Draft Date: March 26, 2010

[Letterhead of Richards, Layton & Finger, P.A.]

_____ __, 200_

To Each of the Persons Listed
on Schedule A Attached Hereto

Re: Authority to File Voluntary Bankruptcy Petition --
_____ LLC

Ladies and Gentlemen:

We have acted as special Delaware counsel for _____, LLC, a Delaware limited liability company (the "Company"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinion hereinafter set forth, our examination of documents has been limited to the examination of executed or conformed counterparts, or copies otherwise proved to our satisfaction, of the following:

(a) The Certificate of Formation of the Company, dated _____ __, 200_, as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on _____ __, 200_;

(b) The Limited Liability Company Agreement of the Company, dated as of _____ __, 200_ (the "Agreement"), executed by _____, as the sole member, and _____ and _____, as the Independent Directors (as defined therein); and

(c) A Certificate of Good Standing for the Company, dated _____ __, 200_, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Agreement.

You have requested our opinion as to whether a federal court of competent jurisdiction (a "federal bankruptcy court") would hold that Delaware law, and not federal law, would govern the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the Company.

You have agreed that this opinion relates solely to the law governing the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the Company. You have also agreed that we are expressing no other opinion herein with respect to the transactions involving the Company, including the enforceability of any of the Basic Documents or the characterization of any of the transactions contemplated by the parties to such documents, or with respect to any other matter[, including whether the Company is eligible to be a debtor under the Bankruptcy Code].

With respect to the opinion set forth herein, we note that the questions raised thereby ordinarily would be determined only through a litigated proceeding. The outcome of any such court proceeding depends in large part upon the facts and circumstances as they would be developed in such proceeding.

For purposes of this opinion, we have not reviewed any documents other than the documents listed above, and we have assumed that there exists no provision in any document not reviewed by us that bears upon or is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed that (i) all signatures on documents examined by us are genuine, (ii) all documents submitted to us as originals are authentic, and (iii) all documents submitted to us as copies conform with the originals of those documents.

For purposes of this opinion, we have assumed (i) the due creation, due formation or due organization, as the case may be, and valid existence in good standing of the Company and of each party to the documents examined by us under the laws of the jurisdiction governing its creation, formation or organization and the legal capacity of natural persons who are signatories to the documents examined by us, (ii) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (iii) that each of the parties to the documents examined by us has duly authorized, executed and delivered such documents, and (iv) that each of the documents examined by us is enforceable against the parties thereto in accordance with its respective terms.

Based upon the foregoing, and upon our examination of such questions of law and statutes as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that a federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the Company. Our opinion is based on the assumption that in any case in which this question is

considered, the question will be competently briefed and argued. Our opinion is reasoned and also presumes that any decision rendered will be based on existing legal precedents, including those discussed below.

In the past few years, a number of cases, many of which are unpublished, have either held or indicated that the issue of who has authority to file a voluntary bankruptcy petition on behalf of a limited liability company (an "LLC") is governed by state law.[1] Since the cases addressing this issue are all relatively recent and a number of them are unpublished, we have also considered authorities ruling on the appropriate authority to file a voluntary bankruptcy petition on behalf of a corporation and a partnership.

Courts have noted that LLCs share certain common characteristics of corporations and partnerships.[2] We believe, however, that drawing an analogy between an LLC and a

[1] See, e.g., In re Orchard at Hansen Park, LLC, 347 B.R. 822 (Bankr. N.D. Tex. 2006) (looking to state law and the LLC's operating agreement to determine that an LLC's bankruptcy petition was not properly authorized); In re Delta Starr Broadcasting, L.L.C., 2006 WL 285974 (E.D. La. Feb. 6, 2006) (looking to state law to reverse a bankruptcy court determination that an LLC's bankruptcy petition was not properly authorized); In re Real Homes, LLC, 352 B.R. 221 (Bankr. D. Idaho 2005) (in approving a motion to dismiss a Chapter 11 case due to lack of proof that bankruptcy filing for an LLC was authorized, Court indicates that authority to file a voluntary bankruptcy petition for an LLC must be authorized under state law); In re Green Power Kenansville, LLC, Case No. 04-08384-8-JRL (Bankr. E.D.N.C. Nov. 18, 2004) (in granting a motion to dismiss, court looked to state law and the LLC's operating agreement to determine that an LLC's bankruptcy petition was not properly authorized); In re J&J Property Holdings, LLC, 2004 WL 5463804 (Bankr. W.D.N.C. Jan. 20, 2004) (in granting a motion to dismiss, court looked to provisions of an LLC's operating agreement to determine that an LLC's bankruptcy petition was not properly authorized); In re Avalon Hotel Partners, LLC, 302 B.R. 377, 380 (Bankr. D. Oregon 2003) ("Avalon") (stating that "whether a business entity properly is authorized to file a bankruptcy petition is a matter determined under state law" and examining Oregon state law and the operating agreement of an Oregon LLC in considering whether its bankruptcy petition was properly authorized); In re DeLuca, 194 B.R. 79, 87 n.12 (Bankr. E.D. Va. 1996) ("DeLuca II") (stating that the manager of the LLC had no authority to file voluntary bankruptcy petition for the LLC because "it is clear that the decision to file a chapter 11 petition was a 'major decision' [as defined in the LLC's operating agreement] that required the vote of the members . . . ." (citing In re Old Grind Co., 99 B.R. 317 (Bankr. W.D. Va. 1989), which held that state law gave no authority to a president to file Chapter 11 on behalf of a corporation)).

