

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

LIQUIDMETAL TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

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

30452 Esperanza
Rancho Santa Margarita, California 92688
(Address, Including Zip Code, of Principal Executive Offices)

Liquidmetal Technologies, Inc. 2012 Equity Incentive Plan
(Full Title of the Plan)

Thomas Steipp
President and Chief Executive Officer
Liquidmetal Technologies, Inc.
30452 Esperanza
Rancho Santa Margarita, California 92688
Phone: (949) 635-2100
(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

COPIES TO:
Curt P. Creely, Esq.
Foley & Lardner LLP
100 North Tampa Street, Suite 2700
Tampa, Florida 33602
(813) 229-2300
(813) 221-4210 - Fax

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐
Non-accelerated filer ☐ (Do not check if smaller reporting company)

Accelerated filer ☐
Smaller reporting company ☒

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share ⁽²⁾	Proposed Maximum Aggregate Offering Price ⁽²⁾	Amount of Registration Fee
Common Stock, \$0.001 par value	30,000,000 shares	\$ 0.22	\$ 6,450,000	\$ 740

(1) This Registration Statement covers, in addition to the number of shares of Common Stock stated above, options and other rights to purchase or acquire the shares of Common Stock covered by the prospectus of the above-named plan, and, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), any additional shares of Common Stock which become issuable under the Liquidmetal Technologies, Inc. 2012 Equity Incentive Plan (the "Plan") in the event of a stock dividend, reverse stock split, split-up, recapitalization, forfeiture of stock under those plans, or other similar event.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) of the Securities Act of 1933, as amended. The price per share and aggregate offering price are calculated on the basis of \$0.22, the average of the average of the bid and asked price within the 5 business

days prior to the date of filing this Registration Statement

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents constituting Part I of this registration statement (this “Registration Statement”) will be sent or given to participants in the Liquidmetal Technologies, Inc. 2012 Equity Incentive Plan as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed by Liquidmetal Technologies, Inc. (hereinafter referred to as the “Company” or the “Registrant”) with the Securities and Exchange Commission (the “Commission”) pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated herein by reference and deemed to be a part hereof:

- The Company’s Annual Report on Form 10-K for the year ended December 31, 2011 (as filed on March 30, 2012);
- The Company’s Quarterly Report on Form 10-Q for the periods ended March 31, 2012 (as filed on May 15, 2012) and June 30, 2012 (as filed on August 14, 2012);
- The Company’s Current Reports on Form 8-K filed March 2, 2012, March 14, 2012, April 27, 2012, June 5, 2012, June 18, 2012, July 2, 2012, July 2, 2012 and September 7, 2012;
- The description of the Company’s Common Stock contained in Item 1 of the Company’s Registration Statement on Form 8-A12B filed May 20, 2002, including any amendments or reports filed for the purpose of updating such description, and any amendment or report filed for the purpose of updating such description.

All other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated or deemed incorporated herein by reference shall be deemed to be modified or superseded for the purpose of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is, or is deemed to be, incorporated herein by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Certificate of Incorporation (as amended)

In accordance with Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”), the Company’s certificate of incorporation (as amended) eliminates the personal liability of directors to the Company and to its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Company and to its stockholders, (ii) for acts or omissions which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. The Company’s certificate of incorporation (as amended) further provides that, if the DGCL is amended after the effective date of the certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of the Company’s directors will be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The Company’s certificate of incorporation (as amended) also provides that the Company shall indemnify, to the fullest extent permitted by the DGCL (including, without limitation, Section 145 thereof), any and all persons whom the Company has power to indemnify under the DGCL.

The indemnification provided for in the certificate of incorporation (as amended) is not exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such indemnified person’s official capacity and as to action in another capacity while serving as a director, officer, employee, or agent of the Company, shall continue as to a person who has ceased to be a Company director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

Bylaws (as amended)

The Company’s bylaws (as amended) provide that the Company shall, to the fullest extent permitted by Section 145 of the DGCL, indemnify any director, officer, employee or agent of the Company or any person serving at the Company’s request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

The Company’s bylaws (as amended) also provide for the advancement of expenses (including attorneys’ fees) incurred by any person in his capacity as a director or an officer of the Company in defending a civil, criminal, administrative or investigative action, suit or proceeding of the type contemplated by Section 145 of the DGCL prior to the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it is ultimately determined that such person is not entitled to be indemnified by the Company.

Pursuant to the Company’s bylaws (as amended), the Company may, upon resolution passed by its board of directors, purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the Company’s request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of its certificate of incorporation.

The indemnification provided for in the Company’s bylaws (as amended) is not exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office, shall continue as to a person who has ceased to be a Company director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

Liability Insurance

The Company also maintains a policy of directors’ and officers’ liability insurance to indemnify directors and officers with respect to actions taken by them on the Company’s behalf.

Indemnification Agreements

Through Indemnity Agreements with various directors and officers, the Company has, subject to certain conditions and limitations, agreed to indemnify and hold harmless an officer or director if he or she is or was a party, or is threatened to be made a party, to any Action (as defined in the Indemnity Agreements) by reason of his or her status as, or the fact that he or she is or was or has agreed to become, a director or officer of the Company, and/or is or was serving or has agreed to serve as a director or officer of an Affiliate (as defined in the Indemnity Agreements), and/or as to acts performed in the course of his or her duty to the Company and/or to an Affiliate, against Liabilities and reasonable Expenses (each as defined in the Indemnity Agreements) incurred by or on behalf of the officer or director in connection with any Action, including, without limitation, in connection with the investigation, defense, settlement or appeal of any Action. Also through Indemnity Agreements, the Company has agreed to pay to the officer or director, in advance of the final disposition or conclusion of any Action, the officer or director’s reasonable expenses incurred by or on behalf of the officer or director in connection with such Action, provided that certain conditions are satisfied. Finally, through Indemnity Agreements, the Company has agreed that it may purchase and maintain insurance on behalf of an officer or director against any liability and/or expense asserted against him or her and/or incurred by or on behalf of him or her in such capacity as a Company officer or director and/or of an Affiliate, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability or advance of expenses under the provisions of the Indemnity Agreement or under the DGCL as it may then be in effect.

Delaware Law

Section 145 of the DGCL, which was adopted by the Company as described above, provides that a corporation may indemnify any persons, including officers and directors, who were, are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such officer, director, employee or agent acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. A Delaware corporation, such as the Company, may indemnify officers or directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action, suit or proceeding referred to above, the corporation must indemnify him against expenses (including attorney's fees) actually and reasonably incurred by such person in connection therewith.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits filed herewith or incorporated herein by reference are set forth in the attached Exhibit Index.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the Registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the Registrant relating to the offering required to be filed pursuant to Rule 424 under the Securities Act of 1933;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the Registrant or used or referred to by the Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the Registrant or its securities provided by or on behalf of the Registrant; and

(iv) Any other communication that is an offer in the offering made by the Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rancho Santa Margarita, State of California, on the 24th day of September 2012.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ Thomas Steipp

Thomas Steipp
President and Chief Executive Officer
(Principal Executive Officer)

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated. Each person whose signature appears below constitutes and appoints Thomas Steipp and Tony Chung and each of them individually, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either or them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Signature	Title	Date
<u>/s/ Thomas Steipp</u> Thomas Steipp	President, Chief Executive Officer and Director	September 24, 2012
<u>/s/ Tony Chung</u> Tony Chung	Chief Financial Officer	September 24, 2012
<u>/s/ Abdi Mahamed</u> Abdi Mahamed	Chairman of the Board and Director	September 24, 2012
<u>/s/ Ricardo Salas</u> Ricardo Salas	Executive Vice President and Director	September 24, 2012
<u>/s/ Mark Hansen</u> Mark Hansen	Director	September 24, 2012
<u>/s/ Scott Gillis</u> Scott Gillis	Director	September 24, 2012

EXHIBIT INDEX

Exhibit
Number

Document Description

<u>4.1*</u>	Certificate of Incorporation, as amended.
<u>4.2*</u>	Bylaws, as amended.
4.3	Liquidmetal Technologies, Inc. 2012 Equity Incentive Plan (incorporated by reference from Exhibit 10.1 to the Form 8-K filed on July 2, 2012).
<u>5.1*</u>	Opinion of Foley & Lardner LLP.
<u>23.1*</u>	Consent of Registered Independent Public Accounting Firm, SingerLewak LLP.
<u>23.2*</u>	Consent of Registered Independent Public Accounting Firm, Choi, Kim & Park, LLP.
23.3*	Consent of Foley & Lardner LLP (included in Exhibit 5.1).
24	Powers of Attorney (included on signature page).

Documents incorporated by reference to filings made by the Company under the Securities Exchange Act of 1934, as amended, are under Securities and Exchange Commission File No. 001-31332.

* Filed herewith.

CERTIFICATE OF INCORPORATION
OF
LIQUIDMETAL TECHNOLOGIES, INC.

ARTICLE I

The name of the corporation is Liquidmetal Technologies, Inc. (the “Corporation”).

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of the Corporation’s registered agent at such address is CT Corporation System.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law, as the same may be amended or supplemented from time to time (the “DGCL”).

ARTICLE IV

The Corporation shall have authority to issue One Hundred Ten Million (110,000,000) shares of capital stock, consisting of One Hundred Million (100,000,000) shares of Common Stock, \$0.001 par value per share, and Ten Million (10,000,000) shares of Preferred Stock, \$0.001 par value per share. The Preferred Stock authorized by the Certificate of Incorporation may be issued from time to time in one or more series. The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon any series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them.

ARTICLE V

The name and mailing address of the incorporator is:

Steven Vazquez
Foley & Lardner
100 North Tampa Street, Suite 2700
Tampa, FL 33602

ARTICLE VI

To the fullest extent permitted by the DGCL, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The Corporation shall indemnify to the fullest extent permitted by the DGCL (including, without limitation, Section 145 thereof), as the same may be amended and supplemented from time to time, any and all persons whom it shall have power to indemnify under the DGCL. The indemnification provided for herein shall not be exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law under any Bylaw, agreement, vote of stockholders or disinterested directors of the Corporation, or otherwise, both as to action in such indemnified person's official capacity and as to action in another capacity while serving as a director, officer, employee, or agent of the Corporation, and shall continue as to a person who has ceased to be a director, officer, employee, or agent of the Corporation, and shall inure to the benefit of the heirs, executors and administrators of such person.

Any repeal or modification of this Article VI or amendment to the DGCL shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer, or agent occurring prior to, such repeal, modification, or amendment.

ARTICLE VII

The Board of Directors shall have the power to adopt, amend, or repeal Bylaws of the Corporation, subject to the right of the stockholders of the Corporation to adopt, amend, or repeal any Bylaw. In addition, the Bylaws may be amended by the affirmative vote of holders of majority of the outstanding shares of voting stock of the Corporation entitled to vote at an election of directors.

ARTICLE VIII

The number of directors of the Corporation shall be determined by resolution of the Board of Directors. Elections of directors need not be by written ballot, unless the Bylaws of the Corporation shall so provide.

Advance notice of stockholder nominations for the election of directors and of any other business to be brought before any meeting of the stockholders shall be given in the manner provided in the Bylaws of the Corporation. At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, or until their successors have been duly elected and qualified; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the DGCL.

Vacancies occurring on the Board of Directors for any reason may be filled by vote of a majority of the remaining members of the Board of Directors, even if less than a quorum, at any meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been duly elected and qualified.

ARTICLE IX

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the undersigned incorporator has executed this Certificate of Incorporation on May 15, 2003.

/s/ Steven Vazquez

Steven Vazquez, Incorporator

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS

OF

SERIES A PREFERRED STOCK

OF

LIQUIDMETAL TECHNOLOGIES, INC.

(Pursuant to Section 151 of the
Delaware General Corporation Law)

Liquidmetal Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Company”), hereby certifies that, pursuant to authority vested in the Board of Directors of the Company by Article 4 of the Certificate of Incorporation of the Company, the following resolution was adopted as of April 30, 2009 by the Board of Directors of the Company pursuant to Section 141 of the Delaware General Corporation Law:

“Pursuant to authority vested in the Board or Directors of the Company by Article Four of the Company’s Certificate of Incorporation, out of the total authorized number of ten million (10,000,000) shares of Company preferred stock (the “Preferred Stock”), par value \$0.001 per share, there shall be designated (i) a series of one million eight hundred seventy-five thousand (1,875,000) shares which shall be issued hereunder and constitute a single series to be known as “Series A-1 Preferred Stock” (hereinafter called the “Series A-1 Preferred Stock”) and (ii) a series of three million two hundred eighty-one thousand two hundred fifty-three (3,281,253) shares which shall be issued hereunder and constitute a single series to be known as “Series A-2 Preferred Stock” (hereinafter called the “Series A-2 Preferred Stock”, and together with the Series A-1 Preferred Stock, the “Series A Preferred Stock”). The shares of Series A Preferred Stock have the voting powers, designations, preferences and other special rights, and qualifications, limitations and restrictions thereof set forth below:

1. Certain Definitions.

“Approved Stock Plan” means any employee benefit, option or incentive plan which has been approved by the Board of Directors and shareholders of the Company, pursuant to which the Company’s securities may be issued to any employee, consultant, officer or director for services provided to the Company; provided that the number of shares of the Company’s Common Stock issuable pursuant to such plans, in the aggregate, shall not exceed 10% of the shares of the Company’s Common Stock outstanding on a fully-diluted basis on the date of the First Closing (as defined in the Securities Purchase and Exchange Agreement) after giving effect to the First Closing and the full exercise of the Series A-1 Option (as defined in the Securities Purchase and Exchange Agreement), as adjusted for stock splits, reverse stock splits, and the like, unless such increased amount of shares is approved by the holders of the Company’s Common Stock and the holders of the Company’s Series A Preferred Stock voting together as a single class. For purposes of this definition, “fully-diluted basis” shall take into account all outstanding shares of Common Stock as well as all shares of Common Stock issuable upon the conversion of all outstanding convertible securities of the Company, including all options and warrants granted.

