

NO. 14-CI-02523

JEFFERSON CIRCUIT COURT  
DIVISION FIVE (5)  
JUDGE MARY SHAW

KOSAIR CHARITIES COMMITTEE, INC.

PLAINTIFF

and

COMMONWEALTH OF KENTUCKY,  
ex rel. Jack Conway, in his official capacity as  
Attorney General

INTERVENING PLAINTIFF

v.

NORTON HEALTHCARE, INC., *et al.*

DEFENDANTS

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NORTON HEALTHCARE, INC. and THE  
CHILDREN'S HOSPITAL FOUNDATION,  
INC.

COUNTERCLAIM-PLAINTIFFS

v.

KOSAIR CHARITIES COMMITTEE, INC.;  
RANDY COE; SHRINERS  
INTERNATIONAL, INC.; SHRINERS  
INTERNATIONAL, INC. d/b/a KOSAIR  
SHRINE TEMPLE; and KOSAIR SHRINE  
TEMPLE

COUNTERCLAIM-DEFENDANTS

**FIRST AMENDED COUNTERCLAIMS**

Norton Healthcare Inc. ("Norton") and The Children's Hospital Foundation, Inc. (the "Foundation") bring these First Amended Counterclaims against Counterclaim-Defendants Kosair Charities, Inc. ("KCC"), Randy Coe ("Mr. Coe"), Shriners International, Inc., both in its own name and doing business as Kosair Shrine Temple ("Shriners International"), and Kosair Shrine Temple, as an unincorporated association ("Kosair Shrine Temple"), pursuant to pursuant to CR 13.01, 13.02, and 13.08. In support, Norton and the Foundation state as follows:

### Preliminary Statement

1. KCC is committing a fraud on the larger Louisville community. Having amassed a \$200 million fortune by purporting to fund and even operate Kosair Children's Hospital ("KCH"), KCC has stopped making any of its contractually required payments to Norton for the benefit of KCH. Yet KCC is still raising money from the public for its coffers based on false claims that it continues to be a major funder of the hospital and responsible for helping millions of children. These false claims have caused the public to donate money to KCC believing that the money would help KCH and the children of Kentucky, when in fact KCC has kept the money for itself.

2. KCC sought to maximize public recognition for its contractual "naming-rights" payments to Norton, in order to raise charitable contributions from the public. KCC publicly claims that it has helped millions of "Kosair Kids" and makes misleading statements that falsely suggest to the public that KCC itself owns and operates KCH. While KCC made financial contributions to Norton for the benefit of KCH pursuant to various contracts (before it stopped doing so in November 2013), the annual monies that KCC provided were a small fraction of the overall cost of operating KCH, which is more than \$200 million annually. The amount that KCC provided also was substantially less than the cost of providing charity care, staff salaries, and acquiring necessary equipment and supplies at KCH. Since mid-2013, KCC has sought to terminate its contractual relationship with KCH and refused to meet any of its contractual obligations related to KCH, all while continuing to mislead the public by misrepresenting itself as the principal benefactor and even owner and operator of this children's hospital.

3. At KCC's behest, for many years, Norton informed KCH patients who qualified for charity care that their unpaid balances had been written off through funds donated by KCC. Norton also sent KCC annual reports documenting the dollar amounts of those unpaid charity

care patient balances. As KCC understood, Norton was never “paid” any incremental monies by KCC for this unpaid charitable care. Rather, Norton was contractually entitled to receive KCC’s payments (in consideration of hospital naming rights) independent of its provision of charity care. And Norton was authorized to expend KCC’s contractual payments on any of a myriad of pediatric services or programs at KCH.

4. Norton spent considerable time and expense generating these charity care letters and reports only because that is primarily how KCC wanted its donations to be publicly recognized. These letters generated “thank you” notes to both KCC and KCH. KCC then exploited this public recognition to amass its fortune. For example, in social media advertising, KCC posts “thank you” letters from parents of children cared for at KCH, thanking KCC for helping their children and suggesting that the care was provided for directly by KCC, when it was not. KCC even touts a supposed “Kosair NICU” (neonatal intensive care unit) as if KCC itself directly provides the NICU, which of course it does not.

5. Ironically, as part of its effort to avoid its contractual obligations, KCC now accuses Norton of giving KCC *too much* recognition—by giving KCC credit for the full retail charges for the services that Norton provided, rather than merely giving KCC credit for Norton’s cost of providing those services. In doing so, KCC seeks to malign Norton for improperly accounting for charitable funds, even though KCC knows or should know those accusations to be untrue and unfair by virtue of its representation for many years on Norton’s Board of Trustees and Finance Committee.

6. Through these Counterclaims, Norton and the Foundation seek to remedy, without limitation: (a) KCC’s multiple breaches of its financial obligations to Norton, pursuant to which KCC now owes over \$11.5 million plus prejudgment interest compounded annually; (b) KCC’s

continuing solicitation of charitable contributions from the public based on false representations that it is supporting KCH; (c) KCC's exploitation of its affiliation with Norton and KCH to mislead the public to believe that KCC operates KCH, so as to divert collect public monies that otherwise would have been donated to the Foundation for use in connection with KCH; (d) KCC's failure to ensure that donations intended for KCH and the Foundation are so directed; (e) KCC's and its principal Randy Coe's interference with third parties donating to, working with, or otherwise associating with Norton, KCH, and the Foundation; and (f) the harm to Norton's reputation that KCC has caused by publicly accusing Norton of improperly accounting for charitable funds despite knowing those accusations to be false.

#### **Parties**

7. Norton is a non-profit healthcare company formed and existing under the laws of the Commonwealth of Kentucky and located in Louisville, Kentucky.

8. The Foundation is a not-for-profit charitable organization, qualified under Section 501(c)(3) of the Internal Revenue Code, formed and existing under the laws of the Commonwealth of Kentucky and located in Louisville, Kentucky. The Foundation supports only KCH.

9. KCC is a Kentucky non-profit corporation located in Louisville, Kentucky. In contrast to the Foundation, which supports only KCH, donations to KCC may be used to fund a variety of institutions and causes other than KCH.

10. Randy Coe is an individual who resides in Louisville, Kentucky. He is the President of KCC.

11. Shriners International, Inc. is an Iowa corporation having its principal place of business in Tampa, Florida, that transacts business in Kentucky under the name Kosair Shrine Temple through members of the Kosair Shrine Temple, its local chapter. On information and

belief, Kosair Shrine Temple is an unincorporated association of members of Shriners International, Inc. who are based in Louisville and identify themselves as associated with the Kosair Shrine Temple.

### **Factual Background**

#### **A. Norton Builds And Opens KCH In Reliance On KCC's Funding Commitments.**

12. Norton is Kentucky's oldest healthcare system with five large hospitals, 12 immediate care centers, and more than 90 physicians practice locations. It opened its first hospital in 1886. In 1969, Norton assumed responsibility for and ownership of Children's Hospital, which had opened in 1892 and served the entire region. By the late 1970s, Children's Hospital had expanded significantly and developed a need for a larger and more modern facility to provide expanded services. In 1981, Norton sought to construct a new pediatric hospital, which became KCH, on land leased by Norton from the Commonwealth of Kentucky.

13. KCC is a charity affiliated with Kosair Shrine Temple. In 1926, Kosair Shrine Temple opened Kosair Crippled Children Hospital. By the late 1970s, occupancy at Kosair Crippled Children Hospital had fallen considerably, and the hospital was not financially viable.

14. In or about 1981, KCC approached Norton about consolidating their pediatric hospital operations into the new children's hospital that Norton had decided to build. Norton agreed. Shortly thereafter, in 1982, the parties entered into an affiliation agreement pursuant to which KCC agreed to pay Norton a one-time sum of \$2,000,000 and 70% of KCC's annual endowment income for 30 years to be used for the new children's hospital. Norton also agreed to use the "Kosair" name in the name of the hospital, calling it "Kosair-Children's Hospital." (The parties agreed in a later amendment to remove the hyphen from the name of the hospital.) KCC was also given representation on Norton's Board of Directors (now Board of Trustees),

Executive Committee, and Finance Committee, and, in that capacity, received all of the financial information about KCH that Norton provided to its board and these committees.

15. In reliance on KCC's funding commitments, Norton completed construction of KCH in 1986, and it quickly became one of the nation's premiere children's hospitals. The current 263-bed hospital serves as the primary pediatric teaching facility for the University of Louisville School of Medicine and is Kentucky's only full-service, free-standing pediatric care facility dedicated exclusively to caring for children. It is also the area's only Level One Trauma Center for pediatrics. KCH serves all 120 Kentucky counties, along with Southern Indiana.

**B. Norton And KCC Enter Into The Current Affiliation Agreement.**

16. In or about 2006, KCC repeatedly asked Norton to amend the parties' affiliation agreement prior to its expiration or renewal, to provide for a fixed payment schedule in lieu of paying Norton a percentage of its annual endowment income, so as to help KCC financially and provide KCC with predictability in budgeting. Norton agreed, and on December 5, 2006, the parties executed the Second Restated Agreement of Affiliation ("Affiliation Agreement"), a copy of which is attached as Exhibit A. The parties also agreed in the Affiliation Agreement to simplify and update their prior agreement.

17. The term of the Affiliation Agreement, which expressly superseded the parties' prior affiliation agreement, is twenty years, from January 1, 2007 through December 31, 2026.

18. The parties defined the scope and purpose of the Affiliation Agreement as follows: "KCC will provide certain significant financial support of Kosair Children's Hospital ("KCH") and its pediatric services while Norton Healthcare will provide KCC with certain recognition naming rights and sponsorship opportunities associated with KCH. This affiliation will provide both parties with greater access and resources to help further their respective charitable missions." (Ex. A § 1) (emphasis added).

19. The Affiliation Agreement requires KCC to make annual support payments in fixed amounts to Norton over the twenty-year term of the agreement. The payments are due on November 15 of each year, and increase throughout the term of the agreement, totaling \$116,998,390. This funding was in lieu of KCC paying 70% of its annual endowment income to Norton, as KCC was required to do under the parties' prior (and superseded) affiliation agreement. It would later become clear that KCC's request to change the payment structure allowed it to give to the University of Louisville ("U of L") money that would have been paid to Norton. For example, if the previous formula (70% of KCC's endowment income) had remained in effect, based on KCC 2012 endowment income, KCC would have owed Norton approximately \$13 million, which is \$8 million more than the amount that KCC paid Norton in 2012 under the Affiliation Agreement.

20. In addition to the Affiliation Agreement, KCC and Norton have entered into separate funding agreements in which KCC agreed to provide Norton additional funding in exchange for additional naming rights and recognition. Those agreements include the December 5, 2006 Special Projects Funding Agreement (Ex. B) and the March 1, 2009 Additional Projects Funding Agreement (Ex. C).

**C. KCC Amasses A Fortune Through Its Association with KCH and Norton.**

21. In consideration of KCC's financial support, Norton agreed to give KCC broad naming rights and recognition, including the "Kosair" name in the name of Norton's children's hospital. Norton has recognized KCC's contributions to KCH in many other ways, including but not limited to by hosting a news conference at which KCC presents its annual support payment, placing a Shriners statue at the front entrance of KCH and Kosair Children's Medical Center Brownsboro, and displaying pictures of KCC's board members and executive director, as well as the KCC "Funsters," in the lobby of KCH.

