Exhibit A

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August 27, 2013

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BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND BY ELECTRONIC MAIL

Robert B. Azar, Esq.
Vice President & General Counsel
Norton Healthcare, Inc.
4967 U.S. Highway 42, Suite 101
Louisville, KY 40222

RE: Notice of default and demand for cure - 1981 Lease and Affiliation and Support Commitments

Dear Mr. Azar:

We represent the University of Louisville ("U of L") as the beneficial owner of a 2.2 acre tract of land and the improvements constructed thereon located at 231 East Chestnut Street in Louisville, Kentucky (the "Real Property"), and as a party to a Lease which grants NKC, Inc. ("NKC" - predecessor in interest to Norton Healthcare) a leasehold interest in the Real Property under the terms and conditions of the Lease ("1981 Lease"). A copy of the 1981 Lease, which consists of two explicitly connected agreements dated August 12, 1981 and December 8, 1981 - and the current version of the Master Affiliation Agreement required by the 1981 Lease – are attached as Exhibits A-1, A-2 and A-3.

This correspondence provides formal written notice under paragraph 12 of the 1981 Lease to Norton Healthcare in its capacity as the successor in interest to NKC under the 1981 Lease, that it is in default in the prompt and full performance of the 1981 Lease and demands that Norton Healthcare cure the default no later than thirty (30) days from the receipt of this letter. Norton Healthcare is also notified that under paragraph 12, upon the expiration of thirty days without full and sufficient cure of such default, the 1981 Lease may be forthwith terminated, and whatever ownership or possessory rights held at that time by Norton Healthcare in the Real Property, including any buildings, structures, fixtures and building equipment, together with all additions, alterations and replacements thereof (excluding movable trade fixtures, machinery, furnishings and equipment) (collectively, "Buildings and Improvements") shall terminate. Paragraph 14 of the 1981 Lease requires Norton Healthcare to, upon such termination, surrender to U of L the ownership and possession of the Real Property and all Buildings and Improvements.

Likewise, this correspondence provides formal written notice to Norton Healthcare of its breach of the Critical Care Support Agreement and Funding Commitments identified below, and a demand to make payment in full of the past due sums identified below no later than September 25, 2013. If Norton Healthcare fails to fully and timely cure these breaches, U of L will pursue any and all remedies available to it for breach.

The Real Property. The Real Property – along with adjacent tracts - has historically formed a part of contiguous hospital operations located in the City of Louisville. The City of Louisville conveyed the Real Property to the Louisville and Jefferson County Board of Health April 30, 1942. The Board of Health owned and operated what was known as Louisville General Hospital on the Real Property and adjacent tracts until June 30, 1979, when the Real Property was conveyed to the Commonwealth "for the use and benefit of the University." Beginning in 1979, the Real Property was part of the U of L Hospital campus.

The interests of the parties to the 1981 Lease. In May 1981, newly-formed NKC, which represented the combination of Kosair Crippled Children's Hospital (then sited on Eastern Parkway) and Norton Children's Hospital (then housed on the third floor of the Norton-Children's complex at Chestnut and Brook Streets) decided to consolidate operations in a free-standing pediatric care hospital, which it planned to build in downtown Louisville near its present facilities. NKC identified U of L's Real Property, which at the time was used for hospital parking, as the desired building site.

The site was particularly attractive because U of L and NKC's predecessor had been partners in Louisville area pediatric care for decades. In 1981, almost all of the pediatric physician care at Norton Children's Hospital was provided by U of L faculty and residents and that has continued to the present day. Indeed, of the 75,000 emergency medicine visits and 10,000 inpatient admissions each year at Kosair Children's Hospital, U of L faculty care for all of the Emergency Department visits and nearly 90% of the inpatient admissions. U of L also provides all services for the emergency department, inpatient medicine (hospitalist) patients, and 80% of the neonatal ICU (NICU) admissions.

And under a series of affiliation agreements in place since 1962, U of L faculty serve as the Chief of Pediatrics, Chief of Surgery and the Chief of Staff of Norton Children's Hospital; likewise, the medical services of Norton Children's Hospital have been directed by the corresponding departmental chairs of U of L's School of Medicine, and U of L recommends the appointment of Chiefs of Service in anesthesiology, radiology, and pathology. As part of the affiliation, Norton Children's Hospital serves as the U of L School of Medicine's pediatric teaching hospital and the Hospital makes its patients available for pediatric education and training. It is apparent why U of L was acutely interested in NKC's proposal, particularly if the newly-built pediatric hospital would benefit U of L's School of Medicine by serving as its pediatric teaching hospital.

The August, 12, 1981 agreement. On August 12, 1981, U of L entered into the first of two agreements with NKC to which, along with the revised and updated Affiliation Agreement required by the 1981 Lease, form the 1981 Lease. The parties to the August 12 agreement included U of L and NKC. The mutual covenants of the parties underscore NKC's promise that in exchange for permitting the facility to be built on a publicly-owned asset, it must serve as the School of Medicine's pediatric teaching hospital for the term of the 1981 Lease:

> WHEREAS, it will be to the mutual interests and benefit of the parties hereto, in the conduct of their respective programs, that said new pediatric facility be constructed on said property where it will provide pediatric care, service and education benefitting the U of L Medical School and the citizens of the Commonwealth of Kentucky.

