

**LIMITED LIABILITY COMPANY OPERATING
AGREEMENT**

OF

RIVEROAK REALTY FUND III, LLC

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**LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
RIVEROAK REALTY FUND III, LLC**

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this **Agreement**) of **RIVEROAK REALTY FUND III, LLC** (the **Fund**), is dated as of January 5, 2004 (the **Effective Date**), and is by and among **RIVEROAK INVESTMENT CORP., LLC**, a Delaware limited liability company (**RiverOak Investment Corp., LLC**), as Managing Member (as hereinafter defined) and as a Nonmanaging Member (as hereinafter defined), and those Persons (as hereinafter defined) listed from time to time as Nonmanaging Members on Schedule A attached hereto (as same may be amended or supplemented from time to time).

**ARTICLE I
CERTAIN DEFINITIONS AND REFERENCES**

References to Articles , Sections and/or Schedules in this Agreement shall, unless otherwise indicated by the context thereof, be deemed to refer to the Articles, Sections and/or Schedules of this Agreement. For the purposes of this Agreement capitalized terms used in this Agreement, unless otherwise defined herein, shall mean the following:

AAA is defined in Section 15.11(a).

AAA Rules is defined in Section 15.11(a).

Act shall mean the Delaware Limited Liability Company Act, 6 Del. C. 18-101 et seq., as amended.

Additional Capital Call is defined in Section 3.5(b).

Additional Capital Call Amount is defined in Section 3.5(b)(i).

Additional Capital Call Notice is defined in Section 3.5(b).

Additional Capital Contributions is defined in Section 3.5(b).

Additional Capital Contribution Date is defined in Section 3.5(b)(iv).

Additional Capital Contribution Shortfall is defined in Section 3.5(e).

Adjusted Capital Account Balance of a Member as of any date means the balance in such Member s Capital Account as of such date (i) increased by any amount such Member is deemed obligated to contribute to the Fund pursuant to Treasury Regulation section 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) or 1.704-2(i)(5) and (ii) reduced by any allocations or distributions to such Member described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5) or (6).

Adjusted Capital Contributions of a Member as of any date means the amount of such Member s Capital Contributions made to the Fund reduced by the aggregate amount of cash

and the Fair Market Value of any assets previously distributed to such Member pursuant to Sections 5.1(b)(i) and 5.2(a).

Advisory Board is defined in Section 6.5(a).

Advisory Board Members is defined in Section 6.5(b).

Affiliate of, or a Person **affiliated** with, a specified Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For the purposes of this definition, the term **control** (including the terms **controlled by** and **under common control with**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, by contract or otherwise.

Agreement is defined in the preamble.

Allocable Capital Contribution of a Nonmanaging Member means, with respect to an Investment, the aggregate cost basis to the Fund of such Investment multiplied by a fraction, the numerator of which is such Member's Adjusted Capital Contributions with respect to such Investment, and the denominator of which is the aggregate Adjusted Capital Contributions of all Nonmanaging Members with respect to such Investment, each of the foregoing to be calculated as of the date such determination is made.

Allocable Preferred Return of a Member with respect to an Investment means the Preferred Return calculated with respect to that Member's Allocable Capital Contribution with respect to that Investment, for the period commencing from the Investment Date with respect to such Investment through and including the Investment Distribution Date with respect to such Investment.

Arbitration Notice is defined in Section 15.11(b).

Arbitration Response Notice is defined in Section 15.11(c).

Assignee means a Person who has become the owner of all or a portion of a Nonmanaging Member's Interest but who has not become a Substitute Nonmanaging Member.

Bankruptcy means, with respect to any Person, the occurrence of any of the following events: (i) the making by such Person of an assignment for the benefit of creditors; (ii) the filing (A) by such Person of a voluntary petition in bankruptcy or (B) of an involuntary petition in bankruptcy against such Person and the failure of such Person to cause such involuntary petition to be discharged within one hundred twenty (120) days of such involuntary filing; (iii) adjudication of such Person as bankrupt or insolvent or the issuance of a decree of bankruptcy or insolvency against such Person; (iv) the filing by such Person of a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief; (v) the filing by such Person of an answer or other pleading admitting or failing to contest material allegations of a petition filed in any proceeding of the type described in this definition; or (vi) the seeking, consent to or acquiescence in, by such Person, the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of his properties.

Business Day means any day other than a Saturday, Sunday, or a public holiday in the State of Connecticut.

Capital Account means the capital account maintained for each Member pursuant to Section 4.1.

Capital Contributions of a Nonmanaging Member means the Initial Capital Contribution, any and all Pre-Final Closing Capital Contributions, and any and all Additional Capital Contributions made by such Nonmanaging Member.

Capital Event means the sale, exchange or other disposition of all or substantially all of the Fund's Investments. The sale, exchange or other disposition of Investments constituting ninety-five percent (95%) or more of the Fund's Investments, based upon the then outstanding capital of the Fund that is then invested in Investments, shall be deemed to be a Capital Event for purposes of this Agreement.

Certificate is defined in Section 2.5(a).

Code means the Internal Revenue Code of 1986, as amended.

Commitment means, with respect to a Nonmanaging Member, the maximum amount that such Nonmanaging Member has agreed to contribute as Capital Contributions to the Fund pursuant to the Subscription Agreement delivered to the Managing Member by or on behalf of such Nonmanaging Member in consideration for such Nonmanaging Member's Interest in the Fund, as such Commitment may be increased from time to time pursuant to the provisions of this Agreement.

Complaining Party is defined in Section 15.11(b).

Complaining Party's Arbitrator is defined in Section 15.11(c).

Consent means the consent of a Person given as provided in this Agreement to do the act or thing for which the consent is solicited, or the act of granting such consent, as the context may require. Reference to (a) the unanimous Consent of the Nonmanaging Members shall mean the Consent of all of the Nonmanaging Members entitled to such Consent pursuant to the provisions of this Agreement (determined at the time such Consent is solicited), (b) the Consent of a majority of or a majority in Interest of the Nonmanaging Members means the Consent of the Nonmanaging Members, whose aggregate Adjusted Capital Contributions represent more than fifty percent (50%) of the aggregate Adjusted Capital Contributions of all of the Members (determined at the time such Consent is solicited), and (c) the Consent of a specified percentage of or a specified percentage in Interest of the Nonmanaging Members means the Consent of not less than the specified percentage of the Nonmanaging Members, whose aggregate Adjusted Capital Contributions represent more than fifty percent (50%) of the aggregate Adjusted Capital Contributions of all of the Members (determined at the time such Consent is solicited). Reference to the Consent of the Managing Member shall be deemed to refer to the Consent solely of the Managing Member and no Nonmanaging Member shall be deemed to have any right in connection therewith.

Delayed Entry means, with respect to a Nonmanaging Member and subject to the approval of the Managing Member, the receipt by the Managing Member of such Nonmanaging Member's Subscription Agreement and the making by such Nonmanaging Member of such Nonmanaging Member's Initial Capital Contribution and, if applicable, Pre-Final Closing Capital Contributions after the Initial Closing Date pursuant to the provisions of Section 3.1.

Effective Date is defined in the preamble.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Exchange Act means the Securities Exchange Act of 1934, as amended.

Existing RiverOak Funds means RiverOak Realty Fund I, LP, a Delaware limited partnership, and RiverOak Realty Fund II, LLC, a Delaware limited liability company.

Final Closing Date shall mean a date designated by the Managing Member, but in no event later than the date that is two (2) years after the Initial Closing Date.

Fiscal Year means the calendar year or, in the case of the first **Fiscal Year**, the period commencing on the Effective Date and ending on December 31, 2004 and, in the case of the last **Fiscal Year**, the period commencing on the January 1 of the calendar year which includes the date on which the liquidation of the Fund is completed and ending on the date on which such liquidation is completed.

Fund is defined in the preamble.

Fund Expenses is defined in Section 6.8.

Incapacity or **Incapacitated** means (i) with respect to any individual, the entry of a court order declaring such individual legally incompetent or incapable of handling his affairs, the appointment by court order of a guardian or conservator for such individual upon an adjudication of such individual's incompetence or his death or (ii) with respect to any other Person, the dissolution or termination of such Person (other than by merger or consolidation).

Initial Capital Contribution and **Initial Capital Contributions** are defined in Section 3.1(a).

Initial Closing Date means June 30, 2004, or such other later date as may be determined by the Managing Member by written notice to the Nonmanaging Members.

Interest means, with respect to a Member and as of a date certain for the determination thereof, the entire membership interest of such Member in the Fund as of such date, including the right of such Member to any and all benefits to which a Member may be entitled as provided herein through such date, together with the obligations of such Member to comply with all the terms and provisions hereof.

Investment means any and all assets and other property acquired by the Fund pursuant to the provisions of this Agreement, including, without limitation, the provisions of Section 2.3.

Investment Advisers Act means the Investment Advisers Act of 1940, as amended.

Investment Company Act means the Investment Company Act of 1940, as amended.

Investment Date means, with respect to an Investment, the date on which at the time the Fund actually acquires such Investment, such acquisition to be evidenced by the delivery of funds or monies of the Fund to a third party (other than to an escrow agent acting on behalf of the Fund in connection with such Investment) and the consummation of the underlying transaction with respect to such Investment.

Investment Distribution Date means, with respect to an Investment, the date on which Net Investment Proceeds derived from such Investment are distributed to the Nonmanaging Members pursuant to Section 5.1(b)(i).

Investment Period means the period beginning on the Initial Closing Date and ending on the earlier of (i) the date on which at least seventy-five percent (75%) of the Total Capitalization has been invested by the Fund, or (ii) the date of dissolution of the Fund under Section 9.1.

Investment Proceeds with respect to any Investment or Short-Term Investment means (a) any cash constituting income on or in respect of such Investment or Short-Term Investment, as applicable, and (b) any proceeds (whether cash or in-kind) from the sale, refinancing or other disposition of such Investment or Short-Term Investment, as applicable (determined by treating a distribution of an Investment in-kind as a distribution of cash equal to the Fair Market Value of such Investment as of the date of such distribution).

Investment Promote is defined in Section 5.1(b)(iii).

Investment Territory means the area commonly referred to as the Boston, Massachusetts to Washington, D.C., corridor including their respective Metropolitan Statistical Areas.

Liquidating Trustee means a Person selected by a majority in Interest of the Nonmanaging Members to act as a liquidating trustee as provided in Section 9.2.

Management means the President and Chief Executive Officer, and the Executive Vice President of the Managing Member, as designated from time to time by the Managing Member (it being agreed that, for convenience, such Persons may be designated, from time to time, by the Managing Member, as the President and Chief Executive Officer, and/or the Executive Vice President of the Fund).

Managing Member is defined in Section 2.5(b).

Matter in Dispute is defined in Section 15.11(b).

Members shall mean the Managing Member and the Nonmanaging Members, and each, from time to time, a **Member** .

Memorandum means the Confidential Offering Memorandum of the Fund dated the Effective Date.

Minimum Gain means, with respect to each Nonrecourse Liability of the Fund, the amount of gain the Fund would realize if the property subject to such Nonrecourse Liability were disposed of for no consideration other than full satisfaction of the Nonrecourse Liability, determined in accordance with the rules set forth in Treasury Regulation sections 1.704-2(b)(2) and 1.704-2(d).

Net Capital Event Proceeds means the amount by which the gross cash proceeds from the occurrence of a Capital Event (treating the distribution of an Investment in-kind as generating cash proceeds equal to the Fair Market Value of such Investment as of the date of distribution) exceed the sum of (a) the amount required to be paid by the Fund in reduction of prior loans or liens upon Fund property, (b) costs incurred by the Fund in connection with such Capital Event and (c) such reserves as the Managing Member shall deem necessary or appropriate.

Net Income and **Net Loss** for each Fiscal Year or part thereof means the income and loss of the Fund for that period, as determined for federal income tax purposes, including all distributive items under Code section 702, adjusted to take into account any tax-exempt income of the Fund and any expenses of the Fund that are described in Code sections 705 or 709 as not deductible or chargeable to capital account, and further adjusted as follows:

(a) Upon adjustment of the book value of Fund property pursuant to Section 4.1(b) or (c), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property;

(b) Items of depreciation, amortization and other cost recovery with respect to Fund property having a book value that differs from its adjusted basis for tax purposes shall be computed by reference to such property's book value in accordance with Treasury Regulation section 1.704-1(b)(2)(iv)(g);

(c) Items of income, gain, loss or deduction attributable to the disposition of Fund property having a book value that differs from its adjusted basis for tax purposes shall be computed by reference to such property's book value in accordance with Treasury Regulation section 1.704-1(b)(2)(iv)(g); and

(d) Items of income, gain, loss or deduction that are specially allocated pursuant to Sections 4.4 through 4.8 shall not be taken into account in calculating Net Income and Net Loss.

