

**KRS-ArrowMark Fund I, LP**

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AMENDED AND RESTATED EXEMPTED  
LIMITED PARTNERSHIP AGREEMENT

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May 1, 2018

LIMITED PARTNER INTERESTS IN THIS PARTNERSHIP HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE U.S. SECURITIES ACT OF 1933 (THE “SECURITIES ACT”) OR QUALIFIED WITH ANY STATE SECURITIES LAW. A HOLDER OF AN INTEREST MAY NOT SELL, PLEDGE, CHARGE, HYPOTHECATE OR OTHERWISE TRANSFER THAT INTEREST, OR ANY INTEREST IN THAT INTEREST (A “TRANSFER”), UNLESS THE HOLDER CAN DEMONSTRATE THAT THE PROPOSED TRANSFER WILL NOT VIOLATE THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND THE QUALIFICATION REQUIREMENTS OF APPLICABLE STATE LAW. THIS AGREEMENT CONTAINS ADDITIONAL CONDITIONS THAT A HOLDER MUST SATISFY BEFORE TRANSFERRING AN INTEREST OR ANY PORTION OF OR INTEREST IN AN INTEREST.

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**AMENDED AND RESTATED**  
**EXEMPTED LIMITED PARTNERSHIP AGREEMENT**  
**OF**  
**KRS-ArrowMark Fund I**

This AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the “**Agreement**”), dated May 1, 2018, is entered into by and among (i) KRS-ArrowMark Fund I GP, Ltd., a Cayman Islands exempted company, as the general partner, (ii) (2) [REDACTED], as the initial limited partner (the “**Initial Limited Partner**”), (iii) Kentucky Retirement Systems and Kentucky Retirement Systems Insurance Trust Fund (collectively with Kentucky Retirement Systems, “**KRS**”), (iv) ArrowMark Colorado Holdings, LLC, a Delaware limited liability company, as the investment manager and not as a partner of the Partnership, and (v) and the persons listed in the Register (as amended or supplemented from time to time) as limited partners of the Partnership. Except where the context otherwise requires, capitalized terms used herein have the meanings given in Article 1.

**RECITALS**

A. The General Partner and the Initial Limited Partner previously entered into an initial exempted limited partnership agreement, dated 6 April 2018, with respect to the Partnership (the “**Original Agreement**”) and established and registered an exempted limited partnership under the laws of the Cayman Islands under the name KRS-ArrowMark Fund I, LP, and since its formation the Partnership was governed by the Original Agreement.

B. The parties hereto desire to amend and restate the Original Agreement in its entirety and enter into this Agreement to admit the parties referred to above as limited partners of the Partnership and further to make the modifications hereinafter set forth, and the parties hereto agree that immediately after the admission of one additional limited partner, the Initial Limited Partner shall withdraw from the Partnership.

**AGREEMENT**

In consideration of the following mutual promises, the parties agree as follows:

ARTICLE 1  
DEFINITIONS

The following terms used in this Agreement will have the meanings set forth below, unless the context otherwise requires:

“**Administration Arrangement**” has the meaning specified in Section 4.12.2.

“**Administrator**” means a reputable, independent administrator, which shall initially be ALPS Fund Services, Inc. (or one or more of its Affiliates), and any successor, assign or replacement reasonably acceptable to all of the Limited Partners.

“**Advisers Act**” has the meaning specified in Section 7.4.

“**Affiliate**” means, as to a specified person, (a) any person who directly or indirectly owns, controls or holds with power to vote, 10% or more of any class of equity securities of that specified person; (b) any person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by that specified person; (c) any person who, directly or indirectly, controls, is controlled by or is under common control with that specified person; or (d) any officer, director or general partner of, or any person who serves in a similar capacity as to, that specified person, or of which that specified person is an executive officer, director or general partner, or as to which that specified person serves in a similar capacity.

“**Agreement**” means this Amended and Restated Agreement of Limited Partnership, as it may be amended from time to time.

“**Annual Expense Cap**” has the meaning specified in Section 6.1.4.

“**Auditor**” means, initially, KPMG, LLP and any successor or replacement reasonably acceptable to KRS.

“**Authorized Representative**” has the meaning specific in Section 13.2.1.

“**Bank Custodian**” means, initially, BNY Mellon, and any successor or replacement reasonably acceptable to KRS.

“**Business Day**” means any day on which the New York Stock Exchange is open for business.

“**Capital Account**” means the account established for each Partner as provided in Section 4.1, including such adjustments as may from time to time be made to that account in accordance with the provisions of this Agreement.

“**Capital Call Notice**” has the meaning specified in Section 3.2.

“**Capital Commitment**” means, with respect to a Limited Partner, the amount of capital that the Limited Partner has committed to contribute to the Partnership pursuant to Section 3.1.1, as increased, if at all, pursuant to Section 3.1.1 and as decreased, if at all, pursuant to Section 5.6.5, and, with respect to the General Partner, the amount set forth in Section 3.1.2.

“**Capital Contribution**” means, as to any Partner, any capital contributed to the Partnership by that Partner pursuant to Section 3.2, including, for the avoidance of doubt, contributions for the payment of Partnership expenses.



**“Cause Event”** means, with respect to any of the General Partner, the Investment Manager, any Affiliate of the General Partner or the Investment Manager, or any of the individuals identified in the definition of Key Person Event:

- (i) any conviction or admission by consent or plea of no contest of such person to a violation of any securities laws, or any rule or regulation promulgated thereunder, or any other criminal statute involving a breach of fiduciary duty with respect to the Partnership;
- (ii) the conviction or admission by consent or plea of no contest of such person of a felony under any federal or state statute;
- (iii) the conviction or admission by consent or plea of no contest of such person of any misdemeanor involving (x) investments or an investment-related business, or (y) fraud, false statement or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, breach of trust, breach of fiduciary duty, crime of moral turpitude, or a conspiracy to commit any of these offenses, by such person with respect to the Partnership;
- (iv) the commission by such person of an action, or the omission by such person to take an action, if such commission or omission constitutes a breach of fiduciary duty, bad faith, Gross Negligence, willful misconduct, fraud or willful or reckless disregard for such person’s duties to the Partnership or a Limited Partner (which has not been cured within thirty (30) days following written notice to the General Partner from a Majority in Interest of the Limited Partners of such alleged conduct; *provided*, that no cure shall be available with respect to fraud; *provided, further*, that any cure shall require that (a) the persons engaging in such conduct are terminated by the General Partner and Investment Manager and (b) the Partnership be made whole from any economic losses);
- (v) a finding by any court, governmental body, self-regulatory organization, federal or state regulatory agency or foreign regulatory authority that such person has (x) made false statements or (y) received any material improper personal benefit as a result of its breach of any covenant, agreement or representation and warranty contained in this Agreement;
- (vi) the imposition of an injunction, suspended sentence, civil money penalty in excess of \$100,000 or order to cease and desist from any activity by a self-regulatory organization, federal or state regulatory agency or foreign regulatory authority against such person;
- (vii) any revocation, suspension, bar, denial or restriction of such person’s right to do business by a federal or state regulatory agency or foreign regulatory authority;

(viii) the filing of a formal complaint by a federal or state regulatory agency or foreign regulatory authority against such person with respect to or related to the activities under this Agreement;

(ix) the failure by the General Partner to make a Capital Contribution required by Section 3.2, which failure is not remedied within ten Business Days of the date such Capital Contribution was due to the Partnership;

(x) the material breach by such person of any obligation, duty, covenant, agreement or representation and warranty contained in this Agreement or the Investment Management Agreement; or

The General Partner agrees that Cause includes the admission by the General Partner, the Investment Manager, any Affiliate of the General Partner or the Investment Manager, or any of the individuals identified in the definition of Key Person Event, in any written settlement between such person and (a) the Securities and Exchange Commission (“SEC”) or United States Department of Justice, or (b) any other agency that is the chief nationwide securities regulatory agency, law enforcement agency or antitrust enforcement agency in a jurisdiction outside the United States where such person conducts business, that such person committed any act that would constitute Cause.

The General Partner further agrees that a Cause Event shall occur if at any time after twelve months from the Final Closing, the Partnership’s annualized net internal rate of return is less than the three-month London Interbank Offered Rate.

“Closing” means a closing of the sale of Interests to investors and such investors’ admission as Limited Partners, or an existing Limited Partner’s increase of its Capital Commitment.

“Code” means the Internal Revenue Code of 1986, as amended (or any corresponding provision of succeeding law).

“Consent” means either (a) the written consent of such Partners as required or permitted to be given pursuant to this Agreement or applicable law, or (b) the act of granting any written consent, as the context may require.

“Current Income” means interest, dividend and similar income (including original issue discount and payment of in-kind income) from Investments and guarantees (other than short-term investment income).

“Document Disclosure Law” has the meaning specified in Section 13.2.1(b).

“Effective Time” means the time as of which withdrawals are deemed effective pursuant to Section 5.6.1.

“**ELP Law**” shall mean the Exempted Limited Partnership Law (as amended) of the Cayman Islands, as amended from time to time.

“**Event of Bankruptcy**” means, as to any person, (a) the entry of a decree or order for relief by a court having jurisdiction as to that person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy or insolvency law, or the appointment of a receiver, assignee or trustee of that person or for any substantial part of that person’s property, or the issuance of an order for the winding up or liquidation of that person’s affairs and the continuance of any decree or order unstayed and in effect for a period of 90 consecutive days, or (b) the commencement by that person of a voluntary proceeding seeking any decree, order or appointment referred to in clause (a) or the consent by that person to any decree, order or appointment.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fee Disclosure Law**” has the meaning specified in Section 13.2.1(b).

“**Final Closing**” means the Partnership’s last Closing.

“**Fiscal Period**” shall (a) begin on the day after the close of the preceding Fiscal Period, with the first Fiscal Period beginning on the date hereof, and (b) end on the earlier of: (i) the last day of each calendar month, (ii) the day on which the Effective Time of any partial or complete withdrawal by a Partner occurs, (iii) the date as of which any distribution (other than pursuant to a withdrawal) is deemed to have been made; (iv) the effective date of any Transfer of an Interest, (v) the day preceding the effective date of any Capital Contribution, (vi) the date of dissolution and/or termination of the Partnership in accordance with this Agreement, and (vii) any other day as may be determined by the General Partner.

“**Fiscal Month**” means any of the twelve financing accounting months within a Fiscal Year.

“**Fiscal Year**” shall mean the period ending on December 31 each calendar year.

“**GAAP**” means U.S. generally accepted accounting principles.

“**General Partner**” means KRS-ArrowMark Fund I GP, Ltd., an exempted company formed under the laws of the Cayman Islands, or any person who is admitted to the Partnership as a substitute or successor general partner in accordance with this Agreement.

“**Gross Negligence**” means gross negligence as construed under the laws of the state of Delaware.

“**Incentive Allocation**” has the meaning specified under Section 4.5.2.

“**Incentive Allocation Statement**” has the meaning specified under Section 4.5.1.

“**Incentive Allocation Time**” means, for each Limited Partner, (i) the end of each Fiscal Month; (ii) the Effective Time of any withdrawal by or as to the Limited Partner or other distribution to the Limited Partner; (iii) the effective date of any mandatory withdrawal by the General Partner pursuant to Section 5.5; and (iv) the date of the dissolution/termination of the Partnership under Article 11.

“**Indemnitee**” has the meaning specified in Section 8.1.1.

“**Initial Closing**” means the first Closing.

“**Initial Limited Partner**” has the meaning specified in the Preamble.

“**Interest**” means the entire ownership interest of a Partner in the Partnership at any particular time, including the right of that Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Invested Capital Portion**” means the portion of a withdrawal or distribution attributable to contributed capital, which shall be calculated by multiplying the amount of such withdrawal or distribution by a fraction equal to (a) with respect to the Partnership as a whole, the cumulative contributed capital from all Partners (less the Invested Capital Portion of prior withdrawals and distributions) over the Partnership’s Net Asset Value, and (b) with respect to each Partner, such Partner’s cumulative capital contributed (less the Invested Capital Portion of prior withdrawals made by, and distributions made to, such Partner) over such Partner’s Partnership Percentage of the Partnership’s Net Asset Value.

“**Investment Guidelines**” means the investment guidelines set forth in Schedule A attached hereto, which are incorporated herein by reference.

“**Investment Management Agreement**” means the Investment Management Agreement, in the form set forth in Schedule F attached hereto, by and among the Partnership and the Investment Manager.

“**Investment Manager**” means ArrowMark Colorado Holdings, LLC, a Delaware limited liability company and an Affiliate of the General Partner.

“**Investment Period**” means the period during which the Partnership may make commitments to Investments. The initial Investment Period shall commence on the date of the Initial Closing and expire on the [REDACTED] anniversary of the Initial Closing; provided that the Investment Period shall be automatically extended by successive [REDACTED] periods until Limited Partners representing at least [REDACTED] of the aggregate Capital Commitments of all Limited Partners elect to terminate the Investment Period by written consent.

“**Investments**” means the investments made and the property held by the Partnership pursuant to this Agreement, as permitted by the Investment Guidelines.

**“Key Person Event”** means the occurrence, at any time, of (a) [REDACTED] ceasing to (i) be actively engaged in the investment business of the Investment Manager or (ii) devote such time as reasonable necessary to the Partnership, or (b) if Persons who do not own economic or voting interests in the General Partner as of the Partnership’s Closing, subsequently directly or indirectly acquire more than fifty percent (50%) of the economic or voting interests of the General Partner or Investment Manager, excluding, in each case, from such determination any transfer of such economic or voting interests (i) to another employee, officer, member or manager of the General Partner or its Affiliates, (ii) in the event that such member of the General Partner is the Investment Manager, to an Affiliate of the Investment Manager, or (iii) to estate planning vehicles, family members or to a Person’s trust, heirs or beneficiaries upon such Person’s death.

**“KRS”** has the meaning specified in the Preamble.

**“Limited Partner”** means each person who is admitted to the Partnership as a limited partner in accordance with the terms of this Agreement, which shall be listed as limited partners in the Register, at all times prior to the complete withdrawal of that person as a limited partner in the Partnership.

**“Losses”** has the meaning specified in Section 8.1.2.

**“Loss Recovery Account”** [REDACTED]

**“Majority in Interest of the Limited Partners”** means, at any time, the Limited Partners whose aggregate Partnership Percentages exceed 50% of the aggregate Partnership Percentages of all Limited Partners.

**“Mutual Funds Law”** has the meaning specified in Section 5.5.2.

**“Net Asset Value”** means, as of any measurement time, the amount determined pursuant to Section 4.10.

**“Net Loss” or “Net Profit”** [REDACTED]

**“Net Recognized Profits”**

**“Notification”** or **“Notice”** means a writing containing the information required by this Agreement to be communicated to any person, sent or delivered in accordance with Section 13.6. A person will be considered to “Notify” or have “Notified” another person if it gives the other person a Notice that meets the foregoing definition.

**“Official Entity”** has the meaning specified in Section 12.2.2.

**“Open Records Act”** has the meaning specified in Section 13.2.1(b).

**“Original Agreement”** has the meaning specified in the Recitals.

**“Other Fees”** means transaction, advisory, break-up, topping, commitment, monitoring, directors’, organizational, origination, closing, amendment, and other similar fees received by the General Partner, the Investment Manager or any of their Affiliates with respect to the Partnership or the Partnership’s Investments; *provided that*, in connection with co-investments, pooled investments or other similar investments whereby other investors bear a portion of such fees, “Other Fees” shall only include the proportionate share of such fees based upon the Partnership’s proportionate interest in such investment.

**“Partner”** means the General Partner or any Limited Partner.

**“Partnership”** means KRS-ArrowMark Fund I, LP.

**“Partnership Percentage”** means, for each Partner, the proportion, expressed as a percentage, that the amount of that Partner’s Capital Account balance bears as of the beginning of any Fiscal Period to the total of all Partners’ Capital Account balances as of the beginning of the Fiscal Period (after giving effect to the adjustments provided in Section 4.4.1).

**“Partnership Tax Audit Rules”** means Code Sections 6221 through 6241, as amended by the Bipartisan Budget Act of 2015, together with any guidance issued thereunder or successor provisions and any similar provision of state or local tax laws.

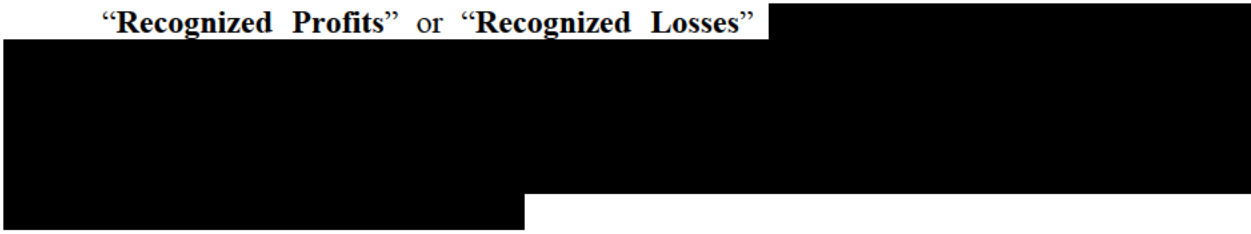
**“Performance Period”** shall (a) begin on the day after the close of the preceding Performance Period, with the first Performance Period beginning on the date hereof, and (b) end on the next Incentive Allocation Time.

**“Prime Broker Custodian”** means a prime broker capable of providing prime brokerage services to the Partnership, with whom the General Partner has an existing prime brokerage and custodian relationship and with whom the General Partner shall promptly enter into a prime brokerage agreement on behalf of the Partnership, which shall initially be BNY Mellon, and any successors or replacements reasonably acceptable to KRS.

“**Proceedings**” has the meaning specified in Section 8.1.2.

“**Proceedings**” has the meaning specified in Section 2.8.

“**Recognized Profits**” or “**Recognized Losses**”



“**Suspension Notice**” has the meaning specified in Section 3.4.

“**Suspension Event**” has the meaning specified in Section 3.4.

“**Tax Information**” has the meaning specified in Section 10.4.3.

“**Tax Matters Partner**” means the General Partner in the capacity described in Section 10.8.1.

“**Termination Date**” has the meaning specified in Section 3.5.

“**Transfer**” means any direct or indirect sale, assignment, exchange, transfer or pledge or other encumbrance of an Interest.

“**Transferee**” means the recipient of a Transfer of an Interest, including a pledgee of or holder of a security interest in an Interest.

“**Transferor**” means a Limited Partner who Transfers an Interest pursuant to Article 9.

“**Unfunded Capital Commitment**” means, for each Partner, the amount of such Partner’s Capital Commitment (a) *reduced* by the amount of all Capital Contributions made by that Partner pursuant to Section 3.2, (b) *reduced* by the terminated amount specified in any Notice provided pursuant to Section 3.5, (c) *increased* by the Invested Capital Portion of any withdrawals made pursuant to Section 5.4.1, unless such Partner specifies in its Notice of withdrawal, pursuant to Section 5.6.5, that the Invested Capital Portion of such withdrawal shall reduce such Partner’s Capital Commitment and thereby shall not affect such Partner’s Unfunded Capital Commitment, (d) *increased* by the Invested Capital Portion of any distributions made to that Partner pursuant to Section 4.8 subject to the limitations in Sections 3.4 and 3.5, and (e) increased by the amount of Capital Contributions returned to such Partner pursuant to Section 3.2.3.

