

LIQUIDMETAL TECHNOLOGIES INC
Form 424B3
July 27, 2007

Prospectus Supplement Filed pursuant to Rule 424(b)(3)
Registration No. 333-142442

PROSPECTUS SUPPLEMENT NO. 1
DATED July 27, 2007
(To Prospectus Dated July 17, 2007)

LIQUIDMETAL TECHNOLOGIES, INC.

12,032,140 Shares of Common Stock

This prospectus supplement supplements information contained in, and should be read in conjunction with, that certain Prospectus, dated July 17, 2007, of Liquidmetal Technologies, Inc. This prospectus supplement is not complete without, and may not be delivered or used except in connection with, the original Prospectus. The Prospectus relates to the public sale, from time to time, of up to 12,032,140 shares of our common stock by the selling shareholders identified in the Prospectus.

The information attached to this prospectus supplement modifies and supersedes, in part, the information in the Prospectus. Any information that is modified or superseded in the Prospectus shall not be deemed to constitute a part of the Prospectus, except as modified or superseded by this prospectus supplement.

This prospectus supplement includes the attached Current Report on Form 8-K, as filed by us with the Securities and Exchange Commission on July 27, 2007.

We may amend or supplement the Prospectus from time to time by filing amendments or supplements as required. You should read the entire Prospectus and any amendments or supplements carefully before you make an investment decision.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities or determined if this Prospectus Supplement (or the original Prospectus dated July 17, 2007) is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus supplement is July 27, 2007.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **July 24, 2007**

LIQUIDMETAL TECHNOLOGIES, INC.

(Exact name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-31332
(Commission File Number)

33-0264467
(I.R.S. Employer
Identification No.)

30452 Esperanza

Rancho Santa Margarita, California 92688

(Address of Principal Executive Offices; Zip Code)

Registrant's telephone number, including area code: **(949) 635-2100**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

LIQUIDMETAL TECHNOLOGIES, INC.

FORM 8-K

Item 1.01. Material Contracts.

On July 24, 2007, Liquidmetal Technologies, Inc. (the Company) completed an \$11.1 million financing transaction (the Transaction) that provided the Company with funding to repay convertible notes previously issued by the Company that were scheduled to become due in July and August 2007. In the Transaction, the Company transferred substantially all of the assets (the Transferred Assets) of the Company's Liquidmetal Coatings division (the Division) to a newly formed, newly capitalized subsidiary named Liquidmetal Coatings, LLC, a Delaware limited liability company (LMC), and LMC assumed substantially all of the liabilities of the Division (the Assumed Liabilities). LMC was capitalized through a \$6.5 million subordinated debt and equity investment by C3 Capital Partners and a \$5.0 million senior credit facility with Bank Midwest, N.A., both out of Kansas City, Missouri. The Company will retain a 69.5% in LMC, and the remaining 30.75% of the equity of LMC will be held by C3 Capital Partners, Larry Buffington (who will also serve as the President and CEO of LMC), and CRESO Capital Partners (the financial advisor in the Transaction).

Asset Purchase and Contribution Agreement

In connection with the Transaction, the Company and LMC entered into an Asset Purchase and Contribution Agreement, dated July 24, 2007 (the Asset Purchase Agreement), under which the Company sold and contributed the Transferred Assets to LMC in exchange for the 69.25% membership interest in LMC, a cash purchase price of \$11,095,000, and the assumption by LMC of the Assumed Liabilities. Under the Asset Purchase Agreement, the Company agreed that it would not compete or assist other competitors in the metal coatings industry, and LMC agreed that it would not compete or assist other competitors in the non-coatings amorphous or semi-amorphous metallic materials industry. Pursuant to the Asset Purchase Agreement, the Company and LMC also entered into a Services Agreement, under which the Company will continue to provide certain transition services for LMC following the closing of the Transaction, and a License and Technical Support Agreement, under which the Company and LMC entered into certain cross-licenses and covenants relating to the post-closing operation of their respective businesses. Also under the Asset Purchase Agreement, LMC entered into an Employment Agreement with Larry Buffington, who will also serve as President and Chief Executive Officer of LMC. The Employment Agreement has a 5-year term, provides for an annual base salary of \$250,000, and provides for potential performance bonuses of up to 50% of Mr. Buffington's base salary. The Employment Agreement provides that, in the event that Mr. Buffington's employment is terminated by LMC in a Termination Without Cause (as defined in the agreement), then Mr. Buffington will be entitled to severance in the amount of 12-months salary continuation (or salary until the end of the 5-year term if less than 12 months is left in the term).

Securities Purchase Agreement between LMC and C3

In the Transaction, LMC also entered into a Securities Purchase Agreement, dated July 24, 2006 (the *Securities Purchase Agreement*), with C3 Capital Partners, L.P. (*C3*), C3 Capital Partners II, L.P. (*C3 II*), and with C3, the *C3 entities*), and Liquidmetal Coatings Solutions, LLC, a wholly owned subsidiary of LMC that will operate the thermal spray coatings business (*LMCS*). Pursuant to the Securities Purchase Agreement, LMC sold and issued to the *C3 entities* subordinated promissory notes in the aggregate principal amount of \$5.53 million (the *Notes*) and a 19% membership interest in LMC. Under the Securities Purchase Agreement, the *C3 entities* have the right, beginning on the 5th anniversary of the closing of the Transactions (or, if earlier, upon a default by LMC under the Notes or Securities Purchase Agreement) to require LMC to purchase the *C3 entities* membership interests in LMC for a purchase price equal to their pro rata portion of the greater of (i) the appraised fair market value of LMC or (ii) six times LMC's trailing 12-month earnings before interest taxes, depreciation, and amortization, less funded debt.

The Notes have a maturity date of July 20, 2012 with no required principal payments before maturity other than upon specified triggering events, such as a change in control of LMC. Interest accrues under the Notes at a rate of 14% per annum, with 12% interest being payable monthly beginning September 2007 and the remaining 2% interest being payable at maturity of the Notes. In connection with the Securities Purchase Agreement and the Notes, the Company and LMC entered into pledge agreements with the *C3 entities* in which the Company pledged its membership interest in LMC to secure the obligations under the notes and LMC pledged its membership interests in LMCS to secure its obligations under the Notes. LMC and LMCS also granted to *C3* a blanket security interest in all of their assets to secure their obligations under the Notes.

Loan Agreement with Bank Midwest, N.A.

As part of the Transaction, the Company entered into a Loan Agreement, dated July 24, 2007 (the *Loan Agreement*), with Bank Midwest, N.A. (*Midwest*). The Loan Agreement provides for total loan availability of \$5.5 million, consisting of a \$4 million term loan and a revolving loan of up to \$1.5 million. The term loan portion of the Loan Agreement is evidenced by a Term Note (the *Term Note*) issued by LMC to Midwest in the principal amount of \$4 million and having a maturity date of July 20, 2011. The revolving loan portion of the Loan Agreement is evidenced by a Revolving Note (the *Revolving Note*) issued by LMC to Midwest of up to \$1.5 million and having a maturity date of July 20, 2008. Borrowing availability under the Revolving Note is based in a percentage of LMC's eligible receivables and eligible inventory, and the initial advance under the Revolving Note was \$1.0 million. LMC's obligations under the Loan Agreement are secured by a blanket security interest in all of LMC's and LMCS's assets, and pursuant to an intercreditor agreement between the *C3 entities* and Midwest, Midwest's security interest in the assets is senior to *C3*'s security interest in the same assets.

Interest on the Term Note accrues on the outstanding principal amount at the rate of 8.48% per annum. LMC is required to make monthly payments of principal and interest under the Term Note, with monthly payments of (i) \$62,500 during months 1 through 12, (ii) \$83,333.33 during months 13 through 36, and (iii) \$104,166.67 during months 37 through 48. All remaining principal and interest shall be due and payable upon the maturity date. If the Term Note is prepaid within the first twenty-four (24) months after July 24, 2007, LMC will pay a prepayment penalty of 1% of the outstanding principal balance, together with accrued interest. After the twenty-four month period has lapsed, LMC will have the right to prepay the Term Note without penalty. Interest accrues on the Revolving Note at the prime rate of interest. LMC will make monthly interest payments on the Revolving Note until July 20, 2008, at which point LMC will pay all remaining principal and interest.

LMC Operating Agreement

As a part of the Transaction and immediately prior to the transfer of the Transferred Assets and Assumed Liabilities pursuant to the Asset Purchase Agreement, the Company, the C3 entities, Larry Buffington, CRESO Capital Partners, and LMC entered into an Operating Agreement, dated July 24, 2007, relating to LMC (the Operating Agreement). Under the Operating Agreement, LMT was issued its 69.25% membership interest in LMC, the C3 funds were issued their collective 19% membership interest, Mr. Buffington was issued his 10% membership interest (subject to repurchase at various prices depending upon his length of employment with LMC), and CRESO Capital Partners was issued a 1.75% membership interest. The Operating Agreement provides that LMC will be managed by a Board of Managers comprised of one manager designated by the Company, one manager designated by C3, and Larry Buffington (but Mr. Buffington will only serve as a manager while he serves as President and CEO of LMC and does not at such time serve as President and CEO of the Company). The Operating Agreement designates Larry Buffington as LMC's initial President and CEO.

Item 2.01. Completion of Disposition of Assets.

The information included in Item 1.01 of this Form 8-K is hereby incorporated by reference into this Item 2.01.

Item 2.03. Creation of a Direct Financial Obligation.

The information included in Item 1.01 of this Form 8-K is hereby incorporated by reference into this Item 2.03 to the extent that such information would be required to be disclosed pursuant to Item 2.03 of Form 8-K.

Item 7.01. Regulation FD Disclosure.

The following information is being furnished under Item 7.01 of Form 8-K: Press release, dated July 26, 2007, announcing the Transaction. A copy of this press release is attached as Exhibit 99.1 to this Form 8-K.

Item 9.01. Financial Statements and Exhibits.

See the Exhibit Index set forth below for a list of exhibits included with this Form 8-K.

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunder duly authorized.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ Larry Buffington
Larry Buffington,
President and Chief Executive Officer

Date: July 27, 2007

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EXHIBIT INDEX

Exhibit Number	Document Description
2.1	Asset Purchase and Contribution Agreement, dated July 24, 2007 between Company and Liquidmetal Coatings, LLC. (includes Liquidmetal Coatings, LLC Operating Agreement).
2.2	Loan Agreement, dated July 24, 2007 by and among Liquidmetal Coatings, LLC, Liquidmetal Coatings Solutions, LLC and Bank Midwest, N.A.
2.3	Securities Purchase Agreement, dated July 24, 2007 by and among Liquidmetal Coatings, LLC, C3 Capital Partners, L.P., C3 Capital Partners II, L.P. and Liquidmetal Coatings Solutions, LLC.
99.1	Press Release, dated July 26, 2007

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ASSET PURCHASE AND CONTRIBUTION AGREEMENT

by and among

LIQUIDMETAL TECHNOLOGIES, INC.

and

LIQUIDMETAL COATINGS, LLC.

July 24, 2007

ASSET PURCHASE AND CONTRIBUTION AGREEMENT

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Exhibits

Exhibit A	Form of LMC Limited Liability Company Agreement
Exhibit B	Form of Escrow Agreement
Exhibit C	Form of Buffington Employment Agreement
Exhibit D	Form of Services Agreement
Exhibit E	Form of License and Technical Support Agreement
Exhibit F	Form of Promissory Note for Upward Purchase Price Adjustment

ASSET PURCHASE AND CONTRIBUTION AGREEMENT

THIS ASSET PURCHASE AND CONTRIBUTION AGREEMENT (this Agreement) is made and effective as of July 24, 2007 by and among LIQUIDMETAL TECHNOLOGIES, INC., a Delaware corporation (LMT), and LIQUIDMETAL COATINGS, LLC, a Delaware limited liability company (LMC).

RECITALS

WHEREAS, LMT operates a business division that markets and sells metallic industrial coatings and powders under the Liquidmetal® Coatings and/or Armacor™ Coatings brand names (the Business); and

WHEREAS, LMT desires to sell and contribute substantially all of its operating assets that are used, held for use or acquired or developed for use primarily in the Business to LMC, and LMC desires to purchase such assets and accept such contribution. As used in this Agreement, Division means LMT with respect to the Business; and

WHEREAS, LMC has entered into a Securities Purchase Agreement of even date herewith (the Securities Purchase Agreement) with C3 Capital Partners, L.P., a Delaware limited partnership (C3), and C3 Capital Partners II, L.P., a Delaware limited partnership (C3 II), pursuant to which C3 and C3 II have agreed to purchase from LMC 14% Subordinated Notes (the Notes) and membership interests (the Membership Interests) in LMC.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants, agreements and conditions set forth in this Agreement, and intending to be legally bound, the Parties agree as follows:

1. PURCHASE, SALE AND CONTRIBUTION OF ASSETS

1.1. Assets to be Transferred.

Upon the terms and subject to the conditions set forth in this Agreement, LMT shall, on the Closing Date, contribute or sell, transfer, convey, assign, and deliver to LMC, and LMC shall, on the Closing Date, accept such contribution and purchase from LMT, all of the following assets used in the Business, together with all rights and privileges associated with such assets, but not including the Excluded Assets (collectively, the Transferred Assets):

- (a) Leased Real Property. The leases of real property identified in Schedule 1.1(a) (the Leased Real Property).

(b) **Tangible Personal Property.** The machinery, equipment, furniture, computer hardware, supplies, spare parts, materials, vehicles and other items of tangible personal property identified in Schedule 1.1(b).

(b) Tangible Personal Property. The machinery, equipment, furniture, computer hardware, supplies, ~~sp~~are part

(c) **Personal Property Leases.** The leases of machinery, equipment, vehicles, furniture and other personal property identified in Schedule 1.1(c).

(c) Personal Property Leases. The leases of machinery, equipment, vehicles, furniture and other personal pro 15

(c) Personal Property Leases. The leases of machinery, equipment, vehicles, furniture and other personal pro 16

(d) **Insurance Policies.** All LMT s rights to benefits under the insurance policies identified in Schedule 1.1(d) with respect to claims directly relating to the Business.

(d) Insurance Policies. All LMT s rights to benefits under the insurance policies identified in Schedule 1.1(d) wi

(e) **Contracts.** All LMT's rights in, to and under all contracts, purchase orders and sales orders identified in Schedule 1.1(e) (collectively, the **Contracts**). To the extent that any Contract for which assignment to LMC is provided herein is not assignable without the consent of another party, this Agreement shall not constitute an assignment or an attempted assignment thereof if such assignment or attempted assignment would constitute a breach thereof. LMT and LMC agree to use their reasonable best efforts (without any requirement on the part of LMC to pay any money or agree to any change in the terms of any such Contract) to obtain the consent of such other party to the assignment of any such Contract to LMC in all cases in which such consent is or may be required for such assignment. If any such consent shall not be obtained, LMT agrees to cooperate with LMC in any reasonable arrangement designed to provide for LMC the benefits intended to be assigned to LMC under the relevant Contract, including enforcement at the cost and for the account of LMC of any and all rights of LMT against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise.

(e) **Contracts.** All LMT's rights in, to and under all contracts, purchase orders and sales orders identified in S

(f) Coatings Intellectual Property Rights. All LMT s interest in any Intellectual Property Rights used or held for use primarily in the Division, including without limitation the Intellectual Property Rights identified in Schedule 1.1(f) (collectively, referred to as the Coatings Intellectual Property). For purposes of this Agreement, Intellectual Property Rights **means all: (i) patents, patent applications, patent disclosures and inventions; (ii) trademarks, service marks, trade dress, trade names, internet domain names, logos and corporate names and registrations and applications for registration thereof, together with all of the goodwill associated therewith; (iii) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof; (iv) mask works and registrations and applications for registration thereof; (v) computer software, data, data bases and documentation thereof; and (vi) trade secrets and other confidential information (including, without limitation, ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information).**

(f) Coatings Intellectual Property Rights. All LMT s interest in any Intellectual Property Rights used or held for

(g) **Permits.** All licenses, permits, approvals, certifications and listings of the Business.

(h) **Literature.** All sales literature, promotional literature, catalogs and similar materials used or held for use in the Business

(h) Literature. All sales literature, promotional literature, catalogs and similar materials used or held for use in t

(i) **Records and Files.** All books, records, files or other embodiments of information of the Business, including all diagrams, prints, surveys, drawings, customer data, training materials, operations manuals and other records, data and materials, whether relating to past or current operations (provided that LMT shall have the right to retain copies thereof).

(i) Records and Files. All books, records, files or other embodiments of information of the Business, including

(i) Records and Files. All books, records, files or other embodiments of information of the Business, including

(j) **Notes and Accounts Receivable.** All notes, drafts and accounts receivable aged sixty (60) days or less (including unbilled receivables) derived from the Business and the full benefit of all security for such rights to payment (collectively, the **Transferred Receivables**).

(j) Notes and Accounts Receivable. All notes, drafts and accounts receivable aged sixty (60) days or less (inc

(k) **Inventory**. Inventories of raw materials, work-in-process and finished goods (including all such in transit), and service and repair parts, supplies and components held for resale in the Business by LMT on the Closing Date, together with related packaging materials (collectively the Inventory).

(k) Inventory. Inventories of raw materials, work-in-process and finished goods (including all such in transit), a

(l) General Intangibles. All prepaid items, causes of action arising out of occurrences before or after the Closing, and other intangible rights and assets, relating to the Business.

(l) General Intangibles. All prepaid items, causes of action arising out of occurrences before or after the Closing

1.2. Excluded Assets

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Notwithstanding anything to the contrary in Section 1.1, LMT shall not contribute or sell, convey, assign, transfer or deliver to LMC, and LMC shall not purchase or acquire from LMT, the following (collectively, Excluded Assets):

- (a) **Trademarks.** All of LMT's rights in, to and under the Liquidmetal® trademark and any and all derivations thereof.

- (a) Trademarks. All of LMT's rights in, to and under the Liquidmetal® trademark and any and all derivations thereof.

(b) Cash. Subject to the provisions of Section 3.4 hereof, any cash and cash equivalents of the Division.

(b) Cash. Subject to the provisions of Section 3.4 hereof, any cash and cash equivalents of the Division. 29.

(c) **Receivables Aged Over 60 Days**. All notes, drafts and accounts receivable aged more than sixty (60) days derived from the Business and the full benefit of all security for such rights to payment (Excluded Receivables).

(c) Receivables Aged Over 60 Days. All notes, drafts and accounts receivable aged more than sixty(60) days

(d) Certain Records. Any books, records, files or other embodiments of information relating exclusively to any Excluded Asset.

(d) Certain Records. Any books, records, files or other embodiments of information relating exclusively to any

2.

ASSUMPTION OF LIABILITIES

2.1. Liabilities to be Assumed.

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As used in this Agreement, the term Liability shall mean and include any direct or indirect indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, secured or unsecured. Subject to the terms and conditions of this Agreement, on the Closing Date, LMC shall assume and agree to perform and discharge the following, and only the following Liabilities of the Division (collectively the Assumed Liabilities):

(a) **Final Closing Balance Sheet Liabilities.** The accounts payable and accrued Liabilities of the Division reflected or reserved against on the Final Closing Balance Sheet (as hereinafter defined), but only in the amounts so reflected or reserved.

(a) Final Closing Balance Sheet Liabilities. The accounts payable and accrued Liabilities of the Division reflected or reserved against on the Final Closing Balance Sheet (as hereinafter defined), but only in the amounts so reflected or reserved.

(a) Final Closing Balance Sheet Liabilities. The accounts payable and accrued Liabilities of the Division reflect

(b) **Contractual Liabilities.** The Division's Liabilities arising from and after the Closing Date under and pursuant to the Contracts specifically described in any of Schedules 1.1(a), 1.1(c) or 1.1(e).

(b) Contractual Liabilities. The Division's Liabilities arising from and after the Closing Date under and pursuant

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The Contracts described in subsection 2.1(b) above are hereinafter collectively described as the Assumed Contracts.

(c) **Liabilities Under Permits and Licenses.** The Division's Liabilities arising from and after the Closing Date under any permits or licenses described in 1.1(g) and assigned to LMC at the Closing.

(c) Liabilities Under Permits and Licenses. The Division's Liabilities arising from and after the Closing Date un

2.2. **Liabilities Not to be Assumed.**

Except as and to the extent specifically set forth in Section 2.1, LMC is not assuming any Liabilities of LMT and all such Liabilities shall be and remain the responsibility of LMT.

3. **ISSUANCE OF LMC LLC MEMBERSHIP INTERESTS AND PAYMENT OF CASH PURCHASE PRICE**

3.1. Consideration for Contributed Assets.

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In consideration of the Transferred Assets contributed to LMC, subject to the terms and conditions of this Agreement, at Closing LMC shall issue to LMT limited liability company membership interests of LMC (Membership Interests) equal to 69.25% of the total outstanding Membership Interests of LMC outstanding immediately after giving effect to such issuance. The Membership Interests shall be issued pursuant to the form of Limited Liability Company Agreement attached as Exhibit A.

3.2. Purchase Price for Purchased Assets.

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In consideration of the Transferred Assets purchased by LMC, subject to the terms and conditions of this Agreement, LMC shall assume the Assumed Liabilities and authorize its lenders to pay to the Escrow Agent pursuant to the Escrow Agreement cash equal to the sum of Eleven Million Ninety Five Thousand and No/100 Dollars (\$11,095,000) as adjusted upward or downward by the Upward Purchase Price Adjustment or Downward Purchase Price Adjustment, if any (the Purchase Price). The term Escrow Agreement shall mean an Escrow Agreement in substantially the form attached hereto as Exhibit B, and Escrow Agent shall have the meaning set forth in the Escrow Agreement.

3.3. Payment of Purchase Price.

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The Purchase Price shall be paid by LMC as follows:

- (a) **Assumption of Liabilities.** At the Closing, LMC shall deliver to LMT such documents and instruments as are reasonably required to evidence the assumption of the Assumed Liabilities.

(a) Assumption of Liabilities. At the Closing, LMC shall deliver to LMT such documents and instruments as are

(b) **Cash to LMT.** At the Closing, LMC shall direct its lenders to deliver to the Escrow Agent pursuant to the Escrow Agreement cash in an amount equal to Eleven Million Ninety Five Thousand and No/100 Dollars (\$11,095,000), plus or minus, as the case may be, the amount of the Estimated Purchase Price Adjustment.

(b) Cash to LMT. At the Closing, LMC shall direct its lenders to deliver to the Escrow Agent pursuant to the Es

(c) **Adjustment of Final Cash Purchase Price.** On or before the fifth business day following the final determination of the Final Closing Balance Sheet (as hereinafter defined) (such date being hereinafter referred to as the Settlement Date), either (i) LMT shall pay to LMC the amount of any Downward Differential in cash or (ii) LMC shall pay to LMT the amount of any Upward Differential by a promissory note in the principal amount of the Upward Differential and in substantially the form attached hereto as Exhibit F. (an Adjustment Note).

(c) Adjustment of Final Cash Purchase Price. On or before the fifth business day following the final determination

(d) **Issuance of LMC Membership Interest.** At Closing, LMC shall issue to LMT Membership Interests of LMC equal to 69.25% of the total outstanding Membership Interests of LMC outstanding immediately after giving effect to such issuance.

(d) Issuance of LMC Membership Interest. At Closing, LMC shall issue to LMT Membership Interests 47 of LMC e

3.4. **Purchase Price Adjustment.**

(a) Pursuant to the provisions of this Section 3.4, the Purchase Price shall be decreased, dollar for dollar, if the following calculation yields a negative number or increased, dollar for dollar, if the following calculation yields a positive number:

(a) Pursuant to the provisions of this Section 3.4, the Purchase Price shall be decreased, dollar for dollar, if the

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(i) Current assets (excluding the Thermal Spray Assets and the Excluded Receivables) minus current liabilities (subject to Section 8.4 hereof and excluding the Thermal Spray Liabilities), as of the Closing Date, as set forth on the Final Closing Balance Sheet, minus:

(i) Current assets (excluding the Thermal Spray Assets and the Excluded Receivables) minus current liabilities

(ii) \$800,000

(ii) \$800,000

(the negative difference, if any, the Downward Purchase Price Adjustment and the positive difference, if any, the Upward Purchase Price Adjustment). For purposes of this Agreement, the term Thermal Spray Assets refers to the assets acquired by LMT on June 1, 2007 from Foster Wheeler Energy Services, Inc., and Thermal Spray Liabilities means the liabilities assumed by LMT on June 1, 2007 from Foster Wheeler Energy Services, Inc.

(b) On the Closing Date, LMT shall prepare and deliver to LMC a good faith estimate of the balance sheet of the Division as of the close of business on the Closing Date (the Closing Balance Sheet Estimate).

(b) On the Closing Date, LMT shall prepare and deliver to LMC a good faith estimate of the balance sheet of the

(c) If based on the Closing Balance Sheet Estimate the calculation in Section 3.4(a) (the Estimated Calculation) would result in a Downward Purchase Price Adjustment, then the cash consideration to be delivered by LMC pursuant to Section 3.3(b) shall be reduced by the amount of such Downward Purchase Price Adjustment. If the Estimated Calculation would result in an Upward Purchase Price Adjustment, then in addition to the consideration set forth in Section 3.3, LMC shall deliver an Adjustment Note in favor of LMT in the amount of

(c) If based on the Closing Balance Sheet Estimate the calculation in Section 3.4(a) (the Estimated Calculation) would result in a Downward Purchase Price Adjustment, then the cash consideration to be delivered by LMC pursuant to Section 3.3(b) shall be reduced by the amount of such Downward Purchase Price Adjustment. If the Estimated Calculation would result in an Upward Purchase Price Adjustment, then in addition to the consideration set forth in Section 3.3, LMC shall deliver an Adjustment Note in favor of LMT in the amount of

such Upward Purchase Price Adjustment which shall be due and payable in full forty-five (45) days after the Closing Date.

(d) As promptly as practical, and in any event not more than 90 days after the Closing Date, LMC shall prepare and deliver to LMT (i) its statement setting forth its good faith determination of the balance sheet of the Division as of the close of business on the Closing Date (the Closing Balance Sheet Statement), and (ii) a calculation of the amount of the Upward Purchase Price Adjustment or Downward Purchase Price Adjustment derived from the Closing Balance Sheet Statement (LMC's Calculation). In connection with the preparation of the Closing Balance Sheet Statement, LMT shall cooperate, and cause its agents and representatives to cooperate, with LMC and its agents and representatives. The parties agree that Tarsus CFO Services, LLC shall assist in the preparation of the Closing Balance Sheet Statement on behalf of LMC.

(d) As promptly as practical, and in any event not more than 90 days after the Closing Date, LMC shall prepare

(e) The Closing Balance Sheet Statement and LMC's Calculation shall be conclusive and binding on the parties and the Closing Balance Sheet Statement shall be deemed the Final Closing Balance Sheet, unless LMT delivers to LMC a notice specifying in reasonable detail the respects in which it objects to the Closing Balance Sheet Statement (the Objection Notice) within 30 days following LMT's receipt thereof. In connection with the LMT's review of the Closing Balance Sheet Statement, LMC shall cooperate, and cause its agents and representatives, to cooperate with LMT and its agents and representatives and shall provide such agents and representatives access to such books, records and information relating to the Closing Balance Sheet Statement, as may be reasonably requested from time to time. If LMT delivers a timely Objection Notice, LMC, LMT and their respective accountants shall negotiate among themselves for a period of 45 days thereafter in an attempt to resolve the objections stated therein. If no resolution is reached within such 45-day period, then LMC and LMT shall select an independent accounting firm mutually agreeable to both parties (the Accounting Firm) to review LMT's books and related information to determine (the Independent Determination) the balance sheet of the Division as of the close of business on the Closing Date (the Final Closing Balance Sheet) and to calculate the amount of the Upward Purchase Price Adjustment or Downward Purchase Price Adjustment (the Definitive Calculation), if any. The Accounting Firm shall be supplied such information, books and records and access to such individuals as it may reasonably require from any party. The Accounting Firm shall only review disputed items and must resolve each disputed item within the range between LMC's position and LMT's position regarding the disputed item. The parties shall use commercially reasonable efforts to cause the Accounting Firm to deliver the Final Closing Balance Sheet and the Definitive Calculation within 30 days of its selection. The Final Closing Balance Sheet and the Definitive Calculation shall be final and binding on the parties hereto absent manifest error. The parties shall each pay one-half of the costs of the Accounting Firm in connection with the Independent Determination.

(e) The Closing Balance Sheet Statement and LMC's Calculation shall be conclusive and binding on the parties

(f) If the amount of LMC's Calculation or the Definitive Calculation, as the case may be, is greater (the Upward Differential) than the amount of the Estimated Purchase Price Adjustment, then LMC shall pay to LMT an amount equal to the Upward Differential. If the amount of LMC's Calculation or the Definitive Calculation, as the case may be, is less (the Downward Differential) than the amount of the Estimated Purchase Price Adjustment, then LMT shall pay to LMC an amount equal to the Downward Differential.

(f) If the amount of LMC's Calculation or the Definitive Calculation, as the case may be, is greater (the Upward Differential) than the amount of the Estimated Purchase Price Adjustment, then LMC shall pay to LMT an amount equal to the Upward Differential. If the amount of LMC's Calculation or the Definitive Calculation, as the case may be, is less (the Downward Differential) than the amount of the Estimated Purchase Price Adjustment, then LMT shall pay to LMC an amount equal to the Downward Differential.

(f) If the amount of LMC's Calculation or the Definitive Calculation, as the case may be, is greater (t~~50~~ Upwa

3.5. **Tax Allocation.**

The allocation of the Transferred Assets between the Transferred Assets to be sold by LMT to LMC and the Transferred Assets to be contributed by LMT to LMC is set forth on Schedule 3.5, and the allocation of the Purchase Price among the Transferred Assets to be sold is also set forth on Schedule 3.5. LMT and LMC will follow and use such allocation in all tax returns, filings or other related reports made by them to any governmental agencies.

4. **REPRESENTATIONS AND WARRANTIES OF LMT**

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LMT makes the following representations and warranties to LMC, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by LMC, or any knowledge of LMC other than as specifically disclosed in the Disclosure Schedules delivered to LMC at the time of the execution of this Agreement, and shall survive the Closing of the transactions provided for herein.

4.1. Corporate.

(a) **Organization.** LMT is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(a) Organization. LMT is a corporation duly organized, validly existing and in good standing under the laws of

(b) **Corporate Power.** LMT has all requisite corporate power and authority to carry on the Business as and where such is now being and as heretofore conducted, to enter into this Agreement and the other documents and instruments to be executed and delivered by LMT pursuant hereto and to carry out the transactions contemplated hereby and thereby.

(b) Corporate Power. LMT has all requisite corporate power and authority to carry on the Business as and where such is now being and as heretofore conducted, to enter into this Agreement and the other documents and instruments to be executed and delivered by LMT pursuant hereto and to carry out the transactions contemplated hereby and thereby.

(c) **Qualification.** LMT is duly licensed or qualified to do business as a foreign corporation, and is in good standing, in each jurisdiction wherein the character of the properties owned or leased by the Division, or the nature of the Business, makes such licensing or qualification necessary, except where the failure to qualify would not result or constitute any event, circumstance, change or effect that is or would reasonably be likely to be materially adverse to the Business or the assets, liabilities, condition (financial or otherwise) or results of operations of the Division (a **Business Material Adverse Effect**). The states in which the Division is licensed or qualified to do business are listed in Schedule 4.1(c).

(c) **Qualification.** LMT is duly licensed or qualified to do business as a foreign corporation, and is in good stand

4.2. Authority.

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The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by LMT pursuant hereto and the consummation of the transactions contemplated hereby and thereby have been duly authorized by LMT. No other or further corporate act or proceeding on the part of LMT is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by LMT pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by LMT pursuant hereto will constitute, valid binding agreements of LMT, enforceable in accordance with their respective terms, except as such enforceability may

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be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

4.3. Title to and Condition of Properties.

LMT has good and marketable title to all the Transferred Assets, free and clear of all mortgages, liens (statutory or otherwise), security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, easements, covenants, reservations, restrictions, rights-of-way, exceptions, limitations, charges or encumbrances of any nature whatsoever (collectively, Liens) except those described in Schedule 4.3(a), and municipal and zoning ordinances and easements for public utilities, none of which interfere with the use of the Transferred Assets as currently utilized or adversely affect the marketability of the Transferred Assets. At Closing, LMC will receive good and marketable title to all the Transferred Assets, free and clear of all Liens of any nature whatsoever except those described in Schedule 4.3(b).

4.4. Incorporation of Securities Purchase Agreement Representations and Warranties.

The representations and warranties made by LMC in the Sections 6.5, 6.6, 6.7, 6.8, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.17, 6.18, 6.19, 6.21, 6.23, 6.24 and 6.25 of the Securities Purchase Agreement (the Incorporated SPA Representations and Warranties) are incorporated herein by reference as representations and warranties of LMT as if fully set forth herein and LMT hereby adopts and ratifies all of the Incorporated SPA Representations and Warranties. For purposes hereof, any reference to LMC or Company in the SPA Representations and Warranties shall be deemed to refer to the Division.

5. **REPRESENTATIONS AND WARRANTIES OF
LMC**

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LMC makes the following representations and warranties to LMT, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by LMT or any notice to LMT, and shall survive the Closing of the transactions provided for herein.

5.1. Corporate.

(a) Organization. LMC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(a) Organization. LMC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Corporate Power. LMC has all requisite company power to enter into this Agreement and the other documents and instruments to be executed and delivered by LMC and to carry out the transactions contemplated hereby and thereby.

(b) Corporate Power. LMC has all requisite company power to enter into this Agreement and the other documents

5.2. **Authority.**

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The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by LMC pursuant hereto and the consummation of the transactions contemplated hereby and thereby have been duly authorized by LMC. No other

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company act or proceeding on the part of LMC or its members is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by LMC pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by LMC pursuant hereto will constitute, valid and binding agreements of LMC, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles.

6. **COVENANTS OF LMT**

LMT covenants and agrees as follows:

6.1. Conduct of Business Pending the Closing.

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From the date hereof until the Closing, except as otherwise approved in writing by LMC:

(a) **No Changes.** LMT will carry on the Business in materially the same manner as heretofore and will not make or institute any material changes in its methods of purchase, sale, management, accounting or operation.

(a) No Changes. LMT will carry on the Business in materially the same manner as heretofore and will not make

(b) **Maintain Organization.** LMT will take such action as may be necessary to maintain, preserve, renew and keep in favor and effect the existence, rights and franchises of the Division and will use its best efforts to preserve the business organization of the Division intact, to keep available to LMC the present officers and employees, and to preserve for LMC its present relationships with suppliers and customers and others having business relationships with the Division.

(c) Maintenance of Insurance. LMT shall maintain all of the insurance with respect to the Business in effect as of the date hereof and shall procure such additional insurance as shall be reasonably requested by LMC.

(c) Maintenance of Insurance. LMT shall maintain all of the insurance with respect to the Business in effect as

(d) Maintenance of Property. LMT shall use, operate, maintain and repair all property of the Division in a normal business manner.

(d) Maintenance of Property. LMT shall use, operate, maintain and repair all property of the Division in a normal

(e) **No Negotiations.** LMT will not directly or indirectly (through a representative or otherwise) solicit or furnish any information to any prospective buyer, commence, or conduct presently ongoing, negotiations with any other party or enter into any agreement with any other party concerning the sale of the Division, the Division's assets or Business (an acquisition proposal), and LMT shall immediately advise LMC of the receipt of any acquisition proposal with respect to the Business.

(e) No Negotiations. LMT will not directly or indirectly (through a representative or otherwise) solicit or furnish

6.2. Consents.

LMT will use its best efforts prior to Closing to obtain all consents necessary for the consummation of the transactions contemplated hereby.

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6.3. Other Action.

LMT shall use its best efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the parties' obligations to consummate the transactions contemplated in this Agreement.

6.4. Cooperation.

LMT and LMC agree to cooperate with each other in connection with, including furnishing or causing to be furnished, upon request and as promptly as practicable, such information and assistance relating to the transactions contemplated by the Agreement as is reasonably necessary for, the preparation or filing of all Tax Returns, the making of any elections related to Taxes, and the conduct of any audits, examinations, litigation, suits or other proceedings relating to the Taxes, including refunds.

6.5. Restrictions on LMT.

(a) **In order to protect adequately the interest of LMC in the Transferred Assets and in consideration of the consideration paid or issued by LMC to LMT for the Transferred Assets, LMT agrees that it shall not, and shall cause its Affiliates (other than LMC) not to, during the four-year period beginning on the Closing Date anywhere in the world:**

(i) **directly or indirectly, whether as an owner, shareholder, member, investor, partner, joint venturer, licensor, financier, operator, consultant, agent, distributor, independent contractor, participant, creditor or otherwise, invest in (other than ownership as a passive investor of less than five percent of the voting stock of a publicly-traded company), own, manage, operate, finance, control or participate in the ownership, management, operation, financing, control of, or act as a consultant to, be associated with, lend its or their name or any trade name to, any of its or their credit to, or otherwise render services or advice to or on behalf of, any business that engages in the manufacture, marketing, sale, distribution, or application of **metallic coating material in the form of a wire or powder that is sprayed in liquid form on industrial equipment for use as a coating to protect against wear, corrosion, or abrasion;****

(ii) **directly or indirectly induce or attempt to induce any customer of LMC in relation to the Business to reduce such customer's purchases of products of the Business from LMC or its Affiliates after the Closing Date or induce or attempt to induce any supplier to LMC with respect to the Business to reduce such supplier's deliveries of materials of the Business after the Closing Date;**

(iii) **directly or indirectly, except as expressly permitted by LMC or its successors or assigns in advance in writing, solicit any employee to leave the employ of LMC or its successors and assigns; or**

(b) **LMT acknowledges and agrees that LMC's remedies at law for any violation or attempted violation of LMT's obligations under this Section 6.5 would be inadequate and incomplete, and agrees that in the event of any such violation or attempted**

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violation, LMC shall be entitled to a temporary restraining order, temporary and permanent injunctions, and other equitable relief, without the necessity of posting any bond or proving any actual damage, in addition to all other rights and remedies that may be available to LMC from time to time.

(c) If a judicial or arbitral determination is made that any of the provisions of this Section 6.5 constitutes an unreasonable or otherwise unenforceable restriction against LMT or any of its Affiliates, the provisions of this Section 6.5 shall be rendered void only to the extent that such judicial or arbitral determination finds such provisions to be unreasonable or otherwise unenforceable with respect to LMT or any Affiliate thereof. In this regard, the parties hereby agree that any judicial authority construing this Agreement shall be empowered to sever any territory or portion thereof, any prohibited business activity or any time period from the coverage of this Section 5.0 and to apply the provisions of this Section 6.5 to the remaining portion of the covered territory, the remaining business activities and the remaining time period not so severed by such judicial or arbitral authority. The time period during which the prohibitions set forth in this Section 6.5 shall apply shall be tolled and suspended for a period equal to the aggregate time during which LMT or any Affiliate thereof (other than LMC) violates such prohibitions in any respect.

(d) For purposes of this Agreement, the term Affiliate means, as to any specified person or entity, any other person or entity that directly or indirectly controls, or is under common control with, or is controlled by, such specified person or entity and, if such other person is an individual, any member of the immediate family of such individual. As used in this definition, control (including, with its correlative meanings, controlled by and under common control with) shall mean possession, directly or indirectly, of power to direct or cause the direction of the management or policies (whether through ownership of securities or partnership or other ownership interests, by contract, or otherwise) and immediate family shall mean any parent, child, grandchild, spouse, or sibling.

7. COVENANTS OF LMC

LMC covenants and agrees as follows:

7.1. Restrictions on LMC.

(a) In order to protect adequately the interest of LMT in entering into the transactions contemplated by this Agreement and in consideration of the obligations of LMT herein, LMC agrees that it shall not, and shall cause its Affiliates (other than LMT) not to, during the four-year period beginning on the Closing Date anywhere in the world:

(i) directly or indirectly, whether as an owner, shareholder, member, investor, partner, joint venturer, licensor, financier, operator, consultant, agent, distributor, independent contractor, participant, creditor or otherwise, invest in (other than ownership as a passive investor of less than five percent of the voting stock of a publicly-traded company), own, manage, operate, finance, control or participate in the ownership, management, operation, financing, control of, or act as a consultant to, be associated with, lend its or their name or any trade name to,

any of its or their credit to, or otherwise render services or advice to or on behalf of, any business that engages manufacture, marketing, sale, distribution, or application of amorphous or semi-amorphous metallic materials (or composite materials including amorphous or semi-amorphous metallic materials) or products made therefrom, but excluding the Business (the LMT Business);

(ii) directly or indirectly induce or attempt to induce any customer of LMT in relation to the LMT Business to reduce such customer's purchases of products of the LMT Business from LMT or its Affiliates after the Closing Date or induce or attempt to induce any supplier to LMT with respect to the LMT Business to reduce such supplier's deliveries of materials of the LMT Business after the Closing Date;

(iii) directly or indirectly, except as expressly permitted by LMT or its successors or assigns in advance in writing, solicit any employee to leave the employ of LMT, its Affiliates (other than LMC), or their respective successors and assigns; or

(b) LMC acknowledges and agrees that LMT's remedies at law for any violation or attempted violation of the LMC's obligations under this Section 7.1 would be inadequate and incomplete, and agrees that in the event of any such violation or attempted violation, LMT shall be entitled to a temporary restraining order, temporary and permanent injunctions, and other equitable relief, without the necessity of posting any bond or proving any actual damage, in addition to all other rights and remedies that may be available to LMT from time to time.

