

This instrument prepared by  
and to be returned to:  
Timothy D. Davis, Esq.  
Sirote & Permutt, P.C.  
2311 Highland Avenue South  
Birmingham, Alabama 35205  
(205) 930-5100

STATE OF ALABAMA       )  
COUNTY OF SHELBY     )

**ASSIGNMENT OF RENTS AND LEASES**

**THIS ASSIGNMENT OF RENTS AND LEASES** is made as of the 1st day of February, 2005,  
by **POLYMET ALLOYS, INC.**, an Alabama corporation (the "Borrower"), in favor of **WACHOVIA  
BANK, NATIONAL ASSOCIATION**, a national banking association (the "Lender").

**RECITALS:**

This Assignment is made (a) as additional security for the payment of indebtedness due by Borrower to Lender (i) in the principal amount of Two Hundred Seventy-Eight Thousand and No/100 Dollars (\$278,000.00) (the "Term Loan"), or such portion thereof as has been disbursed from time to time under the provisions of a Loan Agreement between Borrower and Lender dated of even date herewith (hereinafter, together with any and all extensions, revisions, modifications or amendments thereto at any time made, referred to as the "Term Loan Agreement") relating to the Term Loan, with interest thereon, as evidenced by a Promissory Note dated of even date herewith payable by the Borrower to the Lender (hereinafter, together with any and all extensions, revisions, modifications or amendments thereto at any time made, and together with any and all promissory notes at any time given in extension or renewal of, or in substitution or replacement for, such note, referred to as the "Term Note"), and (ii) in a maximum principal amount currently of Eight Million and No/100 Dollars (\$8,000,000.00) (the "Revolving Loan"), or such portion thereof as has been disbursed from time to time under the provisions of a Revolving Loan Agreement between Borrower and Lender (as successor by merger to SouthTrust Bank) dated as of December 8, 2000 (hereinafter, together with any and all extensions, revisions, modifications or amendments thereto at any time made, referred to as the "Revolving Loan Agreement") relating to the

Revolving Loan, with interest thereon, as evidenced by a Revolving Note dated as of December 8, 2000, payable by the Borrower to the Lender (as successor by merger to SouthTrust Bank) (hereinafter, together with any and all extensions, revisions, modifications or amendments thereto at any time made, and together any and all promissory notes at any time given in extension or renewal of, or in substitution or replacement for, such note, referred to as the "Revolving Note") (the Term Loan and the Revolving Loan being hereinafter sometimes referred to each singularly as a "Loan" and collectively as "Loans"; the Term Note and the Revolving Note being hereinafter sometimes referred to each singularly as a "Note" and collectively as "Notes"; and the Term Loan Agreement and the Revolving Loan Agreement being hereinafter sometimes referred to each singularly as a "Loan Agreement" and collectively as the "Loan Agreements"), and (b) as additional security for the full and faithful performance by Borrower of all the terms and conditions of each of the Loan Agreements, each of the Notes, and each of the other "Loan Documents" (as such term is defined respectively in each of the Loan Agreements), including, without limitation, that certain Mortgage and Security Agreement of even date herewith (as the same may be amended from time to time, the "Mortgage") executed and delivered by Borrower to Lender on the property described in Exhibit "A" (the "Property") to secure the payment of the Notes.

### **AGREEMENT**

**NOW, THEREFORE,** in consideration of the foregoing recitals, and as an inducement to the Lender to make the Term Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the Borrower's interest (the "Landlord's Interest") in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the Property and the improvements located or to be located thereon, and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due (collectively, the "Rents") under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (and any successor or

replacement provision), including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief.

#### SECTION I - BORROWER'S REPRESENTATIONS AND WARRANTIES

The Borrower warrants and represents to the Lender, in order to induce the Lender both to make the Term Loan, and to accept this Assignment, that:

(a) the Borrower is (or, with respect to any Assigned Leases hereafter made, will be) the sole owner and holder of the Landlord's Interest in each Assigned Lease,

(b) each of the Assigned Leases is (or, with respect to any Assigned Leases hereafter made, will be) valid and enforceable and in full force and effect, and has not been (or, with respect to any Assigned Leases hereafter made, will not be) altered, modified or amended in any manner whatsoever except as set forth in this Assignment,

(c) none of the Rents has been or will be assigned, pledged or in any manner transferred or hypothecated, except pursuant to this Assignment, and

(d) none of the Rents, for any period subsequent to the date of this Assignment, has been or will be collected in advance of the time when such Rents become due under the terms of the Assigned Leases.