[2] See, e.g., Avalon, 302 B.R. at 380; In re ICLNDS Notes Acquisition, LLC, 259 B.R. 289, 292-93 (Bankr. N.D. Ohio 2001); In re DeLuca, 194 B.R. 65, 74 (Bankr. E.D. Va. 1996)

corporation, for purposes of determining the authority to file a voluntary bankruptcy petition, is more appropriate than an LLC/partnership analogy. We believe this because, inter alia, the following characteristics of an LLC are similar to corporate characteristics: (i) like a corporation's shareholders, officers, and directors, LLC members and managers do not have liability for an LLC's debts, and (ii) like a corporation with perpetual existence, an LLC's existence under Delaware law as applicable to the Company does not terminate upon the bankruptcy or insolvency of any member.[3] Due to these similarities, the rules of law concerning the authority to file a voluntary bankruptcy petition on behalf of a corporation should be persuasive in determining the authority to file a voluntary bankruptcy petition for an LLC.

The proposition that applicable state law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of a corporation is well settled.[4] Due to the similarities between a corporation and an LLC and the rule of law established in the cases cited in footnote 4 hereof, the issue of what

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("DeLuca I"); DeLuca II, 194 B.R. at 86; In re Daugherty Constr., Inc., 188 B.R. 607, 610 (Bankr. D. Neb. 1995).

[3]See Opinion of Richards, Layton & Finger, P.A., dated _____ __, 200_, regarding the enforceability of the Agreement.

[4]See Price v. Gurney, 324 U.S. 100, 106-07 (1945) ("The District Court in passing on petitions filed by corporations under Chapter X must of course determine whether they are filed by those who have authority so to act. In absence of federal incorporation, that authority finds its source in local law." Also, "nowhere is there any indication that Congress bestowed on the bankruptcy court jurisdiction to determine that those who in fact do not have the authority to speak for the corporation as *a matter of local law* are entitled to be given such authority and therefore should be empowered to file a petition on behalf of the corporation.") (emphasis added); see also Keenihan v. Heritage Press, Inc., 19 F.3d 1255, 1258 (8th Cir. 1994); In re Phillips, 966 F.2d 926, 934 (5th Cir. 1992) ("For many years, courts have consistently looked to state law to determine whether a person has authority to file a voluntary petition on behalf of a corporation."); In re Quarter Moon Livestock Co., 116 B.R. 775, 778 (Bankr. D. Idaho 1990); In re Bel-Aire Invs., Inc., 97 B.R. 88, 89 (Bankr. M.D. Fla. 1989); In re Giggles Rest., Inc., 103 B.R. 549, 553 (Bankr. D.N.J. 1989); In re Nyack Autopartstores Holding Co., 98 B.R. 659, 663 (Bankr. S.D.N.Y. 1989); In re Markus Enters., Inc., 91 B.R. 459, 460 (Bankr. M.D. Tenn. 1988); In re Minor Emergency Ctr. of Tamarac, Inc., 45 B.R. 310, 311 (Bankr. S.D. Fla. 1985); In re Hawaii Times Ltd., 53 B.R. 560, 561 (Bankr. D. Haw. 1985); In re Crescent Beach Inn, Inc., 22 B.R. 155, 157 (Bankr. D. Me. 1982); In re Autumn Press, Inc., 20 B.R. 60, 61 (Bankr. D. Mass. 1982).

persons or entities have authority to file a voluntary petition for bankruptcy on behalf of an LLC should be determined in accordance with state law.

Moreover, the Chancery Court of Delaware has, in *dicta*, made statements in a corporate context that provide useful insight by analogy into the enforceability of a limited liability company agreement's voting provisions concerning the LLC's ability to voluntarily file a bankruptcy petition.[5] The dicta statements in Prosser v. Betty Brooks, Inc. suggest that, at least in the corporate context, a provision in the organizational documents that requires prior approval by certain persons in order to initiate a bankruptcy or similar proceeding is binding.[6] Due to the similarities discussed above between an LLC and a corporation, voting provisions in a limited liability company agreement (an "LLC Agreement") concerning the authority to file for bankruptcy on behalf of an LLC can be viewed as analogous to agreements among shareholders embodied in shareholders' agreements. Thus, such voting provisions in an LLC Agreement should be binding on an LLC.