“Buyer” means a buyer under the Securities Purchase and Exchange Agreement.

“Charter Amendment” shall have the meaning set forth in the Securities Purchase and Exchange Agreement.

“Closing Bid Price” and “Closing Sale Price” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the OTC Bulletin Board, as reported by Bloomberg Financial Markets, or, if the OTC Bulletin Board begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or last trade price, respectively, of such security prior to 4:00 p.m., New York Time, as reported by Bloomberg Financial Markets, or, if the OTC Bulletin Board is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the holders of Series A Preferred Stock. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

“Common Stock” means the common stock, \$0.001 par value, of the Company, including the stock into which the Series A Preferred Stock is convertible, and any capital stock of any class of the Company thereafter authorized that shall not be limited to a fixed sum in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Company.

“Convertible Securities” means any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

“Current Market Price” shall mean, with respect to any shares of capital stock or other securities, (i) if such stock or securities are listed or admitted to trading on a national securities exchange or an inter-dealer quotation system or traded in the over-the-counter market, the price per share or security, as the case may be, at the close of trading on the Trading Day on which the relevant determination is to be made or, if such day is not a Trading Day, the Trading Day immediately preceding such day and (ii) if such stock or security is not so listed, admitted or traded, the fair market value of such stock or security as determined by the Board of Directors of the Company or, if the Board of Directors of the Company cannot agree, as determined by an Independent Appraiser (as defined below).

“Excluded Securities” means any share of Common Stock issued or issuable: (i) in connection with any Approved Stock Plan; (ii) upon conversion or exercise of any Notes, warrants or shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock of the Company issued (A) pursuant to the Securities Purchase and Exchange Agreement, (B) as dividends on the Series A Preferred Stock, or (C) as interest under the Notes; (iii) upon conversion or exercise of any Options or Convertible Securities which are outstanding on the Original Issuance Date, (iv) pursuant to or in connection with commercial credit arrangements, equipment lease financings, acquisitions of other assets or businesses, and strategic transactions not primarily for financing purposes (including licensing or development agreements), but only to the extent the transactions described in this clause (iv) are entered into with non-affiliates of the Company.

“Independent Appraiser” means an investment banking firm, appraisal firm or any other financial expert of recognized national standing in the United States, selected by the holders of a majority of the Series A Preferred Stock and reasonably acceptable to the Company, that does not (or whose directors, officers, employees, affiliates or stockholders do not) have a direct or indirect material financial interest in the Company or a 5% or greater holder of Series A Preferred Stock, who has not been, and, at the time called upon to give independent financial advice to the Company or a holder of Series A Preferred Stock, is not (and none of its directors, officers, affiliates or stockholders are) a promoter, director or officer of the Company.

“Notes” means the Company’s 8% Secured Convertible Subordinated Notes due January 2011.

“Options” means rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

“Securities Purchase and Exchange Agreement” means the Securities Purchase and Exchange Agreement, dated May 1, 2009, among the Company and the persons identified as “Buyers” therein.

“Senior Indebtedness” means the principal of (and premium, if any), interest on, and all fees and other amounts (including, without limitation, any reasonable costs, enforcement expenses (including reasonable legal fees and disbursements, collateral protection expenses and other reimbursement or indemnity obligations relating thereto)), and all other obligations of the Company under (i) any of the agreements or instruments evidencing any indebtedness of the Company and its subsidiaries arising after the Original Issuance Date to an unaffiliated, third-party commercial lender (together with any renewals, refundings, refinancings or other extensions thereof) for purposes of purchasing equipment (which debt shall be secured only by the assets purchased with such financing), and (ii) indebtedness not to exceed \$4,000,000 in the aggregate that is secured solely by the Company’s and/or its subsidiaries’ accounts receivable and/or inventory.

“Series A Issuance Price” means \$5.00 per share.

“Trading Day” means (i) if the relevant stock or security is listed or admitted for trading on the New York Stock Exchange or any other national securities exchange, a day on which such exchange is open for business; (ii) if the relevant stock or security is not listed or admitted for trading on any national securities exchange but is quoted on any system for the automated dissemination of quotations of securities prices, a day on which trades may be effected through such system; or (iii) if the relevant stock or security is not listed or admitted for trading on any national securities exchange or quoted on any system for the automated dissemination of quotation of securities prices, a day on which the relevant stock or security is traded in a regular way in the over-the-counter market and for which a closing bid and a closing asked price for such stock or security are available.

“Warrants” mean the warrants issued pursuant to the Securities Purchase and Exchange Agreement.

2. Dividends.

2A. The holders of the Series A Preferred Stock shall be entitled to receive dividends, which shall begin to accrue on and be cumulative from the date of issuance of the Series A Preferred Stock (whether or not such dividends have been declared and whether or not there shall be net profits or net assets of the Company legally available for the payment of such dividends) at an annual rate equal to eight percent (8%) of the sum of (A) the Series A Issuance Price (also referred to as the “Liquidation Preference”) plus (B) any accrued dividends through the immediately preceding Dividend Accrual Date that remain unpaid (the sum being referred to as the “Dividend Amount”). The dividends shall accrue semi-annually on June 1 and December 1 of each year (the “Dividend Accrual Dates”) and shall be payable either in cash or in kind by issuance by the Company of additional shares of Series A Preferred Stock (the “PIK Shares”) at the option of the Company of the same securities. For purposes of clarification, if the Company pays any Dividend Amount on shares of Series A-1 Preferred Stock in PIK Shares, then such PIK Shares shall be shares of Series A-1 Preferred Stock. If the Company pays any Dividend Amount on shares of Series A-2 Preferred Stock in PIK Shares, then such PIK Shares shall be shares of Series A-2 Preferred Stock. Dividends shall be payable only when and as declared by the Board of Directors of the Company. Beginning on the second anniversary of the initial issuance date of the Series A Preferred Stock (the “Original Issuance Date”), the dividend rate shall increase to 10% per annum. If the Company elects to pay any Dividend Amount in PIK Shares, each holder of Series A Preferred Stock shall be deemed to be the holder of record of such holder's pro rata share of the PIK Shares issuable with respect to the relevant Dividend Amount notwithstanding that the stock transfer books of the Company shall then be closed or that certificates evidencing such PIK Shares shall not have been actually delivered to such holder of Series A Preferred Stock. In the event that dividends on the Series A Preferred Stock are paid with PIK Shares, each such PIK Share (i) shall be valued at the then applicable Liquidation Preference per share and (ii) shall have the same Liquidation Preference as each share of Series A Preferred Stock with respect to which the PIK Share constituted a dividend. No dividends shall be paid on any Common Stock of the Company or any capital stock of the Company that ranks junior to the Series A Preferred Stock during any fiscal year of the Company until dividends in the aggregate Dividend Amount per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) of Series A Preferred Stock for the current and each prior Dividend Accrual Date shall have been paid or declared and set apart for payment to the holders of the Series A Preferred Stock.

2B. The amount of dividends payable for any period shorter than a full year shall be determined on the basis of twelve 30-day months and a 360-day year. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding.

3. Liquidation; Redemption.

3A. Liquidation. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of the shares of Series A Preferred Stock shall be entitled, before any distributions shall be made to the holders of the Common Stock, or any other class of capital stock of the Company ranking junior to the Series A Preferred Stock, to be paid an amount (the “Series A Liquidation Amount”) equal to the Liquidation Preference per share (appropriately adjusted to reflect the occurrence of any stock split, stock dividend, stock combination, stock subdivision or like occurrences) plus accrued and unpaid dividends to the payment date for the Series A Liquidation Amount; provided that if the amount per share that would be received by the holders of the shares of Series A Preferred Stock of any series if the assets of the Company were distributed ratably to the holders of the Common Stock and the Series A Preferred Stock on an as converted to Common Stock basis would be greater than the Liquidation Preference, then the holders of the Series A Preferred Stock of such series shall be entitled to receive such greater amount. If upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Preferred Stock of the Company shall be insufficient to permit payment to the holders of Series A Preferred Stock of the full Series A Liquidation Amount, then the entire assets of the Company to be distributed shall be distributed to the holders of Series A Preferred Stock. Written notice of such liquidation, dissolution or winding up, stating a payment date, the Series A Liquidation Amount and the place where said sums shall be payable shall be given by mail, postage prepaid, not less than 30 or more than 60 days prior to the payment date stated therein, to the holders of record of each series of Series A Preferred Stock, such notice to be addressed to each shareholder at his post office address as shown by the records of the Company. Unless waived in writing by the holders of a majority of the Series A Preferred Stock then outstanding, voting together as one class, a consolidation or merger of the Company into or with any other entity or entities, or the sale or transfer by the Company of all or substantially all of its assets, in each case under circumstances in which the holders of a majority in voting power of the outstanding capital stock of the Company, immediately prior to such a merger, consolidation or sale, own less than a majority in voting power of the outstanding capital stock of the company or the surviving or resulting company or acquirer, as the case may be, immediately following such a merger, consolidation or sale (each such transaction being hereinafter referred to as a “Corporate Transaction”) shall be treated as a liquidation within the meaning of this paragraph 3 for the purpose of determining the consideration to be received by holders of the Series A Preferred Stock upon redemption of such shares as well as the timing of such deemed redemption.

3B. Optional Redemption. The Company shall have the right at any time when no Notes remain outstanding to redeem the Series A Preferred Stock in whole or in part upon not less than 30 days' notice at a redemption price equal to the Liquidation Preference plus any accrued and unpaid dividends through the redemption date. Such redemption notice will include a certification by the Company's Chief Executive Officer that the Company has sufficient funds available for such redemption. In the event of a redemption of the Series A Preferred Stock in part, the Company shall redeem the shares of each holder of Series A Preferred Stock pro rata (subject to rounding for fractional shares of Series A Preferred Stock). The holders of Series A Preferred Stock shall have the right to convert the Series A Preferred Stock into Common Stock as set forth in Section 4A below at any time prior to the redemption date.

3C. Redemption of Series A Preferred Stock. In the event that the Charter Amendment is not filed with, and accepted for filing by, the Delaware Secretary of State by August 31, 2009, the Company shall deliver written notice thereof via facsimile and overnight courier to the holders of the Series A Preferred Stock. At any time after the receipt of such notice by a holder of the Series A Preferred Stock, such holder may require the Company to redeem all or any portion of such holder's Series A Preferred Stock by delivering written notice thereof (the "Redemption Notice") to the Company, which Redemption Notice shall indicate the number of shares of Series A Preferred Stock such holder is electing to redeem. Each share of the Series A Preferred Stock subject to redemption by the Company pursuant to this Section 3C shall be redeemed by the Company at a redemption price equal to the Liquidation Preference plus any accrued and unpaid dividends through the redemption date.

4. Conversion.

4A. Right to Convert. Subject to the terms and conditions of this subparagraph 4A, the holder of any share or shares of Series A Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Preferred Stock into such number of fully paid and nonassessable whole shares of Common Stock as is obtained by multiplying the number of shares of Series A Preferred Stock so to be converted by the Liquidation Preference per share and dividing the result (together with any accrued but unpaid dividends on the shares being converted as of the conversion date) by (i) in the case of Series A-1 Preferred Stock, the conversion price of \$0.10 per share of Common Stock, (ii) in the case of Series A-2 Preferred Stock, the conversion price of \$0.22 per share of Common Stock, or (iii) if there has been an adjustment of such conversion prices, by the conversion prices as last adjusted and in effect at the date any share or shares of Series A Preferred Stock are surrendered for conversion (such prices, or such prices as last adjusted, being referred to herein as the "Series A-1 Conversion Price" for the Series A-1 Preferred Stock and the "Series A-2 Conversion Price" for the Series A-2 Preferred Stock, and the Series A-1 Conversion Price and Series A-2 Conversion Price are herein together referred to as the "Conversion Price"). Such right of conversion shall be exercised by the holder thereof by surrender of a certificate or certificates for the shares to be converted to the Company at its principal office (or such other office or agency of the Company as the Company may designate by notice in writing to the holder or holders of the Series A Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a properly completed notice of conversion in the form attached to the Series A Preferred Stock certificate with a statement of the name or names (with address), subject to compliance with applicable laws to the extent such designation shall involve a transfer, in which the certificate or certificates for shares of Common Stock, shall be issued. No dividends will be paid on the Series A Preferred Stock at the time of conversion.

As an example, to determine the number of shares of Common Stock issuable upon the conversion of 100 shares of Series A-1 Preferred Stock, the following calculations would be used (assuming no accrued but unpaid dividends and no adjustment of the conversion price):

100 shares of Series A-1 Preferred Stock x \$5.00 per share of Series A-1 Preferred Stock = \$500

\$500/\$0.10 per share of Common Stock = 5,000 shares of Common Stock

As an example, to determine the number of shares of Common Stock issuable upon conversion of 100 shares of Series A-2 Preferred Stock, the following calculations would be used (assuming no accrued but unpaid dividends and no adjustment of the conversion price):

100 shares of Series A-2 Preferred Stock x \$5.00 per share of Series A-2 Preferred Stock = \$500

\$500/\$0.22 per share of Common Stock = 2,273 shares of Common Stock

4B. Issuance of Certificates; Time Conversion Effected. On or before the second business day following the date of receipt by the Company of the written notice referred to in subparagraph 4A and surrender of the certificate or certificates for the share or shares of the Series A Preferred Stock to be converted (the “Share Delivery Date”), the Company shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, subject to compliance with applicable laws to the extent such designation shall involve a transfer, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series A Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Company and the certificate or certificates for such shares shall have been surrendered as aforesaid, and at such time the Series A Preferred Stock rights of the holder of such share or shares shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

4C. Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of the Series A Preferred Stock into Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share, and no payment or adjustment shall be made upon any conversion on account of any cash dividends paid on the Series A Preferred Stock so converted or the Common Stock issued upon such conversion. In case the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 4A exceeds the number of shares converted, the Company shall upon such conversion, execute and deliver to the holder thereof at the expense of the Company, a new certificate for the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered which are not to be converted.