NKC's covenant to assure that the publicly-owned asset serve as U of L's pediatric teaching hospital is accompanied by a series of agreements. Since the new free-standing facility was to serve as the School of Medicine's pediatric hospital, the transparency of NKC's planning and operations was critical. NKC agreed that it would "continue the practice" of inviting U of L medical staff to Board of Directors and Executive Committee meetings "to assure full and open communication between them." Further, NKC promised to invite a member of U of L's board of trustees to NKC's Board of Directors and Executive Committee meetings.

The Affiliation Agreement. As part of Kosair Children's Hospital's commitment to continue its historic affiliation with U of L as the School of Medicine's pediatric teaching hospital, NKC was required to review, update and execute the existing Affiliation Agreement executed in 1962. Without an updated Affiliation Agreement which keeps pace with the changing needs and growth of the institution - and the Pediatric Department of the School of Medicine – U of L cannot sustain the excellence in pediatric care and teaching demanded by the public it serves. The new Affiliation Agreement is described as covering the "long-standing relationship" between Children's Hospital and U of L, "particularly the Department of Pediatrics."[1] The terms and conditions of the Affiliation Agreement as currently revised and updated, are *required by the Lease* and therefore form part of the 1981 Lease.

The December 8, 1981 agreement. The December 8, 1981 agreement jointly designates U of L, the beneficial owner of the Real Property, and the Commonwealth, which holds *legal* title to the Real Property, as the "Lessor" under the 1981 Lease. In addition to expressly incorporating the August 12 agreement "by reference" and providing that the August 12 agreement "shall survive the execution of the Lease," NKC covenanted:

[1] NKC also agreed to provide 200 onsite parking spaces to the University in the new facility.

> [The] new pediatric facility . . . will serve the interests of and will be to the benefit of the Lessor by the availability of said new pediatric facility for the programs and use of the University of Louisville's School of Medicine . . . .

In exchange for the benefit of the new pediatric facility for the programs and use of U of L's School of Medicine, the continuation of an updated and revised Affiliation Agreement for the support of U of L's teaching hospital, departments and faculty, payment of $1.00 annual rent payable in advance, and a one-time grant of $592,041.67 to the University of Louisville Foundation restricted to pediatric care, education and research, NKC received a 99-year lease of the Real Property, including the right to construct and operate a pediatric hospital on the site.

Defaults under the 1981 Lease, Critical Care Support Agreement and Pediatric Funding Commitments. Norton Healthcare is in default in the prompt and full performance of the 1981 Lease as the result of three separate but related actions. Any one of the three actions is a sufficient predicate for default and subsequent termination, if not timely and adequately cured. All three breaches threaten the care of pediatric patients in this community, as over 90% of patients at Kosair Children's Hospital are cared for by U of L physicians. Removal of funding for U of L physician care and the U of L Pediatric Department is reduction of funding for patient care and improved patient outcomes.

First, Norton Healthcare has breached its covenant to operate Kosair Children's Hospital for the programs and use of U of L's School of Medicine by unilaterally restricting U of L from providing pediatric care, teaching and research at the hospital by physicians in the pediatric specialties of anesthesiology, radiology and neurosurgery. Norton Healthcare cannot deny permission to U of L School of Medicine faculty from doing precisely what is contemplated in a teaching hospital – to care for, educate and teach. This breach has rendered futile any effort by U of L to recruit and retain physicians in these pediatric specialties. U of L demands that Norton Healthcare cure this breach within thirty days by confirming in writing that in the event U of L retains credentialed physicians in these specialties, they will be granted full privileges at Kosair Children's Hospital to render care, and teach and educate students and residents.

Second, Norton Healthcare has engaged in a course of conduct which prevents U of L in general - and U of L's Pediatric Department in particular - to maintain the excellent and competitive level of pediatric programs and faculty that the community requires and expects. Since negotiations officially commenced in Spring 2010, Norton has (a) refused to pay amounts due to U of L under a Critical Care Support Agreement and has refused to honor other funding commitments made by Norton Healthcare and relied upon by U of L; (b) failed for a period of at least four years to negotiate in good faith with U of L to amend the existing Master Affiliation Agreement to provide sufficient funding to sustain the Pediatric Department's patient care, education and teaching at the pediatric hospital; (c) refused to permit the School of Medicine medical staff to attend meetings of the board of directors or executive committee meetings of NKC and its successor, Norton Healthcare, and refused to permit a member of U of L's Board of Trustees to attend the same meetings – all as required by paragraph 1 of the August 12, 1981 agreement, which forms a part of the 1981 Lease.

Norton's refusal to pay $8,008,399 due to U of L during the period January 1, 2009 through July 31, 2013 includes the breach of the Agreement for Provision of Pediatric Critical Care and Sedation Services ("Critical Care Support Agreement") (Ex. C). Under the Critical Care Support Agreement, Norton Healthcare agreed to pay "compensation for the services furnished hereunder" as set forth in Attachment D thereto.[2] Attachment D requires Norton Healthcare to pay, among other sums, a "Group Guarantee" based in part upon an "Income Guarantee" formula which takes into account net revenue, and total operating expenses (including the salaries and expenses of physicians and nurse practitioners).