There is also a body of law governing the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of a partnership.[7] While bankruptcy courts traditionally have looked to state law to evaluate the authority of the individual or entity filing a voluntary petition on behalf of a partnership, former Federal Rule of Bankruptcy Procedure 1004(a), which provided that a "voluntary petition may be filed on behalf of the partnership by one or more general partners if all general partners consent to [the filing of] the petition," may have allowed a bankruptcy court to override any state law provisions, or, in

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[5]See Prosser v. Betty Brooks, Inc., 1985 WL 11577, at *2 (Del. Ch. July 25, 1985) ("In passing on a voluntary petition for bankruptcy of a corporation the Federal Court must determine whether the petition was filed by those who had authority to act and has no alternative but to dismiss the petition if they are found to have been without authority . . . . The Bankruptcy Court . . . undoubtedly could grant a request by plaintiffs to dismiss the bankruptcy petition if it found that the action had not been properly authorized on behalf of the corporation because the directors failed to abstain from consideration of the matter if they were required to do so by the [shareholder agreement].") (citations omitted).

[6]Id.

[7]See, e.g., In re Phillips, 966 F.2d at 930 ("we must consider whether [the general partner] who files a voluntary petition for Chapter 11 protection is 'bankrupt' within the meaning of Texas partnership law," thereby depriving that general partner of the right to act on behalf of the subject partnership); Id. at 934 ("Without further direction from Congress, we will continue to look to state law to determine which people have authority to seek federal bankruptcy protection on behalf of state-created business entities."); In re Hunters Horn Assocs., 158 B.R. 729, 730 (Bankr. M.D. Tenn. 1993); Jolly v. Pittore, 170 B.R. 793, 797 (S.D.N.Y. 1994).

particular, provisions in a partnership agreement, that may have been in conflict with, or undermined the express language and objective of, former Bankruptcy Rule 1004(a).[8] Bankruptcy Rule 1004(a) has been amended effective as of December 1, 2002, so that it no longer addresses the filing of a voluntary bankruptcy petition by a partnership. The Advisory Committee Note to the revised Bankruptcy Rule 1004 suggests that nonbankruptcy law governs the question of the authority of a partnership to file a voluntary bankruptcy petition.[9]

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[8]See In re Monterey Equities-Hillside, 73 B.R. 749, 752 (Bankr. N.D. Cal. 1987) (state-appointed receiver of the partnership had authority under state law to commence a bankruptcy case, but such authority was restricted by Bankruptcy Rule 1004(a), which required the consent of all general partners before a voluntary petition was allowed).

[9]The Advisory Committee Note to Bankruptcy Rule 1004 comments upon such amendment as follows:

> Section 303(b)(3)(A) of the Code provides that fewer than all of the general partners in a partnership may commence an involuntary case against the partnership. There is no counterpart provision in the Code setting out the manner in which a partnership commences a voluntary case. The Supreme Court has held in the corporate context that applicable nonbankruptcy law determines whether authority exists for a particular debtor to commence a bankruptcy case. See Price v. Gurney, 324 U.S. 100 (1945). The lower courts have followed this rule in the partnership context as well. See, e.g., Jolly v. Pittore, 170 B.R. 793 (S.D.N.Y. 1994); Union Planters Nat'l Bank v. Hunters Horn Assocs., 158 B.R. 729 (Bankr. M.D. Tenn. 1993); In re Channel 64 Joint Venture, 61 B.R. 255 (Bankr. S.D. Oh. 1986). Rule 1004(a) could be construed as requiring the consent of all of the general partners to the filing of a voluntary petition, even if fewer than all of the general partners would have the authority under applicable nonbankruptcy law to commence a bankruptcy case for the partnership. Since this is a matter of substantive law beyond the scope of these rules, Rule 1004(a) is deleted as is the designation of subdivision (b).
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> The rule is retitled to reflect that it applies only to involuntary petitions filed against partnerships.

Fed. R. Bankr. P. 1004 advisory committee's note.

We have considered whether issues concerning preemption should be relevant to our analysis in determining the appropriate authority to file a voluntary bankruptcy petition on behalf of an LLC, and have concluded, for the reasons discussed below, that preemption issues should not affect the foregoing analysis.

In general, the Supremacy Clause of the United States Constitution provides that all federal laws "shall be the supreme law of the land" and shall preempt enforcement of any conflicting state law. The Supreme Court of the United States has held that state law may be preempted by federal law in several different ways. First, federal law may preempt state law when Congress has expressly stated its intention to preempt state law in statutes.[10] Second, federal law may preempt state law when the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state law.[11] Third, in circumstances where Congress has not completely displaced state regulation, federal law may preempt state law when state law actually conflicts with federal law.[12] Such a conflict occurs either because (i) compliance with both the federal and state regulations is impossible or (ii) the state law stands as an obstacle to the accomplishment and execution of the purposes and objectives of Congress.[13]

Applying these standards to the issue covered by this opinion letter, in circumstances where the application of state law does not in effect prohibit a voluntary bankruptcy petition by an LLC, we believe that federal law should not preempt state law concerning the issue of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the LLC. First, Congress has not expressly stated its intention to preempt state law on the issue of the authority to file a voluntary bankruptcy petition on behalf of an LLC. Indeed, Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code"), is silent on who might be granted such authority on behalf of an LLC.

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[10] See Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 280 (1987) ("Guerra").

[11] Id. at 280-81.

[12] Id.