“**Value**” means, as of any measurement time, the amount determined pursuant to Section 4.12.

“**Withholding Taxes**” has the meaning specified in Section 4.7.2.



ARTICLE 2  
GENERAL PROVISIONS

2.1 **Formation.** The parties hereby continue the Partnership as a limited partnership pursuant to the provisions of the ELP Law.

2.2 **Filing of Certificates.** The General Partner will prepare, file, record and publish whatever certificates and other documents may be necessary or, in the General Partner's judgment, appropriate to comply with the requirements for the organization and operation of a limited partnership under the ELP Law as in effect from time to time, as well as any further documents the General Partner deems necessary or appropriate to comply with the laws of any other jurisdiction in which the Partnership may do business.

2.3 **Name.** The Partnership's name will be "KRS-ArrowMark Fund I."

2.4 **Principal Office.** The Partnership's registered office in the Cayman Islands will be located at [REDACTED], or whatever other place the General Partner from time to time designates. The General Partner will Notify the Limited Partners promptly of any change in the principal office's location.

2.5 **Agent.** The Partnership shall continuously maintain within the Cayman Islands a registered agent for service of process on the Partnership and a registered office (which need not be a place of business). The General Partner will Notify the Limited Partners promptly of any change in the registered agent or registered office of the Partnership.

2.6 **Purpose.** The Partnership is organized for the purposes of (in each case subject to and in accordance with the Investment Guidelines): (i) making, acquiring, owning and disposing of Investments; (ii) sharing the profits and losses therefrom and engaging in activities incidental or ancillary thereto; and (iii) engaging in any other lawful acts or activities consistent with the foregoing for which limited partnerships may be organized under the ELP Law.

2.7 **Term.** The Partnership's term will continue until terminated as provided in Article 11.

2.8 **Register.** The General Partner shall cause to be maintained in the principal office of the Manager a register setting forth the name, address and amount of the Capital Commitment of each Partner and such other information as the General Partner may deem necessary or desirable or as may be required by the ELP Law (the "**Register**"). The Register shall not be part of this Agreement. The General Partner shall from time to time update the Register as necessary to accurately reflect the information therein. Any reference in this Agreement to the Register shall be deemed a reference to the Register in effect from time to time. Subject to the terms of this Agreement, the General Partner may take any action authorized hereunder in respect to the Register without the need to obtain the consent of any other Partner. No action of any Limited Partner shall be required to amend or update the Register.



2.9 **U.S. Tax Characterization.** The Partners intend that the Partnership is, and will continue to be, classified as a “partnership” for United States federal income tax purposes. The Partnership has filed (or within seven (7) days after the date hereof, shall file) an election pursuant to Treasury Regulation Section 301.7701-3 confirming such treatment, with such election being effective no later than the date of this Agreement. The authority of the General Partner (and any officer or designee thereof) to make such election is hereby confirmed and ratified. Neither the Partnership nor any Partner shall make an election contrary to the Partnership’s classification set forth in this Section 2.9.

**ARTICLE 3**  
**CAPITAL CONTRIBUTIONS; INVESTMENTS**

**3.1 Capital Commitments.**

3.1.1 *Limited Partner Capital Commitments.* The aggregate initial Capital Commitments of the Limited Partners shall be [REDACTED], with the initial Capital Commitment of each Limited Partner as follows: (i) Kentucky Retirement Systems [REDACTED]; and (ii) Kentucky Retirement Systems Insurance Trust Fund [REDACTED]. A Limited Partner may make additional Capital Commitments with the Consent of the General Partner

3.1.2 *General Partner Capital Commitment.* The General Partner or an Affiliate designated by the General Partner shall make and maintain a Capital Commitment equal to [REDACTED]. The General Partner shall maintain or increase (as applicable) its Capital Contributions to the Partnership so that its aggregate Capital Contribution amount equals [REDACTED] within 5 Business Days of the date on which the General Partner’s aggregate Capital Contribution amount falls below such minimum percentage.

**3.2 Capital Contributions.**

3.2.1 Subject to Sections 3.4 and 3.5, Partners shall make Capital Contributions to the Partnership, pro rata based on the ratio of such Partner’s Capital Commitment to the aggregate Capital Commitments made to the Partnership by all Partners, in cash upon at least ten Business Days’ prior Notice (“**Capital Call Notice**”) in such amounts and at such times as the General Partner deems appropriate as specified in such Capital Call Notice, for the purpose of making Investments, the payment of Partnership expenses. Each Capital Call Notice must include specifics regarding the nature of the Partnership expenses or information regarding the Investments the Partnership intends to make and such other information as is necessary for the Limited Partners to determine compliance with the Investment Guidelines. In no event shall any Partner be required to make any Capital Contribution that exceeds such Partner’s Unfunded Capital Commitment.

3.2.2 Notwithstanding the provisions of Section 3.2.1, following the expiration of the Investment Period, no Capital Commitments shall be drawn to fund Investments; provided that the Partners shall remain obligated to make Capital Contributions throughout the duration of the Partnership pursuant to their respective Capital Commitments to the extent

necessary (i) to pay (or set aside reserves for anticipated) expenses set forth in Section 6.1.3, (ii) to fund then existing commitments to make Investments, (iii) to fund Capital Contributions, to the extent required by Section 4.8, and (iv) to fund follow-on investments not covered in clauses (ii) and (iii) above.

3.2.3 The General Partner shall cause the Partnership to return to the Limited Partners all or any portion of any Capital Contribution that is not invested in Investments or used to pay Partnership expenses set forth in Section 6.1.3 within 90 days of the date of a Capital Call Notice. Any such return of Capital Contributions shall be made pro rata among the Limited Partners in the same proportion as the Limited Partners made such Capital Contributions and shall increase such Limited Partner's Unfunded Capital Commitment that can be re-drawn pursuant to clause (e) of the definition thereof.

3.3 **No Interest.** No Partner will be entitled to interest on that Partner's Capital Contributions or on its Capital Account balance.

3.4 **Suspension of Investment Activities.** At any time during the term of the Partnership, either (a) upon Notice by a Majority in Interest of the Limited Partners to the General Partner of a Cause Event (a "**Suspension Notice**") or (b) automatically upon the occurrence of a Key Person Event (each of (a) and (b), a "**Suspension Event**"), the General Partner shall suspend the investment activities of the Partnership, including with respect to the Limited Partners' Unfunded Capital Commitments and funds otherwise available for reinvestment. Upon a Suspension Event, without the Consent of all of the Limited Partners, the General Partner may not issue any Capital Call Notices (and no Partner may be required to make a Capital Contribution) and no proceeds of investments may be reinvested, *except* as necessary to (i) fund expenses, margin calls and other pre-existing liabilities or obligations; (ii) fund follow-on Investments reasonably necessary to preserve, protect or enhance the value of an existing Investment up to an aggregate amount not to exceed [REDACTED] at the time of the Suspension Event, or (iii) fulfill Investment commitments or other obligations, including loans, pursuant to a binding agreement in effect prior to the date of such Suspension Event. Funds that would otherwise be available for reinvestment may only be used for the purposes set forth in clauses (i) through (iii) above and, if not used for such purposes, such funds shall be distributed to the Partners pursuant to Section 4.8 below; *provided* that such distributions shall decrease the Partners' Capital Commitments and shall not increase any Partner's Unfunded Capital Commitment. Unless such suspension is lifted by all of the Limited Partners by way of a Notice to the General Partner, subject to the exercise of the Limited Partners' termination rights pursuant to Section 3.5 below, such suspension shall remain in effect indefinitely.

3.5 **Termination of Commitments and Investment Activities.** Following the end of the Investment Period, on no less than ten Business Days' prior Notice by any Limited Partner, the General Partner shall terminate the investment activities of the Partnership with respect to such Limited Partner, including with respect to funds otherwise available for reinvestment with respect to such Limited Partner, each measured as of the date such termination becomes effective as specified in such Notice (the "**Termination Date**"). After the Termination Date, funds that would otherwise be available for reinvestment shall be distributed to the

applicable Partners pursuant to Section 4.8 below; *provided* that such distributions shall not increase any Partner's Unfunded Capital Commitment.

3.6 **Wire Transfer Matters.** The General Partner agrees that wiring instructions shall be (i) contained in subscription materials (including any credit facility acknowledgment and instructions), (ii) contained in this Agreement, or (ii) provided to KRS after the date hereof and certified by appropriate authorized senior executive(s) of the Partnership as being true, complete and correct at least ten Business Days prior to the date of the capital call. KRS will not be in default under the Agreement for failure to fund if it is asked to fund a capital call in contravention of the foregoing. Without limitation, KRS acknowledges that the capital calls may be paid to lenders for the Partnership and/or to the Partnership itself (unless limited to solely the lender by materials delivered in connection with KRS' subscription to the Partnership).

#### ARTICLE 4 ACCOUNTS; ALLOCATIONS; VALUATIONS

4.1 **Opening Accounts.** The Partnership will establish in its records in respect of each Partner as of the date on which that Partner first makes a Capital Contribution a Capital Account (with an initial balance equal to the Partner's initial Capital Contribution to the Partnership) to track income, gains, charges and losses attributable to that Capital Account.

4.2 **Allocations of Net Profit and Net Loss.** Except as specifically set forth below, the Partnership's Net Profit and Net Loss, and items thereof, will be allocated among the Partners in proportion to their respective Partnership Percentages.

4.3 **Special Allocation Provisions.** Notwithstanding the general provision of Section 4.2, the following items of cost, expense and, as applicable, income and gain will be specially allocated as provided in this Section 4.3.

4.3.1 *Withdrawal Costs.* If Investments are liquidated, distributed in kind (if permitted pursuant to this Agreement) or segregated in a separate account in connection with any Limited Partner withdrawal, the General Partner may cause some or all of the costs the Partnership incurs in connection with selling or transferring those Investments to be specially allocated to the withdrawing Partner.

4.3.2 *Reserves.* The General Partner may cause some or all of the amount of any reserve described in Section 4.11, and any increase or decrease in any such reserve, to be specially accrued and charged against the Partnership's Net Asset Value, a Limited Partner's withdrawal proceeds, those persons who were Partners at the time of the event that gave rise to the expense, liability or contingency for which the reserve was established (as reasonably determined by the General Partner) in proportion to their respective Partnership Percentages at the beginning of the Fiscal Period during which that event occurred, a particular Partner or former Partner to whom the General Partner reasonably determines that expense, liability or contingency is attributable and/or some combination of these, with whatever adjustments the General Partner reasonably determines are equitable and consistent with the intent expressed below. The Partners intend in this Section 4.3.2, and other provisions of this Agreement related to reserves, to authorize the General Partner to take steps to cause, to the extent the General

Partner considers equitable and practicable, (i) the risks and costs of a particular event to be borne by those who were Partners at the time of the event, in proportion to their participation in the potential benefits of the event and (ii) particular contingent costs to be borne by Limited Partners to whom those costs are attributable. Amounts set aside in reserves, to the extent not used for the purpose so reserved, shall (upon their release from reserve) be apportioned to the Partners from whom such reserves were initially set aside in proportion to the amounts so reserved from such Partners.

4.3.3 *Other Special Costs.* The Partnership may cause any expenditures, payments or amounts that the General Partner determines are, were or should be made or withheld on behalf of, for the benefit of, or because of circumstances applicable to, fewer than all Partners to be charged to those Partners.

4.4 **Capital Account Adjustments.** The Partnership will adjust each Partner's Capital Account as follows:

4.4.1 *Beginning of Fiscal Period Adjustments.* As of the beginning of each Fiscal Period, the Partner's Capital Account will be:

(a) *increased* by the amount of any Capital Contribution the Partner made effective as of the beginning of the Fiscal Period; and

(b) *decreased* by the amount of any withdrawal by that Partner that was effective as of the end of the immediately preceding Fiscal Period (regardless of whether the proceeds of that withdrawal have been paid); and

(c) otherwise adjusted to give effect to the allocations and other actions contemplated to be taken into account as of the beginning of a Fiscal Period pursuant to Section 4.3 (to the extent not otherwise accounted for).

4.4.2 *End of Fiscal Period Adjustments.* As of the end of each Fiscal Period, the Partner's Capital Account will be:

(a) *increased* by that Partner's Partnership Percentage (as of the beginning of the Fiscal Period) of the Net Profit for the Fiscal Period or *decreased* by that Partner's Partnership Percentage (as of the beginning of the Fiscal Period) of the Net Loss for the Fiscal Period;

(b) *decreased* by

(i) the amount of any distribution to the Partner during the Fiscal Period other than any payment of cash or other assets in respect of a partial withdrawal that was effective as of the end of a prior Fiscal Period; and

(ii) any costs, expenses or charges incurred or accrued for or during the Fiscal Period and specially allocated to the Partner pursuant to Section 4.3; and

(c) otherwise adjusted to give effect to the allocations and other actions contemplated to be taken as of the end of a Fiscal Period pursuant to Section 4.3 (to the extent not otherwise accounted for).

*4.4.3 Allocation of Recognized Profits or Recognized Losses.* Solely for purposes of calculating the Incentive Allocation, Recognized Profits or Recognized Losses for each Fiscal Month will be separately allocated at the close of such Fiscal Month among the Limited Partners as if such amounts were Net Profit or Net Loss; provided, that such allocations shall not affect the Partners' Capital Accounts, except to the extent of debits or credits thereto required under Section 4.5. For purposes of the foregoing, the General Partner (i) may establish a separate memorandum account of each Partner, and (ii) may allocate Recognized Profits or Recognized Losses more frequently to the extent necessary to determine the Incentive Allocation with respect to a Limited Partner.

*4.4.4 Incentive Allocation Time Adjustments.* If the end of any Fiscal Period is an Incentive Allocation Time as to a Limited Partner, then, after the adjustments pursuant to Section 4.4.2, that Limited Partner's Capital Account will be *decreased* by the amount of the Incentive Allocation, if any, as to that Limited Partner as of that Incentive Allocation Time, and the General Partner's Capital Account will be *increased* by an equal amount. The adjustments described in the first sentence of this Section 4.4.4 shall be made no less than 10 days after each Limited Partner's receipt of the Incentive Allocation Statement; provided, that such adjustments shall be effective as of the close of the relevant Incentive Allocation Time. Notwithstanding the foregoing, in the event that any such Incentive Allocation Time is (i) the Effective Time of any complete withdrawal by a Limited Partner, (ii) the effective date of any mandatory withdrawal by the General pursuant to Section 5.5; or (iii) the date of dissolution and/or termination of the Partnership under Article 11, the adjustments set forth in the first sentence of this Section 4.4.4 will be made following the release of the annual audited financial statements of the Partnership for the Fiscal Period during which such Incentive Allocation Time occurs. Such adjustments shall be effective as of the close of the relevant Incentive Allocation Time.

#### 4.5 Incentive Allocation.

*4.5.1 Timing and Applicability.* As of each Incentive Allocation Time, the Administrator will determine the Incentive Allocation (if any) for each Limited Partner to which that Incentive Allocation Time applies. Notwithstanding the foregoing, in the event that an Incentive Allocation Time is (i) the Effective Time of any complete withdrawal by a Limited Partner, (ii) the effective date of any mandatory withdrawal by the General pursuant to Section 5.5; or (iii) the date of dissolution and/or termination of the Partnership under Article 11, the Administrator will determine the Incentive Allocation (if any) for each Limited Partner to which that Incentive Allocation Time applies following the release of the financial statements of the Partnership for the Fiscal Period during which such Incentive Allocation Time occurs. The General Partner shall send, or shall cause the Administrator to send, to each Limited Partner an unaudited statement, prepared by the Administrator in accordance with U.S. generally accepted accounting principles, setting forth the amount and calculation of the Incentive Allocation (if any) payable for such Fiscal Period (each, an "Incentive Allocation Statement") within 30 days after the end of each Fiscal Period.

4.5.2 *Amount of Incentive Allocation.* At any Incentive Allocation Time (other than an Incentive Allocation Time that occurs in the circumstance described in Section 4.5.2(c) below), the Capital Accounts of one or more Limited Partners shall be *debited*, and the Capital Account of the General Partner shall be *credited*, by such amounts (each, an “Incentive Allocation”) in the manner described below. An Incentive Allocation, if any, due to the General Partner with respect to a Limited Partner shall be calculated as follows, and the following adjustments to such Limited Partner’s Capital Accounts shall be made:

(a) If there are Net Recognized Profits allocated to a Limited Partner for the Fiscal Month(s) (or portions thereof) ending on or before such Incentive Allocation Time (and without duplication of any such Net Recognized Profits previously taken into account under this Section 4.5.2(a)), then an Incentive Allocation shall be made with respect to that Limited Partner in an amount equal to [REDACTED].

(b) The Incentive Allocation described in Section 4.5.2(a) above, if any, to which the General Partner is entitled shall be charged against such Limited Partner’s Capital Account, and shall be credited to one or more Capital Accounts as the General Partner may designate from time to time.

(c) In the event that an Incentive Allocation Time occurs with respect to a Limited Partner other than as of the end of a Fiscal Month as a result of a withdrawal by or as to the Limited Partner or other distribution to such Limited Partner, the reallocation provided for in this Section 4.5.2 shall be made with respect to such Limited Partner as though the date of such Limited Partner’s withdrawal or retirement was the last day of a Fiscal Month and in proportion to the amount withdrawn or distributed. Moreover, in such a case, the amounts determined under Sections 4.5.2(a) and (b) shall be equitably adjusted, as determined by the General Partner, to reflect the portion of the Capital Account against which the Incentive Allocation was made.

4.6 **Distributive Share for Tax Purposes.** Items of Partnership gain or loss recognized for income tax purposes and arising from Investments will be allocated among the Partners in accordance with the methods set forth in Section 1.704-3(e)(3) of the regulations promulgated under Section 704(c) of the Code. All other items of income, deduction, gain, loss or credit that are recognized for income tax purposes will be allocated among the Partners in accordance with the manner in which the corresponding book items were credited or debited to their Capital Accounts. Notwithstanding the foregoing, the General Partner (a) may specially allocate items of gain and income to each Partner who withdraws any amount during any fiscal year up to the amount (if any) by which that Partner’s withdrawal exceeds its tax basis in its Interest (or portion thereof) at that time, or specially allocate items of loss and deduction to Partners who make a complete withdrawal during any fiscal year up to the amount (if any) by which that Partner’s tax basis for its Interest (or portion thereof) at that time exceeds the Partner’s withdrawal and (b) may otherwise adjust the allocations contemplated by this Section 4.6 as necessary to appropriately reflect the special allocations provided for in Section 4.3 (to the extent not otherwise previously taken into account). Notwithstanding anything to the contrary above, the General Partner may, without any other Partner’s Consent, (1) alter the allocation of any item of taxable income, gain, expense, loss, deduction or credit in any specific

instance where the General Partner determines that alteration is necessary or appropriate to avoid a materially inequitable result (e.g., where the allocation would create an inappropriate tax liability) and/or (2) adopt whatever other method of allocating tax items the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the regulations under Sections 704(b) and 704(c) of the Code.