(c) If a judicial or arbitral determination is made that any of the provisions of this Section 7.1 constitutes an unreasonable or otherwise unenforceable restriction against LMC or any of its Affiliates, the provisions of this Section 7.1 shall be rendered void only to the extent that such judicial or arbitral determination finds such provisions to be unreasonable or otherwise unenforceable with respect to LMC or any Affiliate thereof. In this regard, the parties hereby agree that any judicial authority construing this Agreement shall be empowered to sever any territory or portion thereof, any prohibited business activity or any time period from the coverage of this Section 7.1 and to apply the provisions of this Section 7.1 to the remaining portion of the covered territory, the remaining business activities and the remaining time period not so severed by such judicial or arbitral authority. The time period during which the prohibitions set forth in this Section 7.1 shall apply shall be tolled and suspended for a period equal to the aggregate time during which an LMC violates such prohibitions in any respect.

7.2. Post-Closing Access to LMC Documents and Records.

After the Closing, LMC shall cooperate, and cause its agents and representatives to cooperate, with LMT and its agents and representatives to provide such agents and representatives access to such books, records and information relating to LMC, as may be reasonably requested from time to time.

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8. CONDITIONS PRECEDENT TO LMC S OBLIGATIONS

Each and every obligation of LMC to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of each of the following conditions:

8.1. Representations and Warranties True on the Closing Date.

Each of the representations and warranties made by LMT in this Agreement, and the statements contained in the Disclosure Schedules or in any instrument, list, certificate or writing delivered by LMT pursuant to this Agreement, shall be true and correct when made and shall be true and correct at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, except for any changes permitted by the terms of this Agreement or consented to in writing by LMC.

8.2. No Business Material Adverse Effect.

No events, circumstances or developments shall have occurred since the date of the Recent Balance Sheet which, individually or in the aggregate, results or would reasonably be expected to result in a Business Material Adverse Effect.

8.3. Compliance With Agreement.

LMT shall have performed and complied with all of its agreements and obligations under this Agreement which are to be performed or complied with by LMT prior to or on the Closing Date, including the delivery of the closing documents specified in Section 11.1.

8.4. Absence of Litigation.

No Litigation shall have been commenced or threatened, and no investigation by any Government Entity shall have been commenced, against LMC, the Division or any of the Affiliates, officers or directors of any of them, with respect to the transactions contemplated hereby.

8.5. Senior Credit Facility.

Bank Midwest, N.A. shall have advanced or otherwise made available to LMC an aggregate of no less than \$5,000,000 and no more than \$5,500,000 pursuant to a secured credit facility on customary terms and conditions reasonably satisfactory to LMC.

8.6. Transactions Contemplated by Securities Purchase Agreement.

LMC, C3, and C3 II shall have consummated the purchase and sale of the Notes and Membership Interests pursuant to the Securities Purchase Agreement.

8.7. LMC Operating Agreement.

LMT, C3, C3 II, Larry Buffington, and CRESO Capital Partners shall have each executed and delivered to LMC a duly executed counterpart of a Limited Liability Company

Operating Agreement of LMC in substantially the form attached hereto as Exhibit A (the Operating Agreement).

8.8. Escrow Agreement.

LMT, C3, C3 II, and Bank Midwest shall have each executed and delivered to LMC a duly executed counterpart of an Escrow Agreement.

8.9. Buffington Employment Agreement.

Larry Buffington shall have delivered to LMC a duly executed counterpart of an Employment Agreement in substantially the form attached hereto as Exhibit C (the Buffington Employment Agreement).

8.10. Services Agreement.

LMT shall have delivered to LMC a duly executed counterpart of a Services Agreement in substantially the form attached hereto as Exhibit D (Services Agreement).

8.11. License and Technical Support Agreement.

LMT shall have delivered to LMC a duly executed counterpart of a License and Technical Support Agreement in substantially the form attached hereto as Exhibit E (the License Agreement).

8.12. Opinions of PCE.

The Board of Directors of LMT shall have received from PCE Valuations, LLC (i) an opinion as to the fair value of the Transferred Assets and the consideration received therefore by LMT and (ii) an opinion as to the fairness, from a financial point of view to the creditors of LMT, of the transactions contemplated by this Agreement (the PCE Opinions).

8.13. Consents and Approvals.

LMT shall have received all consents and/or approvals from third parties necessary for the consummation of the transactions contemplated by this Agreement.

8.14. No Late Payables.

The Business will have no notes payable or accounts payable outstanding that are past due according to the payment terms set forth on the applicable invoice.

9. **CONDITIONS PRECEDENT TO LMT'S OBLIGATIONS**

Each and every obligation of LMT to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following conditions:

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9.1. Representations and Warranties True on the Closing Date.

Each of the representations and warranties made by LMC in this Agreement shall be true and correct when made and shall be true and correct at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date.

9.2. Compliance With Agreement.

LMC shall have performed and complied with all of LMC's agreements and obligations under this Agreement which are to be performed or complied with by LMC prior to or on the Closing Date, including the delivery of the closing documents specified in Section 11.2.

9.3. Absence of Litigation.

No Litigation shall have been commenced or threatened, and no investigation by any Government Entity shall have been commenced, against LMC, LMT or any of the Affiliates, officers or directors of any of them, with respect to the transactions contemplated hereby; provided that the obligations of LMT shall not be affected unless there is a reasonable likelihood that as a result of such action, suit, proceeding or investigation LMT will be unable to retain substantially all the consideration to which it is entitled under this Agreement.

9.4. Senior Credit Facility.

Bank Midwest, N.A. shall have advanced or otherwise made available to LMC an aggregate of no less than \$5,000,000 and no more than \$5,500,000 pursuant to a secured credit facility on customary terms and conditions reasonably satisfactory to LMC.

9.5. Transactions Contemplated by Securities Purchase Agreement.

LMC, C3, and C3 II shall have consummated the purchase and sale of the Notes and Membership Interests pursuant to the Securities Purchase Agreement.

9.6. LMC Operating Agreement.

LMC, C3, C3 II, and Larry Buffington shall have each executed and delivered to LMT a duly executed counterpart of the Operating Agreement.

9.7. Escrow Agreement.

LMC, C3, C3 II, and Bank Midwest shall have each executed and delivered to LMT a duly executed counterpart of an Escrow Agreement.

9.8. Buffington Employment Agreement.

Larry Buffington shall have delivered to LMC a duly executed counterpart of the Buffington Employment Agreement.

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9.9. Services Agreement.

LMC shall have delivered to LMT a duly executed counterpart of a Services Agreement.

9.10. License and Technical Support Agreement.

LMC shall have delivered to LMT a duly executed counterpart of the License Agreement.

9.11. Opinions of PCE.

The Board of Directors of LMT shall have received the PCE Opinions from PCE Valuations.

9.12. Consents and Approvals.

LMT shall have received all consents and/or approvals from third parties necessary for the consummation of the transactions contemplated by this Agreement.

10. SURVIVAL; INDEMNIFICATION

10.1. LMT's Obligation to Indemnify.

Subsequent to the Closing, subject to the terms and conditions of this Article 10, LMT shall indemnify, defend and hold harmless LMC and its directors, officers, employees, agents, Affiliates and assigns (collectively, the LMC Indemnified Persons) from and against all losses, liabilities, damages, deficiencies, costs or expenses, including interest and penalties imposed or assessed by any judicial or administrative body and reasonable attorneys' fees, whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing, net of all tax savings for the foregoing (collectively, Losses) suffered or incurred by any LMC Indemnified Person based upon, arising out of or otherwise in respect of (i) any inaccuracy in or breach of (without regard to any knowledge, dollar threshold or materiality qualification contained therein) any representation or warranty of LMT in this Agreement or in any document delivered pursuant hereto, (ii) any breach of (without regard to any knowledge, dollar threshold or materiality qualification contained herein) any covenant or agreement of LMT in this Agreement or in any document delivered pursuant hereto, and (iii) any Liability of the Division other than Assumed Liabilities.

10.2. LMC Obligation to Indemnify.

Subsequent to the Closing, subject to the terms and conditions of this Article 10, LMC shall indemnify, defend and hold harmless LMT, its directors, officers, employees, agents, Affiliates and assigns from and against all Losses suffered or incurred by any such Person based upon, arising out of or otherwise in respect of (i) any inaccuracy in or breach of any representation or warranty of LMC in this Agreement or in any document delivered pursuant hereto, (ii) any breach of any covenant or agreement of LMC in this Agreement or in any document delivered pursuant hereto or (iii) any Assumed Liabilities.

10.3. Procedures Relating to Indemnification.

(a) An indemnified Person under Sections 10.1 or 10.2 (the Indemnified Party) shall give prompt written notice to the indemnifying party (the Indemnifying Party) of any Loss in respect of which such Indemnified Party is seeking indemnification under Sections 10.1 or 10.2, specifying in reasonable detail the nature of such Loss, the section or sections of this Agreement to which the Loss relates, and the amount of such Loss (or if not then determinable, its best estimate of the amount of such Loss), except that any delay or failure to so notify the Indemnifying Party shall only relieve the Indemnifying Party of its obligations hereunder to the extent, if at all, that it is prejudiced by reason of such delay or failure.

(b) If a Loss is suffered or incurred for or on account of or arises from or in connection with any demand, claim, suit, action, cause of action, investigation or inquiry by a Person not party to this Agreement (a Third Party Claim), the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all expenses. The Indemnified Party shall have the right to employ separate counsel in such Third Party Claim and participate in such defense thereof at its own expense. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, which shall not be unreasonably withheld, settle or compromise any Third Party Claim or consent to the entry of any judgment with respect to any Third Party Claim. If the Indemnifying Party fails to assume the defense of any Third Party Claim within 20 business days after notice thereof, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such Third Party Claim for the account of the Indemnifying Party.

(c) With respect to any Loss (other than any Loss suffered or incurred for or on account of or arising from or in connection with any Third Party Claim), the Indemnifying Party shall have 30 business days from receipt of notice from the Indemnified Party of such Loss within which to respond thereto. If the Indemnifying Party does not respond within such 30 business day period, the Indemnifying Party shall be deemed to have accepted responsibility to make payment and shall have no further right to contest the validity of such Loss.

(d) The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Section 10.

10.4. Limitations on Indemnification

Except for fraud, as to which claims may be brought without limitation as to time, amount or the other provisions of this Section 10:

(a) Time Limitation. No claim or action shall be brought under this Article 10 for breach of a representation or warranty after the lapse of eighteen (18) months following the Closing Date. Regardless of the foregoing, however, or any other provision of this Agreement:

(i) There shall be no time limitation on claims or actions brought for breach of any representation or warranty made in or pursuant to Sections 4.1 (Corporate), 4.2 (Authority), 4.3(a) (Marketable Title to Properties), 5.1 (LMC's Corporate) and 5.2 (LMC's Authority).

- (ii) Any claim made by a party hereunder by delivery of written notice giving reasonable notice of a claim and specifying the factual basis of the claim in reasonable detail to the extent then known, for breach of a representation or warranty prior to the termination of the survival period for such claim shall be preserved despite the subsequent termination of such survival period.
- (iii) If any act, omission, disclosure or failure to disclose shall form the basis for a claim for breach of more than one representation or warranty, and such claims have different periods of survival hereunder, the termination of the survival period of one claim shall not affect a party's right to make a claim based on the breach of representation or warranty still surviving.
- (b) **Amount Limitation.** Except with respect to claims for breaches of representations or warranties contained in Sections 4.1 (Corporate), 4.2 (Authority), 4.3(a) (Marketable Title to Properties), 5.1 (LMC's Corporate) and 5.2 (LMC's Authority), the maximum, aggregate liability for all indemnification claims under this Section 10 (other than (i) LMT's failure to pay and perform LMT's Liabilities (including, without limitation the Liabilities not being assumed as described in Section 2.2) other than Assumed Liabilities, and (ii) claims for fraud) against LMT, on the one hand, or against LMC, on the other, shall not exceed the Purchase Price, as adjusted pursuant to Section 3.4.
- (c) **Exclusive Remedy.** The right to indemnification provided by this Section 10 shall be the exclusive remedy available to the parties with respect to claims described in this Section 10, and no other rights or remedies at law or in equity will accrue with respect to such claims.

10.5. Characterization of Indemnification Payments.

Any payments made pursuant to Section 10 of this Agreement shall be treated for all Tax purposes as adjustments to the consideration to be paid hereunder and no party or any of its Affiliates shall take any position on a Tax Return or in any proceeding with any taxing authority contrary to such treatment, unless otherwise required by law.

11. CLOSING

The closing of this transaction (the Closing) shall take place at the offices of Foley & Lardner LLP, 100 North Tampa Street, Suite 2700, Tampa, Florida at 10:00 a.m. (local time) on the date hereof or at such other time and place as the parties hereto shall agree upon. Such date is referred to in this Agreement as the Closing Date.

11.1. Documents to be Delivered by LMT.

At the Closing, LMT shall deliver to LMC the following documents, in each case duly executed or otherwise in proper form:

- (a) **Bills of Sale.** Bills of sale and such other instruments of assignment, transfer, conveyance and endorsement as will be sufficient in the opinion of LMC and its

counsel to transfer, assign, convey and deliver to LMC the Transferred Assets as contemplated hereby.

- (b) **Compliance Certificate.** A certificate signed by the chief executive officer of LMT that each of the representations and warranties made by LMT in this Agreement is true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date (except for any changes permitted by the terms of this Agreement or consented to in writing by LMC), and that LMT have performed and complied with all of LMT's obligations under this Agreement which are to be performed or complied with on or prior to the Closing Date.
- (c) **Certified Resolutions.** A certified copy of the resolutions of the Board of Directors of LMT authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.
- (d) **Incumbency Certificate.** Incumbency certificates relating to each person executing any document executed and delivered to LMC pursuant to the terms hereof.
- (e) **Other Documents.** All other documents, instruments or writings required to be delivered to LMC at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as LMC may reasonably request.

11.2. Documents to be Delivered by LMC.

At the Closing, LMC shall deliver to LMT the following documents, in each case duly executed or otherwise in proper form:

- (a) **Cash Purchase Price.** To LMT a certified or bank cashier's check (or wire transfer) as required by Section 3.3(b) hereof.
- (b) **Assumption of Liabilities.** Such undertakings and instruments of assumption as will be reasonably sufficient in the opinion of LMT and its counsel to evidence the assumption of Assumed Liabilities as provided for in Section 2.
- (c) **Compliance Certificate.** A certificate signed by the chief executive officer of LMC that the representations and warranties made by LMC in this Agreement are true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date (except for any changes permitted by the terms of this Agreement or consented to in writing by LMT), and that LMC has performed and complied with all of LMC's obligations under this Agreement which are to be performed or complied with on or prior to the Closing Date.
- (d) **Certified Resolutions.** A certified copy of the resolutions of the Board of Managers of LMC authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.
- (e) **Incumbency Certificate.** Incumbency certificates relating to each person executing any document executed and delivered to LMT by LMC pursuant to the terms hereof.

(f) **Certificated Membership Interests of LMC.** Certificated Membership Interests of LMC equal to 69.25% of the total outstanding Membership Interests of LMC outstanding immediately after giving effect to such issuance.

(g) **Other Documents.** All other documents, instruments or writings required to be delivered to LMT at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as LMT may reasonably request.

12. TERMINATION

12.1. **Right of Termination Without Breach.**

This Agreement may be terminated without further liability of any party at any time prior to the Closing by mutual written agreement of LMC and LMT.

12.2. **Termination for Breach.**

(a) **Termination by LMC.** If (i) there has been a material violation or breach by LMT of any of the agreements, representations or warranties contained in this Agreement which has not been waived in writing by LMC, or (ii) there has been a failure of satisfaction of a condition to the obligations of LMC which has not been so waived, or (iii) LMT shall have attempted to terminate this Agreement under this Section 12 or otherwise without grounds to do so, then LMC may, by written notice to LMT at any time prior to the Closing that such violation, breach, failure or wrongful termination attempt is continuing, terminate this Agreement with the effect set forth in Section 12.2(c) hereof.

(b) **Termination by LMT.** If (i) there has been a material violation or breach by LMC of any of the agreements, representations or warranties contained in this Agreement which has not been waived in writing by LMT, or (ii) there has been a failure of satisfaction of a condition to the obligations of LMT which has not been so waived, or (iii) LMC shall have attempted to terminate this Agreement under this Section 12 or otherwise without grounds to do so, then LMT may, by written notice to LMC at any time prior to the Closing that such violation, breach, failure or wrongful termination attempt is continuing, terminate this Agreement with the effect set forth in Section 12.2(c) hereof.

(c) **Effect of Termination.** Termination of this Agreement pursuant to this Section 12.2 shall not result in liability to any of the parties if the violation, breach or failure by LMT (in the case of termination pursuant to Section 12.2(a)(i) or (ii)) or by LMC (in the case of termination pursuant to Section 12.2(b)(i) or (ii)) is due to circumstances beyond such party's control. Termination of this Agreement pursuant to this Section 12.2 for reasons other than those set forth in the preceding sentence shall entitle the terminating party to recover from the other party the terminating party's costs and expenses, including reasonable attorney's fees and the reasonable value of in-house personnel's attention to the transaction, incurred in connection with the negotiation and execution of this Agreement. Subject to the foregoing, the parties' obligations under Section 13.8 of this Agreement shall survive termination.

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13. MISCELLANEOUS

13.1. Further Assurance.

From time to time, at LMC's request and without further consideration, LMT will execute and deliver to LMC such documents, instruments and consents and take such other action as LMC may reasonably request in order to consummate more effectively the transactions contemplated hereby, to discharge the covenants of LMT and to vest in LMC good, valid and marketable title to the business and assets being transferred hereunder.

13.2. Disclosures and Announcements.

Both the timing and the content of all disclosure to third parties and public announcements concerning the transactions provided for in this Agreement by either LMT or LMC shall be subject to the approval of the other in all essential respects, except that LMC's approval shall not be required as to any statements and other information which LMT may submit to the Securities and Exchange Commission or LMT's stockholders or be required to make pursuant to any rule or regulation of the Securities and Exchange Commission or national securities exchange or national over-the-counter market or otherwise required by law.

13.3. Assignment; Parties in Interest.

(a) **Assignment.** Except as expressly provided herein, the rights and obligations of a party hereunder may not be assigned, transferred or encumbered without the prior written consent of the other parties.

(b) **Parties in Interest.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto. Nothing contained herein shall be deemed to confer upon any other person any right or remedy under or by reason of this Agreement.

13.4. Equitable Relief.

LMC and LMT agree that any breach of any party's obligation to consummate the contribution, purchase and sale of the Transferred Assets on the Closing Date, will result in irreparable injury to the other parties for which a remedy at law would be inadequate; and that, in addition to any relief at law which may be available to the injured party or parties for such breach and regardless of any other provision contained in this Agreement, the injured party or parties shall be entitled to injunctive and other equitable relief as a court may grant. This Section 13.4 shall not be construed to limit any injured party's right to obtain equitable relief for other breaches of this Agreement under general equitable standards.

13.5. Governing Law.

This Agreement shall be governed by and be construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of laws thereof. Any legal suit, action or proceeding brought by LMT or LMC, or any of their respective Affiliates, arising out of or based upon this Agreement shall be instituted in the courts of the

State of Texas or the Courts of the United States of America located in the State of Texas (collectively, the Courts), and each of LMT and LMC (on its behalf and on behalf of its Affiliates) waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the exclusive jurisdiction of the Courts in any such suit, action or proceeding. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) ARISING OUT OF OR BASED UPON THIS AGREEMENT.

13.6. Amendment and Modification.

LMC and LMT may amend, modify and supplement this Agreement in such manner as may be agreed upon by them in writing.

13.7. Notice.

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All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to LMC, to:

30452 Esperanza,
Rancho Santa Margarita, CA 92688
Attention: Larry Buffington, Chief Executive Officer
Facsimile: (949) 635-2108

(with a copy to)

C3 Capital, LLC
4520 Main Street
Suite 1600
Kansas City, Missouri 64111
Attn: Robert L. Smith
Facsimile: 816-756-5552

or to such other person or address as LMC shall furnish to LMT in writing.

(b) If to LMT, to:

30452 Esperanza,
Rancho Santa Margarita, CA 92688
Attention: John Kang, Chairman

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Facsimile: (949) 635-2108

(with a copy to)

Curt Creely, Esq.
Foley & Lardner LLP
100 North Tampa Street
Suite 2700
Tampa, FL 33602-5810
Facsimile: 813-221-4210
Telephone: 813-225-4122

or to such other person or address as LMT shall furnish to LMC in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

13.8. Expenses.

Regardless of whether or not the transactions contemplated hereby are consummated, each party shall pay all fees and expenses of its legal, accounting, investment banking and other professional counsel and agents in connection with the transactions contemplated hereby, subject to Sections 10 and 12.2(c) hereof.

13.9. Entire Agreement.

This instrument embodies the entire agreement between the parties hereto with respect to the transactions contemplated herein, and there have been and are no agreements, representations or warranties between the parties other than those set forth or provided for herein.

13.10. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.11. Headings.

The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ John Kang

John Kang, Chairman of the Board

LIQUIDMETAL COATINGS, LLC

By: /s/ Larry Buffington

Larry Buffington, President and Chief
Executive Officer

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Form of LMC Limited Liability Company Agreement

OPERATING AGREEMENT

OF

LIQUIDMETAL COATINGS, LLC

A Delaware Limited Liability Company

Adopted as of July 24, 2007

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OPERATING AGREEMENT

OF

LIQUIDMETAL COATINGS, LLC

THIS OPERATING AGREEMENT (Agreement) is hereby entered into effective as of the 24th day of July, 2007, by and between the persons identified as Members on Exhibit A attached hereto and executing this Agreement on the signature pages hereof (each of whom is sometimes hereinafter referred to individually as a Member and collectively as Members) and LIQUIDMETAL COATINGS, LLC, a Delaware limited liability company (the Company).

RECITALS

The Company was organized in accordance with the Delaware Limited Liability Company Act upon the filing of a Certificate of Formation with the Secretary of State of the State of Delaware effective July 9, 2007. The parties hereby provide for the Company's capitalization and management and its affairs and the conduct of its business.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I.

FORMATION AND ORGANIZATION

Section 1.1. NAME AND FORMATION. The name of the Company is: LIQUIDMETAL COATINGS, LLC. All Company business shall be conducted in the name of LIQUIDMETAL COATINGS, LLC or such other names that comply with applicable law as the Board of Managers may select from time to time.

Section 1.2. PRINCIPAL PLACE OF BUSINESS. The initial principal office of the Company will be located at 30452 Esperanza, Rancho Santa Margarita, California 92688, and may be changed to such other place within or without the State of Delaware as may be determined from time to time by the Board of Managers. It is contemplated that the initial principal office will move to the Houston, Texas metropolitan area when a location for such office is leased in that area.

Section 1.3. REGISTERED OFFICE AND REGISTERED AGENT. The Company's initial registered agent and office shall be CorpDirect Agents, Inc., 615 South DuPont Highway, Kent County, Dover, Delaware 19901. The Company may change its registered agent or **registered** office to any other place or places in the State of Delaware as may be determined from time to time by the Board of Managers.

Section 1.4. TERM. The term of the Company shall be perpetual, unless the Company is dissolved in accordance with the provisions of this Agreement.

Section 1.5. NO STATE LAW PARTNERSHIP. The Members intend that the Company (i) shall be taxed as a partnership for all applicable federal, state and local income tax purposes and (ii) shall not be a partnership or joint venture for any other purpose, and that no Member or any Manager shall, by virtue of this Agreement, be a partner or joint venturer of any other Member or Manager.

Article II.
PURPOSE AND POWERS OF THE COMPANY

Section 2.1. PURPOSE. The Company is formed for the purpose of manufacturing and applying metallic coating to various products and engaging in any other business activity permitted under the Act as the Board of Managers may determine from time to time.

Section 2.2. POWERS OF THE COMPANY. Subject to the provisions of this Agreement, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes set forth in Section 2.1, and all powers reasonably connected with such activities and businesses that may be legally exercised by limited liability companies under the Act, and may engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

Article III.
capital structure, contributions to capital and capital accounts

Section 3.1. INITIAL CONTRIBUTIONS. The Members have previously contributed, or shall contribute simultaneously with the execution hereof, capital to the Company in accordance with the schedule attached hereto as Exhibit A (the Initial Capital Contributions) in exchange for their respective Membership Units.

Section 3.2. ADDITIONAL CAPITAL CONTRIBUTIONS. The Member may make additional contributions of capital to the Company as the Member determines are necessary, appropriate or desirable; provided, however, that the Member shall have no obligation to contribute any additional capital to the Company, and except as set forth in the Act, the Member shall have no personal liability for any obligations of the Company.

Section 3.3. RETURN OF CONTRIBUTIONS. Until the dissolution and liquidation of the Company, no Member shall have the right to demand or receive any part of the Member's capital contribution and there is no right given to any Member to demand and receive property other than cash in return for the Member's capital contribution.

Section 3.4. CAPITAL ACCOUNTS. An individual Capital Account shall be maintained for each Member in accordance with Section 704(b) of the Code, paragraph 1.704-1(b)(2)(iv) of the accompanying Treasury Regulations, and the following rules:

(a) **Computation of Capital Account Balance.** The Capital Account of a Member shall consist of the amount of money and the fair market value of any property (other than money) comprising the Member's proportionate share of the Initial Capital Contribution pursuant to Section 3.1 hereof, as increased by: (i) the amount of money and the fair market value of any property (other than money) comprising any additional capital

contributions made by the Member, (ii) any amount credited to the Capital Account of a Member pursuant to Section 4.9 hereof as a result of any Company income, profits or gains allocated to the Member (and as adjusted pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations), and (iii) the amount of any Company liabilities assumed by the Member or that are secured by any Company property distributed to that Member, and decreased by: (i) the amount of money and the fair market value of any property (other than money) comprising any distributions to the Member pursuant to Article V hereof, (ii) any amount debited to the Capital Account of a Member pursuant to Section 4.9 hereof as a result of any Company expenses, deductions, losses and credits allocated to the Member (and as adjusted pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations), and (iii) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by that Member to the Company.

(b) **Built-In Gain or Loss.** The Capital Account of a Member shall not be increased or decreased, as the case may be, with regard to any built-in gain or loss allocated to the Member pursuant to Section 4.5 hereof.

(c) **Transferee's Capital Account.** In the event of a transfer of any Membership Units, the transferee shall assume the Capital Account balance of the transferor.

(d) **Interest.** No interest shall be paid on any present or future Capital Account balance.

(e) **Conformance with Regulations.** The provisions of this Section 3.4 are intended to comply with Treasury Regulation Section 1.704-1(b) regarding the maintenance of the Capital Accounts of the Members and this Section 3.4 shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Board of Managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Treasury Regulations, the Board of Managers may make such modifications, provided that it is not likely to have a material effect on any amounts distributable to any Member upon the dissolution of the Company. The Board of Managers shall also make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulation Section 1.704-1(b).

Section 3.5. **CAPITAL STRUCTURES AND PERCENTAGE INTERESTS**

(b) Built-In Gain or Loss. The Capital Account of a Member shall not be increased or decreased, as the case

- (a) **Capital Structure.** Ownership rights in the Company are divided into and represented by membership units (Membership Units). The Membership Units are further divided into three classes: (i) Class A Units; (ii) Class B Units; and (iii) Class C Units.
- (b) **Initial Percentage Interest.** Upon their admission to the Company, the Members shall own the number and class of Membership Units and the corresponding Percentage Interests in the Company as set forth on Exhibit A attached hereto.
- (c) **Adjustments to Percentage Interests.** In the event of the issuance of any additional Membership Units to an existing Member(s), including the admission of an additional member(s), each Member's Percentage Interest in the Company shall be deemed to be equal to a fraction, the numerator of which is the number of Membership Units issued and

outstanding to the Member, and the denominator of which is the number of Membership Units then issued and outstanding to all Members. All adjustments to a Member's Percentage Interest in the Company shall be permanent and shall not otherwise be altered except as provided in this Agreement.

(d) **Effect of Percentage Interests.** The Percentage Interests of the Members, as determined and adjusted pursuant to this Section 3.5, are maintained solely for the purposes of determining the amount of certain allocations of taxable profits and losses and cash distributions allocable to the Members pursuant to Articles IV and V hereof, and for other purposes set forth in this Agreement. The Percentage Interest of a Member shall not reflect that Member's proportionate interest in the capital of the Company at any time.

Section 3.6. LOANS BY MEMBERS. A Member may at any time lend funds to the Company as may be agreed upon by the Board of Managers. Such funds shall represent a debt, payable on demand, unless otherwise specifically provided, from the Company to the Member making the loan, and interest, at a rate agreed upon by the Board of Managers, shall be paid thereon and charged as an expense to the Company.

Section 3.7. PROFITS INTEREST OF CLASS C HOLDERS. The Class C Holders shall own a percentage of the profits of the Company equal to the right to receive their respective percentage interest as shown on Exhibit A , attached hereto, of the available cash distributed among the Members pursuant to Section 5.2 and Section 5.3. In addition, taxable income shall be allocated to the Class C Holders equal to their respective percentage interest as shown on Exhibit A , attached hereto, of the Net Profits allocated among the Members pursuant to Section 4.3(a)(ii).

It is the agreement of the Members that the rights of the Class C Holders under this Section 3.7 shall be limited to receiving allocations of taxable income and distributions of cash as described herein, but that the Class C Holders shall not receive any other rights in and shall not participate in any other allocations of taxable income, loss, credit, deduction, gain, or other tax items or distributions of cash from the Company except as specifically provided in this Section 3.7.

Article IV.

allocations of taxable profits and losses

Section 4.1. DETERMINATION OF PROFIT OR LOSS. The items of income, gains, expenses, deductions, losses and credits generated by the Company for federal income tax purposes shall be determined in accordance with a generally accepted method of accounting as soon as practicable after the close of the fiscal year of the Company.

Section 4.2. COSTS AND EXPENSES. The Company shall pay all expenses (which expenses shall be billed directly to the Company) of the Company which may include but are not limited to: (i) legal, audit, accounting, and other fees; (ii) expenses and taxes incurred in connection with the issuance, distribution and transfer of documents evidencing ownership of Membership Units in the Company or in connection with the business of the Company; (iii) expenses of organizing, revising, amending, converting, modifying or terminating the Company; (iv) expenses in connection with distributions made by the Company to, and communications and bookkeeping work necessary in maintaining relations with, the Members; and (v) costs of any accounting, statistical or bookkeeping equipment necessary for the maintenance of the books and records of the Company.

Section 4.3. ALLOCATION. The net profits, net gains and net losses generated by the Company for federal income tax purposes for a year shall be allocated among the Members as follows:

(a) **Profits.** Any net taxable income and gain (collectively, Net Profits) of the Company for the year shall be allocated among the Members as follows:

(i) First, 100% of the Net Profits shall be allocated pro rata (relative to the entire amount to be allocated to all Members in that year pursuant to this Section 4.3(a)(i)) among the Members in an amount equal to the excess, if any, of (a) the cumulative Losses allocated pursuant to Section 4.3(b) hereinbelow for all prior years, over (b) the cumulative Profits allocated pursuant to this Section 4.3(a)(i) for all prior years, until such time as each Member has been allocated an aggregate amount of the Net Profits in all years pursuant to this Section 4.3(a)(i) equal to the aggregate amount of Losses allocated to the Member pursuant to Section 4.3(b) hereof in all prior years; and

(ii) Any remaining Net Profits shall be allocated among the Members according to their respective Percentage Interests in the Company at that time, as set forth in Section 3.5 hereof.

(b) **Losses.** Any net taxable losses and deductions (collectively, Losses) of the Company for the year shall be allocated among the Members in the following order of priority:

(i) First, all Losses shall be allocated among the Members in proportion to the positive balances in their respective Capital Accounts at that time, after a reduction for any cash distributed from the Company to the Members pursuant to Article V in that year, until the balance of all Members' Capital Accounts have been reduced to zero (0); and

(ii) Any remaining Losses shall be allocated among the Members according to their respective Percentage Interests in the Company at that time, as set forth in Section 3.5 hereof.

Section 4.4. SPECIAL ALLOCATIONS. Notwithstanding any other provision of this Agreement to the contrary, the following special allocations shall be made in the following order:

(a) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Section 4.4, if there is a net decrease in the Partnership Minimum Gain (as described in Article XVI hereof) during any Company fiscal year, each Member will be specially allocated, before any other allocation is made, items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Partnership Minimum Gain, determined as provided in Section 1.704-2(g)(2) of the Regulations.

Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Section 1.704-2(f), and this Section 4.4(a) is

intended to comply with the minimum gain chargeback requirement in that Section of the Regulations and shall be interpreted consistently therewith.

(b) **Partner Minimum Gain Chargeback.** Notwithstanding any other provision of this Article IV except Section 4.4(a), above, if there is a net decrease in Partner Minimum Gain (as described in Article XVI hereof) attributable to a Partner Nonrecourse Debt (as described in Article XVI hereof) during any Company fiscal year, each Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt (determined as provided in Section 1.704-2(i)(5) of the Regulations) as of the beginning of the year shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, as provided in Section 1.704-2(i)(4) of the Regulations.

Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-2(i)(4) of the Regulations. This Section 4.4(b) is intended to comply with the minimum gain chargeback requirement in that Section of the Regulations and shall be interpreted consistently therewith.

(c) **Qualified Income Offset.** In the event any Member unexpectedly receives an adjustment, allocation or distribution of a nature described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), then each such Member will be specially allocated items of Company taxable income and gain in an amount and manner sufficient to eliminate, to the extent required by the Regulations, that Member's Deficit Capital Account Balance as quickly as possible; provided that an allocation pursuant to this Section 4.4(c) shall be made if and only to the extent that such Member would have a Deficit Capital Account Balance after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.4(c) were not in this Agreement.

(d) **Partner Nonrecourse Deductions.** Any Partner Nonrecourse Deductions (as described in Article XVI hereof) for any fiscal year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt (as described in Article XVI hereof) to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(2) of the Regulations.

(e) **Curative Allocations.** The allocations set forth in this Section 4.4 (the Regulatory Allocations) are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provision of this Article IV (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of profits, losses, income, gains and deductions among the Members so that, to the extent possible, the net amount of such allocations of other taxable items and the Regulatory Allocations to each Member shall be equal to the net amount which would have been allocated to each such Member if the Regulatory Allocations had not occurred. For purposes of applying the previous sentence:

(i) No allocations of Nonrecourse Deductions shall be made pursuant to this Section 4.4(e) with respect to Regulatory Allocations required pursuant to Section 4.4(a) hereof prior to the Company fiscal year during which there is a net decrease in Partnership

Minimum Gain, and then only to the extent necessary to avoid any potential economic distortions caused by such net decrease in Partnership Minimum Gain;

(ii) **Allocations pursuant to this Section 4.4(e) shall be deferred with respect to allocations of Nonrecourse Deductions to the extent the Board of Managers determine that such allocations are likely to be offset by subsequent allocations pursuant to subsection (a) of Section 4.4 hereof;**

(iii) **No allocations of Partner Nonrecourse Deductions shall be made pursuant to this Section 4.4(e) with respect to Regulatory Allocations required under subsection (b) or (d) of this Section 4.4 prior to the Company fiscal year during which there is a net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, and then only to the extent necessary to avoid any potential economic distortions caused by such net decrease in Partner Minimum Gain; and**

(iv) **Allocations pursuant to this Section 4.4(e) shall be deferred with respect to allocations pursuant to subsection (d) of this Section 4.4 relating to a particular Partner Nonrecourse Debt to the extent the Board of Managers reasonably determine that such allocations are likely to be offset by subsequent allocations pursuant to subsection (b) of this Section 4.4.**

Section 4.5. BUILT-IN GAIN OR LOSS. Notwithstanding any other provision of this Article IV, in accordance with Code Section 704(c) and the accompanying Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property other than cash contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take into account any variation between (i) the adjusted basis of such property to the Company for federal income tax purposes on the date of contribution and (ii) the fair market value of such property on the date contributed to the Company, as determined by the Board of Managers.

Section 4.6. INCOME CHARACTERIZATION. For purposes of determining the character (as ordinary income or capital gain) of any taxable income of the Company allocated to the Members pursuant to this Article IV, such portion of the taxable income of the Company allocated pursuant to this Article IV which is treated as ordinary income attributable to the recapture of depreciation shall, to the extent possible, be allocated among the Members in the proportion which (i) the amount of depreciation previously allocated to each Member bears to (ii) the total of such depreciation allocated to all Members. This Section 4.6 shall not alter the amount of allocations among the Members pursuant to this Article IV, but merely the character of income so allocated.

Section 4.7. CREDITS. Tax credits shall be allocated among the Members in accordance with Section 4.3 hereof.

Section 4.8. CHANGE IN INTERESTS. Notwithstanding the foregoing, in the event of a change in the Members' Percentage Interests in the Company during a year, whether occasioned by admission of a new Member, additional contributions, assignments of Membership Units or otherwise, the allocation of items of income and expense shall be made so as to reflect the Members' varying Percentage Interests in the Company during the year. Profits and losses for the year shall be prorated on a daily basis and allocated among the Members based upon the period of time during which they held their respective Percentage Interests.

Section 4.9. CREDITING ACCOUNTS. Items of income, gains, expenses, deductions, losses and credits shall be credited or debited, as the case may be, to each Member's Capital Account created pursuant to Section 3.4 as provided in this Article.

Article V.
DISTRIBUTIONS

Section 5.1. DISTRIBUTABLE AMOUNTS. The Company may make distributions of any amounts in excess of its reasonable operating requirements as determined by the Board of Managers. The amounts available for distribution may be generated by operations of the Company through sale, condemnation, financing or refinancing of assets of the Company, by collection of amounts owed to the Company or by any other transaction. In the case of amounts attributable to a Capital Transaction, the net proceeds to be distributed hereunder shall be the net cash proceeds received by the Company after payment of, or provision for, all Company debts, obligations and reserves required or permitted to be paid upon, or incurred or established in connection with, the receipt by the Company of such proceeds (said reserves to be established in the reasonable discretion of the Board of Managers), and all expenses incurred by the Company in connection with the Capital Transaction giving rise to such proceeds. Notwithstanding the foregoing, no distribution shall be made unless after the distribution the Company retains assets sufficient to pay all its debts as they become due and such distribution, if made, would not cause the Company to otherwise become insolvent.

Section 5.2. ALLOCATION. Distributions of available cash pursuant to Section 5.1 hereof shall be made to the Members according to their respective Percentage Interests in the Company at that time.

Section 5.3. LIQUIDATING DISTRIBUTIONS. After giving effect to all Member contributions, distributions, allocations, and capital account adjustments for all taxable years of the Company (including the taxable year during which the Company is liquidated), the Company shall distribute the liquidation proceeds derived from the dissolution, winding-up, liquidation, and termination of the Company (plus any remaining assets of the Company that are to be distributed in kind to the Members) in the following priority and proportions:

- (a) **To pay in the order of priority required by the Act all the liabilities and obligations of the Company that are then due and payable to creditors (including Members), including all costs and expenses directly relating to the liquidation, winding-up, and termination of the Company, but excluding Capital Contributions and distributions payable to the Members; and then**
- (b) **To establish any reasonable cash reserve that the Members may determine unanimously by resolution to be appropriate for any contingent, conditional, or unmatured liabilities or obligations of the Company and as an allowance for doubtful accounts receivable or the unrealized portion of any promissory note, installment obligation, or other deferred revenue payable to the Company; and then**
- (c) **To the Members, *pro rata*, in accordance with the sum of their Initial Capital Contributions plus any additional Capital Contributions which have not yet been returned to the respective Member (the Unreturned Capital Contributions), in an amount equal to each Member's Unreturned Capital Contributions; and then**

- (d) **To the Members, *pro rata*, in accordance with the Members' respective Percentage Interests at the time of such liquidation..**

The Board of Managers shall use reasonable efforts to cause the proceeds from a liquidation of the Company to be distributed in the same fiscal year in which the sale of the Company's assets occurs.