22. The naming rights that KCC acquired from Norton are very valuable to KCC because they have allowed KCC to use its association with a leading pediatric hospital as the cornerstone of its fund-raising efforts. For example, in its annual "Gifts & Grants Report," which KCC widely distributes to solicit donations, KCC boasts about its long-term commitment to pay Norton \$130 million over twenty years:

Kosair Charities has made a 20 year commitment to Norton Healthcare to provide a total of \$130 million to support Kosair Children's Hospital. Through 2026, Kosair Charities will provide a total of \$117 million in annual support to cover the cost of medical treatment and services for children whose families cannot afford to pay. In addition, the money will support programs and services which further meet the hospital's mission of medically assisting children including Kosair Children's Hospital Brownsboro.

23. In large part due to its association with Norton and KCH, KCC has amassed a treasury of over \$200 million.

24. KCC's association with KCH also has helped KCC overcome negative publicity associated with controversial practices and policies of various Shriner organizations. On information and belief, KCC's association with KCH also helped KCC (or the Kosair Shrine Temple) to avoid making certain payments to Shriners International.

25. KCC also uses its support of KCH to recruit men to join the Kosair Shrine Temple. For example, on the front page of the Kosair Shrine Temple's June 2009 newsletter, the group listed "Support Kosair Children's Hospital" as an advantage of becoming a Shriner. The "history" section of the current Kosair Shrine Temple website identifies KCH as a "commitment from the Shriners of Kosair Temple to health care for children."

**D. KCC Is Represented On Norton's Board And Given Full And Complete Access To Norton's Financial Information.**

26. Throughout the relationship, KCC has been well represented on Norton's Board of Trustees (and earlier, Board of Directors), where KCC representatives received, in a fiduciary



capacity, confidential information about Norton. KCC has had available to it, since the inception of the parties' relationship, all financial information about Norton and KCH that has been made available to any other member of Norton's Board of Trustees.

27. KCC also has been well represented on Norton's Finance Committee. Following the consolidation of Kosair Crippled Children's Hospital and Norton Children's Hospital in 1981, Mr. Jack Wilson, the "lead" representative of KCC in the negotiations, actually chaired the first joint Finance Committee of the merged board, and the first budget that his new post-merger Finance Committee approved (in December 1981, for the coming fiscal year) was a "consolidated" profit and loss statement which did not separate out the financial performance of the new merged children's hospital from the consolidated financial performance of all of Norton's operations. Thus, from the very beginning of the parties' relationship, the KCC board representatives recognized the value of consolidated financial reporting. The accounting and reporting on a consolidated financial basis has been handled consistently since the outset of KCH.

28. Mr. Brown Allen, another KCC representative, also was on the original Finance Committee and later chaired that committee for many years. A KCC representative also served as a member of the Finance Committee from 2001 through August 2014. That individual had extensive experience in financial matters, having served as Treasurer of KCC, Chief Operations Officer for Jefferson County Fiscal Court (before the merger with the City of Louisville), Treasurer and Director of the Jefferson County Federal Credit Union, and Chief Executive Officer (and previously Chief Operating Officer) of a large architectural engineering firm. On August 11, 2014, after KCC's lawsuit had been filed, this representative advised Norton that he

was resigning from Norton's Board and committees at the specific direction of KCC's Chairman of the Board, Jerry Ward.

29. The KCC representatives who served on Norton's Finance Committee received, in their fiduciary capacities, every item of financial information that Norton provided to its Finance Committee. They also had the opportunity to ask any questions they had about Norton's financial affairs, including any questions about Norton's use of KCC's contributions and any questions about the detailed charity care reports that Norton (at KCC's request) provided to KCC every year showing the specific patient accounts that were written off and attributed to KCC's contributions. Additionally, at least once per year, the Finance Committee met with Norton's internal and external auditors without management present, at which time KCC's representative could have asked any question he or KCC wished.

**E. KCC Seeks A Pretext To Stop Its Payment Obligations To Norton As It Diverts Funds To U of L.**

30. Norton's relationship with KCC was harmonious for its first 30 years. However, in 2012, KCC began to look for a pretextual basis to terminate the relationship. In November 2013, after a series of ever-changing pretextual allegations described below, KCC stopped making its contractually required payments to Norton. By November 2014, KCC owed Norton over \$11.5 million plus prejudgment interest, and has indicated that it does not intend to make any of its remaining payments to Norton.

31. One of KCC's principal goals in seeking to terminate its payment obligations is to divert to U of L the money that KCC had pledged to Norton for the benefit of KCH and the children of Kentucky. U of L regularly courts KCC at sporting events and other social events, and has sought to procure contributions from KCC by making personal financial inducements to KCC's principals. For example, KCC's Chairman, Mr. Ward, is the principal in a real estate

firm that has received substantial and valuable business from U of L, including an \$880,000 transaction in 2014. The acceptance of these inducements by KCC's principals violates Article 10(g) of the Shriners International Code of Ethics, which prohibits them from receiving anything of value that might influence their actions.

**1. KCC Falsely Accuses Norton Of Accepting Donations To KCC.**

32. KCC's search for a pretextual basis to terminate its relationship with Norton began on or about March 30, 2012, when KCC sent Norton a letter accusing the Foundation of improperly accepting donations that were intended for KCC, and complaining about the appearance of the phrase "Kosair Children's Hospital Foundation" (a non-existent entity) in local papers and other media outlets in connection with fundraising efforts for KCH.

33. Norton repeatedly attempted to respond to KCC's ever-changing list of supposed concerns. Over the following weeks and months, among many other things, Norton participated in countless meetings and correspondence with KCC, many of which involved members of Norton's senior leadership team. Norton also launched an extensive training program for Foundation employees on the history of the respective organizations, their structure and missions, and the proper nomenclature to be used when referring to each of them, and discarded printed materials that complied with the parties' contract but to which KCC objected, all in an effort to respond KCC's supposed concerns. The total cost of this effort was approximately \$250,000.

**2. KCC Demands 50% Of All Donations To Norton.**

34. In August 2012, KCC insinuated that it would terminate the Affiliation Agreement unless Norton agreed to pay over to KCC 50% of all funds collected by Norton from 2006 through 2026. This demand for half of all of Norton's incoming charitable donations

necessarily included charitable donations that were given to the Norton Healthcare Foundation for the benefit of adult programs that were not even affiliated with KCH.

35. Had Norton agreed to this demand, it would have unlawfully violated the intent of its donors and would have actually turned Norton into an annual net donor to KCC.

**3. Audit Reveals No Violations By Norton And KCC's Failure To Implement Financial Controls.**

36. In response to KCC's demands and legal threats, the independent accounting firm of Mountjoy Chilton Medley, LLP conducted, at Norton's expense, an audit of every estate gift, and every donation from a living donor exceeding \$10,000, received by the Foundation since the inception of the Affiliation Agreement. The purpose of the audit was to determine whether Norton had complied with Section 6(C) of the Affiliation Agreement, which contains a set of rules to govern how testamentary and other gifts are to be allocated between Norton and KCC, given the public confusion between the entities that KCC in large part has created.

37. The auditors concluded, in written reports that were provided to KCC, that Norton did not improperly accept even one dollar in donations. The auditors found that all estate gifts "were either properly retained by Norton Healthcare or redirected to KCC." They also concluded that all donations received by Norton that exceeded \$10,000, from any source, "were properly retained by Norton Healthcare."

38. Parties intending to donate to KCH can ensure their monies will be so directed by giving to the Foundation, which only supports KCH. KCC, however, has secretly taken steps to misdirect to itself donations to the Foundation intended for KCH. In 2012, Mr. Coe, on behalf of KCC, filed with the Commonwealth several assumed names that were variations of "Kosair Children's Hospital Foundation," even though Section 6(C) of the Affiliation Agreement allocates to Norton donations to "Kosair Children's Hospital Foundation."

39. In and around September 2013, at Norton's request, an outside auditor attempted to audit KCC's compliance with Section 6(C) of the Affiliation Agreement, but that audit was never completed. During the audit, it became clear that KCC had failed to maintain copies of records such as checks and wills, thus preventing others from verifying that KCC correctly allocates gifts and violating its own rules regarding retention of financial records.

40. KCC also has failed to implement financial controls to track donations or ensure that agents collecting money on its behalf do not retain portions of the funds.

41. As set forth below, KCC has continued to raise and retain monies based on public representations that it is supporting KCH when it is not doing so.

**4. KCC Pledges Additional Money To U of L As It Intentionally Withholds Funds Due to Norton.**

42. On July 11, 2013, KCC sent Norton a letter asserting Norton was in breach of the Affiliation Agreement, yet failed to cite a single provision of the agreement that Norton had purportedly breached. KCC threatened to terminate the Affiliation Agreement if Norton did not cure the breach within 120 days. In this notice, KCC raised no concern about Norton's financial practices in accounting for KCC's contractual payments.

43. On November 6, 2013, after it had already indicated it would terminate the Affiliation Agreement, KCC sent Norton another letter containing an entirely new set of allegations about "charitable trusts," Norton's financial record keeping, and Norton's potential affiliation with the University of Kentucky's ("UK") pediatric hospital. This was the first time in the history of the parties' relationship that KCC, whose representatives have served on Norton's Board of Trustees and Finance Committee, raised any issue with Norton's financial record keeping or financial affairs. Despite Norton's refutation of each of these new allegations, KCC used this iteration of allegations as a pretext for violating its contractual obligations.

44. On November 15, 2013, KCC failed to make its annual support payment of \$5,181,024 that was due under the Affiliation Agreement. On November 20, 2013, Norton sent KCC a notice of breach. KCC has not paid Norton or otherwise cured its breach.

45. In the Special Projects Funding Agreement, KCC agreed to provide Norton \$500,000 annually to be used for the purposes defined in that agreement. KCC's payment is due by April 15 each year. In breach of the agreement, KCC failed to make the required payment on April 15, 2014. On April 21, 2014, Norton sent KCC a notice of breach. KCC has not paid Norton or otherwise cured its breach.

46. In the Additional Projects Funding Agreement, KCC agreed to provide Norton an additional \$500,000 annually (except for the last year of the term, when the amount is \$1,000,000) on or before April 30 of each year, to be used for the purposes defined in the agreement. In breach of the agreement, KCC failed to make the required payment on April 30, 2014. On April 21, 2014, after KCC stated that it would not make the payment due under the Additional Projects Funding Agreement, Norton sent KCC a notice of breach. KCC has not paid Norton or otherwise cured its breach.

47. On November 15, 2014, KCC's 2014 annual support payment was due, in the amount of \$5,340,600. KCC failed to make the payment due that day, breaching the Affiliation Agreement. On November 18, 2014, Norton sent KCC a notice of breach. KCC has not paid Norton or otherwise cured its breach.

48. At the same time KCC was breaching its contractual commitments to Norton and the children of Kentucky, KCC was expanding its relationship with U of L. During that time, KCC agreed to provide U of L \$3.8 million worth of office space (July 8, 2013); pledged \$7.3 million to U of L (November 8, 2013); and announced a partnership with U of L to build a new

medical office building (July 1, 2014). In addition, U of L's President, Dr. Ramsey, announced on January 22, 2013, that "the list of partnership areas that we're working on with Kosair Charities continues to grow almost every day." A principal goal of KCC's in seeking pretextual grounds to terminate its relationship with Norton is to divert to U of L the monies that KCC pledged to Norton and the children of Kentucky.

**F. KCC Continues To Raise Charitable Contributions Based On False Representations That It Is Current On Its Obligations To Norton.**

49. Although KCC has not paid anything to Norton for nearly two years and owes Norton over \$11.5 million plus pre-judgment interest compounded annually, KCC has been soliciting donations from the public based on false representations that it is current on its obligations to Norton and that donations KCC collects will benefit KCH. KCC has repeatedly invoked the public's sympathy for sick children in need of care at KCH, only to keep the resulting contributions for itself.