4D. Adjustments to Conversion Price.

(1) Direct or Indirect Issuances of Common Stock. If the Company shall, at any time or from time to time after the Original Issuance Date, issue any shares of Common Stock (other than an issuance of Common Stock as a dividend or in a split or subdivision in respect of which the adjustment provided for in subparagraph 4D(2) applies), any Options, or any Convertible Securities without consideration or for consideration per share less than the Conversion Price in effect for the Series A Preferred Stock immediately prior to the issuance of such Common Stock or securities, then such Conversion Price shall forthwith be lowered to a price determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding determined on a fully-diluted basis (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or upon conversion or exchange of Convertible Securities (including the Series A Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issuance) (the “Outstanding Common”) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Company for such issuance would purchase at such Conversion Price (determined by dividing the aggregate consideration received by the Company in respect of such issuance by the Conversion Price in effect immediately prior to such issuance), and (y) the denominator of which shall be the number of shares of Outstanding Common immediately after such issuance but before giving effect to anti-dilution contained in other Securities (as defined in the Securities Purchase and Exchange Agreement) that would be triggered by the same issuance; provided, however, that adjustments to the Conversion Price pursuant to the terms of this subparagraph 4D(1) shall not apply to issuances of Excluded Securities, including Options to purchase Excluded Securities and Convertible Securities convertible into Excluded Securities. For purposes of this subparagraph 4D, “fully-diluted basis” shall take into account all outstanding shares of Common Stock as well as all shares of Common Stock issuable upon the conversion of all outstanding convertible securities of the Company, including all options and warrants granted.

For the purposes of any adjustment of the Conversion Price pursuant to paragraph (1) of this subparagraph 4D, the following provisions shall be applicable:

(i) Such adjustment shall be separately calculated for the Series A-1 Preferred Stock and the Series A-2 Preferred Stock based on the respective Series A-1 Conversion Price and Series A-2 Conversion Price then in effect.

(ii) In the case of the issuance of Common Stock for cash in a public offering or private placement, the consideration shall be deemed to be the amount of cash paid therefor before deducting therefrom any discounts, commissions or placement fees payable by the Company to any underwriter or placement agent in connection with the issuance and sale thereof.

(iii) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors of the Company.

(iv) In the case of the issuance of Options or Convertible Securities (except for Options or Convertible Securities which are Excluded Securities):

(A) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such Options (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time) shall be deemed to have been issued at the time such Options were issued and for a consideration equal to the consideration (determined in the manner provided in subparagraphs (ii) and (iii) above), if any, received by the Company upon the issuance of such Options plus the minimum purchase price provided in such Options for the Common Stock covered thereby;

(B) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such Convertible Securities or upon the exercise of Options to purchase or rights to subscribe for such Convertible Securities and subsequent conversion or exchange thereof (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time) shall be deemed to have been issued at the time such Convertible Securities, Options, or rights were issued and for a consideration equal to the consideration received by the Company for any such Convertible Securities and related Options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Company upon the conversion or exchange of such Convertible Securities or the exercise of any related Options or rights (the consideration in each case to be determined in the manner provided in paragraphs (ii) and (iii) above);

(C) on any change in the number of shares or exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchanges for such securities, the Conversion Price shall forthwith be readjusted to such conversion price as would have been obtained had the adjustment made upon the issuance of such options, rights or securities not converted prior to such change or options or rights related to such securities not converted prior to such change been made upon the basis of such change; and

(D) no further adjustment of the Conversion Price adjusted upon the issuance of any such options, rights, convertible securities or exchangeable securities shall be made as a result of the actual issuance of Common Stock on the exercise of any such rights or options or any conversion or exchange of any such securities.

4D(2). Subdivision or Combination of Stock. In case the Company shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares or shall declare or pay a dividend on its outstanding shares of Common Stock payable in shares of Common Stock, the Series A-1 Conversion Price and Series A-2 Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Company shall be combined into a smaller number of shares, such Conversion Prices in effect immediately prior to such combination shall be proportionately increased.

4D(3). Record Date. In case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

4D(4). Certain Distributions. If, at any time or from time to time after the Original Issuance Date, the Company shall issue or distribute to the holders of shares other than Series A Preferred Stock (the "Dividend Stock") evidences of its indebtedness, any other securities of the Company or any cash, property or other assets (excluding any issuance or distribution described in paragraph 4D(1), 4D(2), or 4(E), and also excluding cash dividends or cash distributions paid out of net profits legally available therefor in the full amount thereof) (any such non-excluded event being herein called a "Special Dividend"), then and in each such event the holders of each series of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock of such series had been converted into Common Stock on the date of such event.

4E. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Company shall be effected in such a way (including, without limitation, by way of consolidation or merger, but excluding a consolidation, merger or sale which is treated as a Liquidation with respect to holders of Series A Preferred Stock for purposes of paragraph 3) that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock then, as a condition of such reorganization or reclassification, lawful and adequate provision (in form satisfactory to the holders of at least a majority of the outstanding shares of Series A Preferred Stock, voting together as one class) shall be made whereby each holder of a share or shares of Series A Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock of the Company immediately theretofore receivable upon the conversion of such share or shares of the Series A Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of Common Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization or reclassification not taken place and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights (including an immediate adjustment, by reason of such reorganization or reclassification, of the Conversion Price to the value for the Common Stock reflected by the terms of such reorganization or reclassification if the value so reflected is less than the Conversion Price in effect immediately prior to such reorganization or reclassification). In the event of a merger or consolidation of the Company as a result of which a greater or lesser number of shares of common stock of the surviving company are issuable to holders of the Common Stock of the Company outstanding immediately prior to such merger or consolidation, the Conversion Price in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock of the Company. The Company will not effect any such consolidation or merger, or any sale of all or substantially all its assets and properties, unless prior to the consummation thereof the successor company (if other than the Company) resulting from such consolidation or merger or the company purchasing such assets shall assume by written instrument (in form satisfactory to the holders of at least a majority of the outstanding shares of Series A Preferred Stock voting together as one class) executed and mailed or delivered to each holder of shares of Series A Preferred Stock at the last address of such holder appearing on the books of the Company, the obligation to deliver to such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to receive.

4F. Notice of Adjustment. Upon any adjustment of the Series A-1 Conversion Price or Series A-2 Conversion Price, then, and in each such case, the Company shall give written notice thereof by first class mail, postage prepaid, addressed to each holder of shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock, as applicable, at the address of such holder as shown on the books of the Company, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

4G. Other Notices. In case at any time:

(1) the Company shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(2) the Company shall offer for subscription pro rata to the holders of its Common Stock any additional shares of such stock of any class or other rights;

(3) there shall be any capital reorganization or reclassification of the capital stock of the Company, or a consolidation or merger of the Company with, or a sale of all or substantially all its assets to, another company; or

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of said cases, the Company shall give, by first class mail, postage prepaid, addressed to each holder of any shares of Series A Preferred Stock at the address of such holder as shown on the books of the Company, (a) at least 15 days' prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 15 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

4H. Mandatory Conversion. The Board of Directors of the Company shall have the right to convert each share of Series A Preferred Stock into Common Stock no less than 30 days after the Company provides written notice to holders of Series A Preferred Stock certifying that the Current Market Price of the Common Stock for 30 consecutive trading days has exceeded \$0.70 (as appropriately adjusted for stock dividends, stock splits, recombinations and reclassifications of the Common Stock) with an average daily trading volume during such period of not less than 200,000 shares of Common Stock. In addition, (A) the Board of Directors of the Company shall convert each share of Series A-1 Preferred Stock into Common Stock upon receipt of the written notice of holders of a majority of the then-outstanding shares of Series A-1 Preferred Stock of their election to cause an automatic conversion pursuant to this subparagraph 4H, and (B) the Board of Directors of the Company shall convert each share of Series A-2 Preferred Stock into Common Stock upon receipt of the written notice of holders of a majority of the then-outstanding shares of Series A-2 Preferred Stock of their election to cause an automatic conversion pursuant to this subparagraph 4H. Any such conversion shall be effected in accordance with the provisions of subparagraphs 4B and 4C hereof, and any Series A Preferred Stock converted pursuant to this paragraph shall be converted into a number of shares of Common Stock equal to the quotient obtained by dividing (i) the Liquidation Preference per share of Series A Preferred Stock by (ii) the applicable Conversion Price.

4I. Stock to be Reserved.

(1) From and after the filing and acceptance of the Charter Amendment with the Delaware Secretary of State, the Company will at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Preferred Stock. All shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all liens, duties and charges arising out of or by reason of the issue thereof (including, without limitation, in respect of taxes) and, without limiting the generality of the foregoing, the Company covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the effective Conversion Price. The Company will take all such action within its control as may be necessary on its part to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Common Stock of the Company may be listed. The Company will not take any action which results in any adjustment of the Conversion Price if after such action the total number of shares of Common Stock issued and outstanding and thereafter issuable upon exercise of all options and conversion of Convertible Securities, including upon conversion of the Series A Preferred Stock, would exceed the total number of shares of such class of Common Stock then authorized by the Company's Certificate of Incorporation.

(2) The Company will at all times reserve and keep available out of its authorized but unissued Series A Preferred Stock, a sufficient number of shares solely for the purpose of satisfying the Company's obligations to issue PIK Shares as herein provided. All shares of Series A Preferred Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all liens, duties and charges arising out of or by reason of the issue thereof (including, without limitation, in respect of taxes).

4J. No Reissuance of Series A Preferred Stock. Shares of Series A Preferred Stock that are converted into shares of Common Stock as provided herein shall not be reissued.

4K. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of the Series A Preferred Stock shall be made without charge to the holders thereof for any issuance tax, stamp tax, transfer tax, duty or charge in respect thereof, provided that the Company shall not be required to pay any tax, duty or charge which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Preferred Stock which is being converted.

4L. Closing of Books. The Company will at no time close its transfer books against the transfer of any Series A Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock in any manner which interferes with the timely conversion of such Series A Preferred Stock; provided, however, nothing herein shall be construed to prevent the Company from setting record dates for the holders of its securities.

4M. Limitations on Conversions.

(1) Beneficial Ownership. Unless waived by a holder of Series A Preferred Stock upon no less than sixty one (61) days prior written notice to the Company, the Company shall not effect any conversion of the Series A Preferred Stock pursuant to this Section 4 to the extent that after giving effect to such conversion such holder (together with such holder's affiliates) would beneficially own in excess of 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. Even if such holder waives the limitation set forth in the preceding sentence, the Company shall in no event effect any conversion under this Section 4, and such holder shall not have the right to convert Series A Preferred Stock pursuant to this Section 4, to the extent that after giving effect to such conversion, such holder (together with such holder's affiliates) would beneficially own in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentences, the number of shares of Common Stock beneficially owned by a holder of Series A Preferred Stock and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining Series A Preferred Stock owned by such holder or any of its affiliates and (B) conversion of the unexercised or nonconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 4(M)(1), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 4(M)(1), in determining the number of outstanding shares of Common Stock, the holders of Series A Preferred Stock may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Form 10-Q or Form 10-K, (y) a more recent public announcement by the Company or (z) any other notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of a holder of Series A Preferred Stock, the Company shall within two (2) business days confirm orally and in writing to such holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Series A Preferred Stock, by such holder or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. Notwithstanding the foregoing, the limitations of this paragraph shall not apply to Carlyle Liquid, LLC, Carlyle Holdings, LLC, Abdi Mahamedi, Atlantic Realty, and Ricardo Salas.

(2) Until the filing and acceptance of the Charter Amendment with the Delaware Secretary of State, no Buyer shall be issued, upon conversion or exercise of such Buyer's Notes, Series A Preferred Stock, or Warrants, a number of shares of Common Stock in the aggregate for all such conversions or exercises greater than the product of the Conversion Cap (as defined below) multiplied by a fraction, the numerator of which is the aggregate purchase price paid by the Buyer for all of the Notes, shares of Series A Preferred Stock, and Warrants purchased by the Buyer pursuant to the Securities Purchase and Exchange Agreement and the denominator of which is \$23,124,933.33, which is the aggregate purchase price paid by all of the Buyers for all of the Notes, shares of Series A Preferred Stock, and Warrants purchased pursuant to the Securities Purchase and Exchange Agreement (with respect to each Buyer, the "Conversion Cap Allocation"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Series A Preferred Stock, the transferee shall be allocated a pro rata portion of such Buyer's Conversion Cap Allocation based on the Series A Issuance Price of the Series A Preferred Stock purchased by the Buyer, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Conversion Cap Allocation allocated to such transferee. The term "Conversion Cap" shall mean 32,985,406 shares of Common Stock, which represents all shares of authorized but unissued Common Stock as of the date of the Securities Purchase and Exchange Agreement to the extent not previously reserved for issuance pursuant to Convertible Securities and Options existing prior to such date.