Section 5.4. MANDATORY TAX DISTRIBUTIONS. In order to permit the Members to pay taxes on Company taxable income, the Company shall, to the extent of Available Cash, distribute cash at least annually and no later than 75 days after the end of a Fiscal Year, an amount which, at the time of such distribution, when added to all prior distributions pursuant to this Section 5.4, equals the cumulative maximum tax payable by an individual taxpayer at the highest combined marginal tax rates of federal and state income taxes imposed on resident individuals in the United States on the taxable income of the Company. Such distribution shall be made ratably to the Members in proportion to their respective Member Percentages.

Article VI.

duration of business; termination

Section 6.1. DURATION OF COMPANY. The Company shall continue until the earlier of:

- (a) **The decision of the Board of Managers to dissolve the Company;**
- (b) **The expiration of the term of the Company set forth in Section 1.4 hereof; or**
- (c) **The sale or other disposition of all Company Property and the distribution of all sales proceeds resulting therefrom to the Members in accordance with this Agreement.**

Section 6.2. DEATH, ETC., OF MEMBER. The Company shall not be dissolved upon the death, insanity, total disability, bankruptcy, dissolution or withdrawal of any Member, or by the assignment by any Member of all of the Membership Units or Economic Interest in the Company.

Section 6.3. LIQUIDATION. In the event of termination of the Company:

- (a) **The Board of Managers shall wind up the affairs of the Company, shall sell all the Company assets as promptly as is consistent with obtaining the fair value thereof, and shall apply and distribute the proceeds of liquidation in the following order of priority:**
 - (i) **To the payment of debts and liabilities of the Company (including to Members to the extent otherwise permitted by law) and the expenses of liquidation; then**
 - (ii) **To the setting up of such reserves as the Board of Managers winding up the Company's affairs may reasonably deem necessary or appropriate for any dispute, contingent or unforeseen liabilities or obligations of the Company; then**
 - (iii) **The remainder to the Members in accordance with Section 5.3 above.**

(b) Each Member shall look solely to the assets of the Company for the return of the Member's capital contribution, and if the Company Property remaining after payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of each Member, a Member shall have no recourse against any other Member(s).

(c) The proceeds of liquidation shall be distributed to the Members pursuant to Section 5.3 hereof.

(d) Upon the liquidation of the Company, if any Member has a Deficit Balance in the Member's Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year in which such liquidation occurs), that Member shall have no obligation to make any contributions to the capital of the Company with respect to such deficit and such deficit shall not be considered a debt owed to the Company or any other person or entity for any purpose whatsoever.

Article VII.
RIGHTS AND DUTIES OF MEMBERS

Section 7.1. LIABILITIES OF MEMBERS. No Member shall be obligated to make capital contributions to the Company except as provided in Article III. No Member shall have any personal liability with respect to the liabilities or obligations of the Company except as provided in Article III. Failure of the Company to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities or obligations of the Company.

Section 7.2. LIMITATIONS ON POWERS OF MEMBERS. Except as expressly authorized by this Agreement, no Member may, directly or indirectly, (a) resign, retire or withdraw from the Company, (b) dissolve, terminate or liquidate the Company, (c) petition a court for the dissolution, termination or liquidation of the Company, or (d) cause any property of the Company to be subject to the authority of any court, trustee or receiver (including suits for partition and bankruptcy, insolvency, and similar proceedings).

Section 7.3. PROHIBITION AGAINST PARTITION. Each Member irrevocably waives any and all rights the Member may have to maintain an action for partition with respect to any property of the Company.

Article VIII.
meetings of members

Section 8.1. ANNUAL MEETING. The annual meeting of the Members shall be held between January 1st and December 31st of each year, on such date and at such hour as may be specified in the Notice of Meeting or in a duly executed Waiver of Notice thereof, for the purpose of electing Managers to serve for the ensuing year and the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Texas, such meeting shall be held on the next succeeding business day.

Section 8.2. SPECIAL MEETING. Special meetings of the Members, for any purpose or purposes, may be called by the President or by a majority of the Board of Managers or by any Member owning Membership Units in the Company.

Section 8.3. PLACE OF MEETING. The Board of Managers may designate any place, either within or without the State of Delaware, unless otherwise prescribed by statute, as the place of meeting for any annual or special meeting of Members. If no designation is made by the Board of Managers, the place of meeting shall be the principal office of the Company in the State of Texas.

Section 8.4. NOTICE OF MEETING. Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered to each Member of record entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by first-class mail, by or at the direction of the President or the Secretary or by the Members calling the meeting. If mailed, such notice shall be deemed to be delivered at the earliest date of the following: (a) when received; (b) five days after its deposit in the United States mail addressed to the Member at his address as it appears on the records of the Company, with the postage thereon prepaid; or (c) on the date shown on the return receipt if sent by registered or certified mail, return receipt requested.

Section 8.5. WAIVER OF NOTICE. Members may waive notice of a meeting before or after the date and time specified in the written notice of meeting. All waivers of notice must be in writing, be signed by the Member entitled to the notice and be delivered to the Company for inclusion in the appropriate records. None of the business to be transacted at, nor the purpose of, a Members meeting must be specified in a written waiver of notice. Attendance of a Member at a meeting shall constitute a waiver of notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

Section 8.6. FIXING OF RECORD DATE. The Board of Managers may fix a date, not less than ten (10) nor more than sixty (60) days before the date set for any meeting of the Members, as the record date as of which the Members of record entitled to notice of and to vote at such meeting and any adjournment thereof shall be determined.

Section 8.7. QUORUM. A majority of the Membership Units of the Company, represented in person or by proxy, shall constitute a quorum at a meeting of the Members. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted at the original date of the meeting. If, however, after the adjournment, the Board of Managers fix a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given in compliance with 4.0 to each Member of record on the new record date entitled to vote at such meeting. After a quorum has been established at a Members meeting, the subsequent withdrawal of Members, so as to reduce the Membership Units entitled to vote at the meeting below the percentage required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

Section 8.8. PROXIES. Every Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting, or his duly authorized attorney-in-fact, may authorize another person or persons to act for him by proxy. The proxy must be executed in writing by the Member or his duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of such meeting or at the time of expressing such consent or dissent without a meeting. No proxy shall be valid after the expiration of eleven (11) months after the date thereof unless provided otherwise in the proxy.

Section 8.9. VOTING OF MEMBERSHIP UNITS. Except as provided in 6.0, each Member shall be entitled to one (1) vote per one (1) Membership Unit (and a corresponding fractional vote for each fraction of a Membership Unit) upon each matter submitted to a vote at a meeting of the Members. If a quorum is present, the affirmative vote of the Members owning a majority of the Membership Units represented at the meeting and entitled to vote on the subject matter shall be the act of the Members unless a greater percentage is required by the Delaware Statutes, this Agreement or the Company's Certificate of Formation.

Section 8.10. VOTING OF MEMBERSHIP UNITS BY CERTAIN HOLDERS. Membership Units standing in the name of a corporation may be voted by the officer, agent or proxy designated by the bylaws of the corporate Member or, in the absence of any applicable bylaws, by such person as the managers of the corporate Member may designate. Proof of such designation may be made by presentation of a certified copy of the bylaws or other instrument of the corporate Member. In the absence of any such designation or, in case of conflicting designation by the corporate Member, the chairman of the board, the president, any vice president, the secretary, and the treasurer of the corporate Member shall be presumed to possess, in that order, authority to vote such Membership Units.

Membership Units held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such Membership Units into his name.

Membership Units standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote Membership Units held by him without a transfer of such Membership Units into his name.

Membership Units standing in the name of a receiver may be voted by such receiver, and Membership Units held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name, if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A Member whose Membership Units are pledged shall be entitled to vote such Membership Units until the Membership Units have been transferred into the name of the pledgee, and thereafter the pledgee or his nominee shall be entitled to vote the Membership Units so transferred only in the event the pledgee becomes a Substituted Member (as defined in Section 12.3 hereinbelow).

Section 8.11. ACTION BY WRITTEN CONSENT OR TELEPHONE CONFERENCE

(a) Any action required or permitted to be taken at any meeting of Members may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by Members having not less than the minimum number of Membership Units necessary to authorize or take such action at a meeting at which all Members entitled to vote were present and voted. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this Section 8.11. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

(b) The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office, its principal place of business or the Board of Managers.

(c) Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can speak to and hear each other. Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 8.12. ANNUAL REPORTS, ETC. The Company shall file any necessary reports with the State of Delaware and pay the annual tax for Limited Liability Companies to the State of Delaware.

Article IX.
BOARD OF MANAGERS

Section 9.1. MANAGEMENT AND CONTROL. The management and control of the Company shall be vested in the Board of Managers. The Board of Managers shall have, except as specifically limited in this Agreement, full and exclusive authority in the management and control of the Company, and shall have all the rights and powers which are otherwise conferred by law or are necessary or advisable for the discharge of their duties and the management of the business and affairs of the Company.

Section 9.2. NUMBER AND ELECTION. The Board of Managers shall consist of three Managers (unless it has only two Managers as a result of the last two sentences of this paragraph). Managers shall be elected as follows: Members holding Class A Units shall have the right to elect one Manager, Members holding Class B Units shall have the right to elect one Manager, and Larry Buffington shall serve as a Manager. In the event of the death, resignation or removal of a Manager, the Member who elected such Manager may elect a successor Manager. Notwithstanding the foregoing, in the event that Larry Buffington ceases to be actively employed by the Company on a full-time basis as the Company's principal executive officer, then as of the date of such cessation, he shall cease to serve as a Manager, and the size of the Board of Managers will thereupon be reduced to two Managers. In addition, Larry Buffington shall not have the right to serve as a Manager during any period of time during which he is serving as an officer or employee of Liquidmetal Technologies, Inc. (LMT). The Member holding Class A Units hereby elects John Kang to serve as an initial Manager, and the Members holding Class B Units hereby elect Robert Smith to serve as an initial Manager.

Section 9.3. RESIGNATION. A Manager may resign at any time by delivering written notice to the Board of Managers or to the Company. A resignation is effective when notice is delivered unless the notice specifies a later effective date.

Section 9.4. REMOVAL OF MANAGER. Each Member may remove its elected Manager, with or without cause, at any time.

Section 9.5. EXPRESSLY AUTHORIZED RIGHTS AND POWERS. Without limiting the generality of Section 9.1, but subject to the provisions of Section 9.6, the Board of Managers are expressly authorized on behalf of the Company to:

- (a) elect officers to manage the day-to-day operations of the Company;
- (b) procure and maintain with responsible companies such insurance as may be advisable in such amounts and covering such risks as are deemed appropriate by the Board of Managers;
- (c) take and hold any assets of the Company in the Company name, or in the name of a nominee of the Company;
- (d) execute and deliver on behalf of and in the name of the Company, or in the name of a nominee of the Company, all instruments necessary or incidental to the conduct of the Company's business;
- (e) protect and preserve the assets of the Company and incur indebtedness;
- (f) sell, dispose of, trade, exchange, convey, quitclaim, surrender, release or abandon, upon terms and conditions which the Board of Managers may negotiate and deem appropriate, personal property of the Company;
- (g) execute and deliver documents and instruments on behalf of the Company in connection with the acquisition and disposition of its assets, and to execute, terminate, modify, enforce, continue or otherwise deal with any Company indebtedness and security interests, to sell Company assets, and to take any other action with respect to agreements made between the Company and a lender or any affiliate thereof, all subject to the limitations of Section 9.6;
- (h) open Company bank accounts in which all Company funds shall be deposited and from which payments shall be made; and
- (i) invest Company funds and working capital reserves.

Section 9.6. CERTAIN LIMITATIONS. Notwithstanding the generality of the foregoing, and in addition to other acts expressly prohibited by this Agreement or by law, the Board of Managers, without the prior written consent or approval of the Members holding a Supermajority (as defined in Article XVI) of the issued and outstanding Membership Units, may not cause the Company to do any of the following:

- (a) amend or restate the Certificate of Formation;
- (b) sell, lease, exchange or otherwise dispose of all or substantially all the Company's property and assets;
- (c) be a party to (i) a merger, (ii) interest exchange or (iii) other transaction affecting the ownership or structure of the Company;
- (d) do any act in contravention of this Agreement;

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- (e) do any act which would make it impossible to carry on the ordinary business of the Company, except as expressly provided in this Agreement;
- (f) confess a judgment against the Company;
- (g) file a bankruptcy petition on behalf of the Company;
- (h) execute or deliver any general assignment for the benefit of the creditors of the Company;
- (i) Convert the Company to a Corporation pursuant to Article XIII;
- (j) assign rights in specific Company property for other than a Company purpose; or
- (k) knowingly or willingly do any act (except an act expressly required by this Agreement) which would cause the Company to become an association taxable as a corporation.

Section 9.7. MEETINGS OF MANAGERS.

- (a) Following Annual Meeting of Members. In connection with any annual meeting of Members at which Managers were appointed, the Board of Managers may, if a quorum is present, hold its first meeting for the transaction of business immediately after and at the same place as such annual meeting of the Members. Notice of such meeting at such time and place shall not be required.
- (b) Regular Meetings. Regular meetings of the Board of Managers shall be held at such times and places as shall be designated from time to time by resolution of the Board of Managers. Notice of such regular meetings shall not be required after the initial notice of the schedule of meetings.
- (c) Special Meetings. Special meetings of the Board of Managers may be called by the President or by any Manager on at least forty-eight (48) hours notice to each Manager. Such notice shall state the purpose or purposes of, or the business to be transacted at, such meeting.
- (d) Attendance and Place of Meeting. Meetings of the Board of Managers may be held at such place or places as shall be determined from time to time by resolution of the Board of Managers. The chair of the Board of Managers, if one has been designated by the Board of Managers, shall preside when present at meetings of the Board of Managers. Attendance of a Manager at a meeting shall be presumed to constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened or unless he or she shall file a written objection to such action with the Person acting as secretary of the meeting before the adjournment thereof on the ground that the meeting is not lawfully called or convened.
- (e) Quorum and Action. A quorum for the transaction of business of the Board of Managers shall require the presence of a majority of the number of Managers fixed

pursuant to Section 9.2 of this Article. At all meetings of the Board of Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Board of Managers. The act of the majority of the Managers present at a meeting at which a quorum is present shall be the act of the Board of Managers. A Manager who is present at a meeting of the Board of Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless he or she shall either voice his or her dissent at the meeting or unless he or she shall file a written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof. Such right to dissent shall not apply to a Manager who voted in favor of such action.

(f) **Action by Written Consent or Telephone Conference.** Any action permitted or required to be taken at a meeting of the Board of Managers or of any committee designated by the Board of Managers may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by a quorum of the Managers as set forth in Section 9.7(e). Such consent shall have the same force and effect as a vote taken at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Delaware, and the execution of such consent or consents shall constitute attendance or presence in person at a meeting of the Board of Managers or any such committee, as the case may be. A telegram, telex, cablegram or similar transmission by a person, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a person, shall be regarded as signed by that person for the purposes of this Section 9.7(f).

Subject to the requirements of the Act, the Certificate of Formation or this Agreement, the Board of Managers, or members of any committee designated by the Board of Managers, may participate in and hold a meeting of the Managers or any committee of Managers, as the case may be, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can speak to and hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 9.8. COMPENSATION. If approved by the Board of Managers and the Members, one or more Managers, or members of any committee designated by the Board of Managers, may be reasonably compensated for services rendered. Each Manager and members of any committee designated by the Board of Managers shall be reimbursed for actual expenses incurred in attending meetings.

Article X.
OFFICERS

Section 10.1. NUMBER. The Officers of the Company shall be the President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Managers. Such other Officers and assistant Officers and agents as may be deemed necessary may be elected or appointed by the Board of Managers. Any two (2) or more offices may be held by the same person. The Board of Managers hereby elects Larry Buffington as the initial President and Chief Executive Officer of the Company to serve until his successor his duly elected or until his earlier resignation or removal.

Section 10.2. ELECTION AND TERM OF OFFICE. The Officers of the Company shall be elected annually by the Board of Managers at the regular meeting of the Managers held after each annual meeting of the Members. If the election of Officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each Officer shall hold office until his successor shall have been duly elected and shall have qualified or until his earlier resignation, removal from office or death.

Section 10.3. REMOVAL AND RESIGNATION. Any Officer or agent elected or appointed by the Board of Managers may be removed by the Board of Managers with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an Officer or agent shall not of itself create contract rights. Any Officer of the Company may resign at any time by giving written notice to the Board of Managers. Any such resignation shall take effect after time specified therein, or, if the time is not specified therein, upon its acceptance by the Board of Managers.

Section 10.4. VACANCIES. A vacancy, however occurring, in any office may be filled by the Board of Managers for the unexpired portion of the term.

Section 10.5. CHAIR. The Chair of the Board of Managers, if one is elected or appointed, shall preside at all meetings of the Board of Managers and shall have such other powers and duties as may from time to time be prescribed by the Board of Managers, upon written directions given to him or her pursuant to resolutions duly adopted by the Board of Managers.

Section 10.6. PRESIDENT. The President shall be the principal executive Officer of the Company and, subject to the control of the Board of Managers, shall in general supervise and control all of the business affairs of the Company. The President shall, when present, preside at all meetings of the Members and of the Board of Managers, unless the Board of Managers has elected a Chair of the Board of Managers and the Chair is present at such meeting. The President may sign deeds, mortgages, bonds, contracts, or other instruments which the Board of Managers has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Managers or by this Agreement to some other Officer or agent of the Company, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties as from time to time may be assigned to him by the Board of Managers.

Section 10.7. VICE PRESIDENTS. If a Vice-President is elected or appointed, in the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall have the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-President shall perform such other duties as from time to time may be assigned to him by the President or the Board of Managers.

Section 10.8. SECRETARY. The Secretary shall: (a) keep the minutes of all the meetings of the Members and the Board of Managers in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of this Agreement or as required by law; (c) be custodian of the Company records; (d) keep a register of the post office address of each Member; (e) have general charge of the Membership Unit transfer books of the Company, if the Company issues certificates representing such Membership Units; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Managers.

Section 10.9. TREASURER. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Company; receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in such banks, trust companies or other depositories as shall be selected by the Board of Managers; and (b) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Managers. If required by the Board of Managers, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Managers shall determine.

Section 10.10. SALARIES. The salaries of the Officers shall be fixed from time to time by the Board of Managers and no Officer shall be prevented from receiving such salary by reason of the fact that he is also a Manager of the Company.

**Article XI.
INDEMNIFICATION OF MEMBERS, MANAGERS AND DIRECTORS**

Section 11.1. RIGHT TO INDEMNIFICATION. The Company shall indemnify the Members, Managers and Officers to the fullest extent allowed by law from all claims brought by third parties relating to or arising out of the Company's business. The Company shall indemnify and hold harmless the Members, Managers and Officers to the fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against the Member, Manager and/or Officer or incurred by any of them in their capacity as Member, Manager and/or Officer or arising out of their status as Member, Manager and/or Officer, as the case may be. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability.

Section 11.2. ADVANCES. Costs, charges and expenses (including attorneys' fees) incurred by a person referred to in Section 11.1 in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by this Article.

Section 11.3. SAVINGS CLAUSE. If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless the Members, Managers, Officers or any other person indemnified pursuant to this Article XI as to costs, charges and expenses (including attorneys' fee), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article XI that shall not have been invalidated and to the fullest extent permitted by applicable law.

Article XII.

ASSIGNMENT OF MEMBERSHIP UNITS

Section 12.1. GENERAL RESTRICTION ON ASSIGNMENT. **Except as expressly permitted hereunder, no Member or Economic Interest Owner may Transfer all or any portion of, or any interest or rights in, their Membership Units or Economic Interest without the prior written consent of the Board of Managers (excluding Managers who are Affiliates of the transferring Member) (the Non-Affiliated Managers) or, if there are no Non-Affiliated Managers, then the consent of all of the Members other than the transferring Member (the Non-Affiliated Members). Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members.**

The Transfer of any Membership Units or Economic Interests in violation of the prohibition contained in this Section 12.1 shall be deemed invalid, null and void, and of no force and effect. Any Person to whom Membership Units are attempted to be Transferred in violation of this Section 12.1 shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company or have any other rights in or with respect to the Membership Units. Any person to whom an Economic Interest is attempted to be transferred in violation of this Section 12.1 shall not be entitled to receive distributions from the Company or have any other rights in or with respect to the Economic Interest.

For purposes of this Agreement, the term Transfer , or Transferred , when used in this Agreement with respect to the Membership Units or Economic Interests, includes a sale, assignment, gift, pledge, encumbrance or any other disposition, whether voluntary, by operation of law or otherwise, and transferee and transferor have corresponding meanings. Further, any such proposed Transfer must be accomplished by written instrument satisfactory in form and content to the Non-Affiliated Managers or Non-Affiliated Members (as the case may be), accompanied by such assurances of genuineness and effectiveness of signatures and the obtaining of any governmental approvals or legal opinions as the Non-Affiliated Managers or Non-Affiliated Members (as the case may be) may reasonably require and payment of any reasonable costs of transfer as the Non-Affiliated Managers or Non-Affiliated Members (as the case may be) may require and all transfer taxes as may be imposed.

In the event of a change of control (as defined hereinbelow) of the Class A Holder, the Class C Holder shall be deemed to have made an offer to sell all of his Membership Units and Economic Interests to the Company immediately prior to the effectuation of the change of control in accordance with the terms of Section 12.2 hereinbelow; *provided, however*, that for purposes of this provision, the per Membership Unit purchase price for the Offered Interest shall be the Fair Market Value (as defined in Article XVI hereinbelow) of the Offered Interest and the terms of payment shall be the payment terms set forth in Section 12.2(d) below. For purposes of this provision, the term change of control shall mean a transaction or series of transactions (related or unrelated) which result in the Class A Holder no longer owning, immediately after such transaction or series of transactions, in excess of fifty percent (50%) (determined by vote and value) of the issued and outstanding equity securities or beneficial interests of the Company.

Section 12.2. **RIGHT OF FIRST REFUSAL.** **In addition to the general restrictions contained in Section 12.1 above, no Member or Economic Interest Owner may voluntarily Transfer any right, title or interest in its Membership Units or Economic Interest, or any part thereof, to any Person, unless the Member or Economic Interest Owner desiring to make the transfer, hereinafter referred to**

as the Transferor , shall (a) have received a *bona fide* written offer to purchase such interest in the Company by an unrelated third party (the Proposed Transferee) and (b) have made an offer to tender to the Company for redemption all of the Transferor 's interest in the Company which the Transferor desires to sell, give or otherwise transfer to the Proposed Transferee (the Offered Interest) in the manner hereinafter described in this Section 12.2, and the offer shall not have been accepted.

(a) **Offer by Transferor.** The offer by a Transferor shall be given in writing to the Company and shall be accompanied by a copy of the written offer, proposal or contract, between the Transferor and the Proposed Transferee (hereinafter referred to as the Written Offer), and shall set forth the nature of the transaction (whether sale, gift, or other transfer), the name and address of the Proposed Transferee and the terms of the transaction, including an identification of the interest involved, the number of Membership Units involved, the purchase price, and the payment terms (hereinafter referred to as the Proposed Transaction). The offer by the Transferor shall consist of an offer to tender to the Company for redemption all of the Offered Interest at the price and upon the terms set forth in this Section 12.2 **below.**

(b) **Exercise of Option.** Within fifteen (15) days after the receipt of the offer, the Company shall have the option, but not the duty, to redeem all or any portion of the Offered Interest; *provided, however*, that the Company's decision to accept or reject the offer shall be made by a vote of a majority of the Non-Affiliated Managers or, if there are no Non-Affiliated Managers, then by a Majority Vote of the Non-Affiliated Members. The election to redeem shall be exercised by the giving of notice thereof to the Transferor.

The notice of exercise of option shall specify a date for the closing of the redemption of the Offered Interest (hereinafter referred to as the Closing or the Closing Date), which shall not be less than thirty (30) days nor more than sixty (60) days after the expiration of the time within which the Company may exercise its option.

(c) **Redemption/Purchase Price.** If the Company elects to redeem all of the Offered Interest, the price for each Membership Unit of the Offered Interest shall be the price per Membership Unit set forth in the Written Offer.

(d) **Payment of Redemption/Purchase Price.** Upon any redemption under this Section 12.2, **the redemption price shall be paid in accordance with the terms provided in the Written Offer.**

(e) **Closing.** The Closing of a purchase under this Section 12.2 **shall take place at the principal office of the Company on a date specified in writing in the written acceptance by the Company to the Transferor, unless the Transferor and the Company otherwise mutually agree on another place or date. At the Closing, the Transferor shall deliver, in exchange for the total purchase price, whether in cash or partially in cash and partially by promissory notes, as the case may be, the certificate, if any, representing the Offered Interest being transferred, duly endorsed, and such other documents as shall be necessary and reasonably required to conclude the transfer.**

(f) **Release from Restriction.** If the Transferor's offer to tender or sell is not accepted by the Company as to the entire interest of the Transferor, the Transferor may make a transfer to the prospective *bona fide* transferee of the entire Offered Interest, the transfer to

be made only in strict accordance with the terms of the Written Offer. If the Transferor shall fail to make the transfer within thirty (30) days following the expiration of the time hereinabove provided for the exercise of the election to purchase by the Company, the Membership Units of the Transferor shall again be subject to all the restrictions of this Agreement.

(g) **Continuance of Restrictions Upon Subsequent Owners.** In the event the Transferor makes a bona fide transfer of the Offered Interest under the provisions of this Section 12.2, **then the Offered Interest transferred to the Proposed Transferee shall be subject to all the provisions of this Agreement. No Membership Units or Economic Interest shall be transferred on the books of the Company and no certificate evidencing such Membership Units or Economic Interest shall be issued to the Proposed Transferee unless and until the Proposed Transferee has executed a counterpart to this Agreement, the original of which shall be retained as part of the Company's records. Failure of the Proposed Transferee to execute a counterpart of this Agreement, however, shall not affect the applicability of this Agreement to the Offered Interest, it being the intention of each Member and the Company that any and all subsequent owners of Membership Units and Economic Interests voluntarily transferred shall only receive and own the Membership Unit or Economic Interest subject to the same restrictions upon transfer and encumbrance as set forth in this Agreement, to which the Transferor was subject, including, without limitation, all of the provisions of this Article XII.**

Section 12.3. **INVOLUNTARY TRANSFER.** **In the event any Membership Units or Economic Interest are the subject of an involuntary Transfer, whether due to bankruptcy, assignment for benefit of creditors, judicial order, legal process, divorce, execution, attachment, enforcement of a pledge or other encumbrance, or otherwise (hereinafter referred to as the Affected Interest), the Member or Economic Interest Owner owning the Affected Interest shall be deemed to have made, immediately prior to such involuntary transfer, an offer first to tender to the Company for redemption all of the Affected Interest in the manner hereinafter described in this Section 12.3. There shall be no obligation or requirement that the Company redeem any of the Affected Interest under this Section 12.3, any redemption of the Affected Interest being solely upon election to do so. The Company may redeem all or any portion of the Affected Interest.**

(a) **Exercise of Option.** If the Company elects to redeem all or any portion of the Affected Interest in accordance with this Section 12.3, **the Company shall serve notice in writing of its election upon the Member owning the Affected Interest and the creditor(s) of the Member, spouse (in the event of a divorce) or other person or entity who is to be the recipient of the Affected Interest (hereinafter referred to collectively as the Transferor) within ninety (90) days after the Board of Managers shall have received actual notice of the involuntary transfer. The Company's decision to accept or reject the offer shall be made by a majority vote of the Non-Affiliated Managers or, if there are no Non-Affiliated Managers, then by a Majority Vote of the Non-Affiliated Members.**

The notice of exercise of option shall specify a date for the closing of the redemption of the Affected Interest (hereinafter referred to as the Closing or the Closing Date), which shall not be less than thirty (30) days nor more than ninety (90) days after the expiration of the time within which the Company may exercise its option.

(b) **Redemption/Purchase Price.** If the Company elects to redeem all or any portion of the Affected Interest, the price for each Membership Unit of the Affected Interest

shall be the lesser of: (i) the Fair Market Value (as defined in Article XVI hereinbelow) of the Affected Interest, or (ii) the total amount, including acquisition costs, if any, which had been due to the creditor of the Member who was to be the recipient of the Affected Interest.

(c) Payment of Redemption/Purchase Price. Upon any redemption under this Section 12.3, **the redemption price shall be paid in the same manner provided in Section 12.2(d) above.**

(d) Closing. The closing of a purchase under this Section 12.3 **shall take place at the principal office of the Company on a date specified in writing in the written acceptance by the Company to the Transferor, unless the Transferor and the Company otherwise mutually agree on another place or date. At the Closing, the Transferor shall deliver, in exchange for the total purchase price, whether in cash or partially in cash and partially by promissory notes, as the case may be, the certificate, if any, representing the Affected Interest being transferred, duly endorsed, and such other documents as shall be necessary and reasonably required to conclude the transfer.**

(e) Continuance of Restrictions Upon Transferor. In the event the deemed offer of the Transferor is not accepted by the Company as to all of the Affected Interest, then the portion of the Affected Interest not redeemed under this Section 12.3 **may be transferred to the transferee/creditor subject to all of the provisions of this Agreement. The transferee/creditor shall execute a counterpart of this Agreement, the original of which shall be retained as part of the Company's records. The failure of the transferee/creditor to execute a counterpart to this Agreement shall not affect the applicability of this Agreement to the Affected Interest, it being the intention of each Member and the Company that any and all subsequent owners of Membership Units or Economic Interests acquired pursuant to an involuntary transfer shall only receive and own the Membership Units or Economic Interests subject to the restrictions upon transfer and encumbrance as set forth in this Agreement to which the Original Member was subject.**

Section 12.4. TERMINATION OF EMPLOYMENT. **In the event that Larry Buffington (Buffington) employment with the Company is terminated for any reason (including but not limited to death, voluntary severance or permanent disability) (the Terminating Event), then the Company may redeem, within six (6) months after the Terminating Event, all of the Class C Units in the Company owned by Buffington on the following terms:**

shall be the lesser of: (i) the Fair Market Value (as defined in Article XVI hereinbelow) of the Affected Interest, or (ii)

- (a) For twenty-percent (20%) of the Fair Market Value (as defined in Article XVI hereinbelow) of the Class C Units owned by Buffington if the Terminating Event occurs within one year of the effective date of this Agreement;
- (b) For forty-percent (40%) of the Fair Market Value (as defined in Article XVI hereinbelow) of the Class C Units owned by Buffington if the Terminating Event occurs within the second year after the effective date of this Agreement;
- (c) For sixty-percent (60%) of the Fair Market Value (as defined in Article XVI hereinbelow) of the Class C Units owned by Buffington if the Terminating Event occurs within the third year after the effective date of this Agreement;

(d) **For eighty-percent (80%) of the Fair Market Value (as defined in Article XVI hereinbelow) of the Class C Units owned by Buffington if the Terminating Event occurs within the fourth year after the effective date of this Agreement.**

(e) **For the Fair Market Value (as defined in Article XVI hereinbelow) of the Class C Units owned by Buffington if the Terminating Event occurs within or after the fifth year after the effective date of this Agreement.**

The redemption price shall be paid within ninety (90) days after the Company notifies Buffington or his successor of the election to redeem his Class C Units. The redemption price shall be paid in cash to the extent it will not impair the operations of the Company, and the balance shall be paid by a promissory note payable on the first anniversary of the Termination Event with interest at Prime Rate published in the *Wall Street Journal*, adjusted quarterly.

Section 12.5. **WITHDRAWALS. No Member may withdraw from the Company, except upon the prior written consent of the Board of Managers.**

(d) For eighty-percent (80%) of the Fair Market Value (as defined in Article XVI hereinbelow) of the Class C U

Section 12.6. RIGHTS OF ASSIGNEE OF MEMBERSHIP UNITS. Unless the assignee of a Membership Unit is admitted as a Substituted Member as provided in Section 12.7, the assignee will be merely an Economic Interest Owner, and the assignee's rights shall be limited to sharing in the profits to which the assignor would otherwise have been entitled and to receiving the assignor's share of any proceeds and an accounting upon dissolution. The assignee shall have no right to vote on Company matters, exercise any purchase rights granted to Members hereunder, inspect Company books and records or otherwise participate in Company affairs and the interest of the assignee shall be disregarded for purposes of determining whether Members owning the required Membership Units have voted on any matter requiring a vote of the Members or in determining the total of the Membership Units outstanding for voting purposes. For example, in the event a judgment creditor obtains a charge against a Member's Membership Unit, pursuant to Section 608.433(4) of the Act, or any successor provision, then unless the judgment creditor is admitted as a Substituted Member, the judgment creditor will be merely an Economic Interest Owner and will not acquire any other rights of a Member. All remaining rights and interest in the Membership Units which were owned by the Transferring Member immediately prior to the Transfer and that were associated with the assigned Economic Interest (including, without limitation, the rights of the Transferring Member to participate in the management and affairs of the Company) shall immediately lapse until the Managers, in their sole discretion, reinstate such rights to the Economic Interest Owner or to a successor or transferee of such Economic Interest Owner.

Section 12.7. SUBSTITUTED MEMBER. **An assignee of the whole or any portion of a Member's Membership Interests in the Company, validly assigned under this Article XII, may become a Substituted Member in the place of his assignor(s), to the extent of the Membership Interests validly assigned, if all of the following conditions are satisfied:**

(a) A fully executed and acknowledged written instrument of assignment has been filed with the Company which sets forth the intention of the assignor(s) that the assignee become a Substituted Member in his/their place, to the extent of the Membership Interests assigned.

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(a) A fully executed and acknowledged written instrument of assignment has been filed with the Company wh

(b) The assignee executes, acknowledges and delivers to the Managers a written acceptance and adoption of the provisions of this Agreement, in form and substance acceptable to the Managers in their sole discretion.

(c) The assignee pays a transfer fee to the Company in an amount sufficient to cover all reasonable expenses connected with the admission of such person as a Substituted Member.

Section 12.8. SECURITIES LAWS. **The Membership Units have not been registered under the Federal or state securities laws of any state and, therefore, may not be resold unless appropriate Federal and state securities laws, as well as the other provisions of this 25 have been complied with.**

(b) The assignee executes, acknowledges and delivers to the Managers a written acceptance and adoption of

Section 12.9. INVALID TRANSFER. **No Transfer of a Membership Unit or Economic Interest that is in violation of this Article XII shall be valid or effective, and the Company shall not recognize any improper transfer for the purposes of making allocations, payments of profits, return of capital contributions or other distributions with respect to such Membership Unit or Economic Interest. The Company may enforce the provisions of this Article XII either directly or indirectly or through its agents by entering an appropriate stop transfer order on its books or otherwise refusing to register or transfer or permit the registration or transfer on its books of any proposed transfers not in accordance with this Article XII.**

Section 12.10. DISTRIBUTIONS AND ALLOCATIONS IN RESPECT OF A TRANSFERRED INTEREST. If any Member Transfers any part of a Membership Unit or Economic Interest in the Company during any accounting period in compliance with the provisions of this Article XII, Company income, gain, deductions and losses attributable to such interest for the respective period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the applicable accounting period in accordance with Code section 706(d), using the daily proration method. All Company distributions on or before the effective date of such transfer shall be made to the transferor and all such Company distributions thereafter shall be made to the transferee. Solely for purposes of making Company tax allocations and distributions, the Company shall recognize a transfer on the day following the day of transfer. Neither the Company nor any Member shall incur any liability for making Company allocations and distributions in accordance with the provisions of this Section 12.10.

Section 12.11. DRAG-ALONG RIGHTS. **Notwithstanding anything in this Agreement to the contrary, in the event that either the Class A Holders or the Class B Holders elect to sell all of their Membership Units in a single transaction to a bona fide third party purchaser, either the Class A Holders or the Class B Holders, as the case may be, may require all of the other Members (the Affected Members) to sell all of their Membership Units for the same price and on the same terms as those to be received by either the Class A Holders or the Class B Holders, as the case may be. In such case, the provisions of Sections 12.1 and 12.2 hereof shall not apply to such Transfer and the Affected Members shall be deemed to have made an offer to sell all of their Membership Units on such terms and conditions as those under which either the Class A Holder or the Class B Holder, as the case may be, will sell its Membership Units; provided, however, that the Affected Members shall have no liability regarding any representations made by either the Class A Holder or the Class B Holder, as the case may be, except representations relating to the Affected Members ownership of the Membership**

Units, their ability to deliver marketable title to such Membership Units and similar representations.

(b) Notwithstanding anything in this Agreement to the contrary, in the event that either the Class A Holders or the Class B Holders elect to sell all of their Membership Units in a single transaction to a bona fide third party purchaser, either the Class A Holders or the Class B Holders, as the case may be, shall require the bona fide third party purchaser to offer to the Affected Members to purchase all their Membership Units for the same price and on the same terms as those to be received by either the Class A or the Class B Holders, as the case may be. If the third party purchaser will not make such offer to the Affected Members, then the Class A Holders or the Class B Holders, as the case may be, shall not be allowed to sell their Membership Units to such third party purchaser.

Section 12.12. APPLICABILITY OF PROVISIONS TO CLASS A HOLDERS **The provisions of Sections 12.1 and 12.2 shall not apply to the Membership Units owned by any Class A Holder, and any Class A Holder may transfer any or all of its Membership Units without the consent of the Board of Managers or the Members, subject to the provisions of Section 12.12(b) below.**

(b) Notwithstanding anything in this Agreement to the contrary, in the event that either the Class A Holders or

(b) At any time a Class A Holder reasonably anticipates that it has a good faith desire to sell some or all of its Membership Units, such Class A Holder shall notify the Class B Holders of that desire and determine whether the Class B Holders have an interest in purchasing all the Membership Units owned by such Holders (the Offered Units). If the Class B Holders, or any of them, have such an interest, they shall make an offer to purchase the Offered Units, and the parties will negotiate in good faith to enter into a definitive purchase agreement with respect thereto. If the parties have not entered into a definitive purchase agreement within ninety (90) days after the original notice from the Class A Holder, the Class A Holder may offer and sell the Offered Units to a third party purchaser (the Third Party Purchaser). If the Class A Holder shall fail to locate a Third Party Purchaser to purchase the Offered Units within one hundred eighty (180) days following the expiration of the time hereinabove provided for, the Offered Units shall again be subject to all the restrictions of this Agreement.

(c) Continuance of Restrictions Upon Subsequent Owners. In the event a Class A Holder sells the Offered Units to a Third Party Purchaser under the provisions of this Section 12.12, then the Offered Units transferred to the Third Party Purchaser shall be subject to all the provisions of this Agreement. No Membership Units or Economic Interest shall be transferred on the books of the Company and no certificate evidencing such Membership Units or Economic Interest shall be issued to the Third Party Purchaser unless and until the Third Party Purchaser has executed a counterpart to this Agreement, the original of which shall be retained as part of the Company's records. Failure of the Third Party Purchaser to execute a counterpart of this Agreement, however, shall not affect the applicability of this Agreement to the Offered Units, it being the intention of each Member and the Company that any and all subsequent owners of Membership Units and Economic Interests voluntarily transferred shall only receive and own the Membership Units or Economic Interests subject to the same restrictions upon transfer and encumbrance as set forth in this Agreement, to which the Class A Holder was subject, including the applicable provisions of this Article XII.

(d) With the exception of the application of Sections 12.1 and 12.2 to any Class A Holder, any transfer by any Class A Holder of any or all of its Membership Units shall be subject to the remaining Sections of this Article XII.

Article XIII.

CONVERSION TO CORPORATE SOLUTION

Subject to Section 9.6, the Board of Managers shall have the power and authority to effect the conversion of the Company's business form from a limited liability company to a corporation (for any reason whatsoever, including without limitation, a public offering of the Company's Capital Securities) or the merger of the Company with or into a new or previously-established but dormant corporation having no assets or liabilities, debts or other obligations of any kind whatsoever other than those associated with its formation and initial capitalization (such a conversion or merger is referred to as a Conversion and such corporation is referred to as Newco).

Upon the consummation of a Conversion, the Units held by each holder thereof shall thereupon be converted into a number of shares of Newco's Capital Securities containing the economic and other terms and rights relative to each other holder of Units as the Board of Managers shall determine to be as nearly as practicable in all material respects the same as such holder's Units as provided herein. The Board of Managers determination of the class (and the terms thereof and rights associated therewith) and number of shares of Newco Capital Securities that each Member receives upon a Conversion shall be final and binding on the holders of Units absent manifest arithmetic error.