50. For example, on November 28, 2013, just days after it breached the Affiliation Agreement, KCC took out a newspaper advertisement in the Louisville Courier-Journal representing, among other things, that it had a "Current Contribution" to KCH of \$6,181,024, which included the 2013 annual support payment of \$5,181,024 that KCC had refused to pay just days earlier. As of the date of the filing of these Counterclaims, KCC still has not paid Norton that \$6,181,024, and KCC is seeking through this litigation to terminate the parties' contracts in order to avoid using that money to benefit KCH.

51. In its widely-distributed 2013-14 Gifts and Grants Report, KCC again falsely represented that it was "current" on its 2013 annual support payment and it intended to fulfill its \$130 million "commitment" to Norton. The report stated:

Kosair Children's Hospital  
Current Contribution: \$6,181,024

Total Contributions: \$130,000,000

Kosair Charities has made a commitment to Norton Healthcare and has provided a total of \$130 million to support Kosair Children's Hospital. Kosair Charities provides support to cover the cost of medical treatment and services for children whose families cannot afford to pay. The additional grant money will support programs and services that further meet the hospital's mission of assisting medically fragile children, including Kosair Children's Hospital Brownsboro.

52. As of the filing of these Counterclaims, Kosair Shrine Temple's website continued to display the following quotations, which it attributes to Norton's current or former executives and falsely imply that KCC is current on its obligations to Norton:

- "Kosair Charities' support permits Kosair Children's Hospital to meet its commitment to treat all kids without concern for their family's ability to pay."
- "Thank you, Kosair Charities, and all the members of Kosair Shrine, from all of us at Kosair Children's Hospital and Norton Healthcare, for all you have done . . . and continue to do . . . for Kosair Children's Hospital."

53. As of the filing of these Counterclaims, Kosair Shrine Temple's website also stated, "Our charitable efforts affect the lives of countless children and their loved ones. Children from hometowns throughout Kentucky, southern Indiana, and the nation benefit from the care and compassion found at Kosair Children's Hospital." This statement falsely suggests that KCC supports KCH, when in fact KCC had failed to make its annual support payment and indicated that it intended to terminate its relationship with the hospital.

54. On March 11, 2014, KCC posted on Twitter a link which stated: "In 2013, we awarded the following amazing organizations Gifts & Grants as part of the program," and listed KCH as one of those organizations. This post falsely represented that KCC had made its 2013 annual support payment to Norton, when in fact it did not.



55. On May 9, 2014, the Courier-Journal quoted Randy Coe as stating: "We [KCC] are their [Norton's] largest donor." At the time of that statement, which falsely implied to the public that KCC was current on its obligations to Norton, Mr. Coe knew that KCC had stopped contributing money to Norton approximately six months earlier and had no intention of satisfying any of its future contractual obligations.

56. KCC's Spring 2014 "Kite Tales" publication also falsely represented that KCC was "current" on its \$6.1 million obligation to Norton and intended to fulfill the entirety of its \$130 million commitment. It listed KCH as one of KCC's 2013-14 grant recipients, and stated:

"Current Contribution: \$6,181,024  
Total Commitment: \$130,000,000"

57. On May 8, 2014, KCC advertised, or permitted to be advertised, the following in regards to the "2014 Metcalfe Mud Run for Kosair Kids": "The proceeds from this event will go to Kosair Charities. Kosair Charities is the largest private supporter of Kosair Children's Hospital." Norton has not received any proceeds from this event, and KCC is no longer a "supporter" of KCH. To the contrary, KCC is attempting to injure the reputation of the hospital and terminate its obligations to Norton and the hospital.

58. On May 17, 2014, KCC posted, or permitted to be posted, to Facebook a statement that "Kosair Charities is the largest private supporter of Kosair Children's Hospital." KCC is not a supporter of KCH, given its conduct and public efforts to injure the reputation of the hospital.

59. On June 10, 2014, KCC advertised, or permitted to be advertised, the following statements, which are false in view of KCC's failure to satisfy its contractual obligations to Norton and efforts to malign the KCH:

Kosair Charities is the largest children's charity in the region and the largest private supporter of Kosair Children's Hospital.

Kosair Children's Hospital and Kosair Charities strive to give children the best treatments available. And knowing that KOSAIR CHARITIES will help financially support the child's medical needs, if the parents cannot, lifts one of the toughest challenges that parents face.

60. As of the filing of these Counterclaims, KCC's website still stated: "In December 2006, Kosair Charities made a 20-year commitment of \$127 million to support the delivery of pediatric healthcare services to Kosair Children's Hospital. In March 2009, Kosair Charities made an additional \$8 million commitment supporting the development, operation, and expansion of Kosair Children's Hospital, including programs, equipment, technology, or facilities." These statements imply that KCC is current on its obligations and intends to fulfill its remaining obligations, which is false.

61. As of the filing of these Counterclaims, KCC's website still contains a flyer (called "About Kosair Charities") that states: "Over \$200 million to date has been pledged to Kosair Children's Hospital, giving Kosair Charities the distinction as the largest private benefactor of the hospital." As noted, KCC is not a benefactor of KCH but rather has sought to terminate its relationship with and injure the hospital.

62. In Kosair Temple's monthly "Kosair Kolums" newsletter from November 2013 and continuing through its most recent issue in November 2014, KCC attributed the following quotation to Norton: "Thank you, Kosair Charities! With medical treatment from Kosair Children's Hospital and financial support from Kosair Charities, children who were once sick now have the opportunity to play, go to school and grow up healthy." Randy Coe is identified as the editor of Kosair Kolums. Norton did not pay for or otherwise authorize these advertisements, which falsely suggest that KCC supports KCH.

63. On October 4, 2014, at its annual "Dreams Take Flight" event, KCC represented that it awarded \$11,328,725 to various organizations in 2014 which, on information and belief, included KCH. Yet, KCC paid nothing to Norton in 2014.

64. As of the filing of these Counterclaims, KCC's website still states: "In 2013, we awarded the following amazing organizations Gifts & Grants as part of the program," and lists KCH along with numerous other organizations. As noted, KCC did not make its annual support payment to Norton in 2013.

65. On information and belief, KCC has raised and continues to raise substantial charitable contributions based on these false representations, all or a portion of which would otherwise have been donated to the Foundation for the true benefit of KCH.

66. Norton has repeatedly demanded that KCC cease and desist from making these and similar false and misleading statements, but KCC has refused.

**G. KCC Has Exploited The Affiliation Agreement To Interfere With Donations Intended For KCH.**

67. KCC also has improperly used its affiliation with KCH to intentionally confuse third parties into giving money to KCC and to deceive organizations seeking to raise money for KCH.

68. For example, from approximately 2000 to 2011, the organizers of the annual airshow event "Tim Evans' Wings for Kids" gave money raised by the event to KCC, believing that the money was supporting KCH. In or around 2011, the organizers discovered KCC's true identity and demanded to work directly with KCH.

69. On November 20, 2013, KCC made a written grant application to the RSMIS Foundation, based in Houston Texas, stating that the grant was for "Norton-Kosair Charities Children's Hospital," attaching information from KCH's website, and holding itself out as the

operator of KCH. At the time of the application, KCC had refused to make its November 15, 2013 contractual payment to Norton and was seeking to terminate its relationship with Norton and KCH.

70. KCC also has deceived individuals seeking to donate to KCH. For example, the mother of a former KCH patient discussed with KCC staff how her donations to KCC would benefit KCH. KCC finally revealed that it did not operate KCH and admitted that the donor should contact the Foundation directly to make her donations, only after some time and after the donor sought to use her donations to name a specific department at the hospital after her deceased child.

71. KCC is frequently aware of, yet fails to correct, third parties' misimpressions that KCC operates KCH. On information and belief, individuals that collect money for KCC on roadblocks often misrepresent that collections are given to KCH. KCC's Facebook page publicly displays many examples of individuals praising KCH doctors and nurses as if they were KCC staff, or otherwise mistaking KCC for KCH. KCC has not corrected or removed these statements from its Facebook page.

72. On information and belief, KCC intentionally deceives donors into believing that KCC is the same entity as, or operator of, KCH in order to collect money that would otherwise be provided to KCH through the Foundation.

73. KCC also has implemented an official internal policy regarding the use of the "Kosair" name, which provides, in contravention of Section 6(C) of the Affiliation Agreement, that "gifts are ours [KCC's] when any of our [KCC's] legal names are used and the gift is indeed the intent of the donor," and which instructs employees to keep donations made to "Kosair

Children's Hospital Foundation." A full accounting is required to determine whether KCC has accepted any donations that should be paid over to Norton pursuant to Section 6(C).

**H. KCC Has Intentionally Harmed Norton.**

**1. KCC And Mr. Coe Have Harassed Third Parties Associating With The Foundation.**

74. While KCC has attempted to increase its own fundraising numbers by encouraging the misconception that it operates KCH, KCC and Mr. Coe have also wrongfully interfered with KCH's direct fundraising entity, the Foundation.

75. On information and belief, in or around 2007, Mr. Coe forced a member of the Foundation's Board, Chase Kirkwood, to resign. Mr. Kirkwood was also an officer of United Mail, LLC, a direct marketing company. Mr. Coe told Mr. Kirkwood that if he did not resign from the Foundation's Board, then Mr. Kirkwood's business would lose its contract with KCC. In response to this threat Mr. Kirkwood, resigned from the Foundation's Board. He explained to others at the Foundation that his company could not afford to lose KCC's business.

76. On information and belief, Mr. Coe has also intimidated third parties from doing or attempting to do business with the Foundation. For example, in or around 2012, nonprofit organization Brooklawn Child & Family Services ("Brooklawn") licensed the rights to an annual antique car show fundraising event, the "Concours d'Elegance Car Show," to the Foundation. Upon hearing of this positive development for the Foundation, Mr. Coe berated Mary Kate O'Leary, the Executive Director of Brooklawn, and indicated that Brooklawn would not receive any future grants from KCC due to its dealings with the Foundation.

77. KCC's other members have also interfered with the Foundation's fund-raising efforts for KCH. In one such instance, while a new pediatric ambulance, which was funded by Speedway LLC and the Foundation, was filling up its gas tank at a Speedway gas station, a KCC

member noticed that the rear side of the ambulance recognized Speedway LLC and the Foundation. The KCC member kicked the vehicle, publicly berated the KCH ambulance driver, and then berated the Speedway convenience store clerk, all because he was angry that the signage mentioned Speedway rather than KCC. The Speedway district manager then followed this KCC representative to KCC's offices to express his concern over the improper public treatment of his staff member.

**2. KCC Has Intentionally Spread False Information About Norton's Financial Practices.**

78. In May 2014, KCC further escalated attempts to avoid its obligations to Norton by filing this lawsuit and a complaint riddled with unfounded allegations about Norton's financial practices. On and subsequent to May 9, 2014, KCC has further sought to damage Norton and KCH by broadcasting its false and unsubstantiated accusations about Norton's financial practices to the Office of the Attorney General and to media outlets. As a direct result of KCC's false statements:

- A news outlet reported: "[KCC's counsel] says some of the monies have gone into Norton's general fund and have been used to pay bonuses to executives." The report then quoted KCC's counsel as saying, "We believe that rather than our funds going into a big pot – and Norton will not deny that our funds don't go directly to the hospital, but instead they go into the overall Norton pot – and from there they pay big salaries, they do other things. . . . We want the money to stay at the hospital."
- Another news outlet quoted KCC's counsel as saying: "We don't want the money to go into this pool from which Norton pays bonuses. We want it to go to the hospital, so we can get the highest quality equipment there and specialists that might enhance the hospital. That's what we want[.]"
- Another news outlet reported: "Kosair Charities, which has given more than \$6 million annually to Kosair Children's Hospital, is accusing parent company Norton Healthcare of misusing some of that money to enhance its bottom line and "line the pockets" of its executives. In a lawsuit filed Thursday in Jefferson County Circuit Court, the charity says Norton has refused to provide an accounting of how Kosair's donations are spent. 'We have an obligation to the

kids and our donors to make sure the money is being used to help children,' said Randy Coe, president of Kosair Charities, which is the hospital's largest donor. 'We don't want our money to go into the Norton pot.' The suit says that Norton applies Kosair donations to pay what the charity's lawyer . . . calls 'rack rates – the rates nobody pays' for indigent patients, rather than the actual costs, or the lower rates negotiated by insurers and the government."