The Critical Care Support Agreement requires Norton Healthcare to adjust its payments each year, based on what U of L is required to pay in increased salaries and expenses and the cost of newly recruited and hired physicians and nurse practitioners. For the period July 1, 2009 to the present, U of L has had to increase both physician and nurse practitioner full-time equivalents ("FTEs") and their pay, and has paid these increased expenses to meet patient care demands and to meet market competitive forces. Despite repeated demands, Norton Healthcare has refused to pay for these services and expenses which reflect care to their patients. Norton Healthcare has refused to pay the sums due and owing on the promise that it will not honor its funding commitments *until* U of L and Norton Healthcare sign a new Master Affiliation Agreement. Norton Healthcare has further refused to amend the Critical Care Support Agreement to reflect the costs which they have agreed to pay under Attachment D. The amount past due under the Critical Care Support Agreement for the last three fiscal years is $1,728,615.

U of L has also incurred substantial expenses in reliance upon Norton Healthcare's funding commitments which have not been reimbursed by Norton Healthcare. U of L has recruited, hired and paid pediatric staff physicians and fellows and made substantial out-of-pocket payments for necessary administrative support. This support is related to the residency program and required by pediatric accreditation bodies. Norton Healthcare has refused to pay for these expenses, including Medical Education Administrative Support ($4,534,123 past due over the period January 2009-June 2013), Funding Support for Recruitment of New Faculty ($1,645,661 past due over the period January 2010-June 2013) and Expenses for Pediatric

[2] *See* Section 8.01 and Attachment D, titled "Compensation to Department of Pediatrics for Pediatric Critical Care and Sedation Services."

Fellowships ($100,000 past due for the period July 2012-July 2013).[3] Like the funds due under the Critical Care Support Agreement, Norton Healthcare has advised that it will not honor its funding commitments *until* U of L and Norton Healthcare sign a new Master Affiliation Agreement. Norton Healthcare is estopped from refusing to honor these commitments, upon which U of L reasonably relied to its detriment.

This failure to honor funding commitments is particularly egregious because Norton Healthcare has withheld commitments while it refused to negotiate in good faith to reach an Affiliation Agreement since the Spring of 2010. After prolonged delays, representatives of both parties met in Chicago in early October 2011 and Norton Healthcare agreed to pay *only ½* of the incremental annual funding required to provide adequate support - $8,000,000.[4] This still-insufficient commitment remained unfulfilled until Norton Healthcare's representatives repeated the commitment as part of a term sheet on September 28, 2012. Despite this commitment, Norton Healthcare has refused to pay *any* of the of the incremental annual fund increases promised since October 2011 - in addition to its *embargo* of the now $8,008,399 in other specific funding identified above.

By refusing to pay amounts due and withholding adequate funding support, Norton Healthcare has caused U of L's Pediatric Department to sustain operating deficits and threatens its ability to serve the pediatric hospital's patients and train new physicians. U of L's ability to retain its physicians and continue to provide the excellence of care the community requires is directly compromised as a result.[5] While Norton Healthcare withholds these funds, it has continued to take steps to erode the patient base available to U of L physicians and the revenue associated with it, *e.g.*, by employing a group of neonatologists in January 2012 to compete with U of L neonatologists at Kosair Children's Hospital, thereby diverting patient service revenue and teaching cases away from U of L neonatologists.

This course of conduct, coupled with the recent Letter of Intent described below, not only constitutes a breach of the Critical Care Support Agreement and the Funding Commitments, but a breach of its obligation to perform its covenant under the 1981 Lease to benefit the U of L School of Medicine and provide a pediatric teaching facility in good faith. U of L demands that

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[3] Norton Healthcare recently offered – *in lieu of the existing funding commitments described above* – a $2 million one-time "gift" related to Medical Education with the "possibility" of future funding; payment of $450,000 to support the hiring of one additional pediatric surgeon and to increase salaries of current surgeons; $700,000 for additional support under the Critical Care Support Agreement amendment effective July 2013; $200,000 for two separate fellowships beginning July 2013; and $150,000 to support research efforts of a new pediatric neurologist, dependent on a U of L matching payment. This offer falls well short of Norton Healthcare's existing commitments.

[4] The incremental annual increase in funding was composed of $3.5 million for clinical program development, $3.5 million for research and $1.0 million for Graduate Medical Education.

[5] For example, Norton Healthcare's refusal to honor its funding commitments has caused the shutdown of U of L's *Healthy for Life* clinic, which treats patients suffering from the effects of childhood obesity.

Norton Healthcare pay the past due sum of $8,088,399 no later than September 25, 2013, that it pay the $16,000,000 outstanding balance of the agreed incremental Pediatric Department funding by September 30, 2013 and make pro rata payments on a going forward basis each month thereafter pending the negotiation and execution of a final Master Affiliation Agreement, that it proceed immediately to negotiate with U of L in good faith to conclude such Master Affiliation Agreement and that it permit Medical Staff and a trustee of U of L to attend Board of Director and Executive Committee meetings.