[13] Id. See also CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 79 (1987); Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984); In re Phillips, 966 F.2d at 933 (quoting Guerra, 479 U.S. at 280-81). We note that in the bankruptcy field at least one court has indicated a requirement that the conflict between state law and federal policy must be a "sharp" conflict. Integrated Solutions, Inc. v. Serv. Support Specialties, Inc., 124 F.3d 487, 492 n.3 (3d Cir. 1997) ("[s]ince bankruptcy is a field traditionally occupied by the states, there must be a 'sharp' conflict between state law and federal policy before we may conclude that federal law preempts state law in the bankruptcy context.").

Second, federal law is not so comprehensive as to infer that Congress intended to preempt state law concerning the authority to file voluntary bankruptcy petitions. As the above cases pertaining to corporations and partnerships indicate, federal law has "left room" for state law to govern on the appropriate authority to file voluntary bankruptcy petitions.

Third, compliance with both federal and state law should not be impossible and state law should not stand as an obstacle to the accomplishment of the purposes and objectives of Congress. Compliance with federal and state law may be impossible when "*ipso facto*" clauses within the state limited liability company statute and an LLC Agreement conflict with the Bankruptcy Code and, thus, make those clauses unenforceable.[14] Furthermore, the court in In re Map 1978 Drilling P'ship determined that a partnership agreement, valid under state law, created a conflict with the Bankruptcy Code and, therefore, provisions in the partnership agreement in conflict with the Bankruptcy Code were invalid.[15] In that case, the court decided that the federal standard, requiring that two-thirds of those persons actually voting approve a Chapter 11 reorganization plan involving the sale of substantially all the assets of the partnership, conflicted with the partnership agreement, which required the approval of an outright majority of limited partners to effect such a sale.[16] In reaching this conclusion, the court explained that "federal law pre-empts state law in determining how votes will be counted for the approval of a plan."[17]

State law would stand as an obstacle to the accomplishment of the purposes and objectives of Congress to the extent, for example, that the state law imposed restrictions on the filing of bankruptcy petitions and enforced waivers on the benefits guaranteed to debtors under the Bankruptcy Code.[18]

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[14]See Daugherty, 188 B.R. at 612; see also Summit Inv. & Dev. Corp. v. LeRoux, 1995 WL 447800, at *12 (D. Mass. Oct. 20, 1994) ("*ipso facto*" provisions within state partnership law and partnership agreement were preempted by the Bankruptcy Code, which invalidates such laws), aff'd, 69 F.3d 608 (1st Cir. 1995); cf. DeLuca I, 194 B.R. at 77-79 ("*ipso facto*" provisions within limited liability company agreement were enforceable because such provisions fit under the exception of Bankruptcy Code § 365(e)(2)); DeLuca II, 194 B.R. at 90-92 (same).

[15]In re Map 1978 Drilling P'ship, 95 B.R. 432 (Bankr. N.D. Tex. 1989).

[16]Id. at 435.

[17]Id. at 436.

[18]See, e.g., Perez v. Campbell, 402 U.S. 637, 648-49 (1971) (state law was preempted because state statute stood as obstacle in effecting purposes of Bankruptcy Code to provide debtors "'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.'") (citations omitted); In re Corporate and Leisure

This third instance of preemption should not be relevant in the context of this opinion letter. With respect to the appropriate authority to file a voluntary bankruptcy petition on behalf of an LLC, we do not perceive a conflict between the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq. (the "Act"), as applied to the Agreement and specific provisions of the Bankruptcy Code.

Moreover, we do not perceive a conflict between the Act as applied to provisions of the Agreement and the Bankruptcy Code pertaining to the authority to file a voluntary bankruptcy petition on behalf of the Company such that enforcing the Agreement would be an obstacle to executing the purposes and objectives of the Bankruptcy Code. [One objective of the Bankruptcy Code is to protect creditors from a debtor's filing of an "abusive" bankruptcy petition.] The Agreement requires, so long as any Obligation is outstanding, the prior unanimous written consent of the Member and the Board (including all Independent Directors) in order for a Person to file a voluntary bankruptcy petition on behalf of the Company. [The filing provisions within the Agreement guard against an "abusive" filing by the Company and, therefore, are in harmony with the Bankruptcy Code.][19]

Accordingly, we believe that a federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the Company.

We are attorneys admitted to practice in the State of Delaware. The opinion expressed herein is not a guaranty as to what any particular federal bankruptcy court would actually hold, but a reasoned opinion as to the decision a federal bankruptcy court would reach if the issues are properly presented to it and the federal bankruptcy court followed existing precedent as to legal and equitable principles applicable in bankruptcy cases. In this regard, we note that legal opinions on bankruptcy law matters unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions to third parties are typically

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Event Prods., Inc., 351 B.R. 724 (Bankr. D. Ariz. 2006) (state law appointment of receiver and state court injunction prohibiting bankruptcy petition were preempted by federal bankruptcy law); In re Tru Block Concrete Prods., Inc., 27 B.R. 486, 492 (Bankr. S.D. Cal. 1983) (provisions in pre-petition agreement providing for automatic dismissal of debtor's petition for bankruptcy under Bankruptcy Code were void); In re George, 15 B.R. 247, 248 (Bankr. N.D. Ohio 1981) (clause in pre-petition agreement waiving debtor's rights to discharge under the Bankruptcy Code was unenforceable).