#### SECTION II - COVENANTS OF BORROWER

The Borrower covenants with the Lender that, except as may otherwise be expressly provided for in any Loan Agreement or any of the other Loan Documents, the Borrower shall (a) observe and perform all the obligations imposed upon the Landlord under each Assigned Lease; (b) not do, or permit to be done, anything to impair the security of any Assigned Lease; (c) promptly send to the Lender copies of each notice of default which the Borrower shall send or receive under the Assigned Leases; (d) enforce the performance and observance of the provisions of each Assigned Lease; (e) not collect any of the Rents except as set forth in this Assignment; (f) not subordinate any Assigned Lease to any mortgage (other



than the Mortgage) or other lien or encumbrance, or permit, consent, or agree to any such subordination without the prior written consent of the Lender; (g) not alter, modify or change the terms of any Assigned Lease, nor give any consent to exercise any option required or permitted by such terms, without the prior written consent of the Lender in each such case; (h) not cancel or terminate any Assigned Lease, or accept a surrender of any Assigned Lease; (i) not convey or transfer, and shall not suffer or permit a conveyance or transfer of, the Property, or of any interest in the Property, so as to effect directly or indirectly, approximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any other party to and under any Assigned Lease; (j) not alter, modify or change the terms of any guaranty of any Assigned Lease, and shall not cancel or terminate any such guaranty, without the prior written consent of the Lender in each such case; (k) not consent to any assignment of, or subletting under, any Assigned Lease without the prior written consent of the Lender; (l) not lease or otherwise let all or any portion of the Property, without the prior written consent of the Lender; (m) at the Lender's request, execute any documentation confirming the assignment and transfer to the Lender of each Assigned Lease upon all or any part of the Property; and (n) execute and deliver, at the request of the Lender, all other further assurances, confirmations and assignments in the Property as the Lender shall, from time to time, reasonably require in order to evidence or secure the rights of the Lender pursuant to this Assignment.

### SECTION III - TERMS AND CONDITIONS OF ASSIGNMENT

3.1 Collection of Rents by Borrower. So long as there shall not exist any default by Borrower in the performance of any covenant or agreement of Borrower in any Assigned Lease (each such default under any Assigned Lease being called an "Assigned Lease Default"), nor any Event of Default under and as defined in any Loan Document nor any default by the Borrower in the performance of any covenant, agreement or obligation of the Borrower contained herein (each of the foregoing herein being called an "Event of Default"), then the Borrower may collect each payment of Rent at the time of, but not more than one (1) month prior to, the date provided in the applicable Assigned Lease for such payment, and may retain, use and enjoy such payment (subject to the terms of the Loan Documents), and

may lease the Property or any part thereof, all subject to the provisions of this Assignment and the Loan Documents. However, in the event of any Event of Default, then the Borrower's rights, pursuant to this paragraph, to collect, retain, use, and enjoy each payment of Rent, and to lease the Property or any part thereof, shall terminate.

3.2 Lender's Rights To Take Possession, Collect Rents, Etc. Upon, or at any time after, the occurrence of any Event of Default, and without in any way waiving such Event of Default or releasing the Borrower from any obligation under this Assignment, at the Lender's option, and irrespective of whether the Lender shall have commenced a foreclosure of the Mortgage, then the Lender may revoke the right of the Borrower to lease all or any portion of the Property and collect the Rents; and the Lender may, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Property or the Rents and have, hold, manage, lease and operate the Property on such terms and for such period of time as the Lender may in its sole discretion deem proper, and, either with or without taking possession of the Property in the Lender's own name:

(a) make any payment or perform any act which the Borrower has failed to make or perform, in such manner and to such extent as the Lender may deem necessary to protect the security provided for in this Assignment, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security provided for in this Assignment, or the rights or powers of the Lender;

(b) lease the Property or any portion thereof in such manner and for such Rents as the Lender shall determine in its sole and absolute discretion; or

(c) demand, sue for, or otherwise collect and receive from all persons all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements of and to the Property (or any part thereof) as may seem proper to the Lender and to apply the Rents to the payment of (in such order of priority as the Lender, in its sole discretion, may determine):

(1) all expenses of managing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as the Lender may deem necessary or desirable,

(2) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which the Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Property, and

(3) all or any portion of any Loan, together with

(4) all costs and attorneys' fees incurred in connection therewith.

3.3 Lender's Exercise of Rights Not a Waiver. The exercise by the Lender of any rights or powers under Section 3.2 of this Assignment, including, without limitation, the collection of the Rents, and the application of the Rents as provided in this Assignment, shall not be considered a waiver by the Lender of any default by the Borrower under any Loan Document.