Third, by announcing its *unilateral* intention to enter into definitive and binding agreements that would (a) delegate joint clinical, operational and financial control of the U of L School of Medicine's pediatric teaching hospital to a *different* university with a *different* teaching hospital; (b) use Kosair Children's Hospital in a manner that would restrict, diminish, damage, impair, and threaten the U of L School of Medicine and its Pediatric Department; and (c) delegate joint recruitment, retention and placement of pediatric specialists to a *different* university with a *different* teaching hospital, Norton Healthcare has repudiated its covenant to operate Kosair Children's hospital – a public asset – for the programs and use of the U of L School of Medicine as its pediatric teaching hospital. *See* Exh. B, *Joint Venture Letter of Intent* dated August , 2013. This covert plan to deprive U of L of its rights under the 1981 Lease was accomplished, in part, by Norton Healthcare's refusal to provide access to Executive Committee Meetings and Board of Directors meetings, which also constitutes a breach of the 1981 Lease, as described above.

This repudiation constitutes a present default and U of L demands that Norton Healthcare immediately – and no later than 30 days from the receipt of this notice – cure the default by providing adequate written assurance that it no longer intends to proceed with its previously announced intention to enter into any binding agreement that would have any or all of the consequences described under the headings (a), (b) or (c) contained in the previous paragraph – or any similar or related consequences.

U of L issues this notification and demand without prejudice to its right to make further demands and claims, including but not limited to claims related to the anticompetitive effect of Norton Healthcare's conduct described herein, and claims for the recovery of expenses, consequential damages, legal fees, punitive damages and other forms of damages.

Very truly yours,

Philip W. Collier

PWC:lcs
w/encl.

cc: Governor Steven L. Beshear (overnight mail)
Attorney General Jack Conway (overnight mail)
Secretary Lori Flanery, Finance & Administration Cabinet (overnight mail)
David L. Dunn, M.D., PhD
Stephen A. Williams, Chief Executive Officer, Norton Healthcare (certified mail)

Exhibit B

353 NORTH CLARK STREET CHICAGO ILLINOIS 60654-3456

JENNER&BLOCK LLP

David J. Bradford
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Fax: (312) 840-7375
dbradford@jenner.com

September 4, 2013

VIA ELECTRONIC MAIL AND U.S. MAIL

Philip W. Collier, Esq.
Stites & Harbison PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352

Dear Mr. Collier:

Please be advised that together with counsel at Middleton Reutlinger and Tachau Meek PLC, we represent Norton Healthcare, Inc. ("Norton") in connection with matters raised in your August 27, 2013 letter to Norton. This letter responds to your letter of August 27, 2013, which purports to constitute a notice of default and demand for cure of certain agreements. This letter also responds to Mr. Dunn's September 2, 2013 letter to Stephen Williams, which based on its legal tone, appears to have been written by counsel.

Your letter threatens that unless certain alleged defaults under the December 8, 1981 Lease between the Commonwealth of Kentucky and NKC, Inc., a predecessor to Norton Healthcare ("Norton") are cured within 30 days, the Lease may "be forthwith terminated" and Norton required to "surrender" to University of Louisville ("U of L") "ownership and possession" of Kosair Children's Hospital, including all improvements. Your threatened action, which has no legal basis, would have catastrophic consequences to the health and care of thousands of children at Kosair Children's Hospital.

Your purported notice is fatally defective for many reasons, including that the U of L is not a party to the Lease, and has no legal standing to enforce the Lease, and there is no default under the Lease in any event. Significantly, the Lessor under this Lease, the Commonwealth of Kentucky, has not claimed any defaults under the Lease, nor has it threatened to terminate the Lease. The Commonwealth should not take such action, both because there is no valid basis for it and because it would jeopardize the health and safety of thousands of children.

Although your letter claims three defaults under the Lease, it identifies no Lease provisions that have been violated. First, your letter complains of a breach of a "covenant to operate Kosair Children's Hospital for the programs and use of U of L's School of Medicine by unilaterally restricting U of L from providing pediatric care, teaching and research at the hospital by physicians in the pediatric specialties of anesthesiology, radiology and neurosurgery." There is no covenant in the Lease that imposes such an obligation and your letter identifies none. Instead, a recital in the Lease provides that the hospital will "serve the interests of and will be to the benefit of the Lessor" – that is, the Commonwealth of Kentucky – "by the availability of said new pediatric facility for the programs and use of the University of Louisville's School of Medicine." The hospital is plainly "available" for the programs and use of U of L, as evidenced by the scores of U of L doctors who practice at the hospital regularly. There is no provision in the Lease or any other agreement that gives U of L a monopoly over the provision of services at Norton's facility and U of L has acknowledged that fact.

Nonetheless, although it has no legal obligation to do so, Norton is agreeable to U of L School of Medicine adding additional physicians to offer qualified pediatric care, teaching and/or research at Kosair Children's Hospital in these three specialties, as more fully described later in this letter.

Second, your letter claims that Norton has refused to meet certain funding obligations. Again, the Lease provides for no funding obligations and your letter identifies none. In fact, there are no amounts due under any of the parties' written agreements. Norton has paid over $135 million to U of L for pediatrics over the last decade and has always met its funding obligations. It will continue to do so. If you have documentation demonstrating that Norton is not current in all of its obligations, Norton will promptly remedy that situation. Otherwise, your suggestion that any disagreement about additional funding obligations can constitute a default under the Lease is without any textual, legal or factual support.