[19]We assume that neither the Member nor any Director (including any Independent Director) would be found by a bankruptcy court to be a representative of, or to have entered into a voting agreement with, or to otherwise be affiliated with or beholden to, any creditor of the Company.

given. These inherent limitations exist primarily because of the pervasive equity powers of federal bankruptcy courts, the overriding goal of reorganization to which other legal rights and policies may be subordinated, the potential relevance to the exercise of judicial discretion of future arising facts and circumstances, and the nature of the bankruptcy process. The recipients of this opinion should take these limitations into account in analyzing the bankruptcy risks associated with the transactions described herein. We do not assume any continuing obligation or responsibility to advise you of any changes in law, or any change in circumstances of which we become aware, which may affect the opinion contained herein or to update, revise or supplement this opinion for any other reason.

[We understand that you will rely as to matters of federal law upon this opinion in connection with the formation of the Company and the transactions contemplated by the Basic Documents. We further understand that your successors and assigns and any trustee holding a loan evidenced by the Basic Documents in a securitization and any rating agency may rely as to matters of federal law upon this opinion in connection with the matters set forth herein. In connection with the foregoing, we hereby consent to your and your successors' and assigns' and any such trustee's and rating agency's relying as to matters of federal law upon this opinion, subject to the understanding that the opinions rendered herein are given on the date hereof and such opinions are rendered only with respect to facts existing on the date hereof and laws, rules and regulations currently in effect. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.]

[We understand that you will rely as to matters of federal law upon this opinion in connection with the formation of the Company. We further understand that your successors and assigns (including, without limitation, any trustee in connection with a securitization) and any rating agency may rely as to matters of federal law upon this opinion in connection with the matters set forth herein. In connection with the foregoing, we hereby consent to your, your successors' and assigns' (including, without limitation, any trustee in connection with a securitization) and any such rating agency's relying as to matters of federal law upon this opinion, subject to the understanding that the opinions rendered herein are given on the date hereof and such opinions are rendered only with respect to facts existing on the date hereof and laws, rules and regulations currently in effect. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.]

Very truly yours,

___/MDC/___

Schedule A

[Board Managed SPE Form]

Richards, Layton & Finger, P.A.

LIMITED LIABILITY COMPANY AGREEMENT
OF
_____ LLC

This Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of _____ LLC (the "Company"), is entered into by _____, as the sole equity member (the "Member"), and _____ and _____, as the Independent Directors (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Member, by execution of this Agreement, hereby forms the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the "Act"), and this Agreement, and the Member and **[names of Independent Directors]** hereby agree as follows:

Section 1. Name.

The name of the limited liability company formed hereby is _____ LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at _____ _____ or such other location as may hereafter be determined by the Member.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o [RL&F Service Corp., One Rodney Square, in the City of Wilmington, County of New Castle, Delaware 19801].

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware are [RL&F Service Corp., One Rodney Square, in the City of Wilmington, County of New Castle, Delaware 19801].

Section 5. Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(j), the Member may act by written consent.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), each person acting as an Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Director pursuant to Section 10; provided, however, the Special Members shall automatically cease to be members of the Company upon the admission to the Company of a substitute Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, each Person acting as an Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each person acting as an Independent Director pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

_____ is hereby designated as an "authorized person" of the Company within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an "authorized person" of the Company ceased, and the Member thereupon became the designated "authorized person" of the Company and shall continue as the designated "authorized person" within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in [jurisdiction in which property is located] and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purpose.

(a) The purpose to be conducted or promoted by the Company is to engage in the following activities:

(i) [to buy, own, hold, manage, finance and dispose of the real property at _____]; and

(ii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member or any Director or Officer on behalf of the Company are hereby authorized to execute and deliver, the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any Member, Director, Officer or other Person notwithstanding any other provision of this Agreement. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Director or Officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(j), the Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Board of Directors. Subject to Section 9(j), the business and affairs of the Company shall be managed by or under the direction of a Board of one or more Directors designated by the Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Member at any time in its sole and absolute discretion, upon notice to all Directors, and subject in all cases to Section 10. The initial number of Directors shall be five, two of which shall be Independent Directors pursuant to Section 10. Each Director elected, designated or appointed by the Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Each Director shall execute and deliver the Management Agreement. Directors need not be a Member. The initial Directors designated by the Member are listed on Schedule D hereto.

(b) Powers. Subject to Section 9(j), the Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes

described herein, including all powers, statutory or otherwise. Subject to Sections 7 and 9, the Board of Directors has the authority to bind the Company.

(c) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board 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 President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the President or Secretary in like manner and with like notice upon the written request of any one or more of the Directors.

(d) Quorum; Acts of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee, as the case may be.

(e) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(f) Committees of Directors.

(i) The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the Directors of the Company. The Board 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.

(ii) 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 such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(iii) Any such committee, to the extent provided in the resolution of the Board, and subject to, in all cases, Sections 9(j) and 10, shall have and may exercise all the powers and authority of the Board in the management of

the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

(g) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board or a stated salary as Director. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(h) Removal of Directors. Unless otherwise restricted by law, any Director or the entire Board of Directors may be removed or expelled, with or without cause, at any time by the Member, and, subject to Section 10, any vacancy caused by any such removal or expulsion may be filled by action of the Member.