Net Investment Proceeds with respect to any Investment or Short-Term Investment means the Investment Proceeds from that Investment or Short-Term Investment that the Managing Member determines to be available for distribution to the Members following (i) the retention of such amounts for reinvestment as determined by the Managing Member in accordance with Section 3.6, (ii) the payment of all debts and Fund Expenses attributable to such Investment (including an allocable share of debts or Fund Expenses that are not attributable to any particular Investment), as determined by the Managing Member, (iii) the distribution to the Members of their respective Tax Distributions, if any, pursuant to Section 5.1(a), and (iv) the establishment or replenishment of such reserves as the Managing Member shall deem necessary

for taxes, debt service, and other expenses and other working capital requirements of the Fund or for contingent or unforeseen liabilities of the Fund

Nonmanaging Members means the Persons listed on Schedule A attached hereto (as same may be amended or supplemented from time to time) and any other Person which shall be admitted to the Fund as a Nonmanaging Member pursuant to Section 3.3 or as a Substitute Nonmanaging Member pursuant to Section 8.3 subject to the withdrawal of such Person as a Nonmanaging Member pursuant to Section 3.11, or the substitution of such Person (with respect to such Person's entire Interest) by one or more Substitute Nonmanaging Member(s) pursuant to this Agreement, and each, from time to time, a **Nonmanaging Member**.

Non-Complaining Party is defined in Section 15.11(b).

Non-Complaining Party's Arbitrator is defined in Section 15.11(b).

Nonrecourse Deductions means the excess, if any, of the net increase, if any, in the amount of Minimum Gain during a Fiscal Year over the aggregate amount of distributions during that Fiscal Year of proceeds of a Nonrecourse Liability, as defined in Treasury Regulation sections 1.704-2(b)(1) and 1.704-2(c).

Nonrecourse Liability means a nonrecourse liability of the Fund as defined in Treasury Regulation section 1.704-2(b)(3).

Notice of Dispute is defined in Section 15.11(b).

Percentage Interest means with respect to each Nonmanaging Member, the percentage set forth opposite such Nonmanaging Member's name on Schedule A attached hereto (as same may be amended or supplemented from time to time), as same may be calculated or adjusted (or recalculated or readjusted) in accordance with Section 3.7.

Person means an individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or governmental authority or any department, agency or political subdivision thereof.

Pre-Final Closing Capital Contribution and **Pre-Final Closing Capital Contributions** are defined in Section 3.1(b).

Pre-Final Closing Capital Contribution Date is defined in Section 3.1(b).

Pre-Final Closing Capital Contribution Notice is defined in Section 3.1(b).

Preferred Return of a Nonmanaging Member as of any date means a cumulative return of eight percent (8%) per annum compounded annually of such Member's average Adjusted Capital Contributions for each Fiscal Year calculated from the Closing Date with respect to that Member.

Preferred Return Shortfall is defined in Section 5.2(c).

Reinvestment Certificate is defined in Section 5.5(a).

Reinvestment Distributions is defined in Section 5.5(a).

Remedial Additional Capital Call Notice is defined in Section 3.5(e)(i).

Remedial Additional Capital Contributions is defined in Section 3.5(e)(i).

Response Notice is defined in Section 15.11(b).

Revised Additional Capital Call Notice is defined in Section 3.5(h)(i).

RiverOak Investment Corp., LLC is defined in the preamble.

Securities Act means the Securities Act of 1933, as amended.

Short-Term Investment means short-term, liquid securities selected by the Managing Member, in its discretion, for temporary investment of the Fund's funds, including, but not limited to, short-term obligations of, or guaranteed by, the United States or any agency or instrumentality thereof; time deposits, bankers' acceptances and certificates of deposit, and money market or other accounts with, commercial banks or savings institutions; and corporate commercial paper.

Subscription Agreement means, with respect to any Nonmanaging Member, the subscription agreement executed by such Nonmanaging Member and delivered to the Managing Member, in the form attached to the Memorandum, in connection with the Commitment of such Nonmanaging Member.

Substitute Nonmanaging Member means, with respect to a Nonmanaging Member, a Person admitted pursuant to Section 8.3 as the successor to all of the rights of such Nonmanaging Member with respect to any part or all of such Nonmanaging Member's Interest.

Targeted Capital Account Balances has the meaning set forth in Section 4.4.

Tax Distribution with respect to any Member for any taxable year of the Fund means an amount of cash equal to the product of (a) the Net Income and items of income and gain (reduced by any items of loss and deduction) allocated to such Member for such taxable year pursuant to Article IV and (b) the combined highest marginal effective federal and state income tax rates applicable to an individual resident of New York (taking into account the category of income subject to tax and the deductibility of state taxes for federal income tax purposes) in effect from time to time during such taxable year.

Total Capitalization means \$15,000,000, or such other amount as determined by the Managing Member in its sole discretion on or before the Final Closing Date; provided, however, that such other amount shall be no less than \$2,500,000, and no more than \$25,000,000. In the event of any change in the Total Capitalization, the Managing Member shall, to the extent required by applicable law, file or issue such supplements to the Memorandum and other documents and instruments issued in connection therewith.

Transfer means sale, exchange, gift, encumbrance, assignment, pledge, mortgage or other hypothecation or disposition, whether voluntary or involuntary.

ARTICLE II ORGANIZATION

2.1 Name.

The name of the Fund is RiverOak Realty Fund III, LLC .

2.2 Offices.

The principal office of the Fund shall be at One Atlantic Street, Stamford, Connecticut, 06901, but the Managing Member, at its sole discretion, may change the principal office of the Fund and/or select another or additional places of business from time to time.

2.3 Purposes.

The purposes of the Fund are (i) investing in, acquiring, holding and selling existing and to-be-built real estate assets and real estate related operating or service companies located or based primarily in the Investment Territory and (ii) the carrying on of any other activity which, in the opinion of the Managing Member, may be necessary or appropriate in connection therewith or incidental thereto.

2.4 Compliance with Applicable Laws and Rules.

No business or activities authorized by Section 2.3 shall be conducted that are forbidden by or contrary to any applicable law or to the rules or regulations lawfully promulgated thereunder. If any of the terms, conditions or other provisions of this Agreement shall be in conflict with any of the foregoing, such terms, conditions or other provisions shall be deemed modified so as to conform therewith. Each Member agrees to comply with all such laws, rules and regulations.

2.5 Formation; Managing Member; Term.

(a) The Fund was formed upon the filing of the certificate of formation (the Certificate) with the Secretary of State of the State of Delaware. Unless sooner terminated pursuant to Section 2.7, Article IX, or as otherwise provided in this Agreement, the term of the Fund shall continue in full force and effect until December 31, 2014.

(b) RiverOak Investment Corp., LLC, with an address at One Atlantic Street, Stamford, Connecticut 06901, is hereby designated the managing member (in such capacity, the **Managing Member**) of the Fund. The Managing Member shall promptly give written notice of any change in its address to the Nonmanaging Members.

(c) The Managing Member is hereby designated as an authorized person within the meaning of the Act, to execute, file and record (or direct the execution, filing and recording of) all such certificates and documents, including amendments to the Certificate, and to do such other acts as may be appropriate to comply with all requirements for the formation, continuation and operation of a limited liability company, the ownership of property (including, without limitation, the Investments), and the conduct of business under the laws of the State of Delaware and any other jurisdiction in which the Fund may own property or conduct business.

The Members hereby ratify the execution, filing and recording by Euchung Ung, Esq., of Robinson & Cole, LLP, of the Certificate with the Secretary of State of the State of Delaware.

2.6 Ownership of Fund Property; Partition.

All property acquired by the Fund, real or personal, tangible or intangible, shall be owned by the Fund as an entity, and no Member, individually, shall have any ownership interest therein. Each Member hereby expressly waives the right to require partition of any Fund property or any part thereof.

2.7 Subscription Agreement; Early Termination.

Each Nonmanaging Member, by execution of this Agreement, acknowledges and agrees that such Nonmanaging Member has heretofore delivered a Subscription Agreement duly executed by such Nonmanaging Member pursuant to which such Nonmanaging Member has made a Commitment for certain Capital Contributions under this Agreement, and that such Nonmanaging Member has made its Initial Capital Contributions and, if applicable, its Pre-Final Closing Capital Contributions, on account of such Commitment in connection therewith. From and after the execution of this Agreement by each Nonmanaging Member, such Nonmanaging Member is obligated pursuant to this Agreement to make certain Pre-Final Closing Capital Contributions (if not theretofore made) on account of such Commitment. Pursuant to each Nonmanaging Member's Subscription Agreement, such Initial Capital Contribution and all such Pre-Final Closing Capital Contributions shall be held in an interest-bearing account by the Managing Member unless otherwise invested in one or more Investment(s) in accordance with this Agreement on or after the Initial Closing Date. Each Nonmanaging Member acknowledges that if, on or before the Final Closing Date, the minimum Total Capitalization has not been realized and no Investment has been entered into by the Fund, the Managing Member shall have the right to terminate the Fund, in which case, with respect to each Nonmanaging Member, (a) the Initial Capital Contribution and all Pre-Final Closing Capital Contributions made by such Nonmanaging Member shall be refunded to such Nonmanaging Member with all accrued interest thereon (if any), and (b) the provisions of Article IX shall not be applicable to such termination.

ARTICLE III MEMBERS, CAPITAL, PERCENTAGE INTERESTS

3.1 Initial Capital Contributions; Pre-Final Closing Capital Contributions.

(a) With respect to each Nonmanaging Member executing this Agreement on or prior to the Initial Closing Date, concurrently with the execution of the Subscription Agreement by such Nonmanaging Member, such Nonmanaging Member has delivered to the Managing Member, on account on such Nonmanaging Member's Commitment, an amount no less than twenty percent (20%) of such Nonmanaging Member's Commitment (such amount is referred to herein as the **Initial Capital Contribution** of such Nonmanaging Member).

(b) Prior to the Final Closing Date, the Managing Member shall have the right to designate additional dates (each a **Pre-Final Closing Capital Contribution Date**) for the making of capital contributions under this Section 3.1(b) on account of each Nonmanaging Member's Commitment (each such capital contribution is referred to herein, with respect to a Non-Managing Member as a **Pre-Final Closing Capital Contribution** of such Nonmanaging

Member; and, with respect to all Nonmanaging Members, the **Pre-Final Closing Capital Contributions**) by written notice (each, a **Pre-Final Closing Capital Contribution Notice**) to the Nonmanaging Members. The following shall apply with respect to the making of Pre-Final Closing Capital Contributions pursuant to a Pre-Final Closing Capital Contribution Notice:

(i) Such Pre-Final Closing Capital Contribution Notice shall set forth (A) the applicable Pre-Final Closing Capital Contribution Date (which shall be no earlier than five (5) Business Days after the date of such Pre-Final Closing Capital Contribution Notice), (B) the amount of the Pre-Final Closing Capital Contributions required to be made by all Nonmanaging Members, and (C) the amount of the Pre-Final Closing Capital Contribution required to be made by the Nonmanaging Member to whom the Pre-Final Closing Capital Contribution Date Notice is addressed.

(ii) Each Nonmanaging Member shall be required to make a Pre-Final Closing Capital Contribution equal to the product of (A) the Percentage Interest of such Nonmanaging Member (determined as of the date of such Pre-Final Closing Capital Contribution Notice) and (B) the total amount of the Pre-Final Closing Capital Contributions required to be made by all Nonmanaging Members pursuant to such Pre-Final Closing Capital Contribution Notice.

(iii) No Nonmanaging Member shall be required to make any Pre-Final Closing Capital Contribution, which together with the Initial Capital Contribution of such Nonmanaging Member and any and all Pre-Final Closing Capital Contributions theretofore made by such Nonmanaging Member would be in excess of one hundred percent (100%) of such Nonmanaging Member's Commitment.

(iv) Each Non-Managing Member shall on or prior to the applicable Pre-Final Closing Capital Contribution Date, deliver to the Managing Member by an available funds check or by wire transfer to the bank account of the Fund, on account on such Nonmanaging Member's Commitment, the Pre-Final Closing Capital Contribution required to be made by such Nonmanaging Member in the applicable Pre-Final Closing Capital Contribution Notice.

(v) Notwithstanding the date of delivery by a Nonmanaging Member of its required Pre-Final Closing Capital Contribution prior to the Pre-Final Closing Capital Contribution Date, each Nonmanaging Member shall, subject to the receipt by the Managing Member of the Pre-Final Closing Capital Contribution required to be made by such Nonmanaging Member on the applicable Pre-Final Closing Capital Contribution Date, be deemed to have made its Pre-Final Closing Capital Contribution on such Pre-Final Closing Capital Contribution Date.

(c) On the Final Closing Date (but after any and all Pre-Final Closing Capital Contribution Date(s), if any), each Nonmanaging Member shall after written notice from the Managing Member, deliver to the Managing Member by an available funds check or by wire transfer to the bank account of the Fund, on account on such Nonmanaging Member's Commitment, an amount equal to the difference between (i) one hundred percent (100%) of such Nonmanaging Member's Commitment and (ii) the sum of such Nonmanaging Member's Initial

Capital Contribution and all Pre-Final Closing Capital Contributions made by such Nonmanaging Member.