#### 4.7 **Tax Withholding.**

4.7.1 *Tax Exempt Status; Withholding Notice.* The Limited Partners have advised the General Partner that they are tax exempt under (a) Code Section 115 as governmental entities and (b) Code Section 401(a) as qualified pension plans. As a result, the Limited Partners represent that they are exempt from taxation and tax withholding in most jurisdictions. Based on the foregoing, the General Partner agrees that, before withholding and paying over to any taxing authority any amount purportedly representing a tax liability of any Limited Partner pursuant to the provisions of this Agreement or any other document, instrument or agreement related to such Limited Partner's interest in the Partnership, the General Partner will use reasonable efforts to provide such Limited Partner with Notice of the claim of any such taxing authority that such withholding and payment is required by law. In addition, the General Partner will provide such Limited Partner with the opportunity to contest such claim during any period at the Limited Partner's expense.

4.7.2 *Withholding Taxes.* The General Partner will use its reasonable best efforts to (i) obtain any available exemption from any withholding or other taxes imposed by any taxing authority with respect to amounts received by the Partnership allocable by the Partnership to any Limited Partner under this Agreement ("**Withholding Taxes**"), (ii) Notify such Limited Partner of the amount of any Withholding Taxes imposed, (iii) advise such Limited Partner, to the best of the General Partner's actual knowledge, of the procedures for obtaining any available refund of such Withholding Taxes, (iv) file any forms or applications necessary to obtain any available refund of Withholding Taxes, to the extent that the Partnership is required to make such filing under applicable law in order for such refund to be obtained, and (v) provide such Limited Partner with such other information or documentation as is reasonably available to the General Partner and is relevant to such Limited Partner's application for a refund of Withholding Taxes and otherwise use its reasonable best efforts to cooperate in such application. Each Limited Partner agrees that it will cooperate with the General Partner in making any such filings, applications or elections to the extent the General Partner reasonably determines that such cooperation is necessary or desirable. Notwithstanding the foregoing, if a Limited Partner must make any such filings, applications or elections directly, the General Partner, at the request of such Limited Partner, shall (or shall cause the Partnership to) provide such information and take such other action as may reasonably be necessary to complete or make such filings, applications or elections. All costs and expenses incurred under this Section 4.7.2 shall be borne by (and specially allocated to the Capital Account(s) of) the relevant Limited Partner(s).

4.8 **Distributions.** The amount and timing of any distributions to the Partners (other than pursuant to withdrawals and except as provided in Sections 3.4, 3.5 and 6.2.2) will be in the General Partner's sole discretion, provided that such distributions shall be made to the Partners

in proportion to their respective Partnership Percentages. Prior to the Termination Date and subject to Sections 3.4 and 3.5, any proceeds of Investments received by the Partnership may be (i) retained and reinvested by the Partnership in additional Investments, subject to the Investment Guidelines, provided that proceeds from Investments that constitute Current Income shall not be retained and reinvested by the Partnership, or (ii) distributed to the Partners in proportion to their respective Partnership Percentages (subject to any Incentive Allocations). Subject to the immediately preceding sentence, Current Income received by the Partnership shall be distributed to the Partners quarterly. Except as otherwise provided herein, if such proceeds are distributed to the Partners pursuant to clause (ii), the Invested Capital Portion of such distributions shall be added to such Partners' Unfunded Capital Commitment and will be subject to recall by the General Partner. All distributions shall be made in cash in U.S. dollars, unless the Limited Partner receiving such distribution requests or Consents to a distribution in kind. If Investments or other assets are distributed in kind, the General Partner shall use its best efforts to deliver to each Limited Partner such Limited Partner's pro rata share of the Partnership's assets, unless the Limited Partners direct otherwise.

The General Partner will utilize commercially reasonable efforts to provide at least five (5) Business Days' notice to Limited Partners prior to making any distribution to Limited Partners, which notice shall include the sources of such distribution and the anticipated amount to be distributed (including detailed figures showing the portion of such distribution attributable to return of capital, realized losses, partnership expenses, organizational expenses and profits).

4.9 **Interpretive Authority.** Notwithstanding, or in addition to, the adjustments to accounts contemplated in this Article 4, the General Partner is authorized to take whatever steps are necessary and appropriate to give full effect to the intentions expressed in this Article 4, including making allocations and adjustments to Capital Accounts, Partnership Percentages and other items and actions that differ from the specific provisions of Sections 4.2, 4.4, and 4.5.

4.10 **Determination of Net Asset Value.**

4.10.1 *Net Asset Value.* The Administrator will determine the Partnership's Net Asset Value as of the beginning and the end of each Fiscal Period. As of any measurement time, the Partnership's Net Asset Value will be the aggregate Value of the Partnership's assets, determined in accordance with Section 4.12, less the amount of the Partnership's liabilities, determined by the Administrator in accordance with GAAP.

4.10.2 *Certain Intangible Assets.* In determining Net Asset Value, no value will be placed on the Partnership's office records, files, statistical data, goodwill or name, or on any similar intangible assets not normally reflected in the Partnership's accounting records.

4.11 **Reserves.** The General Partner may create such reserves as it determines are appropriate in accordance with GAAP for estimated expenses, liabilities or contingencies and, to the extent it does not specifically charge and allocate those reserves pursuant to Section 4.3.2, will accrue and charge those reserves against Net Asset Value. With respect to any voluntary withdrawal made by a Limited Partner pursuant to Section 5.4, the reserves charged pursuant to Section 5.6.4 shall not exceed ten percent of the amount withdrawn by such Limited Partner;



*provided* that such amount shall be paid to such Limited Partner upon the earlier of (a) 30 days after completion of the annual audit with respect to the year in which such withdrawal was made if the audit does not result in the use of the reserves, and (b) the General Partner's determination that such reserves are no longer needed.

#### 4.12 **Valuation of Assets.**

4.12.1 *Valuation Policies.* The General Partner will in good faith assign a Value to each of the Partnership's Investments and other assets as of the beginning and the end of each Fiscal Period, in accordance with the Valuation Policies set forth in Schedule B attached hereto. Within 10 Business Days, the General Partner shall provide such assigned Values, and any additional information regarding the Partnership's Investments and their assigned Values as reasonably requested by any Limited Partner or the Administrator, to the Administrator for a separate review and, if requested, to the Limited Partners. Upon the request of the Administrator or any Limited Partner, the General Partner shall also meet with the Administrator and/or the Limited Partners to discuss any Values assigned by the General Partner to the Partnership's Investments. If, after its review, the Administrator assigns a Value to any Investment that differs from the Value assigned to such Investment by the General Partner, the Administrator's assigned Value shall be binding on all of the Partners and the Partnership.

4.12.2 *Administration Arrangement.* The Partnership and the Administrator have entered into an agreement (the "**Administration Arrangement**"), pursuant to which the Partnership has engaged the Administrator to provide fund administration and valuation services relating to the Partnership, in the form reviewed and approved by the Limited Partners. Any amendments thereto or replacements thereof shall be reasonably acceptable and satisfactory to the Limited Partners. Pursuant to the Administration Agreement, the Administrator shall provide monthly transparency reports which shall consist of monthly breakdowns of the independent values the Administrator assigns to each of the Partnership's Investments and other assets.

### ARTICLE 5 ADMISSIONS; WITHDRAWALS

5.1 **Withdrawal of Initial Limited Partner.** The Initial Limited Partner, in its capacity as such, shall not be required to contribute any capital to the Partnership. Immediately subsequent to the time of a KRS investor's admission to the Partnership, the Initial Limited Partner shall be deemed to have withdrawn from the Partnership as a limited partner without any further action on the part of the Initial Limited Partner or the Partnership, and, upon such resignation and withdrawal, shall cease to have any interest, right, power or authority in or with respect to the Partnership as a partner, or be subject to any of the duties, responsibilities, liabilities or obligations of a partner.

5.2 **Admission of Limited Partners.** Each Limited Partner must, as a condition of its admission to the Partnership, execute and deliver whatever documents the General Partner may reasonably require evidencing the Limited Partner's satisfaction of the conditions to

admission in effect at the time and the Limited Partner's intent to adhere to and be bound by all of the terms and conditions of this Agreement. The General Partner shall cause the books and records of the Partnership to reflect the admission to the Partnership, as a Limited Partner, of each of the KRS investors. Without the Consent of KRS, the General Partner shall not admit any person to the Partnership as a Limited Partner other than KRS admitted on the date hereof.

5.3 **Admission of Additional General Partners.** The General Partner may not admit any additional General Partners or a successor General Partner without first obtaining the Consent of all of the Limited Partners.

5.4 **Voluntary Withdrawals.**

5.4.1 *Limited Partner Withdrawal.* Following the end of the Investment Period and upon giving Notice to the General Partner at least ten days prior to the effective date of such withdrawal (or such shorter time period as determined by the General Partner), a Limited Partner may withdraw all or any portion of its Capital Account in accordance with the limitations and procedures set forth in Section 5.5.1, unless the General Partner Consents to a deviation from one or more of those limitations or procedures.

5.4.2 *General Partner Withdrawal.* The General Partner may withdraw amounts from its Capital Account, in accordance with the limitations and procedures set forth in Section 5.5.1; *provided* that such withdrawals do not cause the General Partner's Partnership Percentage to fall below the Capital Commitment percentage set forth in Section 3.1.2; *provided, further*, that the General Partner may only withdraw amounts from its Capital Account to the extent of any increases in the General Partner's Capital Account attributable to Incentive Allocation(s).

5.5 **Mandatory General Partner Withdrawal.**

5.5.1 *General.* Following the end of the Investment Period, a Majority in Interest of the Limited Partners may cause the General Partner to withdraw from the Partnership upon Notice to the General Partner at least ten days prior to the effective date of such mandatory withdrawal, and may thereafter continue the business of the Partnership and appoint one or more additional General Partners. Notwithstanding the foregoing, the Limited Partners may require the General Partner to withdraw immediately upon Notice following a Cause Event or a Key Person Event. If the General Partner is required to withdraw pursuant to this Section 5.5, (a) the Partnership shall change the name of the Partnership to remove all references to the name "ArrowMark" promptly upon the withdrawal of the General Partner and (b) the Investment Management Agreement shall automatically terminate. Upon the withdrawal of the General Partner and the termination of the Investment Management Agreement pursuant to this Section 5.5, the General Partner shall cease to have any of the powers of a general partner under this Agreement and the Investment Manager shall cease to have the powers of an investment manager under this Agreement and the Investment Management Agreement; *provided*, however, that [REDACTED] of the Incentive Allocation shall remain payable to the General Partner except for a removal following a Cause Event or Key Person Event. The General Partner, if required to withdraw pursuant to this Section 5.5, may, notwithstanding the provisions of

Section 5.4.2, withdraw all amounts in its Capital Account upon the General Partner's withdrawal from the Partnership; *provided* that, solely with respect to a mandatory withdrawal following a Cause Event or a Key Person Event, the General Partner's Capital Account

*;* *provided, further*, that if such Cause Event occurs as a result of the failure by the General Partner to make a Capital Contribution required by Section 3.2, the General Partner's Capital Account shall be reduced prior to such withdrawal by the amount of the General Partner's then-outstanding Capital Contribution(s) and any damages resulting from the General Partner's failure to make such Capital Contribution(s). If the General Partner does not withdraw all amounts in its Capital Account pursuant to the preceding sentence and for purposes of the any future Incentive Allocation payable after removal, the General Partner's Interest shall be converted to that of a non-voting Limited Partner. Upon the admission to the Partnership of one or more additional General Partners, the General Partner shall (i) assist in the transition to the additional General Partner(s), (ii) deliver the books and records of the Partnership to such additional General Partner(s) as promptly as is reasonably practicable, and (iii) provide such reasonable additional assistance in respect of such investments as may be reasonably requested by the additional General Partner(s) during the 90-calendar-day period following the admission of such additional General Partner(s), it being understood that the General Partner shall have no obligation to disclose or provide any of the General Partner's proprietary confidential information or intellectual property.

5.5.2 *Mutual Funds Law Matters.* Unless the Partnership is registered as a mutual fund under the Mutual Funds Law (as amended) (the "**Mutual Funds Law**"), a majority of the investors (as defined in the Mutual Funds Law) shall be entitled to appoint and remove the General Partner by written notice to the Partnership to that effect notwithstanding, and without prejudice to, the other provisions of this Agreement providing for the appointment and removal of the General Partner.

## 5.6 **Conditions and Restrictions.**

5.6.1 *Effective Time.* The Effective Time of any withdrawal will be the effective date set forth in the Notice provided pursuant to Section 5.4 if proper Notice of the withdrawal was received or pursuant to Section 5.5. The General Partner may cause the Partnership to honor withdrawal requests on shorter notice than the period specified in Section 5.4.1, but the General Partner will not be obligated to do so.

5.6.2 *Time and Amount of Payment.* The General Partner will distribute proceeds of a Limited Partner withdrawal within thirty (30) days after the Effective Time for such withdrawal or as soon thereafter as the Partnership has funds available therefor. All expenses of a withdrawal of capital from the Partnership by a Limited Partner generally will be borne by the Partnership; *provided*, however, that any incremental legal or accounting expenses incurred by the Partnership as a result of withdrawals of capital of a Limited Partner may, in

the sole discretion of the General Partner, be charged to such Limited Partner through a reduction of the distributions to such withdrawing Limited Partner.

### 5.6.3 *Manner of Payment.*

(a) The Limited Partners acknowledge that the Investments will be illiquid and no secondary market in the Investments is intended to develop. Accordingly, the Partnership shall pay withdrawal proceeds in cash in U.S. dollars or, if a withdrawing Limited Partner requests or Consents, in kind. If Investments or other assets are distributed in kind, the General Partner shall use its best efforts to deliver to each withdrawing Limited Partner such Limited Partner's pro rata share of the Partnership's assets, unless the Limited Partners direct otherwise.

(b) With respect to any distribution in kind, the Partnership will provide with respect to each distribution of securities the following information (to the extent applicable): (i) the class and number of securities being distributed, (ii) the per share cost of such securities, (iii) the distribution value of such securities (as determined in accordance with the Agreement), (iv) notation as to whether such securities are restricted or freely tradable, (v) the name of the brokerage firm handling the distribution on behalf of the Partnership, (vi) the name and telephone number of a contact person at such firm, and (vii) a brief explanation for such distribution (e.g., return of cost, gain/loss, dividend/interest income, etc.).

5.6.4 *Reserves.* The foregoing amounts will be net of any reserves charged against the withdrawing Partner's withdrawal proceeds (as opposed, for example, to being charged against the Partnership's Net Asset Value) pursuant to Section 4.11, and the Partnership will pay to the withdrawing Partner any amount by which the General Partner determines to reduce any such reserves as soon as practicable after the General Partner determines to effect that reduction, subject to Section 4.11.

5.6.5 *Capital Commitment Reduction.* If specified in the Limited Partner's Notice of withdrawal, withdrawals made by a Limited Partner pursuant to Section 5.4.1 shall reduce the Capital Commitment of such Limited Partner by the Invested Capital Portion of such withdrawal, and thereby not increase the Unfunded Capital Commitment of such Limited Partner by the Invested Capital Portion of such withdrawal.

5.6.6 *Partner Status.* Once the Partnership has distributed all of a withdrawing Partner's withdrawal proceeds, any Partner as to whom a complete withdrawal is effected pursuant to any provision of this Article 5 will cease to be a Partner for any purpose.

5.6.7 *Costs.* Actual costs arising out of the liquidation or transfer of Partnership assets (other than cash) necessary to effect any withdrawal may be specially allocated to the withdrawing Partner in accordance with Section 4.3.1.

## ARTICLE 6 EXPENSES; REIMBURSEMENT; FEES

### 6.1 Expenses and Reimbursements .

6.1.1 The General Partner or the Investment Manager will provide the Partnership with facilities and employees necessary to conduct the Partnership's affairs (except as expressly otherwise provided in this Agreement). The Partnership will not have facilities or employees independent of those provided by the General Partner or the Investment Manager, and it will not reimburse the General Partner or the Investment Manager for providing facilities and/or for the salaries or other general overhead expenses of the General Partner or the Investment Manager. Except to the extent expressly otherwise provided in this Agreement, the General Partner and the Investment Manager will each pay all of its own operating and overhead costs and expenses, including facilities, supplies and administrative and clerical functions, without reimbursement from the Partnership. Notwithstanding anything to the contrary in this Agreement, the General Partner agrees that if any governmental authority's examination or investigation of, or civil or criminal action against, the Partnership, the General Partner or the Investment Manager, results in a settlement with, or verdict, judgment, sanction or order against, any of them which would otherwise constitute a Cause Event, then the Partnership shall not bear any costs or expenses thereof that exceed [REDACTED] in the aggregate, including, without limitation, any fines, penalties, disgorgement, restitution, judgments, settlement payments, or damages, and all defense costs such as legal expenses and costs of accountants and other professionals, unless such costs or expenses are Consented to by all of the Limited Partners.

6.1.2 The Partnership shall pay or reimburse the General Partner for all expenses (including, without limitation, printing, legal, filing and accounting fees and expenses) incurred in connection with the organization, funding and startup of the Partnership; provided that any such expenses in excess of [REDACTED] shall be borne solely by the General Partner. KRS shall be responsible for their own fees and expenses, including attorneys' fees, incurred in connection with the negotiation of this Agreement.

6.1.3 Except as provided in Sections 6.1.1, 6.1.2 and 6.1.4 the Partnership will pay and bear the following costs and expenses related to the operation of the Partnership and/or the administration of its affairs, either directly or through reimbursement to the General Partner or the Investment Manager, as applicable:

- (a) expenses of maintaining the operations of the Partnership and its Investments;
- (b) expenses associated with the acquisition, structuring, holding, monitoring, settlement and disposition of Investments (including, without limitation, brokerage, custody or hedging costs);
- (c) costs and liabilities arising under Article 8;
- (d) leverage costs and costs incurred with establishing and maintaining the leverage facility (including, without limitation, interest and fees on money borrowed by the Partnership or the Investment Manager or the General Partner on behalf of the Partnership; registration expenses; brokerage, finders', custodial and other fees; loan accounting and servicing fees and expenses; and cash management systems and service provider expenses);

- (e) the cost of the Administrator;
- (f) cost of insurance (including, without limitation, directors and officers and errors and omissions liability insurance) as stated under Section 7.9;
- (g) costs and expenses of Partnership reporting and Partnership governance activities (including obtaining Partner Consents);
- (h) subject to Section 6.1.1, amounts determined by the General Partner in good faith to be reasonable legal, accounting, auditing, travel (which shall not include any private or chartered airfare cost), litigation and permitted indemnification costs and expenses, judgments and settlements, consulting, finders', financing, credit agreement, sourcing, appraisal, filing, custodian, rating agency, valuation and related fees and expenses (including, without limitation, expenses associated with the distribution of the Partnership's financial statements or any other reporting to the Limited Partners);
- (i) amounts determined by the General Partner in good faith to be reasonable costs, expenses, liabilities and obligations incurred by the Partnership, the General Partner or any of its Affiliates relating to investment and disposition opportunities for the Partnership not consummated (including, without limitation, legal, accounting, auditing, insurance, travel (which shall not include any private or chartered airfare cost), consulting, finders', financing, appraisal, filing, printing, real estate title and related fees and expenses);
- (j) all out of pocket fees and expenses incurred by the Partnership, the General Partner or any of its Affiliates in connection with any conference or meeting of the Limited Partners;
- (k) subject to Section 6.1.1, any fees and other governmental charges levied against the Partnership (except to the extent that the Partnership is reimbursed therefor by the Partner on whose behalf the Partnership is being obligated to pay such fee);
- (l) any costs and expenses that are classified as extraordinary expenses under GAAP; and
- (m) other reasonable Partnership costs and expenses directly related to the Partnership's management and operation and/or the purchase, sale or transmittal of Investments and other Partnership assets, as the General Partner reasonably determines.