In connection with a Conversion, each Member hereby covenants and agrees to take any and all such action and execute and deliver any and all such instruments and other documents as the Board of Managers may reasonably request in order to effect or evidence such Conversion. Without limiting the generality of the foregoing, no Member shall have or be entitled to exercise any dissenter's rights, appraisal rights or other similar rights in connection with such Conversion.

Article XIV.

BOOKS AND RECORDS

Section 14.1. BOOKS AND RECORDS. The Board of Managers shall keep or cause to be kept complete books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. These and all other records of the Company, including information relating to the Company's activities, information with respect to the sale by a Member or any Affiliate of goods or services to the Company, and a list of the names and business addresses of all Members shall be kept at the offices of the Company, or at such other location as may be determined by the Board of Managers, and shall be available for examination there by any Member, or his duly authorized representative, at reasonable times upon reasonable notice. Any Member, or his duly authorized representative, upon paying the costs of collection, duplication

Section 14.2.

CUSTODY OF MEMBER FUNDS; BANK ACCOUNTS

(a) The Board of Managers shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in the immediate possession or control of the Board of Managers. The funds of the Company shall not be commingled with the funds of any other person and the Board of Managers shall not employ, or permit any other person to employ, such funds in any manner except for the benefit of the Company.

(b) All funds of the Company not otherwise invested shall be deposited in one or more accounts maintained in such banking institutions as the Board of Managers shall determine, and withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Board of Managers may, from time to time, determine.

Section 14.3. ACCOUNTANTS. **The accountants for the Company shall be such certified public accountants as shall be selected by the Board of Managers.**

(a) The Board of Managers shall have fiduciary responsibility for the safekeeping and use of all funds and assets

Section 14.4. **SECTION 754 ELECTION.** In the event of a distribution of Company Property (other than money) to a Member or upon a transfer of all or any part of the Membership Units of a Member, the Board of Managers may in their sole and absolute discretion, upon the written request of the Member receiving the distribution or the transferee of the Membership Units, as the case may be (the **Electing Member**), elect pursuant to Section 754 of the Code, to adjust the basis of the Company's property in the manner provided in Sections 734 and 743 thereof, respectively. Each Member agrees to furnish the Company with all information necessary to give effect to such election. The election will be filed with the Company information tax return for the first taxable year to which the election applies. If the Board of Managers decide to make the Section 754 election, the Electing Member will be responsible for all additional accounting costs incurred by the Company as a result of the Electing Member's request to make the election under Code Section 754.

Section 14.5. FISCAL YEAR. **The fiscal year of the Company shall be the calendar year.**

Section 14.6. TAX MATTERS PARTNER. LMT shall be the Tax Matters Partner of the Company for purposes of Section 6231(a)(7) of the Code. The Tax Matters Partner shall have the power and authority, subject to the review and control of the Board of Managers, to manage and control, on behalf of the Company, any administrative proceeding at the Company level with the Internal Revenue Service relating to the determination of any item of Company income, gain, loss, deduction or credit for federal income tax purposes. The Tax Matters Partner may be removed, and a new Tax Matters Partner appointed, by the Board of Managers in accordance with the Code and the Treasury Regulations.

Section 14.7. ANNUAL FINANCIAL STATEMENTS AND TAX RETURN INFORMATION. **The Company shall provide to C₃ Capital Partners, L.P. (C₃), and C₃ Capital Partners II, L.P. (C₃ II), as soon as available, and, in any event, within one hundred and twenty (120) days after the end of each fiscal year of the Company, beginning with the fiscal year ending December 31, 2007, a copy of the annual consolidated financial statements of the Company and LMCS for such fiscal year containing balance sheets, statements of income, retained earnings and cash flows at the end of such fiscal year, in each, except for the fiscal year ending December 31, 2007, setting forth in comparative form the figures for the preceding fiscal year (if any), all in reasonable detail and audited and certified by independent certified public accountants of recognized**

standing reasonably acceptable to C3 and C3 II, to the effect that such report has been prepared in accordance with GAAP. Within ninety (90) days after the end of each Tax year, Company shall provide sufficient information with respect to the Company for such Tax year necessary for C3 and C3 II to prepare their federal, state and local income Tax Returns. The Company shall provide copies of the federal, state and local income Tax Returns of the Company for each Tax year promptly after the filing thereof.

Section 14.8. MONTHLY FINANCIAL STATEMENTS. **The Company shall provide to C₃ and C₃ II, as soon as available and, in any event, within thirty (30) days after the end of each month, a copy of an unaudited consolidated financial report of the Company and LMCS as of the end of such month and for the portion of the fiscal year then ended, including balance sheets, statements of income, retained earnings and cash flows, setting forth in each case comparisons to the Company's and LMCS's Annual Budget and to the corresponding period in the preceding fiscal year and a brief narrative explaining the results of the Company's and LMCS's operations for such period; all such statements shall have been prepared in accordance with GAAP (absent footnotes and customary year-end adjustments) and fairly present the financial condition and results of operations of the Company and LMCS at the date and for the periods indicated therein.**

Section 14.9. INSPECTION RIGHTS. **At any reasonable time and from time to time, the Company shall permit representatives of C₃ and C₃ II to examine, copy and make extracts from its books and records, to visit and inspect the Company's and LMCS's properties, and to discuss Company's and LMCS's business, operations, and financial condition with Company's or LMCS's officers, employees and independent certified public accountants, provided that C₃ and C₃ II agree to keep such information confidential and to use such information solely in connection with its investment in the Membership Units.**

Article xv. employment agreements

The Company shall neither (i) modify, amend or terminate the confidentiality, nonsolicitation and noncompetition agreements between the Company and Larry Buffington (the Employment Agreements) without the prior written consent of C3 and C3 II, which consent shall not be unreasonably withheld or delayed nor (ii) provide any employee, who is a party to the Employment Agreements, with any compensation, benefit or reimbursement for any expenses related to the performance of such employee s duties as contemplated by such employee s Employment Agreements, except as provided by the Employment Agreements.

Article xvi. definitions

Section 16.1. DEFINITIONS. Unless the context otherwise requires, the terms defined in this 29 shall, for the purposes of this Agreement, have the meanings herein specified.

Act means the Delaware Limited Liability Company Act, as amended.

Affiliate or Affiliated Party means, with respect to any Member, a partner of a Member; any member of the immediate family of any Member; any shareholder, officer or director of a Member or any member of their respective immediate families; any person, firm or entity which, directly or indirectly, controls, is controlled by, or is under common control with a Member, any

partner of any Member or any shareholder, officer or director of a partner of any Member or their respective families; or any person, firm or entity which is associated with a Member, any partner of a Member, any officer, director or shareholder of a Member or any member of their respective immediate families in a joint venture, partnership or other form of business association. In this definition, the term control shall mean the ownership of ten percent (10%) or more of the beneficial interest in the firm or entity referred to, and the term immediate family shall mean the spouse, ancestors, lineal descendants, brothers and sisters of the person in question, including those adopted. To the extent the term Affiliate or Affiliated Party is used in the context of an affiliation with a Person (the Subject) other than a Member then such term shall have the same meaning above; however, the term Member within such definition shall be replaced with the Subject.

Agreement means this Limited Liability Company Operating Agreement, as amended, modified, supplemented or restated from time to time in accordance with the terms hereof.

Business Day means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Delaware are closed.

Capital Account means, with respect to any Member, the account maintained for such Member in accordance with the provisions of Section 3.4.

Capital Contribution means, with respect to any Member, the aggregate amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company pursuant to Section 3.2.

Capital Securities means as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the ownership or membership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person.

Capital Transaction means any of the following events: (A) any sale or other disposition of all or any part of any capital assets of the Company, (B) any loans secured by all or any part of the capital assets of the Company, (C) the refinancing of any Company indebtedness, (D) the condemnation of all or any part of the capital assets of the Company, or (E) any insurance recovery relating to any capital assets owned by the Company.

Class A Holder means a Member holding Class A Units.

Class B Holder means a Member holding Class B Units.

Class C Holder means a Member holding Class C Units.

Class A Percentage Interest means, with respect to a Class A Holder at any time and from time to time, a percentage equal to a fraction, the numerator of which is the number of Class A

Units owned by such Class A Holder and the denominator of which is the aggregate number of Common Units owned by all Members.

Class B Percentage Interest means, with respect to a Class B Holder at any time and from time to time, a percentage equal to a fraction, the numerator of which is the number of Class B Units owned by such Class B Holder and the denominator of which is the aggregate number of Common Units owned by all Members.

Class C Percentage Interest means, with respect to a Class C Holder at any time and from time to time, a percentage equal to a fraction, the numerator of which is the number of Class C Units owned by such Class C Holder and the denominator of which is the aggregate number of Common Units owned by all Members;

Class A Unit means a Unit representing a fractional part of the Member Interests of the Members and having the rights and obligations specified with respect to the Class A Units in this Agreement.

Class B Unit means a Unit representing a fractional part of the Member Interests of the Members and having the rights and obligations specified with respect to the Class B Units in this Agreement.

Class C Unit means a Unit representing a fractional part of the Member Interests of the Members and having the rights and obligations specified with respect to the Class C Units in this Agreement.

Code means the U.S. Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

Company means the Delaware limited liability company that is the subject of this Agreement.

Company Property means all real and personal property acquired by the Company and any improvements thereto, including, without limitation, any tangible or intangible property of the Company.

Conversion has the meaning specified in Article XIII of this Agreement.

Deficit Capital Account Balance means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (a) A credit to such Capital Account of any amount which such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5); and
- (b) A debit to such Capital Account of the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

Economic Interest shall mean a Member's or Economic Interest Owner's pro rata share of the Company's profits and distributions of the Company's assets pursuant to this Operating

Agreement and the Act, but shall not include any right to participate in the management of affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

Economic Interest Owner shall mean the owner of an Economic Interest who is not a Member.

Fair Market Value of a Membership Interest shall mean the amount the Selling Member or Transferor would receive with respect to its Membership Interest upon the dissolution and termination of the Company assuming (A) such dissolution or termination occurred on the date of the Notice, and (B) the assets of the Company were sold for their fair market value without compulsion for the Company to sell such assets. The fair market value of the Company's assets shall be agreed upon by the Selling Member or Transferor, as the case may be, and the Company. If they are unable to agree upon a value within ten (10) days, then they shall agree upon an appraiser who shall determine the value. However, if they are unable to agree upon an appraiser within five (5) working days after either party serves written demand on the other, then each shall select one appraiser and the two appraisers so selected shall select a third appraiser whose determination shall be conclusive and binding for this purpose. In the event that the Company or the Selling Member or Transferor, as the case may be, fails to designate an appraiser pursuant to the preceding sentence within five (5) working days after either party serves written demand on the other, then the appraisal shall be performed by the one appraiser who was timely designated. The cost of the appraisal shall be divided equally between the Company and the Selling Member or Transferor, as the case may be.

Fiscal Year means the fiscal year of the Company which shall be the calendar year unless otherwise required by the Code.

Lien means (a) any encumbrance, mortgage, pledge, lien, charge or other security interest of any kind upon any property or assets of any character, or upon the income or profits therefrom; (b) any acquisition of or agreement to have an option to acquire any property or assets upon conditional sale or other title retention agreement, device or arrangement (including a capitalized lease); or (c) any sale, assignment, pledge or other transfer for security of any accounts, general intangibles or chattel paper, with or without recourse; excluding in each instance the lien of this Agreement.

Manager has the meaning specified in Article IX of this Agreement.

Member means the persons listed on Exhibit A hereto, and includes any Person admitted as an additional Member or a substitute Member pursuant to the provisions of this Agreement, in such Person's capacity as a member of the Company, and **Members** means two (2) or more of such Persons when acting in their capacities as members of the Company.

Membership Rights means all legal and beneficial ownership interests in, and rights and duties as a Member of, the Company, including, without limitation, the right to share in Profits and Losses, the right to receive distributions of cash and other property from the Company, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from the Company.

Membership Units shall mean the units into which the ownership interests of the Members in the Company are divided, including such Member's Economic Interest and the right of such Member to any and all benefits to which such Member may be entitled as provided in this

Agreement or under the Act, together with the obligation of such Member to comply with all of the provisions of this Agreement and of the Act.

Newco has the meaning specified in Article XIII of this Agreement.

Nonrecourse Deductions has the meaning set forth in Sections 1.704-2(b) and 1.704-2(c) of the Regulations. The amount of Nonrecourse Deductions for a Company fiscal year equals the net increase in Partnership Minimum Gain during that fiscal year determined pursuant to Section 1.704-2(d) of the Regulations reduced (but not below zero) by the aggregate distributions during that fiscal year of proceeds of a Nonrecourse Liability that are allocable to an increase in Partnership Minimum Gain, determined according to the provisions of Sections 1.704-2(h) of the Regulations.

Nonrecourse Liability has the meaning set forth in Section 1.752-1(a)(2) of the Regulations.

Partner Minimum Gain means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i) of the Regulations.

Partner Nonrecourse Debt has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

Partner Nonrecourse Deductions has the meaning set forth in Section 1.704-2(i)(2) of the Regulations. The amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Company fiscal year equals the net increase during the year in Partner Minimum Gain attributable to such Partner Nonrecourse Debt reduced (but not below zero) by proceeds of the liability distributed during that fiscal year to the Member bearing the economic risk of loss for the liability that are both attributable to the liability and allocable to an increase in Partner Minimum Gain attributable, determined according to the provisions of Section 1.704-2(h) of the Regulations.

Partnership Minimum Gain has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

Percentage Interest means, with respect to a holder of Common Units at any time and from time to time, the Class A Percentage Interest, Class B Percentage and/or Class C Percentage held by such holder

Person includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

Requisite Majority means the approval or vote of the holders owning at least a majority of the Company's issued and outstanding Membership Units at any given time.

Supermajority means the approval or vote of the holders owning at least eighty-five percent (85%) of the Company's issued and outstanding Membership Units at any given time.

Tax Matters Partner has the meaning specified in Section 14.6.

Transfer means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly.

Treasury Regulations means such regulations implemented by the Internal Revenue Service pursuant to the Code.

Article **xvii.**
agreement prepared by attorney for company

The parties acknowledge that the counsel for the Company, Foley & Lardner, prepared this Agreement on behalf of and in the course of its representation of the Company, and that:

- (a) **Each Member and Manager has been advised that a conflict of interest may exist among the Members, the Board of Managers and the Company; and**
- (b) **Each Member and Manager has been urged and has had the opportunity to seek the advice of independent legal counsel.**

Article **xviii.**
amendments

Except as otherwise expressly provided herein, the written approval of the Members holding a Supermajority, as that term is defined herein, of the Membership Units in the Company shall be required to alter, modify or amend this Agreement; provided, however, that no alteration, modification or amendment of Articles III, IV, V, VI or VII hereof or this Article xviii which would materially and adversely affect the economic interest of one or more Members, or their successors or assigns, may be made without the unanimous written consent of all such Members so adversely affected. Notwithstanding the above, this Agreement may be amended from time to time by the Board of Managers, without the consent of any of the Members, (i) to add to the representations, duties or obligations of the members of the Board of Managers, (ii) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provisions with respect to matters or questions arising under this Agreement and (iii) to delete or add any provision of this Agreement required to be so deleted or added by the staff of the Securities and Exchange Commission or by any state securities commission or similar official, which addition or deletion is deemed by such commission or official to be for the benefit or protection of the Members.

Article **xix.**
manager and member relations to the company

No Manager or Member shall be restricted in any way from engaging in any other business venture or activity and no Manager or Member shall be accountable to the Company or to any other Manager or Member because of any activity or venture which does not directly involve the Company. Neither the Company nor the Members shall have any right under this Agreement in and to the other activities of any Manager or Member or to their income or profits from such business venture or activity.

Article XX.

CHOICE OF LAW;

SUBMISSION TO JURISDICTION; AND WAIVER OF JURY TRIAL

Section 20.1.

LAW. This Agreement shall be governed by and construed under the laws of the State of Delaware. The parties agree that any action brought by any party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in Delaware.

Section 20.1.

LAW. This Agreement shall be governed by and construed under the laws of the State of Delaware.

Section 20.2.

WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY VOLUNTARILY AND IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT, ANY OF THE RELATED AGREEMENTS, DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 20.2.

WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY VOLUNTARILY AND I

Article XXI.
MISCELLANEOUS

Section 21.1.

DELAY OR OMISSIONS. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

Section 21.2. WAIVER. **No waivers of any breach of this Agreement extended by any party hereto to any other party shall be construed as a waiver of any rights or remedies of any other party hereto or with respect to any subsequent breach.**

Section 21.3. WAIVER OF PARTITION. **The Members hereby agree that no Member, nor any successor in interest to any Member, shall have the right, while this Agreement remains in effect, to have any Company property partitioned, or to file a complaint or institute any proceeding at law or in equity to have such property partitioned, and all Members, on behalf of themselves and their heirs, successors and assigns, hereby waive any such right.**

Section 21.4. **SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each Person who shall be a holder of the Capital Securities of the Company from time to time; provided, however, that prior to the receipt by the Company of adequate written notice of the transfer of any Capital Securities of the Company specifying the full name and address of the transferee and such transferee's satisfaction of all requirements to be a Permitted Transferee hereunder, the Company may deem and treat the person listed as the holder of such Capital Securities

of the Company in its records as the absolute owner and holder of such Capital Securities of the Company for all purposes.

of the Company in its records as the absolute owner and holder of such Capital Securities of the Company ¹⁷4 for all pu

Section 21.5.

NOTICES. All notices required in connection with this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written notification of receipt. All communications shall be sent to the Company at the address below and to each Member at the address as set forth on Exhibit A hereto or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto:

Section 21.5.

NOTICES. All notices required in connection with this Agreement shall be in writing and shall be

If to the Company, addressed to:

LIQUIDMETAL COATINGS, LLC
30452 Esperanza
Rancho Santa Margarita, California 92688
Attention: Larry Buffington, Chief Executive Officer
Fax No.: 813.314.0270

with a copy to:

Foley & Lardner LLP
100 North Tampa Street, Suite 2700
Tampa, FL 33602-5804
Tel: (813) 225-4122
Facsimile: (813) 221-4210
Attention: Curt P. Creely, Esq.

Section 21.6. **ENTIRE AGREEMENT.** This Agreement and the Exhibits hereto, along with the other documents delivered pursuant thereto, including but not limited to that certain Securities Purchase Agreement of even date herewith, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and no party shall be liable or bound to any other in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein and therein. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of this Agreement.

Section 21.7. **PRONOUNS.** All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require.

Section 21.8. **TITLES AND SUBTITLES.** The titles of the sections and subsections of the Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 21.9.

SEVERABILITY. In the event one or more of the provisions of this Agreement should, for any reason, be held by any court of competent jurisdiction to be invalid,

illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 21.10. **BINDING EFFECT.** Except as provided to the contrary, the terms and provisions of this Agreement shall be binding upon and shall inure solely to the benefit of all the Members, their personal representatives, heirs, successors and assigns.

Section 21.11. **CREDITORS**. The provisions of this Agreement are not for the benefit of and may not be specifically enforced by any creditors of the Company.

Section 21.12. **EXECUTION OF ADDITIONAL INSTRUMENTS.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney, and other instruments necessary to comply with any applicable laws, rules, or regulations.

Section 21.13. **RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Section 21.14. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one instrument. Counterparts of this Agreement (or applicable signature pages hereof) that are manually signed and delivered by facsimile transmission shall be deemed to constitute signed original counterparts hereof and shall bind the parties signing and delivering in such manner.

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IN WITNESS WHEREOF, the parties have executed this Limited Liability Company Operating Agreement as of the date first set forth hereinabove.

COMPANY:

LIQUIDMETAL COATINGS, LLC

By:

Name:

Title:

MEMBERS:

CLASS A HOLDER:

LIQUIDMETAL TECHNOLOGIES, INC.

By:

Title:

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CLASS B HOLDERS:

C3 CAPITAL PARTNERS, L.P.

By: Its General Partner

C3 Capital Partners, LLC, a Delaware
limited liability company

By: Print

Name:

Title:

C3 CAPITAL PARTNERS II, L.P.

By: Its General Partner

C3 Capital Partners II, LLC, a Delaware
limited liability company

By: Print

Name:

Title:

CLASS C HOLDERS:

LARRY BUFFINGTON

Larry Buffington

**Global Strategy & Capital Group, Inc. d.b.a
CRESO Capital Partners**

By:

Print Name:

Title:

Exhibit A

Members	Initial Capital Contribution	Number and Class of Units	Percentage Interest	
Liquidmetal Technologies, Inc. , a Delaware corporation 30452 Esperanza Rancho Santa Margarita, California 92688 Attention: Legal Department Fax No.: 813.314.0270	\$ 3,577,210	6,986 Class A Units*	69.25	%
C3 Capital Partners, LP , a Delaware limited partnership C3 Capital, LLC 4520 Main Street Suite 1600 Kansas City, Missouri 64111 Attn: Robert L. Smith Facsimile: 816-756-5552	\$ 564,218	1,102 Class B Units**	11.02	%
C3 Capital Partners II, LP , a Delaware limited partnership C3 Capital, LLC 4520 Main Street Suite 1600 Kansas City, Missouri 64111 Attn: Robert L. Smith Facsimile: 816-756-5552	\$ 408,572	798 Class B Units**	7.98	%
Larry Buffington 2205 Riva Row, Unite 2410 The Woodlands, TX 77380 Fax No. (832) 585-0341	\$ 0.00	1,000 Class C Units***	10.00	%

Members	Initial Capital Contribution	Number and Class of Units	Percentage Interest
Global Strategy & Capital Group, Inc. d.b.a CRESO Capital Partners, a corporation 660 Newport Center Drive, Suite 800 Newport Beach, CA 92660 Fax No. (949) 209-5441 Attn: Thomas Papa	\$ 0.00	114 Class C Units****	1.75 %
TOTALS	\$ 4,550,000	10,000 Units	100 %

* Issued pursuant to that certain Asset Purchase and Contribution Agreement of even date herewith between the Company and Liquidmetal Technologies, Inc.

** Issued pursuant to that certain Securities Purchase Agreement of even date herewith between the Company, C3 Capital Partners, L.P., and C3 Capital Partners II, L.P.

*** Issued pursuant to that certain Employment Agreement of even date herewith between the Company and Larry Buffington.

**** Issued as consideration for placement agent services provided by Cresco Capital Partners.

Form of Escrow Agreement

ESCROW AGREEMENT

This Escrow Agreement dated this 24th day of July, 2007 (this **Escrow Agreement**), is entered into by and among C3 Capital Partners, LP, C3 Capital Partners II, LP (together **C3**), Bank Midwest, N.A. (when acting in its capacity as a lender, **BMW**), Liquidmetal Technologies, Inc., a Delaware corporation (**LMT**), Liquidmetal Coatings, LLC, a Delaware limited liability company, Liquidmetal Coatings Solutions, LLC, a Delaware limited liability company (together **LMC**) and Bank Midwest, N.A. (when acting in its capacity as escrow agent, the **Escrow Agent**).

WHEREAS, LMT is entering into a transaction (the **Transaction**) wherein substantially all of the assets of its Liquidmetal Coatings business unit (**Transferred Assets**) will be transferred to a new majority owned subsidiary, LMC, through a combination of sale and contribution, and LMC will incur indebtedness secured by the Transferred Assets and any other assets thereafter acquired by LMC; and,

WHEREAS, to help finance the Transaction, C3 will loan to and invest monies in the aggregate amount of six million five hundred thousand dollars (\$6,500,000.00) to LMC, and contemporaneously therewith LMC will execute a subordinated note in favor of C3, and grant C3 a second in priority security interest (subordinate only to the security interest of BMW) in the assets of LMC. In addition, C3 will receive units of LMC equal to nineteen percent (19%) of the common equity of LMC (**C3 Contribution**); and,

WHEREAS, to further help finance the Transaction, BMW will loan monies in the aggregate amount of five million five hundred thousand dollars (\$5,500,000.00) to LMC and contemporaneously therewith LMC will execute notes in favor of BMW and grant BMW a first in priority security interest in the assets of LMC (**BMW Contribution**); and,

WHEREAS, LMC will use the C3 Contribution and BMW Contribution net of the loan fees, legal fees and other costs incurred by C3 and BMW (collectively the **Transaction Monies**) to pay the amounts required by LMT to consummate the Transaction and convey the Transferred Assets to LMC; and,

WHEREAS, LMT in connection with the Transaction is required to pay in full, from the received Transaction Monies, all of the indebtedness and liabilities owed to the holders of the 7% Senior Secured Convertible Notes Due August 2, 2007, the 6% Senior Secured Notes Due July 29, 2007 (collectively **Notes**), and the amounts due to the other parties listed on the Funds Flow Memorandum attached hereto as Exhibit A (collectively, **Other Creditors**); and,

WHEREAS, LMT in connection with the Transaction is required to pay in full, from the received Transaction Monies, all of the indebtedness and liabilities owed to the

holders of the 8% Unsecured Subordinated Convertible Notes Due August 17, 2007, (the **Unsecured Notes**); and,

WHEREAS, to assure that the Transaction Monies are paid to the holders of the Notes and the Other Creditors, all parties hereto are agreeing to deposit the Transaction Monies with the Escrow Agent for disbursement by the Escrow Agent pursuant to the terms of this Escrow Agreement (**Escrow Funds**).

WHEREAS, the parties agree and acknowledge that Bank Midwest, N.A. has duplicate roles under the terms of this Escrow Agreement, and will be acting as both lender and escrow agent and will fulfill the duties of each in its capacity herein.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Operation of the Escrow. C3 and BMW will cause to be wired directly to Escrow Agent, the Escrow Funds in order to complete the Transaction. Escrow Agent shall deposit the Escrow Funds in an interest bearing account at an institution which is federally insured (**Account**) and any interest amounts accrued in said Escrow Account will be paid to the party or parties receiving the principal Escrow Funds at such time as final disbursement of the Escrow Funds is made. Escrow Agent shall disburse such funds upon the following terms and conditions.

(a) Receipt by Escrow Agent of: (i) an executed copy of the Consent Agreement from the holders of the Convertible Subordinated Notes issued on January 3, 2007 and amendments thereto dated April 23, 2007, (ii) an executed copy of Consent from Hana Financial, Inc; (iii) executed copies of the payoff letters from the holders of the Notes and each of the Other Creditors; and (iv) release of security interests by the holders of the Notes, and the Other Creditors, if applicable (**Required Documents**).

(b) Upon the receipt of the Required Documents the Escrow Agent shall disburse to the holders of the Notes and the Other Creditors the amounts set forth on the Funds Flow Memorandum attached hereto as Exhibit A.

(c) Upon the receipt of joint written directions from C3, BMW, LMC and LMT, the Escrow Agent shall disburse to the holders of the Unsecured Notes the amount set forth in such written instructions.

2. Payment of Escrow Agent's Fees and Expenses. All fees and expenses, including reasonable attorneys' fees, charged by Escrow Agent for its activities pursuant to this Agreement shall be borne equally and jointly by LMT and LMC; provided, however, that LMT, and LMC, shall be solely responsible for their own expenses incurred in connection with their respective performances hereunder, except as provided in other prior agreements between the parties; and provided, further, that any expenses, including reasonable attorneys' fees, charged by Escrow Agent in connection with any dispute between LMT, LMC, C3, and BMW with respect to this Agreement shall be borne by the nonprevailing party as among LMT, LMC, C3 and BMW.

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3. Termination. This Escrow Agreement shall be terminated upon disbursement of all the Escrow Funds in accordance with the terms of this Escrow Agreement and may be terminated prior to that date by written consent signed by all the parties hereto, including the Escrow Agent. Any written termination shall be effective on the date specified in the termination document, or, if not specified, then on the date when signed by all parties hereto, including the Escrow Agent. Furthermore, this Escrow Agreement shall be terminated if the Required Documents are not received by the Escrow Agent by September 1, 2007, or an earlier date which is agreed upon in writing by all parties. In the event the Escrow Agent does not receive the Required Documents with respect to one or more holders of Notes or Other Creditors by September 1, 2007, the Escrow Agent shall return the Escrow Funds to C3 and BMW.

4. Limitation of Liability. IN NO EVENT SHALL ESCROW AGENT BE LIABLE TO LMT, LMC, C3 , OR BMW, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES WHICH RESULT FROM THE ESCROW AGENT S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Escrow Agent s Rights and Responsibilities. To induce Escrow Agent to act hereunder, LMT, LMC, C3 and BMW hereby agree that:

(a) Escrow Agent shall be entitled to rely upon any opinion, order, decision, notice, affidavit, direction, or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein that is believed by Escrow Agent in good faith to be genuine and to have been signed or presented by the proper person. Escrow Agent shall not be responsible for the sufficiency of the execution or for the genuineness of documents or instruments delivered to it under this Agreement or for any lack of endorsement thereon or for a description therein, nor shall Escrow Agent be responsible or liable on account of the identity, authority, or rights of the person executing or delivering or purporting to execute or deliver any such document or instrument;

(b) Escrow Agent may act, and shall be fully protected and shall incur no liability in acting, in reliance upon advice of counsel in reference to any matter connected with this Agreement and shall not be liable for any mistake of fact or error in judgment, or for any acts or omissions of any kind, unless caused by its bad faith or willful misconduct;

(c) LMT, LMC, C3 and BMW, jointly and severally, shall indemnify Escrow Agent from, and hold Escrow Agent harmless against, any loss, liability, cost, or expense relating to breach of this Agreement, including, without limitation, reasonable attorneys fees and expenses, incurred by Escrow Agent, unless caused by its bad faith or willful misconduct arising out of, or in connection with, Escrow Agent carrying out its duties and responsibilities under this Agreement.

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6. Disputes. In the event of any disagreement between any of the parties hereto resulting in adverse claims and demands being made in connection with the Escrow Funds, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of the Escrow Funds, the Escrow Agent shall not be or become liable to any of the parties hereto for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until:

(a) The rights of the adverse claimants shall have been fully and finally adjudicated in a court having jurisdiction over the parties and the Escrow Funds, or

(b) All differences shall have been reconciled by a written agreement signed by LMT, LMC, C3, and BMW, and the Escrow Agent shall have received an original execution copy of same.

7. Resignation of Escrow Agent. The Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least 10 business days before the date specified for such resignation or removal to take effect. Upon the effective date of such resignation or removal:

(a) The Escrow Funds shall be delivered by the Escrow Agent to such successor escrow agent as may be designated in writing by LMT, LMC, C3 and BMW, whereupon the Escrow Agent's obligations hereunder shall cease and terminate; or

(b) If no such successor Escrow Agent has been designated by such date, the Escrow Agent's sole obligation thereafter shall be to keep the Escrow Funds and to deliver the same to a person designated in writing by LMT, LMC, C3 and BMW or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

8. Severability. Any invalidity, in whole or in part, of any provision of this Escrow Agreement shall not affect the validity or enforceability of any other provisions of this Escrow Agreement.

9. Amendment of Agreement. The Escrow Agent shall not be bound by any amendment of this Escrow Agreement and no amendment shall be effective unless:

(a) The amendment is in writing; and

(b) The amendment is executed by all the parties hereto.

10. Notices. All notices shall be deemed conclusively to have been given and delivered if the same is in writing and (a) mailed, by registered or certified mail, postage prepaid, or (b) hand delivered, or (c) by overnight delivery via a reputable national overnight delivery service, to the addresses first set forth herein or to such other address as any of the parties hereto may designate by notice given as above provided. Any item sent by registered or certified mail, as above

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provided, will be deemed given two days following deposit in the United States mail. The addresses for the purposes herein are:

Liquidmetal Technologies, Inc.

30452 Esperanza

Rancho Santa Margarita, California 92688

Attn: Legal Department

Liquidmetal Coatings, LLC

30452 Esperanza

Rancho Santa Margarita, California 92688

Attn: Legal Department

Liquidmetal Coatings Solutions, LLC

30452 Esperanza

Rancho Santa Margarita, California 92688

Attn: Legal Department

C3 Capital Partners, LP

4520 Main Street, Suite 1600

Kansas City, Missouri 64111

Attn: Robert L. Smith

C3 Capital Partners II, LP

4520 Main Street, Suite 1600

Kansas City, Missouri 64111

Attn: Robert L. Smith

Bank Midwest, N.A.

1100 Main Street, Suite 350

Kansas City, Missouri 64105

Attn: Judson Stanion

Bank Midwest, N.A. (as Escrow Agent)

1100 Main Street, Suite 350

Section 21.14. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which

Kansas City, Missouri 64105

Attn: Judson Stanion

11. Miscellaneous. This Escrow Agreement and the related documents covering the Transaction contains the entire understanding of the parties hereto and supersedes all prior oral and written understandings, agreements or undertakings of the parties with respect to the escrowing of funds by LMT, LMC, C3, BMW in connection with the Transaction. This Escrow Agreement and all actions taken hereunder in accordance with its terms shall be binding upon and inure to the benefit of LMT, LMC, C3, BMW, the Escrow Agent and their respective heirs,

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successors and assigns. This Escrow Agreement and the Escrow Agent's employment hereunder shall be construed and enforced in accordance with the laws of the State of Missouri. This Escrow Agreement may be executed in one or more counterparts with the same effect as if all signatures and all counterparts were written upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Agreement to be executed as of the date first above written.

Liquidmetal Technologies, Inc.

By:
Printed Name:
Title:

Liquidmetal Coatings, LLC

By:
Printed Name:
Title:

Liquidmetal Coatings Solutions, LLC

By:
Printed Name:
Title:

**C3 Capital Partners, LP
By: C3 Capital Partners, LLC,
its general partner**

By:
Printed Name:
Title:

**C3 Capital Partners II, LP
By: C3 Capital Partners II, LLC,
its general partner**

By:
Printed Name:
Title:

Bank Midwest, N.A.

By:
Printed Name:
Title:

**Bank Midwest, N.A.
in its capacity as Escrow Agent**

By:
Printed Name:
Title:

Form of Buffington Employment Agreement

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this Agreement) is made and entered into effective as of July 24, 2007 (the Effective Date), by and between **LIQUIDMETAL COATINGS, LLC**, a Delaware limited liability company (the Company), and **LARRY BUFFINGTON**, an individual residing in the State of Texas (the Employee).

RECITALS

WHEREAS, the Employee desires to be employed by the Company upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Company desires to assure itself of the Employee s continued employment in the capacities set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties hereto covenant and agree as follows:

1. EMPLOYMENT. THE COMPANY HEREBY EMPLOYS EMPLOYEE, AND THE EMPLOYEE HEREBY ACCEPTS SUCH EMPLOYMENT, UPON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

1. **EMPLOYMENT. THE COMPANY HEREBY EMPLOYS EMPLOYEE, AND THE EMPLOYEE HEREBY A**

2. **TERM.** SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PROVISIONS FOR TERMINATION SET FORTH IN SECTION 5 HEREOF, THE EMPLOYMENT OF THE EMPLOYEE UNDER THIS AGREEMENT SHALL COMMENCE ON THE EFFECTIVE DATE AND SHALL CONTINUE THROUGH THE CLOSE OF BUSINESS ON FIFTH (5TH) ANNIVERSARY OF THE EFFECTIVE DATE (THE INITIAL TERM). UPON THE EXPIRATION OF THE INITIAL TERM, THE EMPLOYEE S EMPLOYMENT WITH THE COMPANY WILL CONTINUE ON AN AT-WILL BASIS AND MAY BE TERMINATED BY EMPLOYEE OR THE COMPANY FOR ANY REASON AND AT ANY TIME, PROVIDED THAT THE TERMINATING PARTY SHALL PROVIDE AT LEAST NINETY (90) DAYS PRIOR WRITTEN NOTICE OF THE TERMINATION TO THE OTHER PARTY (UNLESS THE TERMINATION IS FOR CAUSE AS DEFINED IN THIS AGREEMENT, IN WHICH CASE THE EMPLOYEE S EMPLOYMENT MAY BE TERMINATED IMMEDIATELY). NOTWITHSTANDING THE EXPIRATION OR TERMINATION OF EMPLOYEE S EMPLOYMENT, THE PROVISIONS OF THIS AGREEMENT OTHER THAN THOSE OF SECTIONS 2, 4, AND 5 SHALL REMAIN IN FULL FORCE AND EFFECT. ALL OTHER PROVISIONS OF THIS AGREEMENT, INCLUDING BUT WITHOUT LIMITATION, SECTIONS 1, 6, AND 7, SHALL SURVIVE THE EXPIRATION OF THE INITIAL TERM. NOTWITHSTANDING THE EXPIRATION OF THE THIS AGREEMENT OR THE TERMINATION OF EMPLOYMENT BY ANY MEANS BY ANY PARTY, SECTIONS 2, 6, AND 7 OF THIS AGREEMENT SHALL SURVIVE AND REMAIN FULLY ENFORCEABLE.

2. TERM. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, BUT NOT

3. **DUTIES.** Employee will initially serve as President and Chief Executive Officer of the Company and report to the Board of Managers of the Company. Employee will be based at the Company's principal executive offices located in or around Houston, Texas. Employee will devote the necessary business time, attention, skill, and energy to the business of the Company, will use the Employee's best efforts to promote the success of the Company's business, and will cooperate fully with the Board of Managers in the advancement of the best interests of the Company. Furthermore, the Employee shall assume and competently perform such reasonable responsibilities and duties as may be assigned to the Employee from time to time by the Board of Managers of the Company or their designee. To the extent that the Company shall have any parent company, subsidiaries, affiliated corporations, partnerships, or joint ventures other than Liquidmetal Technologies, Inc. (collectively "Related Entities"), the Employee shall perform such duties to promote these entities and to promote and protect their respective interests to the same extent as the interests of the Company without additional compensation. In addition, Employee may, upon the agreement of Liquidmetal Technologies, Inc., continue to serve as President and Chief Executive Officer of Liquidmetal Technologies, Inc.

3. **DUTIES.** Employee will initially serve as President and Chief Executive Officer of the Company and report to the Board of Managers of the Company. Employee will be based at the Company's principal executive offices located in or around Houston, Texas. Employee will devote the necessary business time, attention, skill, and energy to the business of the Company, will use the Employee's best efforts to promote the success of the Company's business, and will cooperate fully with the Board of Managers in the advancement of the best interests of the Company. Furthermore, the Employee shall assume and competently perform such reasonable responsibilities and duties as may be assigned to the Employee from time to time by the Board of Managers of the Company or their designee. To the extent that the Company shall have any parent company, subsidiaries, affiliated corporations, partnerships, or joint ventures other than Liquidmetal Technologies, Inc. (collectively "Related Entities"), the Employee shall perform such duties to promote these entities and to promote and protect their respective interests to the same extent as the interests of the Company without additional compensation. In addition, Employee may, upon the agreement of Liquidmetal Technologies, Inc., continue to serve as President and Chief Executive Officer of Liquidmetal Technologies, Inc.

4. COMPENSATION.

(a) Annual Base Salary. As compensation for Employee s services and in consideration for the Employee s covenants contained in this Agreement, the Company shall pay the Employee an annual base salary of \$250,000.00. The annual base salary may be adjusted upward (but not downward) in the sole discretion of the Board of Managers of the Company. For purposes of this Agreement, the term Salary Year means the one year, 365-day period (or 366 day period for a leap year) that begins on the Effective Date and each successive one year period thereafter.

(a) Annual Base Salary. As compensation for Employee s services and in consideration for the Employee s

(b) **Bonuses. In addition to the Employee s annual base compensation, during each fiscal year during the term of the Employee s employment hereunder, the Employee shall be entitled to an annual performance bonus upon terms and conditions more particularly established by the Board of Managers of the Company. The annual performance bonus will be in an amount up to 50% of Employee s base salary (the Maximum Bonus Amount), payable as follows: (i) 25% of the Maximum Bonus Amount will be paid if the Company meets its EBITDA target (as established by the Board of Managers) for the applicable fiscal year, (ii) an additional 25% of the Maximum Bonus Amount will be paid if the Company meets its debt repayment target (as established by the Board of Managers) for the applicable fiscal year, and (iii) the remaining Maximum Bonus Amount (or any portion thereof) will be paid only at the discretion of the Board of Managers based on any factor or consideration that the Board of Managers, in its sole discretion, deems relevant.**

(b) Bonuses. In addition to the Employee s annual base compensation, during each fiscal year d201g the te

(b) Bonuses. In addition to the Employee's annual base compensation, during each fiscal year ending the

(c) Reimbursement of Expenses. The Employee shall be reimbursed for all reasonable and customary travel and other business expenses incurred by Employee in the performance of Employee s duties hereunder, provided that such reimbursement shall be subject to, and in accordance with, any expense reimbursement policies and/or expense documentation requirements of the Company that may be in effect from time to time.