(d) In the event, in the sole discretion of the Managing Member, a Nonmanaging Member executes this Agreement after the Initial Closing Date (but prior to the Final Closing Date), such Nonmanaging Member shall be granted a Delayed Entry into the Fund, in which case such Nonmanaging Member shall, concurrently with the execution of this Agreement, deliver to the Managing Member by an available funds check or by wire transfer to the bank account of the Fund, on account on such Nonmanaging Member s Commitment, an amount equal to (i) the product of (x) a fraction, (A) the numerator of which shall be the total Commitment of the Nonmanaging Member that is subject to such Delayed Entry and (B) the denominator of which shall be the total Commitment of all of the Nonmanaging Members then admitted to the Fund (other than the Nonmanaging Member that is subject to granted Delayed Entry), and (y) the total Capital Contributions made by all of the Nonmanaging Members then admitted to the Fund (including the amount to be made by such Nonmanaging Member that is granted Delayed Entry), plus (ii) an amount equal to deemed interest on the amount set forth in clause (i), calculated at the rate of eight percent (8%) from the Initial Closing Date through the date such payment was made (the amount set forth in clause (i) of this Section 3.1(d) shall be deemed the Capital Contributions of such Nonmanaging Member, and the amount set forth in clause (ii) of this Section 3.1(d) shall not be credited to the Capital Account of such Nonmanaging Member, but shall be deemed to be income to the Fund).

3.2 Managing Member s Contributions

RiverOak Investment Corp., LLC, shall not be required, in its capacity as Managing Member, to make any capital contributions to the Fund (it being acknowledged that RiverOak Investment Corp., LLC, has agreed to make Capital Contributions, as a Nonmanaging Member, in the amounts set forth against its name on Schedule A attached hereto (as same may be amended or supplemented from time to time)). The Managing Member shall not be required to lend any funds or money to the Fund.

3.3 Nonmanaging Members Sale of Interests.

(a) The Fund shall admit Persons as Nonmanaging Members to the Fund who are (or who the Managing Member reasonably believes are), at the time of such admission, accredited investors, as such term is defined in Regulation D promulgated under the Securities Act. On or before the Final Closing Date, the Managing Member may, at its sole discretion, accept, on behalf of the Fund, Subscription Agreements from Persons as Nonmanaging Members for Interests in the Fund. On the Initial Closing Date, each of the Persons set forth on Schedule A attached hereto (as same may be amended or supplemented from time to time) shall be deemed a Nonmanaging Member and shall be shown as such on the books and records of the Fund.

(b) The Managing Member may in its discretion cause the Fund to admit additional Nonmanaging Members or allow any Nonmanaging Member to voluntarily increase the amount of its Commitment and/or Pre-Final Closing Capital Contributions at any time after the Initial Closing Date until the Final Closing Date (and if such increase is to such Nonmanaging Member s Commitment, such Nonmanaging Member shall be obligated to make such Capital Contributions as may be required to cause its Initial Capital Contribution and any

Pre-Final Closing Capital Contributions to be proratably increased). Upon the execution and delivery of a counterpart of this Agreement, each such additional Nonmanaging Member shall become a Nonmanaging Member of the Fund and shall be shown as such on the books and records of the Fund. Neither the admission of any additional Nonmanaging Member to the Fund nor the increase in the Capital Contribution(s) of any existing Nonmanaging Member pursuant to this Section 3.3 shall require the approval of any Nonmanaging Member. Notwithstanding the foregoing, no additional Nonmanaging Member shall be admitted to the Fund, and no existing Nonmanaging Member shall be allowed to increase its Capital Contribution(s), if the admission of such Nonmanaging Member or the increase by such Nonmanaging Member of its Capital Contribution(s) would, in the judgment of the Managing Member, cause a dissolution of the Fund under the Act, cause the Fund's assets to be deemed to be plan assets for purposes of ERISA, cause the Fund to be deemed to be an investment company for purposes of the Investment Company Act, cause the Managing Member to be in violation of the Investment Advisers Act or violate, or cause the Fund to violate, any applicable law or regulation, including any applicable Federal or state securities laws.

3.4 **Nonmanaging Members Capital and Interest Thereon.**

The Nonmanaging Members acknowledge that pursuant to the Subscription Agreement, the minimum Commitment required from each Nonmanaging Member is \$250,000, unless the Managing Member, at its sole discretion, waives such requirement. Except as provided in Section 2.7, no Member shall be paid interest by the Fund or by the Managing Member on or in respect of any Capital Contributions or the Capital Account of such Member. No Member shall have any right to demand the return of such Member's Capital Contribution(s) other than upon dissolution of the Fund pursuant to Article IX or as provided in Sections 2.7 or 3.11. The Managing Member shall have no personal liability to the Nonmanaging Members for the return of Capital Contributions or for distributions from the Fund, except to the extent of any obligation of the Managing Member to the Fund under Section 3.2.

3.5 **Additional Capital Contributions.**

(a) Upon the occurrence of the Final Closing Date, each such Nonmanaging Member (subject to the making of any and all Capital Contributions by such Nonmanaging Member pursuant to Section 3.1) shall have no further obligation to make any further Capital Contributions to the Fund.

(b) Notwithstanding anything to the contrary contained herein, the Managing Member may from time to time determine that additional capital contributions (the **Additional Capital Contributions**) will be necessary or desirable to make Investments or cover Fund Expenses. Upon such determination, the Managing Member shall notify each Nonmanaging Member in writing (each, an **Additional Capital Call Notice**) of its intention to make a capital call (each an **Additional Capital Call**). Each Additional Capital Call Notice shall specify:

(i) the aggregate amount of the Additional Capital Contributions to be made by the Managing Members pursuant to such Additional Capital Call Notice (the **Additional Capital Call Amount**);

(ii) the purpose(s) for which such Additional Capital Call is being made and a description of the material terms of the Investment or Fund Expenses for which the Additional Capital Contributions are required;

(iii) the portion of Additional Capital Contributions to be made by such Nonmanaging Member, which shall equal the product of (A) the Percentage Interest of such Nonmanaging Member, determined as of the date of the applicable Additional Capital Call Notice, and (B) the Additional Capital Call Amount;

(iv) the date (the **Additional Capital Contribution Date**) on which such Additional Capital Contribution is due (which shall be at least ninety (90) business days from and including the date of delivery of the Additional Capital Call Notice); and

(v) the account to which and the manner (i.e., by either or both available funds check or wire transfer) in which such Additional Capital Contribution shall be made.

(c) Each Nonmanaging Member shall have the right, but not the obligation, to participate in any Additional Capital Call. Each Nonmanaging Member that chooses to make its Additional Capital Contribution pursuant to an Additional Capital Call Notice (a **Participating Nonmanaging Member**) shall, with fifteen (15) business days of receipt of the applicable Additional Capital Call Notice, notify the Managing Member in writing (each, a **Participation Notice**) of its election to make such Additional Capital Contribution. Each Participation Notice shall specify:

(i) the name of such Nonmanaging Member; and

(ii) the amount of the Additional Capital Contribution elected to be made by such Participating Nonmanaging Member (which shall be no more than the amount set forth in Section 3.5(b)(iii)).

(d) Notwithstanding anything to the contrary contained herein, the Managing Member may, in its sole discretion, accept Additional Capital Contributions from any Participating Nonmanaging Member less than the amounts specified in such Nonmanaging Member's Additional Capital Call Notice as provided in Section 3.5(b)(iii).

(e) In the event, with respect to an Additional Capital Call, less than all of the Nonmanaging Members are Participating Nonmanaging Members or in the event any Participating Nonmanaging Member elects to make an Additional Capital Contribution less than the amount set forth in Section 3.5(b)(iii), and the Managing Member determines that additional funds are required by the Fund for funds to cover such shortfall (the **Additional Capital Contribution Shortfall**), the Managing Member may (but shall have no obligation to) do either of the following:

(i) deliver notice (the **Remedial Additional Capital Call Notice**) to all Participating Nonmanaging Members no later than thirty (30) days after the Additional Capital Contribution Date specified in the Additional Capital Call Notice (and, in connection therewith, the Managing Member may extend the Additional Capital Contribution Date in the Remedial Additional Capital Call Notice to a date no later than sixty (60) days after the date

specified in the Additional Capital Call Notice), pursuant to which the Managing Member shall request that the Participating Nonmanaging Members make Additional Capital Contributions (the **Remedial Additional Capital Contributions**) in the aggregate amount of such Additional Capital Contribution Shortfall; or

(ii) cause RiverOak Investment Corp., LLC (in its capacity as a Nonmanaging Member), to make an Additional Capital Contribution to the Fund in the amount of Additional Capital Contribution Shortfall.

(f) With respect to each Remedial Additional Capital Call Notice, the portion of Additional Capital Contributions to be made by each Participating Nonmanaging Member therefor shall equal the product of (A) a fraction, the numerator of which shall be the Adjusted Capital Account Balance of such Participating Nonmanaging Member and the denominator of which shall be the aggregate Adjusted Capital Account Balances of all Participating Nonmanaging Members, each determined as of the date of the applicable Remedial Additional Capital Call Notice, and (B) the Additional Capital Contribution Shortfall. Each Participating Nonmanaging Member shall have the right (but not the obligation) to make the Remedial Additional Capital Contribution required to be made by such Participating Nonmanaging Member (but no less than such amount) and an electing Participating Nonmanaging Member shall make its Remedial Additional Capital Contribution on or prior to the Additional Capital Contribution Date set forth in the Remedial Additional Capital Call Notice, provided, however, if the aggregate Remedial Additional Capital Contributions elected to be made by the Participating Nonmanaging Members electing hereunder shall be less than the Additional Capital Contribution Shortfall, the Managing Member shall have the right (but not the obligation) to cause RiverOak Investment Corp., LLC (in its capacity as a Nonmanaging Member), to make such Additional Capital Contributions to the Fund as may be required in order for the total Remedial Additional Capital Contributions made pursuant to such Remedial Additional Capital Call Notice to equal the amount of the applicable Additional Capital Contribution Shortfall.

(g) The Managing Member shall increase the Percentage Interest and Capital Account of each Participating Nonmanaging Member under this Section 3.5 to reflect the Additional Capital Contribution(s) and Remedial Additional Capital Contribution(s) made by such Participating Nonmanaging Member.

(h) (i) If in connection with the making of any Investment or the payment of any Fund Expense in respect of which an Additional Capital Call Notice has been delivered, the Managing Member shall determine that it is necessary or desirable to increase the Additional Capital Contributions to be made by the Nonmanaging Members in connection therewith, the Managing Member shall deliver a revised Additional Capital Call Notice (each, a **Revised Additional Capital Call Notice**) to each Participating Nonmanaging Member, amending the original Additional Capital Call Notice and specifying:

(1) the amount of any increase in the Additional Capital Call Amount,

(2) the amount of the increase in the Additional Capital Contribution to be made by such Nonmanaging Member,

(3) the date of contribution with respect to the amount of the increase in the Additional Capital Contribution if different from the Additional Capital Contribution Date specified in the applicable First Additional Capital Call Notice, and

(4) the reason for such increase.

(ii) If the amount of such increase is equal to or less than twenty-five percent (25%) of the Additional Capital Contributions specified in the original Additional Call Notice, the Additional Capital Contribution Date shall be extended to a date no earlier than the later of (x) the date specified in the Additional Capital Call Notice or (y) five (5) Business Days from and including the date of delivery of the Revised Additional Capital Call Notice. If the amount of such increase is greater than twenty-five percent (25%) of the Additional Capital Contributions specified in the original Additional Call Notice, the Additional Capital Contribution Date shall be extended to a date no earlier than the later of (A) the date specified in the Additional Capital Call Notice or (B) fifteen (15) Business Days from and including the date of delivery of the Revised Additional Capital Call Notice.

(iii) For the avoidance of doubt, any increase in the Capital Contributions of a Nonmanaging Member due to an increase in the Additional Capital Call Amount pursuant to this Section 3.5(h) shall be calculated in accordance with Section 3.5(b)(iii).

3.6 Reinvestment of Certain Proceeds.

For the period commencing on the Final Closing Date and expiring on the third (3rd) anniversary of the Final Closing Date, the Managing Member shall have the right (but not the obligation), in its sole discretion, to cause the Fund to retain and not distribute any proceeds from the sale, refinancing or other disposition of any Investment or Short-Term Investment, other than proceeds that exceed the aggregate cost basis to the Fund of such Investment or Short-Term Investment, and to further cause the Fund to reinvest such proceeds in additional Investments or Short Term Investments (including, without limitation, Investments or Short-Term Investments made from and after the third (3rd) anniversary of the Final Closing Date).

3.7 Percentage Interests.

The Percentage Interest of each Nonmanaging Member as of any date shall be determined by multiplying one hundred percent (100%) by a fraction, the numerator of which is the Capital Contribution of that Nonmanaging Member and the denominator of which is the aggregate Capital Contributions of all Nonmanaging Members, each determined as of such date.

3.8 Members.

No Person other than a Member shall be considered, be dealt with as or have any rights as a Member of the Fund (notwithstanding an assignment or Transfer of an Interest to such Person by operation of law, as a result of an assignment, by reason of the Incapacity of a Member or for any other reason). Any distribution by the Fund to the Person shown on the records of the Fund as a Member or to such Person's legal representatives shall acquit the Fund and the Managing Member of all liability to any other Person who may be interested in such distribution for any reason.