6.1.4 *Expense Cap*. The annual operating expenses (exclusive of any extraordinary expenses) of the Partnership for any Fiscal Year shall not exceed the Annual Expense Cap. The "Annual Expense Cap" for any fiscal year shall equal [REDACTED]. Absent the consent of the Limited Partners, expenses in excess of the Annual Expense Cap shall be borne by the Investment Manager or the General Partner up to the extent of the Incentive Allocation for that Fiscal Year. The Annual Expense Cap shall generally apply with respect to any period during which the Net Asset Value of the Partnership [REDACTED]; provided, that if the Net Asset Value of the Partnership for a given fiscal year drops below [REDACTED] due to either (i) a

withdrawal of a Limited Partner's capital from the Partnership or (ii) a redemption of a Limited Partner's interest, the Annual Expense Cap shall no longer apply. For the avoidance of doubt, the Annual Expense Cap shall not apply to any amounts payable by the Partnership related to Section 7.9.2 of this Agreement.

6.2 **Other Fees.** Any amount of Other Fees received by the General Partner, the Investment Manager or any of their Affiliates in a calendar quarter with respect to the Partnership or the Partnership's Investments shall be paid to the Limited Partners in accordance with each Limited Partner's Partnership Percentage of the Other Fees; *provided* that the Limited Partners may elect to require the Partnership to retain such Limited Partner's share of Other Fees and treat such retention as an additional Capital Contribution by such Limited Partner pursuant to Section 3.2, with a corresponding increase in such Limited Partner's Capital Commitment.

6.3 **Placement Fees.** No Limited Partner shall be obligated directly or indirectly to pay or bear the expense of any placement fees. The Partnership shall not pay any placement fees with respect to any Limited Partner's investment in the Partnership.

## ARTICLE 7 RIGHTS AND OBLIGATIONS OF THE GENERAL PARTNER

7.1 **General Authority and Power.** Subject to Section 2.6 and the Investment Guidelines, and except as otherwise provided in this Agreement, the General Partner will have exclusive management and control of the business of the Partnership and will make all decisions affecting the Partnership and the Partnership's assets. In addition to the rights, powers and authority granted elsewhere in this Agreement and by law, the General Partner will have the right, power and authority to obligate and bind the Partnership and, on behalf of and in the name of the Partnership, to take any action of any kind and to do anything it deems necessary or appropriate in pursuit of the Partnership's purposes, subject to the provisions of this Agreement. Without limiting the generality of the foregoing, the General Partner is specifically authorized to cause the Partnership to:

7.1.1 source, identify and evaluate investment opportunities for the Partnership;

7.1.2 select and approve the investment of Partnership funds in accordance with the Investment Guidelines and Section 7.4;

7.1.3 purchase, hold, sell, lend, borrow or otherwise deal in Investments, and to exercise all rights, powers, privileges and other incidents of ownership with respect thereto, subject to the Investment Guidelines;

7.1.4 hold a portion of the Partnership's assets in cash, cash equivalents and other short term Securities in accordance with the Investment Guidelines and Section 7.4;

7.1.5 borrow funds and/or Investments on behalf of the Partnership and pledge and hypothecate assets of the Partnership to secure those borrowings, subject to the Investment Guidelines;

7.1.6 monitor and analyze the progress of all Partnership Investments on behalf of the Partnership;

7.1.7 open, maintain, conduct and close accounts with intermediaries for and counterparties to transactions in or involving Investments, and with banks, each as selected by the General Partner, and to draw checks or other orders for the payment of money by the Partnership;

7.1.8 purchase, from or through others, contracts of liability, casualty and other insurance that the General Partner deems advisable, appropriate or convenient for the protection of the Investments acquired by the Partnership or other assets or affairs of the Partnership or for any purpose convenient or beneficial to the Partnership, including policies of insurance insuring the General Partner and/or the Partnership against liabilities that may arise out of the General Partner's management of the Partnership;

7.1.9 make all tax elections required or permitted to be made by the Partnership, including elections under Section 754 of the Code;

7.1.10 file, conduct and defend legal proceedings of any form by or against the Partnership, and to compromise and settle any such proceedings, or any claims against any person, on whatever terms deemed appropriate by the General Partner;

7.1.11 waive or reduce, in whole or in part, any notice period, minimum amount requirement or other limitation or restriction imposed on Capital Contributions or withdrawals of capital by a Limited Partner; and/or waive, reduce, postpone, delay or otherwise vary any requirement imposed on a Limited Partner by this Agreement;

7.1.12 participate in or consult regarding the management of or transactions involving issuers of Investments, or designate agents to participate or consult regarding any of those matters;

7.1.13 engage in any kind of activity, and to perform and carry out contracts of any kind, necessary to, or in connection with, or incidental to the accomplishment of, the Partnership's purposes;

7.1.14 hire, monitor and remove consultants and attorneys as it may deem necessary or advisable, which consultants and attorneys shall be reasonably acceptable to KRS;

7.1.15 retain the Investment Manager as the investment manager of the Partnership pursuant to the Investment Management Agreement; and

7.1.16. take all action that may be necessary, advisable, convenient or incidental for the continuation of the Partnership's valid existence as an exempted limited partnership under the ELP Law and in each other jurisdiction in which such action is necessary to protect the limited liability of the Limited Partners or to enable the Partnership, consistent with such limited liability, to conduct the investment and other activities in which it is engaged.



Neither the General Partner nor the Investment Manager may further delegate any of its duties hereunder to any other Person without the prior written consent of KRS.

7.2 **Right of Others to Rely on Authority of General Partner.** The execution and delivery of any contract or instrument described in Section 7.1, or the taking of any action described in Section 7.1, by the General Partner will be sufficient to bind the Partnership, and will not require the Consent of any other Partner.

7.3 **Custody and Brokerage.**

7.3.1 Notwithstanding anything to the contrary in this Agreement, all of the Partnership's assets shall be held as follows: (i) the Bank Custodian shall hold fully paid long positions, including corporate securities and loans, sovereign bonds and loans, structured securities, equities, and whole loans; (ii) the Prime Broker Custodians shall hold all exchange-traded options, short equity positions, and any securities required to be held as collateral for margin or other loans used by the Partnership for the purchase of those securities; and (iii) derivative positions other than exchange-traded options are not required to be held by a custodian; *provided* that nothing in this Section 7.3.1 shall be deemed to override any restriction in the Investment Guidelines as to which assets, and in what amounts, the Partnership may purchase or hold.

7.3.2 Cash will generally be held by the Bank Custodian; however, cash or cash equivalents (e.g., U.S. Treasuries or agencies) may be held by the Prime Broker Custodians as reasonably needed: (i) for purposes of margin or collateral requirements; (ii) in connection with the purchase or sale of the Partnership's assets held by the Prime Broker Custodians; and (iii) in an aggregate amount not to exceed [REDACTED] for contingencies. The Limited Partners reserve the right to modify any of the above amounts and types of cash and cash equivalents at any time, upon 30 days' advance notice to the General Partner. On a daily basis, the General Partner shall transfer, to the Partnership's account at the Bank Custodian, all cash of the Partnership held at any Prime Broker Custodian that is in excess of the requirements set forth in clauses (i), (ii) and (iii) of this Section 7.3.2.

7.3.3 The Investment Manager shall select the brokers and/or dealers with which it shall execute portfolio transactions on behalf of the Partnership (the "**Brokers**"). The Investment Manager shall select and monitor Brokers in good faith and in accordance with the fiduciary duties set forth in Section 7.4. The Limited Partners may at any time or from time to time direct the Investment Manager or the General Partner to cease executing portfolio transactions on behalf of the Partnership with any Broker. The Investment Manager shall use its best efforts to obtain best execution at the most favorable prices reasonably obtainable at all times.

7.4 **Fiduciary Duty.** Notwithstanding anything to the contrary in this Agreement, the General Partner and the Investment Manager each acknowledges and agrees that it owes the Limited Partners those fiduciary duties that have been interpreted and found to apply by United States federal courts of competent jurisdiction to investment advisers under the U.S. Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), in the context of the provision of

investment advice to their clients (which fiduciary duties the General Partner and the Investment Manager each acknowledges and agrees include discharging each of its duties and exercising each of its powers under this Agreement and the Investment Management Agreement, as applicable, with the care, skill, prudence and diligence under the circumstances, then prevailing, that a prudent investment adviser acting in a like capacity and familiar with these matters would use in the conduct of a like enterprise with like aims, and include a duty (i) to act with utmost good faith and in the best interest of the Partnership in accordance with the Partnership Agreement and the Investment Management Agreement, (ii) of loyalty, which requires the General Partner and the Investment Manager to carry out its responsibilities with loyalty, honesty, good faith and fairness toward the Partnership and each of the Limited Partners, (iii) to provide full and fair disclosure of all material facts and (iv) to employ reasonable care to avoid misleading any of the Limited Partners); *provided* that, to the extent certain conflicts of interests have been mutually agreed to and identified in this Agreement (as set forth on Schedule C or Schedule D attached hereto) or are approved in accordance with the procedures described in Section 7.5 below, the fiduciary duties of the General Partner and the Investment Manager, as applicable, shall be deemed to have been discharged in connection therewith. In addition to and without limitation of any higher standard of care set forth in this Agreement or the Investment Management Agreement, the General Partner and the Investment Manager agree to act in good faith, in accordance with its fiduciary obligations, and in a fair, reasonable and equitable manner, in allocating fees, expenses and Incentive Allocations and for providing accurate statements regarding the same to the Limited Partners.

7.5 **Conflicts of Interest.** The General Partner agrees that it will not, and will not permit the Partnership to, engage in any conflict of interest transaction not identified, described and Consented to by all of the Limited Partners. In particular, the General Partner agrees that it will not, and will not permit the Partnership to, engage in any of the following types of transactions without the prior Consent of all of the Limited Partners: a principal transaction involving the sale or purchase of a security by or to the Partnership to or from such other Affiliate of the Investment Manager or General Partner. Only those conflicts of interests specifically identified and set forth in Schedule C and Schedule D attached hereto have been mutually agreed and Consented to by all of the Partners as of the date of this Agreement. Notwithstanding the foregoing, within thirty (30) days of the end of each calendar quarter, the Investment Manager will notify the Limited Partners of any cross trades involving the Partnership.

7.6 **Investment Opportunities.** The General Partner shall be subject to, and shall cause the Partnership to be subject to, the internal allocation policy applicable to the General Partner and its Affiliates. Such policy is set forth in Schedule D attached hereto. The General Partner will promptly (i) Notify the Limited Partners of any changes to such policy, and (ii) provide the Limited Partners with updated copies of such policy.

7.7 **Transactions with Affiliates.** Other than the Investment Manager pursuant to the Investment Management Agreement, the General Partner has not engaged any of its Affiliates or Affiliates of the Investment Manager as a service provider with respect to the Partnership except as disclosed to the Limited Partners and as set forth in Schedule C hereto. The General Partner

agrees that (a) the terms of any transactions with its Affiliates or Affiliates of the Investment Manager, including the determination of fees payable in connection therewith, are and will be at arm's-length, and (b) the prior approval by all of the Limited Partners is required for any transactions with an Affiliate of the General Partner or the Investment Manager and any changes to the terms of such transactions.

7.8 **Soft Dollars.** The Partnership may not utilize, and the General Partner may not utilize on behalf of the Partnership, "soft dollars" other than in compliance with Section 28(e) of the Exchange Act.

7.9 **Insurance.** The General Partner shall maintain such liability and other insurance as it determines is commercially reasonable to protect the Partnership and the Partners, taking into consideration the activities of the Partnership and its investments. The General Partner agrees to furnish satisfactory evidence of this insurance coverage to the Limited Partners upon request.

7.10 **Non-U.S. Investments.** In connection with any Investment organized in a jurisdiction other than the United States, or whose principal assets or operations are located outside of the United States, the General Partner shall use its reasonable best efforts to:


7.10.1 Provide the Limited Partners with written notice of the claim of any foreign, United States federal, state or local taxing authority that such withholding and payment is required by law, and to reasonably assist the Limited Partner at the Limited Partner's written request and expense to obtain any exemption, exclusion, credit and/or refund associated with any taxes imposed on amounts distributed or distributable to it to the extent that the Partnership is required to make such filing under applicable law in order for such exemption to be claimed and to the extent such filing does not cause undue cost or expense or otherwise adversely affect the Partnership or the General Partner;

7.10.2 Prior to making any non-U.S. equity Investment, the Limited Partners request that the Partnership use reasonable best efforts to obtain (a) the written advice of local tax counsel confirming that the Limited Partners will not be required to file a tax return and (b) legal counsel confirming the Limited Partners' limited liability.

**ARTICLE 8**  
**EXCULPATION, INDEMNIFICATION AND LIABILITY OF PARTNERS**

**8.1 Exculpation and Indemnification.**

8.1.1 *Exculpation.*



8.1.2 *Indemnification.*



8.2 **Limited Partner Limited Liability.** No Limited Partner will be liable for the debts, liabilities, contracts or other obligations of the Partnership, except as may be required by applicable law, including the ELP Law.

8.3 **No Participation in Management.** No Limited Partner may, in its capacity as a Limited Partner, take part in the management of the business of the Partnership or transact any business for the Partnership, nor will any Limited Partner have the power to sign for or to bind the Partnership in the capacity as a Limited Partner. All management responsibility and authority to act on behalf of the Partnership is vested in the General Partner as provided in Section 7.1. The rights of Limited Partners to consent to specified actions are limited to those set forth in this Agreement and as required by provisions of the ELP Law that may not be lawfully modified or nullified by agreement among the partners of a limited partnership formed under the ELP Law. The Limited Partners may, however, at the General Partner's request, consult with and advise the General Partner as to the business of the Partnership.

8.4 **Limitations on Limited Partner Rights.** No Limited Partner will have the right or power to: (a) bring an action for partition against the Partnership; (b) cause the termination and dissolution of the Partnership, except as set forth in this Agreement; or (c) demand or receive any specific property in return of that Partner's Capital Contributions. Except as expressly provided in this Agreement, no Limited Partner will have priority over any other Limited Partner either for the return of capital, for allocations of profit or loss (or any items thereof), or for distributions.

ARTICLE 9  
TRANSFERS OF PARTNERSHIP INTERESTS

9.1 **Restrictions.** Except as otherwise set forth in this Agreement, the Interest of a Limited Partner (or any portion thereof) may not be sold, assigned, exchanged, transferred or encumbered, whether voluntarily, by operation of law, at a judicial sale or otherwise, without first (i) obtaining the Consent of the General Partner, which shall not be unreasonably withheld (and shall not be withheld in connection with any proposed Transfer by a Limited Partner to any Affiliate thereof (including the other Limited Partners) or any successor governmental agency or entity or pursuant to state law), and (ii) to the extent required by the General Partner, providing the following: (a) a written acknowledgement, executed by the Transferee, that such Transferee will be bound by and subject to the terms and conditions of this Agreement; (b) all other documents or instruments that the General Partner may deem necessary or desirable in connection with the Transfer, including an opinion of counsel (including counsel to any of the KRS investors) satisfactory to the General Partner concerning securities, tax and/or regulatory matters; and (c) a transfer fee to the Partnership that is sufficient to cover all reasonable expenses connected with the Transfer, including legal fees. The General Partner agrees that the Limited Partners shall be deemed to be Affiliates of each other for purposes of this paragraph.

9.2 **Effect of Violation.** Any purported Transfer in violation of this Article 9 will be null and void and will not bind or be recognized by the Partnership.

9.3 **Admission of Substituted Limited Partners.** No Transferee of a Limited Partner's Interest will be admitted to the Partnership as a substitute Limited Partner without the Consent of the General Partner, which shall not be unreasonably withheld. Furthermore, no Transferee will be considered admitted as a substitute Limited Partner unless and until that assignee executes and delivers to the General Partner whatever number of counterpart signature pages to this Agreement as the General Partner may reasonably require, which the General Partner also will execute.

9.4 **Rights of Transferee.** Until and unless a Transferee of a Limited Partner's Interest is admitted to the Partnership as a substitute Limited Partner pursuant to Section 9.3, the rights of that Transferee will be limited to its share of all allocations of profit and loss (and any items thereof) and all distributions, if any.

9.5 **Effective Date of Transfer.** Any Transfer of a Limited Partner's Interest made in compliance with this Article 9 will be effective as of the close of business on the day on which all required documentation has been received and accepted by the General Partner; *provided, however,* that the General Partner may waive this provision with respect to any Transfer.

9.6 **Allocations between Transferor and Transferee.** In the case of any Transfer, the Transferee will succeed to the Capital Account of the Transferor. For purposes of allocating items pursuant to Article 4, profit and loss (and any items thereof) allocable in respect of that Interest will be prorated between the Transferor and the Transferee on the basis of the number of days in the Fiscal Period and Performance Period that each was the holder of that Interest without regard to the performance of the Partnership's assets during the periods before and after

the effective date of the Transfer, unless the Transferor and the Transferee agree to an allocation based on the performance of the Partnership's assets as of the effective date of the transfer (or any other method permissible under the Code) and agree to reimburse the Partnership for the cost of making and reporting any such allocation. Without limiting the foregoing, each Transferor agrees to pay all reasonable costs and expenses, including attorneys' fees and any incremental tax return preparation costs, incurred by the General Partner or the Partnership in connection with a Transfer, except to the extent the Transferee agrees, with the General Partner's consent, to bear such costs.

9.7 **Transfer of General Partner's Interest.** Without the Consent of all of the Limited Partners, the General Partner may not Transfer all or any part of its Interest as a General Partner or in this Agreement. The General Partner may not effect any transaction that constitutes an "assignment" of this Agreement in contravention of requirements under applicable law (such as the Adviser's Act, if applicable) requiring consents of advisory clients, unless and to the extent all consents required by those laws have been obtained, it being understood that, if those laws are interpreted to require that the Limited Partners Consent to a transaction that constitutes an "assignment" of an investment advisory agreement, the Consent of all of the Limited Partners will constitute the required consent.

9.8 **Restrictions on Transfers.** Notwithstanding anything to the contrary in this Agreement, no Transfer of an Interest (or beneficial interest therein), including derivatively, shall be allowed, and any such purported transfer shall be void ab initio, if (A) the transfer is being effected on or through (x) an "established securities market" within the meaning of Section 7704(b)(1) of the Code, including without limitation, an over-the-counter market or an interdealer quotation system that regularly disseminates firm buy or sell quotations or (y) a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704(b)(2) of the Code and any proposed, temporary or final Treasury Regulations thereunder; or (B) such transfer would cause the Partnership to have more than one hundred (100) partners within the meaning of Treasury Regulation Section 1.7704-1(h)(1).