4N. Company's Failure to Timely Convert. If the Company shall fail to issue a certificate to a holder of Series A Preferred Stock or credit such holder's balance account with the Depository Trust Company ("DTC") through its Deposit/Withdrawal At Custodian system for the number of shares of Common Stock to which such holder is entitled upon conversion of any Series A Preferred Stock on or prior to the date which is five (5) business days after the date that such holder exercises its conversion rights pursuant to this Section 4 (a "Conversion Failure"), then (A) the Company shall pay liquidated damages to such holder for each day of such Conversion Failure in an amount equal to 1.0% of the product of (I) the sum of the number of shares of Common Stock not issued to such holder on or prior to the Share Delivery Date and to which the such holder is entitled, and (II) the Closing Sale Price of the Common Stock on the Share Delivery Date and (B) such holder, upon written notice to the Company, may void its notice of conversion (in the form attached to the Series A Preferred Stock) with respect to, and have returned any Series A Preferred Stock that has not been converted pursuant to such notice of conversion; provided that the voiding of such notice of conversion shall not affect the Company's obligations to make any payments of dividends pursuant to Section 2 hereof which have accrued prior to the date of such notice pursuant to this Section 4(N) or otherwise. In addition to the foregoing, if within three (3) Trading Days after the Company's receipt of such notice of conversion, the Company shall fail to issue and deliver a certificate to such holder or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder is entitled upon such holder's conversion of any Series A Preferred Stock, and if on or after such Trading Day such holder purchases (in an open market transaction or otherwise) Common Stock to deliver in satisfaction of a sale by such holder of Common Stock issuable upon such conversion that such holder anticipated receiving from the Company (a "Buy-In"), then the Company shall, within five (5) business days after such holder's request and in such holder's discretion, either (i) pay cash to such holder in an amount equal to such holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Company's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to such holder a certificate or certificates representing such Common Stock and pay cash to such holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Bid Price on the date that such holder exercises its conversion rights pursuant to this Section 4.

5. Right to Participate in Future Issuances.

In case the Company proposes at any time to issue or sell any Common Stock or any Options or Convertible Securities other than Excluded Securities and other than securities issued in a public offering (the “Offered Securities”), the Company shall, no later than ten (10) days prior to the consummation of such transaction (a “Preemptive Rights Transaction”), give notice in writing (the “Preemptive Rights Offer Notice”) of such Preemptive Rights Transaction to each Series A Preferred Stock holder (each, a “Preemptive Rights Holder”). The Preemptive Rights Offer Notice shall describe the proposed Preemptive Rights Transaction, identify the proposed purchaser, and contain an offer (the “Preemptive Rights Offer”) to sell to each Preemptive Rights Holder, at the same consideration to be paid by the proposed purchasers, that number of Offered Securities required to maintain such Preemptive Rights Holder’s ownership percentage of the fully-diluted Common Stock in effect as of the date of the Preemptive Rights Offer Notice (the “Maximum Offer Amount”); provided, however, that in calculating such ownership percentage, only the Preemptive Rights Holder’s Series A Preferred Stock (and not any outstanding shares of Common Stock or Options or other Convertible Securities then held by the Preemptive Rights Holder) will be included when the percentage interest is calculated. A Preemptive Rights Holder may subscribe for all or a portion of its Maximum Offer Amount on or prior to the 30th day following the date of sale of the Offered Securities to the initial purchasers. Any of the Offered Securities not subscribed for by a Preemptive Rights Holder shall be offered to the other Preemptive Rights Holders pursuant to a written notice from the Company on a pro rata basis for a period of 30 days. When the Offered Securities are accepted in the manner set forth in this paragraph 5, the Company shall, as promptly as practicable but no later than twenty (20) days after acceptance by a Preemptive Rights Holder of its subscription portion of the Maximum Offer Amount, issue certificates representing the applicable number of Offered Securities (free of all liens and encumbrances) to such holder against delivery by such holder of the consideration payable therefor. Any notice required to be given by Company pursuant to this paragraph 5 shall (i) specify the name of the proposed purchaser, the number of shares to be issued, the amount and type of consideration to be received therefor, and the other material terms on which the Company proposes to issue the shares, and (ii) contain an offer to sell to those holders permitted to participate in such offer all of such shares at the same price per share and for consideration consisting of (x) cash equal to the amount of cash proposed to be paid by the proposed purchaser and (y) if any of the consideration to be paid by the proposed purchaser is non-cash consideration, either the same non-cash consideration or, at the election of the particular holder, cash having an equivalent value to the non-cash consideration proposed to be paid by the proposed purchaser. The determination of equivalent value required by the preceding sentence shall be made by an Independent Appraiser, it being understood that the fees and expenses of such Independent Appraiser shall be paid by the Company. Notwithstanding anything to contrary herein, before the Company sends a Preemptive Rights Offer Notice to a Preemptive Rights Holder, the Company shall send written notification to such Preemptive Rights Holder that the Company intends to send a Preemptive Rights Offer Notice to such Preemptive Rights Holder (such notice, the “Pre-Notice”). If the Company does not receive, within three (3) business days from the date of the Pre-Notice, a written notice from such Preemptive Rights Holder stating that he, she or it does not wish to receive material non-public information relating to the Company, then the Company shall send a Preemptive Rights Offer Notice to such Preemptive Rights Holder and such Preemptive Rights Holder shall not have the rights set forth in this paragraph.

6. Voting - Series A Preferred Stock. In addition to any class voting rights provided by law and the Certificate of Incorporation, the holders of Series A Preferred Stock shall have the right to vote together with the holders of Common Stock as a single class on any matter on which the holders of Common Stock are entitled to vote, at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the holders of Common Stock; provided, however, that from and after the filing and acceptance of the Charter Amendment with the Delaware Secretary of State, the voting rights of the holders of Series A Preferred Stock shall be subject to any limitations that are set forth in the Charter Amendment. With respect to the voting rights of the holders of the Series A Preferred Stock pursuant to the preceding sentence, each holder of Series A Preferred Stock shall be entitled to one vote for each share of Common Stock that would be issuable to such holder upon the conversion of all the shares of Series A Preferred Stock held by such holder on the record date for the determination of shareholders entitled to vote at such meeting or the effective date of such written consent (after taking into account the conversion limitation set forth in Section 4M(1) above but disregarding the conversion limitation set forth in Section 4M(2) hereof), and shall have voting rights and powers equal to the voting rights and powers of the Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company.

7. Further Restrictions. As long as at least 25% of the number of shares of Series A Preferred Stock issued on the Original Issuance Date are outstanding, and in addition to any other vote of the holders of Series A Preferred Stock required by law or by the Certificate of Incorporation, the prior consent of the holders of at least two-thirds of the outstanding Series A Preferred Stock shall be required for the Company to take any action that: (i) alters or changes the rights, preferences or privileges of the Series A Preferred Stock, (ii) constitutes the incurrence of indebtedness by the Company which possesses senior repayment rights to the Series A Preferred Stock, other than Senior Indebtedness, (iii) creates (by reclassification or otherwise) any new class or series of shares or securities having rights, preferences or privileges senior to, or on a parity with, the Series A Preferred Stock, (iv) results in the redemption of any shares of Common Stock or any other shares or securities on a parity with or junior to the Series A Preferred Stock (other than pursuant to equity incentive agreements with service providers giving the Company the right to repurchase shares upon the termination of services), (v) results in the issuance of any shares of Common Stock or Options or Convertible Securities with an effective issuance, conversion or exercise price, as applicable, lower than the Series A-1 Conversion Price at the time of such issuance (other than Excluded Securities), (vi) results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold, (vii) amends or waives any provision of the Company's Certificate of Incorporation or Bylaws relative to the Series A Preferred Stock, (viii) increases the authorized size of the Company's Board of Directors, (ix) results in the payment or declaration of any dividend on any shares of Common Stock or any other shares or securities junior to the Series A Preferred Stock, (x) results in a confession of judgment against the Company, or settle or compromise by or against the Company (provided that no such consent shall be required for matters involving less than \$50,000.00), (xi) results in any filing by the Company for bankruptcy or receivership, (xii) results in any guaranty of any debt of a third party other than a direct or indirect wholly owned subsidiary of the Company; (xiii) results in the making of any material cash investments in the securities of another entity other than in the ordinary course of business or other than investments in wholly owned subsidiaries of the Company, (xiv) results in the mortgaging, pledging, or creating of a security interest in the property of the Company other than in the ordinary course of the Company's business consistent with past practice, or (xv) results in the Company entering into a materially new line of businesses not related to the Company's current line of business.

8. No Waiver. Except as otherwise modified or provided for herein, the holders of Series A Preferred Stock shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the applicable provisions of the Delaware General Corporation Law.

9. No Impairment. The Company will not, through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities on any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but will at all times in good faith assist in the carrying out of all the provisions of Article Four and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights and liquidation preferences granted hereunder of the holders of the Series A Preferred Stock against impairment.

IN WITNESS WHEREOF, this Certificate of Designation has been executed by the Company by a duly authorized executive officer as of this 1st day of May, 2009.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ Tony Chung
Name: Tony Chung
Title: Chief Financial Officer

CERTIFICATE OF AMENDMENT
TO THE CERTIFICATE OF INCORPORATION OF
LIQUIDMETAL TECHNOLOGIES, INC.

Liquidmetal Technologies, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “General Corporation Law”), does hereby certify as follows:

FIRST: That the original Certificate of Incorporation of Liquidmetal Technologies, Inc. (the “Corporation”) was filed with the Secretary of State of the State of Delaware on May 15, 2003, and that a Certificate of Ownership and Merger of Liquidmetal Technologies (a California corporation) with and into the Corporation was filed with the Secretary of State of the State of Delaware on May 21, 2003.

SECOND: That, at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted setting forth proposed amendments to the Certificate of Incorporation of the Corporation, declaring said amendments to be advisable, and calling a meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendments is as follows:

RESOLVED, that the Certificate of Incorporation of this Corporation be amended by changing Article IV thereof so that, as amended, Article IV shall be and read as follows:

“The Corporation shall have authority to issue Three Hundred Ten Million (310,000,000) shares of capital stock, consisting of Three Hundred Million (300,000,000) shares of common stock, \$0.001 par value per share (the “Common Stock”), and Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share (the “Preferred Stock”), of which One Million Eight Hundred Seventy-Five Thousand (1,875,000) shares are hereby designated as “Series A-1 Preferred Stock” and Three Million Two Hundred Eighty-One Thousand Two Hundred Fifty-Three (3,281,253) shares are hereby designated as “Series A-2 Preferred Stock.” The Preferred Stock authorized by the Certificate of Incorporation, as amended, may be issued from time to time in one or more series. The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon any series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them. The voting powers, designations, preferences and other special rights, and qualifications, limitations and restrictions of the Series A-1 Preferred Stock and Series A-2 Preferred Stock (collectively, the “Series A Preferred Stock”) are set forth in a Certificate of Designation, Preferences, and Rights previously filed by the Corporation with the Secretary of State of Delaware on May 1, 2009 (the “Series A Certificate of Designation”).”

RESOLVED, that the Certificate of Incorporation of this Corporation be amended by changing Article VIII thereof so that, as amended, Article VIII shall be and read as follows:

“(a) Directors – General. Subject to Section (b) below, the number of directors of the Corporation shall be determined by resolution of the Board of Directors. Elections of directors need not be by written ballot, unless the Bylaws of the Corporation shall so provide.

(b) Series A Directors and Common Directors. Notwithstanding the foregoing, for as long as at least 25% of the number of shares of Series A Preferred Stock issued on May 1, 2009 (the initial issuance date of the Series A Preferred Stock) are outstanding, the Board of Directors of the Company shall consist of five (5) members. In any election of directors taking place after May 1, 2009, as long as at least 25% of the number of shares of Series A Preferred Stock issued on May 1, 2009 are outstanding, (i) the holders of the Series A Preferred Stock, voting as a separate class, shall have the right to elect two of the members of the Corporation’s Board of Directors, (ii) the holders of the Common Stock, voting as a separate class, shall have the right to elect two of the members of Company’s Board of Directors (the “Common Directors”), and (iii) the holders of the Common Stock and the holders of the Series A Preferred Stock, voting together as a single class (with the holders of Preferred Stock voting on an as converted to Common Stock basis as described in the last sentence of this Section (b)), shall have the right to elect one of the members of the Company’s Board of Directors.

In addition to any class voting rights provided by law and the Certificate of Incorporation, and subject to the first paragraph of this Section (b), the holders of Series A Preferred Stock shall have the right to vote together with the holders of Common Stock as a single class on any matter on which the holders of Common Stock are entitled to vote, at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner of the holders of the Common Stock; provided, however, that the holders of Series A Preferred Stock shall not have the right to vote on the election of the Common Directors. With respect to the voting rights of the holders of the Series A Preferred Stock pursuant to the preceding sentence, each holder of Series A Preferred Stock shall be entitled to one vote for each share of Common Stock that would be issuable to such holder upon the conversion of all the shares of Series A Preferred Stock held by such holder on the record date for the determination of shareholders entitled to vote at such meeting or the effective date of such written consent (after taking into account the conversion limitation set forth in Section 4M(1) of the Series A Certificate of Designation but disregarding the conversion limitation set forth in Section 4M(2) of the Series A Certificate of Designation), and shall have voting rights and powers equal to the voting rights and powers of the Common Stock, and shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws of the Company.”

THIRD: That thereafter, pursuant to a resolution of the Board of Directors of the Corporation, a special meeting of the stockholders of the Corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law at which meeting the necessary number of shares as required by statute were voted in favor of the amendments.

FOURTH: That said amendments were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law.

FIFTH: That said amendments shall be effective upon filing in the Office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by a duly authorized officer this 31st day of July, 2009.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ Tony Chung
Name: Tony Chung
Title: Chief Financial Officer

AMENDED AND RESTATED
CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS

OF

SERIES A PREFERRED STOCK

OF

LIQUIDMETAL TECHNOLOGIES, INC.

(Pursuant to Section 151 of the
Delaware General Corporation Law)

Pursuant to Section 242 of the Delaware General Corporation Law, the undersigned officer hereby certifies that:

A. He is the duly elected and acting Chief Executive Officer of Liquidmetal Technologies, Inc., a Delaware corporation (the “Company”).