3.9 Control.

No Nonmanaging Member acting in its capacity as a Nonmanaging Member shall participate or take part in the control (as such term is defined in the definition of Affiliate) of the business of the Fund or shall have any right or authority to act for or bind the Fund.

3.10 Liability of Nonmanaging Members.

Except as specifically set forth herein or as provided in the Act, no Nonmanaging Member acting in its capacity as a Nonmanaging Member shall have any personal liability, whether to the Fund, to any of the Members or to the creditors of the Fund, for the debts, liabilities, contracts or any other obligations of the Fund or for any losses of the Fund.

3.11 Mandatory Redemption.

(a) The Managing Member may require, at its sole discretion, the redemption, in whole or in part, of the Interest of any Nonmanaging Member if the Managing Member believes, in good faith, that the continued participation of such Nonmanaging Member in the Fund might cause the Fund or any Member to violate any law or might be adverse to the interests of the Fund or any Member. Such redemption shall become effective on such date as shall be specified by the Managing Member. The Managing Member shall give written notice to such Nonmanaging Member of such required redemption at least five (5) days prior to the effective date of such redemption. The redemption price of such Interest shall equal the amount that would have been distributed to that Member pursuant to Section 5.2(a)(iv) had all assets of the Fund been sold for Fair Market Value and the Fund liquidated on the effective date of the redemption.

(b) In lieu of any redemption pursuant to Section 3.11(a), the Managing Member may permit one or more existing Nonmanaging Members (or if existing Nonmanaging Members do not acquire all of the redeemed Member s Interest, one or more new Nonmanaging Members) to acquire such redeemed Member s Interest, by (i) paying to the redeemed Member an aggregate amount not less than the redemption price of such Interest as determined pursuant to Section 3.11(a) and (ii) if not an existing Nonmanaging Member, otherwise complying with Section 3.3(b). Upon such occurrence and subject to Section 8.2, any such new Nonmanaging Member shall become an additional Nonmanaging Member and be shown as such on the books and records of the Fund.

(c) Once a Nonmanaging Member s Interest has been redeemed, such Nonmanaging Member shall be deemed to have withdrawn from the Fund and shall have no further rights in respect of the Fund. The redemption of a Member s Interest shall not dissolve the Fund, except as expressly provided in the Act.

ARTICLE IV CAPITAL ACCOUNTS; ALLOCATIONS

4.1 Capital Accounts.

(a) A separate Capital Account shall be established for each Member and maintained in accordance with the provisions of Treasury Regulation section 1.704-1(b)(2)(iv).

Each Member's Capital Account shall be (i) increased by such Member's Capital Contributions and by such Member's allocable share of Net Income and items of Fund income and gain and the net Fair Market Value of property contributed to the Fund by such Member, (ii) decreased by such Member's allocable share of Net Loss and items of Fund loss and deduction and by the amount of cash and the net Fair Market Value of property distributed by the Fund to such Member, and (iii) otherwise adjusted in the manner provided in this Agreement.

(b) Immediately prior to any distribution of Fund assets in kind, each Member's Capital Account shall be adjusted to reflect the manner in which the unrealized income, gain, loss or deduction inherent in the assets to be distributed (and not already reflected in the Members' Capital Accounts) would be allocated among the Members pursuant to this Article IV if such assets were sold for Fair Market Value on the date of distribution.

(c) Immediately prior to (i) any contribution of money or other property to the Fund by a new or existing Member as consideration for an Interest in the Fund or (ii) the liquidation of the Fund pursuant to this Article VI, each Member's Capital Account shall be adjusted to reflect the manner in which the unrealized income, gain, loss or deduction inherent in all Fund assets (and not already reflected in the Members' Capital Accounts) would be allocated among the Members pursuant to this Article IV if such assets were sold for Fair Market Value on the date of such contribution or liquidation.

4.2 **Allocations of Net Income.**

After all allocations have been made pursuant to Sections 4.4 through 4.8, Net Income for any period shall be allocated as follows:

(a) first, to the Managing Member to the extent of and in proportion to the cumulative Net Loss, if any, previously allocated to the Managing Member pursuant to Section 4.3(b)(ii), reduced by any prior allocations of Net Income to the Managing Member pursuant to this Section 4.2(a);

(b) second, to the Members to the extent of and in proportion to the cumulative Net Loss, if any, previously allocated to such Members pursuant to Section 4.3(b)(i), reduced by any prior allocations of Net Income to such Members pursuant to this Section 4.2(b);

(c) third, to the Members to the extent of and in proportion to the cumulative Net Loss, if any, previously allocated to such Members pursuant to Section 4.3(a)(iv), reduced by any prior allocations of Net Income pursuant to this Section 4.2(c);

(d) fourth, to the Nonmanaging Members in proportion to their relative Capital Contributions, until the cumulative amount of Net Income allocated to each Nonmanaging Member pursuant to this Section 4.2(d), reduced by the cumulative amount of Net Loss, if any, allocated to such Nonmanaging Member pursuant to Section 4.3(a)(ii), equals such Nonmanaging Member's Preferred Return; and

(e) thereafter, eighty percent (80%) to the Nonmanaging Members, pro rata in accordance with their relative Percentage Interests, and twenty percent (20%) to the Managing Member.

4.3 Allocations of Net Loss.

(a) After all allocations have been made pursuant to Sections 4.4 through 4.8, Net Loss for any period shall be allocated as follows:

(i) first, to the Members to the extent of and in proportion to the cumulative Net Income, if any, previously allocated to such Members pursuant to Section 4.2(e), reduced by any prior allocations of Net Loss to such Members pursuant to this Section 4.3(a)(i);

(ii) second, to the Nonmanaging Members to the extent of and in proportion to the cumulative Net Income, if any, previously allocated to such Nonmanaging Members pursuant to Section 4.2(d), reduced by any prior allocations of Net Loss to such Nonmanaging Members pursuant to this Section 4.3(a)(ii);

(iii) third, to the Members to the extent of and in proportion to the cumulative Net Income, if any, previously allocated to such Members pursuant to Section 4.2(c), reduced by any prior allocations of Net Loss pursuant to this Section 4.3(a)(iii); and

(iv) thereafter, to the Members in accordance with their respective Capital Contributions.

(b) Notwithstanding any other provision of this Section 4.3, Net Loss shall not be allocated to a Member to the extent such allocation would create or increase a deficit in such Member's Adjusted Capital Account Balance, but shall instead be allocated as follows:

(i) first, to those Members, if any, with positive Adjusted Capital Account Balances, to the extent of and in proportion to such positive balances, until the Adjusted Capital Account Balance of each Member has been reduced to zero (0); and

(ii) thereafter, to the Managing Member.

4.4 Allocations on Capital Event or Liquidation.

Notwithstanding any other provision of this Article IV to the contrary, upon the occurrence of a Capital Event or the liquidation of the Fund, all items of Fund income, gain, loss and deduction shall be allocated among the Members so as to bring their respective Capital Account balances to the amounts and proportions necessary to make the distributions specified in Section 5.2 (Targeted Capital Account Balances). If the Fund has insufficient items of income, gain, loss and deduction to bring each Member's Capital Account balance to its Targeted Capital Account Balance, the available amounts shall be allocated as follows:

(a) first, so as to bring the Nonmanaging Members' Capital Account balances to the amounts required to make the distribution specified in Section 5.2(a);

(b) second, so as to bring the Nonmanaging Members' Capital Account balances to the amounts required to make the distribution specified in Section 5.2(b);

(c) third, so as to bring the Managing Member's Capital Account balance to the amount required to make the distribution specified in Section 5.2(c); and

(d) thereafter, so as to bring the Members relative Capital Account balances into the same proportion as their Targeted Capital Account Balances (with both such Capital Account balances and Targeted Capital Account Balances reduced by the amounts of the distributions referred to in paragraphs (a) through (c) of this Section 4.4 as if such distributions had been made).

4.5 Minimum Gain Chargeback.

Notwithstanding any other provision of this Article IV except Section 4.4, if there is a net decrease in Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Fund income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Minimum Gain, determined in accordance with Treasury Regulation section 1.704-2(g). Allocations pursuant to this Section 4.5 shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto. The items to be allocated pursuant to this Section 4.5 shall be determined in accordance with Treasury Regulation sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.5 is intended to comply with the minimum gain chargeback requirement in Treasury Regulation section 1.704-2(f) and shall be interpreted consistently therewith.

4.6 Qualified Income Offset.

Notwithstanding any other provision of this Article IV except Sections 4.4 and 4.5, if a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that creates or increases a deficit in such Member's Adjusted Capital Account Balance, items of Fund income and gain shall be allocated to such Member in the amount and proportion necessary to eliminate such deficit Adjusted Capital Account Balance as quickly as possible.

4.7 Nonrecourse Deductions.

Notwithstanding any other provision of this Article IV except Sections 4.4, 4.5 and 4.6, Nonrecourse Deductions for any period shall be allocated to the Members in proportion to their respective Capital Contributions.

4.8 Offsetting Allocations.

In the event items of Fund income, gain, loss or deduction are allocated pursuant to Sections 4.5 through 4.7, offsetting allocations of items of Fund income, gain, loss or deduction shall subsequently be made to the Members in such manner as the Managing Member deems appropriate so as to achieve as nearly as possible the results that would have been achieved had Sections 4.5 through 4.7 not been included in this Agreement and all items of Fund income, gain, loss and deduction had been allocated pursuant to Sections 4.2 through 4.4 (except that no allocation shall be made that would contravene Treasury Regulation section 1.704-1(b)(2)(ii)(d)).

4.9 Tax Allocations.

(a) Except as provided below in Section 4.9(b), Fund income, gain, loss, deduction and credit, as calculated for tax purposes, shall be allocated among the Members, to the extent possible, in accordance with the allocations of the corresponding Net Income, Net

Loss or items of income, gain, loss or deduction among the Members pursuant to Sections 4.2 through 4.8.

(b) Income, gain, loss, deduction and credit, as calculated for tax purposes, with respect to (i) property contributed to the Fund by a Member and (ii) Fund property that has been revalued pursuant to Section 4.1(c) shall be allocated among the Members in accordance with the principles of Code section 704(c), using such method as shall be selected by the Managing Member, so as to take account of the variation, at the time of contribution or revaluation, between the property's tax basis and book value, as required pursuant to Treasury Regulation sections 1.704-1(b)(4)(i) and 1.704-3.

4.10 Excess Nonrecourse Liabilities.

For purposes of determining the Members' shares of excess nonrecourse liabilities under Treasury Regulation section 1.752-3(a)(3), each Member's share of profits shall be deemed to be the same as such Member's share of Net Income pursuant to Section 4.2(e).

4.11 Changes in Interest.

Upon the admission of an additional Member or the assignment of an Interest, or at such other time as it is necessary to determine the Net Income, Net Loss or other items allocable to a particular period, the Managing Member shall determine the proper allocation of Net Income, Net Loss and items of income, gain, loss, deduction and credit to the periods before and after such admission or Transfer, or to the period in question, using any method permitted under Code section 706 and the Treasury Regulations thereunder.

ARTICLE V DISTRIBUTIONS

5.1 Distributions Other Than Net Capital Event Proceeds and Liquidation Proceeds.

(a) Within one hundred eighty (180) days after the close of each taxable year of the Fund, the Managing Member shall cause the Fund to distribute to each Member an amount of cash equal to such Member's Tax Distribution with respect to such taxable year, provided, however, that no such distribution shall be made should the Managing Member determine, in its discretion, that such distribution would adversely affect the Fund or its business.

(b) The Managing Member shall cause the Fund to distribute Net Investment Proceeds, if any, attributable to an Investment or from the sale or other disposition of such Investment, within six (6) months after the Fund receives such Net Investment Proceeds, as follows:

(i) first, to the Nonmanaging Members, pro rata in accordance with their Percentage Interests, until each Nonmanaging Member shall have received, pursuant to this Section 5.1(b)(i), an aggregate amount equal to its Allocable Capital Contribution with respect to such Investment;

(ii) second, to the Nonmanaging Members, pro rata in accordance with their Percentage Interests, until each Nonmanaging Member shall have received, pursuant to this Section 5.1(b)(ii), an aggregate amount equal to its Allocable Preferred Return with respect to such Investment; and

(iii) third, eighty percent (80%) to the Nonmanaging Members, to be allocated among the Nonmanaging Members pro rata in accordance with their Percentage Interests, and twenty percent (20%) (the **Investment Promote**) to the Managing Member.

(c) Notwithstanding the provisions of Section 5.1(b), no distribution shall be made to a Nonmanaging Member to the extent such distribution would create or increase a deficit in such Nonmanaging Member's Adjusted Capital Account Balance, calculated following all allocations pursuant to Article IV for the periods prior to such distribution.