## ARTICLE 10 BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS

10.1 **Books and Records.** Books and records of the Partnership will be maintained at the principal office of the Partnership or at whatever other office of the Partnership as may be designated by the General Partner within the United States, and will be available for examination, inspection and copying by any Partner or that Partner's duly authorized representatives at any reasonable time. For a period of six years following the termination of the Partnership or for such longer period as may be required by law, the Partnership shall maintain complete and accurate books and records of the Partnership. The General Partner shall require the Investment Manager and each of its other delegates and agents to maintain books and records in connection with its services with respect to the Partnership in accordance with this Section 10.1.

10.2 **Inspection of Records.** Each Limited Partner has the right, on reasonable request, to examine, inspect, copy and obtain from the General Partner for purposes reasonably

related to the Limited Partner's Interest as a Limited Partner the information set forth above in Section 10.1 as well as information regarding the status of the business and financial condition of the Partnership and whatever other information regarding the affairs of the Partnership as is just and reasonable. The General Partner may, however, keep confidential from any Limited Partner any information that the Partnership is required by law or agreement with a third party to keep confidential; *provided* that under no circumstances may the General Partner keep confidential or withhold from any Limited Partner any information required to be provided to the Limited Partners pursuant to Section 10.4. Each Limited Partner may also, at reasonable times, audit the General Partner's and the Investment Manager's services and the books and records of the Partnership.

10.3 **Transparency.** The Limited Partners shall have full transparency and tracking to all Partnership positions to the extent available to the General Partner internally.

10.4 **Reports.**

10.4.1 *Quarterly.* The General Partner shall provide, as soon as reasonably practicable after the close of each quarter but no later than 45 days after the end of each quarter, the following information to each Limited Partner and its custodian: (i) quarterly portfolio reviews and (ii) unaudited quarterly financial statements, including the Partnership's balance sheet and income statement and the Limited Partner's Capital Account statement, which will include the Limited Partner's Unfunded Capital Commitment, and a specific statement of any distributions made to each Partner that are subject to recall for reinvestment pursuant to Section 4.8 of this Agreement, as applicable.

10.4.2 *Annual.*

(a) The General Partner will provide, as soon as reasonably practicable after the close of each calendar year but no later than 90 days after the end of each fiscal year, an audited annual financial report to each Limited Partner and its custodian. The General Partner shall cause an audit of the annual financial statements of the Partnership to be made by the Auditor. Each audit shall be conducted in accordance with U.S. generally accepted auditing standards. The annual financial statement shall be accompanied by a report of the Auditor.

(b) In the annual reports delivered to KRS in accordance with Section 10.4.2(a), the General Partner hereby agrees to furnish KRS with the following information:

- (i) a balance sheet of the Partnership
- (ii) an income statement of the Partnership
- (iii) a statement of the Partnership's capital
- (iv) a description of the amount and use of all outstanding debt guarantees of the Partnership;



(v) a description of the amount of distributions representing Incentive Allocations made to the General Partner; and

(vi) the amount of any Other Fees

10.4.3 The Partnership will send to each Partner as soon as reasonably practicable but no later than 90 days after the end of each fiscal year, the information necessary for the Partner to complete that Partner's federal and state income tax or information returns ("**Tax Information**"). The General Partner may obtain extensions of the date on which the Partnership's income tax returns are due and will Notify Limited Partners of that extension as soon as practicable after determining that it is appropriate for the Partnership to obtain the extension. In that event, the Partnership will provide Tax Information a reasonable period before the expiration of the term of the extension.

10.4.4 The General Partner shall furnish KRS, to the extent reasonably available, with such additional information as KRS may reasonably request in writing from time to time upon reasonable written notice as is necessary to (i) comply with KRS' reporting requirements under all applicable laws, statutes, rules, regulations, ordinances and policies, (ii) complete KRS' tax or information returns, if applicable, and (iii) comply with any disclosure requirements of any governmental body, regulatory agency, official or authority having jurisdiction over KRS.

#### 10.5 **Annual Certifications.**

10.5.1 Within 30 days of the end of each calendar year, the General Partner shall provide each of the Limited Partners with a certificate stating that (i) the General Partner's representations and warranties set forth in Section 12.1 remain true and correct and (ii) it has complied with its obligations hereunder and the terms hereof.

10.5.2 Within 30 days of the end of each calendar year, the Investment Manager shall provide each of the Limited Partners with a certificate stating that (i) the Investment Manager's representations and warranties of the Investment Management Agreement remain true and correct and (ii) it has complied with its obligations under the Investment Management Agreement and the terms thereof.

10.5.3 The General Partner will use its reasonable best efforts to cause the Partnership's independent certified accountants (i) to certify in its annual audit that allocations and distributions to Limited Partners were made in accordance with the Agreement and (ii) in the event that, despite such reasonable best efforts, such independent certified accountants do not make such certification, to certify in its annual audit that allocations and distributions to the General Partner, on the one hand, and the Limited Partners, as a group, on the other hand, were made in accordance with the Agreement.

10.6 **Tax Returns and Elections.** The Partnership's tax or fiscal year will be the calendar year. The Partnership's accountants will be instructed to prepare and file all required income tax returns for the Partnership. The General Partner will make any tax election necessary for completion of the Partnership tax return. In the event of a distribution of property made in the manner provided in Section 734 of the Code, or in the event of a transfer of any Interest

permitted by this Agreement made in the manner provided in Section 743 of the Code, the General Partner, on behalf of the Partnership, may file an election under Section 754 of the Code in accordance with the procedures set forth in the applicable Regulations promulgated thereunder.

**10.7 Notices of Certain Matters.** The General Partner shall Notify each Limited Partner in writing as soon as reasonably practicable of (i) any claims for indemnification made against the Partnership pursuant to Article 8, (ii) the commencement of or settlement, verdict or judgment, or any final order with respect to any litigation or governmental proceeding against the General Partner, the Investment Manager or the Partnership, (iii) the occurrence of a Cause Event, (iv) the occurrence of a Key Person Event, (v) the withdrawal or removal of the General Partner referenced in Section 11.1.3 or an Event of Bankruptcy, (vi) material non-compliance with the Investment Guidelines, (vii) any breach by the General Partner, the Investment Manager, any Affiliate of the General Partner or the Investment Manager, or any of the individuals identified in the definition of Key Person Event of any obligation, duty, covenant, agreement or representation and warranty contained in this Agreement or the Investment Management Agreement; *provided that* the General Partner must Notify each Limited Partner of the occurrence of a Cause Event or a Key Person Event within ten Business Days of such occurrence, and (viii) the General Partner's failure to take any action that: (a) would remove the current Auditor, (b) would materially reduce the scope of functions to be performed by the Auditor, (c) would directly cause the Auditor's report to the audited annual financial statements provided by the General Partner to include any qualification due to scope limitations, lack of sufficient competent evidential matter, or a departure from GAAP.

**10.8 Tax Matters Partner.**

10.8.1 The General Partner will be the Tax Matters Partner for purposes of Sections 6221 et seq. of the Code, and will have all the authority granted by the Code to the Tax Matters Partner, including the authority, without the Consent of any other Partner, to do all of the following: (i) enter into a settlement agreement with the Internal Revenue Service that purports to bind the other Partners, (ii) file a petition as contemplated in Section 6226(a) or Section 6228 of the Code, (iii) intervene in any action as contemplated in Section 6226(b)(6) of the Code, (iv) file any request contemplated in Section 6227(b) of the Code, or (v) enter into an agreement extending the period of limitations as contemplated in Section 6229(b)(1)(B) of the Code.

10.8.2 The General Partner intends to make an election under Section 6226 of the Partnership Tax Audit Rules to the extent it is legally able to do so or, if such election cannot permissibly be made, to take all commercially reasonable actions as may be legally permissible so that, to the greatest extent possible, no Limited Partner shall bear liability for taxes, interest, and penalties imposed on the Partnership under Section 6225 of the Partnership Tax Audit Rules that such Limited Partner would not have been responsible for if the law in effect on December 31, 2017 continued to remain effective and Section 6225 were not effective. The General Partner shall provide the Limited Partners with prompt written Notice of any audit by a U.S. federal, state or local taxing authority and shall provide the Limited Partners with periodic updates regarding any such audit.

ARTICLE 11  
WINDING UP AND DISSOLUTION

11.1 **Events of Dissolution.** The Partnership will be wound up upon the earlier to occur of the following times or events:

11.1.1 The agreement of all of the Partners to wind up and subsequently dissolve the Partnership;

11.1.2 Following a Cause Event or a Key Person Event, upon the election of a Majority in Interest of the Limited Partners;

11.1.3 The withdrawal, removal (unless a replacement general partner is admitted to the Partnership in accordance with Section 2.8), bankruptcy or dissolution and commencement of winding up of the General Partner, or the assignment by the General Partner of its entire interest in the Partnership, or the occurrence of any other event that causes the General Partner to cease to be a general partner of the Partnership under the ELP Law, *unless* (i) at the time of the occurrence of such event there is at least one remaining general partner of the Partnership that is hereby authorized to and does (unanimously in the case of more than one general partner) elect to continue the investment or other activities of the Partnership without dissolution or (ii) within 90 days after the occurrence of such event a Majority in Interest agrees in writing or votes to continue the investment or other activities of the Partnership and to the appointment, effective as of the date of such event, if required, of one or more additional general partners of the Partnership;

11.1.4 An order or direction of a court of a competent jurisdiction in accordance with the ELP law; or

11.1.5 Any other event that applicable law specifies must operate as an event causing the dissolution of a limited partnership notwithstanding any provision to the contrary in the limited partnership's agreement of limited partnership.

11.2 **Winding Up.** Upon the commencement of the winding up of the Partnership, the General Partner, or, if the Partnership is wound up upon the election of the Limited Partners pursuant to Section 11.1.2, a liquidator appointed by such Limited Partners, will take full account of the Partnership's liabilities and assets and the Partnership's property will be liquidated as promptly as is consistent with obtaining the fair value thereof. The proceeds from the liquidation of the Partnership's property will be applied and distributed in the following order:

11.2.1 First, to the payment and discharge of all of the Partnership's debts and liabilities (other than those to the Partners), including the establishment of any necessary reserves;

11.2.2 Second, to the payment of any debts and liabilities to the Partners;

11.2.3 The balance, if any, to each Partner having a positive balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all

Fiscal Periods, including the Fiscal Period during which the dissolution occurs) in the proportion that the positive balance in those Partners' Capital Account bears to the sum of all Capital Accounts having positive balances. To the extent reasonable, each asset distributed in kind (to the extent such distribution in kind is permitted by this Agreement) will be distributed proportionately among the Partners.

11.3 **Timing of Liquidation Distributions.** Distributions in liquidation will be made by the end of the taxable fiscal year in which the liquidation occurs or, if later, within 90 days of the liquidating event and will otherwise comply with Section 1.704-1(b) of the regulations promulgated under Section 704 of the Code.

11.4 **Authority to Wind Up.** The General Partner may, from time to time, cause the Partnership to enter into (and modify and terminate) agreements with whatever person(s) or entity(ies) selected by unanimous Consent of the Partners, authorizing that person(s) or entity(ies) to wind up the Partnership's affairs in the event that the Partnership is subsequently dissolved. If no agreement has been entered into, or is in effect, as of the time of any dissolution or if the Partnership is dissolved by election of the Limited Partners pursuant to Section 11.1.2, then the person designated by court decree or by all of the Limited Partners will wind up the affairs of the Partnership and will be entitled to compensation as approved by the court or by all of the Limited Partners.

11.5 **Termination.** Following the winding up of the Partnership and the satisfaction of all debts, liabilities and obligations of the Partnership (whether by payment or reasonable provision for payment) and all of the remaining property and assets of the Partnership have been distributed, the General Partner (or other liquidator appointed by the Limited Partners in accordance with section 11.3 above) shall execute, acknowledge and cause to be filed such notice of dissolution as required by the ELP Law. Upon the filing of such notice of dissolution, the Partnership and this Agreement shall terminate and the existence of the Partnership shall cease.

## ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 **Representations and Warranties of the General Partner.** The General Partner represents and warrants to each Limited Partner that:

12.1.1 The General Partner is an exempted company duly organized, validly existing, and in good standing under the laws of the state of its organization, is qualified to do business in all jurisdictions in which it is required, and has full corporate power and authority to carry on its business as it has been and is conducted.

12.1.2 The General Partner has full power and authority to execute and deliver this Agreement and perform its obligations under this Agreement.

12.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement are within the power of the General Partner and have been duly authorized by all necessary corporate and other action. The General Partner

has duly authorized, executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding agreement and obligation of the General Partner, enforceable against the General Partner in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity.

12.1.4 The execution and delivery of this Agreement by the General Partner and the performance by the General Partner of its obligations hereunder do not violate, or constitute a breach of or default under, the constituent documents of the General Partner or any material agreement or instrument by which it is bound, and the General Partner has no knowledge that its performance of such obligations will violate, or constitute a breach of or default under, any order, rule, law or regulation applicable to the General Partner of any court, governmental body, administrative agency or self-regulatory authority having jurisdiction over the General Partner.

12.1.5 There is no legal action, suit, arbitration or other legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, state, local or foreign) pending or, to the best knowledge of the Partnership, the General Partner, the Investment Manager and their Affiliates, threatened against the Partnership, the General Partner, the Investment Manager, any of their Affiliates or any of their respective properties, assets or businesses. During the preceding five years, to the best knowledge of the Partnership, the General Partner, the Investment Manager and their Affiliates, none of the entities or the individuals referred to above has (1) been the subject of any actual action, suit, arbitration, legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, state, local or foreign) that claims or alleges fraud, misrepresentation, willful misconduct, breach of fiduciary duty or violation of any federal or state securities law, rule or regulation, or (2) settled any actual or threatened action, suit, arbitration, legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, state, local or foreign) of the type described in the immediately preceding clause (1).

12.1.6 As of the date hereof, to the best of its knowledge, none of the General Partner, the Investment Manager or any of their Affiliates is or has been the subject of, or a defendant in: (a) any enforcement action or prosecution (or settlement in lieu thereof) brought by any governmental authority relating to a violation of securities, tax, fiduciary or criminal laws or (b) a civil action (or settlement in lieu thereof) brought by investors in a common investment vehicle for violation of duties owed to the investors. The General Partner covenants that it will promptly Notify the Limited Partners in the event any such action or proceeding is initiated during the term of the Limited Partners' investment in the Partnership; *provided*, however, that the Limited Partners acknowledge that the General Partner may delay the notification until such time as it can notify the Investment Manager's other clients, as applicable, at the same time as the Limited Partners.

12.1.7 The General Partner, the Investment Manager and each of their principals, partners and employees have all material regulatory and exchange licenses and approvals required to conduct their business and perform their obligations hereunder.

12.1.8 The General Partner is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any agreement, that would be breached or violated by the General Partner's execution, delivery or performance of this Agreement.

12.1.9 The General Partner has completed, obtained, and performed all registrations, filings, approvals, licenses, authorizations, consents, or examinations required by any government or governmental authority for entry into this Agreement and performance of its acts contemplated by this Agreement, and the General Partner shall maintain such proper authorizations while this Agreement is in force.

12.1.10

(a) No fees, bonuses or other compensation, including placement fees or finder's fees, have been paid by or on behalf of the General Partner or its Affiliates to any placement agent, finder or other individual or entity in connection with KRS's investment, or which could be charged to KRS directly or indirectly.

(b) None of (i) the General Partner, (ii) any placement agent, solicitor, broker-dealer or other agent engaged by the General Partner or (iii) any Affiliate of the General Partner, has a commercial, investment, or business or other similar relationship with a Covered Person (as defined below), or has engaged in any financial or other transaction with a Covered Person. "Covered Person" means: (i) any Enumerated Person (as defined below), (ii) any immediate family member of an Enumerated Person (i.e., a spouse, parent, child or sibling), and (iii) any Affiliate of any of the foregoing. "Enumerated Person" means (i) any member of KRS' Board of Trustees and (ii) any person which is a trustee, staff member, or employee of the KRS.

(c) Neither the General Partner nor any Affiliate or agent of the General Partner, has offered, promised, or provided, directly or indirectly, anything of substantial economic value to any Covered Person in connection with KRS' investment. Items of substantial economic value include (by way of example, but not by way of limitation) any economic opportunity, future employment, gift, loan, gratuity, campaign contribution, finder's fee, placement fee, discount, trip, favor, or service.

(d) Neither the General Partner, nor any Affiliate of the General Partner, has been convicted of bribery or attempting to bribe an officer or employee of the Commonwealth of Kentucky, nor have any of them made an admission of guilt of such conduct.

(e) The General Partner and its Affiliates have not, and the General Partner covenants that they will not, accept anything of substantial economic value (as described in greater detail in clause (c)), from parties in which the Partnership makes investments (including from parties associated with sponsors of Partnership investments).

(f) The term "in connection with KRS' investment," as used in this Section, includes (i) obtaining an introduction to KRS or any of KRS' officers or employees, and (ii) obtaining a favorable recommendation with respect to KRS' investment. The term "agent,"

as used in this Section, includes anyone who is acting at the behest of any of the persons identified above.

(g) The General Partner agrees to provide KRS notice within five Business Days if it becomes aware that any of the provisions in this Section are not true and accurate, either on the date on which made or on any subsequent date.

12.1.11 The Investment Manager is registered under the Advisers Act and shall maintain its registration continuously during the term of this Agreement, and has delivered its Form ADV PART 2, including a written disclosure statement, to the Limited Partners prior to the execution of this Agreement by the Parties. The Investment Manager shall send the Limited Partners copies of any amendments to the Form ADV or other disclosure forms that the Investment Manager is required to file with the Securities and Exchange Commission in compliance with Rule 204-1(b) under the Advisers Act within five (5) Business Days of such filing.

12.1.12 The Investment Manager has adopted reasonable and customary written compliance policies and procedures in accordance with applicable law and regulation, including without limitation Rule 206(4)-7 under the Advisers Act (the “IA Policies and Procedures”), the IA Policies and Procedures comply with applicable law and regulation and, except to the extent previously disclosed in writing to the Limited Partner, the Investment Manager and its shareholders, members, partners, directors, managers, officers and employees have complied and shall comply with the IA Policies and Procedures; prior to the execution of this Agreement, the Investment Manager has provided the Limited Partner with copies of (i) the IA Policies and Procedures and (ii) its most recent written annual review of the IA Policies and Procedures; and during the term of this Agreement, it shall provide the Limited Partner with copies of (i) any amendment to the IA Policies and Procedures and (ii) on an annual basis, its written annual review of the IA Policies and Procedures.