B. On May 1, 2009, the Company filed with the Delaware Secretary of State a Certificate of Designations, Preferences, and Rights of Series A Preferred Stock (the “Designation”) creating a series of 1,875,000 shares of “Series A-1 Preferred Stock” (hereinafter called the “Series A-1 Preferred Stock”) and a series of 3,281,253 shares of “Series A-2 Preferred Stock” (hereinafter called the “Series A-2 Preferred Stock”).

C. Pursuant to resolutions duly adopted by the board of directors of the Company as of October 29, 2010, the Chief Executive Officer of the Company was authorized and directed to file an amended and restated Designation setting forth the changes to the rights and preferences of the Series A-1 Preferred Stock and Series A-2 Preferred Stock as are set forth below (the “Amended Designation”).

D. The Amended Designation was duly approved and consented to by the holders of the Series A-1 Preferred Stock and Series A-2 Preferred Stock (both as separate classes and as a single class) pursuant to and in accordance with Sections 6 and 7 of the Designation, Article VIII of the Company’s Certificate of Incorporation, as amended, and Section 242 of the Delaware General Corporation Law.

NOW, THEREFORE, the Designation is hereby amended and restated as follows:

“Pursuant to authority vested in the Board or Directors of the Company by Article IV of the Company’s Certificate of Incorporation, out of the total authorized number of ten million (10,000,000) shares of Company preferred stock (the “Preferred Stock”), par value \$0.001 per share, there shall be designated (i) a series of one million eight hundred seventy-five thousand (1,875,000) shares which shall be issued hereunder and constitute a single series to be known as “Series A-1 Preferred Stock” (hereinafter called the “Series A-1 Preferred Stock”) and (ii) a series of three million two hundred eighty-one thousand two hundred fifty-three (3,281,253) shares which shall be issued hereunder and constitute a single series to be known as “Series A-2 Preferred Stock” (hereinafter called the “Series A-2 Preferred Stock”, and together with the Series A-1 Preferred Stock, the “Series A Preferred Stock”). The shares of Series A Preferred Stock have the voting powers, designations, preferences and other special rights, and qualifications, limitations and restrictions thereof set forth below:

1. Certain Definitions.

“Approved Stock Plan” means any employee benefit, option or incentive plan which has been approved by the Board of Directors and shareholders of the Company, pursuant to which the Company’s securities may be issued to any employee, consultant, officer or director for services provided to the Company; provided that the number of shares of the Company’s Common Stock issuable pursuant to such plans, in the aggregate, shall not exceed 10% of the shares of the Company’s Common Stock outstanding on a fully-diluted basis on the date of the First Closing (as defined in the Securities Purchase and Exchange Agreement) after giving effect to the First Closing and the full exercise of the Series A-1 Option (as defined in the Securities Purchase and Exchange Agreement), as adjusted for stock splits, reverse stock splits, and the like, unless such increased amount of shares is approved by the holders of the Company’s Common Stock and the holders of the Company’s Series A Preferred Stock voting together as a single class. For purposes of this definition, “fully-diluted basis” shall take into account all outstanding shares of Common Stock as well as all shares of Common Stock issuable upon the conversion of all outstanding convertible securities of the Company, including all options and warrants granted.

“Buyer” means a buyer under the Securities Purchase and Exchange Agreement.

“Charter Amendment” shall have the meaning set forth in the Securities Purchase and Exchange Agreement.

“Closing Bid Price” and “Closing Sale Price” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the OTC Bulletin Board, as reported by Bloomberg Financial Markets, or, if the OTC Bulletin Board begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or last trade price, respectively, of such security prior to 4:00 p.m., New York Time, as reported by Bloomberg Financial Markets, or, if the OTC Bulletin Board is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported by Pink OTC Markets (formerly known as Pink Sheets). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the holders of Series A Preferred Stock. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

“Common Stock” means the common stock, \$0.001 par value, of the Company, including the stock into which the Series A Preferred Stock is convertible, and any capital stock of any class of the Company thereafter authorized that shall not be limited to a fixed sum in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Company.

“Convertible Securities” means any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

“Current Market Price” shall mean, with respect to any shares of capital stock or other securities, (i) if such stock or securities are listed or admitted to trading on a national securities exchange or an inter-dealer quotation system or traded in the over-the-counter market, the price per share or security, as the case may be, at the close of trading on the Trading Day on which the relevant determination is to be made or, if such day is not a Trading Day, the Trading Day immediately preceding such day and (ii) if such stock or security is not so listed, admitted or traded, the fair market value of such stock or security as determined by the Board of Directors of the Company or, if the Board of Directors of the Company cannot agree, as determined by an Independent Appraiser (as defined below).

“Excluded Securities” means any share of Common Stock issued or issuable: (i) in connection with any Approved Stock Plan; (ii) upon exercise of any warrants of the Company issued pursuant to the Securities Purchase and Exchange Agreement or as dividends on the Series A Preferred Stock, or (C) in connection with any public offering by the Company; (iii) upon conversion or exercise of any Options or Convertible Securities which are outstanding on the Original Issuance Date, (iv) pursuant to or in connection with commercial credit arrangements, equipment lease financings, acquisitions of other assets or businesses, and strategic transactions not primarily for financing purposes (including licensing or development agreements), but only to the extent the transactions described in this clause (iv) are entered into with non-affiliates of the Company.

“Independent Appraiser” means an investment banking firm, appraisal firm or any other financial expert of recognized national standing in the United States, selected by the holders of a majority of the Series A Preferred Stock and reasonably acceptable to the Company, that does not (or whose directors, officers, employees, affiliates or stockholders do not) have a direct or indirect material financial interest in the Company or a 5% or greater holder of Series A Preferred Stock, who has not been, and, at the time called upon to give independent financial advice to the Company or a holder of Series A Preferred Stock, is not (and none of its directors, officers, affiliates or stockholders are) a promoter, director or officer of the Company.

“Options” means rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

“Original Issuance Date” means May 1, 2009.

“Securities Purchase and Exchange Agreement” means the Securities Purchase and Exchange Agreement, dated May 1, 2009, among the Company and the persons identified as “Buyers” therein.

“Senior Indebtedness” means the principal of (and premium, if any), interest on, and all fees and other amounts (including, without limitation, any reasonable costs, enforcement expenses (including reasonable legal fees and disbursements, collateral protection expenses and other reimbursement or indemnity obligations relating thereto)), and all other obligations of the Company under (i) any of the agreements or instruments evidencing any indebtedness of the Company and its subsidiaries arising after the Original Issuance Date to an unaffiliated, third-party commercial lender (together with any renewals, refundings, refinancings or other extensions thereof) for purposes of purchasing equipment (which debt shall be secured only by the assets purchased with such financing), and (ii) indebtedness not to exceed \$4,000,000 in the aggregate that is secured solely by the Company’s and/or its subsidiaries’ accounts receivable and/or inventory.

“Series A Issuance Price” means \$5.00 per share.

“Trading Day” means (i) if the relevant stock or security is listed or admitted for trading on the New York Stock Exchange or any other national securities exchange, a day on which such exchange is open for business; (ii) if the relevant stock or security is not listed or admitted for trading on any national securities exchange but is quoted on any system for the automated dissemination of quotations of securities prices, a day on which trades may be effected through such system; or (iii) if the relevant stock or security is not listed or admitted for trading on any national securities exchange or quoted on any system for the automated dissemination of quotation of securities prices, a day on which the relevant stock or security is traded in a regular way in the over-the-counter market and for which a closing bid and a closing asked price for such stock or security are available.

2. Dividends.

2A. The holders of the Series A Preferred Stock shall be entitled to receive dividends, which shall begin to accrue on and be cumulative from the date of issuance of the Series A Preferred Stock (whether or not such dividends have been declared and whether or not there shall be net profits or net assets of the Company legally available for the payment of such dividends) through and until June 1, 2010, at an annual rate equal to eight percent (8%) of the sum of (A) the Series A Issuance Price plus (B) any accrued dividends through the immediately preceding Dividend Accrual Date that remain unpaid (the amount of such dividends being referred to as the “Dividend Amount”). The dividends shall accrue semi-annually on June 1 and December 1 of each year (the “Dividend Accrual Dates”) and shall be payable either in cash or in kind by issuance by the Company of additional shares of Series A Preferred Stock (the “PIK Shares”) at the option of the Company of the same securities. For purposes of clarification, if the Company pays any Dividend Amount on shares of Series A-1 Preferred Stock in PIK Shares, then such PIK Shares shall be shares of Series A-1 Preferred Stock. If the Company pays any Dividend Amount on shares of Series A-2 Preferred Stock in PIK Shares, then such PIK Shares shall be shares of Series A-2 Preferred Stock. Dividends shall be payable only when and as declared by the Board of Directors of the Company. If the Company elects to pay any Dividend Amount in PIK Shares, each holder of Series A Preferred Stock shall be deemed to be the holder of record of such holder’s pro rata share of the PIK Shares issuable with respect to the relevant Dividend Amount notwithstanding that the stock transfer books of the Company shall then be closed or that certificates evidencing such PIK Shares shall not have been actually delivered to such holder of Series A Preferred Stock. In the event that dividends on the Series A Preferred Stock are paid with PIK Shares, each such PIK Share (i) shall be valued at the then applicable Liquidation Preference per share and (ii) shall have the same Liquidation Preference as each share of Series A Preferred Stock with respect to which the PIK Share constituted a dividend. No dividends shall be paid on any Common Stock of the Company or any capital stock of the Company that ranks junior to the Series A Preferred Stock during any fiscal year of the Company until dividends in the aggregate Dividend Amount per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) of Series A Preferred Stock for the current and each prior Dividend Accrual Date shall have been paid or declared and set apart for payment to the holders of the Series A Preferred Stock. For purposes hereof, the “Liquidation Preference” of a share of Series A Preferred Stock means, as of any specified date, the sum of (A) the Series A Issuance Price of such share plus (B) any accrued but unpaid dividends on such share through the Dividend Accrual Date that immediately precedes the specified date.

2B. The amount of dividends payable for any period shorter than a full year shall be determined on the basis of twelve 30-day months and a 360-day year. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding.

3. Liquidation; Redemption.

3A. Liquidation. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of the shares of Series A Preferred Stock shall be entitled, before any distributions shall be made to the holders of the Common Stock, or any other class of capital stock of the Company ranking junior to the Series A Preferred Stock, to be paid an amount (the "Series A Liquidation Amount") equal to 1.08 multiplied by the Liquidation Preference per share (appropriately adjusted to reflect the occurrence of any stock split, stock dividend, stock combination, stock subdivision or like occurrences); provided that if the amount per share that would be received by the holders of the shares of Series A Preferred Stock of any series if the assets of the Company were distributed ratably to the holders of the Common Stock and the Series A Preferred Stock on an as converted to Common Stock basis would be greater than the Liquidation Preference, then the holders of the Series A Preferred Stock of such series shall be entitled to receive such greater amount. If upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Preferred Stock of the Company shall be insufficient to permit payment to the holders of Series A Preferred Stock of the full Series A Liquidation Amount, then the entire assets of the Company to be distributed shall be distributed to the holders of Series A Preferred Stock. Written notice of such liquidation, dissolution or winding up, stating a payment date, the Series A Liquidation Amount and the place where said sums shall be payable shall be given by mail, postage prepaid, not less than 30 or more than 60 days prior to the payment date stated therein, to the holders of record of each series of Series A Preferred Stock, such notice to be addressed to each shareholder at his post office address as shown by the records of the Company. Unless waived in writing by the holders of a majority of the Series A Preferred Stock then outstanding, voting together as one class, a consolidation or merger of the Company into or with any other entity or entities, or the sale or transfer by the Company of all or substantially all of its assets, in each case under circumstances in which the holders of a majority in voting power of the outstanding capital stock of the Company, immediately prior to such a merger, consolidation or sale, own less than a majority in voting power of the outstanding capital stock of the company or the surviving or resulting company or acquirer, as the case may be, immediately following such a merger, consolidation or sale (each such transaction being hereinafter referred to as a "Corporate Transaction") shall be treated as a liquidation within the meaning of this paragraph 3 for the purpose of determining the consideration to be received by holders of the Series A Preferred Stock upon redemption of such shares as well as the timing of such deemed redemption.

3B. Optional Redemption. The Company shall have the right at any time when no Notes remain outstanding to redeem the Series A Preferred Stock in whole or in part upon not less than 30 days' notice at a redemption price equal to the Liquidation Preference plus any accrued and unpaid dividends through the redemption date. Such redemption notice will include a certification by the Company's Chief Executive Officer that the Company has sufficient funds available for such redemption. In the event of a redemption of the Series A Preferred Stock in part, the Company shall redeem the shares of each holder of Series A Preferred Stock pro rata (subject to rounding for fractional shares of Series A Preferred Stock). The holders of Series A Preferred Stock shall have the right to convert the Series A Preferred Stock into Common Stock as set forth in Section 4A below at any time prior to the redemption date.

4. Conversion.

4A. Right to Convert. Subject to the terms and conditions of this subparagraph 4A, the holder of any share or shares of Series A Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Preferred Stock into such number of fully paid and nonassessable whole shares of Common Stock as is obtained by multiplying (A) the number of shares of Series A Preferred Stock so to be converted by (B) the Liquidation Preference per share multiplied by 1.08, and dividing the result (together with any accrued but unpaid dividends on the shares being converted as of the conversion date) by (i) in the case of Series A-1 Preferred Stock, the conversion price of \$0.10 per share of Common Stock, (ii) in the case of Series A-2 Preferred Stock, the conversion price of \$0.22 per share of Common Stock, or (iii) if there has been an adjustment of such conversion prices, by the conversion prices as last adjusted and in effect at the date any share or shares of Series A Preferred Stock are surrendered for conversion (such prices, or such prices as last adjusted, being referred to herein as the "Series A-1 Conversion Price" for the Series A-1 Preferred Stock and the "Series A-2 Conversion Price" for the Series A-2 Preferred Stock, and the Series A-1 Conversion Price and Series A-2 Conversion Price are herein together referred to as the "Conversion Price"). Such right of conversion shall be exercised by the holder thereof by surrender of a certificate or certificates for the shares to be converted to the Company at its principal office (or such other office or agency of the Company as the Company may designate by notice in writing to the holder or holders of the Series A Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a properly completed notice of conversion in the form attached to the Series A Preferred Stock certificate with a statement of the name or names (with address), subject to compliance with applicable laws to the extent such designation shall involve a transfer, in which the certificate or certificates for shares of Common Stock, shall be issued. No dividends will be paid on the Series A Preferred Stock at the time of conversion.