(c) Reimbursement of Expenses. The Employee shall be reimbursed for all reasonable and customary travel

(d) Other Benefits. During the term of the Employee's employment hereunder, the Employee shall be eligible to participate in a health insurance plan selected by the Company. The Company shall pay 100 % of the premium of such health insurance plan. Also, Employee will, during his employment hereunder, be entitled to an automobile allowance in the amount of \$800.00 per month.

(d) Other Benefits. During the term of the Employee's employment hereunder, the Employee shall be eligible to participate in a health insurance plan selected by the Company. The Company shall pay 100 % of the premium of such health insurance plan. Also, Employee will, during his employment hereunder, be entitled to an automobile allowance in the amount of \$800.00 per month. 207

(e) Vacation. The Employee shall be entitled to four (4) weeks paid vacation during each Salary Year during the term of the Employee's employment hereunder. Vacation shall be taken at such times and with such notice so as to not disrupt or interfere with the business of the Company. Unused vacation from a particular Salary Year will carry over to succeeding Salary Years, but only up to a maximum of four (4) weeks may be carried into any succeeding Salary Year.

(e) Vacation. The Employee shall be entitled to four (4) weeks paid vacation during each Salary Year during

5. TERMINATION.

(a) Death. The Employee's employment under this Agreement shall terminate immediately upon Employee's death. In the event of a termination pursuant to this Section 5(a), the Employee's estate shall be entitled to receive any unpaid base salary, bonuses or benefits owing to Employee up through and including the date of the Employee's death.

(a) Death. The Employee's employment under this Agreement shall terminate immediately upon Employee's death.

(b) Disability. If, during the term of the Employee's employment hereunder, the Employee becomes physically or mentally disabled in the determination of a physician appointed or selected by the Company, or, if due to any physical or mental condition, the Employee becomes unable for a period of more than sixty (60) days during any six-month period to perform Employee's duties hereunder on substantially a full-time basis as determined by a physician selected by the Company, the Company may, at its option, terminate the Employee's employment upon not less than thirty (30) days written notice. In the event of a termination pursuant to this Section 5(b), the Employee shall be entitled to receive any unpaid base salary, bonuses or benefits owing to Employee up through and including the effective date of termination.

(c) Termination By Company With Cause. The Company may terminate the Employee s employment at any time with Cause. As used in this Agreement, Cause shall include the following: (1) the Employee s failure or inability to perform Employee s duties under this Agreement; (2) dishonesty or other serious misconduct, (3) the commission of an unlawful act material to Employee s employment, (4) a material violation of the Company s policies or practices which reasonably justifies immediate termination; (5) committing, pleading guilty, nolo contendere or no contest (or their equivalent) to, entering into a pretrial intervention or diversion program regarding, or conviction of, a felony or any crime or act involving moral turpitude, fraud, dishonesty, or misrepresentation; (6) the commission by the Employee of any act which could reasonably affect or impact to a material degree the interests of the Company or Related

(c) Termination By Company With Cause. The Company may terminate the Employee s employ~~ment~~ at any

(c) Termination By Company With Cause. The Company may terminate the Employee's employment at any

Entities or in some manner injure the reputation, business, or business relationships of the Company or Related Entities; (7) the Employee's inability to perform an essential function of Employee's position; or (8) any material breach by Employee of this Agreement. The Company may terminate this Agreement for Cause at any time without notice. In the event of a termination for Cause, the Company shall be relieved of all its obligations to the Employee provided for by this Agreement as of the effective date of termination, and all payments to the Employee hereunder shall immediately cease and terminate as of such date, except that Employee shall be entitled to receive any unpaid base salary, bonuses or benefits owing to Employee up to and including the effective date of termination, provided, however, that the Employee's obligations under Sections 6 and 7 shall survive such a termination for Cause and any liabilities or obligations which have accrued and are owed by the Employee to the Company shall not be extinguished or released thereby.

(d) Termination By Company Without Cause. In addition to the other termination provisions of this Agreement, the Company may terminate the Employee's employment at any time and for any reason and without cause (a Termination Without Cause). In the event of a Termination Without Cause, the Employee shall continue to receive the Employee's base salary (as then in effect) through the later of one year after the date of the Termination Without Cause or the end of the Initial Term (the Severance Period). In addition to the severance pay described in the preceding sentence, the Employee shall continue to receive, during the Severance Period, all employee health and welfare benefits that Employee would have received during the Severance Period in the absence of such termination, but only to the extent that the Company is permitted to continue providing such benefits after termination in accordance with the applicable employee benefit plans. Employee agrees and acknowledges, however, that Employee will forfeit the right to receive base salary and benefits during the Severance Period immediately upon the Employee's breach of any covenant set forth in Section 6 of this Agreement. The Employee will also forfeit the right to salary and benefits during the Severance Period upon accepting employment with another employer with comparable salary and benefits hereunder shall be forfeited and shall cease upon the Employee becoming eligible for benefits from the Employee's new employer. Notwithstanding the foregoing, the termination of the Employee's employment pursuant to the second sentence of Section 2 of this Agreement shall not constitute a Termination Without Cause and shall not give rise to any severance payment or other benefits pursuant to this Section 5(d).

(d) Termination By Company Without Cause. In addition to the other termination provisions of this Agreement 215

6. Noncompetition, Nonsolicitation, and Nondisclosure Covenants.

(a) Rationale for Restrictions. Employee acknowledges that Employee's services hereunder are of a special, unique, and extraordinary character, and Employee's position with the Company places Employee in a position of confidence and trust with customers, suppliers, and other persons and entities with whom the Company and its Related Entities have a business relationship. The Employee further acknowledges that the rendering of services under this Agreement will require the disclosure to Employee of Confidential Information (as defined below) including Trade Secrets of the Company relating to the Company and/or Related Entities, and the Company hereby agrees to provide such Confidential Information. As a consequence, the Employee agrees that it is reasonable and necessary for the protection of the goodwill and legitimate business interests of the Company and Related Entities that the Employee make the covenants contained in this Section 6, that such covenants are a material inducement for the Company to employ the Employee and to enter into this Agreement, and that the covenants are given as an integral part of and incident to this Agreement.

(b) Noncompetition and Nonsolicitation Covenants. As used herein, the term Restrictive Period means the time period commencing on the Effective Date of this Agreement and ending on the second (2nd) anniversary of the date on which the Employee's employment by the Company (or any Related Entity) expires or is terminated for any reason, including both a termination by the Company for Cause and a Termination Without Cause. In addition, the term Covered Business means any business which is the same as, or similar to, any business conducted by the Company or any of the Related Entities at any time during the Restrictive Period. The Employee agrees that the Employee will not engage in any of the following acts anywhere in the world during the Restrictive Period:

(i) **directly or indirectly engage or invest in; own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of; be employed by, associated with, or in any manner connected with; lend the Employee's name or any similar name to; lend Employee's credit to; or render services or advice to, any business which competes with, is engaged in, or carries on any aspect of a Covered Business;**

(ii) **directly or indirectly assist, promote or encourage any existing or potential employees, customers, clients, or vendors of the Company or any Related Entity, as well as any other parties which have a business relationship with the Company or a Related Entity, to terminate, discontinue, or reduce the extent of their relationship with the Company or a Related Entity;**

(iii) **directly or indirectly solicit business of the same or similar type as a Covered Business, from any person or entity known by the Employee to be a customer or client of the Company, whether or not the Employee had contact with such person or entity during the Employee's employment with the Company;**

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(iv) **disparage the Company, any Related Entities, and/or any shareholder, director, officer, employee, or agent of the Company or any Related Entity; and/or**

(v) **engage in any practice the purpose of which is to evade the provisions of this Section 6 or commit any act which adversely affects the Company, any Related Entity, or their respective businesses.**

Employee acknowledges that Employee's services hereunder are of a special, unique, and extraordinary character, and Employee's position with the Company places Employee in a position of confidence and trust with customers, suppliers, and other persons and entities with whom the Company and its Related Entities have a business relationship. The Employee further acknowledges that the rendering of services under this Agreement will likely require the disclosure to Employee of Confidential Information (as defined below) and Trade Secrets (as defined below) of the Company relating to the Company and/or Related Entities. As a consequence, the Employee agrees that it is reasonable and necessary for the protection of the goodwill and legitimate business interests of the Company and Related Entities that the Employee make the covenants contained in this Section 6, that such covenants are a material inducement for the Company to employ the Employee and to enter into this Agreement, and that the covenants are given as an integral part of and incident to this Agreement. Accordingly, the Employee agrees that the geographic scope of the above covenants is a reasonable means of protecting the Company's (and the Related Entities') legitimate business interests. Notwithstanding the foregoing covenants, nothing set forth in this Agreement shall prohibit the Employee from owning the securities of (i) corporations which are listed on a national securities exchange or traded in the national over-the-counter market in an amount which shall not exceed 5% of the outstanding shares of any such corporation or (ii) any corporation, partnership, firm or other form of business organization which does not compete with, is not engaged in, and does not carry on any aspect of, either directly or indirectly through a subsidiary or otherwise, any Covered Business.

(c) **Disclosure of Confidential Information. The Employee acknowledges that the inventions, innovations, software, Trade Secrets, business plans, financial strategies, finances, and all other confidential or proprietary information with respect to the business and operations of the Company and Related Entities are valuable, special, and unique assets of the Company. Accordingly, the Employee agrees not to, at any time whatsoever either during or after the Employee's term of employment with the Company, disclose, directly or indirectly, to any person or entity, or use or authorize any person or entity to use, any confidential or proprietary information with respect to the Company or Related Entities without the prior written consent of the Company, including, without limitation, information as to the financial condition, results of operations, identities of clients or prospective clients, products under development, acquisition strategies or acquisitions under consideration, pricing or cost information, marketing strategies, passwords or codes or any other information relating to the Company or any of the Related Entities which could be reasonably regarded as confidential (collectively referred to as Confidential Information). However, the term Confidential Information does not include any information which is or shall become generally available to the public other than as a result of disclosure by the Employee or by any person or entity which the Employee knows (or which the Employee reasonably should know) has a duty of confidentiality to the Company or a**

(iv) **disparage the Company, any Related Entities, and/or any shareholder, director, officer, employee, or agent of the Company or any Related Entity; and/or**

Related Entity with respect to such information. In addition to the foregoing, Company will be fully entitled to all of the protections and benefits afforded by the any applicable law. Trade Secret shall mean information, including a formula, pattern, compilation, program, device, method technique, or process that derives independent economic value, actual or potential, from being not generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use, including but not limited to the patented information and processes as well as the unpatented information and processes comprising, underlying, arising from, and associated with Liquidmetal Coatings sold by the Company.

(d) **Removal and Return of Proprietary Items. The Employee will not remove from the Company's premises (except to the extent such removal is for purposes of the performance of the Employee's duties at home or while traveling, and under such conditions and restrictions as are specifically authorized and/or required by the Company) or transmit by any means, electronic or otherwise, any document, record, notebook, plan, model, component, device, computer software or code, or Confidential Information or Trade Secret whether embodied in a disk or in any other form, including electronic form (collectively, the Proprietary Items). The Employee recognizes that, as between the Company and the Employee, all of the Proprietary Items, whether or not developed by the Employee, are the exclusive property of the Company. Upon termination of Employee's employment with the Company by either party (regardless of the reason for termination), or upon the request of the Company during the term of employment, the Employee will return to the Company all of the Proprietary Items in the Employee's possession or subject to the Employee's control, and the Employee shall not retain any copies, abstracts, sketches, or other physical embodiment of any of the Proprietary Items, Confidential Information, Trade Secret or any part thereof.**

(e) Enforcement and Remedies. In the event of any breach of any of the covenants set forth in this Section 6, the Employee recognizes that the remedies at law will be inadequate and that in addition to any relief at law which may be available to the Company for such violation or breach and regardless of any other provision contained in this Agreement, the Company shall be entitled to equitable remedies (including an injunction) and such other relief as a court may grant after considering the intent of this Section 6. Additionally, the period of time applicable to any covenant set forth in this Section 6 will be extended by the duration of any violation by Employee of such covenant. In the event a court of competent jurisdiction determines that any of the covenants set forth in this Section 6 are excessively broad as to duration, geographic scope, prohibited activities or otherwise, the parties agree that this covenant shall be reduced or curtailed to the extent, but only to the extent, necessary to render it enforceable.

(e) Enforcement and Remedies. In the event of any breach of any of the covenants set forth in this Section 6

7. EMPLOYEE INVENTIONS.

(a) Definition. For purposes of this Agreement, Employee Invention means any idea, invention, technique, modification, process, or improvement (whether patentable or not), any industrial design (whether registerable or not), any mask work, however fixed or encoded, that is suitable to be fixed, embedded or programmed in a semiconductor product (whether recordable or not), and any work of authorship (whether or not copyright protection may be obtained for it) created, conceived, or developed by the Employee, either solely or in conjunction with others, during the Employee's employment with the Company or during the ninety (90) day period following such employment, that relates in any way to, or is useful in any manner in, the businesses then being conducted or proposed to be conducted by the Company or any Related Entity.

(b) Ownership of Employee Inventions. Employee agrees and acknowledges that all Employee Inventions will belong exclusively to the Company and that all Employee Inventions are works made for hire and the property of the Company, including any copyrights, patents, semiconductor mask protection, or other intellectual property rights pertaining thereto. If it is determined that any such works are not works made for hire, the Employee hereby assigns to the Company all of the Company's right, title, and interest, including all rights of copyright, patent, semiconductor mask protection, and other intellectual property rights, to or in such Employee Inventions. The Employee covenants that the Employee will promptly:

(i) **disclose to the Company in writing any Employee Invention;**

(i) disclose to the Company in writing any Employee Invention;

(ii) **assign to the Company or to a party designated by the Company, at the Company's request and without additional compensation, all of the Employee's right to the Employee Invention for the United States and all foreign jurisdictions;**

(ii) assign to the Company or to a party designated by the Company, at the Company's request

(iii) **execute and deliver to the Company such applications, assignments, and other documents as the Company may request in order to apply for and obtain patents or other registrations with respect to any Employee Invention in the United States and any foreign jurisdictions;**

(iv) **sign all other papers necessary to carry out the above obligations; and**

(v) **give testimony and render any other assistance in support of the Company s rights to any Employee Invention.**

(v) give testimony and render any other assistance in support of the Company s rights to any E 228

8. Essential and Independent Covenants. **The Employee s covenants in Sections 6 and 7 of this Agreement are independent covenants, and the existence of any claim by the Employee against the Company under this Agreement or otherwise will not excuse the Employee s breach of any covenant in Section 6 or 7. The covenants of Sections 6 and 7 shall survive the termination, extinguishment, or lapse of this Agreement under any circumstances, even if this Agreement is terminated by either party, whether for Cause or Not for Cause.**

9. Representations and Warranties by The Employee. **The Employee represents and warrants to the Company that the execution and delivery by the Employee of this Agreement do not, and the performance by the Employee of the Employee's obligations hereunder will not, with or without the giving of notice or the passage of time, or both: (a) violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency applicable to the Employee, or (b) conflict with, result in the breach of any provisions of or the termination of, or constitute a default under, any agreement to which the Employee is a party or by which the Employee is or may be bound, including, without limitation, any noncompetition agreement or similar agreement. Employee further represents and warrants that he fully and completely understands this Agreement and that he has engaged in negotiations with the Company and has either consulted with an attorney of his choice or has had ample opportunity to do so and is fully satisfied with the opportunity he has had.**

10. **Notices. For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been duly given when hand-delivered, sent by facsimile transmission (as long as receipt is acknowledged), or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the address or facsimile number for each party set forth on the signature page hereto, or to such other address or facsimile number as either party may have furnished to the other in writing in accordance herewith, except that a notice of change of address shall be effective only upon receipt.**

11. Miscellaneous. **No provision of this Agreement may be modified or waived unless such waiver or modification is agreed to in writing signed by both of the parties hereto. No waiver by any party hereto of any breach by any other party hereto shall be deemed a waiver of any similar or dissimilar term or condition at the same or at any prior or subsequent time. This Agreement is the entire agreement between the parties hereto with respect to the Employee s employment by the Company, and there are no agreements or representations, oral or otherwise, expressed or implied, with respect to or related to the employment of the Employee which are not set forth in this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the Company, its respective successors and assigns, and the Employee and Employee s heirs, executors, administrators and legal representatives. The duties and covenants of the Employee under this Agreement, being**

personal, may not be delegated or assigned by the Employee without the prior written consent of the Company, and any attempted delegation or assignment without such prior written consent shall be null and void and without legal effect. The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, the Agreement shall be construed with the invalid or inoperative provision deleted and the rights and obligations of the parties shall be construed and enforced accordingly. This Agreement may be assigned by the Company without the consent of the Employee, provided, however, that the Employee is given notice of the assignment.

12. Governing Law; Resolution of Disputes. **The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of Texas without regard to principles of choice of law or conflicts of law thereunder. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either of the parties in the courts of the State of Texas, County of Harris or Montgomery, or, if it has or can acquire jurisdiction, in the federal courts located in, Harris County or Montgomery County, Texas, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party anywhere in the world. The parties hereto agree that having venue and jurisdiction solely in Texas is reasonable in that the headquarters for the Company will be in Harris County or Montgomery County, Texas and that site for litigation is the most central for such matters. **THE PARTIES HEREBY WAIVE A JURY TRIAL IN ANY LITIGATION ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE EMPLOYMENT OF THE EMPLOYEE WITH THE COMPANY.** This Agreement shall not be construed against either party but shall be construed without regard to the participation of either party in the drafting of this Agreement or any part thereof.**

13. Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be effective upon the execution and delivery by any party hereto of facsimile copies of signature pages hereto duly executed by such party; provided, however, that any party delivering a facsimile signature page covenants and agrees to deliver

promptly after the date hereof two (2) original copies to the other party hereto.

14. **Modification By The Court.** In the event that any provision or Section of this Agreement violates any law of the state of Texas or is for some other reason unenforceable as written in the state of Texas, the Employee and the Company agree that the unenforceable provision or Section should not cause the entire Agreement to become unenforceable unless it is caused to fail in its essential purpose. In the event that any provision or Section of this Agreement violates any law of the state of Texas or is for some other reason unenforceable as written in the state of Texas, the Employee agrees that the provision should be reduced in scope or length or otherwise modified by the Court, if possible under the law, to cause the provision or Section of the Agreement to be legal and enforceable but to still provide to the Company the maximum protection available to it under the law.

[signatures follow]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LIQUIDMETAL COATINGS, LLC

By:

Liquidmetal Coatings, LLC
30452 Esperanza
Rancho Santa Margarita, CA 92688
Attention: Chief Financial Officer
Fax No.: (949) 635-2108
(initial address until Houston office is opened)

EMPLOYEE

By:

Printed Name: Larry Buffington

Address and Facsimile Number:

Larry Buffington
2205 Riva Row, Unit 2410
The Woodlands, TX 77380
Fax: 832-585-0341

Form of Services Agreement

SERVICES AGREEMENT

THIS SERVICES AGREEMENT is made as of the 24th day of July, 2007 (the Agreement), by and between **Liquidmetal Coatings, LLC**, a Delaware limited liability company, (LMC), and **Liquidmetal Technologies, Inc.** (or LMT). LMT and LMC may collectively be referred to as the Parties. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Asset Purchase Agreement (as defined below).

WITNESSETH:

WHEREAS, the Parties have entered into an Asset Purchase Agreement of even date herewith (the Asset Purchase Agreement), pursuant to which, among other things, LMC purchased from the LMT the Purchased Assets (as defined in the Asset Purchase Agreement); and

WHEREAS, LMC manufactures and sells industrial coatings materials and provides application services of industrial coatings from its facilities and offices (the Business); and

WHEREAS, subject to the terms and provisions hereof, LMC desires to engage LMT to provide certain services to LMC and LMT desires to provide such services to LMC.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and other agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Administrative and Information Technology (IT) Services.** Subject to the terms and provisions of this Agreement, LMC hereby retains LMT to provide the following services during the term of this Agreement (the Administrative Services) and LMT hereby accepts the engagement on the terms set forth in this Agreement:

1.1. LMC hereby engages LMT, and LMT hereby accept such engagement, to provide day-to-day administrative and technology services to and for LMC, including but not limited to financial management, audit and Sarbanes-Oxley support, IT support, human resources support and other general or administrative support.

1.1. LMC hereby engages LMT, and LMT hereby accept such engagement, to provide day-to-day ~~244~~administrati

1.2. LMC shall maintain one or more bank accounts. LMC may provide LMT with authority to deposit customer receipts into such accounts, make payments from such accounts or to invest such funds in connection with the cash management system employed by LMC. The handling of receipts and disbursements with respect to such bank accounts shall be in accordance with customary business practices.

1.3. LMT shall maintain, supervise and from time to time revise and amend management, financial and informational systems in support of the operations of LMC, including

1.3. LMT shall maintain, supervise and from time to time revise and amend management, financial and informational systems in support of the operations of LMC, including

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but not limited to those required for accounting, inventory management, purchasing, sales order processing and e-mail.

1.4. LMT may negotiate agreements and contracts for and on behalf of LMC in the usual course of business in such areas as general liability insurance, property insurance and directors and officers insurance.

1.5. LMT shall have the right to act as the agents of LMC in the procuring of licenses, permits and other approvals.

1.5. LMT shall have the right to act as the agents of LMC in the procuring of licenses, permits and other approvals.

1.6. Notwithstanding any provision in this Agreement, the full authority and responsibility for the day-to-day operation of LMC shall, during the term of this Agreement, be and remain in LMC, and LMT shall have no rights or duties except as set forth in this Agreement. LMT shall exercise commercially reasonable efforts at all times during the term of this Agreement in providing administrative and IT services as efficiently and economically as practicable. LMT shall exercise good faith efforts not to expend more than a reasonable sum of money for any goods purchased or services engaged on behalf of LMC.

1.7. LMC's engagement of LMT with respect to the Administrative and IT Services is not exclusive. As between LMC and LMT, LMT will have the primary day-to-day responsibilities with respect to the Administrative and IT services, but LMC will retain the authority to direct LMT. Therefore, notwithstanding any provision in this Agreement, LMC will have the right, but not the obligation, to oversee, review and monitor LMT in its performance of services and its exercise of rights and powers pursuant to this Agreement, and LMT will follow all policies and directives of LMC provided to LMT in writing with respect to the Administrative and IT Services.

1.8. LMT shall, subject to the direction of LMC, perform the duties set forth on Exhibit A hereto.

2. **Reimbursement of Expenses.** LMC will reimburse LMT for its direct, out-of pocket expenses incurred in connection with the provision of the services required by this Agreement, including (i) its reasonable out of pocket expenses in connection with travel, lodging and meals; (ii) its reasonable legal fees, accounting, and other professional fees incurred on behalf of LMC (provided, however, that LMT will not engage attorneys, accountants or other professionals without the prior approval of LMC), and (iii) other direct expenses incurred on behalf of LMC. Except as set forth in Section 6 below, LMT will not be reimbursed for any of its indirect or overhead expenses. LMC may establish reasonable policies in connection with the submission of vouchers and evidence regarding expenses to be reimbursed, but any change in policy will not apply to any expenses incurred by LMT prior to the date it receives written notice of such change to the extent that the change would limit or restrict their reimbursement right. LMT will not be

required to incur any expenses in connection with its provision of services hereunder to the extent that such expenses are not reimbursable by LMC.

3. **Relationship of the Parties.** LMT and LMC affirmatively state that they do not have the intention and are not forming a joint venture, partnership, association or other relationship for tax or any other purposes. The relationship between LMT and LMC created under this Agreement is that of an agent (LMT) contracting with a principal (LMC) as independent contractors.

4. Indemnification.

(a) LMC agrees to indemnify and hold harmless LMT and its members, officers, employees and agents (collectively, the LMT Indemnified Parties) from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys fees and expenses related to the defense of any claims) (a Loss), which may be asserted against any of the LMT Indemnified Parties as a result of the provision of services pursuant to this Agreement (including acts and omissions relating thereto), but only if such Loss has not been caused by the willful misconduct (including a willful breach of this Agreement) of LMT.

(b) LMT agrees to indemnify and hold harmless LMC and its members, officers, employees and agents (collectively, the LMC Indemnified Parties) from and against all Losses which may be asserted against any of LMC Indemnified Parties as a result of the willful misconduct (including a willful breach of this Agreement) of LMT in connection with the performance by LMT of its duties hereunder or the exercise by LMT of its rights and powers hereunder if such Loss has not been caused by the gross negligence or willful misconduct (including a willful breach of this Agreement) of any of LMC Indemnified Parties.

5. Term and Termination.

5.1. The term of this Agreement shall commence as of the date hereof (the Effective Date) and shall continue in effect until the 180th **calendar day after the Effective Date, unless terminated in accordance with this Section 5.**

5.2. LMC shall have the right to terminate immediately this Agreement for cause in the event of the occurrence of any of the following:

(a) If LMT breaches or defaults in a material manner in the performance of any term, condition or undertaking set forth herein or breaches or fails to follow in a material manner any policy established or directive issued by LMC and fails to cure such breach or default within 30 days after LMT's receipt of written notice from LMC describing the occurrence and nature of the breach or default, or fails to submit a plan for curing the breach or default that is reasonably acceptable to LMC within such 30 day period and thereafter diligently and continuously proceeds to cure the breach or default pursuant to the plan if the breach or default cannot reasonably be cured within the 30 day period;

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(a) If LMT breaches or defaults in a material manner in the performance of any term, condition or undertaking 262

(b) Upon the filing of a voluntary petition in bankruptcy or for reorganization under any bankruptcy law, or a petition for the appointment of a receiver for all or any substantial portion of the property of LMT;

(c) Upon the consent by LMT to an order for relief under the federal bankruptcy laws or the failure to vacate such an order, judgment or decree, by any court of competent jurisdiction, on the application of a creditor, adjudicating LMT as bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of either of LMT's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of 60 days.

5.3. LMT shall have the right to terminate this Agreement for cause in the event of the occurrence of any of the following:

(b) Upon the filing of a voluntary petition in bankruptcy or for reorganization under any bankruptcy law, or a p

- (a) If LMC breaches or defaults in a material manner in the performance of any term, condition or undertaking set forth herein (except for a breach or default of any fees due pursuant to Section 6 hereof) and fails to cure such breach or default within 30 days after LMC's receipt of written notice from LMT describing the occurrence and nature of the breach or default, or fails to submit a plan for curing the breach or default that is reasonably acceptable to LMT within such 30 day period and thereafter diligently and continuously proceeds to cure the breach or default pursuant to the plan if the breach or default cannot reasonably be cured within the 30 day period; or
 - (b) If LMC fails to timely pay any amounts that become due pursuant to Section 6 hereof; or
 - (c) If LMC or its affiliate for any reason ceases to own its business.
6. Fee for Services. LMT shall be entitled to receive fees for the services provided pursuant to this Agreement on an hourly basis based on the hours expended by LMT personnel at the hourly rates as noted on Exhibit B. These fees shall be due upon presentment of invoices.

7. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered in person or when delivered by overnight courier, (b) on the first Business Day following receipt when delivered by telegraphic or other electronic means (including facsimile, telecopy and telex), or (c) if mailed, upon the delivery or refusal date (as shown on the receipt), if deposited in the United States mail, certified or registered mail, first-class postage prepaid, return receipt requested, to the parties at the following addresses or facsimile numbers:

7. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given to have

7. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have

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If to LMC, to: Liquidmetal Technologies, Inc.
30452 Esperanza
Rancho Santa Margarita, CA 92688
Attn: Larry Buffington, CEO
Fax: (949) 635-2108

With a copy to (which shall not constitute notice): Foley & Lardner LLP
100 N. Tampa Street, Suite 2700
Tampa, FL 33602
Attention: Curt P. Creely
Fax: (813) 221-4210

and with a copy to (which shall not constitute notice): Bryan Cave LLP
3500 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Attn: Thomas W. Van Dyke
Facsimile: (816) 374-3300

If to LMT, to: Liquidmetal Technologies, Inc.
30452 Esperanza
Rancho Santa Margarita, CA 92688
Attn: John Kang, Chairman
Fax: (949) 635-2108

With a copy to (which shall not constitute notice): Foley & Lardner LLP
100 N. Tampa Street, Suite 2700
Tampa, FL 33602
Attention: Curt P. Creely
Fax: (813) 221-4210

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Any party from time to time may change its address or facsimile number for the purpose of receipt of notices to that party by giving a similar notice specifying a new address or facsimile number to the other notice parties listed above in accordance with the provisions of this Section 7.

8. Entire Agreement. This Agreement supersedes all prior oral discussions and written agreements between the parties with respect to the subject matter of this Agreement (including any term sheet or similar agreement or document relating to the transactions contemplated hereby). This Agreement, together with the Asset Purchase Agreement,

8. Entire Agreement. This Agreement supersedes all prior oral discussions and written agreements between

contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof.

9. Waiver. Any term or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof. Any such waiver must be in writing and must be duly executed by such party. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach, provision or requirement on any other occasion.

9. Waiver. Any term or condition of this Agreement may be waived at any time by the party which ~~is~~ entitled

10. Amendment. This Agreement may be modified or amended only by a written instrument duly executed by each of the parties hereto.

11. Counterparts and Facsimile Signatures. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall be deemed to be original signatures for all purposes.

12. **No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their respective successors or assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person.

13. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO A CONTRACT EXECUTED AND PERFORMED IN SUCH STATE. The parties hereto agree that no provisions of this Agreement or any related document shall be construed for or against or interpreted to the advantage or disadvantage of any party hereto by any authority or arbitrator by reason of any party s having or being deemed to have structured or drafted such provision, each party having participated equally in the structuring and drafting hereof.

14. **Binding Effect.** This Agreement shall be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

15. Assignment. Neither this Agreement nor any right hereunder or part hereof may be assigned by any party hereto without the prior written consent of the other parties hereto.

16. **Headings.** The headings used in this Agreement have been inserted for convenience and do not constitute provisions

to be construed or interpreted in connection with this Agreement.

17. **Severability; Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, (a) such provisions will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

18. **Further Assurances.** On and after the date hereof, LMC and LMT will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof.

19. Conflicts between Agreements. This Agreement is made pursuant to the Asset Purchase Agreement and is subject to the terms and conditions thereof. If any conflicts exist between this Agreement and the Asset Purchase Agreement, the Asset Purchase Agreement shall control.

20. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

Exhibit A

1. Financial Management
 - A. Prepare financial reports
 - B. Support preparation and work with audit firm
 - C. Support preparation and work for Sarbanes-Oxley Section 404 compliance
 - D. Process Vendor Purchases, Invoices and Accounts Payable
 - E. Process Customer Orders, Invoices and Accounts Receivable
 - F. Perform Human Resource functions including
 - Process new employees
 - Process terminated employees
 - Compute payroll calculation
 - Distribute payroll checks and stubs
 2. Information Technology Services
 - A. Maintain SAP financial system
 - B. Maintain e-mail system
 - C. Provide remote desktop support
 3. General and Administrative Services
 - A. Assist in selection of insurance policies and coverage
 - B. Assist in selection and transition of financial system
 - C. Assist in selection and implementation of payroll system and service
 - D. Assist in selection of local IT support company
- 9
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Exhibit B
Rates

	<u>Position</u>	<u>Hourly Rate</u>	
VP Finance		\$75.00	-
Controller		\$45.00	
Staff Accountant		\$22.50	
VP R&D		\$90.00	
Director R&D		\$50.00	
Senior Technician		\$42.50	
Technician		\$22.50	
Administrative		\$18.00	
VP IT		\$75.00	

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Form of License and Technical Support Agreement

LICENSE AND TECHNICAL SUPPORT AGREEMENT

THIS LICENSE AND TECHNICAL SUPPORT AGREEMENT (this Agreement) is made and entered into as of the 24th day of July, 2007 (the Effective Date), by and between **LIQUIDMETAL TECHNOLOGIES, INC.**, a Delaware corporation having its principal place of business at 30452 Esperanza, Rancho Santa Margarita, CA 92688 (LMT), and **LIQUIDMETAL COATINGS, LLC**, a Delaware limited liability company having its principal place of business at 30452 Esperanza, Rancho Santa Margarita, CA 92688 (LMC).

RECITALS:

- A. Pursuant to an Asset Purchase and Contribution Agreement of even date herewith between LMT and LMC, LMT transferred substantially all of the assets (the Transferred Assets) of LMT's Liquidmetal Coatings business unit (the Coatings Business) to LMC through a combination of sale and capital contribution (the Coatings Transaction).
- B. The Transferred Assets include certain patent rights and other intellectual property related to the Coatings Business (the Transferred Intellectual Property).
- C. After the date hereof, LMT will continue to employ certain individuals who may from time to time develop technology or inventions that may be useful in the Coatings Business, and LMC may develop technology or inventions that may be useful in LMT's Amorphous Alloy Business (as defined below), and the parties therefore desire to enter into certain technology licenses with one another as more particularly set forth herein.
- D. After the date hereof and upon the terms and conditions set forth herein, LMC may also wish to procure certain technical support from LMT employees relating to Metallic Coatings (as defined below).

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements set forth herein, LMT and LMC agree as follows:

**Article 1.
CERTAIN DEFINITIONS**

For purposes of this Agreement and except as otherwise specifically set forth herein, the following capitalized terms shall have the following meanings:

1.1. Affiliate means, with respect to any specified person or entity, any corporation, limited liability company or other legal entity which directly or indirectly controls, is controlled by, or is under common control with specified person or entity or its successors or assigns. For the purposes of this Agreement, control shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding shares on a fully diluted basis or other voting rights of the specified entity to elect directors or managers, or the right to direct or cause the direction of the management and policies of the specified entity

whether by contract or otherwise; and the terms controlling and controlled have meanings correlative to the foregoing.

1.2. **Amorphous Alloy** means any one or more amorphous alloys or bulk metallic glasses (or composite materials containing amorphous alloys or bulk metallic glasses). The term Amorphous Alloy includes, but is not limited to, any Liquidmetal® **alloys** and any amorphous alloys, bulk metallic glasses, or composite materials that may be developed or conceived under this Agreement. However, the term Amorphous Alloy specifically excludes any Metallic Coating.

1.2. Amorphous Alloy means any one or more amorphous alloys or bulk metallic glasses (or composite materials that may be developed or conceived under this Agreement). However, the term Amorphous Alloy specifically excludes any Metallic Coating.

1.3. Amorphous Alloy Business means any business that is conducted by LMT on the date hereof and any business that may be conducted by LMT from time to time hereafter, including but not limited to the manufacture, sale, or distribution of Amorphous Alloys.

1.3. Amorphous Alloy Business means any business that is conducted by LMT on the date hereof and any

1.4. Confidential Information shall mean any and all commercial, technical, financial, proprietary, and other information relating to a Discloser, its affiliates, and their respective business operations, including, but not limited to, samples, data, technical information, know-how, formulas, ideas, inventions, discoveries, patents, patent applications, Intellectual Property, product development plans, demonstrations, business and financial information, applications and designs, and all manifestations or embodiments relating to the foregoing and all improvements made thereto, in whatever form provided, whether oral, written, visual, machine-readable, electronic, or otherwise. Confidential Information also includes any information described above which a Discloser obtains from a third party and which the Discloser treats as proprietary or designates as confidential, whether or not owned or developed by the Discloser.

1.4. Confidential Information shall mean any and all commercial, technical, financial, proprietary~~2006~~ and other

1.5. Discloser shall mean the party that is disclosing Confidential Information under this Agreement, regardless of whether such Confidential Information is being provided directly by such party, by a Representative of the party, or by any other person that has an obligation of confidentiality with respect to the Confidential Information being disclosed.

1.6. Improvement shall mean any modification of a process, machine, or composition of matter that relates to the LMT Field or LMC Field, as the case may be, developed at any time during the period beginning on the Effective Date and ending on the fifth (5th) anniversary of the Effective Date.

1.7. Intellectual Property means any and all inventions (whether or not protected or protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected or protectable under copyright laws), moral rights, trade secrets, developments, designs, applications, processes, know-how, discoveries, ideas (whether or not protected or protectable under trade secret laws), and all other subject matter protected or protectable under patent, copyright, moral right, trademark, trade secret, or other laws, including, without limitation, all new or useful art, combinations, formulae, manufacturing techniques, technical developments, applications, data, and research results.

1.8. Licensee means a party to this Agreement acting in its capacity as the grantee of a license pursuant to Article 2 hereof, and Licensor means a party to this Agreement acting in its capacity as a grantor of a license pursuant to Article 2 hereof.

1.8. Licensee means a party to this Agreement acting in its capacity as the grantee of a license pursuant to

1.9. Licensed Product means any LMC Licensed Product or LMT Licensed Product.

1.10. Licensed Technical Information means any LMC Licensed Technical Information or LMT Licensed Technical Information.

1.11. LMC Field shall mean the manufacture, sale, distribution, or application of Metallic Coatings or of equipment used in the manufacture or application of Metallic Coatings.

1.11. LMC Field shall mean the manufacture, sale, distribution, or application of Metallic Coatings~~304~~of equip

1.12. LMC Licensed Patents means any Patents of LMT or any Affiliate of LMT that have utility in the LMC Field and that are first created, conceived, or reduced to practice by LMT during the period beginning on the Effective Date and ending on the fifth (5th) anniversary of the Effective Date.

1.13. LMC Licensed Products means any Metallic Coatings or any Metallic Coating application services or any equipment used in the application or production of Metallic Coatings utilizing technology under LMC Licensed Patents.

1.14. LMC Licensed Technical Information means unpublished research and development information, unpatented inventions, know-how, trade secrets, and technical data now or hereafter in the possession of LMT that are reasonably necessary or useful for using the LMC Licensed Patents to produce LMC Licensed Products within the LMC Field, provided LMT has the right to disclose such items to LMC and provided that such items come into the possession of LMT on or before the fifth (5th) anniversary of the date of the Effective Date.

1.15. LMT Field shall mean the manufacture, sale, distribution, or application of Amorphous Alloys, products containing Amorphous Alloys, or equipment used in the production of Amorphous Alloys or products containing the same.

1.15. LMT Field shall mean the manufacture, sale, distribution, or application of Amorphous Alloy~~306~~products

1.16. LMT Licensed Patents means any Patents of LMC or any Affiliate of LMC that have utility in the LMT Field and that are first created, conceived, or reduced to practice by LMC during the period beginning on the Effective Date and ending on the fifth (5th) anniversary of the Effective Date.

1.17. LMT Licensed Products means any Amorphous Alloys, products containing Amorphous Alloys, or equipment used in the production of Amorphous Alloys or products containing Amorphous Alloys utilizing technology under LMT Licensed Patents.

1.18. LMT Licensed Technical Information means unpublished research and development information, unpatented inventions, know-how, trade secrets, and technical data now or hereafter in the possession of LMC that are reasonably necessary or useful for using the LMT Licensed Patents to produce LMT Licensed Products within the LMT Field, provided LMC has the right to disclose such items to LMT and provided that such items come into the possession of LMC on or before the fifth (5th) anniversary of the Effective Date.

1.19. Metallic Coating means any metallic coating material in the form of a wire or powder that is sprayed in liquid form on industrial equipment for use as a coating to protect against wear, corrosion, or abrasion, including the coatings materials historically branded and sold by LMT prior hereto under the Liquidmetal and Armacor brands.

1.20. Net Sales Price means, for purposes of computing royalties under this Agreement, a Licensee's invoice price, after deduction of regular trade and quantity discounts, but before deduction of any other items, including, but not limited to, freight allowances, cash discounts, and agents' commissions.

1.21. Patents means any and all letters patent (including, but not limited to, patents of implementation, improvement, or addition, utility model and appearance design patents, and inventors certificates, as well as all divisionals, reissues, reexaminations, continuations, continuations-in-part, renewals, extensions, substitutions, foreign equivalents and counterparts, and any other forms of patent protection directed to the inventions covered by any of the foregoing), applications for letters patent

(including, but not limited to, all foreign counterpart patent applications), and letters patent that may issue on such applications.

1.22. Recipient shall mean the party receiving Confidential Information that is protected under this Agreement.

1.23. Representatives shall mean the respective directors, officers, employees, financial advisors, accountants, attorneys, agents, and consultants of a party.

1.23. Representatives shall mean the respective directors, officers, employees, financial advisors, accountants, attorneys, agents, and consultants of a party.