5.2 **Liquidating Distributions.**

(a) All assets of the Fund, or all proceeds therefrom, shall be distributed, upon liquidation of the Fund, in the following order and priority:

(i) first, for the payment of the debts and liabilities of the Fund, including, without limitation, any amounts due to the Managing Member, and the expenses of liquidation;

(ii) second, for the setting up of any reserves which the Liquidating Trustee may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Fund;

(iii) third, for the repayment of any loans from Members or their Affiliates;

(iv) fourth, to the Nonmanaging Members until each Nonmanaging Member shall have received an amount equal to its Adjusted Capital Contributions determined immediately prior to such distribution;

(v) fifth, to the Nonmanaging Members until each Nonmanaging Member shall have received an amount, which, together with all of the distributions to such Nonmanaging Member under Section 5.1(b)(ii), shall, in the aggregate, equal the Preferred Return with respect to such Nonmanaging Member; and

(vi) sixth, eighty percent (80%) to the Nonmanaging Members, pro rata in accordance with their relative Percentage Interests, and twenty percent (20%) to the Managing Member.

(b) Notwithstanding the provisions of Section 5.2(a), no distribution shall be made to a Nonmanaging Member to the extent such distribution would create or increase a deficit in such Nonmanaging Member's Adjusted Capital Account Balance, calculated following all allocations pursuant to Article IV for the periods prior to such distribution.

(c) In the event the amount distributed pursuant to Section 5.2(a)(v) together with all of the distributions to such Nonmanaging Member under Section 5.1(b)(ii), shall, in the aggregate, be less than the Preferred Return of such Nonmanaging Member (the difference between (i) the Preferred Return of such Nonmanaging Member, and (ii) the amount distributed pursuant to Section 5.2(a)(v) together with all of the distributions to such Nonmanaging Member under Section 5.1(b)(ii) is referred to herein as the **Preferred Return Shortfall**), the Managing Member shall, within ninety (90) days after the making of distributions under Section 5.2(a) pay to such Nonmanaging Member an amount equal to the Preferred Return Shortfall, provided, however, the payment(s) by the Managing Member to all Nonmanaging Members under this Section 5.2(c) shall not exceed the aggregate amount of the Investment Promote received by the Managing Member pursuant to Section 5.1(a)(iii). In the event there is a Preferred Return Shortfall with respect to more than one (1) Nonmanaging Member, then the Managing Member shall make such payments on account thereof pro rata to their relative Percentage Interests (as determined on the date distributions were made pursuant to Section 5.2(a)(v)), subject to the limitation set forth in the preceding sentence of this Section 5.2(c).

5.3 Distributions in Kind.

In any distribution of property in kind, the Managing Member shall not discriminate among Members and shall (a) distribute to each applicable Member a proportional interest in any particular property in accordance with Article V and (b) if cash and property in kind are to be distributed simultaneously in respect of any Investment, distribute cash and property in kind in the same proportion to each applicable Member.

5.4 Withheld Taxes.

Any amount that the Fund is required to withhold and deposit with any governmental authority with respect to any federal, state or local tax liability of a Member, including any withholding pursuant to Code section 1441, 1442, 1445 or 1446, shall be treated as an amount distributed to such Member and shall reduce, dollar for dollar, any distribution that would otherwise be made to such Member pursuant to Sections 5.1 and 5.2(a) for that or any subsequent period. Should the amount withheld for any period exceed the amount that would have been distributed to that Member pursuant to Sections 5.1 and 5.2(a) for that period, the excess will be treated as a recourse loan from the Fund to that Member bearing interest at an annual rate equal to the prime rate, as announced from time to time in the Wall Street Journal on the date such deposit for tax liability was made until the date of repayment thereof. That loan and interest thereon will be paid by reduction of any subsequent distributions to that Member pursuant to Sections 5.1 and 5.2(a).

5.5 Reinvestment of Distributions.

(a) Nonmanaging Members may elect, in lieu of receiving distributions pursuant to Section 5.1 up to and including the Final Closing Date, to cause such distributions to be invested in the Fund (such distributions, together with interest thereon (if any) pursuant to this Section 5.5, are referred to herein as the **Reinvestment Distributions**), by completing and signing the certificate (the **Reinvestment Certificate**) attached hereto as Schedule B and returning it to the Managing Member concurrently with its execution hereof.

(b) If a Nonmanaging Member delivers a Reinvestment Certificate, then the Managing Member shall deposit such Reinvestment Distributions in an interest bearing escrow account with a federally insured bank in the name of the Managing Member (and no other funds of the Managing Member shall be commingled with such distributions), and in such event, the Managing Member shall, from time to time, increase the amount of the Commitment made by such Nonmanaging Member by the amount of such Reinvestment Distributions, and to the extent such Nonmanaging Member is thereafter required to make any Capital Contributions to the Fund on account of such increased amount of the Commitment, the Managing Member shall apply the Reinvestment Distributions of such Nonmanaging Member against such Capital Contributions, up to the amount of such increase in the Commitment, on the date that such Capital Contributions are due and payable.

ARTICLE VI RIGHTS AND DUTIES OF THE MANAGING MEMBER

6.1 Management and Administration.

Except as otherwise expressly provided herein, or by law, (i) the Managing Member is hereby vested with the full, exclusive and complete right, power and discretion to operate, manage and control (as such term is defined in the definition of Affiliate) the affairs of the Fund and to make all decisions affecting Fund affairs, as deemed proper, necessary, expedient or advisable by the Managing Member to carry on the business of the Fund as described in Section 2.3, (ii) the Managing Member is hereby authorized to appoint Management to perform the duties of Managing Member as provided herein, (iii) the Managing Member shall have all of the rights, powers and obligations of a Managing Member of a limited liability company under the Act and otherwise as provided by law, and (iv) without limiting the generality of the foregoing, all of the Members hereby specifically agree that the Managing Member may, on behalf of the Fund, at any time and without further notice to or Consent from any other Member, do any or all of the following:

(a) take any and all actions which it deems necessary or advisable in connection with the business of the Fund as described in the Memorandum, including, without limitation, entering into any contract, agreement, undertaking or transaction with any Member, Affiliate of a Member or other Person having any business, financial or other relationship with any Member;

(b) pay any and all fees and make any and all expenditures which it deems necessary or appropriate in connection with the management of the affairs of the Fund and the carrying out of its obligations and responsibilities under this Agreement;

(c) register or qualify the Fund under any applicable federal or state laws, or obtain exemptions under such laws, if such registration, qualification or exemption is deemed necessary by the Managing Member;

(d) sell all or any part of any Fund assets, whether for cash or other consideration, on such reasonable terms as the Managing Member shall determine to be appropriate;

(e) incur all expenditures permitted by this Agreement and pay all expenses, debts and obligations of the Fund;

(f) engage, compensate and discharge any agent, attorney, employee, accountant, consultant, investment manager or other Person, including anyone who may be a Member or an Affiliate of a Member, at such compensation and upon such terms and conditions as the Managing Member may deem appropriate;

(g) maintain such bank accounts on behalf of the Fund and make such signature arrangements with respect thereto as the Managing Member shall determine to be appropriate;

(h) enter into agreements with any and all Persons with respect to financing and operating of the Fund's business upon such terms as the Managing Member deems appropriate;

(i) compromise, submit to arbitration, sue on and defend all claims in favor of or against the Fund;

(j) do all acts it deems necessary or appropriate to further the Fund's business or for the protection and preservation of the Fund's assets;

(k) offer, sell, redeem and resell Interests as contemplated by the Memorandum and this Agreement;

(l) cause the Fund to enter into transactions in which the Managing Member or its Affiliates have an interest, including, but not limited to, transactions which involve the purchase or sale of any property to or from the Fund and transactions in which services will be rendered for or by the Fund;

(m) enter into, execute, amend, supplement, acknowledge and deliver any and all contracts, agreements and other instruments as the Managing Member shall determine to be appropriate in furtherance of the purposes of the Fund; and

(n) cause the Fund to purchase insurance against liabilities covered by the indemnification provisions of Section 6.9.

6.2 Authority.

Third parties dealing with the Fund may rely conclusively upon any certificate of the Managing Member to the effect that it is acting on behalf of the Fund. The signature of the Managing Member shall be sufficient to bind the Fund to any agreement or on any document, including, but not limited to, documents drawn, or agreements made, in connection with the acquisition of any investment or property or the disposition of any Fund assets in furtherance of the purposes of the Fund.

6.3 **Restrictions on the Authority of the Managing Member.**

The Managing Member shall have no authority to (i) do any act in contravention of the Act, (ii) without prior written consent of a majority of the Nonmanaging Members, do any act in contravention of this Agreement, (iii) admit a Person as a Managing Member of the Fund, except as provided in Article VII, or (iv) dissolve the Fund, except as provided in Article IX.

6.4 **Duties and Obligations of the Managing Member.**

(a) The Managing Member shall take all action which may be necessary or appropriate for the continuation of the Fund's valid existence as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Nonmanaging Members or to enable the Fund to conduct the business in which it is engaged.

(b) The Managing Member shall use all reasonable efforts at all times to conduct its affairs and the affairs of the Fund in such a manner that no Nonmanaging Member acting in its capacity as a Nonmanaging Member shall have any personal liability with respect to any liability or obligation of the Fund, except as expressly assumed by any Nonmanaging Member herein or in the Act.

(c) The Managing Member shall prepare or cause to be prepared an annual budget for the Fund.

6.5 **Advisory Board.**

(a) Establishment and Functions. The Fund shall establish and maintain an advisory board (the **Advisory Board**) that shall be authorized, but not obligated, to review and consult with the Managing Member with respect to Fund matters, including: (i) the annual review of the Fund's business plan; (ii) the annual review of the Fund's audited financial statements; (iii) annual consultation with Management on budgetary matters, including, without limitation, the amount reimbursed by the Fund to the Managing Member for the salaries, bonuses and benefits of Management; (iv) action for which the Advisory Board's approval is required under Section 6.5(f); and/or (v) any other matter as to which the Managing Member determines to consult with the Advisory Board. Notwithstanding anything in this Agreement to the contrary, the Advisory Board shall not have any right, power, or authority to act for or on behalf of or to bind the Fund.

(b) Number and Appointment. The Advisory Board shall initially consist of the members of Management, Mr. Peter Hearst, Mr. Joel E. Bickell and Mr. Henry Schimberg. Notwithstanding anything to the contrary contained herein, the Managing Member shall have the right to replace any member of the Advisory Board that has been removed, been disqualified, resigned, died or rendered Incapacitated, and/or appoint to the Advisory Board up to two (2) additional members. Such replacement and/or additional members need not be Nonmanaging Members. The members of the Advisory Board (including without limitation, any replacement and additional members) are hereinafter referred to herein as the **Advisory Board Members**.

(c) Term of Service. Each Advisory Board Member shall serve until the termination of the Fund or until such Advisory Board Member's earlier removal,

disqualification, resignation, death, or Incapacity. Except as provided below, any (including, without limitation, any replacement or additional member) Advisory Board Member may be removed at any time (with or without cause) by the Managing Member, provided, however, that an Advisory Board Member that is a Nonmanaging Member may only be removed by the Managing Member with cause upon the affirmative vote of a majority of the Advisory Board Members (excluding such Nonmanaging Member that is an Advisory Board Member), and without cause upon the unanimous vote of the Advisory Board Members (other than vote of the Advisory Board Member so removed). Any vacancies arising from removal, disqualification, resignation, death, Incapacity, or other cause of an Advisory Board Member shall be filled at the discretion and in the manner determined by the Managing Member.

(d) Meetings, Rules, and Expenses. The Advisory Board shall meet at the call of the Managing Member or any member of such board on not less than three (3) Business Days prior notice. The Advisory Board shall adopt rules and procedures that shall be consistent with the terms of this Agreement and shall govern the conduct of the board's meetings and affairs. The presence of Advisory Board Members representing a majority of all Advisory Board Members of the Advisory Board then serving shall constitute a quorum for any meeting. Notice of any meeting may be waived by any Advisory Board Member in writing (before or after such meeting), and any member who attends any meeting of the Advisory Board and does not (at the commencement of such meeting) object to the calling and convening of such meeting shall be deemed to have waived notice of such meeting. Members of the Advisory Board may participate in a meeting by telephone conference permitting all participants in the meeting to hear and speak with one another. All actions of the Advisory Board shall be taken by the concurrence of a majority of the Advisory Board Members thereof participating in the meeting of the Advisory Board, unless a greater percentage is expressly required by this Agreement. Any action or vote of the Advisory Board may be taken by written consent, with or without a meeting, of Advisory Board Members constituting the requisite number of Advisory Board Members authorized to take such action or vote under this Agreement. Any Advisory Board Member may, upon prior notice given to the Managing Member and the other Advisory Board Members, appoint one or more individuals to act as such appointing member's alternate from time to time for purposes of attending or acting at any and all meetings or by written consent of the Advisory Board. Members of the Advisory Board shall receive no compensation from the Fund for services rendered in their capacity as members of the Advisory Board, but shall be entitled to reimbursement from the Fund for any reasonable expenses incurred in connection with such attendance; provided, however, that no Advisory Board Member (including, without limitation, any replacement or additional Advisory Board Members) shall be reimbursed for expenses incurred in attending in person more than one (1) meeting (outside the metropolitan area in which such member resides or conducts business) in any annual period after the Initial Closing Date.