3.4 Lender Not Liable Except For Its Willful Tortious Misconduct or Bad Faith. The Lender shall not be liable for any loss sustained by the Borrower resulting: 1) from the Lender's failure to let the Property or 2) from any other act or omission of the Lender in managing the Property, unless and to the extent such loss is caused by the willful tortious misconduct or bad faith of the Lender. Nor shall the Lender be obligated to perform or discharge, nor does the Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Assigned Leases or under or by reason of this Assignment, and the Borrower shall, and does hereby agree, to indemnify the Lender for, and to hold the Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Assigned Leases, unless resulting from the willful tortious misconduct or bad faith of the Lender. Should the Lender incur any such liability under any Assigned Lease, or under or by reason of this



Assignment, or in defense of any claims or demands specified above in this paragraph, then the amount of all such liability, including, without limitation, costs, expenses and attorneys' fees, shall be secured by this Assignment and the Borrower shall reimburse the Lender for all such liability immediately upon demand by the Lender. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon the Lender, nor for the carrying out of any of the terms and conditions of the Assigned Leases; nor shall it operate to make the Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, nor for any dangerous or defective condition of the Property, nor for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, employee or others, unless and to the extent resulting from the willful tortious misconduct or bad faith of the Lender.

3.5 Termination of Assignment. Upon payment in full by the Borrower of each of the Loans, and provided that the Lender has no further obligation to the Borrower or otherwise under any of the Loan Documents, then this Assignment shall become and be void and of no effect, provided, however, 1) this Assignment shall continue to secure the obligations of the Borrower to the Lender pursuant to this Assignment as and to the extent that any payment by the Borrower to the Lender is avoided or is required to be disgorged by the Lender, and 2) the affidavit, certificate, letter or statement of any officer, agent or attorney of the Lender showing any part of any Loan to remain unpaid, or any obligation of the Lender to exist (each such affidavit, certificate, letter or statement being called an "Lender's Certification"), shall be and constitute presumptive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may, and is hereby authorized to, rely on such Lender's Certification.

3.6 Borrower's Authorization to Tenants. The Borrower hereby authorizes and directs each tenant or any other party to any Assigned Lease, upon receipt from the Lender of written notice to the effect that an Event of Default or an Assigned Lease Default exists, to pay over to the Lender all Rents, and to continue to do so until otherwise notified by the Lender.

3.7 Release or Application of Security By Lender. The Lender: 1) may take or release other security for the payment of any Loan, 2) may release any party primarily or secondarily liable for any

Loan or any part of any Loan, and 3) may apply any other security held by the Lender to the satisfaction of any Loan, without, in each case, prejudice to any of the Lender's rights under this Assignment.

3.8 Borrower's Indemnity of Lender. Notwithstanding anything to the contrary in any Loan Document, the Borrower shall indemnify and hold the Lender harmless from, and defend the Lender, at the Borrower's sole cost and expense, against, each loss, liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of the Lender's counsel arising out of or in connection with this Assignment (collectively, the "Losses"), and all Losses shall be payable by the Borrower to the Lender, on demand by the Lender, and, until reimbursed by the Borrower pursuant to the terms of this Assignment, shall be secured by this Assignment and shall bear interest at the highest Default Rate as defined in each of the Notes.

3.9 No Waiver By Lender. Nothing contained in this Assignment, and no act done or omitted by the Lender pursuant to the powers and rights granted to it under this Assignment, shall be deemed to be a waiver by the Lender of its rights and remedies under the Loan Documents other than this Assignment. This Assignment is made and accepted without prejudice to any right or remedy of the Lender under the terms of such other Loan Documents.

3.10 Lender's Rights Cumulative And May Be Exercised Separately. The right of the Lender to collect each of the Loans, and to enforce any other security for any Loan held by the Lender, may be exercised by the Lender either prior to, simultaneously with, or subsequent to any action taken by the Lender under this Assignment.

3.11 Cooperation By Borrower. The Borrower will, at the cost of the Borrower, and without expense to the Lender, do, execute, acknowledge and deliver such further acts, conveyances, assignments, notices of assignments, transfers and assurances as the Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Lender the property and rights assigned by this Assignment, or intended now or hereafter to be assigned by this Assignment, or which the Borrower may be or may hereafter become bound to convey or assign to the Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering



or recording this Assignment. On demand, the Borrower will execute and deliver, and hereby authorizes the Lender to execute in the name of the Borrower to the extent the Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien of this Assignment upon the Assigned Leases.