Third, your letter suggests that Norton's intention to enter into an agreement with University of Kentucky ("UK") to improve the scope and quality of care for children throughout the Commonwealth somehow constitutes a breach of the Lease. You contend that this agreement would delegate certain authority to UK and thereby injure U of L's activities at Kosair Children's Hospital ("KCH"). There is no provision in the Lease that precludes Norton from providing support for the care of children at hospitals other than at Kosair Children's Hospital, and nothing in the Lease that precludes other qualified physicians from caring for children at KCH. Indeed, that has been the practice of the parties for many years.

The proposed affiliation with UK benefits both the children of the Commonwealth and U of L. As but one example, UK recently underwent changes in their pediatric cardiovascular surgery program. Some of those patients are currently being sent to KCH to be treated by U of L faculty. With the potential relationship in place, UK has expressed interest in a collaborative programs with some surgeries likely performed by U of L doctors in Louisville. These types of collaborative programs may very well be repeated across other disciplines over time. Instead of the partnership lessening U of L's involvement in KCH, the opposite may in fact be the case. The resulting increased patient flow in turn will enhance recruiting of leading specialists, provide more teaching opportunities and potential patient services for U of L – and most importantly, better care for the children of the Commonwealth.

Even though the proposed partnership benefits all concerned and does not in any way implicate the Lease, Norton is willing to enter into contractual commitments, as part of a global resolution of issues, to reassure U of L that Norton has no intention of delegating control of KCH to UK, as suggested in your letter. That delegation is neither contemplated by the current letter of intent nor by the parties to it.

Finally, we also note that your letter raises concerns about U of L's ability to participate in board meetings. Since U of L raised this issue several years ago, U of L has consistently been invited to participate in meetings. Norton has continued to provide this access, consistent with legal restrictions regarding unfair competition, even though U of L has entered into a Joint Operating Agreement with the statewide affiliate of Catholic Health Initiatives ("CHI") and receives a portion of the net income from that entity, and is now in a position to share proprietary and confidential information with that entity.

In fact, Norton expressly invited representatives from U of L to attend meetings in a letter of February 15, 2011. However, I am informed that after attending two initial meetings in 2011, Dean Edward Halperin, MD stopped attending meetings, despite Norton's repeated invitations, and the U of L Board of Trustees' appointee, Robert Hughes, MD only attended one board meeting in 2011 and subsequently did not respond to repeated invitations to attend. In U of L's letter of March 27, 2013, it indicated that it would appoint a new representative to replace Dr. Hughes as a representative, but apparently has not done so. I have also been informed that Dean Toni Ganzel, MD has recently begun attending meetings, following her permanent appointment, and Norton hopes that she will continue to do so. In short, there is no basis for the allegation that U of L's representatives have not been permitted to attend board meetings, and no basis for any allegations of breach of the Lease.

Please understand that this letter does not attempt to address actionable conduct committed by U of L, which includes but is not limited to breaches of contract, breaches of duties of good faith and fair dealing, disparagement, and tortious interference with business expectations. Among other things, U of L has reneged on its stated intentions in connection with the September 2012 term sheet, in which it agreed to designate Norton as its "exclusive pediatric academic affiliate," by purporting to give CHI a right to a similar academic affiliation agreement. However, after making its deal with CHI, U of L demanded a "radical change" in the nature of the hospital's relationship, with U of L taking control of Norton's assets.

More fundamentally, it is apparent that U of L is attempting to take away ownership of the KCH facility and improvements, which Norton owns and has built at an expense of over $500 million and which Norton continues to improve at the cost of tens of millions of dollars annually. In doing so, U of L has engaged in a course of conduct that will fundamentally injure the ability to provide the highest quality care for all children in the Commonwealth. KCH's recognized excellence rests on a long-established partnership between Norton, the region's strongest, private, non-profit, healthcare system, which owns the hospital, and U of L with whom the hospital has a critical academic affiliation. KCH's foundation rests on public land on which Norton, which donated the fair market value of the land to U of L Foundation, has invested hundreds of millions of dollars. Norton makes available at KCH thousands of highly-skilled healthcare providers who work in partnership with private physicians, Norton physicians and academic physicians from U of L, as well as in partnership with hundreds of pediatricians all across the state to provide extraordinary care for children. These stakeholders from all across the state – including Kosair Charities, of course – contribute to the success of KCH. U of L's unjustified attempt to take away Norton's ownership of this important facility disserves these interests and constitutes actionable misconduct.

We do not address more fully issues related to U of L's conduct in this letter because it is Norton's preference to avoid litigation and remain focused on the important mission of providing the very best possible pediatric care to all children in Kentucky, so that they no longer need to travel to pediatric medical centers outside of Kentucky for their care. To permit the parties to focus on constructive solutions to the challenges of providing necessary pediatric care, Norton has made certain offers in this letter. Among them are assurances that U of L may provide services in the areas identified in your letter, assurances that authority will not be delegated to UK in the areas you identify, assurances that any monies that are owed (and we know of none) will be paid promptly, and assurances that U of L's representatives have been and will continue to be welcome at board meetings. With respect to the first of these assurances, please note that most of the physicians currently practicing at the hospital in the three specific areas you reference are currently U of L "gratis" faculty members participating in teaching and research activities, and/or are willing to do so. If U of L is interested in these physicians assuming more of an active part-time teaching role, Norton is happy to work with them to accommodate that interest. Moreover, if U of L desires to recruit qualified physicians in these areas to its full time faculty to supplement the physicians currently practicing at Kosair Children's Hospital, Norton will work with the University to that end within reasonable parameters necessary to maintain their viable medical practice and call coverage.