(e) Standard of Care. The Advisory Board Members shall exercise their good faith business judgment in carrying out their functions under this Agreement. Notwithstanding anything in this Agreement or applicable law to the contrary, no Advisory Board Member acting in its capacity as an Advisory Board Member shall be regarded as serving in any fiduciary capacity with respect to the Fund, and no such Advisory Board Member shall be liable to the Fund (by virtue of such member's membership on the Advisory Board) or any other Person for actions taken in good faith. The Advisory Board collectively may, but shall not be obligated to, engage and consult with legal counsel, accountants, or other professionals in connection with the

performance of the board's duties under this Agreement, and the fees and expenses of any such professional shall be borne by the Fund. Each Advisory Board Member shall be fully protected and justified with respect to any action or omission taken or suffered in reliance upon and in accordance with the opinion or advice of legal counsel (as to matters of law), accountants (as to accounting matters), and other professionals (as to matters within their expertise) respectively engaged by the Advisory Board, the Fund, or the Managing Member.

(f) Fund Action Requiring the Approval of the Advisory Board. The affirmative vote of a majority of the Advisory Board shall be necessary to approve the following:

(i) the Fund's annual budget (including, without limitation, the amount reimbursed by the Fund to the Managing Member for the salaries, bonuses and benefits of Management and other employees of the Managing Member);

(ii) any proposed Investments outside of the Investment Territory; and

(iii) any transaction involving a potential conflict of interest between the Fund and the Managing Member or any of its Affiliates.

6.6 Other Business of Members.

(a) The Managing Member shall authorize Management to devote to the Fund such efforts as may be necessary to conduct the Fund's business and affairs in an appropriate manner. Any Member and any of its Affiliates may engage in or possess any interest in other investment or investment advisory activities or business ventures of any kind, nature or description, independently or with others, regardless of whether such ventures are competitive with the Fund, and neither the Fund nor any Member shall have any rights or interest by virtue of this Agreement or the Fund or investment advisory relation created hereby or thereby in or to any such independent activities or ventures or in or to the fees, compensation, income or profits derived therefrom. Notwithstanding the foregoing, other than real estate investments made prior to the formation of the Fund, real estate investment in the Existing RiverOak Funds, and real estate acquired by members of Management for personal uses, the members of Management shall not engage in or possess any interest in any competitive investment within the Investment Territory.

(b) The Managing Member, Management and their Affiliates may offer to any Member, its Affiliates or any other Person, in any capacity, the opportunity to invest in, or make loans to, any Person in which the Fund acquires or holds an investment, and neither the Fund nor any other Member shall have any right to participate, or any interest, therein by virtue of this Agreement or the Fund or investment advisory relation created hereby or thereby.

6.7 Organization of New Funds.

Until the expiration of the Investment Period, the Managing Member shall not organize, or accept subscriptions for, any new fund with the primary purpose of engaging in activities that are competitive with the Fund's activities as set forth in Section 2.3; provided, however, that nothing in this Agreement shall restrict the Managing Member or its Affiliates from soliciting subscriptions for any such competitive fund if the Investment Period has expired. During the period from the expiration of the Investment Period until Total Capitalization has been achieved,

the Nonmanaging Members shall have the right but not the obligation to invest in any such new fund. Notwithstanding the foregoing, the Nonmanaging Members acknowledge that the Managing Member has heretofore organized and is currently managing the Existing RiverOak Funds, that the Existing RiverOak Funds are competitive with the Fund s activities as set forth in Section 2.3, and that each Nonmanaging Member waives any claim that same constitutes a conflict of interest.

6.8 Allocation of Expenses.

(a) The Fund shall bear, and reimburse the Managing Member for, all expenses (the **Fund Expenses**) incurred in connection with the Fund, including but not limited to the following:

(i) expenses incurred in connection with (A) forming the Fund and offering the Interests, including, without limitation, the legal and accounting fees incurred in connection with preparing this Agreement and the Memorandum, (B) operating the day-to-day business of the Fund, including allocable expenses of administration, rent, office expenses salaries paid to employees and the cost of maintaining books and records, (C) communicating with Nonmanaging Members and (D) all accounting fees and expenses incurred in connection with the preparation of the annual financial statements, the audit of such statements, and any tax returns required to be filed by the Fund;

(ii) compensation to be paid to Management (through reimbursement thereof to the Managing Member) as determined from time to time by the Advisory Board in connection with the services provided by Management and other employees of the Managing Member (through the Managing Member) to the Fund hereunder, including, without limitation, salaries, bonuses and benefits for Management and other employees of the Managing Member;

(iii) all taxes payable in respect of the holding of, or dealing with, the investments of the Fund;

(iv) all costs and expenses incurred as a result of termination of the Fund and the realization of Fund assets;

(v) all taxes or governmental charges, brokerage fees, commissions and other duties, charges or fees arising in connection with the purchase and sale of real estate for the Fund;

(vi) any costs and expenses of any litigation involving the Fund and the amount of any judgment or settlement paid in connection therewith, excluding, however, the costs and expenses of any litigation, judgment or settlement in which the conduct of the Managing Member or any member of Management is found to have violated the standard of conduct set forth in Section 6.9;

(vii) all costs and expenses incurred in connection with the redemption of a Nonmanaging Member s Interest and such Nonmanaging Member s withdrawal from the Fund which are not borne by such Nonmanaging Member; and

(viii) all other extraordinary expenses which may be incurred by the Fund.

(b) The Managing Member shall bear no Fund Expenses and/or shall be reimbursed for Fund Expenses incurred by the Managing Member on behalf of the Fund.

6.9 Exculpation and Indemnification.

Neither the Managing Member nor Management nor any of their Affiliates shall be liable, responsible or accountable in damages or otherwise to the Fund or any Nonmanaging Member for any loss, damage or liability (including tax liabilities) incurred by reason of any error in judgment or any act or failure to act arising out of the activities of any of them on behalf or in respect of the Fund or in furtherance of the interests of the Fund, including, without limitation, (i) the failure to perform any acts they are not expressly obligated to perform under this Agreement or the Act, (ii) any acts or failures to act made on the advice of legal counsel, accountants or other consultants to the Fund or the Managing Member, (iii) the negligence, dishonesty or bad faith of any consultant, employee or agent of the Fund through whom the Fund and/or the Managing Member in good faith conducts its business, or (iv) any other matter beyond the control (as such term is defined in the definition of Affiliate) of the Managing Member; provided, that such error, act or failure to act did not amount to fraud, willful misconduct or other breach of fiduciary duties imposed upon the Managing Member by the Act. The Fund shall indemnify and hold harmless, to the fullest extent permitted by law, the Managing Member, each member of Management and their Affiliates who are or were a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Fund), by reason of any error in judgment, act or failure to act or any alleged error in judgment, act or failure to act arising out of their activities on behalf or in respect of the Fund or in furtherance of the interests of the Fund, against losses, damages and expenses for which they have not otherwise been reimbursed (including attorneys fees, judgments, fines and amounts paid in settlement) and which were actually incurred by them in connection with such action, suit or proceeding, so long as such error, act or failure to act did not amount to fraud, willful misconduct or other breach of fiduciary duties imposed upon the Managing Member by the Act. No Member shall have any personal liability on account of any obligation under this Section 6.9.

6.10 Elections.

Except as otherwise expressly provided herein, all elections required or permitted to be made by the Fund under the Code or other applicable tax law including, but not limited to, the election under Code section 754, and all decisions with respect to the calculation of its taxable income or tax loss under the Code or other applicable tax law, shall be made in such manner as may be reasonably determined by the Managing Member, provided, however, that the Managing Member shall not make or permit an election under Code section 7701 and the Treasury Regulations thereunder to treat the Fund as an association taxable as a corporation.

6.11 Tax Matters Member.

The Managing Member shall act as the Tax Matters Member of the Fund within the meaning of Code section 6231(a)(7) and in any similar capacity under applicable state or local

tax law. All expenses incurred by the Managing Member while acting in such capacity shall be paid or reimbursed by the Fund. A Nonmanaging Member shall promptly notify the Managing Member of any intention to (i) file a notice of inconsistent treatment under Code section 6222(b); (ii) file a request for administrative adjustment of Fund items; (iii) file a petition with respect to any Fund item or other tax matters involving the Fund; or (iv) enter into a settlement agreement with the Secretary of the Treasury with respect to any Fund items.

ARTICLE VII TRANSFER OF THE MANAGING MEMBER S INTEREST

7.1 Substitution of Managing Member.

The Managing Member shall have the right to Transfer its interest to any Person that is (i) a Person that succeeds to the Managing Member s business substantially as an entity, or which, directly or indirectly, owns all of the outstanding limited liability company interests of the Managing Member or (ii) an Affiliate of the Managing Member. As a condition of any such Transfer, the Managing Member must obtain an opinion of counsel to the effect that such Transfer will not cause the Fund to be classified as an association taxable as a corporation. The Fund shall not be dissolved by any assignment of all or any part of the Interest of the Managing Member in the Fund.

7.2 Withdrawal of Managing Member.

Except in connection with an assignment permitted by Section 7.1, the Managing Member shall not withdraw from the Fund unless the Managing Member gives the Nonmanaging Members ninety (90) days written notice in advance of such withdrawal.

7.3 Continuation of the Fund.

In the event of the withdrawal, Bankruptcy or Incapacity of the Managing Member, the Fund shall be dissolved, unless the Nonmanaging Members, excluding such Nonmanaging Members who are Affiliates of the Managing Member, shall, within ninety (90) days after the occurrence of such withdrawal, Bankruptcy or Incapacity, unanimously Consent to continue the Fund and unanimously Consent to the election of a new Managing Member. Such election shall be deemed to have occurred immediately prior to the occurrence of an event described in the first sentence of this Section 7.3.

7.4 Liability of a Withdrawn Managing Member.

A Managing Member which shall withdraw from the Fund or otherwise cease to be a Managing Member shall remain liable for obligations and liabilities incurred by the Fund prior to the time of such withdrawal or cessation, but it shall be free of any obligation or liability incurred by the Fund from and after the time of such withdrawal or cessation unless such obligation or liability is a direct result of the Managing Member s withdrawal or cessation.

ARTICLE VIII
TRANSFERS OF NONMANAGING MEMBER INTERESTS

8.1 Restrictions on Transfer of Interests.

(a) Subject to Section 8.1(b), no Transfer of all or any fraction of a Nonmanaging Member's Interest may be made without (i) the prior written consent of the Managing Member, which consent may be withheld for any reason at the Managing Member's sole discretion, (ii) the receipt by the Managing Member of such documents and instruments of Transfer as the Managing Member may reasonably require, and (iii) if required by the Managing Member, the receipt by the Managing Member, not less than ten (10) days prior to the date of any proposed Transfer, of a written opinion of counsel (who may be counsel for the Fund), satisfactory in form and substance to the Managing Member, to the effect that such Transfer would not result in any adverse legal or regulatory consequences to the Fund or any Member under the Investment Company Act, the Investment Advisers Act, or otherwise, including, but not limited to, that such Transfer would not:

(i) result in a violation of the Securities Act, the Exchange Act or any securities laws of any other jurisdiction applicable to the Fund or the Interest to be transferred;

(ii) cause the Fund to become a publicly traded limited liability company for federal income tax purposes;

(iii) constitute a public offering within the meaning of Section 7(d) of the Investment Company Act; or

(iv) result in the termination of the Fund or loss by the Fund of its status as a Fund for tax purposes.

(b) Section 8.1(a) shall not apply to a Transfer by a Nonmanaging Member to a Person that acquires such Nonmanaging Member's Interest by reason of the death of such Nonmanaging Member. Each Nonmanaging Member hereby agrees that it will not Transfer all or any fraction of its Interest, except as permitted by this Agreement.

(c) In no event shall all or any part of an Interest be transferred to a minor or a person, who is Incapacitated, except in trust or by will or intestate succession.

(d) The transferring Nonmanaging Member agrees that it will pay all reasonable expenses, including attorneys' fees, incurred by the Fund in connection with a Transfer of its Interest.

8.2 Assignees.

(a) The Fund shall not recognize for any purpose any purported Transfer of all or any part of the Interest of a Nonmanaging Member, unless the provisions of Section 8.1 shall have been complied with and there shall have been filed with the Fund a dated notice of such Transfer, in form satisfactory to the Managing Member, executed and acknowledged by both the transferor or such transferor's legal representative and the transferee, and such notice (i) contains the acceptance by the transferee of all the terms and provisions of this Agreement and such

transferee's agreement to be bound hereby and (ii) represents that such Transfer was made in accordance with all applicable laws, rules and regulations.

(b) Unless and until an Assignee becomes a Substitute Nonmanaging Member, such Assignee shall have no rights with respect to such Interest other than those rights with respect to allocations and distributions.

(c) Any Nonmanaging Member, which shall Transfer all of its Interest, shall cease to be a Nonmanaging Member upon, but only upon, the admission of a Substitute Nonmanaging Member in such Nonmanaging Member's stead.

(d) Notwithstanding anything to the contrary contained in this Agreement, both the Fund and the Managing Member shall be entitled to treat a Nonmanaging Member transferring all or any part of its Interest as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to such Nonmanaging Member, until such time as a Substitute Nonmanaging Member is admitted in such Nonmanaging Member's stead in respect thereof.