12.1.13 The Investment Manager has adopted a written code of ethics in accordance with Rule 204 under the Advisers Act.

12.1.14 The General Partner agrees that it will use reasonable best efforts not to cause the Partnership to be in violation of (i) the prohibitions by the Office of Foreign Assets Control (“OFAC”) of the United States Department of the Treasury against engaging in transactions with individuals and entities identified on OFAC’s List of Specially Designated Nationals and Blocked Persons or (ii) the prohibitions imposed by Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act, or OFAC’s foreign assets control regulations and sanctions regulations, in each case as amended from time to time. The General Partner also agrees that neither it nor the Partnership will knowingly make any payment to any Person in violation of the U.S. Foreign Corrupt Practices Act (as amended from time to time). The General Partner represents that it has developed and implemented policies and procedures for the operation, administration and investment activities of the Partnership, including the securing of the services of any agent or administrator on behalf of the Partnership, designed to comply with applicable anti-money laundering laws, including but not limited to the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986 or the

United States International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, in each case as amended and any successor statute thereto and including all regulations promulgated thereunder (the “Anti-Money Laundering Laws”). The General Partner agrees to provide the Limited Partners with prompt written notice in the event that it learns of any material violation or breach of any Anti-Money Laundering Law applicable to the Partnership. The General Partner represents and warrants that, to the best of the General Partner’s knowledge, neither the General Partner nor the Partnership or any of the General Partner’s Affiliates, as of the date hereof, has violated or is in violation of any of the aforementioned laws or regulations in this paragraph

12.1.15 The General Partner shall use reasonable best efforts to cause the Partnership not to engage in any transaction that, as of the date the Partnership enters into a binding contract to engage in such transaction, would cause the Limited Partner (assuming that the Limited Partner were a “tax-exempt entity” (as defined in Section 4965(c) of the Code)) to become a party (within the meaning of Section 4965(a) of the Code) to a “listed transaction” or a “prohibited reportable transaction” (each, as defined in Section 4965(e) of the Code). If the General Partner reasonably determines that the Partnership has engaged directly in a transaction that is a listed transaction, a prohibited reportable transaction, or a “reportable transaction” as defined in Treasury Regulations Section 1.6011-4(b)(1), it shall notify the Limited Partner promptly of (but in no event later than five (5) days following) such determination and shall use its reasonable efforts to cooperate with the Limited Partners so as to ensure, to the extent practicable, that the Limited Partners that do not wish to become a party to a listed transaction or a prohibited reportable transaction do not become or continue as such a party.

12.1.16 The General Partner and the Investment Manager shall comply with Rule 206(4)-5 under the Advisers Act and the related record keeping requirements set forth in Advisers Act Rule 204-2. None of the General Partner, the Investment Manager, or any of their covered associates (i) has made or will make a contribution to an official of a government entity, as defined in subsections (f)(5) and (6) of Advisers Act Rule 206(4)-5, in a jurisdiction where any of them is providing, or seeking to provide, investment advisory services to a government entity, that exceeds the de minimis levels set forth in subsection (b)(1) of that Rule, or (ii) has engaged or will engage in any activity prohibited by the Advisers Act Rule 206(4)-5.

12.1.17 The General Partner confirms that the Partnership shall use its reasonable best efforts to comply with and to cause each non-U.S. entity in which the Partnership owns more than 50 percent of the interests (by vote or by value) to comply with the requirements of Sections 1471 or 1472 of the Code (“FATCA”) that are necessary to avoid the imposition of withholding taxes pursuant to FATCA (which, for the avoidance of doubt, may include compliance with an applicable intergovernmental agreement entered into between the U.S. and another jurisdiction regarding the implementation of FATCA). In the event any amounts are withheld from payments made to the Partnership or any such entity pursuant to FATCA, the General Partner confirms that such withheld taxes shall be allocated or apportioned to those Limited Partners whose failure to provide information or otherwise cooperate with the Partnership or such entity results in the imposition of such withheld taxes.



12.1.18 The interests in the Partnership to be acquired by KRS pursuant to the Agreement and KRS' Subscription Agreements represent duly and validly issued interests in the Partnership.

12.1.19 The General Partner agrees that KRS shall be permitted to rely on the opinion of counsel for the Partnership received by KRS in connection with KRS' subscription for an interest in the Partnership in determining to invest in the Partnership.

12.1.20 The Incentive Allocation charged to the Limited Partners is the incentive fee arrangement offered by the General Partner, the Investment Manager and their respective Affiliates to any of their clients for funds and managed accounts with a strategy substantially similar to the Partnership to which the General Partner and the Investment Manager provide services. For purposes of this paragraph, the term 'clients' means and includes managed account clients or fund investors (other than any member, director, officer or employee of the General Partner or the Investment Manager or their respective immediate family members (together, "Manager-Affiliated Persons")) and any retirement plan or account, trust or other entity formed for the benefit of any Manager-Affiliated Person). KRS and/or its representatives shall be permitted to disclose to other sovereign entities and pension plans the material terms of this Agreement, including, but not limited to, the Incentive Allocation paid pursuant to this Agreement in order to effectuate the provisions of this 12.1.20. In the event that the General Partner, the Investment Manager or their respective Affiliates provide services to another managed account client or fund investor (other than any Manager-Affiliated Person and any retirement plan or account, trust or other entity formed solely for the benefit of one or more Manager-Affiliated Persons) on more favorable fee terms than those set forth herein, the General Partner and Investment Manager agree to promptly disclose such terms to the Limited Partners in writing, and shall provide the Partnership with the benefit of such favorable term or terms, effective as of the date they become effective with respect to such other client or investor. This Agreement shall be deemed amended as of such date to reflect the implementation of such favorable fee term. The foregoing representation and warranty shall be deemed to be made on the date hereof and repeated every day in which this Agreement is in effect.

12.2 **Representations and Warranties of Limited Partners.** Each Limited Partner represents and warrants to the Partnership and the General Partner that:

12.2.1 Such Limited Partner has the requisite right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.

12.2.2 The execution and delivery of this Agreement by such Limited Partner and the performance by such Limited Partner of its obligations hereunder: (A) have been duly authorized by all necessary action on the part of such Limited Partner; (B) do not violate any statute, rule or regulation, or any order or ruling, of any court or other tribunal or of any U.S. (federal or state) or non-U.S. government (or any political subdivision, department, instrumentality, body or agency thereof), any securities or commodities exchange or any self-regulatory organization or association ("Official Entity"); (C) do not conflict with or result in any breach or violation of any material provision of any agreement, undertaking, instrument,

order or ruling by which such Limited Partner is bound or to which any material part of its assets is subject; and (D) do not require any authorization, consent, approval or order of, or registration or filing with, any court or other tribunal or any Official Entity that such Limited Partner has not heretofore received, obtained or made.

12.2.3 The person or persons executing and delivering this Agreement on behalf of such Limited Partner have the requisite right, power and authority, and have been duly authorized, to do so.

12.2.4 This Agreement constitutes a legal, valid and binding obligation of such Limited Partner, enforceable against it in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity.

12.2.5 To the extent such Limited Partner is a partnership, a limited liability company or other entity or arrangement treated as a partnership, a grantor trust or an "S" corporation, in each case for U.S. federal income tax purposes (each, a "**Flow-Through Entity**") (A) no Person owns, directly or indirectly through one or more Flow-Through Entities, an interest in such Limited Partner such that substantially all (within the meaning of Treasury Regulation Section 1.7704-1(h)(3)) of the value of such Person's interest in such Limited Partner is attributable to such Limited Partner's investment in the Partnership or (B) if such a Person does own such an interest, it is not a principal purpose of the use of a tiered arrangement among such Person, such Limited Partner, and the Partnership to permit the Partnership to satisfy the 100-partner limitation in Treasury Regulation Section 1.7704-1(h)(1)(ii). To the extent such Limited Partner is a disregarded entity or nominee for federal income tax purposes, the sole owner of such Limited Partner or the beneficial owner of such Limited Partner's Interest, as applicable, shall be deemed to be the "Limited Partner" for purposes of the foregoing representations.

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### 13.1 **Amendment.**

13.1.1 *Amendments; Notice of Amendments.* This Agreement may be amended only with the Consent of all of the Limited Partners and the General Partner. The General Partner will promptly furnish to each Limited Partner a copy of each amendment to this Agreement. Upon the effectiveness of any amendment to this Agreement, each Partner will be bound by the terms of the Agreement as so amended.

13.1.2 *Amendments to the Investment Guidelines.* Notwithstanding Section 13.1.1, the Investment Guidelines may be amended at any time and from time to time upon Notice to the General Partner by a Majority in Interest of the Limited Partners. As soon as reasonably practicable, but in no event later than 15 days after receipt of such Notice, the General Partner shall provide a recommendation to the Limited Partners for bringing the Investments into compliance with the amended Investment Guidelines. If the Partners do not reach agreement with respect to a recommendation, the General Partner shall use good faith

efforts to bring the Investments into compliance with the amended Investment Guidelines within ninety (90) days of receipt of such Notice.

## 13.2 **Confidentiality.**

### 13.2.1 *Public Records.*

(a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its interest in the Partnership or for purposes of filing such Limited Partner's tax returns) or disclose to any person, any confidential information or matter relating to the Partnership and its affairs and any confidential information or matter related to any investment of the Partnership, other than disclosure to such Limited Partner's directors, employees, agents, lawyers, auditors, administrators or other representatives or advisors for purposes reasonably related to such Partner's investment in the Partnership or to any other person approved in writing by the General Partner (each such person being hereinafter referred to as an "**Authorized Representative**").

(b) Notwithstanding Section 13.2.1(a), The Partnership hereby acknowledges that KRS is a public agency subject to (i) Kentucky's public records law (the "Open Records Act," Kentucky Revised Statutes sections 61.870 to 61.884), which provide generally that all records relating to a public agency's business are open to public inspection and copying unless exempted under the Open Records Act, (ii) Kentucky Revised Statutes section 61.645(19)(i) (the "Fee Disclosure Law"), and (iii) Kentucky Revised Statutes sections 61.645 (19)(l) and (20) (the "Document Disclosure Law"), which provide generally that all contracts or offering documents for services, goods, or property purchased or utilized by KRS shall be made available to the public unless exempted under the Document Disclosure Law. Notwithstanding any provision in the Partnership Agreement or the Subscription Agreement to the contrary, the Partnership hereby agrees that (x) KRS will generally treat all information received from the General Partner or the Partnership as open to public inspection under the Open Records Act, the Fee Disclosure Law or the Document Disclosure Law, unless such information falls within an exemption under the Open Records Act, the Fee Disclosure Law or the Document Disclosure Law, and (y) KRS will not be deemed to be in violation of any provision of the Partnership Agreement or the Subscription Agreement relating to confidentiality if KRS discloses or makes available to the public (e.g., via KRS' website) any information regarding the Partnership to the extent required pursuant to or under the Open Records Act, the Fee Disclosure Law or the Document Disclosure Law, including the Partnership-Level Information described in paragraph (c) below (even if a court or the Attorney General later determines that certain information disclosed by KRS falls within an exemption under the Open Records Act, the Fee Disclosure Law, or the Document Disclosure Law).

(c) The General Partner acknowledges that KRS considers certain Partnership level information public under the Open Records Act, the Fee Disclosure Law or the Document Disclosure Law and that KRS has concluded that it is obligated to disclose such information upon request (e.g., via KRS' website). Notwithstanding any provision in the Partnership Agreement or Subscription Agreement to the contrary, the General Partner agrees that KRS may disclose the following information without notice to the General Partner or the

Partnership: (i) the name of the Partnership, (ii) the vintage year of the Partnership and/or the date in which KRS' initial investment was made in the Partnership; (iii) the amount of the KRS' Capital Commitment and Unfunded Capital Commitment, (iv) aggregate funded contributions made by KRS and aggregate distributions received by KRS from the Partnership as of a specified date; (v) the estimated current value of KRS' investment in the Partnership as of any previous date, (vi) the net asset value of the Partnership as of a specified date, (vii) the estimated IRR of KRS' investment in the Partnership as of a specified date, which shall be clearly disclosed to have been calculated by KRS or its representatives and not to have been provided or approved by the General Partner or the Partnership, and (viii) the amount of fees and commissions (including, but not limited to, the Incentive Allocations) paid to the General Partner, Investment Manager and its Affiliates with respect to KRS' interests (the "Partnership-Level Information").

(d) The General Partner agrees that KRS may disclose redacted versions of this Agreement, KRS's side letters and KRS' Subscription Agreements (collectively, the "Partnership Documents"), in each case to the extent required by the Document Disclosure Law, once the offering period ends and the Final Closing occurs.

(e) Notwithstanding any provision in the Agreement or Subscription Agreement to the contrary, the General Partner shall provide KRS on at least a quarterly basis the information set forth in the Fee Disclosure Law, including but not limited to, (i) the dollar value of fees and commissions paid by KRS (including via Capital Contributions) to the Partnership (including any alternative investment vehicle), the General Partner, the Investment Manager or their respective Affiliates; (ii) the dollar value of KRS' pro rata share of any profit sharing, Incentive Allocations or any other incentive arrangements, partnership agreements, or any other partnership expenses paid to the Partnership, the General Partner, the Investment Manager or their respective Affiliates; and (iii) if applicable, the name and address of all individual underlying managers or partners in any fund of funds in which KRS' assets are invested.

(f) The General Partner agrees that KRS may disclose confidential information to any governmental body that has oversight over it and its statutory auditor, without notice to the General Partner or the Partnership; provided that such information retains the same confidential treatment with the recipient.

(g) The General Partner agrees to provide reporting to KRS in accordance with the Fee Template published by the Institutional Limited Partners Association (available at [ilpa.org](http://ilpa.org)).

(h) The General Partner and the Partnership acknowledge and agree that pursuant to the Open Records Act, the Fee Disclosure Law or the Document Disclosure Law, the Investor may publicly disclose the information set forth in this Section 13.2.1 without further notice to the General Partner.

**13.2.2 CFA Standards.** In connection with KRS' investment in the Partnership, the General Partner shall ensure compliance with Kentucky Revised Statutes Section 61.650(1)(d) to the extent applicable. For the avoidance of doubt, it is understood that certain of

the above-referenced obligations (including the reference to "the individual ... managing retirement system assets") apply to the General Partner and the Investment Manager and to the individuals employed by the General Partner and the Investment Manager.

13.2.3 Neither the General Partner nor the Partnership shall disclose any confidential information regarding any Limited Partner; provided that the General Partner or the Partnership may make such disclosure to the extent that (i) the information to be disclosed is publicly known at the time of proposed disclosure by the General Partner or the Partnership, (ii) the information otherwise is or becomes legally known to the General Partner or the Partnership other than through disclosure by a Limited Partner, or (iii) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities

### 13.3 **Appointment of the General Partner as Attorney-in-Fact.**

13.3.1 Each Limited Partner, including each substituted Limited Partner, by the execution of this Agreement, irrevocably constitutes and appoints the General Partner its true and lawful attorney-in-fact with full power and authority in its name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including:

(a) all certificates and other instruments, and any amendment thereof, that the General Partner deems appropriate in order to form, qualify or continue the Partnership as a limited partnership in the jurisdiction in which the Partnership may conduct business or in which the General Partner considers such formation, qualification or continuation to be necessary or appropriate to protect the limited liability of the Limited Partners;

(b) all amendments to this Agreement adopted in accordance with the terms hereof and all instruments which the General Partner deems appropriate to reflect a change or modification of the Partnership in accordance with the terms of this Agreement; and

(c) all conveyances and other instruments the General Partner deems appropriate to reflect the dissolution and termination of the Partnership.

13.3.2 The appointment by all Partners of the General Partner as attorney-in-fact is given to secure an interest in property and the obligations of each Limited Partner hereunder, in recognition of the fact that the Partners under this Agreement will be relying upon the power of the General Partner to act as contemplated by this Agreement in any filing and other action by the General Partner on behalf of the Partnership, is irrevocable and will survive any Event of Bankruptcy, death, adjudication of incompetence or dissolution of any person giving this power, and the Transfer of all or any part of the Interest of that person; *provided, however*, that in the event of a Transfer, the foregoing power of attorney will survive the Transfer only until such time as the Transferee will have been admitted to the Partnership as a substituted Partner and all required documents and instruments will have been duly executed, filed and recorded to effect the substitution. Further, the General Partner agrees that any power of attorney provisions in the Agreement, the Subscription Agreement or other document authorizing the General Partner to take actions in the name of KRS shall not apply to any action by the General Partner that is

illegal or otherwise a violation of the law, and such power of attorney shall be revocable by KRS in the event of (i) removal of the General Partner or (ii) a finding (other than a temporary, preliminary or similar injunction) by any court or governmental body of competent jurisdiction in a final and non-appealable judgment, verdict or order that the General Partner has committed embezzlement or fraud or acted in bad faith, in connection with the performance of their respective duties under the terms of the Agreement and the individuals who engaged in such conduct are not terminated from employment with the General Partner within thirty (30) days of such finding.

13.4 **Counterparts.** This Agreement may be executed in several counterparts, and as executed will constitute one agreement, binding on all of the parties hereto.

13.5 **Successors and Assigns.** Except as otherwise provided herein, the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the successors and assigns of the parties hereto.

13.6 **Notices.**

(a) All Notices required or permitted under this Agreement will be given to the Partner entitled thereto by personal service or by first-class registered or certified mail or overnight courier or electronic mail to the address or e-mail address maintained by the Partnership for that Partner. Any Notice sent by certified or registered mail to the address so maintained will be deemed received within three days after mailing.

(b) Notices to a Limited Partner shall be sent as follows:

For all legal notices:

Kentucky Retirement Systems & Kentucky Retirement Systems  
Insurance Trust Fund

Office of Legal Services  
Kentucky Retirement Systems  
1260 Louisville Road  
Frankfort, KY 40601

For all other notices:

Kentucky Retirement Systems & Kentucky Retirement Systems  
Insurance Trust Fund

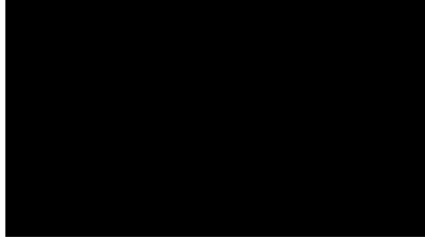
Kentucky Retirement Systems  
1260 Louisville Road  
Frankfort, KY 40601

with relevant contact names, telephone numbers and e-mail addresses as set forth in Schedule E attached hereto,

or to such other individual or address as a Limited Partner may designate by Notice as provided herein.

(c) Notices to the General Partner shall be sent to:

KRS-ArrowMark Fund I GP, Ltd.



With a copy to:

Chief Operating Officer  
ArrowMark Colorado Holdings, LLC



or to such other individual or address as the General Partner may designate by Notice as provided herein.

13.7 **Benefits.** Except as expressly provided herein, this Agreement is entered into for the sole and exclusive benefit of the parties hereto and will not be interpreted in any manner as to give rise to or create any rights or benefits of or for any person not a party hereto.

13.8 **Severability.** If any covenant, condition, term or provision of this Agreement is illegal or if the application thereof to any person is judicially determined to be invalid or unenforceable to any extent, then the remainder of this Agreement, or the application of that covenant, condition, term or provision to persons or in circumstances other than those held invalid or enforceable, will not be affected thereby, and each covenant, term, condition and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

13.9 **Complete Agreement.** This Agreement constitutes the complete agreement among the parties concerning the subject matter hereof.

13.10 **Governing Law; Jurisdiction.** Except to the extent the terms hereof require interpretation or enforcement of a law, regulation or public policy of the Commonwealth of Kentucky, in which case the laws of the Commonwealth of Kentucky shall govern, this Agreement shall be governed by the laws of the State of Delaware without regard to principles of conflicts of law. Notwithstanding anything to the contrary in the Agreement or the Subscription Agreement, the General Partner agrees with KRS that any legal proceeding involving any claim asserted by or against KRS arising out of the Agreement or the Subscription Agreement may be brought only in and subject to the exclusive jurisdiction of the Franklin County Circuit Court in the Commonwealth of Kentucky.