3.12 Notices. All notices given pursuant to this Assignment shall be given (and deemed received) in the manner set forth in the Mortgage.

3.13 Successors and Assigns. This Assignment, together with the covenants, representations and warranties contained in this Assignment, shall inure to the benefit of the Lender and each subsequent holder of the Mortgage and shall be binding upon the Borrower, and its successors and assigns and any subsequent owner of the Property (or any part thereof or interest therein).

3.14 No Oral Changes. This Assignment may only be modified, amended or changed by an agreement in writing signed by the Borrower and the Lender, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Lender. No waiver of any term, covenant or provision of this Assignment shall be effective unless given in writing by the Lender and if so given by the Lender shall only be effective in the specific instance in which given.

3.15 Severability. Whenever possible, each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be unenforceable or prohibited by, or invalid under, applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Assignment.

3.16 Entire Agreement. The Borrower acknowledges that the Loan Documents set forth the entire agreement and understanding of the Borrower and the Lender with respect to each of the respective Loans and that no oral or other agreement, understanding, representation or warranty exists with respect to any Loan other than as set forth in the Loan Documents.

**3.17 No Trial By Jury. THE BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND THE LENDER (BY ITS ACCEPTANCE OF THE**

MORTGAGE AND THIS ASSIGNMENT) IRREVOCABLY AND UNCONDITIONALLY WAIVES, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO, ANY OF THE LOAN DOCUMENTS HERETOFORE, NOW OR HEREAFTER EXECUTED OR DELIVERED, OR IN CONNECTION WITH ANY LOAN, OR IN ANY WAY RELATED TO THIS TRANSACTION OR OTHERWISE WITH RESPECT TO THE PROPERTY OR ANY OF THE ASSIGNED LEASES.

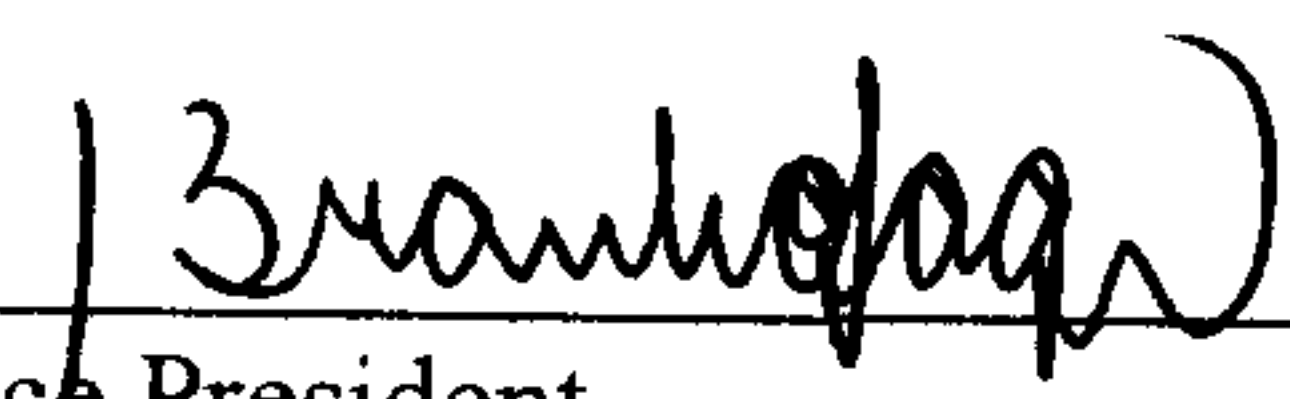
3.18 Amendments to Loan Documents. The terms "Note", "Notes", "Term Note", "Revolving Note", "Mortgage", "Loan Agreement", "Loan Agreements", "Term Loan Agreement", "Revolving Loan Agreement", and "Loan Documents" shall refer to such instruments as they may hereafter be amended from time to time.

3.19 Binding Effect. This Assignment shall be binding upon the Borrower, its successors and assigns and subsequent owners of the Property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of any Note.

IN WITNESS WHEREOF, Borrower has caused these presents to be properly executed by its duly authorized officer as of the day and year first above written.