8.3 Substitute Nonmanaging Members.

(a) No Nonmanaging Member shall have the right to substitute a transferee of all or any part of such Nonmanaging Member's Interest in its place, except as provided in Section 8.1(b). Any such transferee of an Interest (whether pursuant to a voluntary or involuntary Transfer) shall be admitted to the Fund as a Substitute Nonmanaging Member only (i) with the Consent of the Managing Member granted at its sole discretion, (ii) by satisfying the requirements of Sections 8.1 and 8.2(a), and (iii) upon the receipt of all necessary consents of governmental and regulatory authorities. Persons who become Substitute Nonmanaging Members pursuant to Section 8.1(b) need not comply with clause (i) of the preceding sentence.

(b) Each transferee of all or part of a Nonmanaging Member's Interest, as a condition to its admission as a Substitute Nonmanaging Member, shall execute and acknowledge such instruments, in form and substance satisfactory to the Managing Member, as the Managing Member reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of such Person to be bound by all the terms and provisions of this Agreement with respect to the Interest acquired. All reasonable expenses, including attorneys' fees, incurred by the Fund in this connection shall be borne by such Person.

8.4 Bankruptcy or Incapacity of a Nonmanaging Member.

In the event of the Bankruptcy or Incapacity of a Nonmanaging Member, the Fund shall not be dissolved, and the Nonmanaging Member's trustee in bankruptcy or other legal representative shall have only the rights of a transferee of the right to receive Fund distributions applicable to the Interest of such Bankrupt or Incapacitated Nonmanaging Member as provided herein (and for the avoidance of doubt, the Nonmanaging Members agree that such trustee or legal representative shall have no right to Consent to any matters to which the Consent of the Nonmanaging Members shall be required hereunder). Any Transfer to or from such trustee in bankruptcy or legal representative shall be subject to the provisions of this Agreement.

ARTICLE IX
DISSOLUTION, LIQUIDATION AND WINDING UP OF THE FUND

9.1 Dissolution.

The Fund shall be dissolved upon the first to occur of any of the following events:

- (a) the expiration of the term of the Fund;
- (b) the failure of the Nonmanaging Members to elect to continue the Fund as provided in Section 7.3 in the event of the withdrawal, Bankruptcy or Incapacity of the Managing Member;
- (c) the Consent of the Managing Member and a majority in interest of the Nonmanaging Members to dissolve the Fund;
- (d) the termination required by operation of law; or
- (e) the sale, disposition or distribution of all of the Fund s assets.

Dissolution of the Fund shall be effective on the day on which the event occurs giving rise to the dissolution, but the Fund shall not terminate until the Certificate of the Fund has been cancelled and the assets of the Fund have been liquidated and distributed as provided in Section 9.2.

9.2 Liquidation.

Upon dissolution of the Fund, the Managing Member, or (if there is no Managing Member) a Person selected by the Consent of a majority in Interest of the Nonmanaging Members, shall act as the Liquidating Trustee to wind up the affairs of the Fund and proceed within a reasonable period of time to sell or otherwise liquidate the assets of the Fund and, after paying or making appropriate provision by setting up reserves for all liabilities to the creditors of the Fund, to distribute such assets among the Members in accordance with this Agreement. If the Liquidating Trustee shall, in its absolute discretion, determine that a sale or other disposition of part or all of the Fund s investments would cause undue loss to the Members or otherwise be impractical, the Liquidating Trustee may either defer liquidation of, and withhold from distribution for a reasonable time, any investments or distribute part or all of such investments to the Members in kind as provided in Sections 5.2(a) and 4.2. The Liquidating Trustee shall have all of the rights, powers and duties of the Managing Member in connection with carrying out the purposes of this Section 9.2. Upon the dissolution and winding up of the Fund, all allocations for the final period of the Fund shall be made in accordance with Section 4.4. Thereafter, all of the assets of the Fund, or the proceeds therefrom, shall be distributed pursuant to Section 5.2.

ARTICLE X AMENDMENTS

10.1 Amendments Requiring Consent.

Except as otherwise provided herein, this Agreement is subject to amendment only with the written Consent of the Managing Member and a majority in Interest of the Nonmanaging Members; provided, however, that no amendment to this Agreement may:

(a) without the Consent of each affected Member, increase the Capital Contributions required to be made by such Member, convert a Nonmanaging Member's Interest into a Managing Member's Interest or modify the limited liability of a Nonmanaging Member;

(b) alter the Interest of any Member in respect of Fund income, gains and losses or amend or modify any portion of Articles IV or V without the Consent of each Member adversely affected by such amendment or modification; provided, however, that the admission, withdrawal or substitution of Members in accordance with this Agreement shall not constitute such an alteration, amendment or modification, and no such Consent shall be required in the event of any dilution of any Member's Interest pursuant to the operation of Article III of this Agreement;

(c) amend or modify any provision of Article VIII in a manner that would further restrict the transferability of a Nonmanaging Member's Interest without the Consent of all of the Nonmanaging Members;

(d) amend any provision hereof which requires the Consent, action or approval of a majority or of a specified percentage in Interest of the Nonmanaging Members without the Consent of such majority or specified percentage in Interest of the Nonmanaging Members; or

(e) amend this Section 10.1 without the Consent of all of the Nonmanaging Members.

10.2 Amendments Not Requiring Consent.

In addition to any amendments otherwise authorized hereby, this Agreement may be amended from time to time by the Managing Member: (i) to add to the representations, duties or obligations of the Managing Member or surrender any right or power granted to the Managing Member; (ii) to cure any ambiguity or correct or supplement any provisions hereof which may be inconsistent with any other provision hereof or correct any printing, stenographic or clerical errors or omissions; (iii) to provide for the admission, withdrawal or substitution of Members in accordance with this Agreement; (iv) to amend Schedule A attached hereto (as same may be amended or supplemented from time to time) to provide any necessary information regarding any Nonmanaging Member and to add or remove Nonmanaging Members or Substitute Nonmanaging Members; (v) to delete or add any provisions of this Agreement required to be so deleted or added by a state securities law commissioner or similar such official or in order to qualify for a private placement exemption; and (vi) to reflect any change in the amount of the Capital Contribution of any Member in accordance with this Agreement; provided, however, that no amendment shall be adopted pursuant to this Section 10.2 if (a) such amendment would

adversely alter the interest of a Member in income, gains or losses or distributions of the Fund or (b) such amendment would, in the opinion of counsel for the Fund, alter, or result in the alteration of, the limited liability of the Nonmanaging Members or the status of the Fund as a Fund for federal income tax purposes. The power of attorney granted pursuant to Section 12.1 may be used by the Managing Member to execute on behalf of a Nonmanaging Member any document evidencing or effecting an amendment adopted in accordance with this Section 10.2.

ARTICLE XI CONSENTS AND VOTING

11.1 Submissions to Nonmanaging Members.

The Managing Member shall give all of the Nonmanaging Members notice of any proposal or other matter required by any provision of this Agreement or by law to be submitted for the consideration and approval of the Nonmanaging Members. Such notice shall include any information required by the relevant provisions of this Agreement and by law.

11.2 Bound by a Majority.

Unless otherwise specifically provided herein or otherwise required by the Act, all Nonmanaging Members agree to be bound by the Consent of a majority in interest of the Nonmanaging Members.

11.3 Record Dates.

The Managing Member may set in advance a date for determining the Nonmanaging Members entitled to Consent. No record date shall be more than sixty (60) days prior to the doing of the act or thing to which such record date relates.

ARTICLE XII POWER OF ATTORNEY

12.1 Grant of Power.

Each Member, by his execution hereof, hereby irrevocably makes, constitutes and appoints the Managing Member, its individual officers and its and their successors as such Member's true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in such Member's name, place and stead, to make, execute, sign, acknowledge, swear to, record, publish and file in such Member's or such Member's transferee's name, place and stead: (i) any and all counterparts of this Agreement and any and all amendments hereto; (ii) the Certificate and all amendments thereto required or permitted by law or the provisions of this Agreement; (iii) all certificates and other instruments deemed advisable by the Managing Member to carry out the provisions of this Agreement and any applicable law or to permit the Fund to become or to continue as a limited liability company; (iv) all instruments that the Managing Member deems appropriate to reflect a change or modification of this Agreement, including, without limitation, the admission of additional Nonmanaging Members, Substitute Nonmanaging Members or substituted Managing Members, and the redemption of Interests and withdrawal of Members; (v) all conveyances and other instruments or documents deemed advisable by the Managing Member, including, without limitation, those to effect the

dissolution and winding up of the Fund; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Fund; (vii) any changes in this Agreement as are required or are desirable in the judgment of the Managing Member in order to comply with the laws of Delaware, the Code or other applicable law; (viii) all insertions and/or corrections to any documents executed by such Member in connection with such Member's admission as a Nonmanaging Member of the Fund, including, without limitation, filling in blank addresses and dollar amounts in the Subscription Agreement executed by such Member; and (ix) all other instruments which may be required or permitted by law to be filed, recorded or published on behalf of the Fund. Any Person dealing with the Fund may presume conclusively and rely upon the fact that any instrument referred to above is authorized, regular and binding, without further inquiry. This power of attorney:

(a) is coupled with an interest, shall be irrevocable and shall survive the incapacity of the Member in respect of which such power of attorney may be exercised;

(b) may be exercised by such attorneys-in-fact individually or collectively;
and

(c) shall survive a Transfer by a Member of the whole or any fraction of his Interest; except that, where the transferee of the whole of such Member's Interest has been approved by the Managing Member for admission to the Fund as a Substitute Nonmanaging Member, the power of attorney of the transferor shall survive the Transfer for the sole purpose of enabling such attorneys-in-fact to effect such Transfer and substitution.

12.2 Additional Documents.

Each Member shall execute and deliver to the Managing Member within fifteen (15) days after receipt of the Managing Member's request therefor such further designations, powers-of-attorney and other instruments as the Managing Member reasonably deems necessary to carry out the terms of this Agreement.

ARTICLE XIII RECORDS AND ACCOUNTING REPORTS

13.1 Books and Records.

(a) The Managing Member shall keep or cause to be kept complete and accurate books of account with respect to the operations of the Fund. Such books shall be maintained at the address of the Managing Member. The Managing Member shall also maintain or cause to be maintained at such address the following records: (i) a current list of the full name and last known business address of each Member set forth in alphabetical order; (ii) a copy of the Certificate and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; (iii) copies of the Fund's federal, state and local income tax returns and reports, if any, for the three most recent years; and (iv) copies of any then effective Fund agreements and of any financial statements of the Fund for the three most recent years.

(b) The books and records of the Fund shall be kept in accordance with the income tax method of accounting and in such a way as shall permit the preparation of the

financial statements described in Section 13.2. The income tax method of accounting shall be followed by the Fund for tax purposes, and the taxable year of the Fund shall be its Fiscal Year.

13.2 Audits and Reports.

The books and records of the Fund shall be audited as of the end of each Fiscal Year by a firm of independent certified public accountants selected by the Managing Member (the **Accountants**). The Managing Member shall furnish or cause to be furnished to each Member, within thirty (30) days after the receipt of the auditor's report, a written statement containing (a) a report of the Accountants setting forth a balance sheet of the Fund and the Net Income or Net Loss for such Fiscal Year and (b) a statement prepared by the Managing Member setting forth each Member's distributive share of Net Income or Net Loss and specially allocated items of income, gain, loss or deduction for such Fiscal Year, in sufficient detail to enable such Member to file its federal income tax return and any required state and local income tax returns.

13.3 Tax Information.

Within ninety (90) days after the receipt of the underlying tax information (Form K-1) for each investment made by the Fund, the Managing Member will deliver or cause to be delivered to each Person who was a Member at any time during such Fiscal Year, a Form K-1 and such other information, if any, with respect to the Fund as a Member reasonably requests as necessary for the preparation of such Member's income tax returns.

13.4 Elections.

The determinations of the Managing Member with respect to the treatment of any item or its allocation for federal, state or local tax purposes shall be binding upon all of the Members so long as such determination shall not be inconsistent with any express term hereof.

ARTICLE XIV FAIR MARKET VALUE

14.1 Fair Market Value.

For purposes of this Agreement, Fair Market Value means, as to any non-cash property of the Fund, the fair market value thereof as determined by the Managing Member. The Managing Member shall provide the Advisory Board with written notice of each determination of Fair Market Value. Each such determination shall be final and conclusive unless the Advisory Board, within twenty (20) days after such notice from the Managing Member, delivers to the Managing Member a written objection to such determination (it being agreed that if no such objection is received by the Managing Member by the expiration of such twenty (20) day period, such determination of the Managing Member shall be conclusive as to the Fair Market Value of such non-cash property for purposes of this Agreement). If the Advisory Board timely objects to any determination of Fair Market Value and if the Managing Member and the Advisory Board do not agree on the Fair Market Value of any property within the applicable period specified in this Article XIV, the Fair Market Value of such property shall be determined by appraisal in accordance with this Article XIV. In determining the Fair Market Value of any non-cash property of the Fund, all factors, which the Managing Member determines might reasonably

affect such value, shall be taken into account without regard to any discounts for illiquidity or non-transferability.