(i) Directors as Agents. To the extent of their powers set forth in this Agreement and subject to Section 9(j), the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

(j) Limitations on the Company's Activities.

(i) This Section 9(j) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity.

(ii) The Member shall not, so long as any Obligation is outstanding, amend, alter, change or repeal the definition of "Independent Director" or Sections 5(c), 7, 8, 9, 10, 16, 20, 21, 22, 23, 24, 25, 26, 30 or 31 or Schedule A of this Agreement without the unanimous written consent of the Board (including all Independent Directors). Subject to this Section 9(j), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 31.

(iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Member, the Board, any Officer or any other Person, so long as any Obligation is outstanding, neither the Member nor the Board nor any Officer nor any other Person shall be authorized or empowered on behalf of the Company to, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Member and the Board (including all Independent Directors), take any Material Action, provided, however, that, so long as any Obligation is outstanding, the Board may not vote on, or

authorize the taking of, any Material Action, unless there are at least two Independent Directors then serving in such capacity.

(iv) The Board and the Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Board also shall cause the Company to:

(A) maintain its own separate books and records and bank accounts;

(B) at all times hold itself out to the public and all other Persons as a legal entity separate from the Member and any other Person;

(C) have a Board of Directors separate from that of the Member and any other Person;

(D) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;

(E) except as contemplated by the Basic Documents, not commingle its assets with assets of any other Person;

(F) conduct its business in its own name and strictly comply with all organizational formalities to maintain its separate existence;

(G) maintain separate financial statements;

(H) pay its own liabilities only out of its own funds, provided, however, the foregoing shall not require the Member to make any additional capital contributions to the Company;

(I) maintain an arm's length relationship with its Affiliates and the Member;

(J) pay the salaries of its own employees, if any, provided, however, the foregoing shall not require the Member to make any additional capital contributions to the Company;

(K) not hold out its credit or assets as being available to satisfy the obligations of others;

(L) allocate fairly and reasonably any overhead for shared office space;

(M) use separate stationery, invoices and checks;

(N) except as contemplated by the Basic Documents, not pledge its assets for the benefit of any other Person;

(O) correct any known misunderstanding regarding its separate identity;

(P) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities, provided, however, the foregoing shall not require the Member to make any additional capital contributions to the Company;

(Q) keep minutes of any meetings and actions and observe all other Delaware limited liability company formalities;

(R) not acquire any securities of the Member; and

(S) cause the Directors, Officers, agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing.

Failure of the Company, or the Member or Board on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member or the Directors.

(v) So long as any Obligation is outstanding, the Board shall not cause or permit the Company to:

(A) except as contemplated by the Basic Documents, guarantee any obligation of any Person, including any Affiliate;

(B) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Section 7, the Basic Documents or this Section 9(j);

(C) incur, create or assume any indebtedness other than as expressly permitted under the Basic Documents;

(D) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Basic Documents and may make any advance required or expressly permitted to be made pursuant to any provisions of the Basic Documents and permit the same to remain outstanding in accordance with such provisions;

(E) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of

ownership interests other than such activities as are expressly permitted pursuant to any provision of the Basic Documents and subject to obtaining any approvals required under this Agreement; or

(F) except as contemplated or permitted by the Basic Documents, form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other).

Section 10. Independent Director.

As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least two Independent Directors who will be appointed by the Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any duty otherwise existing hereunder, at law or in equity, the Independent Directors shall consider only the interests of the Company, including its creditors, in acting or otherwise voting on the matters referred to in Section 9(j)(iii). No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Director by a written instrument, which may be a counterpart signature page to the Management Agreement, and (ii) shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

Section 11. Officers.

(a) Officers. The initial Officers of the Company shall be designated by the Member. The additional or successor Officers of the Company shall be chosen by the Board and shall consist of at least a President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board. Any vacancy occurring in any office of the Company shall be filled by the Board. The initial Officers of the Company designated by the Member are listed on Schedule E hereto.

(b) President. The President shall be the chief executive officer of the Company, shall preside at all meetings of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Board are carried into effect. The President or any other Officer authorized by the President or the Board shall execute all bonds, mortgages and other contracts, except: (i) where required or

permitted by law or this Agreement to be otherwise signed and executed, including Section 7(b); (ii) where signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of the Company, and (iii) as otherwise permitted in Section 11(c).

(c) Vice President. In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Directors, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(d) Secretary and Assistant Secretary. The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and record all the proceedings of the meetings of the Company and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings of the Member, if any, and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(e) Treasurer and Assistant Treasurer. The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and to the Board, at its regular meetings or when the Board so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(f) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(j), the actions of the Officers taken in accordance with such powers shall bind the Company.

(g) Duties of Board and Officers. Except to the extent otherwise modified herein (including, with limitation, in Section 10), each Director and Officer shall have fiduciary duties

identical to those of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Members nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or Director of the Company.

Section 13. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed on Schedule B attached hereto. In accordance with Section 5(c), the Special Members shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 14, are intended to benefit the Member and the Special Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member and the Special Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law or any Basic Document.