4B. Issuance of Certificates; Time Conversion Effected. On or before the second business day following the date of receipt by the Company of the written notice referred to in subparagraph 4A and surrender of the certificate or certificates for the share or shares of the Series A Preferred Stock to be converted (the “Share Delivery Date”), the Company shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, subject to compliance with applicable laws to the extent such designation shall involve a transfer, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series A Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Company and the certificate or certificates for such shares shall have been surrendered as aforesaid, and at such time the Series A Preferred Stock rights of the holder of such share or shares shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

4C. Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of the Series A Preferred Stock into Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share, and no payment or adjustment shall be made upon any conversion on account of any cash dividends paid on the Series A Preferred Stock so converted or the Common Stock issued upon such conversion. In case the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 4A exceeds the number of shares converted, the Company shall upon such conversion, execute and deliver to the holder thereof at the expense of the Company, a new certificate for the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered which are not to be converted.

4D. Adjustments to Conversion Price.

(1) [Reserved]

(2). Subdivision or Combination of Stock. In case the Company shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares or shall declare or pay a dividend on its outstanding shares of Common Stock payable in shares of Common Stock, the Series A-1 Conversion Price and Series A-2 Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Company shall be combined into a smaller number of shares, such Conversion Prices in effect immediately prior to such combination shall be proportionately increased.

(3). Record Date. In case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(4). Certain Distributions. If, at any time or from time to time after the Original Issuance Date, the Company shall issue or distribute to the holders of shares other than Series A Preferred Stock (the "Dividend Stock") evidences of its indebtedness, any other securities of the Company or any cash, property or other assets (excluding any issuance or distribution described in paragraph 4D(2) or 4(E), and also excluding cash dividends or cash distributions paid out of net profits legally available therefor in the full amount thereof) (any such non-excluded event being herein called a "Special Dividend"), then and in each such event the holders of each series of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock of such series had been converted into Common Stock on the date of such event.

4E. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Company shall be effected in such a way (including, without limitation, by way of consolidation or merger, but excluding a consolidation, merger or sale which is treated as a Liquidation with respect to holders of Series A Preferred Stock for purposes of paragraph 3) that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock then, as a condition of such reorganization or reclassification, lawful and adequate provision (in form satisfactory to the holders of at least a majority of the outstanding shares of Series A Preferred Stock, voting together as one class) shall be made whereby each holder of a share or shares of Series A Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock of the Company immediately theretofore receivable upon the conversion of such share or shares of the Series A Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of Common Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization or reclassification not taken place and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights (including an immediate adjustment, by reason of such reorganization or reclassification, of the Conversion Price to the value for the Common Stock reflected by the terms of such reorganization or reclassification if the value so reflected is less than the Conversion Price in effect immediately prior to such reorganization or reclassification). In the event of a merger or consolidation of the Company as a result of which a greater or lesser number of shares of common stock of the surviving company are issuable to holders of the Common Stock of the Company outstanding immediately prior to such merger or consolidation, the Conversion Price in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock of the Company. The Company will not effect any such consolidation or merger, or any sale of all or substantially all its assets and properties, unless prior to the consummation thereof the successor company (if other than the Company) resulting from such consolidation or merger or the company purchasing such assets shall assume by written instrument (in form satisfactory to the holders of at least a majority of the outstanding shares of Series A Preferred Stock voting together as one class) executed and mailed or delivered to each holder of shares of Series A Preferred Stock at the last address of such holder appearing on the books of the Company, the obligation to deliver to such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to receive.

4F. Notice of Adjustment. Upon any adjustment of the Series A-1 Conversion Price or Series A-2 Conversion Price, then, and in each such case, the Company shall give written notice thereof by first class mail, postage prepaid, addressed to each holder of shares of Series A-1 Preferred Stock or Series A-2 Preferred Stock, as applicable, at the address of such holder as shown on the books of the Company, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

4G. Other Notices. In case at any time:

(1) the Company shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(2) the Company shall offer for subscription pro rata to the holders of its Common Stock any additional shares of such stock of any class or other rights;

(3) there shall be any capital reorganization or reclassification of the capital stock of the Company, or a consolidation or merger of the Company with, or a sale of all or substantially all its assets to, another company; or

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of said cases, the Company shall give, by first class mail, postage prepaid, addressed to each holder of any shares of Series A Preferred Stock at the address of such holder as shown on the books of the Company, (a) at least 15 days' prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 15 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

4H. Mandatory Conversion. The Board of Directors of the Company shall have the right at any time to convert each share of Series A Preferred Stock into Common Stock upon no less than 30 days prior written notice to holders of Series A Preferred Stock. In addition, (A) the Board of Directors of the Company shall convert each share of Series A-1 Preferred Stock into Common Stock upon receipt of the written notice of holders of a majority of the then-outstanding shares of Series A-1 Preferred Stock of their election to cause an automatic conversion pursuant to this subparagraph 4H, and (B) the Board of Directors of the Company shall convert each share of Series A-2 Preferred Stock into Common Stock upon receipt of the written notice of holders of a majority of the then-outstanding shares of Series A-2 Preferred Stock of their election to cause an automatic conversion pursuant to this subparagraph 4H. Any such conversion shall be effected in accordance with the provisions of subparagraphs 4B and 4C hereof, and any Series A Preferred Stock converted pursuant to this paragraph shall be converted into a number of shares of Common Stock equal to the quotient obtained by dividing (i) the Liquidation Preference per share of Series A Preferred Stock multiplied by 1.08, by (ii) the applicable Conversion Price.

4I. Stock to be Reserved.

(1) The Company will at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Preferred Stock. All shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all liens, duties and charges arising out of or by reason of the issue thereof (including, without limitation, in respect of taxes) and, without limiting the generality of the foregoing, the Company covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the effective Conversion Price. The Company will take all such action within its control as may be necessary on its part to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Common Stock of the Company may be listed. The Company will not take any action which results in any adjustment of the Conversion Price if after such action the total number of shares of Common Stock issued and outstanding and thereafter issuable upon exercise of all options and conversion of Convertible Securities, including upon conversion of the Series A Preferred Stock, would exceed the total number of shares of such class of Common Stock then authorized by the Company's Certificate of Incorporation.

(2) The Company will at all times reserve and keep available out of its authorized but unissued Series A Preferred Stock, a sufficient number of shares solely for the purpose of satisfying the Company's obligations to issue PIK Shares as herein provided. All shares of Series A Preferred Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all liens, duties and charges arising out of or by reason of the issue thereof (including, without limitation, in respect of taxes).

4J. No Reissuance of Series A Preferred Stock. Shares of Series A Preferred Stock that are converted into shares of Common Stock as provided herein shall not be reissued.

4K. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of the Series A Preferred Stock shall be made without charge to the holders thereof for any issuance tax, stamp tax, transfer tax, duty or charge in respect thereof, provided that the Company shall not be required to pay any tax, duty or charge which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Preferred Stock which is being converted.

4L. Closing of Books. The Company will at no time close its transfer books against the transfer of any Series A Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock in any manner which interferes with the timely conversion of such Series A Preferred Stock; provided, however, nothing herein shall be construed to prevent the Company from setting record dates for the holders of its securities.

4M. Limitations on Conversions.

(1) Beneficial Ownership. Unless waived by a holder of Series A Preferred Stock upon no less than sixty one (61) days prior written notice to the Company, the Company shall not effect any conversion of the Series A Preferred Stock pursuant to this Section 4 to the extent that after giving effect to such conversion such holder (together with such holder's affiliates) would beneficially own in excess of 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. Even if such holder waives the limitation set forth in the preceding sentence, the Company shall in no event effect any conversion under this Section 4, and such holder shall not have the right to convert Series A Preferred Stock pursuant to this Section 4, to the extent that after giving effect to such conversion, such holder (together with such holder's affiliates) would beneficially own in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentences, the number of shares of Common Stock beneficially owned by a holder of Series A Preferred Stock and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining Series A Preferred Stock owned by such holder or any of its affiliates and (B) conversion of the unexercised or nonconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 4(M)(1), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 4(M)(1), in determining the number of outstanding shares of Common Stock, the holders of Series A Preferred Stock may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Form 10-Q or Form 10-K, (y) a more recent public announcement by the Company or (z) any other notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of a holder of Series A Preferred Stock, the Company shall within two (2) business days confirm orally and in writing to such holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Series A Preferred Stock, by such holder or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. Notwithstanding the foregoing, the limitations of this paragraph shall not apply to Carlyle Liquid, LLC, Carlyle Holdings, LLC, Abdi Mahamedi, Atlantic Realty, and Ricardo Salas.

4N. Company's Failure to Timely Convert. If the Company shall fail to issue a certificate to a holder of Series A Preferred Stock or credit such holder's balance account with the Depository Trust Company ("DTC") through its Deposit/Withdrawal At Custodian system for the number of shares of Common Stock to which such holder is entitled upon conversion of any Series A Preferred Stock on or prior to the date which is five (5) business days after the date that such holder exercises its conversion rights pursuant to this Section 4 (a "Conversion Failure"), then (A) the Company shall pay liquidated damages to such holder for each day of such Conversion Failure in an amount equal to 1.0% of the product of (I) the sum of the number of shares of Common Stock not issued to such holder on or prior to the Share Delivery Date and to which the such holder is entitled, and (II) the Closing Sale Price of the Common Stock on the Share Delivery Date and (B) such holder, upon written notice to the Company, may void its notice of conversion (in the form attached to the Series A Preferred Stock) with respect to, and have returned any Series A Preferred Stock that has not been converted pursuant to such notice of conversion; provided that the voiding of such notice of conversion shall not affect the Company's obligations to make any payments of dividends pursuant to Section 2 hereof which have accrued prior to the date of such notice pursuant to this Section 4(N) or otherwise. In addition to the foregoing, if within three (3) Trading Days after the Company's receipt of such notice of conversion, the Company shall fail to issue and deliver a certificate to such holder or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder is entitled upon such holder's conversion of any Series A Preferred Stock, and if on or after such Trading Day such holder purchases (in an open market transaction or otherwise) Common Stock to deliver in satisfaction of a sale by such holder of Common Stock issuable upon such conversion that such holder anticipated receiving from the Company (a "Buy-In"), then the Company shall, within five (5) business days after such holder's request and in such holder's discretion, either (i) pay cash to such holder in an amount equal to such holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Company's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to such holder a certificate or certificates representing such Common Stock and pay cash to such holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Bid Price on the date that such holder exercises its conversion rights pursuant to this Section 4.

5. Right to Participate in Future Issuances.

In case the Company proposes at any time to issue or sell any Common Stock or any Options or Convertible Securities other than Excluded Securities and other than securities issued in a public offering (the “Offered Securities”), the Company shall, no later than ten (10) days prior to the consummation of such transaction (a “Preemptive Rights Transaction”), give notice in writing (the “Preemptive Rights Offer Notice”) of such Preemptive Rights Transaction to each Series A Preferred Stock holder (each, a “Preemptive Rights Holder”). The Preemptive Rights Offer Notice shall describe the proposed Preemptive Rights Transaction, identify the proposed purchaser, and contain an offer (the “Preemptive Rights Offer”) to sell to each Preemptive Rights Holder, at the same consideration to be paid by the proposed purchasers, that number of Offered Securities required to maintain such Preemptive Rights Holder’s ownership percentage of the fully-diluted Common Stock in effect as of the date of the Preemptive Rights Offer Notice (the “Maximum Offer Amount”); provided, however, that in calculating such ownership percentage, only the Preemptive Rights Holder’s Series A Preferred Stock (and not any outstanding shares of Common Stock or Options or other Convertible Securities then held by the Preemptive Rights Holder) will be included when the percentage interest is calculated. A Preemptive Rights Holder may subscribe for all or a portion of its Maximum Offer Amount on or prior to the 30th day following the date of sale of the Offered Securities to the initial purchasers. Any of the Offered Securities not subscribed for by a Preemptive Rights Holder shall be offered to the other Preemptive Rights Holders pursuant to a written notice from the Company on a pro rata basis for a period of 30 days. When the Offered Securities are accepted in the manner set forth in this paragraph 5, the Company shall, as promptly as practicable but no later than twenty (20) days after acceptance by a Preemptive Rights Holder of its subscription portion of the Maximum Offer Amount, issue certificates representing the applicable number of Offered Securities (free of all liens and encumbrances) to such holder against delivery by such holder of the consideration payable therefor. Any notice required to be given by Company pursuant to this paragraph 5 shall (i) specify the name of the proposed purchaser, the number of shares to be issued, the amount and type of consideration to be received therefor, and the other material terms on which the Company proposes to issue the shares, and (ii) contain an offer to sell to those holders permitted to participate in such offer all of such shares at the same price per share and for consideration consisting of (x) cash equal to the amount of cash proposed to be paid by the proposed purchaser and (y) if any of the consideration to be paid by the proposed purchaser is non-cash consideration, either the same non-cash consideration or, at the election of the particular holder, cash having an equivalent value to the non-cash consideration proposed to be paid by the proposed purchaser. The determination of equivalent value required by the preceding sentence shall be made by an Independent Appraiser, it being understood that the fees and expenses of such Independent Appraiser shall be paid by the Company. Notwithstanding anything to contrary herein, before the Company sends a Preemptive Rights Offer Notice to a Preemptive Rights Holder, the Company shall send written notification to such Preemptive Rights Holder that the Company intends to send a Preemptive Rights Offer Notice to such Preemptive Rights Holder (such notice, the “Pre-Notice”). If the Company does not receive, within three (3) business days from the date of the Pre-Notice, a written notice from such Preemptive Rights Holder stating that he, she or it does not wish to receive material non-public information relating to the Company, then the Company shall send a Preemptive Rights Offer Notice to such Preemptive Rights Holder and such Preemptive Rights Holder shall not have the rights set forth in this paragraph.