14.2 Appraisal Procedures.

If the Managing Member and the Advisory Board are unable to agree upon the Fair Market Value of any non-cash property of the Fund within thirty (30) days after the Managing Member receives written notice that the Advisory Board objects to the Managing Member's determination, or if the Managing Member determines at any time (whether before or after the expiration of such thirty (30) days) that the Managing Member and the Advisory Board are unlikely to reach agreement on the Fair Market Value, then such Fair Market Value shall be determined as follows:

(a) Upon the expiration of such thirty (30) day period or such shorter period determined by the Managing Member, either the Managing Member or the Advisory Board may request an appraisal of the applicable property by sending written notice thereof to the other. Within five (5) days after receipt of the written notice by the party to whom such notice is sent, the Managing Member and the Advisory Board shall, by mutual agreement, appoint an independent appraiser (which may be an investment bank, accounting firm, asset appraiser, or other valuation professional). If the Managing Member and the Advisory Board cannot agree on a single independent appraiser within such five (5) day period, the Managing Member and the Advisory Board shall each have the right to select an independent appraiser experienced in such matters and shall give written notice to the other of the appraiser so selected. The first party to receive such a notice shall have five (5) days after receipt thereof to give the other written notice of its selection.

(b) If either the Managing Member or the Advisory Board properly gives a first notice and the other does not properly give the second notice within the requisite time or if a single appraiser is selected, the one independent appraiser so selected shall be the sole appraiser in making the determination required hereunder, which written determination shall be final and binding and shall be delivered to the Managing Member and the Advisory Board no more than thirty (30) days after the delivery of the first notice.

(c) If the second notice is properly given within the requisite time, the independent appraisers so selected shall promptly make the determination required hereunder and deliver a written summary of such determination to the Managing Member and the Advisory Board within thirty (30) days after the delivery of the first notice. If such two appraisers reach the same determination, their determination shall be final and binding. If the two appraisers reach determinations that are different but the lower determination is no less than ninety percent (90%) of the higher determination, an average of the two (2) shall be final and binding. In all other events, the two (2) appraisers shall promptly select a third independent appraiser who shall promptly select the determination of one of the two (2) appraisers which it believes is more accurate and deliver a written summary of such determination to the Managing Member and the Advisory Board no more than sixty (60) days after the delivery of the first notice, and such determination shall be final and binding on both parties. All fees and expenses of each such independent appraiser shall be borne by the Fund.

(d) In making any determinations of Fair Market Value of non-cash property under this Article XIV, each appraiser shall take into account such factors consistent with the intent and purposes of this Agreement, including, without limitation, any and all factors, such appraisers reasonably determine might affect such Fair Market Value, without regard to any discounts for illiquidity or non-transferability.

ARTICLE XV MISCELLANEOUS

15.1 Notices.

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made (a) upon the date of personal delivery (if notice is delivered by personal delivery), (b) on the date of delivery, as confirmed by electronic answerback (if notice is delivered by facsimile transmission), (c) on the day one (1) Business Day after deposit with a nationally recognized overnight courier service (if notice is delivered by nationally recognized overnight courier service), or (d) on the third (3rd) Business Day following mailing from within the United States by first class United States mail, postage prepaid, certified mail return receipt requested (if notice is given in such manner), and in any case (i) if to a Nonmanaging Member, to such Nonmanaging Member at the address(es) set forth for such Nonmanaging Member in the applicable Subscription Agreement, and (ii) if to the Fund or the Managing Member to:

c/o RiverOak Investment Corp., LLC
One Atlantic Street
Stamford, Connecticut 06901
Attention: Stephen DeNardo
Facsimile: 203-325-8588

with copy to:

Robinson & Cole LLP
695 East Main Street
Stamford, Connecticut 06904
Attention: Euchung Ung
Facsimile: 203-462-7599

In any case, notices shall be sent to the Fund or a Member to such other addresses as each such party may specify by due notice to the other.

15.2 Governing Law; Separability of Provisions.

The laws of Delaware and, in particular, the provisions of the Act shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Members. If any provision of this Agreement shall be held to be invalid, the remainder of this Agreement shall not be affected thereby.

15.3 Entire Agreement.

This Agreement and the Memorandum together constitute the entire agreement among the Members and supersede any prior agreement or understandings among them, oral or written, relating to the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between or among the parties relating only to the subject matter hereof. If any provision of this Agreement shall conflict with any provision in the Memorandum, this Agreement shall govern.

15.4 Headings.

The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine or the neuter gender shall include the masculine, the feminine and the neuter.

15.5 Pronouns.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the Person or entity may require.

15.6 No Third Party Beneficiaries.

The provisions of this Agreement are intended to bind each Member and are not intended to create and do not create any rights in any other Person. No Person shall be or be deemed to be a third party beneficiary of this Agreement.

15.7 Binding Provisions.

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal or legal representatives, successors and assigns of the respective parties.

15.8 Additional Documents.

Each party agrees to execute, with acknowledgment or affidavit, if required by the Managing Member, any and all documents, which may be necessary or expedient in connection with the creation of the Fund and the achievement of its purposes.

15.9 Confidentiality.

Each Nonmanaging Member will maintain the confidentiality of nonpublic information regarding the Fund and the Managing Member received by such Nonmanaging Member pursuant to this Agreement.

15.10 Counterparts.

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

15.11 Arbitration.

The parties acknowledge and agree that all disputes under this Agreement shall be submitted to arbitration pursuant to the terms and provisions set forth below, which shall be the sole and exclusive manner in which the parties may resolve disputes under this Agreement and the parties fully waive any right to commence an action or proceeding in court arising out of any such dispute, subject only to the right of a party to bring an action in court to enforce the determination made in an arbitration proceeding. In the event of any arbitration hereunder the following shall apply:

(a) Any controversy, claim or dispute arising out of or relating to this Agreement, or the breach, enforcement or interpretation thereof, shall be settled by arbitration administered by the American Arbitration Association (the **AAA**) under its Commercial Arbitration Rules (the **AAA Rules**) then in effect (it being agreed that except as set forth herein to the contrary or to the extent prohibited by the AAA Rules, any dispute hereunder shall be resolved in accordance with the Expedited Procedures of the AAA Rules; provided that (i) the parties agree that the Expedited Procedures shall continue to apply notwithstanding any counter-claim for non-monetary relief or in excess of \$75,000, (ii) any notices in connection with an arbitration proceeding shall be given in accordance with this Agreement and (iii) a stenographic record of the arbitration hearing shall be made). The venue for any such arbitration shall be in Fairfield County, Connecticut.

(b) If a party (the **Complaining Party**) desires to submit a dispute under this Agreement (a **Matter in Dispute**) to arbitration, then the Complaining Party shall deliver a written notice (**Notice of Dispute**) to the party (the **Non-Complaining Party**) with whom such Matter in Dispute relates (with a copy to the Fund) stating (i) that there is a Matter in Dispute under this Agreement, (ii) with specificity, the nature of the Matter in Dispute, (iii) the amount involved, and (iv) the nature of the remedy claimed by the Complaining Party. In such event, the Non-Complaining Party shall, within the ten (10) day period after the Non-Complaining Party receives the Complaining Party's Notice of Dispute, deliver a notice (**Response Notice**) to the Complaining Party stating (x) that it disputes the allegation made by the Complaining Party and desires to submit the Matter in Dispute to arbitration pursuant to the provisions set forth herein or (y) that it admits such allegation and that the Non-Complaining Party intends to effectuate the cure thereof on or prior to the date that is fifteen (15) days after the date of the delivery of the Response Notice to the Complaining Party (a Response Notice that is given under clause (y) of this Section 15.11(b) shall be referred to herein as an **Arbitration Notice**). In order to be effective, the Arbitration Notice shall state the name of the AAA arbitrator selected by the Non-Complaining Party (the **Non-Complaining Party's Arbitrator**). The Arbitration Notice must be filed with the AAA in accordance with the AAA Rules that are then in effect. The failure to send a Response Notice within such ten (10) day period, or the failure of the Arbitration Notice to be in compliance with the preceding sentence, shall be deemed to be delivery of a Response Notice by the Non-Complaining Party under of this Section 15.11(b).

(c) If the Non-Complaining Party delivers an Arbitration Notice submitting a Matter in Dispute to arbitration, then within fifteen (15) days after receipt of the Arbitration Notice, the Complaining Party shall deliver a notice (the **Arbitration Response Notice**) stating the Complaining Party's choice of AAA arbitrator (the **Complaining Party's Arbitrator**). The failure of the Complaining Party to deliver an Arbitration Response Notice within such fifteen (15) day period shall be deemed agreement by the Complaining Party to use the Non-Complaining Party's Arbitrator to resolve the Matter in Dispute. From and after the expiration of such fifteen (15) day period, the arbitrator(s) shall attempt to resolve the Matter in Dispute in accordance with the AAA Rules. The arbitrator(s) shall not be entitled to award punitive damages, or require any party to agree to any decision or determination hereunder that is within the discretion of such party or to act inconsistently with the terms of this Agreement.

(d) The determination of the arbitrators in the foregoing proceeding shall be binding upon the Complaining Party and Non-Complaining Party, and the Complaining Party and Non-Complaining Party shall be required to comply with the determination of the arbitrators.

(e) If a party fails to comply with the determination of the arbitrators hereunder, then the other party shall be entitled to bring an action in court to enforce such determination.

15.12 Waiver of Jury Trial.

NOTWITHSTANDING THE FACT THAT THE PARTIES HERETO INTEND THAT ARBITRATION SHALL BE THE EXCLUSIVE MEANS FOR RESOLVING DISPUTES OF THE PARTIES HEREUNDER, IN THE EVENT A PARTY WERE TO (CONTRARY TO THE INTENT OF THIS AGREEMENT) ATTEMPT TO BRING SUCH A CAUSE OF ACTION IN A FEDERAL OR STATE COURT OR IN THE EVENT THAT A PARTY HERETO DESIRES TO BRING AN ACTION IN COURT TO ENFORCE THE DETERMINATION OF THE ARBITRATORS MADE PURSUANT TO SECTION 15.11, THE PARTIES HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER PARTY, AS APPLICABLE.

15.13 Venue and Jurisdiction.

NOTWITHSTANDING THE FACT THAT THE PARTIES HERETO INTEND THAT ARBITRATION SHALL BE THE EXCLUSIVE MEANS FOR RESOLVING DISPUTES OF THE PARTIES HEREUNDER, IN THE EVENT A PARTY WERE TO (CONTRARY TO THE INTENT OF THIS AGREEMENT) ATTEMPT TO BRING SUCH A CAUSE OF ACTION IN A FEDERAL OR STATE COURT OR IN THE EVENT THAT A PARTY HERETO DESIRES

TO BRING AN ACTION IN COURT TO ENFORCE THE DETERMINATION OF THE ARBITRATORS MADE PURSUANT TO SECTION 15.11, THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY CONNECTICUT STATE OR FEDERAL COURT SITTING IN FAIRFIELD COUNTY, CONNECTICUT, OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, PROVIDED, HOWEVER, IF A PROCEEDING IN SUCH CONNECTICUT STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN FAIRFIELD COUNTY, CONNECTICUT, WOULD NOT BE EFFECTIVE TO ENFORCE THE DETERMINATION OF ARBITRATORS MADE PURSUANT TO SECTION 15.11, THEN THE PARTY SEEKING TO ENFORCE SUCH INTERPRETATION SHALL NOT BE PRECLUDED FROM BRINGING SUCH ENFORCEMENT ACTION IN WHICHEVER JURISDICTION SUCH PARTY DETERMINES IS NECESSARY TO EFFECTUATE SUCH ENFORCEMENT OF SUCH DETERMINATION OF SUCH ARBITRATORS. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO SUCH VENUE AS BEING AN INCONVENIENT FORUM.

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

MANAGING MEMBER:

RIVEROAK INVESTMENT CORP., LLC

By: _____
Stephen DeNardo, Manager

NONMANAGING MEMBER:

By: RiverOak Investment Corp., LLC, as
his/her/its Attorney-In-Fact

By: _____
Stephen DeNardo, Manager

SCHEDULE A
MEMBERS

<u>Name</u>	<u>Address</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
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The date of this Schedule A is _____, _____.

SCHEDULE B
FORM OF REINVESTMENT CERTIFICATE

From: _____

Date: _____

To: RiverOak Investment Corp., LLC
One Atlantic Street
Stamford, Connecticut 06901

Re: RiverOak Realty Fund III, LLC (the Fund)

The undersigned is party to that certain Limited Liability Company Operating Agreement, dated as of January 5, 2004 (as amended, the Operating Agreement), of the Fund. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given such terms in the Operating Agreement

Pursuant to the provisions of the Operating Agreement, the undersigned hereby elects to cause all distributions to the undersigned under the LLC Agreement up to and including the Final Closing Date, to be applied in accordance with the provisions of Section 5.5 of the Operating Agreement.

The foregoing election is subject to the provisions of Section 5.5 of the Operating Agreement and shall be deemed irrevocable by the undersigned.

Very truly yours

(Signature)