1.24. **Sublicensing Revenue shall mean the fair market cash value of any and all consideration received from sublicensees in consideration for sublicenses granted by Licensor or its Affiliates hereunder, including without limitation running royalties, license issue fees and other licensing fees, milestone payments, research grants, minimum annual royalties, equity or other payments of any kind whatsoever, irrespective of whether such revenues are received in the form of cash, barter, credit, stock, warrants, release from debt, goods or services, licenses back, or any other form whatever.**

Article 2.
LICENSE GRANT

2.1. License Grant to LMC. Upon the terms and conditions set forth herein, LMT hereby grants to LMC a worldwide, exclusive, perpetual, royalty-bearing license (including the right to grant sublicenses) under the LMC Licensed Patents, LMC Licensed Technical Information and Improvements to make, have made, use, offer to sell, sell, export and import LMC Licensed Products within the LMC Field.

2.2. License Grant to LMT. Upon the terms and conditions set forth herein, LMC hereby grants to LMT a worldwide, exclusive, perpetual, royalty-bearing license (including the right to grant sublicenses) under the LMT Licensed Patents, LMT Licensed Technical Information and Improvements to make, have made, use, offer to sell, sell, export and import LMT Licensed Products within the LMT Field.

2.2. License Grant to LMT. Upon the terms and conditions set forth herein, LMC hereby grants to ~~BOT~~ a worl

2.3. **Reservation of Rights. All rights not specifically granted to Licensee by this Agreement are expressly reserved by Licensor. Licensor reserves the right to continue its use of the Licensed Patents for purposes of research and development.**

2.4. **Notice of Improvements.** During the Term, Licensor shall on at least a semiannual basis provide Licensee with written notice of all Improvements in the LMC Field or the LMT Field (as the case may be) conceived, discovered or developed by Licensor or any of its Affiliates since the Effective Date or last providing such notice to Licensee (an Improvement Notice). The Improvement Notices shall include a written description of each such Improvement in sufficient detail so as to allow its technical and proprietary merit to be promptly and fully evaluated. Such Improvements shall automatically be licensed to the Licensee pursuant to this Article 2.

2.5 **Sublicenses.** Any sublicense granted by a Licensee shall only contain terms consistent with this Agreement, including, without limitation, Article 4 hereof.

**Article 3.
ROYALTY**

3.1. **Royalty Rate. LMC agrees to pay LMT a royalty equal to three percent (3.0%) of the Net Sales Price of LMC Licensed Products by LMC or any Affiliate of LMC, and LMT agrees to pay LMC a royalty equal to three percent (3.0%) of the Net Sales Price of LMT Licensed Products by LMT or any Affiliate of LMT.**

3.1. Royalty Rate. LMC agrees to pay LMT a royalty equal to three percent (3.0%) of the Net Sales Price of L

3.2. **Royalties for Transactions Not at Arm's Length. In order to assure to Licensor the full royalty payments contemplated by this Agreement, Licensee agrees that in the event any Licensed Product shall be sold or sublicensed (1) to a Licensee Affiliate, or (2) to a corporation, firm, or association with which, or individual with whom, Licensee or its stockholders or affiliates shall have any agreement, understanding or arrangement (such as, among other things, an option to purchase stock, or an arrangement involving a division of profits or special rebates or allowances) without which agreement, understanding or arrangement, prices or royalties paid for the Licensed Product would be higher than the Net Sales Price reported by Licensee, or if such agreement, understanding or arrangement results in extending to such corporation, firm, association or individual lower prices or royalties for Licensed Product than those charged to outside concerns buying similar products in similar amounts and under similar conditions, then, and in any such events, the royalties to be paid hereunder in respect of such Licensed Product shall be computed on the Net Sales Price at which the purchaser of Licensed Product resells them, or if such Licensed Product is not resold, the Net Sales Price at which (or the royalty applicable to) products of similar kind and quality, sold in similar quantities, are then currently being offered for sale by other manufacturers.**

3.3. Quarterly Payment. Royalties shall be paid to Licensor on a quarterly basis within twenty (20) days following the end of each calendar quarter.

3.3. Quarterly Payment. Royalties shall be paid to Licensor on a quarterly basis within twenty (20) ~~30~~ days follow

3.4. Late Fees. In the event Licensee is late in making payments to Licensor under any provision of this Agreement, for each month (or portion thereof) that such payments are late, Licensee shall pay Licensor a late charge equal to the lesser of one and one-half percent (1.5%) of the late payment or the maximum rate permitted by law multiplied by the amount of the payment that is late (including any prior accumulated late charges).

3.5. Taxes. All payments due hereunder shall be paid without deduction for taxes, assessments, or other charges of any kind or description that may be imposed on Licensor by any government except the federal government of the United States with respect to any amounts payable to Licensor pursuant to this Agreement, and such taxes, assessments, and other charges shall be paid for and assumed by Licensee.

3.5. Taxes. All payments due hereunder shall be paid without deduction for taxes, assessments, or other charges

3.6. Currency. All payments specified in this Agreement shall be made in United States Dollars. Licensee shall pay all amounts owed to Licensor by wire transfer of immediately available funds unless otherwise agreed upon in writing between the parties.

3.7. Expiration of Patent. Licensee's obligation to pay royalties in respect of a Licensed Patent shall end upon the expiration of such Licensed Patent.

3.8. Royalty on Materials Not Sold Separately. The parties acknowledge that some of the Licensed Products will not be sold separately, but rather will be sold in combination with or as parts of other products or services. For example, some products sold by Licensee may be include in application projects which involve services, materials and other costs. In all such cases, where Licensed Products are not sold separately, but are sold in combination with or as parts of other products or services, the Net Sales Price of the Licensed Products so sold shall be calculated for the purpose of computing royalties due by determining the portion of the total Net Sales Price attributable to the Licensed Products as if the Licensed Products had been sold independently in similar quantities and terms.

3.9. Sublicense Revenue. Licensee shall pay to Licensor an amount equal to fifty percent (50%) of Sublicensing Revenues actually received by Licensee or any Affiliate of Licensee. Consideration received by Licensee in the form of equity or other securities shall be paid to Licensor in kind (provided that such a transfer of securities is permitted), and consideration received in the form of goods shall be paid to Licensor in cash based upon the fair market value of such goods actually received.

3.9. Sublicense Revenue. Licensee shall pay to Licensor an amount equal to fifty percent (50%) of Sublicens

3.9. Sublicense Revenue. Licensee shall pay to Licensor an amount equal to fifty percent (50%) of Sublicens

Article 4.
REPORTS AND AUDITS

4.1. **Reports. Licensee shall keep accurate and sufficient records to determine amounts owed to Licensor under this Agreement. Licensee shall make a written report detailing the basis for any computations to Licensor within thirty (30) days following each calendar quarter. Along with such reports, Licensee shall transmit payment for the royalty shown to be due. In the event no royalty is due, the report shall so state. Records necessary for the computation of amounts payable by Licensee under this Agreement shall be maintained by Licensee for a period of five (5) years following each accounting report due hereunder.**

4.2. Audits. Such records of Licensee shall be open to inspection by an auditor selected by Licensor during regular business hours of Licensee. Such records shall only be used by Licensor or its agents to determine the accuracy of the royalties paid and reports submitted. Licensor shall bear the expenses of the auditor it selects, except Licensee shall reimburse Licensor for such expenses in the event the total underpayment of royalties identified during the audit exceeds the cost of the audit. If royalties due as determined by the audit are greater than royalties actually paid by Licensee, Licensee will be invoiced for the difference, along with interest at the rate specified in Section 3.5 (Late Fees) hereof.

4.2. Audits. Such records of Licensee shall be open to inspection by an auditor selected by Licensee during re

Article 5.
NO WARRANTIES

EXCEPT FOR THE SPECIFIC PROVISIONS OF THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE TECHNOLOGY LICENSED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING OUT OF CUSTOM OR TRADE USAGE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE PARTIES MAKE NO WARRANTIES WITH RESPECT TO FREEDOM FROM ALLEGED INFRINGEMENT OF THIRD PARTY PATENTS OR FREEDOM FROM THIRD PARTY INFRINGERS, AND LICENSOR IS NOT UNDER ANY OBLIGATION TO HOLD LICENSEE HARMLESS AGAINST SUCH ALLEGED INFRINGEMENT OF THIRD PARTY PATENTS NOR TO ENFORCE ITS PATENT PROPERTIES AGAINST ALLEGED INFRINGERS. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO BE A REPRESENTATION OR WARRANTY BY LICENSOR OF THE ACCURACY, SAFETY, OR USEFULNESS FOR ANY PURPOSE OF ANY TECHNICAL INFORMATION, TECHNIQUES, OR PRACTICES AT ANY TIME MADE AVAILABLE BY LICENSOR. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR LICENSOR S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR REPRESENTATION. THIS SECTION SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUES, BUSINESS INTERRUPTION, LOSS OF SOFTWARE, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, THE INADEQUACY OF THE LICENSED MATERIALS FOR ANY PURPOSE, OR ANY OTHER ITEM) RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Article 6.
TRADEMARK LICENSE

6.1. Trademark License. LMT hereby grants to LMC a perpetual, non-exclusive worldwide, royalty-free, fully paid up, non-transferable license to use the Liquidmetal trademark (the Trademark) solely in connection with the marketing and sale of the products and services in its Coatings Business, subject to the following terms and conditions:

- (a) Except as otherwise agreed to by LMT in writing, all use of the Trademark by LMC is subject to LMT's standard trademark usage policy in effect from time to time (provided that LMT delivers a copy of such policy to LMC).
- (b) All stylized use of the Trademark shall be solely in the original logotype identified by LMT, except as otherwise agreed in writing by LMT.
- (c) LMC agrees not to affix the Trademark to products other than the products in its Coatings Business. Furthermore, Licensee agrees not to attach any additional trademarks, logos, or designations to such without the prior written consent of LMT (which consent will not be unreasonably withheld). The ® icon shall always follow the Trademark.
- (d) LMC shall not challenge the validity of LMT's rights in and to the Trademark or the validity of the Trademark or any registration(s) thereof. LMC agrees that it shall not register or

attempt to register the Trademark or any other trademark or trade name of LMT, or use or register any other trademark or trade name which may be confusingly similar to the Trademark or any other trademark or trade name of LMT.

(e) LMC shall promptly, upon receipt of notice thereof, fully inform LMT as to any actual or proposed action, by any governmental agency, consumer or environmental group, media or other organization, directed toward removing from the market any Liquidmetal-branded product based on alleged injury or death, alleged potential for harm, product defect, alleged contamination, tampering or similar occurrence, actual or alleged violation of law in connection with production, labeling, packaging, storage, shipment, advertising or sale, or for any other reason whatsoever. LMC shall likewise promptly inform LMT as to any proposal to remove from the market any such as described above on account of suspected nonconformity with applicable product quality or safety standards, improper labeling, possibility of consumer harm, and/or violation of any law or regulation.

(f) LMC shall be permitted to sublicense the Trademark to any third party that complies with the usage conditions and restrictions set forth in this Section 6.1, including without limitation that the sublicensee may only use the Trademark in connection with the marketing and sale of the products and services in LMC's Coatings Business. LMC shall cause any such sublicense to comply with the terms, conditions, and restrictions of this Section 6.1.

Article 7.

TECHNICAL ASSISTANCE AND SUPPORT

Upon the request of LMC and at reasonable times and upon reasonable notice, LMT agrees to make its employees available to provide technical support and assistance with respect to business, products, and technology of LMC. In consideration of such technical support and assistance, LMC will pay LMT an hourly charge in accordance with the fee schedule attached as Exhibit A hereto. The obligation to provide such technical support and assistance shall expire on the fifth (5th) anniversary of the Effective Date unless the parties otherwise agree.

Article 8.

TERM AND TERMINATION

8.1. Term. Except as set forth in Section 8.2 below, the rights and licenses set forth in this Agreement shall be perpetual in nature.

8.2. **Termination. Notwithstanding any other provision contained herein, this Agreement may be terminated as follows:**

(a) **Material Breach.** This Agreement shall terminate on the thirtieth (30th) day after either party gives the other party written notice of a material breach by the other party of any term or condition of this Agreement, unless the breach is cured before that day. The right of a party to terminate this Agreement shall be in addition to and not in lieu of any other right or remedy that the terminating party may have at law or in equity.

(b) **Bankruptcy.** This Agreement may be terminated immediately by a party in the event the other party becomes insolvent, files or has filed against it a petition under any chapter of the United States Bankruptcy Code (or any similar petition under the insolvency law of an applicable jurisdiction) and such petition is not dismissed within thirty (30) days, proposes any dissolution, liquidation, financial reorganization, or re-capitalization with creditors, or makes an assignment or trust

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mortgage for the benefit of creditors, or if a receiver, trustee, custodian, or similar agent is appointed or takes possession of any property or business of such other party.

(c) **Patent Expiration.** The grant of rights in the LMT Licensed Patents shall terminate upon the expiration of the last to expire of the LMT Licensed Patents. The grant of rights in the LMC Licensed Patents shall terminate upon the expiration of the last to expire of the LMC Licensed Patents.

8.3. Effect of Termination.

(a) **Rights Upon Termination.** Upon termination of this Agreement, the licenses and all other rights granted to a party under this Agreement shall immediately terminate.

(b) **Continuation of Obligations.** In addition to any other provisions of this Agreement which by their terms are intended to survive any termination of this Agreement, after termination of this Agreement, the provisions concerning the parties' obligations and responsibilities under Article 9 (Confidentiality) shall continue in full force and effect for an additional period of ten (10) years, and indefinitely for trade secrets; and a Licensee's payment and other obligations under Section 3 (License Fees and Royalties) shall continue in effect until paid.

**Article 9.
CONFIDENTIALITY**

9.1. Terms of Agreement. Each party agrees not to disclose any terms of this Agreement to any third party without the consent of the other party; provided, however, that disclosures may be made as required by securities or other applicable laws; or by either party to its accountants, attorneys, and other professional advisors. Neither party shall release any publicity or information concerning this Agreement without the other party's prior written approval, which shall not be unreasonably withheld or delayed, provided that the parties agree to issue a jointly-written press release following the execution of this Agreement.

9.2. Restrictions on Disclosure and Use.

(a) Restrictions and Covenants. Except as otherwise provided herein, each party agrees that, in its capacity as the Recipient of Confidential Information, it will (i) hold the Discloser's Confidential Information in strict confidence, use a high degree of care in safeguarding the Discloser's Confidential Information, and take all precautions necessary to protect the Discloser's Confidential Information including, at a minimum, all precautions the Recipient normally employs with respect to its own Confidential Information, (ii) not divulge any of the Discloser's Confidential Information or any information derived therefrom (including results of tests on material samples) to any other person (except as set forth in Section 9.2(b) (Disclosure to Representatives) hereof), (iii) not make any use whatsoever at any time of the Discloser's Confidential Information except as is necessary in the performance of Recipient's specific duties under this Agreement, (iv) not copy, reverse engineer, alter, modify, break down, melt down, disassemble or transmit any of the Discloser's Confidential Information, (v) not, within the meaning of United States or other export control laws or regulations, export or re-export, directly or indirectly, including but not limited to export on the Internet or other network service, any of the Discloser's Confidential Information, (vi) notify the Discloser in writing immediately upon discovery by the Recipient or its Representatives of any unauthorized use or disclosure of the Discloser's Confidential Information, and (vii) upon the termination or expiration of this Agreement, immediately return to the Discloser or destroy (at the option of the Recipient) all such Confidential Information, including all originals, copies and extracts.

(b) **Disclosure to Representatives.** The Recipient may only disseminate the Discloser's Confidential Information to its Representatives who have been informed of the Recipient's obligations under this Agreement and are bound by an obligation of confidentiality and non-use with respect to the Discloser's Confidential Information at least as broad in scope as the Recipient's obligations under this Agreement. The Recipient agrees to reasonably restrict disclosure of the Discloser's Confidential Information to the smallest number of the Recipient's Representatives which have a need to know the Confidential Information. The Recipient shall be responsible for enforcing this Agreement as to the Recipient's Representatives and shall take such action (legal or otherwise) to the extent necessary to cause them to comply with this Agreement.

(c) **Trade Secrets.** Any trade secrets of the Discloser will also be entitled to all of the protections and benefits of applicable trade secret law, and the Recipient agrees to be bound by all applicable trade secret laws, unfair competition laws, and any other similar laws with respect to the Discloser's Confidential Information. If any Confidential Information that the Discloser deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret under applicable law, such Confidential Information will nevertheless still be protected by this Agreement.

(d) **Protection of Licensed Technical Information by Licensee.** Licensee acknowledges and agrees that the Licensed Technical Information derives economic value from not being generally known to other persons who can obtain economic value from its disclosure or use. Therefore, without the express written consent of Licensor, Licensee covenants and agrees that it, its employees, contractors, representatives, successors, assigns, affiliates, parents, subsidiaries, officers, directors, and the like will (1) hold the Licensed Technical Information in strict confidence, use a high degree of care in safeguarding the Licensed Technical Information, and take all precautions reasonably necessary to protect the Licensed Technical Information including, without limitation, all precautions Licensee normally takes with respect to its own most sensitive and confidential information, (2) not divulge any of the Licensed Technical Information or any information derived therefrom to any person other than Licensor, (3) not make any use whatsoever at any time of the Licensed Technical Information except in furtherance of Licensee's obligations to Licensor and as necessary to produce Licensed Products in accordance with the license granted under this Agreement, (4) not, within the meaning of United States or other export control laws or regulations, export or re-export, directly or indirectly, including but not limited to export on the Internet or other network service, any of the Licensed Technical Information, and (5) notify Licensor in writing immediately upon discovery of any unauthorized use or disclosure of the Licensed Technical Information by Licensee or its employees or any third party.

(e) **Enforcement.** Licensee acknowledges and agrees that due to the unique nature of the Licensed Technical Information and other Confidential Information of Licensor, there can be no adequate remedy at law for any breach of its obligations hereunder, which breach may result in irreparable harm to Licensor, and therefore, that upon any such breach or any threat thereof, Licensor shall be entitled to appropriate equitable relief, including injunction, without the requirement of posting a bond, in addition to whatever remedies it might have at law.

(f) **Exceptions.** The restrictions on the Recipient's disclosure and use of the Discloser's Confidential Information under this Section 9.2 will not apply to the extent of any Confidential Information:

(i) that becomes publicly known without breach of the Recipient's or its Representatives' obligations under this Agreement;

- (ii) that is rightfully acquired by Recipient from a third party which is not subject to any restriction or obligation (whether contractual, fiduciary, or otherwise) on disclosure or use of such Confidential Information;
- (iii) that is independently developed by employees of the Recipient without knowledge of or reference to such Confidential Information, as evidenced by written documentation or other tangible evidence of Recipient;
- (iv) that is required to be disclosed by law or by court order or government order, provided that the Recipient (a) promptly notifies the Discloser of any such disclosure requirement so that the Discloser may seek an appropriate protective order (or other appropriate protections), and (b) provides reasonable assistance (at no cost to the Recipient) in obtaining such protective order or other form of protection; or
- (v) as to which and to the extent to which the Recipient has received express written consent from an authorized officer of the Discloser to disclose or use.

9.3. Third Party Information. Each party represents and warrants to the other that it is free to divulge, without any obligation to or violation of the rights of any third party, any and all information which it will demonstrate, divulge, or in any other manner make known to the other pursuant to this Agreement. Each party shall indemnify and hold harmless the other from and against any and all liability, loss, cost, expense, damage, claim or demand for actual violation of the rights of any third party in any trade secret, proprietary know-how, or other confidential information by reason of the other party's receipt of information disclosed hereunder. The foregoing provision shall not be construed to affect or diminish the obligations of confidentiality and non-disclosure of the parties as provided in this Article 9 (Confidentiality).

Article 10.
MISCELLANEOUS

10.1. Force Majeure. Excluding payment obligations, neither party shall be liable for, nor shall it be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or public enemy, act of any military, civil or regulatory authority, terrorism or threat thereof, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the party with reasonable care.

10.2. Notices. All notice, requests, demands and other communications hereunder shall be in English and shall be given in writing and shall be: (i) personally delivered; (ii) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents with confirmation of receipt; or (iii) sent to the parties at their respective addresses indicated herein by registered or certified mail, return receipt requested and postage prepaid, or by private overnight mail courier services with confirmation of receipt. The respective addresses to be used for all such notices, demands or requests are as follows:

() **If to LMC:**

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Or to such other person or address as LMC shall furnish to LMT in writing.

() **If to LMT:**

Liquidmetal Technologies
30452 Esperanza
Rancho Santa Margarita, CA 92688
Attention: John Kang
Phone No.: (949) 635-2100
Fax No.: (949) 635-2108

With copies to:

Or to such other person or address as LMT shall furnish to LMC in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt by the attention addressees or persons authorized to accept for such addressees; if transmitted by facsimile pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt by the attention addressees or persons authorized to accept for such addressees; and if sent by mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this paragraph.

10.3. Independent Contractors. In the performance of this Agreement, Licensor and Licensee are independent contractors. Neither party nor any of its employees or agents shall be considered an employee or agent of the other party. Nor shall any partnership, co-venture or joint-employer relationship be created or implied by virtue of this Agreement or of its performance. The parties intend that this Agreement shall not create a partnership for tax purposes.

() **If to LMT:**

10.4. Severability. Each provision contained in this Agreement is declared to constitute a separate and distinct covenant and provision and to be severable from all other separate, distinct covenants and provisions. It is agreed that should any clause, condition or term, or any part thereof, contained in this Agreement be unenforceable or prohibited by law or by any present or future legislation then such clause, condition, term or part thereof, shall be amended, and is hereby amended, so as to be in compliance with the said legislation or law but, if such clause, condition or term, or part thereof, cannot be amended so as to be in compliance with the said legislation or law, then such clause, condition, term or part thereof is severable from this Agreement, and all the rest of the clauses, terms and conditions or parts thereof contained in this Agreement shall remain unimpaired and continue in full force and effect.

10.5. Amendment. This Agreement may not be amended or modified other than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

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10.6. Waiver. No waiver of a breach of any provision of this Agreement shall be deemed to be, or shall constitute, a waiver of a breach of any other provision of this Agreement, whether or not similar, nor

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nor shall such waiver constitute a continuing waiver of such breach unless otherwise expressly provided in such waiver.

10.7. Governing Law. This Agreement, the legal relations between the parties, and any action, whether contractual or non-contractual, instituted by any party with respect to matters arising under or growing out of or in connection with or in respect of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware (U.S.A.), excluding any choice of law rules that may direct the application of the laws of another jurisdiction, and except that questions affecting the construction and effect of any Patent shall be determined by the law of the country in which the Patent has been granted.

10.8. Resolution of Disputes. The parties irrevocably agree that any legal actions or proceedings brought by or against them with respect to this Agreement shall be brought exclusively in the state or federal courts in and for Orange County, California, and by execution and delivery hereof, the parties irrevocably submit to such jurisdiction and hereby irrevocably waive any and all objections which they may have with respect to venue in any of the above courts. THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING OR OTHER LITIGATION RESULTING FROM OR INVOLVING THE ENFORCEMENT OF THIS AGREEMENT.

10.9. Attorneys Fees. In any action between the parties for relief based in whole or in part on this Agreement (or the breach thereof), including actions to collect overdue royalty payments, the prevailing party shall be entitled to recover (in addition to any other relief awarded or granted) its reasonable costs and expenses (including attorneys fees and expert witness fees) incurred in the proceeding.

10.10. Entire Agreement. This Agreement sets forth the complete agreement of the parties concerning the subject matter hereof. No claimed oral agreement in respect thereto shall be considered as any part hereof. No waiver of or change in any of the terms hereof subsequent to the execution hereof claimed to have been made by any representative of either party shall have any force or effect unless in writing, signed by duly authorized representatives of the parties.

10.11. **Recitals. The recitals set forth in the preamble to this Agreement are true and correct and are made a part of this Agreement.**

10.11. Recitals. The recitals set forth in the preamble to this Agreement are true and correct and are made a part of this Agreement.

10.12. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party shall assign its rights or duties under this Agreement, in whole or in part, without the prior written consent of the other party, except that either party may assign this Agreement without the consent of the other party as a part of the sale or transfer of all or substantially all of the assets or business of the assigning party..

10.13. Headings. The section and paragraph headings in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

10.14. Contract Interpretation. Ambiguities, inconsistencies, or conflicts in this Agreement shall not be strictly construed against the drafter of the language but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time this Agreement is entered into. Where the context of this Agreement requires, singular terms shall be considered plural, and plural terms shall be considered singular.

10.15. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which will be deemed an original, but all of which together will constitute the same Agreement.

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10.15. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which will be deemed to be an original and all of which together will constitute the entire agreement between the parties.

10.16. Language. In the event of controversy between the parties respecting the interpretation or application of this Agreement, the English language version of the Agreement shall be controlling.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above:

LIQUIDMETAL TECHNOLOGIES, INC.

By:
Name:
Title:

LIQUIDMETAL COATINGS, LLC

By:
Name:
Title:

EXHIBIT A

Level	Hourly Cost
Senior Scientist	
Technician	

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Form of Promissory Note for Upward Purchase Price Adjustment

PROMISSORY NOTE

\$155,298.00

Effective as of _____, 2007

FOR VALUE RECEIVED, the undersigned **LIQUIDMETAL COATINGS, LLC** (**Maker**), promises to pay to the order of **LIQUIDMETAL TECHNOLOGIES, INC.** (**Holder**) or any subsequent holder of this Promissory Note (this **Note**), at 30452 Esperanza, Rancho Santa Margarita, CA 92688 or at such other place as Holder may designate, the principal sum of the Upward Purchase Price Adjustment, as that term is defined in the Asset Purchase and Contribution Agreement between Maker and Holder, or One Hundred Fifty Five Thousand Two Hundred Ninety Eight Dollars (\$155,298.00), together with any accrued interest thereon, which shall be due and payable upon the following terms and conditions contained in this Note.

1. The outstanding principal balance of this Note shall be due and payable on the date that is forty-five (45) calendar days after the date hereof. This Note may be prepaid, either in whole or in part, at any time without penalty.
 2. The outstanding principal amount of this Note shall bear interest at a rate equal to the Prime Rate (as defined below) plus .5%, calculated on a 360-day year basis. The Prime Rate, as used in this Note, shall mean that rate of interest announced from time to time by Bank of America, N.A. as its prime rate, it being understood and agreed that such rate shall not necessarily be the lowest rate then offered by Bank of America, N.A. to its most creditworthy borrowers. Any change in the Prime Rate shall be effective as of the beginning of the day on which such change is announced to become effective.
 3. The remedies under this Note shall be cumulative. Failure of the Holder to exercise any of its rights and remedies under this Note shall not constitute a waiver of the right to exercise the same at that or any other time. All rights and remedies of the Holder for default under this Note shall be cumulative to the greatest extent permitted by law. If there is any default under this Note, and this Note is placed in the hands of an attorney for collection or is collected through any court, including any bankruptcy court, Maker promises to pay to the Holder the Holder's reasonable attorneys' fees and court costs incurred in collecting or attempting to collect this Note or enforcing the Holder's rights hereunder.
 4. This Note shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of choice of law thereunder. The venue for any judicial or arbitration proceedings arising out of this Note or the obligations hereunder shall be in the state courts of the State of Texas. As it is the intent of all parties to this transaction to abide by the interest limitations of any applicable usury law, it is expressly agreed, anything herein to the contrary notwithstanding, that the Holder shall not be allowed or entitled to collect any interest (or any sum which is considered interest by law) which is in excess of any legal rate
-

applicable hereto. Should any amount be collected hereunder which would cause the interest to exceed said lawful rate, such part of said amount in excess of the lawful rate shall automatically be credited to principal, or, if all principal amounts have been paid, shall be refunded to the Maker. The provisions of this Note are hereby modified to the extent necessary to conform with the limitations and provisions of this paragraph. This paragraph shall govern over all other provisions in any document or agreement now or hereafter existing. Maker shall pay all documentary stamp taxes on this Note. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) ARISING OUT OF OR BASED UPON THIS NOTE.

MAKER:

LIQUIDMETAL COATINGS, LLC

By:

Name:

Larry E. Buffington

Title:

President and Chief Executive Officer

LOAN AGREEMENT

THIS LOAN AGREEMENT (as amended, modified or supplemented from time to time, this **Agreement**) made this 24th day of July, 2007 (the **Effective Date**), by and between BANK MIDWEST, N.A. (**Lender**), with an address of 1100 Main Street, Kansas City, Missouri 64105, LIQUIDMETAL COATINGS, LLC (**LMC**), with an address of c/o Liquidmetal Technologies, Inc., 30452 Esperanza, Rancho Santa Margarita, California 92688 and LIQUIDMETAL COATINGS SOLUTIONS, LLC (**LMCS**), with an address of c/o Liquidmetal Technologies, Inc., 30452 Esperanza, Rancho Santa Margarita, California 92688. LMC and LMCS, jointly and severally, hereinafter referred to as **Borrowers** , and each individually, **Borrower** .

WITNESSETH

WHEREAS, Borrowers may from time to time request Loans from Lender, and the parties wish to provide for the terms and conditions upon which such Loans or other financial accommodations, if made by Lender, shall be made;

NOW, THEREFORE, in consideration of any Loan (including any Loan by renewal or extension) hereafter made to Borrowers by Lender, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Borrower, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

As used herein, the following definitions shall apply:

Debt means, as to any Person, without duplication, (a) all indebtedness of such Person; (b) all borrowed money of such Person (including principal, interest, fees and charges), whether or not evidenced by bonds, debentures, notes or similar instruments; (c) all obligations to pay the deferred purchase price of property or services; (d) all obligations, contingent or otherwise, with respect to the maximum face amount of all letters of credit (whether or not drawn), bankers' acceptances and similar obligations issued for the account of such Person (including the letters of credit), and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations; (e) all indebtedness secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided, however, if such Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the fair market value of the property subject to such Lien at the time of determination); (f) the aggregate amount of all capitalized lease obligations of such Person; (g) all contingent liabilities of such Person, whether or not reflected on its balance sheet; (h) all hedging obligations of such Person; (i) all Debt of any partnership of which such Person is a general partner; and (j) all monetary obligations of such Person under (i) a so-called synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting

treatment). Notwithstanding the foregoing, Debt shall not include trade payables and accrued expenses incurred by such Person in accordance with customary practices and in the ordinary course of business of such Person.

Debtor Relief Proceeding means any bankruptcy, reorganization, liquidation, conservatorship, receivership or other similar proceedings under any state or federal law now or hereafter in effect which are commenced by or against either or both of the Borrowers or if either or both of the Borrowers otherwise take any action to restrain, enjoin or otherwise impede the Lender in the exercise of the remedies afforded to Lender under this Agreement or under any of the obligations owed by each Borrower to the Lender, or at law or in equity.

Depreciation shall mean the total amounts added to depreciation, amortization, obsolescence, valuation and other proper reserves, as reflected on Borrower's financial statements and determined in accordance with GAAP.

EBITDA means, for any period, the sum for such period of (i) Net Income, plus (ii) Interest Charges, plus (iii) federal and state income taxes, plus (iv) Depreciation, plus (v) all other non-cash charges, in each case to the extent included in determining Net Income for such period.

Eligible Cash means cash on deposit with Lender.

Eligible Inventory means all inventory of Borrowers which meets each of the following requirements:

- (a) it is subject to a perfected, first priority Lien in favor of Lender and is not subject to any other assignment, claim or Lien other than Permitted Liens;
- (b) it is in the possession and control of any Borrower and it is stored and held in facilities owned by a Borrower or, if such facilities are not so owned, Lender is in possession of a collateral access agreement with respect thereto;
- (c) it is not inventory produced in violation of the Fair Labor Standards Act and subject to the hot goods provisions contained in Title 29 U.S.C. §215;
- (d) it is not subject to any agreement or license which would restrict Lender's ability to sell or otherwise dispose of such inventory;
- (e) it is located in the United States or in any territory or possession of the United States that has adopted Article 9 of the Uniform Commercial Code;
- (f) it is not supply items, packaging or any other similar materials;
- (g) it is not identified to any purchase order or contract to the extent progress or advance payments are received with respect to such inventory;
- (h) it does not breach any of the representations, warranties or covenants pertaining to inventory set forth in the Loan Documents; and

(i) **Lender shall not have determined in good faith in accordance with Lender's reasonable and customary business practices that it is unacceptable due to age, type, category, quality, quantity and/or any other reason whatsoever.**

Inventory which is at any time Eligible Inventory but which subsequently fails to meet any of the foregoing requirements shall forthwith cease to be Eligible Inventory.

Eligible Receivables means any right of payment for goods sold, leased or licensed or service rendered by a Borrower, whether or not earned by performance, and may, without limitation, in whole or in part, be in the form of an account, chattel paper or instrument as determined by Lender in good faith in accordance with Lender's reasonable and customary business practices, which are aged less than ninety (90) days.

Event of Default means any of the following in addition to any event of default defined in the Loan Documents:

- (a) **A failure to pay when due any principal, interest, fee, escrow payment or expense reimbursement.**
- (b) **A failure to perform or pay when due any other material obligation, covenant, representation, warranty, or agreement under the terms of any Loan Document in strict accordance with the terms and provisions thereof.**
- (c) **Without Lender's prior written consent, a sale, conveyance, or encumbrance of any interest in the Collateral. Notwithstanding the foregoing, Lender's prior written consent shall not be required for any sale or conveyance which results in the Term Note and Revolving Note being paid in full.**
- (d) **The occurrence of any default under any other promissory note, guaranty, security document, or loan document executed by Borrower and owned by Lender at the time of default.**
- (e) **The occurrence of any default under any document executed by Borrower which (i) is owned by any person other than Lender, (ii) constitutes a lien on the Collateral (no permission for creation of such liens being implied), (iii) remains uncured after the expiration of any applicable cure period and (iv) could reasonably result in a material impairment of Borrower's ability to pay or perform its obligations under the Loan Documents.**
- (f) **A violation, whether discovered or asserted before or after closing of any federal, state, or local law, rule, regulation, or order issued by a governmental agency or court which would or could have a material adverse impact on Borrower's business or properties (including without limitation the Collateral) including but not limited to (i) any provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or any similar law which prohibits or restricts the storage, maintenance, or discharge of hazardous materials or waste, or (ii) any provisions of the Americans with Disabilities Act of 1990 or any similar federal, state, or local law imposing requirements relating to the accessibility of buildings or structures to persons with disabilities.**

- (g) The material falseness of any statement, warranty, or representation when given or made by Borrower to Lender or any such statement, warranty, or representation becoming materially false at any time when any portion of the Loan remains outstanding.
- (h) Borrower or any surety (i) makes an assignment for the benefit of creditors, (ii) files a voluntary proceeding seeking protection from creditors under any bankruptcy or other law, (iii) becomes the subject of an involuntary proceeding under any bankruptcy or other similar law, or (iv) makes any admission of its inability to pay its debts generally as they become due.
- (i) The appointment of a trustee, receiver, or liquidator for Borrower, any surety or the Collateral.
- (j) The occurrence of any of the following with respect to Borrower or the Collateral involving an amount in excess of \$100,000.00 (i) the imposition of any lien or other similar encumbrance (which does not include a voluntary grant or conveyance of a lien or encumbrance by Borrower against assets other than the Collateral), (ii) the issuance of any garnishment, attachment, levy, or any other form of execution or (iii) the entry of a material adverse judgment by a court having jurisdiction.
- (k) The occurrence of a change in Borrower's (a) ownership which results in (i) Liquidmetal Technologies, Inc. (LTC) owning less than a majority of the outstanding membership interests of LMC or (ii) LMC owning less than 100% of LMCS, or (b) management, without Lender's prior written consent, which consent will not be unreasonably withheld or delayed.
- (l) Prior to payment in full of all obligations of Borrowers to C3 Capital Partners, LP and C3 Capital Partners II, L.P. (collectively C3) under that certain Securities Purchase Agreement (SPA) between and among Borrowers and C3 dated July 20, 2007, the failure of LMC to maintain (i) the allocation of two (2) board votes to be controlled by C3 and CEO Larry Buffington and (ii) a springing proxy control of a third board vote in favor of C3 to be triggered upon the occurrence of an event of default under the SPA.
- (m) The loss or impairment of (i) Lender's lien or security interest or (ii) the priority of Lender's lien or security interest in the Collateral.
- (n) A determination by Lender in good faith that the prospect of payment or performance under the Loan Documents is materially impaired.

Excess Cash Flow means, for any period, EBITDA less (i) federal and state income taxes, less (ii) capital expenditures, less (iii) Senior Debt Service, less (iv) Interest Charges arising from Borrowers' Debt to C3.

Fixed Charge Coverage Ratio means, with respect to any period, the ratio of (i) EBITDA minus federal and state income taxes minus capital expenditures to (ii) Total Debt Service.

General Intangibles means any and all existing or acquired educational licenses, certifications and other similar items of value as determined by Lender in good faith in accordance with Lender's reasonable and customary business practices.

Interest Charges means, for any period, the sum of: (a) all interest charges and related expenses payable with respect to that fiscal period to a lender in connection with borrowed money or the deferred purchase price of assets that are treated as interest in accordance with GAAP, plus (b) the portion of capitalized lease obligations with respect to that fiscal period that should be treated as interest in accordance with GAAP, plus (c) all charges paid or payable (without duplication) during that period with respect to any hedging agreements.

Leverage Maximum means (i) as of even date herewith through month six (6): 1.75 to 1.00; (ii) for months seven (7) through month twelve (12): 1.60 to 1.00; (iii) for months thirteen (13) to twenty-four (24): 1.50 to 1.00; (iv) for months twenty-five (25) through the Term Note Maturity Date: 1.25 to 1.00.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person (including an interest in respect of any capital lease) which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, title retention lien, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loans shall mean all loans and advances made by Lender to or on behalf of Borrowers hereunder.

Loan Documents shall mean all agreements instruments and documents, including, without limitation, this Agreement, the Term Note, the Revolving Note, the LCM Security Agreement, the LMCS Security Agreement and all other writings heretofore, now or from time to time hereafter executed by or on behalf of Borrower or any other Person delivered to Lender in connection with the Loans or the transactions contemplated hereby, as each of the same may be amended, modified or supplemented from time to time.

Net Income means, with respect to Borrowers for any period, the net income (or loss) of Borrowers for such period as determined in accordance with GAAP.

Net Worth means, as of any given date, a Person's equity calculated in conformance with GAAP by subtracting total liabilities from total Tangible Assets.

Permitted Liens means:

- (a) **Liens pursuant to any Loan Document;**
- (b) **Liens existing on the date hereof and disclosed to Lender and any refinancing, refunding, renewal or extension thereof; provided, that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, and (iii) the direct or any contingent obligor with respect thereto is not changed;**

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(n) A determination by Lender in good faith that the prospect of payment or performance under the Loan Document

- (c) **Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;**
- (d) **carriers, warehousemen, mechanics, materialmen, repairmen or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;**
- (e) **pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;**
- (f) **deposits to secure the performance of bids, trade contracts and leases (other than indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;**
- (g) **Liens in connection with capital leases and purchase money obligations for fixed or capital assets; provided, that (i) such Liens do not at any time encumber any property other than the property financed by such indebtedness and (ii) the indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;**
- (h) **Liens securing indebtedness (and any refinancing, refunding, renewal or extension thereof) on property in existence at the time such property is acquired by a borrower in connection with an acquisition; provided, that (i) such Liens do not at any time encumber any property other than the property so acquired, (ii) the amount secured or benefited thereby is not increased, and (iii) the direct or any contingent obligor with respect thereto is not changed;**
- (i) **Liens not otherwise permitted by this definition; provided, that the aggregate amount of indebtedness secured by Liens permitted by this clause (j) shall not at any time exceed \$50,000; and**
- (j) **any and all other Liens specifically approved by Lender, including the Notes made by the Borrowers and held by C3, as such Notes are defined in the SPA.**

Person means any natural person, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

Security Agreements means, collectively, the Security Agreement executed by LMC in favor of Lender dated as of even date herewith and the Security Agreement executed by LMCS in favor of Lender as of even date herewith.

Senior Debt Service means, with respect to any period, an amount equal to the sum of (i) Interest Charges arising from the Loans for such period, plus (ii) the scheduled amortization of any Loans during such period, plus (iii) Interest Charges arising from any capitalized lease obligations of Borrower for such period, plus (iv) the scheduled amortization of any capitalized lease obligations of Borrowers during such period.

Senior Debt Service Coverage Ratio means, with respect to any period, the ratio of (i) EBITDA minus federal and state income taxes minus capital expenditures to (ii) Senior Debt Service.

Senior Funded Debt means, at any time (i) the aggregate amount outstanding of all Loans, plus (ii) the aggregate amount of all capitalized lease obligations of Borrowers.