**BORROWER:**

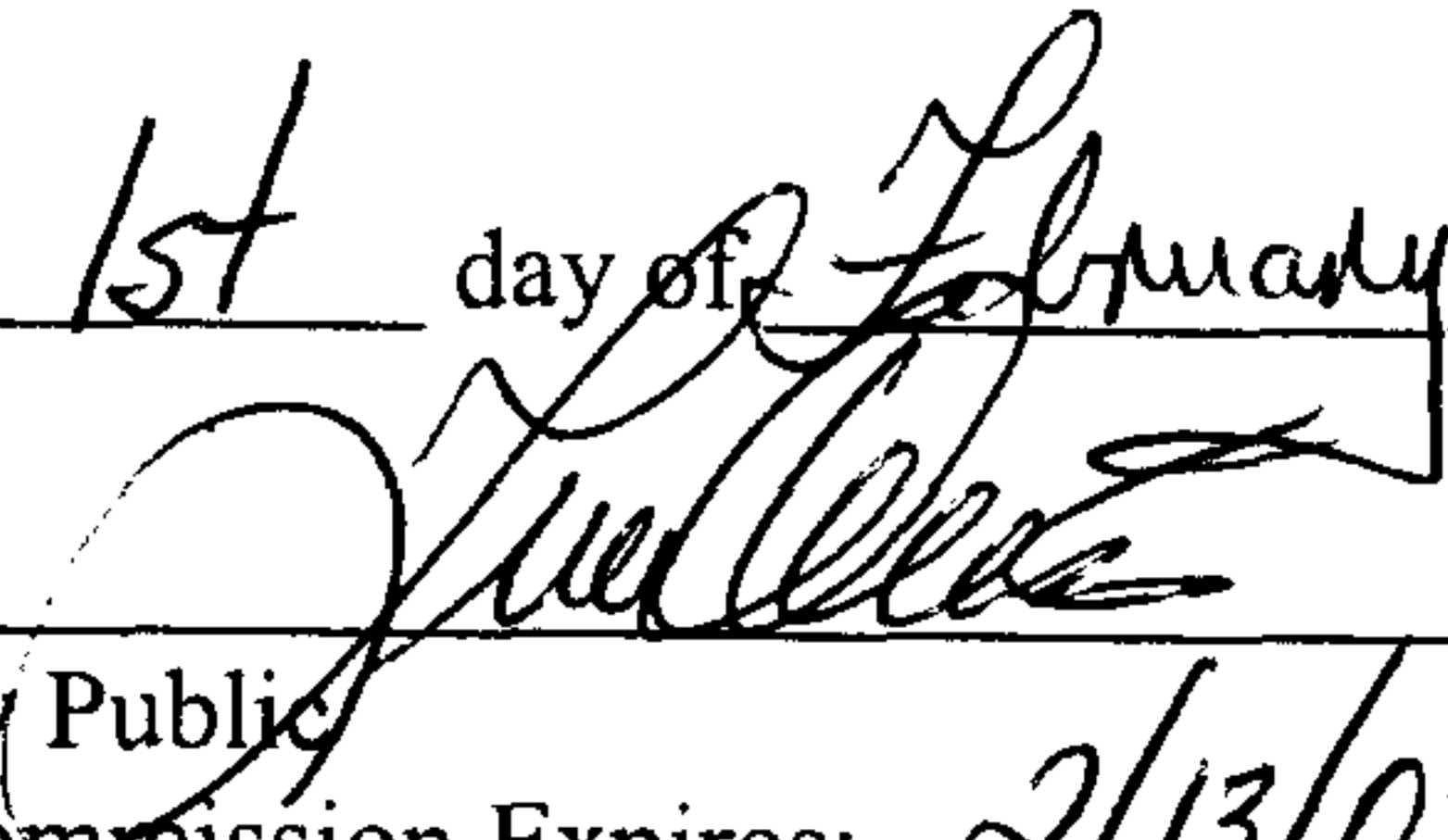
POLYMET ALLOYS, INC.

By:   
Its: Vice President

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Braulio M. Lage, whose name as Vice President of Polymet Alloys, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 1st day of February, 2005.

  
\_\_\_\_\_(SEAL)  
Notary Public  
My Commission Expires: 2/13/07



**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY**

The following described property situated in Shelby County, Alabama:

Unit 100 and 150, Building 1701, according to Providence Park, a Condominium, according to the Declaration of Condominium of Providence Park, as recorded in Instrument #20040802000426220, and amended in Instrument #20050113000020340; and By-Laws thereto as recorded in Instrument #20040802000426220, in the Office of the Judge of Probate of Shelby County, Alabama; together with an undivided interest in the Common Elements assigned to the Units, being defined in said Declaration of Condominium of Providence Park, a Condominium. Said unit being more particularly described in the floor plans and architectural drawings of Providence Park, Phase II, a Condominium, being attached to the Map and Survey of Providence Park, Phase II, a Condominium, as recorded in Map Book 34, Page 75, in said Probate Office.