In light of the foregoing, we must insist that you immediately withdraw your purported notice of default and join us in a constructive dialogue to address the mutual concerns of U of L and Norton in a manner that serves the best interests of all children in the Commonwealth. U of L's offer merely to "suspend" that notice is not acceptable. U of L's threat of an attempted eviction of Norton from its hospital and the catastrophic consequences that this attempt at eviction would cause are so grave, that your notice – unless withdrawn – makes it impossible to have a constructive dialogue on a level playing field and requires Norton to focus exclusively on how, in the face of that threat, to best secure needed medical care for the thousands of children who depend upon that care.

We genuinely hope that you will promptly withdraw your pending notice and join us in a constructive dialogue to resolve all open issues.

Sincerely,

David J. Bradford

DJB:fms

cc: Mr. Robert Azar
Mr. Thomas E. Powell
Dennis D. Murrell, Esq.
Thomas W. Ice, Jr., Esq.
David Tachau, Esq.
Dustin Meek, Esq.
Daniel J. Weiss, Esq.
Bradley M. Yusim, Esq.

Exhibit C

MASTER AFFILIATION AGREEMENT

This Master Affiliation Agreement is made and entered into by and between The University of Louisville on behalf of its School of Medicine (the "University") and Norton Healthcare, Inc. and its facilities ("NHC").

WITNESSETH:

WHEREAS the University is a state institution of higher education, with programs in graduate and post-graduate medical education, research, and clinical medicine; and

WHEREAS NHC operates licensed health care facilities providing health care services in areas in which the University trains students and residents/fellows (hereafter "residents"); and

WHEREAS the University wishes to offer diverse and high quality training sites for its students and residents beyond those which it owns and operates; and

WHEREAS the University wishes to offer high quality comprehensive clinical services and research; and

WHEREAS NHC wishes to offer its facilities, patients, and personnel to support the training of students and residents and the University's research programs; and

WHEREAS the University and NHC both recognize the benefits of such training and research programs accrue to both parties; and

WHEREAS the University and NHC both recognize the importance of having quality, reputable medical training programs to provide outstanding physicians to the community and region; and

WHEREAS NHC acknowledges that the University in training students operates under the specific standards of the Liaison Committee for Medical Education ("LCME") and that these standards are both obligatory for the University and subject to periodic modification; and

WHEREAS NHC acknowledges that the University in training residents operates under the specific standards of the Accreditation Council for Graduate Medical Education ("ACGME") and its specialty-based Residency Review Committees ("RRC's") and that standards from these bodies are both obligatory for the University and subject to periodic modification; and

WHEREAS the University and NHC acknowledge that the ACGME in addition requires specific programmatic affiliation agreements for training programs in each specialty and that this Master Affiliation Agreement and any Attachments are intended to be additive to those agreements; and

WHEREAS the University and NHC mutually acknowledge their desire to pursue progressive and synergistic medical research agendas; and

WHEREAS the University and NHC further acknowledge items in Attachment A1, laying out specific agreements between the two parties;

NOW THEREFORE, it is mutually agreed as follows:

1. TERM. The initial term of this agreement shall be from July 1, 2008 to June 30, 2009. The agreement will thereafter be automatically renewed for one-year periods commencing on July 1st of each year. If the agreement is not to be renewed by either party, notice will be given to the other party with six months notice (by January 1 of the year of termination).

2. TERMINATION. This agreement may be terminated upon the occurrence of any of the following events:

   A. By mutual consent of the parties;
   B. NHC suffers revocation of their license;
   C. Either party is in material default of any representation, covenant, or obligation under this agreement. A party found in default will be given a 90 day cure period to regain compliance with this agreement before termination is in effect.

3. STUDENT AND RESIDENT OBLIGATIONS AND STATUS. Assigned students and residents will be required to agree to existing and applicable rules and regulations of NHC. However, neither students nor residents are to be considered members of the medical staff or to be held to the specific regulations and requirements for medical staff members. Students and residents will have full access to medical records, diagnostic results, and information afforded to members of the medical staff. As set forth in the Medical Staff Operating Rules of each NHC facility, (1) students and residents may document medical information in patient charts; (2) student's orders will require co-signature by a licensed professional before implementation; (3) residents' orders will not require co-signature; (4) students and residents may perform procedures under the privileges and approval of the attending physician; and, (5) students and residents will be afforded ancillary support and services equivalent to those for medical staff members, including, but not limited to, support personnel, information system access, dictation where available, and medical supplies.

4. COMMUNICATION. Both parties agree to work toward open and regular communication regarding academic programs provided at NHC. The University will provide NHC with appropriate student and resident schedules, resident license information, and other materials required for implementation of an efficient and coordinated training program, and for compliance with standards of the Joint Commission on Accreditation of Healthcare Organizations.