13.11 **Gender and Certain Other References.** In this Agreement: the neuter gender includes the feminine and masculine, and vice versa, as the context so requires; the singular number includes the plural, and vice versa, as the context so requires; Article and Section headings are for convenience of reference only and will not be used to modify, interpret, limit, expand or construe the terms of this Agreement; the term “person” includes not only individuals, but also entities such as corporations, partnerships, limited liability companies, associations, joint-stock companies, trusts, unincorporated organizations and governments or political subdivisions of governments; and the words “include,” “includes” and “including” will be deemed to be exemplary and not exclusive, whether or not followed by the phrase “without limitation” or similar phrase. Except as otherwise provided, the terms “herein,” “hereof,” “hereto” and similar terms refer to this Agreement as a whole and not to the specific section, subsection, paragraph or other subdivision of this Agreement in which those terms appear.

13.12 **No Waiver.** The General Partner confirms that, in the absence of a separate express prior written consent, amendment or waiver executed by KRS, the making of any Capital Contribution by KRS shall not act as a consent, waiver or amendment of any breach by the General Partner of any of the terms, conditions or disclosures of the Agreement, the Investment Management Agreement, the Subscription Agreement, or the side letter irrespective of whether or not KRS has knowledge of such breach. For the avoidance of doubt, in no way does the foregoing limit any rights or remedies available to the General Partner under equitable principles.

13.13 **Limitation on the Provision of Information and Identification.** In no event shall any Limited Partner be required to provide to the General Partner, the Partnership, the Investment Manager or any agent or representative of any of them, any information relating to, or identification documents of, (i) any trustees, officers or employees of such Limited Partner, or (ii) any of such Limited Partner’s underlying plan participants or plan beneficiaries.

13.14 **Sovereign Immunity .** KRS hereby reserves all immunities, defenses, rights or actions arising out of its sovereign status or under the Eleventh Amendment to the United States Constitution, and no waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by its entry into the Agreement, the Subscription Agreements or the side letter (the “Investment Agreements”), by any express or implied provision thereof or by any actions or omissions to act on behalf of KRS or any representative or agent of KRS, whether taken pursuant to the Agreement or the Subscription Agreements or prior to the entry by KRS into the Agreement or the Subscription Agreements. Notwithstanding the foregoing sentence, KRS hereby acknowledges that the foregoing sentence in no way compromises or otherwise limits the obligations (including the contractual liability) of KRS under the Investment Agreements nor shall it reduce or modify the rights of the General Partner and the Partnership to enforce such obligations at law or in equity, in each case including but not limited to (i) KRS’ obligations to make contributions and (ii) any obligation to reimburse or otherwise pay the Partnership or any other Partner for any loss, damage or liability arising from a breach of any representation, warranty or agreement of the Investor contained in the Partnership Agreement or KRS’ Subscription Agreements.

13.15 **Website .** If the General Partner or the Investment Manager designates a website to disseminate information about the Partnership, the General Partner and the Investment



Manager agree that if the terms of use or other confidentiality, end-user or license agreements of such website are inconsistent with or contrary to the terms of this Agreement or the Subscription Agreement or KRS's side letter, the terms of this Agreement or the Subscription Agreement or KRS's side letter, as applicable, shall control.

13.16 **Opinion of Counsel** . The General Partner hereby agrees that in connection with any opinion of counsel to be rendered on behalf of KRS, the opinion of the general counsel of KRS, as well as other outside legal counsel, shall be deemed to be acceptable to the General Partner for all purposes of the Agreement. In connection therewith, the General Partner shall provide to KRS all information that is reasonably requested in order to enable KRS' counsel to render any such opinion (so long as providing such information does not cause the General Partner any undue burden).

13.17 **Third Party Rights**. Except with respect to Indemnitees, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Law (as amended) to enforce any term of this Agreement. Notwithstanding any term of this Agreement, the consent of or notice to any person who is not a party to this Agreement shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under this Agreement at any time.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, this Agreement is executed and delivered as a deed on the date first written above.

**GENERAL PARTNER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witnessed By: \_\_\_\_\_

Name: \_\_\_\_\_

**INVESTMENT MANAGER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witnessed By: \_\_\_\_\_

Name: \_\_\_\_\_

**LIMITED PARTNERS:**

KENTUCKY RETIREMENT SYSTEMS

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witnessed By: \_\_\_\_\_

Name: \_\_\_\_\_

KENTUCKY RETIREMENT SYSTEMS INSURANCE TRUST FUND

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witnessed By: \_\_\_\_\_

Name: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement is executed and delivered as a deed on the date first written above.

**GENERAL PARTNER:**

By: \_\_\_\_\_  
Name:  
Title:

Witnessed By: \_\_\_\_\_  
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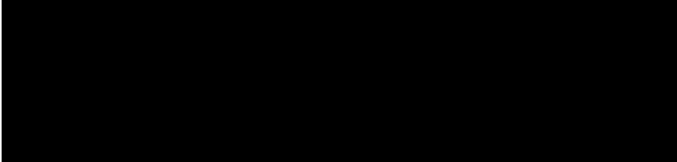
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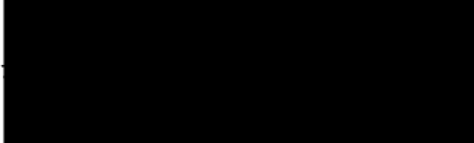
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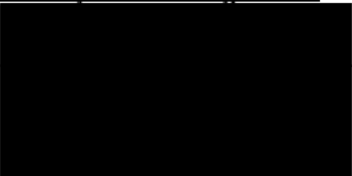
KENTUCKY RETIREMENT SYSTEMS

By: \_\_\_\_\_  


Witnessed By: \_\_\_\_\_  
Name: \_\_\_\_\_  


KENTUCKY RETIREMENT SYSTEMS INSURANCE TRUST FUND

By: \_\_\_\_\_  


Witnessed By: \_\_\_\_\_  
Name: \_\_\_\_\_  


**Schedule A**  
**Investment Guidelines**

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**Schedule B**  
**Valuation Policies**

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**Schedule C**  
**Conflicts of Interest**



**Schedule D**  
**Allocation Policy**

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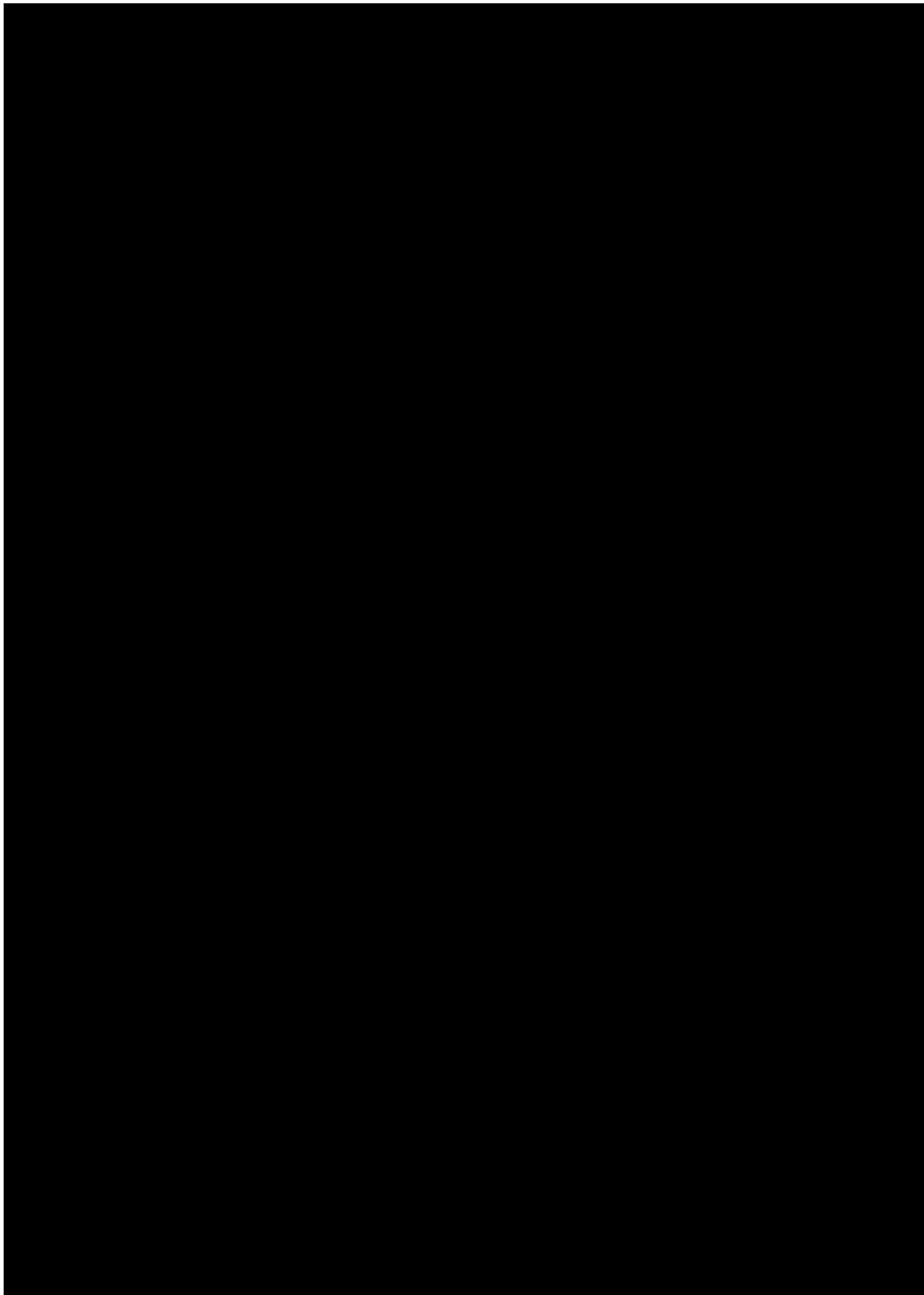
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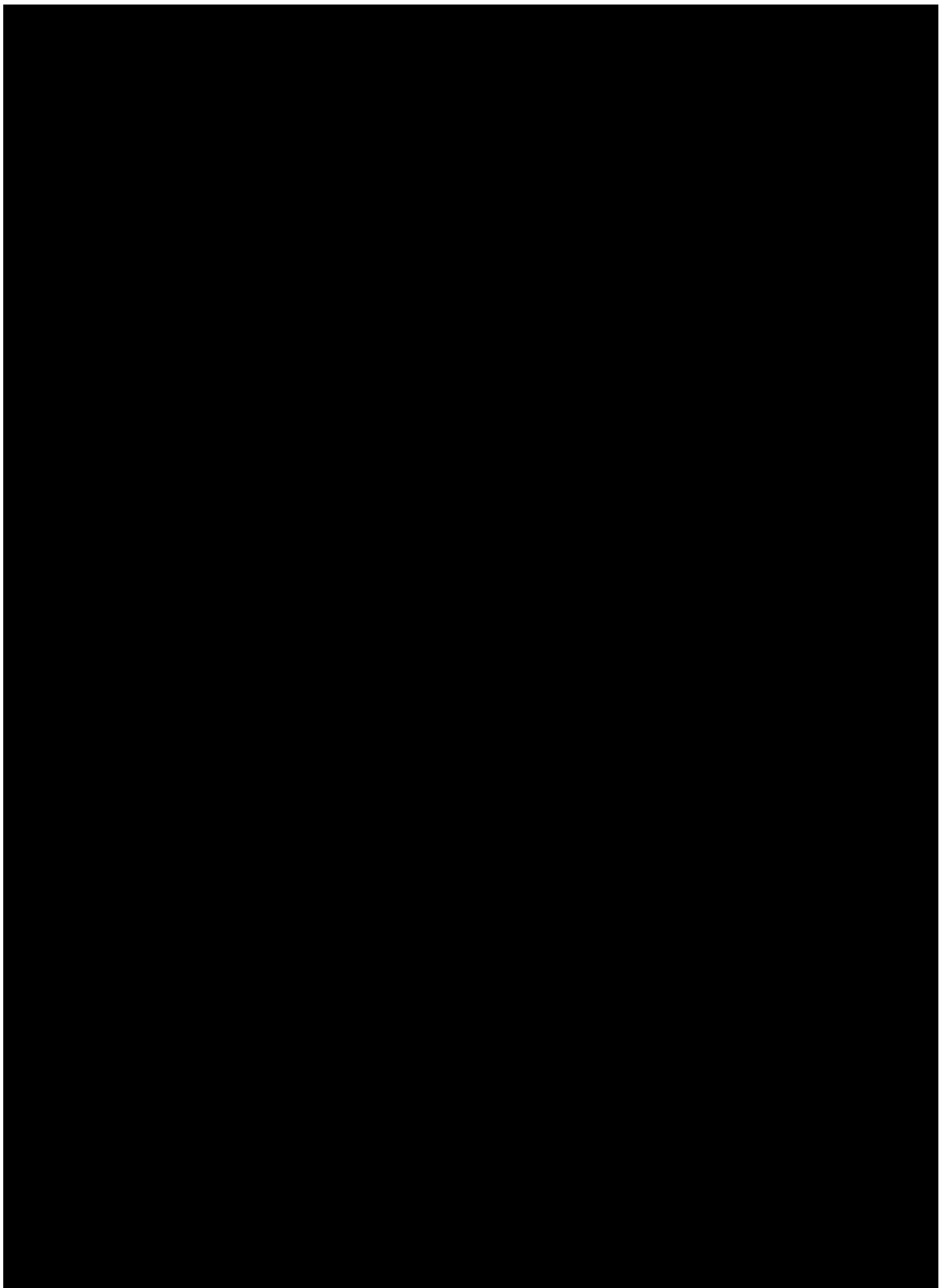
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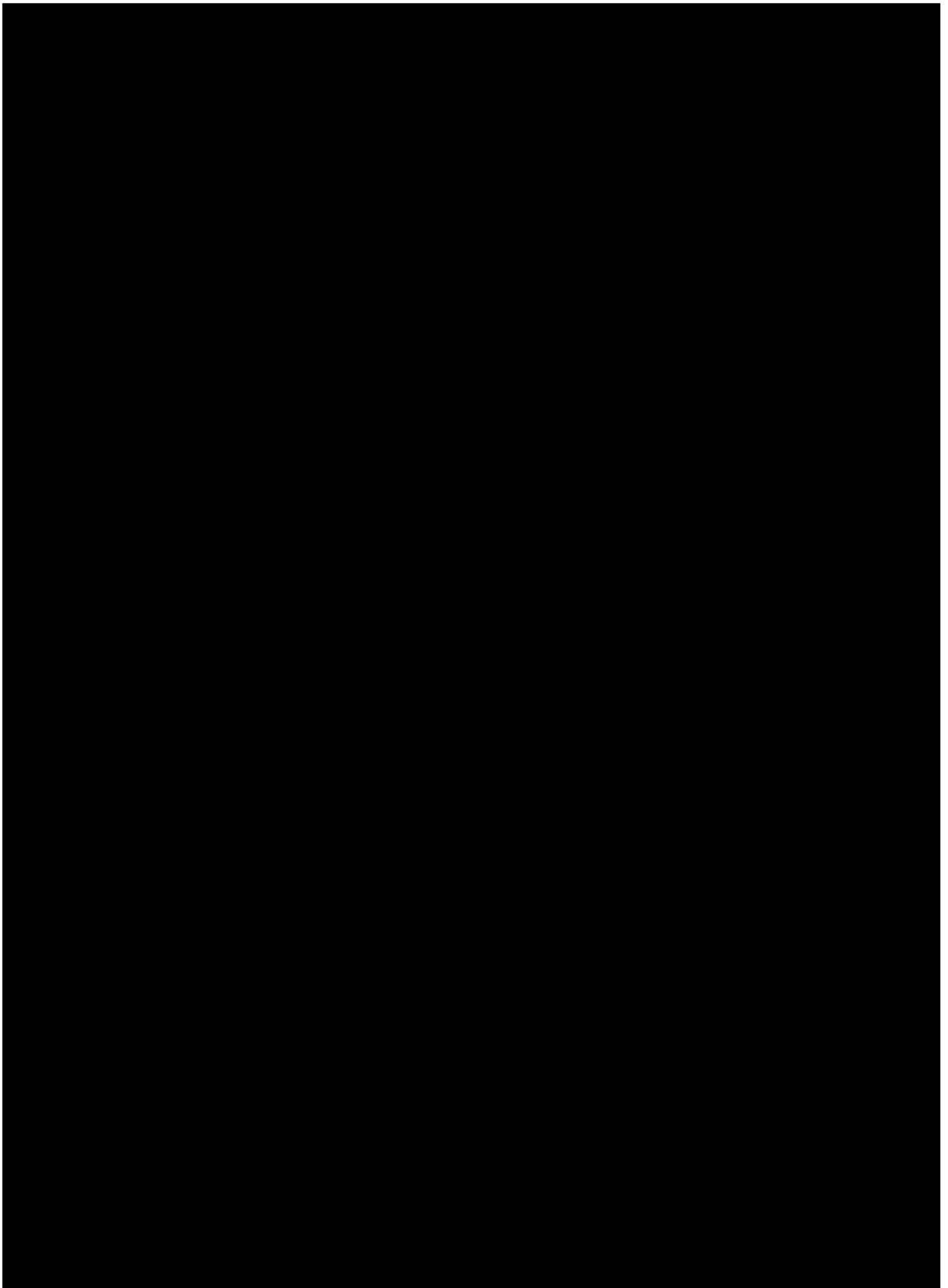
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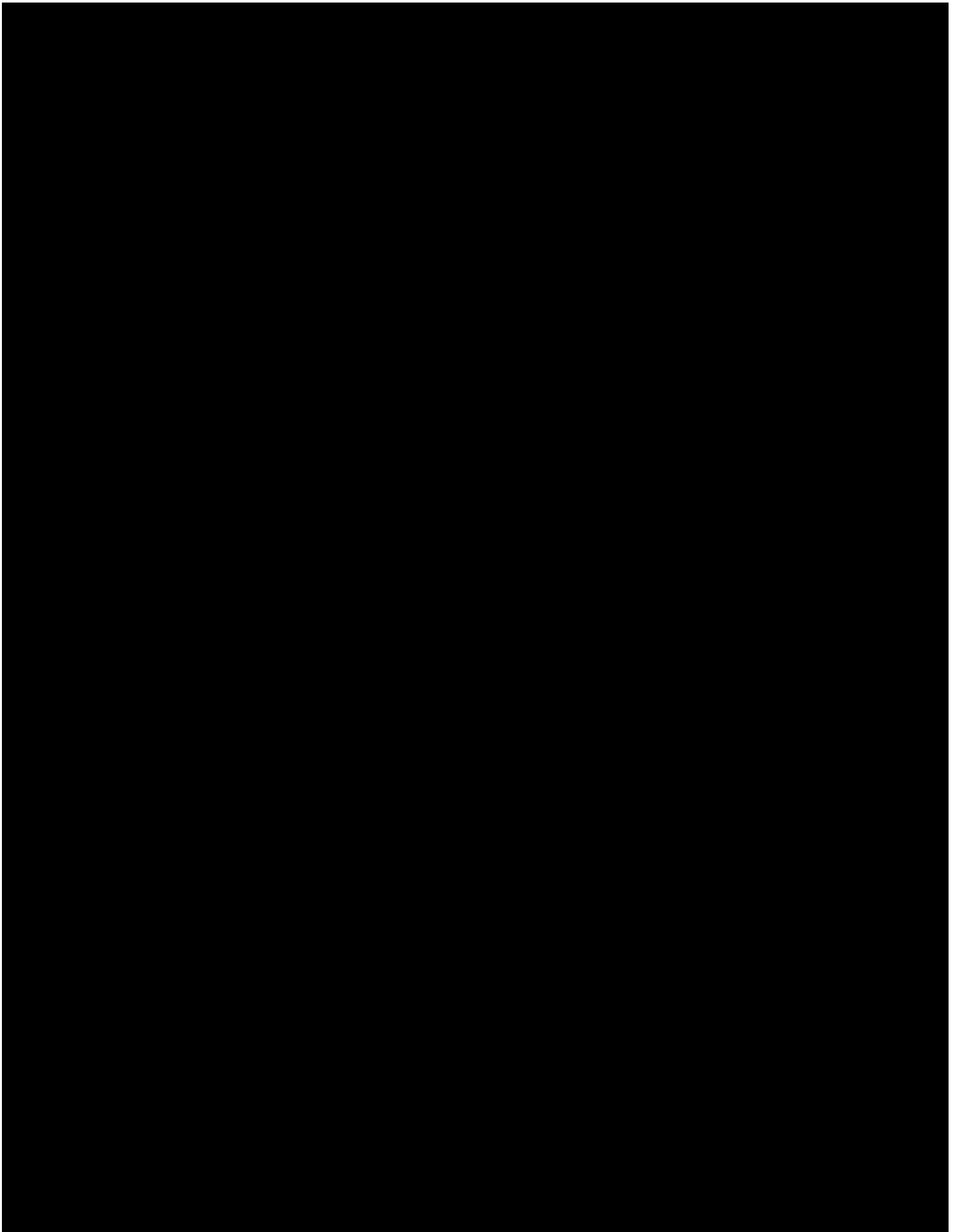
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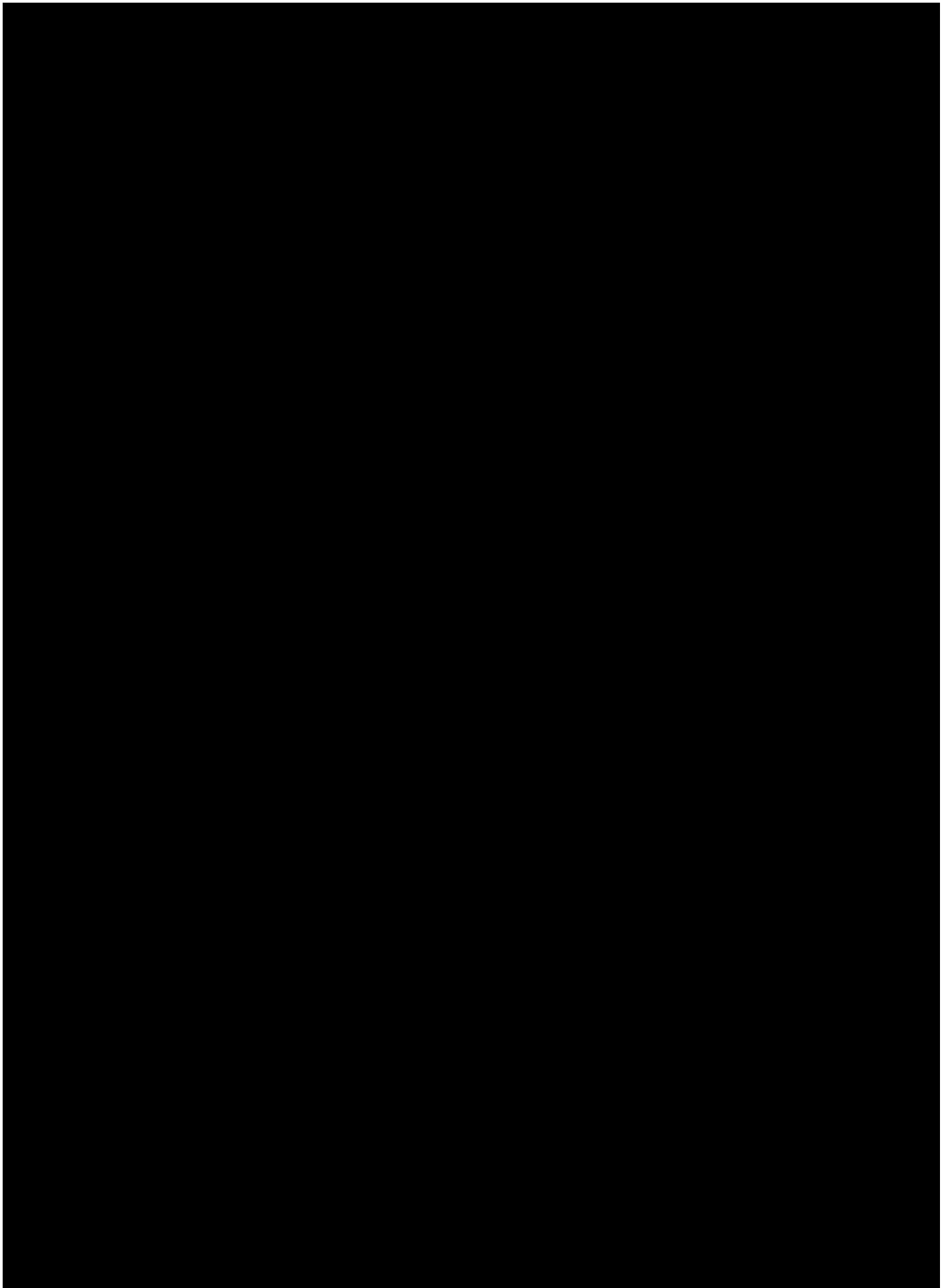
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**Schedule E**  
**KRS Contact List**