79. These statements made by KCC, and its representatives, were knowingly false, misleading and defamatory.

### **Causes of Action**

#### **Count I**

##### **(Norton against KCC: Breach of the Affiliation Agreement)**

80. Norton adopts and realleges the allegations contained in Paragraphs 1 through 79 above as if fully set forth herein.

81. The Affiliation Agreement is a valid and enforceable contract.

82. Norton fully performed and complied with all provisions of the Affiliation Agreement.

83. KCC breached Section 2 of the Affiliation Agreement by failing to make the annual support payment of \$5,181,024 that was due on November 15, 2013, and the annual support payment of \$5,340,600 that was due on November 15, 2014.

84. The Affiliation Agreement contains a covenant of good faith and fair dealing that is implied by Kentucky law. In addition to the express breach of contract described above, KCC has breached the implied covenant of good faith and fair dealing contained in the Affiliation Agreement as set forth above, including by: (a) falsely publishing to third parties that Norton has improperly used KCC's funds; (b) deterring third parties from donating to, working with, or otherwise associating with Norton and the Foundation; (c) intentionally misleading third parties to believe that KCC operates KCH; (d) failing to implement financial controls to ensure that

donations intended for KCH are so directed; (e) diverting to U of L funds owed to Norton; and (f) soliciting donations from the public based on false representations that such monies would be paid to Norton.

85. As a direct and proximate result of KCC's breaches, Norton has suffered damages in an amount to be determined at trial, which include the amounts due and owing under the Affiliation Agreement and damage to its and KCH's reputation, plus interest and attorneys' fees.

86. Norton also seeks an accounting of KCC to determine whether KCC has accepted any donations that should have been paid to Norton pursuant to Section 6 of the Affiliation Agreement.

## **Count II**

### **(Norton against KCC: Breach of the Special Projects Funding Agreement)**

87. Norton adopts and realleges the allegations contained in Paragraphs 1 through 86 above as if fully set forth herein.

88. The Special Projects Funding Agreement is a valid and enforceable contract.

89. Norton fully performed and complied with all provisions of the Special Projects Funding Agreement.

90. KCC breached Section 1(B) of the Special Projects Funding Agreement by failing to make the annual payment of \$500,000 that was due on April 15, 2014.

91. The Special Projects Funding Agreement contains a covenant of good faith and fair dealing that is implied by Kentucky law. In addition to the express breach of contract described above, KCC has breached the implied covenant of good faith and fair dealing contained in the Special Projects Funding Agreement as set forth above, including by: (a) falsely publishing to third parties that Norton has improperly used KCC's funds; (b) deterring third parties from donating to, working with, or otherwise associating with Norton and the



Foundation; (c) intentionally misleading third parties to believe that KCC operates KCH; (d) failing to implement financial controls to ensure that donations intended for KCH are so directed; (e) diverting to U of L funds owed to Norton; and (f) soliciting donations from the public based on false representations that such monies would be paid to Norton.

92. As a direct and proximate result of KCC's breaches, Norton has suffered damages in an amount to be determined at trial, which include the amounts due and owing under the Special Projects Funding Agreement and damage to its and KCH's reputation, plus interest and attorneys' fees.

### **Count III**

#### **(Norton against KCC: Breach of the Additional Projects Funding Agreement)**

93. Norton adopts and realleges the allegations contained in Paragraphs 1 through 92 above as if fully set forth herein.

94. The Additional Projects Funding Agreement is a valid and enforceable contract.

95. Norton fully performed and complied with all provisions of the Additional Projects Funding Agreement.

96. KCC breached Section 1(A) of the Additional Projects Funding Agreement by failing to make the annual payment of \$500,000 that was due on April 30, 2014.

97. The Additional Projects Funding Agreement contains a covenant of good faith and fair dealing that is implied by Kentucky law. In addition to the express breach of contract described above, KCC has breached the implied covenant of good faith and fair dealing contained in the Additional Projects Funding Agreement as set forth above, including by: (a) falsely publishing to third parties that Norton has improperly used KCC's funds; (b) deterring third parties from donating to, working with, or otherwise associating with Norton and the Foundation; (c) intentionally misleading third parties to believe that KCC operates KCH; (d)

failing to implement financial controls to ensure that donations intended for KCH are so directed; (e) diverting to U of L funds owed to Norton; and (f) soliciting donations from the public based on false representations that such monies would be paid to Norton.

98. As a direct and proximate result of KCC's breaches, Norton has suffered damages in an amount to be determined at trial, which include the amounts due and owing under the Additional Projects Funding Agreement and damage to its and KCH's reputation, plus interest and attorneys' fees.

#### **Count IV**

##### **(Norton against KCC: Breach of Fiduciary Duty)**

99. Norton adopts and realleges the allegations contained in Paragraphs 1 through 98 above as if fully set forth herein.

100. KCC owes Norton fiduciary duties by reason of, among other things: (a) the trust and confidence that Norton has reposed in KCC, including as demonstrated by the authority conferred upon KCC's representatives who have served as members of Norton's Board of Trustees and Finance Committee; (b) KCC's undertaking to act primarily for the benefit of Norton and KCH by collecting public charitable donations intended for Norton and KCH; and (c) KCC holding itself out to the public and third parties as responsible for the operation and success of KCH.

101. KCC has breached its fiduciary duties to Norton as set forth above, including by: (a) falsely publishing to third parties that Norton has improperly used KCC's funds; (b) deterring third parties from donating to, working with, or otherwise associating with Norton and the Foundation; (c) intentionally misleading third parties to believe that KCC operates KCH; (d) failing to implement financial controls to ensure that donations intended for KCH are so directed;

(e) diverting to U of L funds owed to Norton; and (f) soliciting donations from the public based on false representations that such monies would be paid to Norton.

102. As a direct and proximate result of KCC's breaches of its fiduciary duties, Norton has suffered significant damages including damage to its reputation and the reputation of KCH.

103. By reason of KCC's willful and consciously wrongful conduct, Norton is entitled to compensatory and punitive damages in an amount in excess of the jurisdictional minimum of this Court.

### **Count V**

#### **(Norton against Mr. Coe: Breach of Fiduciary Duty and/or Aiding and Abetting KCC's Breach of Fiduciary Duty)**

104. Norton adopts and realleges the allegations contained in Paragraphs 1 through 103 above as if fully set forth herein.

105. Mr. Coe knowingly provided substantial assistance and encouragement to, and otherwise participated in and aided and abetted, KCC's breaches of fiduciary duties to Norton as set forth above, including by: (a) falsely publishing to third parties that Norton has improperly used KCC's funds; (b) publicly maligning KCH; and (c) knowingly deterring third parties from donating to, working with, or otherwise associating with Norton's fundraising arm for KCH, the Foundation.

106. As a direct and proximate result of Mr. Coe's participation in KCC's breaches of fiduciary duty and as a direct and proximate result of Mr. Coe's aiding and abetting KCC's breaches of fiduciary duty, Norton has suffered significant damages including damage to its reputation and the reputation of KCH.

107. By reason of Mr. Coe's willful and consciously wrongful conduct, Norton is entitled to compensatory and punitive damages in an amount in excess of the jurisdictional minimum of this Court.

**Count VI**

**(Norton and the Foundation against KCC:  
Unlawful Business Practice, KRS §§ 367.170, 367.667, 446.070)**

108. Norton and the Foundation adopt and reallege the allegations contained in Paragraphs 1 through 107 above as if fully set forth herein. Norton and the Foundation bring this claim in response to KCC's claim under the same statutes, and at a minimum, ask that the Court treat both claims consistently.

109. Since November 2013, KCC has solicited charitable contributions based on false representations that its solicitations were for or on behalf of the Foundation or KCH, using KCH's name, and otherwise representing that it is current on its obligations to Norton and that a portion of the contributions received would be donated to the Foundation or KCH. These solicitations would tend to confuse or mislead solicited persons to believe that KCC was affiliated with KCH and that a portion of the donations received by KCC would be donated to the Foundation or KCH.

110. In fact, KCC was not current on its obligations to Norton at the time of these representations and had no intention of donating any portion of the contributions to KCH. KCC's representations thus were false and were not authorized by Norton.

111. Norton, as operator of KCH, and the Foundation were injured by KCC's statements. If not for KCC's unauthorized statements, KCH would have received, through the Foundation, donations that KCC has collected.

112. As a direct and proximate result of KCC's fraudulent fundraising statements, Norton has suffered damages in an amount to be determined at trial.

#### **Count VII**

##### **(Norton and the Foundation against KCC: Intentional Interference with Gift)**

113. Norton and the Foundation adopt and reallege the allegations contained in Paragraphs 1 through 112 above as if fully set forth herein.

114. Since at least November 2013, KCC has solicited charitable contributions based on intentionally false representations that gifts it collected would benefit the Foundation and KCH. KCC failed to disclose that it had breached its financial obligations to Norton and that it had no intention of paying any monies to Norton.

115. KCC has retained or sought to retain those gifts for itself, including by filing meritless claims against Norton and placing funds in escrow with the Court.

116. The Foundation and/or Norton, as the operator of KCH, was the intended recipient of the gifts and has been deprived of their benefit by KCC.

117. As a direct and proximate result of KCC's tortious interference, Norton and the Foundation suffered damages in an amount to be determined at trial.

#### **Count VIII**

##### **(Norton and the Foundation against KCC: Unjust Enrichment)**

118. Norton and the Foundation adopt and reallege the allegations contained in Paragraphs 1 through 117 above as if fully set forth herein.

119. Since at least November 2013, KCC has solicited charitable contributions based on intentionally false representations that donations it collected would benefit the Foundation and KCH. KCC failed to disclose that it had breached its financial obligations to Norton and that it had no intention of paying any monies to Norton.

120. KCC has been unjustly enriched because it has retained those gifts.

121. Norton, as operator of KCH, has been harmed because if not for KCC's interference, these funds would have been passed by donative transfer to KCH through Norton and/or the Foundation.

122. As a direct and proximate result of KCC's intentional misconduct, Norton has suffered damages in an amount to be determined at trial.

### **Count IX**

#### **(Norton against Shriners International, Inc., Kosair Shrine Temple, and KCC: Declaratory Relief)**

123. Norton adopts and realleges the allegations contained in Paragraphs 1 through 122 above as if fully set forth herein.

124. Shriners International and Kosair Shrine Temple benefit from the agreements between KCC and Norton, although they are not a party to those agreements. Members of the community are led to believe that KCH is a hospital that is owned and/or operated by Kosair Shrine Temple and its members, as well as by its charitable arm KCC.

125. As a result of the agreements between KCC and Norton, Kosair Shrine Temple, which is a local chapter and/or division of the Shriners International, and Norton have formed a special relationship, pursuant to which members of Kosair Shrine Temple have publicly supported KCH and have organized events involving KCH.

126. Norton seeks a determination that Kosair Shrine Temple and Shriners International have no rights as a third-party beneficiary or otherwise under the contracts between Norton and KCC.