5. ACADEMIC AND CLINICAL PROGRAMS. The University has the authority and responsibility to design, schedule, implement, and manage the training programs of its students and residents assigned to NHC.
   The University's Chair of Pediatrics is the Chair of Pediatrics at KCH, with responsibilities for research programs and undergraduate, graduate, and continuing medical education programs at KCH. The University's chair or his/her designee will serve as the Chief of Staff at KCH. The Medical Director of KCH shall be the University's Chair of Pediatrics or his/her designee. Chiefs of clinical services at KCH will be appointed as specified in the Operating Rules for KCH, as amended. The Chief of Staff, Medical Director, and Chiefs of Service positions are subject to approval by NHC Board but shall not be withheld for arbitrary, financial, or competitive reasons.
   For other NHC facilities the University's chairs in medicine, surgery, obstetrics/gynecology, radiology, pathology, emergency services, anesthesia, family medicine, neurology, neurosurgery, ophthalmology, orthopedics, psychiatry, and radiation oncology are the academic chairs of the respective services, with responsibilities for research programs and undergraduate, graduate, and continuing medical education programs as it pertains to University students, residents, and faculty.
   NHC and its medical staff will assist in evaluating the performance of students and residents as required.

6. SUPERVISION. Attending physicians who are not full or part time faculty members must hold gratis faculty status at the University to supervise or teach students or residents. All attending physicians will provide close supervision of assigned students and residents to assure high quality medical care, including providing appropriate chart documentation in a timely manner.

7. RESEARCH. Recognizing the University's and NHC's roles in leading medical research in our community, the parties agree to work towards and support cooperative research programs that capitalize on the unique resources and patients of NHC. All classes of faculty of the University will follow appropriate research rules and regulations of the University at all times. Research at NHC is subject to the policies and procedures of the Norton Healthcare Research Office.

8. FACILITIES. NHC agrees to provide call rooms (where appropriate), parking, and access to library and medical information resources for assigned students, residents, and faculty.

9. PROGRAMMATIC AGREEMENTS. For each residency program at NHC, the parties acknowledge that programmatic affiliation agreements between each residency specialty program and NHC are required by the ACGME and will work to implement and maintain such agreements. The parties acknowledge additional specific other agreements will cover specific programs between the two organizations.

10. CONTINUING MEDICAL EDUCATION. Recognizing their mutual responsibility in providing long term continuing medical education (CME) for physicians of the region and nation, the University and NHC agree to use their best efforts in working toward affiliated and coordinated CME programs that provide high quality education accredited by the NHC or the University.

11. AMENDMENTS. Recognizing the intentions of the University to maintain accredited student and resident training programs, both parties agree to amend this agreement and their relationship as necessary to meet changing accreditation standards applicable to each party.

12. ENTIRE AGREEMENT. This agreement, to the extent the subject matter is covered in this agreement, supercedes and replaces any and all previous affiliation agreements, written and oral, between the University and NHC.

13. NON-DISCRIMINATION. Neither party hereto shall illegally discriminate against any individual in the performance of its obligation under this Agreement on the basis of race, color, religion, national origin, ethnicity, sex, age or disability.

14. "HIPAA Compliance. To the extent any of University's students or residents are permitted by the Hospital to have access to any information subject to the Privacy Standards (codified at 45 CFR, Parts 160 and 164) implementing the privacy requirements of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), University shall require such students or residents to fully comply with all of the Hospital's requirements concerning HIPAA privacy both during and following their assignment pursuant to this Agreement."

15. OCCUPATIONAL EXPOSURES AND INJURIES. When a student or resident is exposed to infectious or environmental hazards or other occupational injuries in the course of assigned health sciences education or postgraduate training activities, the cost of testing and treatment when given as recommended by the University Student Health physician will be borne by the University of Louisville. All testing and treatment will be as outlined in the protocols developed by University Student Health Services. Long-term treatment, if needed, will be the responsibility of the student/resident and/or insurer.

10/28/081:48 PM

IN TESTIMONY WHEREOF, witness the signatures of the parties executing this agreement as of the day and year first written above.

Norton Healthcare, Inc.

Steve Heck MD

Signature

Sr. VP/CMO

Title

11/15/8

Date

University of Louisville School of Medicine

LN Cook

Signature: Larry N. Cook, M.D.

Executive Vice President for Health Affairs

Title

11/25/2008

Date

Recommended By:

EC Halpe

Signature: Edward Halperin, M.D.

Dean, School of Medicine

Title

Signature: Glenn Bossmeyer

Associate University Counsel

Title

ATTACHMENT A1

The parties hereto agree as follows:

1. MALPRACTICE COVERAGE. Malpractice coverage for students is the responsibility of the University via statutory coverage or by malpractice insurance. Resident coverage to a minimum of $250,000 per claim/$750,000 annual aggregate will be provided by NHC for errors or omissions while performing services in a NHC facility. Evidence of such coverage shall be provided to the other party upon request.

2. STIPENDS/BENEFITS/ADMINISTRATIVE FEES. The University and NHC will negotiate resident stipends and benefits annually, with both parties agreeing to make annual adjustments so that resident stipends and benefits are competitive based on regional benchmarking.

Exhibit D

LEASE

THIS LEASE made and entered into this 8th day of December, 1981 by and between Commonwealth of Kentucky, for the use and benefit of the University of Louisville, an agency of the Commonwealth of Kentucky (hereinafter called "Lessor"), the post office and mailing address of which is Belknap Campus, Louisville, Kentucky 40292; and NKC, Inc., a Kentucky nonstock, nonprofit corporation (hereinafter called "Lessee"), the post office and mailing address of which is 200 East Chestnut Street, Louisville, Kentucky 40202.