**Kentucky Retirement Systems  
Contact List**



**Schedule F**

**Investment Management Agreement**

## INVESTMENT MANAGEMENT AGREEMENT

**THIS INVESTMENT MANAGEMENT AGREEMENT** (this “**Agreement**”) is made this 1st day of May, 2018 by and among **KRS-ArrowMark I, LP**, a Cayman Islands exempted limited partnership (the “**Partnership**”), **KRS-ArrowMark Fund I GP, Ltd.**, a Cayman Islands exempted company (the “**General Partner**”), and **ArrowMark Colorado Holdings, LLC**, a Delaware, U.S.A. limited liability company (the “**Investment Manager**”). All capitalized terms not defined herein are defined in the Partnership’s Amended and Restated Exempted Limited Partnership Agreement, dated May 1, 2018, as may be amended and restated from time to time (the “**Partnership Agreement**”).

**WHEREAS**, the Partnership has been organized for the purposes of (in each case subject to and in accordance with the Investment Guidelines): (i) making, acquiring, owning and disposing of Investments (as defined below); (ii) sharing the profits and losses therefrom and engaging in activities incidental or ancillary thereto; and (iii) engaging in any other lawful acts or activities consistent with the foregoing for which limited partnerships may be organized under the ELP Law (collectively, the “**Purpose**”);

**WHEREAS**, the Partnership desires to engage the Investment Manager to provide the Partnership with certain advisory and management services to carry out the Purpose, and the Investment Manager desires to render such services to the Partnership pursuant to the terms hereof; and

**WHEREAS**, the engagement of the Investment Manager is authorized by the Partnership Agreement, and the Investment Manager agrees to act in a manner consistent with the Partnership Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

Section 1      Retention of the Investment Manager.

(a) The Partnership hereby retains the Investment Manager and the Investment Manager hereby agrees to act as investment manager of the Partnership to invest and reinvest all of the capital of the Partnership. All investment decisions for the Partnership are to be made by the Investment Manager. The Partnership has furnished to the Investment Manager a copy of the Partnership Agreement, including each schedule thereto, and will from time to time furnish the Investment Manager with copies of any amendments thereto. Until such amendments are delivered to the Investment Manager, matters therein stated shall not be binding on the Investment Manager. All investments of the Partnership shall at all times conform to and be in accordance with the requirements imposed by the Partnership Agreement. As the investment manager for the Partnership, the Investment Manager shall furnish continuous investment management to the Partnership. The Investment Manager shall not be an employee of the Partnership, and the Investment Manager shall have no authority to act for, represent, bind or obligate the Partnership except as provided for herein.

(b) The authority of the Investment Manager with respect to the Partnership includes, without limitation, the authority to (i) purchase, hold, sell, sell short, cover and otherwise deal in credit-linked notes, swaps, securities and other similar investments of any sort and rights therein, on margin or otherwise; (ii) write, purchase, hold, sell and otherwise deal in put and call options of any sort and any combination thereof; (iii) invest all or a portion of the Partnership's assets through a "master fund" or similar investment vehicle; (vi) conduct margin accounts with brokers; open, maintain and close bank accounts and draw checks or other orders for the payment of moneys; pledge securities for loans, and effect borrowings from brokers, banks and other financial institutions; (vii) enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in connection with providing investment management services to the Partnership, including but not limited to contracts, agreements or other undertakings with persons, firms or corporations with which the Investment Manager or any principal of the Investment Manager is affiliated; and (viii) act for the Partnership in any other investment management-related matters (collectively, "**Investments**").

(c) The Investment Manager shall endeavor to keep the capital of the Partnership invested to such extent as it deems advisable from time to time, but it may, if it deems advisable, maintain any portion of the assets of the Partnership in cash, cash-equivalents and short-term obligations. The Investments and re-Investments made by the Investment Manager shall be based on such research and inquiries as the Investment Manager shall deem advisable. The investment and reinvestment of the capital of the Partnership, including the purchase or sale of any Investments or the borrowing of any funds on behalf of the Partnership, either on a secured or unsecured basis, shall be exclusively within the control and discretion of the Investment Manager.

Section 2     Compensation of the Investment Manager. The Investment Manager shall not be entitled to any compensation pursuant to the terms of this Agreement.

Section 3     Expenses. The Investment Manager shall render its services to the Partnership at its own expense and shall be responsible for its own overhead expenses, including: office; rent; regulatory compliance expenses; furniture and fixtures; stationery; secretarial/internal administrative services; salaries; employee insurance; and payroll taxes. Except as provided for in the Partnership Agreement, the Partnership shall bear all of its organizational expenses, operating expenses, including all investment-related expenses incurred in its trading activities such as brokerage commissions, bank service fees, settlement fees, interest on loans and debit balances and research expenses (including computer software, news and information services and licensing costs which benefit the Partnership). The Partnership will also pay its own service provider fees, including fees of the Partnership's prime broker, third-party valuator, administrator and counsel fees. The Partnership will also be responsible for any extraordinary expenses, including the expenses of litigation, if any, as well as any taxes that may be assessed against it. The Investment Manager will be reimbursed for any non-investment advisory expenses it incurs on behalf of the Partnership.

Section 4     Reports to the Partnership. The Investment Manager shall submit or cause to be submitted to the Partnership such reports of the assets of the Partnership and of the market value of such assets under its management as the Partnership shall from time to time reasonably require. The Investment Manager shall not incur any individual liability or responsibility for any

determination made, advice given or other action taken or omitted by it in good faith with respect to the determination of the value of the assets of the Partnership under its management unless such determination made, advice given or other action taken or omitted constitutes gross negligence, actual fraud or willful misconduct on the part of the Investment Manager.

Section 5 ERISA. To the extent that the Partnership is considered “plan assets” within the meaning of the U.S. Department of Labor regulations, then the Investment Manager represents that it is registered as an investment adviser under the Investment Advisers Act of 1940, as amended; it is a qualified professional asset manager within the meaning of Prohibited Transaction Exemption 84-14; and acknowledges that it is a “fiduciary,” as that term is used in the Employee Retirement Income Security Act of 1974, as amended, including the regulations thereunder.

Section 6 Selection of Brokers and Custodians.

(a) The Investment Manager is authorized to determine the broker or dealer to be used for each investment transaction for the Partnership. It is generally not the Investment Manager’s practice to negotiate “execution only” commission rates; thus, the Partnership may be deemed to be paying for research, brokerage or other services provided by the broker which are included in the commission rate; provided, however, in selecting brokers or dealers to execute transactions, the Investment Manager shall use its best efforts to obtain best execution at the most favorable prices reasonably obtainable at all times. In determining the broker or dealer to be used for each securities transaction, the Investment Manager will conform to and be in accordance with the provisions of the Partnership Agreement.

(b) The Investment Manager shall also have the authority, subject to terms of the Partnership Agreement, to select and appoint custodians of the assets of the Partnership.

Section 7 Allocation. When the Investment Manager deems the purchase or sale of certain Investments to be in the best interests of the Partnership and of affiliates or other clients of the Investment Manager, the Investment Manager may aggregate the Investments to be purchased or sold. In such event, allocation or rotation of the Investments purchased or sold, as well as expenses incurred in the transaction, shall be made in a manner which the Investment Manager considers to be fair and equitable to all of its clients, including the Partnership, over time.

Section 8 Liability of the Investment Manager. The Partnership shall indemnify the Investment Manager and its members, principals, employees and affiliates against all expenses, including losses due to trade errors caused by such persons, legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings or otherwise in connection with the performance by such persons of their responsibilities to or with respect to the Partnership; provided, that nothing herein shall be deemed either to protect or to purport to protect such persons against any liability to which it otherwise would be subject by reason of such person’s actual fraud, bad faith, gross negligence, willful misconduct, a willful violation of law, a breach of the Investment Manager’s fiduciary duties as set forth in the Partnership Agreement or a breach of this Agreement. In addition, the Investment Manager shall not be liable to the Partnership for any losses due to the

mistakes, negligence, misconduct or bad faith of any broker or other agent or third-party service provider of the Partnership selected and monitored by the Investment Manager with reasonable care. The Partnership shall advance to the Investment Manager monies from the Partnership for legal expenses and other costs subject to a written undertaking to repay such advances if it is determined that indemnification is not proper. The foregoing provisions shall not be construed to relieve the Investment Manager of any liability to the extent that such liability may not be waived, modified or limited under applicable laws.

Section 9 Other Activities of the Investment Manager. The services provided by the Investment Manager are not exclusive. The Investment Manager (and its members, principals, affiliates and employees) may serve as investment adviser or investment manager to other client accounts and conduct investment activities for their own accounts. Such other entities or accounts (the “**Other Clients**”) may have investment objectives or may implement investment strategies similar to those of the Partnership. Accordingly, the Partnership and the Other Clients may co-invest in many of the same Investments. Any personal trading by employees of the Investment Manager will be conducted in accordance with the Investment Manager’s Code of Ethics.

Subject to the foregoing, the Investment Manager (or its members, principals, affiliates and employees) may give advice or take action with respect to the Other Clients that differs from the advice given with respect to the Partnership. To the extent a particular investment is suitable for both the Partnership and the Other Clients, such Investments will be allocated between the Partnership and the Other Clients in a manner which the Investment Manager determines is fair and equitable under the circumstances to all clients, including the Partnership, over time.

In addition, purchase and sale transactions (including swaps) may be effected between the Partnership and the Other Clients subject to the following guidelines: (a) such transactions shall be effected for cash consideration at the current market price of the particular Investments, and (b) no brokerage commission or fee (except for customary transfer fees or commissions paid to a third party broker) or other remuneration shall be paid in connection with any such transaction.

As a result of the foregoing, the Investment Manager (and its members, principals, affiliates and employees) may have conflicts of interest in allocating their time and activity between the Partnership and the Other Clients, in allocating Investments among the Partnership and the Other Clients and in effecting transactions for the Partnership and the Other Clients, including ones in which the Investment Manager (or its members, principals, affiliates or employees) may have a greater financial interest. The Investment Manager will use its best efforts in connection with the purposes and objectives of the Partnership and will devote so much of its time and effort to the affairs of the Partnership as is reasonably necessary to accomplish the purposes of the Partnership. The Investment Manager (or its members, principals, affiliates or employees) may conduct any other business, including any business within the financial services industry, whether or not such business is in competition with the Partnership. Without limiting the generality of the foregoing, the Investment Manager (or its members, principals, affiliates and employees) may act as investment adviser or investment manager for others, may manage funds or capital for others, may have, make and maintain Investments in its own name or through other entities and may serve as an officer, director, consultant, partner or stockholder of one or



more investment funds, partnerships, securities firms or advisory firms. It may not always be possible or consistent with the investment objectives of the various persons or entities described above and of the Partnership to take or liquidate the same investment positions at the same time or at the same prices.

Section 10 Duration and Termination. This Agreement shall continue until terminated as provided herein. This Agreement may be terminated by either party effective as of the close of business on the last day of any quarter by giving the other party no fewer than thirty (30) days' prior written notice; provided, however, this Agreement shall automatically terminate upon the mandatory withdrawal of the General Partner from the Partnership pursuant to Section 5.5 of the Partnership Agreement.

Section 11 Notices. All notices shall be in writing and shall be deemed to have been duly given if delivered personally or if mailed by courier delivery service, to the following respective addresses until a different address is specified in writing by a party to the other party:

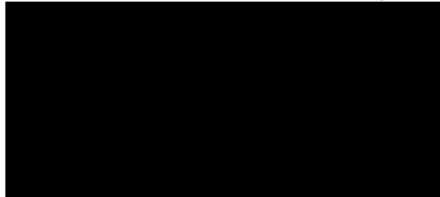
To the Partnership:

KRS-ArrowMark Fund I, LP



To the General Partner:

KRS-ArrowMark Fund I GP, Ltd.



To the Investment Manager:

ArrowMark Colorado Holdings, LLC



Section 12 Assignment. This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties; provided, however, that the assignment of this Agreement by the Investment Manager to an entity that controls, is controlled by or is under common control with the Investment Manager shall not require prior consent of the Partnership.

Section 13 Sales Literature. The Partnership shall not approve or authorize the use or distribution in connection with the sale of their securities of any literature or advertisement in which the Investment Manager is named or referred to unless such literature or advertisement shall first be submitted to the Investment Manager for its approval with respect to matters concerning the Investment Manager.

Section 14 Severability. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held to be contrary to any express provision of law or contrary to policy of express law, though not expressly prohibited, or to be against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

Section 15 Headings. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to limit or affect in any way the meaning or interpretation of any of the terms or provisions herein.

Section 16 Governing Law. This Agreement shall be governed, construed, administered and regulated in all respects under the laws of the State of Delaware, U.S.A., without regard to any conflict-of-laws principles which would result in the application of the laws of a jurisdiction other than the State of Delaware, U.S.A. and to the extent such laws are not preempted or superseded by the laws of the United States.

Section 17 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. It shall not be necessary for all parties to execute the same counterpart hereof. The execution and delivery of this Agreement may occur by facsimile or by email in portable document format (PDF), and facsimile or PDF signatures or copies of signatures shall have the full force and effect of the original signatures.

**[Signature Page Follows]**

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

**KRS-ArrowMark Fund I, LP**

By: KRS-ArrowMark Fund I GP, Ltd., its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KRS-ArrowMark Fund I GP, Ltd.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ArrowMark Colorado Holdings, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_