Subsidiary and **Subsidiaries** shall mean, respectively, with respect to any Person, each and all such corporations, partnerships, limited partnerships, limited liability companies, limited liability partnerships, joint ventures or other entities of which or in which such Person owns, directly or indirectly, such number of outstanding capital securities as have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of Borrower.

Tangible Assets means the total of all assets appearing on a balance sheet of Borrowers prepared in accordance with GAAP (with inventory being valued at the lower of cost or market), after deducting all proper reserves (including reserves for Depreciation) minus the sum of (i) goodwill, patents, trademarks, prepaid expenses, deposits, deferred charges and other personal property which is classified as intangible property in accordance with GAAP.

Tangible Net Worth means, as of any given date, Borrowers consolidated Net Worth plus the outstanding amount of all Debt from Borrowers to C3.

Total Debt Service means, with respect to any period, an amount equal to the sum of (i) Interest Charges for such period plus (ii) the scheduled amortization of any Debt during such period.

Capitalized terms not defined herein shall have the same definition as set forth in the Security Agreements or the Uniform Commercial Code as adopted by the State of Missouri.

ARTICLE II ADVANCES

Section 1. Term Loan Advance. Subject to the terms and conditions of this Agreement and the Loan Documents, as of even date herewith, Lender shall make an advance to Borrower in an aggregate principal amount equal to Four Million and No/100 Dollars (\$4,000,000.00) (the **Term Loan**). Amounts repaid with respect to the Term Loan may not be reborrowed.

Section 2. Revolving Loan Advance. Subject to the terms and conditions of this Agreement and the Loan Documents, as of even date herewith, Lender shall make revolving loans and advances to Borrower (the Revolving Loan), in an aggregate principal amount not to exceed One Million Five Hundred Thousand and 00/100 Dollars (the Maximum Revolving Limit) as follows:

- (a) **Initial Advance.** As of even date herewith, Lender shall make an initial advance of the loan amount in the sum of One Million and 00/100 Dollars (\$1,000,000.00) (Initial Advance).
- (b) **Future Advance.** Upon satisfaction of the conditions referenced herein and provided no Event of Default has occurred and is continuing, Lender shall, at Borrower's request, from time to time, make advances to Borrower in the aggregate amount of up to the lesser of (i) eighty-five percent (85%) of the face amount (less maximum discounts, credits and allowances which may be taken by or granted to Account Debtors in connection therewith in the ordinary course of Borrower's business) of Borrower's Eligible Receivables, plus fifty percent (50%) of Eligible Inventory, each on a consolidated basis or (ii) the trailing twelve months EBITDA multiplied by the applicable Leverage Maximum [less amount of lender term loan outstanding] (as the case may be, the Future Advance Amount). Provided, however, the sum of all advances with respect to the Revolving Loans shall at no time exceed the Maximum Revolving Limit, except as such amount may be increased or, upon the occurrence and continuation of an Event of Default, decreased by Lender, in its sole discretion.

Section 3. Borrower Reporting. Each Borrower shall provide to Lender the following:

- (a) Within ninety (90) days after Borrower's fiscal year-end, Borrower shall provide to Lender, at Borrower's sole cost and expense, audited Financial Statements;
- (b) Within forty-five (45) days after Borrower's fiscal year-end, Borrower shall provide to Lender, at Borrower's sole cost and expense, a copy of Borrower's year-end tax return;
- (c) Within thirty (30) days after the end of Borrower's fiscal quarter, or at the request of Lender, and together with any request by Borrower for an Advance, Borrower shall deliver to Lender (i) a Borrowing Base Certificate in substantially the same form as the closing Borrowing Base Certificate attached hereto as Exhibit A, which shall be accompanied by copies of Borrower's sales journal, cash receipts journal and credit memo journal for the relevant period, and (ii) a certification of Borrower's financial covenants substantially in the same form as attached hereto as Exhibit B. Such Borrowing Base Certificate shall reflect activity of the Borrower with respect to Accounts for the immediately preceding period to the date of the last Advance made by Lender to Borrower, and shall be in a form and with such specificity as is satisfactory to Lender and shall contain additional information concerning Accounts, Inventory and Equipment as may be requested by Lender, including, without limitation, but only if specifically requested by Lender, copies of all invoices prepared in connection with such Accounts; and

(d) Such other financial documents as Lender deems appropriate in the course of normal business with reasonable notice to Borrower.

Section 4. As a condition to the Loan, Borrower shall at all times maintain all of its deposit and operating accounts with Lender and Lender will provide substantially competitive rates in its marketplace.

Notwithstanding the foregoing, Lender shall not be obligated to make advances (**Advances**) of the Loan to Borrower, unless Lender is satisfied that the conditions precedent to the making of such Advance have been satisfied by Borrower.

**ARTICLE III
TERMS OF NOTES**

Section 1. **Term Note.**

(a) **Interest.** The **Term Interest Rate** prior to the occurrence of an Event of Default, will be a fixed rate of 8.48% per annum. All interest shall be calculated for the actual number of days elapsed over a year assumed to consist of 360 days.

(b) **Payments of Principal and Interest.** Payments of principal and interest, at the **Term Interest Rate**, shall be due and payable on August 1, 2007, and on the first day of each calendar month thereafter (**Term Note Period**). Principal payments shall be (i) \$62,500.00 during months 1 through 12, (ii) \$83,333.33 during months 13 through 36 and (iii) \$104,166.67 during months 37 through 48.

(c) **Payment of Principal and Interest on the Maturity Date.** All remaining outstanding principal and interest shall be due and payable on July 20, 2011 (**Term Note Maturity Date**).

(d) **Fees.** As of even date herewith, Borrower shall pay to Lender an initial loan fee in the amount of \$40,000.00.

(e) **Prepayment.** If the **Term Note** is prepaid within the first twenty-four months (**Term Prepayment Penalty Period**) following the **Effective Date**, Borrower must pay a prepayment penalty of one percent (1%) of the outstanding principal balance of the **Term Loan**, together with all accrued interest on the principal so prepaid. After the expiration of the **Term Prepayment Penalty Period**, Borrower shall have the right, at any time and from time to time, to prepay the **Term Note** in whole or in part without premium or penalty, provided that Borrower shall pay accrued interest on the principal so prepaid to the date of such prepayment.

(f) **Security.** The **Term Note** is secured by the **Security Agreements** which are the first lien security interest on all assets of Borrowers.

Section 2. Revolving Note.

(a) Interest. The Revolving Interest Rate, prior to the occurrence of an Event of Default, will be a fixed rate of 8.25% per annum until the first Rate Adjustment Date (as defined below). Thereafter, the Revolving Interest Rate, prior to the occurrence of an Event of Default, will be a variable rate per annum equal to the Index (as defined below). The Index is the prime rate of interest published from time to time by the Wall Street Journal in its listing of Money Rates. The Revolving Interest Rate shall be adjusted daily (each a Rate Adjustment Date). If the Index is no longer available, Lender will choose a new index which is based upon comparable information. All interest will be calculated for the actual number of days elapsed over a year assumed to be 360 days. Notwithstanding anything herein to the contrary, the Revolving Interest Rate shall not be less than 7% per annum.

(b) Interest Only Payments. Payments of interest only, at the Revolving Interest Rate, shall be due and payable on August 1, 2007, and on the first day of each calendar month thereafter.

(c) Payment of Principal and Interest on the Maturity Date. All remaining outstanding principal and interest shall be due and payable on July 20, 2008 (Revolving Note Maturity Date).

(d) Fees. As of even date therewith, Borrower shall pay to Lender an initial loan fee in the amount of \$15,000.00.

(e) Prepayment. Borrower shall have the right, at any time and from time to time, to prepay the Revolving Note, in whole or in part without premium or penalty, provided that Borrower shall pay accrued interest on the principal so prepaid to the date of such prepayment.

(f) Security. The Revolving Note is secured by the Security Agreements which are the first lien security interest on all assets of Borrowers.

Section 3. Default Interest Rate. At any time that an incurred Event of Default is outstanding, the Term Note will bear interest at a rate of interest which is 5.0 percentage points in excess of the Term Interest Rate in effect from time to time and the Revolving Note will bear interest at a rate of 5.0- percentage points in excess of the Revolving Interest Rate in effect from time to time (each a Default Rate). The Default Rate will be paid without prejudice to Lender's right to collect other amounts due hereunder or to declare a default under any Loan Documents. If the Event of Default is cured during the applicable cure period, if any, interest will begin to accrue at the Term Note Rate or Revolving Note Rate, as applicable, commencing on the date the Event of Default is cured.

Section 4. Late Payment Charge. If Borrower fails to make any payment within 10 days after the due date, at Lender's option, a late charge of 5.0% of the payment amount due may be charged by Lender. A tender to Lender of any payment more than 10 days past due which does not include the late fee may be rejected as insufficient or Lender may accept the tendered amount as a partial payment without waiving Lender's right to receive the late payment charge.

The Term Note and the Revolving Note will remain in default and interest at the Default Rate will accrue until the late payment charge is paid. The late payment charge shall be paid without prejudice to Lender's rights to collect other amounts due hereunder or to declare a default under the Term Note, the Revolving Note or any other Loan Document.

Section 5. Acceleration. Upon breach of any promise made in the Loan Documents, or in any other instrument given to secure the payment hereof after any applicable notice and cure period, at the option of Lender, the entire indebtedness hereby evidenced shall become due, payable and collectible, then or thereafter as Lender may elect, regardless of the date of maturity, subject to any applicable cure period in the Security Agreements.

Section 6. Fees. Borrower agrees to pay Lender's reasonable attorneys' fees if the Term Note or Revolving Note is placed in the hands of an attorney for collection.

ARTICLE IV FINANCIAL COVENANTS

Section 1. Minimum Senior Debt Service Coverage Ratio. Borrowers shall have, on a consolidated basis at the end of each fiscal quarter of Borrowers, a Senior Debt Service Coverage Ratio of not less than 1.60:1.00.

Section 2. Minimum Fixed Charge Coverage Ratio. Borrowers shall have, on a consolidated basis at the end of each fiscal quarter of Borrowers, a Fixed Charge Coverage Ratio of not less than 1.10:1.00.

Section 3. Maximum Senior Funded Debt to EBITDA. Borrowers shall have, on a consolidated basis at the end of each fiscal quarter of Borrowers set forth below, a ratio of (i) Senior Funded Debt measured as of the last day of such fiscal quarter of Borrowers to (ii) EBITDA for such fiscal quarter of not more than the following:

1.75:1.00 for the fiscal quarters ending September 30, 2007, and December 31, 2007;

1.60:1.00 for the fiscal quarters ending March 31, 2008, and June 30, 2008;

1.50:1.00 for the fiscal quarters ending September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009; and

1.25:1.00 for each fiscal quarter ending thereafter.

Section 4. Minimum Tangible Net Worth. Borrowers shall have, on a consolidated basis at the end of each fiscal quarter of Borrowers set forth below, a Tangible Net Worth of not less than the following:

\$7,000,000.00 for the fiscal quarters ending September 30, 2007, December 31, 2007, March 31, 2008, and June 30, 2008;

\$7,500,000.00 for the fiscal quarters ending September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009;

\$8,500,000.00 for the fiscal quarters ending September 30, 2009, December 31, 2009, March 31, 2010, and June 30, 2010;

\$9,000,000.00 for the fiscal quarters ending September 30, 2010, December 31, 2010, March 31, 2011, and June 30, 2011;

\$9,500,000.00 for each fiscal quarter ending thereafter.

Section 5. Excess Cash Flow Payments to Lender.

(a) Within ninety (90) days after the end of Borrowers fiscal year ending December 31, 2007, Borrowers shall pay Lender the lesser of (i) Excess Cash Flow, provided Excess Cash Flow for purposes of this Section shall not be less than zero, or (ii) \$104,000.00.

(b) Within ninety (90) days after the end of Borrowers fiscal year ending December 31, 2008 and each fiscal year thereafter, Borrowers shall pay Lender the lesser of (i) Excess Cash Flow, provided Excess Cash Flow for purposes of this Section shall not be less than zero, or (ii) \$250,000.00.

**ARTICLE V
MISCELLANEOUS PROVISIONS**

Section 1. Waiver. Except as otherwise provided herein, Borrower, endorsers, guarantors, sureties and all other parties liable for the payment of any sum or sums due or to become due under the terms of the Loan Documents jointly and severally waive presentment, demand for payment, protest and notice of dishonor, and consent that the time of payment of the Term Note or Revolving Note, or any installment thereof, may be extended from time to time without notice to them.

Section 2. Notices. Any written notices required hereunder shall be sent in accordance with requirements of the

Security Agreements.

Section 3. Governing Law. This Agreement is to be construed and enforced according to and governed by the laws of the State of Missouri.

Section 4. Ratification. Borrower hereby absolutely, unconditionally, irrevocably, and without limitation on amount, agrees that it shall be responsible for, and will perform all obligations contained in the Loan Documents. Borrower's obligations shall include, without limitation, the obligation to repay all amounts payable under the Term Note, the Revolving Note and all other Loan Documents and to observe and perform all other obligations contained in the Loan Documents, including without limitation the obligation to indemnify and hold Lender harmless from any breach of the agreements contained in Section 11 of the Security Agreements.

Section 5. Waiver of Jury Trial. EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR BY ANY PARTY IN THE PERFORMANCE OF ANY OF THE TERMS OF THE PROVISIONS OF THIS AGREEMENT OR THE LOAN DOCUMENTS.

Section 6. Revival of Liability. To the extent any payment or payments made to the Lender, or any payment of proceeds from the sale of any property are received by Lender, in the reduction of the amounts due with respect to any of the obligations evidenced by this Agreement or under any of the obligations any Borrower owes the Lender are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, to a surety, or any other person liable for any of the obligations evidenced and/or secured by this agreement or under any of the obligations any Borrower owes the Lender, whether directly or indirectly, as a debtor-in-possession or to a receiver or any other person under any bankruptcy law, state or federal law, common law or equitable cause (collectively, the Invalidated Payments), then the portion of such indebtedness equal to the Invalidated Payments and the liens, if any, given to secure this agreement or any of the obligations each Borrowers owes the Lender will be revived and will continue in full force and effect as if such payment or proceeds had never been received by the Lender.

Section 7. Stay Waiver and/or Adequate Protection Payments. In the event either or both Borrowers for any reason becomes the subject of any Debtor Relief Proceeding Lender shall be entitled to the following: (i) the automatic and absolute lifting of any stay, injunction, restraining order or similar legal impediment (including, without limitation, the automatic stay imposed pursuant to the United States Bankruptcy Code (Bankruptcy Code) § 362) to the enforcement of Lender s remedies under this Agreement and under all the obligations each Borrower owes to the Lender and, if applicable, (ii) adequate protection, pursuant to the Bankruptcy Code or other law, of Lender s interest in any property of either or both of the Borrowers. Moreover, each Borrower hereby consents to the immediate lifting of any such stay, injunction, restraining order or similar legal impediment in such Bankruptcy Proceeding against Lender s exercise of its remedies and hereby covenants, promises and agrees that each will not contest any effort by Lender to annul, lift, modify or extinguish such stay in such Bankruptcy Proceeding. Each Borrower also expressly acknowledges and agrees that: (a) cause shall exist to lift such stay pursuant to Bankruptcy Code § 362(d) or other applicable law preventing Lender from exercising its rights, and (b) neither Borrower has any equity in any property of any kind in which Lender has an interest and such property is not now and will never be necessary to any plan of reorganization of either or both Borrowers in such Bankruptcy Proceeding.

Section 8. Mediation; Arbitration. Each Borrower agrees that any dispute under this or any other Loan Document shall be resolved only through mediation followed by arbitration, if necessary. If a dispute arises which cannot otherwise be resolved by the parties, Borrower and Lender shall mutually agree to a mediator within ten (10) days of either party s written notification to the other party that a dispute exists which requires mediation. If the parties cannot reach an agreement with respect to the selection of a mediator, then each party

shall nominate a mediator. The nominees shall jointly select a mediator who will undertake the mediation. The mediation must be completed within thirty (30) days of the mediator's selection. If any dispute is not resolved through such mediation, then Borrower agrees that any such dispute can only be resolved through binding arbitration. The selection of the arbitrator and the rules of arbitration shall be mutually agreed to by the parties. If, however, no agreement can be reached, then both the arbitrator selection process and the arbitration itself shall be governed by the rules of the American Arbitration Association in accordance with its Commercial Arbitration Rules, and shall be arbitrated by a single arbitrator. Such arbitrator's fees and any expenses shall be shared equally by Borrower and Lender.

Section 9. No Oral Agreements. The following notice is given to comply with § 432.045 of the Revised Statutes of Missouri.

Oral agreements or commitments to loan money, extend credit or forbear from enforcing repayment of a debt, including promises to extend or renew such debt, are not enforceable. To protect Borrower and Lender from misunderstanding or disappointment, any agreements reached regarding such matters are contained in this Agreement, which is the complete and exclusive statement of the agreement between Borrower and Lender, except as they may later agree in writing to modify it.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement as of the date first written above.

BORROWER:

LIQUIDMETAL COATINGS, LLC,
a Delaware limited liability company

By: /s/ Larry Buffington
Name: Larry Buffington
Its: President and Chief Executive Officer

LIQUIDMETAL COATINGS SOLUTIONS, LLC,
a Delaware limited liability company

By: /s/ Larry Buffington
Name: Larry Buffington
Its: President and Chief Executive Officer

[Signature of Lender Appears on the Following Page]

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LENDER:

BANK MIDWEST, N.A.

By:	/s/ Judson Stanion
Name:	Judson Stanion
Its:	Vice President

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Exhibit A**Borrowing Base Certificate**

	Date:		Prepared By:
1	Total Accounts Receivable	\$ 1,510,000	
2	Less: Aged 90 Days or More	\$	
3	Less: Credits	\$	
4	Eligible Accounts Receivable	\$ 1,510,000	
5	Advance Rate	85.0 %	
6	Loanable Value - Accounts Receivable		\$ 1,283,500.00
7	Total Inventory	\$ 682,000.00	
8	Less: Inventory Exclusions (if any)	\$	
9	Eligible Inventory	\$ 682,000.00	
10	Advance Rate	50.0 %	
11	Loanable Value - Inventory		\$ 341,000
12	Total Loanable Value		\$ 1,624,500
13	Authorized Maximum of Revolver		\$ 1,500,000
14	Trailing 12 Months EBITDA	\$ 3,403,000	
15	Applicable Leverage Maximum	1.75	
16	Leverage Maximum	\$ 5,955,250	
17	Beginning Loan Balance (RLOC)	\$	
18	Beginning Loan Balance (Term Loan)	\$ 4,000,000	
19	RLOC Loan Available	\$ 1,500,000	
19	Advance Amount	\$ 1,000,000	
20	Ending Loan Balance (RLOC plus Term)	\$ 5,000,000	
21	Remaining Availability		\$ 500,000

Attachments:

- ___ Sales Journal
- ___ Cash Receipts Journal
- ___ Credit Memo Journal
- ___ Financial Covenants

Exhibit B

Disclosure Schedules are omitted pursuant to Item 601(b)(2) of Regulation S-K. The following sets forth a list of the omitted Schedules. The registrant agrees to furnish supplementally to the Commission a copy of any omitted Schedule, upon the Commission's request.

Liquidmetal / Quarterly Financial Covenants (based on annualized projections)

SECURITIES PURCHASE AGREEMENT

DATED JULY 24, 2007

AMONG

C3 CAPITAL PARTNERS, L.P.,

C3 CAPITAL PARTNERS II, L.P.,

LIQUIDMETAL COATINGS, LLC

AND

LIQUIDMETAL COATINGS SOLUTIONS, LLC

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Appendix 1 Definitions

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this **Agreement**) is made as of July 24, 2007, between Liquidmetal Coatings, LLC, a Delaware limited liability company (the **Company**), Liquidmetal Coatings Solutions, LLC, a Delaware limited liability company (**LMCS**), C3 CAPITAL PARTNERS, L.P., a Delaware limited partnership (**C3**) and C3 CAPITAL PARTNERS II, L.P., a Delaware limited partnership (**C3 II**), and each of the other holders of Securities (as defined below) or any equity for which Securities are exchanged or converted, if any, who become a party hereto in accordance with the terms hereof (C3, C3 II and such other holders are collectively referred to herein as the **Purchasers**).

The parties hereto agree as follows:

Section 1. Definitions and Related Matters.

1.1 Definitions.

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth on Appendix 1 attached hereto (such meanings are applicable to both the singular and plural forms of the terms defined).

1.2 Accounting Principles.

The classification, character and amount of all assets, liabilities, capital accounts and reserves and of all items of income and expense to be determined, and any consolidation or other accounting computation to be made, and the interpretation of any definition containing any financial term, pursuant to this Agreement shall be determined and made in accordance with GAAP consistently applied.

1.3 Other Interpretive Matters.

In each of the Investment Documents, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by such Investment Document, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) reference to any agreement (including this Agreement and the Schedules and Exhibits and the Appendices hereto), document or instrument means such agreement, document or instrument as amended or modified; (d) reference to any applicable law, statute, rule or regulation means such applicable law, statute, rule or regulation as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and (e) references to any Subsidiary of a Person shall be given effect only at such times as such Person has one or more Subsidiaries.

Section 2.

Authorization and Closing.

2.1 **Authorization of the Securities.** The Company and LMCS have, or on or before the Closing will have, duly authorized the sale and issuance to:

(a) C3 of (i) a fourteen percent (14%) Subordinated Note in the principal amount of \$3,770,000 and containing the terms and conditions and in the form set forth on Exhibit A-1 attached hereto (**CNote**), and (ii) 1,102 Membership Units, which shall represent 11.02% of the Membership Units of the Company (the **C3 Membership Units**) and shall have the terms and conditions set forth in the Company's Operating Agreement, attached hereto as Exhibit B-1; and

(b) C3 II of (i) a fourteen percent (14%) Subordinated Note in the principal amount of \$2,730,000 and containing the terms and conditions and in the form set forth on Exhibit A-2 attached hereto (**CII Note**), and together with the C3 Note, and any other notes issued by the Company in respect of the purchase of the Securities are collectively referred to as the **Notes**), and (ii) 798 Membership Units, which shall represent 7.98% of the of Membership Units of the Company (the **CII Membership Units** , and together with the C3 Membership Units, the **Purchased Membership Units**) and shall have the terms and conditions set forth in the Company's Operating Agreement, attached hereto as Exhibit B-1. The Notes and the Purchased Membership Units are sometimes collectively referred to herein as the **Securities** .

2.2 **Purchase and Sale of the Securities.**

At the Closing, the Company shall sell to C3 and C3 II and, subject to the terms and conditions set forth herein, C3 and C3 II shall purchase from the Company and LMCS, the Notes at an aggregate price equal to \$5,527,210 and the Membership Units at an aggregate price equal to \$972,790 (collectively, the **Purchase Price**).

2.3 **The Closing.**

The closing of the purchase and sale of the Note and the Purchased Membership Units (the **Closing**) shall take place at the offices of Bryan Cave LLP, 3500 One Kansas City Place, 1200 Main Street, Kansas City, Missouri 64105 at 10:00 a.m. on July 24, 2007, subject however, to the satisfaction of the conditions set forth in Section 3 and Section 4. At the Closing, the Company shall deliver the Securities to C3 and C3 II and C3 and C3 II shall deposit the Purchase Price into an escrow account pursuant to the Escrow Agreement dated as of an even date herewith by and among C3, C3 II, Liquidmetal Technologies, Inc. (**LMT**), Bank Midwest, N.A. (**BMW**), Company and BMW as escrow agent (the **Escrow Agent**).

2.4 **Use of Proceeds.**

The Company will use the proceeds from the sale of the Securities for (a) the purchase of certain assets from LMT pursuant to the Asset Purchase and Contribution Agreement dated as of July 24, 2007 by and among LMT and LMC (the **Asset Purchase and Contribution Agreement**), including payment of the purchase price to LMT and (b) all

reasonable expenses related to the consummation of the transactions contemplated by the Investment Documents.

Section 3. Conditions of Purchasers Obligation at the Closing. The obligation of Purchasers to purchase the Securities at the Closing is subject to the fulfillment as of the Closing of the following conditions, any one or more of which may be waived by Purchasers:

3.1 Representations, Warranties and Covenants; No Event of Default.

(a) **All of the representations and warranties contained in Section 6 hereof (considered collectively) and each of these representations and warranties (considered individually) shall be true, complete and correct in all material respects at and as of the Closing (without giving effect to any material or materiality qualification and both immediately prior to and immediately after giving effect to the transactions contemplated by the Investment Documents) as though then made, except for representations and warranties which refer to facts existing on a specific date, which shall be true and correct as of such date, and except where the failure of any such representation or warranty to be so true and correct, whether individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and the Company shall have performed in all material respects all of the covenants required to be performed by it under the Investment Documents that are to be complied with or performed by the Company on or prior to the Closing (unless the same shall have been waived, in writing, by Company).**

(b) **Notwithstanding Section 3.1(a), each of the representations and warranties in Sections 7.1, and 7.2 shall be true, complete and correct in all respects at and as of the Closing (both immediately prior to and immediately after giving effect to the transactions contemplated by the Investment Documents) as though then made.**

3.2 Certificate of Formation.

The Certificate of Formation of each of the Company and LMCS in the form attached as Exhibits C-1 and C-2 shall be in full force and effect under the laws of the Delaware.

3.3 Operating Agreement.

The Operating Agreement of each of the Company and LMCS shall be in the form of Exhibit B-1 and Exhibit B-2, respectively and such Operating Agreements shall be in full force and effect as of the Closing.

3.4 **14% Subordinated Secured Notes.**

The Company shall have issued and delivered the Notes to C3 and C3 II and the Notes shall be in full force and effect as of the Closing.

3

3.5 **Sale of the Membership Units to the Purchaser.**

The Company shall have issued and delivered to C3 and C3 II the Purchased Membership Units to be purchased hereunder at the Closing.

3.6 **Employment Agreement.**

The confidentiality, nonsolicitation and noncompetition agreement between the Company and Larry Buffington attached hereto as Exhibit D and (the **Employment Agreement**), shall be in full force and effect as of the Closing and shall not have been modified or amended.

3.7 **Security Agreements.**

The Company and LMCS shall each have entered into definitive security agreements in the forms attached hereto as Exhibit E-1 and E-2, respectively (the **Security Agreements**) for the purpose of securing the obligations arising under the Notes, and such Security Agreements shall be in full force and effect as of the Closing.

3.8 **Pledge Agreements.**

The Company and LMT shall each have entered into a Pledge Agreement for the purpose of securing the obligations arising under the Notes in the form attached hereto as Exhibit F (the **Pledge Agreements**) and such Pledge Agreements shall be in full force and effect as of the Closing.

3.9 **Asset Purchase and Contribution Agreement.**

The Asset Purchase and Contribution Agreement shall be in full force and effect as of the Closing. The conditions in Articles 8 and 9 of the Asset Purchase and Contribution Agreement shall have been satisfied in full (without reliance on any waiver by the parties thereto). The transactions contemplated by the Asset Purchase and Contribution Agreement shall have been consummated simultaneously with the Closing hereunder in accordance with the terms of the Asset Purchase and Contribution Agreement. The Company shall have also executed a Collateral Assignment in form attached hereto as Exhibit G (**Collateral Assignment**), and such Collateral Assignment shall be in full force and effect as of the Closing.

3.10 **Financing.**

BMW shall have advanced or otherwise made available to the Company an aggregate of no less than \$5,000,000 and no more than \$5,500,000 pursuant to a secured credit facility on customary terms and conditions reasonably satisfactory to the Purchasers and Company (the **Senior Credit Facility**), and the Purchasers will agree to subordinate its Lien in the Company's assets to the Lien of such Senior Credit Facility pursuant to an intercreditor agreement with the provider of the Senior Credit Facility (**Senior Lender**) on customary and reasonable terms acceptable to the Purchaser.

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3.11 **Proceedings.**

All proceedings required to be taken by the Company in connection with the transactions contemplated hereby shall have been taken and all documents incident thereto shall be reasonably satisfactory in form and substance to C₃ and C₃ II and their counsel.

3.12 **No Material Adverse Effect.**

Since December 31, 2006, there shall have been no Material Adverse Effect.

3.13 **Deliveries of the Company at Closing.**

At the Closing, the Company shall deliver to the Purchasers, except as otherwise indicated below, all of the following:

- (a) **the Notes in the principal amount of \$6,500,000, duly completed and executed by the Company;**
- (b) **the Purchased Membership Units, duly issued by the Company to C₃ and C₃ II, respectively, and which, in the aggregate, represent 19.00% of the Company's fully diluted equity;**
- (c) **an Officer's Certificate of the Company, dated the date of the Closing, stating that the conditions specified in Sections 3.1 through 3.13, inclusive, have been fully satisfied;**
- (d) **certified copies of the resolutions duly adopted by the Board of Directors of LMT, the board of managers of the Company and the board of managers of the LMCS authorizing the execution, delivery and performance of each of the Investment Documents to which it is a party, the issuance and sale of the Securities and the consummation of all other transactions contemplated by the Investment Documents;**
- (e) **certified copies of the Company's and LMCS's Governing Documents, each as in effect at the Closing;**
- (f) **certificates of the secretary of the Company and LMCS certifying the names and signatures of the officers of the Company and LMCS, respectively, authorized to sign each of the Investment Documents to which the Company and LMCS is a party;**

(g) certificates of good standing, dated not more than ten (10) days prior to the date of the Closing, of the Company and LMCS issued by its jurisdiction of organization and from each jurisdiction in which the Company or LMCS is qualified to conduct business;

(h) copies of third party and governmental consents, approvals and filings as set forth on Schedule 3.13(h);

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(g) certificates of good standing, dated not more than ten (10) days prior to the date of the Closing, of the Company and LMCS issued by its jurisdiction of organization and from each jurisdiction in which the Company or LMCS is qualified to conduct business;

- (i) **duly completed and executed SBA Forms 480, 652 and 1031 from the Company in the forms attached as Exhibit H-1, H-2 and H-3, respectively;**
- (j) **the Company's financial projections (including balance sheets and income and cash flow statements) through December 31, 2009;**
- (k) **an operating budget for the balance of 2007 reflecting anticipated Capital Expenditures for the Company and operating expenses approved in advance by C₃ and C₃ II, which approval shall not be unreasonably withheld or delayed (the 2007 Operating Budget);**
- (l) **the Security Agreements;**
- (m) **the Employment Agreement;**
- (n) **the Pledge Agreements;**
- (o) **payment of closing fees to C₃ and C₃ II in the aggregate amount of \$130,000 and the reimbursement for the fees and expenses described in Section 9.1 hereof;**
- (p) **a solvency certificate in the form of Exhibit I executed by the Company's chief executive officer or secretary;**
- (q) **the Asset Purchase and Contribution Agreement;**
- (r) **a Use of Proceeds Schedule from the Company regarding the intended use of the proceeds from sale of the Securities;**
- (s) **an irrevocable springing proxy in the form of Exhibit J executed by LMT and accepted and acknowledged, in writing, by C₃ and C₃ II (the Irrevocable Springing Proxy); and**
- (t) **such other documents related to the transactions contemplated by the Investment Documents as C₃ and C₃ II or their counsel may reasonably request.**

Section 4. Conditions of Company's Obligation at the Closing. The obligation of the Company to issue and sell the Securities at the Closing is subject to the fulfillment as of the Closing of the following conditions, any one or more of which may be waived by Company:

- (i) **duly completed and executed SBA Forms 480, 652 and 1031 from the Company in the forms attached as**

4.1 **Representations, Warranties and Covenants; No Event of Default**

All of the representations and warranties contained in Section 7 hereof (considered collectively) and each of these representations and warranties (considered individually) shall be true, complete and correct in all material respects at and as of the Closing (without giving effect to any material or materiality qualification) (both immediately prior to and immediately after giving effect to the transactions contemplated by the Investment Documents) as though then made, except for representations and warranties which refer to facts

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existing on a specific date, which shall be true and correct as of such date, and the Purchaser shall have performed in all material respects all of the covenants required to be performed by it under the Investment Documents that are to be complied with or performed by the Purchaser on or prior to the Closing (unless the same shall have been waived, in writing, by Company, and there shall not exist any Event of Default or Potential Event of Default.

4.2 **Asset Purchase and Contribution Agreement.**

The Asset Purchase and Contribution Agreement shall be in full force and effect as of the Closing. The conditions in Articles 8 and 9 of the Asset Purchase and Contribution Agreement shall have been satisfied in full (without reliance on any waiver by the parties thereto). The transactions contemplated by the Asset Purchase and Contribution Agreement shall have been consummated simultaneously with the Closing hereunder in accordance with the terms of the Asset Purchase and Contribution Agreement.

4.3 **Financing.**

BMW shall have advanced or otherwise made available to the Company an aggregate of no less than \$5,000,000 and no more than \$5,500,000 pursuant to a secured credit facility on customary terms and conditions reasonably satisfactory to each Purchaser and Company, and each Purchaser shall have agreed to subordinate its Lien in the Company's assets to the Lien of such Senior Credit Facility pursuant to an intercreditor agreement with the Senior Lender on customary and reasonable terms acceptable to the Purchasers.

4.4 **Deliveries of C₃ and C₃ II at Closing.**

C₃ and C₃ II shall have delivered to BMW an amount equal to \$6,500,000, net of the amounts specified in Section 3.13(o).

Section 5. **Covenants**

5.1 **Affirmative Covenants.**

So long as the principal amount under the Notes remain outstanding, prior to the indefeasible payment in full of all amounts due and owing under the Notes, the Company shall deliver to the Purchaser:

(a) **Notice of Litigation.** Promptly after receipt of service of process and in any event within ten (10) Business Days after receipt of service of process, notice of all actions, suits, and proceedings before any governmental authority, court or arbitrator affecting the Company which, if determined adversely to the Company, could have a Material Adverse Effect;

(b) **Notice of Default.** As soon as possible (but in any event within ten (10) Business Days) after (i) the discovery or receipt of notice of any Event of Default or Potential Event of Default, (ii) any default under any Investment Document or any other material agreement to which the Company is a party, (iii) any material investigation, notice, proceeding or adverse determination from any governmental or regulatory

(b) Notice of Default. As soon as possible (but in any event within ten (10) Business Days) after (i) ~~30~~ discov

authority or agency, or (iv) immediately (notwithstanding the reference to ten (10) Business Days stated above) after the receipt of notice (oral or written) of the acceleration of any material Indebtedness, an Officer's Certificate specifying the nature and period of existence thereof and what actions the Company has taken and proposes to take with respect thereto;

(c) **ERISA Reports.** Within ten (10) Business Days after the filing or receipt thereof, copies of all reports, including annual reports, and notices which the Company or LMCS files with or receives from the PBGC or the U.S. Department of Labor under ERISA; and as soon as possible and in any event within ten (10) Business Days after the Company knows that any ERISA Event or Prohibited Transaction has occurred with respect to any Pension Plan or that the PBGC has instituted or will institute proceedings under Title IV of ERISA to terminate any Pension Plan, a certificate of the chief financial officer of the Company setting forth the details as to such ERISA Event or Prohibited Transaction or Pension Plan termination and the action that the Company or LMCS proposes to take with respect thereto;

(d) **Reports to Other Creditors.** Promptly after the furnishing thereof, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Purchaser pursuant to this Section;

(e) **Notice of Material Adverse Change.** As soon as possible and in any event within ten (10) Business Days after the occurrence thereof, written notice of any matter that could reasonably be expected to have a Material Adverse Effect;

(f) **Management Letters.** Promptly upon receipt thereof, a copy of any management letter or written report submitted to the Company by independent certified public accountants with respect to the business, condition (financial or otherwise), operations, prospects, or properties of the Company and LMCS;

(g) **General Information.** Promptly, such other information concerning the Company as the Purchaser may from time to time reasonably request;

(h) **Annual Budget.** At least thirty (30) days, but not more than ninety (90) days prior to the beginning of each fiscal year, an annual budget of the operating expenses and Capital Expenditures for the Purchaser's approval, which shall not be unreasonably withheld or delayed, provided there is sufficient debt coverage and the budget demonstrates the Company's and LMCS's ability to comply with the financial covenants herein and in all other

authority or agency, or (iv) immediately (notwithstanding the reference to ten (10) Business Days stated above) after

debt instruments to which the Company is bound. Each such annual budget shall be prepared (displaying anticipated statements of income, cash flows, balance sheets and detailed projected Capital Expenditures on a monthly basis) (the Annual Budget) and within thirty (30) days after any quarterly period in which expenditures, costs or obligations incurred result in a deviation in excess of twenty percent (20%) of such corresponding quarterly period described within an Approved Annual Budget (as defined in Section 5.1(h)), the Company shall deliver to the Purchaser

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an Officer's Certificate explaining the deviation and what actions the Company and LMCS has taken and proposes to take with respect thereto;

(i) **Securities Communications.** As soon as possible after the transmission or occurrence (but in any event within ten (10) Business Days), of any communications by LMT with its Shareholders generally or the financial community, any reports filed by LMT with any securities exchange or the Securities and Exchange Commission;

(j) **Insurance Reports.** As soon as possible after each insurance policy to be maintained by the Company pursuant to Section 5.3(f) has been obtained, a statement from each such insurance carrier, which shall provide that each such policy shall name each of C₃ and C₃ II as a loss payee and shall provide that such policy will not be cancelled or reduced without thirty (30) days prior written notice to C₃ and C₃ II. As soon as possible (but in any event within ten (10) days) after becoming Aware of any material change in any insurance maintained by the Company, written notice thereof which describes the same and the intended course of action of the Company with respect thereto shall be delivered to the Purchasers; and

(k) **Compliance Certificate.** Concurrently with the delivery of each of the financial statements referred to in Section 5.3(a) and (b), a duly completed Officer's Certificate in the form of Exhibit K attached hereto, with appropriate insertions, dated the date of such financial statements and signed by the Company's and LMCS's Chief Financial Officer containing a computation of each of the financial ratios and restrictions set forth in Section 5.5 and to the effect that such officer has not become Aware of any Event of Default or Potential Event of Default that has occurred and is continuing, if there is any such event, describing it and the steps, if any, being taken or proposed to be taken to cure it.

5.2 **Attendance at Board Meetings.**

So long as any Securities remain outstanding or notes issued in exchange for any Securities remain outstanding and prior to the indefeasible payment in full of all amounts due and owing under the Notes, the Purchasers shall have the right to attend and observe all the Company's board of managers meetings (the **Purchasers Observation Rights**). The Company shall give the Purchasers written notice of each meeting of its board of managers and each committee thereof at least three (3) Business Days prior to the date of each such meeting, and the Company shall permit one (1) representative of C₃ and C₃ II (the **Purchaser Representative**) to attend all meetings of its board of managers and all committees thereof; provided, that in the case of telephonic meetings conducted in accordance with the Company's Governing Documents and applicable law, the Purchaser Representative shall receive actual notice thereof at least 48 hours prior to any such meeting, and the Purchaser Representative shall be given the opportunity to listen to such telephonic meetings unless the Purchaser

an Officer's Certificate explaining the deviation and what actions the Company and LMCS has taken and proposes to take with respect thereto;

Representative shall have waived in writing such advance notice. The Purchaser Representative shall be entitled to receive all written materials and other information (including, without limitation, copies of meeting minutes) given to managers in connection with such meetings at the same time such materials and information are given to the managers. If the Company proposes

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to take any action by written consent in lieu of a meeting of its board of managers or of any committee thereof, the Company shall give written notice thereof to the Purchaser Representative prior to the effective date of such consent describing in reasonable detail the nature and substance of such action. The Company shall pay the reasonable out-of-pocket expenses of the Purchaser Representative incurred in connection with attending all such meetings.

5.3 Additional Affirmative Covenants. So long as any of the Securities remain outstanding and prior to the indefeasible payment in full of all amounts due and owing under the Notes or any Put Notes issued pursuant to Section 5.11(c):

(a) **Annual Financial Statements and Tax Return Information.** The Company, as soon as available, and, in any event, within one hundred and twenty (120) days after the end of each fiscal year of the Company, beginning with the fiscal year ending December 31, 2007, a copy of the annual consolidated financial statements of the Company and LMCS for such fiscal year containing balance sheets, statements of income, retained earnings and cash flows at the end of such fiscal year, in each, except for the fiscal year ending December 31, 2007, setting forth in comparative form the figures for the preceding fiscal year (if any), all in reasonable detail and audited and certified by independent certified public accountants of recognized standing reasonably acceptable to C₃ and C₃ II, to the effect that such report has been prepared in accordance with GAAP. Within ninety (90) days after the end of each Tax year, Company shall provide sufficient information with respect to the Company for such Tax year necessary for C₃ and C₃ II to prepare their federal, state and local income Tax Returns. The Company shall provide copies of the federal, state and local income Tax Returns of the Company for each Tax year promptly after the filing thereof.