127. Norton seeks a determination that KCC and Shriners International have no right to claim that they own, operate or provide financial support necessary for the operation of KCH.

**Prayer for Relief**

WHEREFORE, Norton and the Foundation respectfully request that this Court enter judgment in their favor and grant them the following relief:

1. A declaration of the parties' rights as set forth above;
2. An award of damages in an amount to be proven at trial;
3. An accounting;
4. Equitable restitution;
5. Norton's attorneys' fees and costs;
6. Prejudgment interest compounded annually;
7. Punitive damages against KCC and Mr. Coe;
8. All other relief to which Norton may be entitled.

Respectfully submitted,

David J. Bradford by DBT

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*Counsel for Defendants and Counterclaim-Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served on December 30, 2014 upon:

**By Electronic Mail:**

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\_\_\_\_\_  
*Counsel for Defendants and Counterclaim-Plaintiffs*



# EXHIBIT A

## SECOND RESTATED AGREEMENT OF AFFILIATION

THIS SECOND RESTATED AGREEMENT OF AFFILIATION (the "Agreement") is entered into and effective the 5th day of December, 2006, by and between Norton Healthcare, Inc., a Kentucky nonprofit corporation ("Norton Healthcare"), and Kosair Charities Committee, Inc., a Kentucky nonprofit corporation ("KCC").

WHEREAS, Norton Healthcare is the parent corporation which owns Norton Hospitals, Inc. ("Norton Hospitals"); which, in turn, currently owns and operates four hospitals in Jefferson County, Kentucky, including Norton Hospital, Kosair Children's Hospital, Norton Audubon Hospital, and Norton Suburban Hospital;

WHEREAS, a new hospital, Norton Old Brownsboro, located in the Old Brownsboro Crossing development in northeast Jefferson County, is being constructed and is scheduled to open in 2009;

WHEREAS, Norton Healthcare and KCC have a long history of working together to provide the citizens of their community with efficient access to quality healthcare services;

WHEREAS, in October 1980 KCC and Norton-Children's Hospitals, Inc., entered into a Memorandum of Agreement for the purpose of serving "as a working guideline for the planning and development of an expanded pediatric center to consolidate the parties' health care services, education and research programs for infants and children";

WHEREAS, the Memorandum of Agreement was subsequently replaced by an Agreement of Affiliation dated April 30, 1981 which was later replaced by a Restated Agreement of Affiliation dated September 13, 1982. The Restated Agreement of Affiliation was entered into for purposes of consolidating the hospital operations of Kosair Crippled Children's Hospital and Norton Children's Hospital;

WHEREAS, the Restated Agreement of Affiliation was first amended on or about June 15, 1983 to establish NKC, Inc. (Norton's predecessor) as the parent holding corporation of Norton Hospital, Inc. and Kosair Children's Hospital, Inc., NKC Management, Inc., Norton Properties, Inc. and NKC Services, Inc.;

WHEREAS, on or about May 24, 1984, the parties (or their predecessors) entered into the Second Amendment to the Restated Agreement of Affiliation wherein they agreed to a mechanism governing the disposition of undesignated funds or other property bequeathed or devised to, or left in trust for the benefit of "Kosair Children's Hospital";

WHEREAS, on or about June 14, 1989, the parties (or their predecessors) entered into the Third Amendment to the Restated Agreement of Affiliation wherein the parties agreed to amend the agreement so that NKC could implement restructuring plans in its efforts to combine with Methodist-Evangelical Hospital, Inc. to form Alliant Healthcare, Inc.;

WHEREAS, on July 13, 2000, the parties (or their predecessors) entered into the Fourth Amendment to the Restated Agreement of Affiliation wherein KCC agreed to delete the separate medical staff provision of the agreement which permitted Norton to fully integrate its medical staff; and,

WHEREAS, the parties now desire to again restate their affiliation in the manner set forth herein and all prior understandings or agreements concerning the subject matter of this Agreement, including the Restated Agreement of Affiliation and all four amendments thereto, shall be superseded by this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises of the parties herein, it is mutually agreed as follows:

1. Commitment and Purpose. Through this affiliation, Norton Healthcare and KCC intend to continue and further develop the long-standing relationship between them wherein KCC will provide certain significant financial support of Kosair Children's Hospital ("KCH") and its pediatric services while Norton Healthcare will provide KCC with certain recognition, naming rights and sponsorship opportunities associated with KCH. This affiliation will provide both parties with greater access and resources to help further their respective charitable missions.

2. KCC Financial Support and Disbursement.

A. Annual Support Funding. KCC agrees to provide Norton Healthcare the following annual support funding.

[1] Notwithstanding any other provision of this Agreement to the contrary, the parties agree that for the year 2006, the amount of annual support funding provided by KCC to Norton Healthcare shall be calculated pursuant to the Restated Agreement of Affiliation and shall be paid to Norton Healthcare in 2006.

[2] Except as provided in Section 2(A)(1), during the term of this Agreement KCC shall provide annual support funding in the amounts and for the years set forth in the schedule attached hereto as Exhibit A, totaling \$116,998,390.00. The annual support payments shall be made by KCC to Norton Healthcare on or before November 15 of each year. The parties acknowledge and agree that the first support payment pursuant to this Section 2(A)(2) shall be made on or before November 15, 2007 and that the last support payment shall be made on or before November 15, 2026. The funding provided pursuant to this Section 2(A)(2) shall be used to further and support the mission and programs of KCH as determined by Norton Healthcare and KCH.

[3] In cooperation with KCC, Norton Healthcare shall coordinate and host an annual news conference to be held at a date and time agreed upon by the parties. The news conference will, among other things, provide KCC an opportunity to present the annual support payment to Norton Healthcare by way of a check presentation ceremony. The news conference will generally coincide with KCC's annual support payment to Norton Healthcare as set forth above. Norton Healthcare shall further, in cooperation with KCC, coordinate a press release to the media regarding KCC's support payment and the check presentation ceremony.

B. MRI Equipment Initiative Funding. KCC agrees to provide Norton Healthcare certain funding for the acquisition of Magnetic Resonance Imaging equipment and related supplies pursuant to a Magnetic Resonance Imaging Funding Agreement executed contemporaneously with the execution of this Agreement.

C. Special Projects Funding. KCC agrees to provide Norton Healthcare certain funding for special projects pursuant to a Special Projects Funding Agreement executed contemporaneously with the execution of this Agreement.

D. Permitted Uses. All funds disbursed to Norton Healthcare by KCC shall be expended by Norton Healthcare at KCH or in association with KCH's delivery of pediatric healthcare services in a manner supportive of the mission of KCH. Such funds shall be expended by Norton Healthcare (i) solely for charitable, scientific or educational purposes in a manner consistent with Norton Healthcare's status as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; and (ii) in a manner that complies with all applicable laws, including all limitations imposed on Section 501(c)(3) organizations. The funds shall not be expended, directly or indirectly, (i) to carry on propaganda, or otherwise attempt to influence legislation; (ii) to influence the outcome of a public election or to carry on a voter registration drive; (iii) for any grant to an individual for travel, study or other similar purposes by the individual; or (iv) for any grant to another organization.

3. Governance. Consistent with the *Amended and Restated Bylaws of Norton Healthcare, Inc.*, KCC, so long as this Agreement is in effect, shall have the opportunity to nominate one (1) person to be an *ex officio* member of the Norton Healthcare Board of Trustees, with voting rights. KCC understands and agrees that the term of office for Norton Healthcare Board of Trustees' members is three (3) years. KCC may remove their *ex officio* trustee at any time. Any vacancy on the Norton Healthcare Board of Trustees by the KCC representative, whether voluntary or involuntary, shall be filled by KCC's nomination of another individual to fill the open *ex officio* seat. Norton Healthcare shall not be required to approve the individual nominated by KCC to the Norton Healthcare Board of Trustees. In such case, KCC shall nominate another individual for election to the open position until the position is filled. KCC understands and agrees that its representative to the Norton Healthcare Board of Trustees will be subject to and expected to follow all applicable bylaws, rules, regulations and procedures applicable to other Board members and will further be expected to participate in and assume such roles and responsibilities as are expected of other Board members. The nomination and appointment of a KCC representative to be an *ex officio* member of the Norton Healthcare Board of Trustees shall at all times be consistent with the then current version of the bylaws of Norton Healthcare and the parties agree to work together so that the *Amended and Restated Bylaws of Norton Healthcare, Inc.* are consistent with this Agreement and are interpreted consistent with this Agreement.

4. Liaison Committee.

A. There shall be established a Kosair Children's Hospital Liaison Committee ("Liaison Committee") with representatives as follows:

[1] For KCC:

[a] KCC Executive Director.

[b] Four officers of KCC or such designees as appointed by the board of directors of KCC.

[2] Norton Healthcare:

[a] President of KCH.

[b] President of the Medical Staff of KCH.

[c] President of Norton Healthcare or such designee as the President of Norton Healthcare may appoint.

[d] One senior executive of KCH or such designee as Norton Healthcare may appoint.

[3] Such other individuals as KCC and Norton Healthcare may agree to include, from time to time.

B. The Liaison Committee shall provide a forum for regular communications between the parties and provide each an opportunity to consider and address matters affecting both parties which merit the attention of senior management including, but not limited to, the following:

[1] Current and planned services and programmatic initiatives at KCH;  
and,

[2] Ways the parties can work together to better serve the patients of KCH and related facilities.

C. The chair of the Liaison Committee shall be rotated on an annual basis between Norton Healthcare and KCC.

D. The Liaison Committee shall meet no less often than semi-annually to facilitate well-informed and high level quality communication between the parties.

E. The parties agree that the Liaison Committee created herein is intended to serve a similar purpose to the Advisory Board for Kosair Children's Hospital as set forth in Article III of the *Amended and Restated Bylaws of Norton Healthcare, Inc.* In an effort to avoid the duplication of efforts and resources, Norton Healthcare and KCC agree to work together to see that the Advisory Board for Kosair Children's Hospital is dissolved in a manner consistent with the *Amended and Restated Bylaws of Norton Healthcare, Inc.*

5. KCH "Friends" Affinity Group. Norton Healthcare agrees to consider developing one or more forums which could bring together various organizations which support and/or provide funding for the programs, initiatives or services provided by KCH. Such participating support organizations could include KCC, Children's Hospital Foundation, Festival of Trees and Lights, TWIGS, and the WHAS Crusade for Children. The purpose of any such forum would be to provide information about KCH and to provide opportunities for communications to, by and between such organizations. The decision to host such a forum as well as all aspects of its planning, content and execution shall be left to the sole discretion of Norton Healthcare.

6. Testamentary and Other Gifts. The parties agree that testamentary or other gifts made to or for the benefit of KCH shall be disposed of in the following manner:

A. For any gift, devise, bequest, or trust wherein the applicable gift or estate documents are dated prior to October 1, 1981, and the gift, devise, bequest, or trust was made, or will be made, to or for the benefit of Kosair, Kosair Charities, Kosair Charities Committee, Kosair Crippled Children('s) Hospital, the Shriner(s), the Shriner(s) of Louisville, or the Imperial Shrine of Louisville, then the gift, devise, bequest, or trust shall be paid or provided to KCC to be used as provided by the donor, testator or testatrix.

B. For any gift, devise, bequest, or trust wherein the applicable gift or estate documents are dated on or after October 1, 1981, and the gift, devise, bequest, or trust was made, or will be made, to or for the benefit of the Kosair Charities Committee, Kosair Charities, any Shriner(s) Hospital of Louisville, Kentucky, Kosair Crippled Children('s) Hospital, Crippled Children('s) Hospital of Louisville, Crippled Hospital or any other entity referencing the word "Kosair" which does not reference a hospital, healthcare facility, or healthcare service of any kind, then the gift, devise, bequest, or trust shall be paid or provided to KCC to be used as provided by the donor, testator or testatrix.