6. Voting - Series A Preferred Stock. In addition to any class voting rights provided by law and the Certificate of Incorporation, the holders of Series A Preferred Stock shall have the right to vote together with the holders of Common Stock as a single class on any matter on which the holders of Common Stock are entitled to vote, at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the holders of Common Stock; provided, however, the voting rights of the holders of Series A Preferred Stock shall be subject to any limitations or additional rights that are set forth in the Company's Certificate of Incorporation, as amended through the date of this Amended Certificate of Designation. With respect to the voting rights of the holders of the Series A Preferred Stock pursuant to the preceding sentence, each holder of Series A Preferred Stock shall be entitled to one vote for each share of Common Stock that would be issuable to such holder upon the conversion of all the shares of Series A Preferred Stock held by such holder on the record date for the determination of shareholders entitled to vote at such meeting or the effective date of such written consent (after taking into account the conversion limitation set forth in Section 4M(1) above), and shall have voting rights and powers equal to the voting rights and powers of the Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company.

7. Further Restrictions. As long as at least 25% of the number of shares of Series A Preferred Stock issued on the Original Issuance Date are outstanding, and in addition to any other vote of the holders of Series A Preferred Stock required by law or by the Certificate of Incorporation, the prior consent of the holders of at least two-thirds of the outstanding Series A Preferred Stock shall be required for the Company to take any action that: (i) alters or changes the rights, preferences or privileges of the Series A Preferred Stock, (ii) creates (by reclassification or otherwise) any new class or series of shares or securities having rights, preferences or privileges senior to, or on a parity with, the Series A Preferred Stock, (iii) results in the redemption of any shares of Common Stock or any other shares or securities on a parity with or junior to the Series A Preferred Stock (other than pursuant to equity incentive agreements with service providers giving the Company the right to repurchase shares upon the termination of services), (iv) results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold, (v) amends or waives any provision of the Company's Certificate of Incorporation or Bylaws relative to the Series A Preferred Stock, (vi) increases the authorized size of the Company's Board of Directors, (vii) results in the payment or declaration of any dividend on any shares of Common Stock or any other shares or securities junior to the Series A Preferred Stock, (viii) results in a confession of judgment against the Company, or settle or compromise by or against the Company (provided that no such consent shall be required for matters involving less than \$50,000.00), (ix) results in any filing by the Company for bankruptcy or receivership, (x) results in any guaranty of any debt of a third party other than a direct or indirect wholly owned subsidiary of the Company; (xi) results in the making of any material cash investments in the securities of another entity other than in the ordinary course of business or other than investments in wholly owned subsidiaries of the Company, or (xii) results in the Company entering into a materially new line of businesses not related to the Company's current line of business.

8. No Waiver. Except as otherwise modified or provided for herein, the holders of Series A Preferred Stock shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the applicable provisions of the Delaware General Corporation Law.

9. No Impairment. The Company will not, through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities on any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but will at all times in good faith assist in the carrying out of all the provisions of Article Four and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights and liquidation preferences granted hereunder of the holders of the Series A Preferred Stock against impairment.”

IN WITNESS WHEREOF, this Amended and Restated Certificate of Designation has been executed by the Company by a duly authorized executive officer as of this 2nd day of November, 2010.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ Tony Chung
Name: Tony Chung
Title: Chief Financial Officer

**SECOND CERTIFICATE OF AMENDMENT
TO THE CERTIFICATE OF INCORPORATION OF
LIQUIDMETAL TECHNOLOGIES, INC.**

Liquidmetal Technologies, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “General Corporation Law”), does hereby certify as follows:

FIRST: That the original Certificate of Incorporation of Liquidmetal Technologies, Inc. (the “Corporation”) was filed with the Secretary of State of the State of Delaware on May 15, 2003, and that a Certificate of Ownership and Merger of Liquidmetal Technologies (a California corporation) with and into the Corporation was filed with the Secretary of State of the State of Delaware on May 21, 2003.

SECOND: That a Certificate of Amendment to the Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 4, 2009.

THIRD: That, at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted setting forth proposed amendments to the Certificate of Incorporation of the Corporation, declaring said amendments to be advisable, and calling a meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendments is as follows:

RESOLVED, that the Certificate of Incorporation of the Corporation be amended by changing Article IV thereof so that, as amended, Article IV shall be and read as follows:

“The Corporation shall have authority to issue Four Hundred Ten Million (410,000,000) shares of capital stock, consisting of Four Hundred Million (400,000,000) shares of common stock, \$0.001 par value per share (the “Common Stock”), and Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share (the “Preferred Stock”), of which One Million Eight Hundred Seventy-Five Thousand (1,875,000) shares are hereby designated as “Series A-1 Preferred Stock” and Three Million Two Hundred Eighty-One Thousand Two Hundred Fifty-Three (3,281,253) shares are hereby designated as “Series A-2 Preferred Stock.” The Preferred Stock authorized by the Certificate of Incorporation, as amended, may be issued from time to time in one or more series. The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon any series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them. The voting powers, designations, preferences and other special rights, and qualifications, limitations and restrictions of the Series A-1 Preferred Stock and Series A-2 Preferred Stock (collectively, the “Series A Preferred Stock”) are set forth in an Amended and Restated Certificate of Designation, Preferences, and Rights previously filed by the Corporation with the Secretary of State of Delaware on November 3, 2010 (the “Series A Certificate of Designation”).”

FOURTH: That thereafter, pursuant to a resolution of the Board of Directors of the Corporation, an annual meeting of the stockholders of the Corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

FIFTH: That said amendments were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law.

SIXTH: That said amendments shall be effective upon filing in the Office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Second Certificate of Amendment to be signed by a duly authorized officer this 28th day of June, 2012.

LIQUIDMETAL TECHNOLOGIES, INC.

By: /s/ Tony Chung

Name: Tony Chung

Title: Chief Financial Officer

BYLAWS
OF
LIQUIDMETAL TECHNOLOGIES, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be located in the City of Wilmington, County of New Castle, State of Delaware.

Section 1.2 Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

STOCKHOLDERS

Section 2.1 Place of Meeting. All meetings of the stockholders for the election of directors shall be held at such place as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.2 Annual Meeting. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At each annual meeting, the stockholders shall elect directors to succeed those directors whose terms expire in that year and shall transact such other business as may properly be brought before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 2.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be held at any time upon call of the Board of Directors. A special meeting of the stockholders of the Corporation shall be called by the President or the Secretary upon the written request of the stockholders who together own of record 25% of the outstanding stock of all classes entitled to vote at such meeting. The request shall state the date, time, and place by which stockholders and proxy holders may be deemed to be present and vote at such meeting and purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.4

Notice of Meetings. Written notice of stockholders' meetings, stating the place, date, and hour thereof, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by or at whose direction the notice is being issued. A copy of the notice of any meeting shall be delivered personally or shall be mailed, not less than ten days but not more than sixty days before the date of such meeting, unless a different period is prescribed by law. If mailed, the notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder's address as it appears on the records of the Corporation, unless such stockholder shall have filed with the Secretary of the Corporation a written request that such notice be mailed to some other address, in which case it shall be directed to such other address. Notice of any meeting of stockholders need not be given to any stockholder who shall attend the meeting, other than for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting is not lawfully called or convened, or who shall submit, either before or after the time stated therein, a written waiver of notice. Unless the Board of Directors, after an adjournment is taken, shall fix a new record date for an adjourned meeting or unless the adjournment is for more than thirty days, notice of an adjourned meeting need not be given if the place, date and time to which the meeting shall be adjourned are announced at a meeting at which the adjournment is taken.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, unless excepted under Sections 164, 296, 311, 312, or 324 of the Delaware General Corporation Law, any notice to stockholders given by the Corporation under any provision of these Bylaws or the Certificate of Incorporation shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Notice given by a form of electronic transmission shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Electronic transmission includes any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Whenever any notice is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation of the Corporation or these Bylaws, a waiver thereof in writing, or a waiver by electronic transmission, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 2.5 Quorum. Except as otherwise provided by law or in the Certificate of Incorporation of the Corporation or these Bylaws, at any meeting of stockholders, the holders of a majority of the outstanding shares of each class of stock entitled to vote thereat shall be present or represented by proxy in order to constitute a quorum for the transaction of any business. In the absence of a quorum, a majority in interest of the stockholders present or the chairman of the meeting may adjourn the meeting from time to time in the manner provided for in this Section 2.5 until a quorum shall attend.

In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting of the time, place, if any, thereof by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

Section 2.6 Conduct of Meeting. The Chairman of the Board of Directors, if any, or, in his absence, the Chief Executive Officer, or in his absence, the President, or in their absence, any Vice President, shall call to order meetings of stockholders and shall act as chairman of such meetings. If none of the forgoing is present, the stockholders entitled to vote and who are present in person or represented by proxy at the meeting shall appoint any person to act as chairman of the meeting. The Secretary of the Corporation shall act as secretary of all meetings of stockholders, but, in the absence of the Secretary, the chairman of the meeting may appoint any other person to act as secretary of the meeting. The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) pursuant to the corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the corporation who is a stockholder of record at the time of giving of the notice provided for in this Bylaw, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Bylaw; provided, however, that business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

For business to be properly brought before any meeting by a stockholder pursuant to clause (c) above of this Section 2.6, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) days prior to the date of the meeting. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (a) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (c) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder of record and by the beneficial owner, if any, on whose behalf of the proposal is made, and (d) any material interest of such stockholder of record and the beneficial owner, if any, on whose behalf the proposal is made in such business.

Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 2.6. The presiding officer of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the procedures prescribed by this Section 2.6, and if such person should so determine, such person shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.6, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section 12.

Section 2.7 Voting. Except as otherwise provided by law or in the Certificate of Incorporation of the Corporation or these Bylaws, any corporate action to be taken by a vote of the stockholders, other than for the election of directors, at any meeting duly called and held at which a quorum is present, shall be authorized by the affirmative vote of a majority of the shares present or represented by proxy at the meeting and entitled to vote on the subject matter. At any meeting of the stockholders duly called and held for the election of directors at which a quorum is present, those persons receiving a plurality of the votes cast whether in person or represented by proxy and entitled to vote for the election of directors shall be elected.

Section 2.8 Stockholder List. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (2) during ordinary business hours, at the principal place of business of the Corporation. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 2.9 Written Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation of the Corporation, any action required to be taken or which may be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed, in person or by proxy, by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted in person or by proxy and shall be delivered to the Corporation as required by law. An electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed, and dated for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (1) that the electronic transmission was transmitted by the stockholder or proxyholder, or by a person or persons authorized to act for the stockholder or proxyholder and (2) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Function. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 3.2 Number and Term of Office. Except as otherwise provided in the Certificate of Incorporation of the Corporation, until such time as the Board of Directors determines otherwise, the number of directors shall initially be seven (7). The directors shall be classified, with respect to the time for which they severally hold office, into three (3) classes, Class I, Class II, and Class III, each of which shall be as nearly equal in number as possible. Class I shall be established for a term expiring at the annual meeting of shareholders to be held in 2005 and shall consist initially of two (2) directors. Class II shall be established for a term expiring at the annual meeting of shareholders to be held in 2006 and shall consist initially of two (2) directors. Class III shall be established for a term expiring at the annual meeting of shareholders to be held in 2004 and shall consist initially of three (3) directors. Each director shall hold office until his or her successors are elected and qualified, or until such director's earlier death, resignation or removal as hereinafter provided. At each annual meeting of the stockholders, the successors of the class of directors whose terms expire at that meeting shall be elected to hold office for a term expiring at the annual meeting of shareholders held in the third (3rd) year following the year of their election. The number of directors may be reduced or increased from time to time by action of a majority of the directors then in office, and the board of directors shall determine the class or classes to which the increased or decreased number of directors shall be apportioned; provided, however, that no decrease in the number of directors shall affect the term of any director then in office.

Section 3.3 Chairman of the Board. The directors may elect one of their members to be Chairman of the Board of Directors. The Chairman of the Board of Directors shall be subject to the control of, and may be removed by, the Board of Directors. He shall perform such duties as may from time to time be assigned to him by the Board of Directors.

Section 3.4 Meetings. The annual meeting of the Board of Directors shall be held either without notice immediately after the annual meeting of stockholders and in the same place, if any, or at such time and place, if any, as shall be fixed by the vote of the stockholders at the annual meeting or as soon as practicable after the annual meeting of stockholders on such date and at such time and place if any, as the Board of Directors determines from time to time.

The Board of Directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular and special meetings of the Board of Directors shall be held at such time and place if any, as shall be designated in the notice of the meeting whenever called by the Chairman of the Board of Directors, if any, or the Chief Executive Officer, and shall be called by the Chief Executive Officer or Secretary upon the written request of a majority of the directors then in office. The request shall state the date, time, place, and purpose or purposes of the proposed meeting.