Section 17. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the

right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Reports.

The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

Section 19. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member, the Special Members and any Officer, Director, employee or agent of the Company and any Affiliate of the Member or the Special Members may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others, and the Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, neither the Member nor the Special Members nor any Officer, Director, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member or the Special Members (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity or advancement of expenses under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Members shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no payment from funds of the Company (as distinct from funds from other sources,

such as insurance) of any indemnity or advancement of expenses under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they modify, restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

Section 21. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, the transferee of a limited liability company interest in the Company shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Basic Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign, except as permitted under the Basic Documents and if the Rating Agency Condition is satisfied. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart

signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company with the written consent of the Member; provided, however, that, notwithstanding the foregoing, so long as any Obligation remains outstanding, no additional Member may be admitted to the Company unless the Rating Agency Condition is satisfied.

Section 24. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, or (ii) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member shall not cause such Member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member and the Special Members waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or a Special Member or the occurrence of an event that causes the Member or a Special Member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member and the Special Members hereby irrevocably waives any right or power that such Person might have to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons).

Section 27. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 10, 20, 21, 22, 23, 24, 26, 29 and 31, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Directors, in accordance with its terms.

Section 30. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 31. Amendments.

Subject to Section 9(j), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member. Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless the Rating Agency Condition is satisfied except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the other Basic Documents.

Section 32. Counterparts.

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

Section 33. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 34. Effectiveness.

Pursuant to Section 18-201(d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State on _____ __, 20__.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the ____ day of _____, 20__.

MEMBER:

[_____]

By: _____
Name:
Title:

INDEPENDENT DIRECTORS:

_____
Name:

_____
Name:

SCHEDULE A

Definitions

A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Basic Documents" means [insert documents being executed by Company at closing] and all documents and certificates contemplated thereby or delivered in connection therewith.

"Board" or "Board of Directors" means the Board of Directors of the Company.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on _____ __, 20__, as amended or amended and restated from time to time.

"Company" means _____ LLC, a Delaware limited liability company.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partner or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

"Covered Persons" has the meaning set forth in Section 20(a).

"Directors" means the Persons elected to the Board of Directors from time to time by the Member, including the Independent Directors, in their capacity as managers of the Company. Each Director is hereby designated as a "manager" of the Company within the meaning of Section 18-101(10) of the Act.

"Independent Director" means a natural person who, for the five-year period prior to his or her appointment as Independent Director has not been, and during the continuation of his or her service as Independent Director is not: (i) an employee, director, stockholder, partner or officer of the Company or any of its Affiliates (other than his or her service as an Independent Director or similar capacity of the Company or any of its Affiliates); (ii) a customer or supplier of the Company or any of its Affiliates (other than an Independent Director provided by a corporate services company that provides independent directors in the ordinary course of its business); or (iii) any member of the immediate family of a person described in (i) or (ii).

"Management Agreement" means the agreement of the Directors in the form attached hereto as Schedule C. The Management Agreement shall be deemed incorporated into, and a part of, this Agreement.

"Material Action" means to consolidate or merge the Company with or into any Person, or sell all or substantially all of the assets of the Company, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a voluntary bankruptcy petition or any other petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Company.

"Member" means _____, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its

capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Members.

"Obligations" shall mean the indebtedness, liabilities and obligations of the Company under or in connection with the Basic Documents or any related document in effect as of any date of determination.

"Officer" means an officer of the Company described in Section 11.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Rating Agency" has the meaning assigned to that term in [the Basic Documents].

"Rating Agency Condition" means (i) with respect to any action taken at any time before the loan evidenced and secured by the Basic Documents has been sold or assigned to a securitization trust, that the lender thereunder has consented in writing to such action, and (ii) with respect to any action taken at any time after such loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Company in writing that such action will not result in a reduction or withdrawal of the then current rating by such Rating Agency of any of securities issued by such securitization trust.

"Special Member" means, upon such person's admission to the Company as a member of the Company pursuant to Section 5(c), a person acting as Independent Director, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

Name	Mailing Address	Agreed Value of Capital Contribution	Limited Liability Company Interest
		[$_____]	100%

SCHEDULE C

Management Agreement

_____ __, 20__

[_____
_____
_____]

Re: Management Agreement --_____LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned Persons, who have been designated as directors of _____ LLC, a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of _____ __, 20__, as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. Each of the undersigned accepts such Person's rights and authority as a Director under the LLC Agreement and agrees to perform and discharge such Person's duties and obligations as a Director under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person's successor as a Director is designated or until such Person's resignation or removal as a Director in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a "manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

2. So long as any Obligation is outstanding, each of the undersigned agrees, solely in its capacity as a creditor of the Company on account of any indemnification or other payment owing to the undersigned by the Company, not to acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or governmental authority for the purpose of commencing or sustaining an involuntary case against the Company under any federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company.

3. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE,

AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement.

This Management Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Management Agreement and all of which together shall constitute one and the same instrument.

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

_____

_____

_____

_____

SCHEDULE D

DIRECTORS

1.
2.
3.
4.
5.