(b) **Monthly Financial Statements.** The Company, as soon as available and, in any event, within thirty (30) days after the end of each month, a copy of an unaudited consolidated financial report of the Company and LMCS as of the end of such month and for the portion of the fiscal year then ended, including balance sheets, statements of income, retained earnings and cash flows, setting forth in each case comparisons to the Company's and LMCS's Annual Budget and to the corresponding period in the preceding fiscal year and a brief narrative explaining the results of the Company's and LMCS's operations for such period; all such statements shall have been prepared in accordance with GAAP (absent footnotes and customary year-end adjustments) and fairly present the financial condition and results of operations of the Company and LMCS at the date and for the periods indicated therein.

(a) Annual Financial Statements and Tax Return Information. The Company, as soon as available, and, in any event, within one hundred and twenty (120) days after the end of each fiscal year of the Company, beginning with the fiscal year ending December 31, 2007, a copy of the annual consolidated financial statements of the Company and LMCS for such fiscal year containing balance sheets, statements of income, retained earnings and cash flows at the end of such fiscal year, in each, except for the fiscal year ending December 31, 2007, setting forth in comparative form the figures for the preceding fiscal year (if any), all in reasonable detail and audited and certified by independent certified public accountants of recognized standing reasonably acceptable to C₃ and C₃ II, to the effect that such report has been prepared in accordance with GAAP. Within ninety (90) days after the end of each Tax year, Company shall provide sufficient information with respect to the Company for such Tax year necessary for C₃ and C₃ II to prepare their federal, state and local income Tax Returns. The Company shall provide copies of the federal, state and local income Tax Returns of the Company for each Tax year promptly after the filing thereof.

(c) **Maintenance of Existence; Conduct of Business.** The Company shall, as commercially reasonable, preserve and maintain its and LMCS s existence and all of their respective leases, privileges, certifications, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of their respective businesses. The Company and LMCS will conduct each of their businesses in an orderly and efficient manner in accordance with good business practices. Neither the Company nor LMCS will, without the written consent of the Purchasers, make any material change in their credit collection policies if such change would materially impair

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the collectibility of any material account owing to the Company, nor will either the Company or LMCS rescind, cancel or modify any material account owing to the Company or LMCS except in the ordinary course of business.

(d) **Maintenance of Properties and Intellectual Property Rights.** The Company and LMCS shall (i) maintain, keep and preserve all of their properties (real, personal, tangible and intangible) necessary or useful in the proper conduct of their business in good working order and condition and (ii) possess and maintain all material Intellectual Property Rights necessary to the conduct of the Company's and LMCS's businesses and own all right, title and interest in and to, or have a valid license for, all such Intellectual Property Rights.

(e) **Taxes and Claims.** The Company and LMCS shall use their commercially reasonable best efforts to pay or discharge at or before maturity or before becoming delinquent (i) all taxes, levies, assessments and governmental charges imposed on the Company and LMCS or their income or profits or any of their property and (ii) all lawful claims for labor, material, and supplies, which, if unpaid, might become a Lien upon any of their property; provided, however, that the Company and LMCS shall not be required to pay or discharge any tax, levy, assessment, or governmental charge which is being contested in good faith by appropriate proceedings diligently pursued, and for which adequate reserves have been established and such contest operates to suspend collections of the same.

(f) **Insurance.** The Company and LMCS shall use their commercially reasonable best efforts to maintain insurance with financially sound and reputable insurance companies in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company and LMCS operate, including, but not limited to, director and officer liability insurance.

(g) **Inspection Rights.** At any reasonable time and from time to time, the Company shall permit representatives of C₃ and C₃ II to examine, copy and make extracts from its books and records, to visit and inspect the Company's and LMCS's properties, and to discuss Company's and LMCS's business, operations, and financial condition with Company's LMCS's officers, employees and independent certified public accountants, provided that Purchasers agree to keep such information confidential and to use such information solely in connection with its investment in the Securities.

(h) **Keeping Books and Records.** The Company and LMCS shall maintain proper books of record and account in which full, true, and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to their business and activities.

(i) **Compliance with Laws.** The Company and LMCS shall comply in all material respects with all applicable laws, rules, regulations, orders and decrees of any governmental authority or arbitrator the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

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(j) **Compliance with Agreements.** The Company and LMCS shall use their commercially reasonable best efforts to comply in all material respects with all agreements, contracts, and instruments binding on it or affecting its properties or business, the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

(k) **ERISA.** The Company and LMCS shall use their commercially reasonable best efforts to comply with all minimum funding requirements and all other material requirements of ERISA, if applicable, so as not to give rise to any liability thereunder.

(l) **Employment Agreement.** The Company shall neither (i) modify, amend or terminate the Employment Agreement without the prior written consent of C₃ and C₃ II, which consent shall not be unreasonably withheld or delayed nor (ii) provide any employee, who is a party to the Employment Agreement, with any compensation, benefit or reimbursement for any expenses related to the performance of such employee's duties as contemplated by such employee's Employment Agreement, except as provided by the Employment Agreement.

5.4 **Negative Covenants.**

So long as any of the principal amount under the Notes remain outstanding, neither the Company nor LMCS shall do any of the following, without the prior written consent of the Purchasers, which consent shall not be unreasonably withheld or delayed:

(a) **Additional Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, other than (i) a working capital line of credit, of which the Company shall not draw more than \$1,000,000 at Closing; (ii) Indebtedness incurred pursuant to an annual budget approved by Purchasers;

(b) **Merger or Consolidation.** Become a party to a merger or consolidation, or purchase or otherwise acquire all or any part of the assets of any Person or any shares or other evidence of beneficial ownership of any Person, or wind-up, dissolve, or liquidate;

(c) **Distributions.** Except as contemplated by this Agreement or to pay distributions to pay Taxes of its Members as provided in Article 5 of the LMC Operating Agreement (which provision shall not be amended without the prior written consent of the Purchaser), declare or pay any Dividends or make any other payment or distribution (in cash, property, or obligations) on account of

(j) Compliance with Agreements. The Company and LMCS shall use their commercially reasonable best efforts

the Company's Membership Units, or redeem, purchase, retire, or otherwise acquire any Membership Units, or set apart any money for a sinking or other analogous fund for any Dividend or other distribution on the Company's Membership Units or for any redemption, purchase, retirement, or other acquisition of any of the Company's Membership Units.

(d) Advances and Loans. Make any loans or advances to, Guarantees for the benefit of, or investments in, any Person except for (i) reasonable advances to employees in the ordinary course of business, (ii) investments having a stated maturity no

greater than 1 year from the date such Investment is made in (A) obligations of the United States government or any agency thereof or obligations guaranteed by the United States government, (B) certificates of deposit of commercial banks having combined capital and surplus of at least \$50 million or (C) commercial paper with a rating of at least Prime-1 by Moody's Investors Service, Inc., and (iii) intercompany loans or advances to or guarantees by the Company or LMCS for the benefit of the Company or LMCS in the ordinary course of business, consistent with past practice;

(e) **Equity Issuances.** Authorize, issue, sell, assign, or otherwise dispose of (i) any of its Membership Units, (ii) any securities exchangeable for or convertible into or carrying any rights to acquire any of its Membership Units, or (iii) any option, warrant, or other right to acquire any of its Membership Units other than options and Equity Purchase rights issued in connection with any equity incentive plan or employee equity ownership plan as in existence as of the Closing or any new equity incentive plan or employee equity ownership plan approved by the board of managers; provided, however, any new equity incentive plan, together with any existing equity plan, shall not reduce the Purchaser's interest in the capital and profits of the Company;

(f) **Affiliated Transactions.** Enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate of the Company or LMCS, except in the ordinary course of and pursuant to the reasonable requirements of the Company's or LMCS's business and upon fair and reasonable terms no less favorable to the Company or LMCS than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of the Company or LMCS and except as otherwise set forth on Section 4.4(f) of the Disclosure Schedules;

(g) **Transfer of Assets.** Directly or indirectly in one or more related transactions, sell, lease, exchange or otherwise dispose of more than 5% of the Total Assets in any 12-month period (other than sales of inventory in the ordinary course of business, consistent with past practice) or sell, exchange or permanently dispose of any of its Intellectual Property Rights;

(h) **Sale Lease Back.** Enter into any arrangement with any Person pursuant to which it leases from such Person real or personal property that has been or is to be sold or transferred, directly or indirectly by it to such Person;

(i) **Prepayment of Indebtedness.** Prepay, redeem, purchase, defease or otherwise satisfy in any manner any principal or interest on any Indebtedness other than prepayment of the Notes as permitted according to their terms and prepayment of the Senior Debt;

(j) **Other Business Ventures. Enter into or cause LMCS to enter into the ownership, active management or operation of any business not directly related to the Business conducted by the Company or LMCS as of Closing;**

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(j) Other Business Ventures. Enter into or cause LMCS to enter into the ownership, active management or o 411

(k) **Environmental Compliance.** Violate any applicable Environmental Laws with respect to the real property owned or operated by the Company (including soils, groundwater, surface water, buildings or other structures), except for violations that would not have a Material Adverse Effect on the Company or LMCS;

(l) **Accounting Changes.** Change the Company's or LMCS's respective fiscal years or make any change (i) in accounting treatment or reporting practices, except as required by GAAP and disclosed to the Purchasers, or (ii) in tax reporting treatment, except as required by law and disclosed to the Purchasers;

(m) **Certain Security Matters.** Enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any Investment Document, which directly or indirectly prohibits the Company or LMCS from creating or incurring a Lien on any of its assets;

(n) **Business Organization.** Convert to any other type of business entity or cause the conversion of any of the Company's Membership Units;

(o) **Joint Ventures.** Enter into any joint venture, involving an aggregate consideration (including the assumption of liabilities whether direct or indirect) in any calendar year exceeding \$100,000 with all such transactions being aggregated to such limit;

(p) **Additional Agreements.** Enter into, become subject to, amend, modify or waive any agreement or instrument (other than Senior Loan Documents) which by its terms would (under any circumstances) restrict (i) the right of the Company to make loans or advances or pay Dividends to, transfer property to, or repay any Indebtedness owed to the Purchasers or (ii) the Company's right to perform any of the provisions of any of the Investment Documents;

(q) **Compensation.** Increase any compensation (including salary, bonuses and other forms of current and deferred compensation) payable, directly or indirectly, to any of its officers, managers, members or their Affiliates or representatives or any Affiliate of the Company or LMCS by more than 5% per annum; except as set forth in the Employment Agreement, and except as provided for in any planned or budgeted increases under the 2007 Operating Budgets, or any performance bonuses or distributions based on EBITDA

(k) Environmental Compliance. Violate any applicable Environmental Laws with respect to the real property owned or operated by the Company (including soils, groundwater, surface water, buildings or other structures), except for violations that would not have a Material Adverse Effect on the Company or LMCS;

targets as agreed to in writing by C₃ and C₃ II prior to Closing;

- (r) **Subsidiaries. Establish or acquire any Subsidiary other than LMCS;**
- (s) **Capital Expenditures. Make Capital Expenditures (i) during the fiscal year ended December 31, 2007 in excess of \$100,000 and (ii) during any subsequent fiscal year in excess of \$200,000 (including, without limitation, payments with respect to Capitalized Leases, as determined in accordance with GAAP) other than Capital Expenditures made pursuant to an Approved Annual Budget;**

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(q) Compensation. Increase any compensation (including salary, bonuses and other forms of current and deferred compensation) for any executive officer, director or

(t) **Use of Proceeds.** Use the proceeds from the Financing other than as set forth in Section 2.4 of this Agreement;

(u) **Amendment to Governing Documents.** Make any amendment to its Governing Documents which would adversely affect the Purchaser, directly or indirectly, whether by merger, conversion, operation of law or otherwise, or file any resolution of its board of managers (or similar governing body) with its jurisdiction of incorporation, formation or organization (as applicable);

(v) **Take or Pay Contracts.** Enter into or be a party to any contract or agreement for the purchase of materials, supplies or other property or services if such contract or agreement requires that a payment be made by the Company or LMCS regardless of whether delivery is ever made of such materials, supplies or other property or services;

5.5 **Financial Covenants.**

(a) **Fixed Charge Coverage Ratio.** The Company shall have, on a consolidated basis at the end of each fiscal quarter of the Company, a Fixed Charge Coverage Ratio of not less than 1.09:1.00.

(b) **Maximum Total Funded Debt to EBITDA Ratio.** The Company shall have, on a consolidated basis at the end of each fiscal quarter of the Company set forth below, a ratio of (i) Total Funded Debt measured as of the last day of such fiscal quarter to (ii) EBITDA for such fiscal quarter of not more than the following:

3.90:1.00 for the fiscal quarters ending September 30, 2007, and December 31, 2007;

3.5:1.00 for the fiscal quarters ending March 31, 2008, June 30, 2008, September 30, 2008, and December 31, 2008

3.0:1.0 for the fiscal quarter ending March 31, 2009 and for each fiscal quarter ending thereafter.

5.6 **SBIC Regulatory Provisions**

(a) **Equity Holders.** As long as any Purchasers hold any Securities or any securities issued by the Company with respect thereto, the Company shall notify each SBIC Holder (i) at least 15 days prior to taking any action after which the number of record holders of the Company's voting securities would be increased from fewer than 50 to 50 or more and (ii) of any other action or occurrence after which the number of record holders of the

(t) **Use of Proceeds.** Use the proceeds from the Financing other than as set forth in Section 2.4 of this Agreement;

Company's voting securities was increased (or would increase) from fewer than 50 to 50 or more, as soon as practicable after the Company, as applicable, becomes Aware that such other action or occurrence has occurred or is proposed to occur.

(b) Use of Proceeds. At such times as any SBIC Holder reasonably requests, the Company shall deliver to each SBIC Holder a written statement on behalf of

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(a) Equity Holders. As long as any Purchasers hold any Securities or any securities issued by the Company w

the Company certified by the chief executive officer of Company describing in reasonable detail the use of the proceeds of the Financing hereunder by the Company. In addition to any other rights granted hereunder, the Company shall, and shall cause LMCS to, grant such SBIC Holder and the SBA access to their books, and records for the purpose of verifying the use of such proceeds and verifying the certifications made by the Company in SBA Forms 480, 652 and 1031 delivered pursuant to Section 3.13(i) and for the purpose of determining whether the principal business activity of the Company continues to constitute an eligible business activity (within the meaning of the SBIC Regulations).

(c) **Economic Impact Information.** Promptly after the end of each calendar year (but in any event prior to February 28 of each year), the Company shall deliver to each SBIC Holder a written assessment of the economic impact of each SBIC Holder's investment in the Company, specifying the full-time equivalent jobs created or retained in connection with the Investment, the impact of the Investment on the businesses of the Company and on taxes paid by the Company and its employees.

5.7 **Public Disclosures.**

The Company shall not disclose any Purchaser's name or identity as an investor in the Company in any press release or other public announcement, without the prior written consent of such Purchaser unless such disclosure is required by this Agreement, applicable securities law, applicable rules of any securities exchange, law, statute, rule or regulation or by order of a court of competent jurisdiction, in which case, prior to making such disclosure, the Company shall give written notice to such Purchaser describing in reasonable detail the proposed content of such disclosure and shall permit such Purchaser to review and comment upon the form and substance of such disclosure.

5.8 **Further Assurances.**

At any time and from time to time, upon the reasonable request of the Purchasers, the Company shall execute, deliver and acknowledge or cause to be executed, delivered and acknowledged, such further documents and instruments and do such other acts and things as so requested in order to fully effect the purposes of this Agreement, the other Investment Documents and any other agreements, instruments and documents delivered pursuant hereto or in connection with the Securities. In addition, if requested by the Purchasers, the Company shall obtain and promptly furnish to the Purchasers evidence of all governmental approvals as may be required to enable the Company to comply with its respective obligations under the Investment Documents and to continue its business as conducted on the date hereof without material interruption or interference.

5.9 **Post Closing Obligations.** No later than fifteen (15) days following the Closing, the Company shall have made all filings under all applicable federal and state securities laws necessary to consummate the issuance of the Securities pursuant to this Agreement in compliance with such laws.

5.10 **Annual Budget Approval.**

So long as any of the principal amount under the Notes remains outstanding, the Company will not submit any budget to its board of managers (or similar governing body) for approval or implement any Annual Budget unless such budget is first presented to the Purchasers for approval as set forth in Section 5.1(h) and approved by the Purchasers (an **Approved Annual Budget**), which approval by Purchaser shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained herein, if there shall be an Event of Default in existence as of the commencement of any fiscal year, the Purchasers will have absolute approval rights with respect to such upcoming Annual Budget and the Company will not submit any budget to its board of managers (or similar governing body) for approval or implement any Annual Budget unless the Purchasers have approved said budget in writing.

5.11 **Put Provisions.**

(a) **At any time during the period commencing on the earlier to occur of (i) the fifth anniversary of the Closing, (ii) the indefeasible payment in full of all amounts due under the Notes or (iii) the occurrence of an Event of Default, the Purchasers shall have the right to put at any time all or any portion of the Purchased Membership Units then held by the Purchasers (Put Equity) by delivering a written notice (the Put Notice) to the Company, at a purchase price equal to the Purchasers pro rata portion of the greater of (x) the fair market value of the Company determined by an appraisal (with no minority or liquidity discounts) conducted by an independent valuation expert agreeable to the Purchasers and the Company and (y) six (6) times the Company s trailing 12 month EBITDA, less funded Indebtedness calculated as of the date of the Put Notice plus cash and cash equivalents in excess of the minimum cash level maintained as part of working capital to operate LMC s business in the ordinary course (the Put Price). If the Purchasers and the Company cannot agree as to an appraiser, then the Purchasers shall select one appraiser, the Company shall select one appraiser and a third shall be selected by the first two appraisers chosen. The decision of a majority of the three appraisers shall be binding on all the parties and the Company shall bear all appraisal costs.**

(b) **Upon the receipt of any Put Notice by the Company, the Company will be obligated to purchase all Put Equity requested to be repurchased in the Put Notice, at a mutually agreeable time and place which will in no event be later than 90 days after the date of the Company s receipt of the Put Notice (the Put Closing).**

(c) **At the Put Closing, the Purchasers selling Put Equity shall deliver to the Company certificates representing the Put Equity held by such Purchasers and the Company shall deliver to such holder the product of (i) the Put Price**

multiplied by (ii) the number of units of Put Equity owned by such holder by cashier's or certified check or wire transfer of immediately available funds payable to such Purchasers. The Company will undertake Diligent Efforts (as defined below) during the 90-day period immediately following the receipt of the Put Notice to finance the payment of the Put Price in accordance with this Section so that the Put Price may be paid in full in cash, but only to the extent such financing can be obtained on commercially reasonable terms. Such

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(c) At the Put Closing, the Purchasers selling Put Equity shall deliver to the Company certificates representing

diligent efforts (Diligent Efforts) shall include, but shall not be limited to, pursuing private or public offerings of equity or debt securities, restructuring of the Company s debt and other recapitalizations. In the event that, notwithstanding such Diligent Efforts, the Company is unable to purchase all of the Put Equity at a Put Closing in cash within such 90-day period, the Company will at such Put Closing pay the maximum portion of the Put Price which it is legally able to pay in cash and pay the remaining portion of the Put Price which it is not able to pay in cash by issuing to the holders of Put Equity promissory notes (the Put Notes) accruing interest at an annual rate equal to 12% per annum (but in no event greater than the highest rate permitted under the SBIC Regulations) (payable quarterly) and payable on demand, and such Put Notes shall be subordinate in right of payment to the Senior Debt (if any Senior Debt is then outstanding) on terms and conditions no less favorable than the contained in the Note; provided, that the interest on a Put Note shall increase by one additional percentage point up to 19% per annum (but in no event greater than the highest rate permitted under the SBIC Regulations) for each 90-day period after the Put Closing at which such Put Note was issued. In no event shall the term of the Put Notes exceed twenty-four (24) months. After a Put Closing, the Company will continuously undertake Diligent Efforts to arrange debt and/or equity financing in order to retire Put Notes for cash and will provide to the holders of such Put Notes any information regarding the Company s efforts to obtain such financing as is reasonably requested by any such holder of Put Notes. For the avoidance of doubt, Put Notes shall be deemed to be notes issued in exchange for Securities and as a result the provisions of this Agreement applicable to the same shall apply in all circumstances to all Put Notes.

(d) The Company shall not be required to pay cash or property to repurchase Put Equity to the extent the sole reason for not doing so is that it is prohibited from doing so under applicable law due to a lack of surplus; provided, that the Company will take all reasonable steps necessary to make such payments under this Section, including without limitation reducing its capital and/or increasing its net assets (by re-appraisal or otherwise). The Company shall deliver an Officer s Certificate to the Purchaser that specifies the provision of law on account of which the Company is so precluded from making such payment and the action that the Company is taking to remedy the same.

(e) Notwithstanding anything contained herein to the contrary, if the Company is not able to pay the Put Price in full in cash within 90 days after the delivery of a Put Notice, the Purchasers may rescind the exercise of the put option at such Purchaser s election by delivering written notice to the Company within 30 days after the Company notifies each such electing Purchaser that it will be unable to pay the Put Price in full in cash. If the Company fails to satisfy its obligations pursuant to this Section the Purchasers may pursue any and all rights and remedies at law or in equity.

Section 6. Representations and Warranties of the Company and LMCS. As a material inducement to the Purchasers to enter into this Agreement and purchase the Securities hereunder, the Company and LMCS hereby represent and warrant to the Purchasers as follows:

6.1 Organization, Corporate Power and Licenses.

The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business in every jurisdiction in which its ownership of property or conduct of business requires it to qualify. The Company possesses all requisite company power and authority and all material licenses, certifications, permits and authorizations necessary to own and operate its properties, to carry on its businesses as now conducted and presently proposed to be conducted and to carry out the transactions contemplated by the Investment Documents.

6.2 Capitalization and Related Matters.

(a) **The attached Capitalization Schedule accurately sets forth the following information with respect to the Company's capitalization as of the Closing and immediately thereafter (i) the authorized Membership Units of the Company, (ii) the number of each class of Membership Units of the Company issued and outstanding, (iii) the number and each class of Membership Units of the Company reserved for issuance upon exercise of any Convertible Securities and (iv) the name of each holder of Membership Units in the Company and the amount of Membership Units owned by each such holder of such Membership Units and the capital contribution to the Company of each holder of Membership Units. As of the Closing, the Company does not have outstanding any of its Membership Units, except for the Securities and except as set forth on the Capitalization Schedule. As of the Closing, the Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any of the Company's Membership Units, except as set forth on the Capitalization Schedule and except pursuant to the terms of the Investment Documents, the Securities and the LMC Operating Agreement. As of the Closing, all of the outstanding Membership Units of the Company shall be validly issued, fully paid and nonassessable.**

(b) **There are no statutory or, to the Company's Knowledge, except as set forth in the LMC Operating Agreement, contractual equity holders preemptive rights or rights of refusal with respect to the issuance of the Securities hereunder. The Company has not violated and will not knowingly violate any applicable federal or state securities laws in connection with the offer, sale or issuance of any of its Membership Units, and, assuming the truth and accuracy of the Purchaser's representations and warranties set forth in Section 7.3 of this Agreement, there is an exemption available to the Company**

from the registration requirements of the Securities Act or any applicable state securities laws in connection with the offer, sale and issuance of the Securities. To the Company's Knowledge, there are no agreements between the holders of the Company's Membership Units with respect to the voting or transfer of the Company's Membership Units or with respect to any other aspect of the Company's affairs, except for the LMC Operating Agreement.

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6.3 Subsidiaries; Investments.

The attached Subsidiary Schedule correctly sets forth the name of each Subsidiary of the Company, the jurisdiction of its incorporation, formation or organization and the Persons owning the outstanding Equity Interests of such Subsidiary. Except as set forth on the Subsidiary Schedule, the Company does not own or hold the right to acquire any Equity Interests in any other Person.

6.4 Authorization; No Breach.

The execution, delivery and performance of each of the Investment Documents and all other agreements and instruments contemplated hereby and thereby to which the Company is a party, including the Asset Purchase and Contribution Agreement, and all agreements and instruments referenced therein, have been duly authorized by the Company. Except as set forth on the attached Restrictions Schedule, the execution and delivery by the Company of each of the Investment Documents and all other agreements and instruments contemplated hereby and thereby to which it is a party, including the Asset Purchase and Contribution Agreement, and all agreements and instruments referenced therein, the offering, sale and issuance of the Securities hereunder and the fulfillment of and compliance with the respective terms hereof and thereof by the Company, do not and shall not: (a) conflict with or result in a breach of the terms, conditions or provisions of; (b) constitute a default under; (c) result in the creation of any Lien upon the Company's Membership Units or assets pursuant to; (d) give any third party the right to modify, terminate or accelerate any obligation under; (e) result in a violation of; or (f) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or governmental body or agency pursuant to, the Governing Documents of the Company, or any law, statute, rule or regulation to which the Company is subject, or any material agreement, instrument, order, judgment or decree to which the Company is subject.

6.5 Financial Statements.

(a) **Attached hereto as the Financial Statements Schedule are the following financial statements:**

(i) **the audited Special-Purpose Financial Statements of the Company as a division of LMT, as of December 31, 2005 and December 31, 2006 (the Special-Purpose Financial Statements), and the related statements of assets and liabilities, revenues and direct expenses, and notes for the respective 12-month periods then ended; and**

(ii) **the internally prepared profit and loss statement of the Company as a division of LMT, for the period January 1, 2007 to May 31, 2007.**

(b) **To the Company's Knowledge, each of the foregoing financial statements (including in all cases the notes thereto, if any) (i) is consistent with the books and records of LMT (which, in turn, are accurate and complete in all material respects), and (ii) presents fairly the financial condition and results of operations of the Company as a division of LMT for the periods set forth therein.**

6.6 Projections and Pro Forma Financial Statements.

(a) **The Company delivered to Purchasers on May 26, 2007 a correct and complete copy of the latest projections of the income and cash flows of the Company and LMCS for the current year and for two years following Closing. Such projections have been prepared on the basis of the assumptions set forth therein, which the Company in good faith believes are fair and reasonable in light of the historical financial performance of the Company as a division of LMT.**

(b) **The pro forma balance sheet of the Company and LMCS as of the date of the Closing (the Pro Forma Balance Sheet), attached hereto as Exhibit L, is complete and correct in all material respects and presents fairly in all material respects the financial condition of the Company and LMCS as of June 30, 2007 as if the transactions contemplated by the Investment Documents had occurred immediately prior to such date, and such balance sheet contains all pro forma adjustments necessary in order to fairly reflect such assumption.**

6.7 Absence of Undisclosed Liabilities.

The Company does not have any material obligation or liability (whether accrued, absolute, contingent, unliquidated or otherwise) arising out of transactions entered into at or prior to the Closing, or any action or inaction at or prior to the Closing, or any state of facts existing at or prior to the Closing other than: (a) liabilities set forth on the Pro Forma Balance Sheet (including any notes thereto); (b) other liabilities and obligations expressly disclosed on the attached Liabilities Schedule; and (c) any liabilities incurred in connection with the transactions contemplated in any of the Investment Documents.

6.8 No Material Adverse Change.

Since the date of the Special-Purpose Financial Statements, there has been no change in the operating results, assets, liabilities, operations, prospects, business, condition, employee relations, dealer relations, distributor relations, customer relations or supplier relations of the Company or LMCS, taken as a whole, which has had or could reasonably be expected to have, a Material Adverse Effect.

6.9 Assets.

Except as set forth on the attached Assets Schedule, the Company, upon Closing, will have good and marketable title to, or a valid leasehold interest in the material properties and assets located on their premises or shown on the Pro Forma Balance Sheet, free and clear of all Liens, except for Permitted Liens. Except as described on the Assets Schedule, upon Closing the Company's, equipment and other tangible assets will be in good operating condition (ordinary wear and tear excepted) and are fit for use in the ordinary course of business.

6.10 Tax Matters.

Except as set forth on the attached Taxes Schedule:

- (a) **The Company and LMCS have filed all federal and other material Tax Returns which they are required to file under applicable laws and regulations; all such Tax Returns are complete and correct in all material respects and have been prepared in compliance with all applicable laws and regulations in all material respects; the Company has paid all material Taxes due and owing (whether or not such Taxes are required to be shown on a Tax Return) and has withheld and paid over to the appropriate taxing authority all material Taxes which it is required to withhold from amounts paid or owing to any employee, holder of Membership Units, creditor or other third party.**
- (b) **The Company has not made an election under Treas. Reg. §301.7701-3 to be taxed as a corporation. The Company is not liable for the Taxes of another Person (i) under Treas. Reg. § 1.1502-6 (or comparable provisions of state, local or foreign law, statute, rule or regulation), (ii) as a transferee or successor or (iii) by contract, indemnity or otherwise. The Company is not a party to any Tax sharing, Tax allocation, Tax indemnification or similar agreement. The Company has disclosed on its federal income Tax Returns any position taken for which substantial authority (within the meaning of Code §6662(d)(2)(B)(i)) did not exist at the time the return was filed. The Company has not made any payments, is not obligated to make payments and is not a party to an agreement that could obligate it to make any payments that would not be deductible under Code §280G (determined without regard to Code §280G(b)(5)).**
- (c) **The Company has not been a member of an Affiliated Group or filed or been included in a combined, consolidated or unitary income Tax Return, except for the consolidated group of LMT.**

6.11 Contracts and Commitments.

- (a) **Except for the Investment Documents and the Schedules attached thereto and those contracts and agreements listed on the attached Contracts Schedule, after giving effect to the transactions contemplated by this Agreement, as of Closing, neither the Company nor LMCS will be a party to, or bound by, any written or oral material contract, pension, profit sharing or equity option or put rights, lease, warranty or employment Agreement.**

(b) **C₃ has been provided access to a correct and complete copy of each of the written contracts, agreements and instruments and an accurate description of each of the oral contracts and agreements and other items which are referred to on Contracts Schedule, together with all amendments, waivers or other changes thereto.**

6.12 **Intellectual Property Rights.**

The attached Intellectual Property Schedule contains a complete and accurate list of all material (a) patented or registered Intellectual Property Rights owned or licensed by the Company or LMCS, (b) pending patent applications and applications for registrations of other

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(b) C3 has been provided access to a correct and complete copy of each of the written contracts, ~~agreements~~

Intellectual Property Rights filed by the Company or LMCS, (c) registered or unregistered trade names and corporate names owned or licensed by the Company or LMCS and (d) registered or unregistered trademarks, service marks, internet domain names, copyrights, mask works and computer software owned or licensed by the Company or LMCS (collectively, the Intellectual Property). The Company or LMCS shall have the right to use all Intellectual Property free and clear from any liens and on the same terms and conditions as LMT after the Closing. There have been no claims made against LMT asserting the invalidity, misuse or unenforceability of any Intellectual Property and there is no basis for any such claim and LMT has not received any notices of, and has no knowledge of any facts which indicate a likelihood of, any misappropriation by, or conflict with any Person with respect to any Intellectual Property.

6.13 **Litigation, Etc.**

Except as set forth on the Litigation Schedule, there are no material actions, suits, proceedings, orders, investigations or claims pending or, to the Company's Knowledge, threatened against or affecting the Company or LMCS (or affecting any of the officers, directors or employees of the Company or LMCS with respect to their businesses or proposed business activities), or pending or threatened by the Company or LMCS against any third party, at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality.

6.14 **Brokerage.**

Except as set forth on the Brokerage Schedule, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by the Investment Documents based on any arrangement or agreement binding upon the Company. The Company shall pay, and hold the Purchasers harmless against, any liability, loss or expense (including reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any such claim.

6.15 **Governmental Consent, Etc.**

No material permit, consent, approval or authorization of, or declaration to or filing with, any governmental authority is required in connection with the execution, delivery and performance by the Company of the Investment Documents and the other agreements contemplated hereby and thereby, except as set forth on the attached Consents Schedule.

6.16 **Insurance.**

Effective as of the Closing, the insurance coverage of the Company will be customary for prudent companies of similar size engaged in similar lines of business.

6.17 **Employees.**

The Company is not Aware of any executive or key employee of the Company or LMCS or any group of employees of the Company or LMCS that has any plans to terminate employment with the Company or LMCS. The Company and LMCS have complied in all material respects with all laws, statutes, rules and regulations relating to the employment of labor

(including provisions thereof relating to wages, hours, equal opportunity, collective bargaining and the payment of social security and other taxes), and the Company is not Aware of any material labor relations problems (including any union organization activities, threatened or actual strikes or work stoppages or material grievances). To the Company's Knowledge and except as set forth in the Employment Agreement, none of its employees or the employees of LMCS are subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreements relating to, affecting or in conflict with the present or proposed business activities of the Company or LMCS.

6.18 **ERISA.**

- (a) **Neither the Company nor LMCS have any obligation to contribute to (or any other liability, including current or potential withdrawal liability with respect to) any multiemployer plan (as defined in §3(37) of ERISA).**
- (b) **Neither the Company nor LMCS have any obligation to contribute to (or any other liability with respect to) any plan or arrangement whether or not terminated, which provides medical, health, life insurance or other welfare-type benefits for current or future retired or terminated employees (except for limited continued medical benefit coverage required to be provided under Section 4980B of the Code or as required under applicable state law).**
- (c) **Except as set forth on the attached ERISA Schedule, neither the Company nor LMCS maintain, contribute to or have any liability under (or with respect to), any employee plan which is a tax-qualified defined benefit plan (as defined in §3(35) of ERISA), whether or not terminated.**
- (d) **Except as set forth on the attached ERISA Schedule, neither the Company nor LMCS maintain, contribute to or have any liability under (or with respect to) any employee plan which is a tax-qualified defined contribution plan (as defined in §3(34) of ERISA), whether or not terminated.**
- (e) **Except as set forth on the attached ERISA Schedule, neither the Company nor LMCS maintains, contribute to or have any liability under (or with respect to) any plan or arrangement providing benefits to current or former employees, including any bonus plan, plan for deferred compensation, employee health or other welfare benefit plan or other arrangement, whether or not terminated.**

6.19 **Compliance with Laws.**

To the Company's Knowledge, neither the Company nor LMCS have violated any law, statute, rule or regulation which violation has had or would reasonably be expected to have a Material Adverse Effect, and the Company has not received notice of any such violation.

6.20 **Small Business Matters.**

The Company acknowledges that each of C3 and C3 II is a federally licensed SBIC under the SBIC Act. To the knowledge of the Company, the Company, together with its

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affiliates (as that term is defined in 13 CFR §121.103), is a small business concern within the meaning of the SBIC Regulations, including 13 CFR §121.103. After giving effect to the transactions contemplated by the Investment Documents, the Company will have 500 or fewer full-time equivalent employees. The information regarding the Company and affiliates (as defined above) set forth in the Small Business Administration Form 480, Form 652 and Form 1031 delivered at the Closing is accurate and complete. Copies of such forms have been completed and executed by the Company and delivered to C3 and C3 II at the Closing.

6.21 **Affiliated Transactions.**

Except as set forth on the attached Affiliated Transactions Schedule, no officer, manager, director, employee, member, stockholder, partner, limited partner, owner, principal or Affiliate of the Company or LMCS or to Company's Knowledge, any Person related, by blood, marriage or adoption to any such Person in which any such Person owns any beneficial interest, is a party to any agreement, contract, commitment, transaction or arrangement with the Company or LMCS has any material interest in any material property used by the Company or LMCS, except for employment arrangements and compensation in the ordinary course of business, consistent with past practice, or as otherwise contemplated by this Agreement.

6.22 **Investment Company.**

The Company is not an investment company or an affiliated person of, or promoter or principal underwriter for, an investment company, as terms are defined in the Investment Company Act of 1940, as amended, nor is the Company, directly or indirectly, controlled by or acting on behalf of any Person which is an investment company within the meaning of such act.

6.23 **Margin Regulations.**

The Company does not own any margin stock, as the term is defined in Regulation U of the Federal Reserve Board, and the proceeds of the sale of the Securities will be used only for the purposes contemplated in Section 2.4 hereof.

6.24 **Public Utility Holding Company Act.**

The Company is not a holding company, or a subsidiary company of a holding company, or an affiliate of a holding company, or an affiliated subsidiary company of a holding company, within the meaning of the Public Utility Holding Company Act of 1935, as amended.

6.25 **Customers and Suppliers.**

(a) **The attached Customer Schedule lists the ten (10) largest customers of each of the Company, as a division of LMT, for the period beginning January 1, 2005 and ending December 31, 2006 and sets forth opposite the name of each such customer the percentage of consolidated net sales during such period attributable to such customer.**

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(b) **The attached Supplier Schedule lists the five (5) largest suppliers of each of the Company, as a division of LMT, for the period beginning January 1, 2005 and ending December 31, 2006.**

(c) **To the Knowledge of the Company, no supplier listed on the Supplier Schedule has indicated that it shall stop, or materially decrease the rate of, supplying materials, products or services of such company, and no customer listed on the Customer Schedule has indicated that it shall stop, or materially decrease the rate of, buying materials, products or services from the Company once the transactions contemplated by the Investment Documents occur.**

6.26 **Disclosure.**

Neither this Agreement nor any of the schedules, attachments, written statements, documents, certificates or other items provided to the Purchasers by or on behalf of the Company with respect to the transactions contemplated hereby contain any untrue statement of a material fact or omit a material fact necessary to make each statement contained herein or therein not misleading.

6.27 **Closing Date.**

The representations and warranties of the Company contained in this Agreement and elsewhere in the Investment Documents and all information contained in any exhibit, schedule or attachment hereto or thereto or in any certificate or other writing delivered by, or on behalf of, the Company to the Purchasers is and shall be complete and correct as of the Closing, except for those representations and warranties which refer to facts existing on a specific date, which shall be true and correct as of such date (both immediately prior to and immediately after giving effect to the transactions contemplated by the Investment Documents).

Section 7. Representations and Warranties of the Purchasers. As a material inducement to the Company to enter into this Agreement and issuance of the Securities hereunder, the Purchasers hereby represent and warrant to the Company as follows:

7.1 **Organization, Corporate Power and Licenses.**

Each Purchaser is a limited liability company or corporation duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business in every jurisdiction in which its ownership of property or conduct of business requires it to qualify. Each Purchaser possesses all requisite company power and authority and all licenses, certifications, permits and authorizations necessary to own and operate its properties, to carry on its businesses as now conducted and presently proposed to be conducted and to carry out the transactions contemplated by the Investment Documents.

7.2 **Due Authorizations.**

Each Purchaser has full power and authority to execute this Agreement and the other Investment Documents to which it is, or is specified to be, a party. The execution and delivery by Purchaser of the Investment Documents, the performance by it of its obligations thereunder, and the

Transactions have been duly and validly authorized by all necessary action on the part of each Purchaser. This Agreement has been, and each of the other Investment Documents when executed, will be, duly executed and delivered by Purchaser and constitute legal, valid and binding obligations of Purchaser enforceable in accordance with their respective terms, except as such enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors, and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

7.3 **Purchaser s Investment Representations.**

Each Purchaser, severally and not jointly, hereby represents that:

(a) **Purchase Entirely for Own Account.** This Agreement is made with such Purchaser in reliance upon such Purchaser s representation to the Company, which by such Purchaser s execution of this Agreement, such Purchaser hereby confirms, that the Securities purchased hereby will be acquired for investment for such Purchaser s own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same.

(b) **Reliance upon Purchaser s Representations.** Such Purchaser understands that the Securities are not registered under the Securities Act on the ground that the sale provided for in this Agreement and the issuance of the Securities hereunder is exempt from registration under the Securities Act pursuant to Section 4(2) thereof, and that the Company s reliance on such exemption is predicated on such Purchaser s representations set forth herein.

(c) **Investment Experience; Economic Risk.** Such Purchaser understands that the Company has a limited financial and operating history and that an investment in the Company involves substantial risks. Such Purchaser is experienced in evaluating and investing in private placement transactions of securities of companies in a similar stage of development to that of the Company and acknowledges that such Purchaser is able to fend for himself, herself or itself. Such Purchaser has such knowledge and experience in financial and business matters that such Purchaser is capable of evaluating the merits and risks of the investment in the Securities. Such Purchaser can bear the economic risk of such Purchaser s investment and is able, without impairing such Purchaser s financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of such Purchaser s investment.

(d) **Accredited Purchaser.** Such Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(e) **Restricted Securities.** Such Purchaser understands that the Securities are characterized as restricted securities under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such federal securities laws and applicable regulations such

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(d) Accredited Purchaser. Such Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