Section 3.5 Notice of Meetings. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Chairman of the Board or the Chief Executive Officer on twelve (12) hours' notice to each director either personally or by telephone, facsimile, or electronic mail; special meetings shall be called by the Chief Executive Officer or Secretary in like manner and on like notice on the written request of a majority of the Board unless the Board consists of only one director, in which case special meetings shall be called by the Chairman of the Board, the Chief Executive Officer, or Secretary in like manner and on like notice on the written request of the sole director. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice.

Section 3.6 Quorum and Conduct of Meetings. Except as otherwise provided in these Bylaws or by statute, a majority of the Board shall constitute a quorum for the transaction of business, but, if at any meeting of the Board of Directors (whether or not adjourned from a previous meeting) there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time and place, and the meeting may be held as adjourned without further notice or waiver.

Except as otherwise provided by law or in the Certificate of Incorporation of the Corporation or these Bylaws, a majority of the directors present at any meeting at which a quorum is present may decide any question brought before such meeting. Meetings shall be presided over by the Chairman of the Board of Directors, if any, or in his absence, by the Chief Executive Officer, or in the absence of both, by such other person as the directors may select. The Secretary of the Corporation shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of all business at all meetings of the Board of Directors shall be determined by the person presiding over the meeting.

Section 3.7

Committees. The Board of Directors may, by resolution adopted by a majority of the Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business, property, and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have power or authority in reference to amending the Certificate of Incorporation of the Corporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors pursuant to authority expressly granted to the Board of Directors by the Certificate of Incorporation of the Corporation and the General Corporation Law, fix the designation and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of the assets of the Corporation, or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease, or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, or amending these Bylaws; and, unless such resolution or resolutions expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law. Each committee which has been established by the Board of Directors pursuant to these Bylaws may fix its own rules and procedures; provided that a majority of all the members of a committee shall constitute a quorum for the transaction of business, and the vote a majority of all the members of a committee present at a meeting at which a quorum is present shall be the act of the committee. Notice of meetings of committees, other than of regular meetings provided for by committee rules, shall be given to committee members. All action taken by committees shall be recorded in minutes of the meetings.

Section 3.8

Action Without Meeting. Unless otherwise prohibited by law or the Certificate of Incorporation of the Corporation, the Board of Directors or any committee thereof may take any action required or permitted to be taken by them without a meeting if all of the members of the Board of Directors or committee, as the case may be, consent in writing or by means of electronic transmissions, and such written consent or electric transmission is filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.9 Telephonic Meetings. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

Section 3.10 Removal. A director may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

Section 3.11 Compensation. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 3.12 Resignations. Any director may resign at any time by giving written notice or by electronic transmission of his resignation to the Corporation. A resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt.

Section 3.13 Vacancies. Except as otherwise provided in the Certificate of Incorporation of the Corporation, any vacancy in the Board of Directors arising from an increase in the number of directors or otherwise may be filled by the vote of a majority of the directors then in office, even if less than a quorum, or by sole remaining director, and the directors so chosen shall hold office until the next election of the class for which such directors were chosen and until their successors are duly elected and qualified or until earlier resignation or removal. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

ARTICLE IV

OFFICERS

Section 4.1 Executive Officers. The executive officers of the Corporation shall be a President, a Chief Financial Officer, and a Secretary, each of whom shall be appointed by the Board of Directors. The Board of Directors also may elect or appoint such other officers (including, without limitation, a Chief Executive Officer, Treasurer, one or more Vice Presidents, and one or more Assistant Treasurers and Assistant Secretaries) as it may deem necessary or desirable for the conduct of business of the Corporation, and each of whom shall have such powers and duties as the Board of Directors determines. Each officer shall hold office for such term as may be prescribed by the Board of Directors from time to time. Any person may hold at one time two or more offices.

(a) Chairman of the Board. The Chairman of the Board, if such an officer is elected, shall exercise and perform such powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws.

(b) Chief Executive Officer. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the Chief Executive Officer shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. He shall preside at all meetings of the stockholders. He shall have the general powers and duties of management usually vested in the office of the Chief Executive Officer of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

(c) President. In the absence or disability of the Chief Executive Officer, the President shall perform all the duties of the Chief Executive Officer, and when so acting shall have all of the powers of, and be subject to all the restrictions upon, the Chief Executive Officer. The President shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors or the Bylaws or the Chief Executive Officer or the Chairman of the Board.

(d) Chief Financial Officer. The Chief Financial Officer shall have care and custody of the corporate funds and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transaction of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any Director. The Chief Financial Officer shall render to the Chief Executive Officer and the Board, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the corporation, and shall have other power and perform such other duties as may be prescribed by the Board of Directors of the Bylaws.

(e) Secretary. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of Directors, committees or Directors, and shareholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at the Directors' meetings or committee meetings, the number of shares present or represented at shareholders' meetings, and the proceedings.

The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors a share register, or a duplicate share register, showing the names of all shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required by the Bylaws or Bylaw to be given, and he shall keep the seal of the corporation if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the Bylaws.

Section 4.3 Resignations. Any officer may resign at any time by giving written notice of his resignation to the Corporation. A resignation shall take effect at the time specified therein, or if the time when it shall become effective shall not be specified therein, immediately upon its receipt.

Section 4.4 Vacancies and Term. If an office becomes vacant for any reason, the Board of Directors may fill the vacancy, and such officer so elected or appointed shall serve for the remainder of his predecessor's term and until his successor shall have been elected or appointed and shall have qualified. The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors.

ARTICLE V

CAPITAL STOCK

Section 5.1 Stock Certificates. The certificates representing shares of the capital stock of the Corporation shall be in such form as shall be prescribed by law and approved, from time to time, by the Board of Directors. Each certificate shall be signed in the name of the Corporation by the President or any Vice President and by the Secretary, any Treasurer, any Assistant Secretary or any Assistant Treasurer. Any or all of the signatures on a certificate may be a facsimile. In case any officer who shall have signed or whose facsimile signature shall have been placed on any certificate shall have ceased to be such officer before the certificate shall be issued, the certificate may be issued by the Corporation with the same effect as if he were such officer, at the date of issue.

Section 5.2 Transfer of Shares. Transfers of shares shall be registered on the books of the Corporation maintained for that purpose after due presentation of the stock certificates therefor, appropriately endorsed or accompanied by proper evidence of succession, assignment or authority to transfer.

Section 5.3 Fixing Record Date. For purposes of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.

Section 5.4 **Lost Certificates.** The Board of Directors or any transfer agent of the Corporation may direct a new certificate or certificates representing stock of the Corporation to be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors (or any transfer agent of the Corporation authorized to do so by a resolution of the Board of Directors) may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond in such sum as the Board of Directors (or any transfer agent so authorized) shall direct to indemnify the Corporation against any claim that may be made against the Corporation with respect to the certificate or certificates alleged to have been lost, stolen, or destroyed or the issuance of such new certificate or certificates, and such requirement may be general or confined to specific instances.

Section 5.5 **Regulations.** The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, registration, cancellation, and replacement of certificates representing stock of the Corporation.

ARTICLE VI

INDEMNIFICATION

Section 6.1 **Indemnification.** The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law or any successor provision or statute, as the same may be amended from time to time, indemnify any director, officer, employee or agent of the Corporation or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

Section 6.2 **Advancement of Expenses.** Expenses (including attorneys' fees) incurred by any person in his capacity as a director or an officer of the Corporation in defending a civil, criminal, administrative or investigative action, suit or proceeding of the type contemplated by Section 145 of the General Corporation Law, or any successor provision or statute, as the same may be amended from time to time, shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VI.

Section 6.3 **Other Rights and Remedies.** The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 6.4 Insurance. Upon resolution passed by the Board of Directors, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article VI.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal" and "Delaware."

Section 7.2 Fiscal Year. The fiscal year of the Corporation shall end on December 31 or such date as otherwise determined by the Board of Directors.

Section 7.3 Stock of Other Corporations or Other Interests. Unless otherwise ordered by the Board of Directors, the President, the Secretary, and such attorneys or agents of the Corporation as may be, from time to time, authorized by the Board of Directors or the President shall have full power and authority on behalf of the Corporation to attend and to act and vote in person or by proxy at any meeting of the holders of securities of any corporation or other entity in which the Corporation may own or hold shares or other securities, and at such meetings shall possess and may exercise all the rights and powers incident to the ownership of such shares or other securities which the Corporation, as the owner or holder thereof, might have possessed and exercised if present. The President, Secretary, or such attorneys or agents may also execute and deliver on behalf of the Corporation powers of attorney, proxies, consents, waivers, and other instruments relating to the shares or securities owned or held by the Corporation.

Section 7.4 Variations in Pronouns. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context requires.

ARTICLE VIII

AMENDMENTS

These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of holders of at least a majority of the outstanding voting stock of the corporation. These Bylaws may also be altered, amended or repealed or new Bylaws may be adopted by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation. The foregoing may occur at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal, or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend, or repeal Bylaws.

ARTICLE IX

CERTIFICATE OF INCORPORATION

These Bylaws shall be subject to the Certificate of Incorporation of the Corporation. All references in these Bylaws to the Certificate of Incorporation of the Corporation shall be construed to mean the Certificate of Incorporation of the Corporation and any Certificate of Designation to the Certificate of Incorporation of the Corporation, as the same may be amended from time to time.

AMENDMENT

TO

BYLAWS

OF

LIQUIDMETAL TECHNOLOGIES, INC.

Article III, Section 3.2 of the Bylaws of Liquidmetal Technologies Inc. (the “Bylaws”) is hereby deleted in its entirety and replaced with the following:

“2.11 Number and Term of Office. Except as otherwise provided in the Certificate of Incorporation of the Corporation, the number of directors of the Corporation shall be determined by resolution of the Board of Directors; provided, however, that no decrease in the number of directors shall affect the term of any director then in office. Each director shall be elected at the annual meeting of the Corporation to hold office until the expiration of the term for which they are elected or until such director’s successor is elected and qualified, or until such director’s earlier death, resignation or removal as hereinafter provided.”

Except as aforesaid, the Bylaws shall remain in full force and effect.

Adopted by the Board of Directors and effective on September 19, 2011.



September 24, 2012

ATTORNEYS AT LAW
 100 NORTH TAMPA STREET,
 SUITE 2700
 TAMPA, FL 33602-5810
 P.O. BOX 3391
 TAMPA, FL 33601-3391
 813.229.2300 TEL
 813.221.4210 FAX
 foley.com

CLIENT/MATTER NUMBER
 078489-0103

Liquidmetal Technologies, Inc.
 30452 Esperanza
 Rancho Santa Margarita, California 92688

Re: Liquidmetal Technologies, Inc.
 Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished to you in connection with the Registration Statement on Form S-8 (the "Registration Statement") filed by Liquidmetal Technologies, Inc., a Delaware corporation (the "Company") on September 24, 2012 with the United States Securities and Exchange Commission (the "Commission") in connection with registration under the Securities Act of 1933, as amended (the "Securities Act"), of 30,000,000 shares of the Company's common stock, \$0.001 par value per share (the "Shares"), issuable under the Liquidmetal Technologies, Inc. 2012 Equity Incentive Plan (the "Plan").

We have examined and are familiar with the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of Delaware, Bylaws of the Registrant, proceedings of the Board of Directors of the Registrant in connection with the adoption of the Plan, and such other records and documents of the Registrant, certificates of public officials and such other documents as we have deemed appropriate as a basis for the opinions set forth in this opinion letter. For the purpose of the opinion rendered below, we have assumed that in connection with the issuance of the Shares, the Company will receive consideration in an amount not less than the aggregate par value of the Shares covered by each such issuance.

Based on the foregoing, it is our opinion that, as of the date hereof, the Shares of common stock covered by the Registration Statement and to be issued pursuant to the Plan, when issued in accordance with the terms and conditions of the Plan, will be validly issued, fully paid and nonassessable.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon only by you and by persons entitled to rely upon it pursuant to applicable provisions of the Securities Act, and may not be relied upon by any other person or for any other purpose without our prior written consent. We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Foley & Lardner LLP
 Foley & Lardner LLP

BOSTON	JACKSONVILLE	MILWAUKEE	SAN DIEGO	SILICON VALLEY
BRUSSELS	LOS ANGELES	NEW YORK	SAN DIEGO/DEL MAR	TALLAHASSEE
CHICAGO	MADISON	ORLANDO	SAN FRANCISCO	TAMPA
DETROIT	MIAMI	SACRAMENTO	SHANGHAI	TOKYO
				WASHINGTON, D.C.

Consent of Independent Registered Public Accounting Firm

We consent to incorporation by reference in this Registration Statement on Form S-8 of Liquidmetal Technologies, Inc. and subsidiaries (collectively, the “Company”) of our report dated March 30, 2012, relating to our audit of the consolidated financial statements, which appears in the Annual Report on Form 10-K of the Company for the year ended December 31, 2011. Our report dated March 30, 2012 relating to the consolidated financial statements includes an emphasis paragraph relating to an uncertainty as to the Company’s ability to continue as a going concern and an explanatory paragraph relating to the adjustments necessary to restate the warrant and earnings per share information for the 2010 consolidated financial statements.

/s/ SingerLewak LLP

Los Angeles, California
September 24, 2012

Consent of Independent Registered Public Accounting Firm

We consent to the use in this Registration Statement (No. 333) on Form S-8 of Liquidmetal Technologies, Inc. of our report dated March 29, 2012 relating to our audit of the consolidated financial statements, appearing in the Prospectus, which is part of this Registration Statement. Our report dated March 29, 2012, relating to the consolidated financial statements includes an emphasis paragraph relating to an uncertainty as to the Company's ability to continue as a going concern.

We also consent to the reference to our firm under the captions "Experts"

/s/ Choi, Kim & Park, LLP

CERTIFIED PUBLIC ACCOUNTANTS

Los Angeles, California

September 24, 2012