SCHEDULE E

OFFICERS	TITLE
	President
	Vice President
	Treasurer
	Secretary

Draft Date: March 26, 2010

[Letterhead of Richards, Layton & Finger, P.A.]

_____ __, 20__

To Each of the Persons Listed
on Schedule A Attached Hereto

Re: _____ LLC

Ladies and Gentlemen:

We have acted as special Delaware counsel for _____ LLC, a Delaware limited liability company (the "Company"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

(a) The Certificate of Formation of the Company, dated as of _____ __, 20__ (the "LLC Certificate"), as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on _____ __, 20__;

(b) The Limited Liability Company Agreement of the Company, dated as of _____ __, 20__ (the "LLC Agreement"), executed by _____, as the sole equity member (the "Member"), and by _____, as the Independent Manager (as defined therein);

(c) The Management Agreement, dated _____ __, 20__, executed by the Independent Manager (as defined in the LLC Agreement); and

(d) A Certificate of Good Standing for the Company, dated _____ __, 20__, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the LLC Agreement.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (d) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (d) above) that is referred to in or incorporated by reference into any document reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed that (i) all signatures on documents examined by us are genuine, (ii) all documents submitted to us as originals are authentic, and (iii) all documents submitted to us as copies conform with the originals of those documents.

For purposes of this opinion, we have assumed (i) except to the extent provided in paragraph 1 below, the due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its organization or formation and the legal capacity of natural persons who are signatories to the documents examined by us, (ii) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, and (iii) the due authorization, execution and delivery by all parties thereto of all documents examined by us. We have not participated in the preparation of any offering material relating to the Company and assume no responsibility for the contents of any such material.

This opinion is limited to the laws of the State of Delaware (excluding the securities and blue sky laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws (including federal bankruptcy law) and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder that are currently in effect. In rendering the opinions set forth herein, we express no opinion concerning (i) the creation, attachment, perfection or priority of any security interest, lien or other encumbrance, or (ii) the nature or validity of title to any property.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Company has been duly formed and is validly existing in good standing as a limited liability company under the laws of the State of Delaware.

2. The LLC Agreement constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member, in accordance with its terms.

3. If properly presented to a Delaware court, a Delaware court applying Delaware law would conclude that (i) for as long as any Obligation is outstanding, in order for a Person to file a voluntary bankruptcy petition on behalf of the Company, the prior unanimous written consent of the Member and the Independent Manager, as provided for in Section 9(d)(iii) of the LLC Agreement, is required, and (ii) such provision, contained in Section 9(d)(iii) of the LLC Agreement, that requires, for as long as any Obligation is outstanding, the prior unanimous written consent of the Member and the Independent Manager in order for a Person to file a

voluntary bankruptcy petition on behalf of the Company, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member, in accordance with its terms.

4. While under the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq. (the "LLC Act"), on application to a court of competent jurisdiction, a judgment creditor of the Member may be able to charge the Member's share of any profits and losses of the Company and the Member's right to receive distributions of the Company's assets (the "Member's Interest"), to the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the Member would otherwise have been entitled in respect of such Member's Interest. Under the LLC Act, no creditor of the Member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the Company. Thus, under the LLC Act, a judgment creditor of the Member may not satisfy its claims against the Member by asserting a claim against the assets of the Company.

5. Under the LLC Act (i) the Company is a separate legal entity, and (ii) the existence of the Company as a separate legal entity shall continue until the cancellation of the LLC Certificate.

6. Under the LLC Act and the LLC Agreement, the Bankruptcy or dissolution of the Member will not, by itself, cause the Company to be dissolved or its affairs to be wound up.

The opinion expressed in paragraph 2 above is subject to the effect upon the LLC Agreement of (i) bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, receivership, reorganization, liquidation and other similar laws relating to or affecting the rights and remedies of creditors generally, and (ii) principles of equity, including applicable law relating to fiduciary duties (regardless of whether considered and applied in a proceeding in equity or at law). In rendering the opinion expressed in paragraph 2 above, we express no opinion (i) concerning the right or power of a member or manager of the Company to apply to or petition a court to decree a dissolution of the Company pursuant to Section 18-802 of the LLC Act, or (ii) with respect to provisions of the LLC Agreement that apply to a Person that is not a party to the LLC Agreement.

The opinions expressed in paragraphs 3 through 6 above are subject to principles of equity, including applicable law relating to fiduciary duties (regardless of whether considered and applied in a proceeding in equity or at law), but the opinions expressed in paragraphs 3 through 6 above are not subject to the matters set forth in the first clause (i) of the preceding paragraph.

We understand that you will rely as to matters of Delaware law upon this opinion in connection with the formation of the Company. We further understand that your successors and assigns (including, without limitation, any trustee in connection with a securitization) and

any rating agency may rely as to matters of Delaware law upon this opinion in connection with the matters set forth herein. In connection with the foregoing, we hereby consent to your, your successors' and assigns' (including, without limitation, any trustee in connection with a securitization) and any such rating agency's relying as to matters of Delaware law upon this opinion, subject to the understanding that the opinions rendered herein are given on the date hereof and such opinions are rendered only with respect to facts existing on the date hereof and laws, rules and regulations currently in effect. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

GWL/ARH

Schedule A