C. For any gift, devise, bequest, or trust wherein the applicable gift or estate documents are dated on or after October 1, 1981, and the gift, devise, bequest, or trust was made, or will be made, to or for the benefit of:

[1] any hospital, healthcare facility or service not specifically identified in Sections 6(A) or (B); or,

[2] any entity wherein the word "Kosair" is associated with a hospital, healthcare facility or healthcare service of any kind (including Kosair Children's Hospital and Kosair Hospital) unless the gift, devise, bequest or trust utilizes the word "Kosair" and KCC actually owned and operated the specific hospital or healthcare facility or provided the specific referenced service or program set forth in the documents at the time of the gift, devise, bequest or trust); or,

[3] where it is the intention of the donor, testator or testatrix that the gift, devise, bequest, or trust is for Kosair Children's Hospital,

then, the gift, devise, bequest, or trust shall be paid or provided to Norton Healthcare for the sole use and benefit of KCH as provided by the donor, testator or testatrix.

D. Notwithstanding any other provision of this Agreement to the contrary, the parties agree that, as of the date that this Agreement is fully executed, any and all funds remaining in KCC's restricted "Kosair Children's Hospital Fund," as such was contemplated in the Restated Agreement of Affiliation, as amended, shall revert to and remain the separate property of KCC. KCC shall have no further obligation to pay any income derived therefrom to Norton Healthcare or KCH but it will be used in a manner consistent with the intention of the donor, testator or testatrix.

E. The parties agree that any dispute between them arising from a gift, devise, bequest, or trust shall first be submitted for resolution to the Liaison Committee identified in Section 4 above. In the event that the Liaison Committee cannot reach a unanimous decision as to how the respective gift, devise, bequest, or trust shall be directed, the parties agree that any such dispute shall be resolved by binding arbitration in the manner described below. All such disputes shall be resolved by arbitration in accordance with the rules of the American Arbitration Association before an individual arbitrator selected in accordance with those rules. The arbitrator shall apply Kentucky law, without regard to its choice of laws principles. Each party shall submit to any court of competent jurisdiction for purposes of the enforcement of any award, order or judgment. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction. Each party shall have the right to be represented by counsel. Such arbitration shall take place in Louisville, Kentucky, at a location agreed by the parties. All costs incurred for a hearing room shall be shared equally between the parties. The arbitrator shall be paid a reasonable fee plus expenses which fees and expenses shall be shared equally by the parties. Notwithstanding anything in the foregoing to the contrary, the parties agree that: (1) any resolution of the above matters, whether by the Liaison Committee or through arbitration, shall be determined on the basis of the donor, testator or testatrix's intent; (2) the applicable gift or estate documents shall be considered the primary source to determine the donor, testator or testatrix's intent; and, (3) if intent cannot be determined solely on the basis of the respective gift or estate documents, the Liaison Committee or arbitrator may utilize such other documents or evidence as may be necessary to determine such intent.

7. Hospital Name and Use. Currently named "Kosair Children's Hospital," the parties agree that for the term of this Agreement, Norton Healthcare's pediatric hospital shall use the word "Kosair" as the first word of its institutional name, as may be changed from time to time. Norton Healthcare and KCH may use the Kosair name in association with and when referring to KCH, its programs, activities and services. Otherwise, Norton Healthcare shall not use the name "Kosair" in any manner without the prior written consent of KCC, which consent shall not be unreasonably withheld. Norton Healthcare and KCH agree that in those instances where either Norton Healthcare or KCH is requested to formally approve a fund-raising event by a third party to benefit KCH, Norton Healthcare or KCH shall require such third-party to specify in its promotional material that Norton Healthcare or KCH is the intended beneficiary of the fund-raising event rather than its sponsor or organizer. The parties agree that the term "third-party" as used in the immediately preceding sentence shall not include Norton Healthcare, KCH or any corporate affiliate of Norton Healthcare or KCH. Except as provided for in this Section (7), this Agreement shall not be construed as a license from one party to the other to utilize a party's trademarks, servicemarks, copyrights, patents or other intellectual property.

8. Patient Accounts and Charity Care. During the term of this Agreement, KCH shall fulfill requests by KCC to provide charity care to specific patients or to "write-off" specific patient accounts for charitable purposes. Such charity care requests shall be submitted to KCH in writing and shall be subject to Norton Healthcare and KCH's charity care policies as well as all applicable legal requirements.

9. Norton Healthcare Combined Giving Campaign. Norton Healthcare agrees to include KCC as one of the charities to which Norton Healthcare employees can contribute in connection with Norton Healthcare's Combined Giving Campaign. KCC shall be afforded the same opportunity as are other charities to participate in the Combined Giving Campaign and Norton Healthcare employees will be offered the opportunity to make contributions to KCC in the same manner as to other charities (i.e. through payroll deduction or other payment method).

10. Recognition, Tributes and Dedications.

A. Norton Healthcare agrees that photographs of the then current KCC Board of Directors as well as the then current KCC Executive Director shall be displayed in the lobby of KCH or at such other location within KCH as is agreed upon by the parties. The parties agree that the photographs shall be provided to Norton Healthcare by KCC at KCC's sole expense and that the display shall aesthetically fit within the area surrounding their placement.

B. Norton Healthcare agrees that photographs of the KCC "Funsters" shall be displayed at such a location within KCH as is agreed upon by the parties. The parties agree that the photographs shall be provided to Norton Healthcare by KCC at KCC's sole expense and that the display shall aesthetically fit within the area surrounding their placement.

C. Norton Healthcare agrees to provide KCC the exclusive use of two (2) glass display cases located at the rear entrance of KCH. The contents of the display cases shall be subject to the continuing approval of Norton Healthcare and KCH, which shall not be unreasonably withheld.

D. For the term of this Agreement, Norton Healthcare agrees that the Shriner's statue currently located at the Chestnut Street entrance to KCH shall remain at that location unless both parties agree to relocate the statue to another location. KCC agrees to promptly reimburse Norton Healthcare or KCH for the cost of maintaining or repairing the statue, if any. In the event that Norton Healthcare opens pediatric facilities at a location(s) other than the current KCH downtown campus, Norton Healthcare agrees to display either a statue or other appropriate symbol of the Kosair Shrine/Kosair Charities at such location. In such case, the specific statue or symbol, as well as its placement, shall be agreed upon by both parties and shall be paid for and maintained by KCC. At all times, such statues or symbols shall aesthetically fit within the area surrounding their placement.

11. Term of Agreement.

A. Initial Term. The term of this Agreement shall be twenty (20) years beginning on the 1st day of January, 2007 and continuing through the 31<sup>st</sup> day of December, 2026.



B. Termination.

[1] Either Norton Healthcare or KCC may terminate this Agreement for cause in the event of a material breach by the other party. In such case, the terminating party must give written notice to the other party specifying in reasonable detail the claimed breach. The other party shall have one-hundred twenty (120) days following receipt of such notice in which to cure the breach. If the claimed breach is not so cured within such period, the non-breaching party shall have the right, but not the obligation, to immediately terminate this Agreement.

[2] This Agreement may be terminated at any time upon the mutual written agreement of Norton Healthcare and KCC.

[3] This Agreement may be terminated by KCC, effective immediately if, [i] as a result of a consolidation or merger, there is a change in control of Norton Healthcare materially affecting the composition and number of the Norton Healthcare Board of Trustees such that a majority of the Board members are no longer considered to be representatives of the community as defined by IRS requirements for 501(c)(3) corporations; or, [ii] Norton Healthcare is no longer a nonprofit corporation; or, [iii] KCH fails to maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Medicare or Medicaid as an accredited provider of healthcare services. No support funding payments, as contemplated by this Agreement, shall be due to Norton Healthcare after such termination is effective. In the event KCC terminates this Agreement under this Section B[3], KCC shall only be obligated to make support funding payments and Norton Healthcare shall only be entitled to retain such payments through the effective date of termination.

12. Miscellaneous.

A. Parties in Interest; Assignment. All provisions of this Agreement will bind and inure to the benefit of the parties to this Agreement and their respective successors and assigns, whether so expressed or not. Neither party may, however, sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under this Agreement ("Transfer") to any other person or entity, without the prior written consent of the other party, except that Norton Healthcare may Transfer its rights and delegate its duties to [i] its wholly-owned subsidiary, [ii] a corporation which has succeeded to substantially all of its business and assets and has assumed in writing its obligations under this Agreement, or [iii] a corporation surviving a consolidation or merger to which Norton Healthcare is a party. Any attempted Transfer in violation of this Paragraph will be void. Any Transfer in accordance with the provisions of this Paragraph shall not relieve the transferor of its obligations hereunder or terminate the other party's rights or remedies with respect to those obligations.

B. Status of Parties. This Agreement will not be construed to constitute either party as an agent of the other party; to authorize or empower either party to assume or create any obligation or responsibility, express or implied, on behalf of the other party; or to authorize or empower either party to bind in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the other party.

C. Third Party Rights. This Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.

D. Entire Agreement; Amendment; Waiver. This Agreement sets forth the entire agreement of the parties with respect to the subject matter of this Agreement, supersedes all existing agreements or understandings between them concerning that subject matter, and may be modified or amended only by a written instrument signed by each party. Any party to this Agreement may in writing [i] extend the time for the performance of any obligations of any other party; [ii] waive any inaccuracies in representations and warranties by any other party; [iii] waive performance of any obligations by any other party; and [iv] waive the fulfillment of any condition that is precedent to the performance by the party of any of its obligations under this Agreement. No such waiver will be deemed to be continuing or to apply to any other instance or to constitute the waiver of any other term or condition of this Agreement in that or any other instance. The failure of a party to insist upon strict compliance with any provision of this Agreement on one or more occasions will not be considered a waiver and will not prevent that party from insisting upon strict compliance with that provision or any other provision of this Agreement.

E. Headings. The paragraph headings contained in this Agreement are inserted solely as a matter of convenience and will not affect in any way the construction or interpretation of the terms of this Agreement.

F. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Kentucky, without giving effect to its conflict of laws rules. The parties consent to the exclusive jurisdiction and venue of any state or federal court located within or closest to Louisville, Kentucky, and irrevocably agree that any actions relating to this Agreement shall be litigated in such courts, and the parties waive any objection they may have based on lack of personal jurisdiction, improper venue or forum non conveniens to the conduct of any proceeding in such court.

G. Severability. If any provision of this Agreement is held to be invalid, or unenforceable under the present or future laws effective during the term of this Agreement, the affected provision(s) shall be limited only to the extent necessary to bring it or them within the requirements of the law and, insofar as possible under the circumstances, to carry out the purposes of this Agreement. The other provisions of this Agreement shall remain in full force and effect, and the invalidity or unenforceability of any provision hereof shall not affect the validity and enforceability of the other provisions of this Agreement, nor the availability of all remedies in law or equity to the parties with respect to such other provisions.

H. Expenses. Each party to this Agreement will pay all costs, fees and expenses that the party may incur in connection with the negotiation, execution and delivery of this Agreement.

