

LIQUIDMETAL TECHNOLOGIES INC  
Form 424B3  
July 27, 2007

Prospectus Supplement Filed pursuant to Rule 424(b)(3)  
Registration No. 333-130251

**PROSPECTUS SUPPLEMENT NO. 11**  
**DATED July 27, 2007**  
**(To Prospectus Dated August 7, 2006)**

**LIQUIDMETAL TECHNOLOGIES, INC.**

11,614,322 Shares of Common Stock

This prospectus supplement supplements information contained in, and should be read in conjunction with, that certain Prospectus, dated August 7, 2006, of Liquidmetal Technologies, Inc., as supplemented by Supplement #1, dated August 9, 2006, Supplement #2, dated August 16, 2006, Supplement #3, dated October 12, 2006, Supplement #4, dated October 24, 2006, Supplement #5, dated November 14, 2006, Supplement #6 dated January 4, 2007, Supplement #7 dated March 16, 2007, Supplement #8 dated April 25, 2007, Supplement #9 dated May 15, 2007, and Supplement #10 dated June 6, 2007.

This prospectus supplement is not complete without, and may not be delivered or used except in connection with, the original Prospectus and Supplements #1, #2, #3, #4, #5, #6, #7, #8, #9, and #10 thereto. The Prospectus relates to the public sale, from time to time, of up to 11,614,322 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, as supplemented. Any information that is modified or superseded in the Prospectus shall not be deemed to constitute a part of the Prospectus, except as modified or superseded by this prospectus supplement or Prospectus Supplements #1, #2, #3, #4, #5, #6, #7, #8, #9, and #10.

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, as supplemented, 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, as previously supplemented) 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

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**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 5<sup>th</sup> 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**

<b>Exhibit Number</b>	<b>Document Description</b>
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**

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**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 property

(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 Escrow Agreement the amount of the Estimated Purchase Price Adjustment.

(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



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 65

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.

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**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

(a) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Section 4.4, if there is a net decrease