I. Notices. All notices, requests, consents and other communications under this Agreement must be in writing and must be [i] mailed by first class certified mail, [ii] sent by Federal Express, United States Express Mail or similar overnight delivery or courier service, or

[iii] delivered (in person, or by a facsimile transmission, telex or similar telecommunications equipment) to receipt, as follows:

If to Norton Healthcare: Norton Healthcare, Inc.  
Attention: President and Chief Executive Officer  
234 E. Gray Street, Suite 225  
Louisville, KY 40202-1903

If to KCC: Kosair Charities Committee, Inc.  
Attention: Executive Director  
982 Eastern Parkway, Suite 3  
Louisville, KY 40217-1568

or to another address of which the addressee has notified the sender in writing in accordance with this Section. Notices given by certified mail will be deemed given at the time of certification, and notices given by any other permitted means will be deemed given at the time of receipt of the notice.

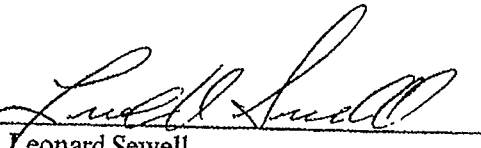
J. Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement.

K. Attachments. The attachments, if any, attached to this Agreement are a part of this Agreement and are incorporated by reference in their entirety as if fully set forth in this Agreement at the point where first mentioned.

L. Construction. Each party hereto hereby acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than against the other.

IN TESTIMONY WHEREOF, the parties hereto, by their duly authorized officers, have executed this Second Restated Agreement of Affiliation on the day and year first hereinabove written.

KOSAIR CHARITIES COMMITTEE, INC.      NORTON HEALTHCARE, INC.

By:   
Leonard Sewell

Its: President

Date: 12-4-06

By:   
Stephen A. Williams

Its: President and Chief Executive Officer

Date: 12-05-06

Exhibit A

Schedule of Payments From KCC to Norton Healthcare

Year	Annual Support <sup>1</sup>
2007	\$4,318,860
2008	\$4,451,881
2009	\$4,588,999
2010	\$4,730,340
2011	\$4,876,035
2012	\$5,026,217
2013	\$5,181,024
2014	\$5,340,600
2015	\$5,505,090
2016	\$5,674,647
2017	\$5,849,426
2018	\$6,029,588
2019	\$6,215,300
2020	\$6,406,731
2021	\$6,604,058
2022	\$6,807,463
2023	\$7,017,133
2024	\$7,233,261
2025	\$7,456,045
2026	\$7,685,691
Totals	\$116,998,390

<sup>1</sup> The annual support funding has been calculated based on a 2005 payment of \$4,189,814.00 indexed at 3.08%.

# EXHIBIT B

## SPECIAL PROJECTS FUNDING AGREEMENT

THIS SPECIAL PROJECTS FUNDING AGREEMENT (the "Agreement") is entered into and effective the 5<sup>th</sup> day of December, 2006, by and between Norton Healthcare, Inc., a Kentucky nonprofit corporation ("Norton Healthcare"), and Kosair Charities Committee, Inc., a Kentucky nonprofit corporation ("KCC").

WHEREAS, Norton Healthcare is the parent corporation which owns Norton Hospitals, Inc.; which, in turn, currently owns and operates several hospitals in Jefferson County, Kentucky, including Kosair Children's Hospital ("KCH");

WHEREAS, contemporaneously with the execution of this Agreement, the parties will execute a Second Restated Agreement of Affiliation between themselves memorializing their relationship and understandings; and,

WHEREAS, Norton Healthcare and KCC have a long history of working together to provide the citizens of their community with efficient access to quality healthcare services and now, with the intention of furthering this mission, KCC desires to provide significant financial support to Norton Healthcare for the funding of certain special projects, including capital items, equipment or special programmatic support initiatives ("Special Projects").

NOW, THEREFORE, in consideration of the premises and mutual promises of the parties herein, it is mutually agreed as follows:

1. KCC Special Projects Funding. KCC agrees to provide Norton Healthcare the following Special Projects funding.

A. Beginning in 2007 and annually thereafter for the remaining term of this Agreement, Norton Healthcare shall, by February 1<sup>st</sup> of each year, submit to KCC a Special Projects funding request. The Special Projects funding request shall be submitted in writing to KCC and shall identify no less than five (5) areas or items wherein funding is requested to further and support the mission and services of KCH, including capital items, equipment needs or special programmatic support initiatives.

B. KCC shall review Norton Healthcare's Special Projects funding request, select the specific projects that it will fund from those areas or items identified by Norton Healthcare in its funding request, and communicate its decision to Norton Healthcare by April 15 of that year. Although the decision to disburse funds for any specific Special Project(s) shall be left to the discretion of KCC, KCC nevertheless agrees to provide Special Projects funding to Norton Healthcare for the furtherance and support of KCH in the amount of not less than Five Hundred Thousand Dollars and no/100 (\$500,000.00) annually on or before April 15 of each year during the term of this Agreement.

2. Permitted Uses of Funds. Norton Healthcare agrees that all funds disbursed by KCC to Norton Healthcare pursuant to this Agreement will be used or allocated by Norton Healthcare consistent with its Special Projects funding request and as approved by KCC. Such funds shall be expended by Norton Healthcare (i) solely for charitable, scientific or educational purposes in a manner consistent with Norton Healthcare's status as a tax-exempt organization

pursuant to Section 501(c)(3) of the Internal Revenue Code; and (ii) in a manner that complies with all applicable laws, including all limitations imposed on Section 501(c)(3) organizations. The funds shall not be expended, directly or indirectly, (i) to carry on propaganda, or otherwise attempt to influence legislation; (ii) to influence the outcome of a public election or to carry on a voter registration drive; (iii) for any grant to an individual for travel, study or other similar purposes by the individual; or (iv) for any grant to another organization.

3. Gift Recognition. Norton Healthcare agrees to recognize KCC's Special Projects funding by providing a plaque or other appropriate means of recognition to KCC for providing the funding of the specific project, equipment, program or initiative, as the case may be. The method of recognition, message contained thereupon and placement of such item shall be agreed to by the parties, will be provided for the life of the respective project, equipment, program or initiative and shall be placed where it will aesthetically fit with the area surrounding its placement.

4. Term of Agreement.

A. Initial Term. The term of this Agreement shall be twenty (20) years beginning on the 1st day of January, 2007 and continuing through the 31st day of December, 2026.

B. Termination.

[1] Either Norton Healthcare or KCC may terminate this Agreement for cause in the event of a material breach by the other party. In such case, the terminating party must give written notice to the other party specifying in reasonable detail the claimed breach. The other party shall have one-hundred twenty (120) days following receipt of such notice in which to cure the breach. If the claimed breach is not so cured within such period, the non-breaching party shall have the right, but not the obligation, to immediately terminate this Agreement.

[2] This Agreement may be terminated at any time upon the mutual written agreement of Norton Healthcare and KCC.

[3] This Agreement may be terminated by KCC, effective immediately if, [i] as a result of a consolidation or merger, there is a change in control of Norton Healthcare materially affecting the composition and number of the Norton Healthcare Board of Trustees such that a majority of the Board members are no longer considered to be representatives of the community as defined by IRS requirements for 501(c)(3) corporations; or, [ii] Norton Healthcare is no longer a nonprofit corporation; or, [iii] KCH fails to maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Medicare or Medicaid as an accredited provider of healthcare services. No support funding payments, as contemplated by this Agreement, shall be due to Norton Healthcare after such termination is effective. In the event KCC terminates this Agreement under this Section B[3], KCC shall only be obligated to make support funding payments and Norton Healthcare shall only be entitled to retain such payments through the effective date of termination.

[4] This Agreement shall automatically terminate in the event that the parties' Second Restated Agreement of Affiliation dated December 5, 2006, executed concurrently with this Agreement, is terminated for any reason. If such termination should occur, the effective date of termination of this Agreement shall be the same as the effective date of termination of the Second Restated Agreement of Affiliation.

5. Parties in Interest; Assignment. All provisions of this Agreement will bind and inure to the benefit of the parties to this Agreement and their respective successors and assigns, whether so expressed or not. Neither party may, however, sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under this Agreement ("Transfer") to any other person or entity, without the prior written consent of the other party, except that Norton Healthcare may Transfer its rights and delegate its duties to [i] its wholly-owned subsidiary, [ii] a corporation which has succeeded to substantially all of its business and assets and has assumed in writing its obligations under this Agreement, or [iii] a corporation surviving a consolidation or merger to which Norton Healthcare is a party. Any attempted Transfer in violation of this Paragraph will be void. Any Transfer in accordance with the provisions of this Paragraph shall not relieve the transferor of its obligations hereunder or terminate the other party's rights or remedies with respect to those obligations.

6. Status of Parties. This Agreement will not be construed to constitute either party as an agent of the other party; to authorize or empower either party to assume or create any obligation or responsibility, express or implied, on behalf of the other party; or to authorize or empower either party to bind in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the other party.

7. Third Party Rights. This Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.

8. Entire Agreement; Amendment; Waiver. This Agreement sets forth the entire agreement of the parties with respect to the subject matter of this Agreement, supersedes all existing agreements or understandings between them concerning that subject matter, and may be modified or amended only by a written instrument signed by each party. Any party to this Agreement may in writing [i] extend the time for the performance of any obligations of any other party; [ii] waive any inaccuracies in representations and warranties by any other party; [iii] waive performance of any obligations by any other party; and [iv] waive the fulfillment of any condition that is precedent to the performance by the party of any of its obligations under this Agreement. No such waiver will be deemed to be continuing or to apply to any other instance or to constitute the waiver of any other term or condition of this Agreement in that or any other instance. The failure of a party to insist upon strict compliance with any provision of this Agreement on one or more occasions will not be considered a waiver and will not prevent that party from insisting upon strict compliance with that provision or any other provision of this Agreement.

9. Headings. The paragraph headings contained in this Agreement are inserted solely as a matter of convenience and will not affect in any way the construction or interpretation of the terms of this Agreement.



10. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Kentucky, without giving effect to its conflict of laws rules. The parties consent to the exclusive jurisdiction and venue of any state or federal court located within or closest to Louisville, Kentucky, and irrevocably agree that any actions relating to this Agreement shall be litigated in such courts, and the parties waive any objection they may have based on lack of personal jurisdiction, improper venue or forum non conveniens to the conduct of any proceeding in such court.

11. Severability. If any provision of this Agreement is held to be invalid, or unenforceable under the present or future laws effective during the term of this Agreement, the affected provision(s) shall be limited only to the extent necessary to bring it or them within the requirements of the law and, insofar as possible under the circumstances, to carry out the purposes of this Agreement. The other provisions of this Agreement shall remain in full force and effect, and the invalidity or unenforceability of any provision hereof shall not affect the validity and enforceability of the other provisions of this Agreement, nor the availability of all remedies in law or equity to the parties with respect to such other provisions.

12. Expenses. Each party to this Agreement will pay all costs, fees and expenses that the party may incur in connection with the negotiation, execution and delivery of this Agreement.

13. Notices. All notices, requests, consents and other communications under this Agreement must be in writing and must be [i] mailed by first class certified mail, [ii] sent by Federal Express, United States Express Mail or similar overnight delivery or courier service, or [iii] delivered (in person, or by a facsimile transmission, telex or similar telecommunications equipment) to receipt, as follows:

If to Norton Healthcare: Norton Healthcare, Inc.  
Attention: President and Chief Executive Officer  
234 E. Gray Street, Suite 225  
Louisville, KY 40202-1903

If to KCC: Kosair Charities Committee, Inc.  
Attention: Executive Director  
982 Eastern Parkway, Suite 3  
Louisville, KY 40217-1568

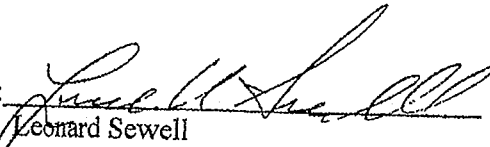
or to another address of which the addressee has notified the sender in writing in accordance with this Section. Notices given by certified mail will be deemed given at the time of certification, and notices given by any other permitted means will be deemed given at the time of receipt of the notice.

14. Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement.

15. Construction. Each party hereto hereby acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than against the other.

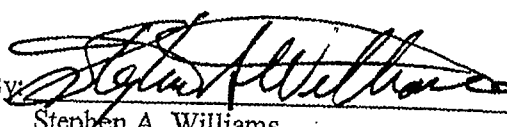
IN TESTIMONY WHEREOF, the parties hereto, by their duly authorized officers, have executed this Special Projects Funding Agreement on the day and year first hereinabove written.

KOSAIR CHARITIES COMMITTEE, INC.      NORTON HEALTHCARE, INC.

By:   
Leonard Sewell

Its: President

Date: 12-4-06

By:   
Stephen A. Williams

Its: President and Chief Executive Officer

Date: 12-05-06

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# EXHIBIT C

## ADDITIONAL PROJECTS FUNDING AGREEMENT

THIS ADDITIONAL PROJECTS FUNDING AGREEMENT (the "Agreement") is entered into and effective the 1<sup>st</sup> day of March, 2009, by and between Norton Healthcare, Inc., a Kentucky nonprofit corporation ("Norton Healthcare"), and Kosair Charities Committee, Inc., a Kentucky nonprofit corporation ("KCC").

WHEREAS, Norton Healthcare is the parent corporation which owns Norton Hospitals, Inc.; which, in turn, currently owns and operates several hospitals in Jefferson County, Kentucky, including Kosair Children's Hospital ("KCH");

WHEREAS, Norton Healthcare and KCH have previously executed a Second Restated Agreement of Affiliation, Special Projects Funding Agreement, and Magnetic Resonance Imaging Funding Agreement, each of which is dated December 5, 2006, which collectively memorializes their relationship and understandings; and

WHEREAS, Norton Healthcare and KCC have a long history of working together to provide the citizens of their community with efficient access to quality healthcare services and now, with the intention of furthering this mission, KCC desires to provide certain additional significant financial support to Norton Healthcare for the funding of certain additional projects, including capital items, equipment or special programmatic support initiatives ("Additional Projects") in the amounts and for the duration set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises of the parties herein, it is mutually agreed as follows:

1. KCC Additional Projects Funding. KCC agrees to provide Norton Healthcare the following Additional Projects funding.

A. Beginning in 2010 and annually thereafter for the remaining term of this Agreement, KCC shall provide Additional Projects funding to Norton Healthcare for the furtherance and in support of KCH in the amount of Five Hundred Thousand Dollars and No/100 (\$500,000.00) annually on or before April 30 of each year during the term of this Agreement, except for the final year of this Agreement (2026), when the amount shall be One Million Dollars and No/100 (\$1,000,000.00).

2. Permitted Uses of Funds. Norton Healthcare agrees that all funds disbursed by KCC to Norton Healthcare pursuant to this Agreement will be used or allocated by Norton Healthcare consistent with its Mission and strategic plan regarding the development, operation and expansion of KCH and further, shall be used to support new or existing pediatric services, programs, equipment, technology or facilities whether they are located at the downtown KCH campus or such other location or locations as may be determined appropriate by Norton Healthcare. Such funds shall be expended by Norton Healthcare (i) solely for charitable, scientific or educational purposes in a manner consistent with Norton Healthcare's status as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; and (ii) in a manner that complies with all applicable laws, including all limitations imposed on Section

501(c)(3) organizations. The funds shall not be expended, directly or indirectly, (i) to carry on propaganda, or otherwise attempt to influence legislation; (ii) to influence the outcome of a public election or to carry on a voter registration drive; (iii) for any grant to an individual for travel, study or other similar purposes by the individual; or (iv) for any grant to another organization.

3. Gift Recognition. Norton Healthcare agrees to recognize KCC's Additional Projects funding and their ongoing support of KCH by naming the Pediatric Facility currently under construction on Chamberlain Lane in Louisville, Kentucky as **Kosair Children's Medical Center Brownsboro** (or such other similar name as may be determined in the future by Norton Healthcare, except in any event, the first two words of the name shall be "Kosair Children's"). Norton Healthcare shall also recognize KCC by providing appropriate signage in the interior of the above facility or such other location where funds from this Agreement may be used. This signage shall reflect KCC's long standing and ongoing charitable commitment to Norton Healthcare, KCH and KCH's various programs, services and facilities. Additionally, Norton Healthcare agrees to erect a statue of "The Editorial Without Words" (or such other statue as may be mutually agreed to by KCC and Norton) to be provided by KCC to Norton Healthcare in an appropriately visible site on the grounds of the above facility within 180 days of either [i] the opening of the above facility or [ii] the date the statue is furnished by KCC to Norton Healthcare, whichever shall occur later. The designated naming of the above facility and the placement of the statue and signage shall remain in effect during the entire term of this Agreement. Norton Healthcare shall return the statue to KCC upon the termination or expiration of this Agreement. Norton Healthcare shall be responsible for the maintenance of the statue and shall bear the risk of its loss or damage during the term of this Agreement. Norton Healthcare agrees that the statue and the use of the names Kosair and Kosair Charities shall at all times remain the property of KCC and that this extension of the usage of the name "Kosair Children's" granted herein is restricted to the new Pediatric Facility except as set forth in the Second Restated Agreement of Affiliation between the parties dated December 5, 2006 or as may be agreed in future written agreements.

4. Term of Agreement.

A. Initial Term. The term of this Agreement shall be eighteen (18) years beginning on the 1st day of January, 2009 and continuing through the 31st day of December, 2026.

B. Termination.

[1] Either Norton Healthcare or KCC may terminate this Agreement for cause in the event of a material breach by the other party. In such case, the terminating party must give written notice to the other party specifying in reasonable detail the claimed breach. The other party shall have one hundred twenty (120) days following receipt of such notice in which to cure the breach. If the claimed breach is not so cured within such period, the non-breaching party shall have the right, but not the obligation, to immediately terminate this Agreement.

[2] This Agreement may be terminated at any time upon the mutual written agreement of Norton Healthcare and KCC.

[3] This Agreement may be terminated by KCC, effective immediately if, [i] as a result of a consolidation or merger, there is a change in control of Norton Healthcare materially affecting the composition and number of the Norton Healthcare Board of Trustees such that a majority of the Board members are no longer considered to be representatives of the community as defined by IRS requirements for 501(c)(3) corporations; or, [ii] Norton Healthcare is no longer a nonprofit corporation; or, [iii] KCH fails to maintain accreditation by the Joint Commission (JC) or Medicare or Medicaid as an accredited provider of healthcare services. No support funding payments, as contemplated by this Agreement, shall be due to Norton Healthcare after such termination is effective. In the event KCC terminates this Agreement under this Section 4.B[3], KCC shall only be obligated to make support funding payments and Norton Healthcare shall only be entitled to retain such payments though the effective date of termination.

[4] This Agreement shall automatically terminate in the event that the parties' Second Restated Agreement of Affiliation dated December 5, 2006, executed concurrently with this Agreement, is terminated for any reason. If such termination should occur, the effective date of termination of this Agreement shall be the same as the effective date of termination of the Second Restated Agreement of Affiliation.

5. Parties in Interest; Assignment. All provisions of this Agreement will bind and inure to the benefit of the parties to this Agreement and their respective successors and assigns, whether so expressed or not. Neither party may, however, sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under this Agreement ("Transfer") to any other person or entity, without the prior written consent of the other party, except that Norton Healthcare may Transfer its rights and delegate its duties to [i] its wholly-owned subsidiary, [ii] a corporation which has succeeded to substantially all of its business and assets and has assumed in writing its obligations under this Agreement, or [iii] a corporation surviving a consolidation or merger to which Norton Healthcare is a party. Any attempted Transfer in violation of this Paragraph will be void. Any Transfer in accordance with the provisions of this Paragraph shall not relieve the transferor of its obligations hereunder or terminate the other party's rights or remedies with respect to those obligations.

6. Status of Parties. This Agreement will not be construed to constitute either party as an agent of the other party; to authorize or empower either party to assume or create any obligation or responsibility, express or implied, on behalf of the other party; or to authorize or empower either party to bind in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the other party.

7. Third Party Rights. This Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.

8. Entire Agreement; Amendment; Waiver. This Agreement sets forth the entire agreement of the parties with respect to the subject matter of this Agreement, supersedes all existing agreements or understandings between them concerning that subject matter, and may be modified or amended only by a written instrument signed by each party. Any party to this Agreement may in writing [i] extend the time for the performance of any obligations of any other party; [ii] waive any inaccuracies in representations and warranties by any other party; [iii] waive performance of any obligations by any other party; and [iv] waive the fulfillment of any condition that is precedent to the performance by the party of any of its obligations under this Agreement. No such waiver will be deemed to be continuing or to apply to any other instance or to constitute the waiver of any other term or condition of this Agreement in that or any other instance. The failure of a party to insist upon strict compliance with any provision of this Agreement on one or more occasions will not be considered a waiver and will not prevent that party from insisting upon strict compliance with that provision or any other provision of this Agreement.

9. Headings. The paragraph headings contained in this Agreement are inserted solely as a matter of convenience and will not affect in any way the construction or interpretation of the terms of this Agreement.

10. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Kentucky, without giving effect to its conflict of laws rules. The parties consent to the exclusive jurisdiction and venue of any state or federal court located within or closest to Louisville, Kentucky, and irrevocably agree that any actions relating to this Agreement shall be litigated in such courts, and the parties waive any objection they may have based on lack of personal jurisdiction, improper venue or forum non conveniens to the conduct of any proceeding in such court.

11. Severability. If any provision of this Agreement is held to be invalid, or unenforceable under the present or future laws effective during the term of this Agreement, the affected provision(s) shall be limited only to the extent necessary to bring it or them within the requirements of the law and, insofar as possible under the circumstances, to carry out the purposes of this Agreement. The other provisions of this Agreement shall remain in full force and effect, and the invalidity or unenforceability of any provision hereof shall not affect the validity and enforceability of the other provisions of this Agreement, nor the availability of all remedies in law or equity to the parties with respect to such other provisions.

12. Expenses. Each party to this Agreement will pay all costs, fees and expenses that the party may incur in connection with the negotiation, execution and delivery of this Agreement.

13. Notices. All notices, requests, consents and other communications under this Agreement must be in writing and must be [i] mailed by first class certified mail, [ii] sent by Federal Express, United States Express Mail or similar overnight delivery or courier service, or [iii] delivered (in person, or by a facsimile transmission, telex or similar telecommunications equipment) to receipt, as follows:

If to Norton Healthcare:

Norton Healthcare, Inc.  
Attention: President and Chief Executive Officer  
234 East Gray Street, Suite 225  
Louisville, KY 40202-1903

If to KCC:

Kosair Charities Committee, Inc.  
Attention: President  
982 Eastern Parkway, Suite 3  
Louisville, KY 40217-1568

or to another address of which the addressee has notified the sender in writing in accordance with this Section. Notices given by certified mail will be deemed given at the time of certification, and notices given by any other permitted means will be deemed given at the time of receipt of the notice.

14. Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement.

15. Construction. Each party hereto hereby acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than against the other.

IN TESTIMONY WHEREOF, the parties hereto, by their duly authorized officers, have executed this Additional Projects Funding Agreement on the day and year first hereinabove written.

KOSAIR CHARITIES COMMITTEE, INC.

NORTON HEALTHCARE, INC.

By: 

Jerry Ward

Its: Chairman

Date: 5/21/2009

By: 

Stephen A. Williams

Its: President and Chief Executive Officer

Date: 5/21/09