W I T N E S S E T H :

WHEREAS, Lessee intends to construct a new pediatric facility on the north side of Chestnut Street in Louisville, Kentucky, to be operated by Lessee as part of the existing Kosair-Children's Hospital division of Lessee; and

WHEREAS, the University of Louisville, an agency of the Commonwealth of Kentucky, and Lessee have entered into an Agreement dated August 12, 1981, providing for a long term lease to Lessee of the property needed for such new pediatric facility, which facility will serve the interests of and will be to the benefit of the Lessor by the availability of said new pediatric facility for the programs and use of the University of Louisville's School of Medicine, and which Agreement, which is incorporated herein by reference, provides among other things for the communication bewteen the University of Louisville School of Medicine staff and its Board of Trustees with the Board of Directors and Executive Committee of Lessee, the making available of parking facilities to the University of Louisville in the new facility to be constructed by Lessee, the review and updating of an Affiliation Agreement between the University of Louisville and Lessee, and a grant by Lessee to the University of Louisville Foundation, Inc. for use for pediatric health care, pediatric education or pediatric research in the Louisville Medical Center which will benefit the University of Louisville and the citizens of the Commonwealth of Kentucky; and

WHEREAS, Lessor is willing to make a long term lease of approximately 2.2 acres of land north of Chestnut Street to the Lessee.

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties hereto, as set forth in the preambles hereto, and as hereinafter set forth, the parties hereto agree as follows:

1. Lessor does hereby lease unto Lessee a tract of land in Louisville, Jefferson County, Kentucky (hereinafter called the "demised premises"), more particularly described as follows:

> Beginning at a point in the North line of Chestnut Street, said point being North 82 degrees 17 minutes 48 seconds West 589.51 feet from the West line of Preston Street; thence with the Chestnut Street line, North 82 degrees 17 minutes 48 seconds West 290.14 feet; thence leaving said Chestnut Street line, North 7 degrees 56 minutes 12 seconds East 182.00 feet, South 82 degrees 17 minutes 48 seconds East 16.60 feet, and North 7 degrees 56 minutes 12 seconds East 162.39 feet to the South line of Abraham Flexner Way; thence with said Abraham Flexner Way line, South 82 degrees 24 minutes 48 seconds East 272.65 feet; thence leaving said Abraham Flexner Way line, South 7 degrees

47 minutes 18 seconds West 344.94 feet to the point of beginning, containing 2.230 acres; said tract being shown on the attached plat as Tract #2.

BEING a part of the property conveyed to Lessor by Deed dated June 30, 1979, recorded in Deed Book 5101, Page 590, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

2. The term of said Lease shall be ninety-nine (99) years commencing on the date Lessor notifies Lessee in writing that the demised premises have been vacated by Lessor and are available to Lessee for its use and occupancy, which date shall, however, be no later than January 1, 1983; provided, however, that if on or before July 1, 1982 Lessor notifies Lessee in writing that for reasons beyond Lessor's control it can not vacate the demised premises by January 1, 1983, the time in which Lessor shall have to give Lessee possession of the demised premises shall be extended for such additional time as required by Lessor to vacate the demised premises after January 1, 1983, but in no event to exceed an additional six (6) months. Lessee shall have the right to extend said Lease term for an additional fifty (50) years under the same terms and conditions as provided for the initial ninety-nine (99) year term, upon written notice to Lessor of Lessee's intent to extend the Lease term given in the last year of the initial Lease term.

3. Lessee hereby covenants and agrees to pay Lessor as rent for the Demised Premises the sum of ONE DOLLAR ($1.00) per year, payable in advance on the commencement of the Lease term, and Lessor acknowledges receipt of the sum of NINETY-NINE DOLLARS ($99.00) as said rent for the initial Lease term.

As further consideration for this Lease, the University of Louisville, an agency of the Commonwealth of

Kentucky, and Lessee have entered into said Agreement dated August 12, 1981, which provides for their mutual benefit and cooperation in the development of the new pediatric facility by Lessee, which Agreement, incorporated herein by reference, shall survive the execution of this Lease.

4. Lessee shall construct on the demised premises a pediatric facility to be operated by the Kosair-Children's Hospital Division of Lessee, and parking facilities and other facilities incident thereto, which improvements shall be constructed at the sole expense of Lessee and shall at all times during the term of this Lease, and any renewal or extension thereof, remain and be the sole property of Lessee. All such improvements, additions, alterations and major repairs thereto, shall be in accordance with all applicable laws and regulations, and Lessee will indemnify and save Lessor harmless from and against all liens, claims or damages by reason of such improvements, additions, alterations and major repairs. Lessor agrees, when requested by Lessee, to execute and deliver any applications, consents or other instruments required to permit Lessee to make such initial improvements and such additions, and alterations and major repairs thereto, as required by Lessee to obtain permits therefor, or otherwise. Lessee shall take the demised premises in their "as is" condition, and Lessor agrees that Lessee may at Lessee's expense demolish any or all improvements on the demised premises as of the date Lessee takes possession.

5. Lessee shall not at any time permit any mechanics', laborers' or materialmen's liens to stand against the demised premises for any labor or material furnished to Lessee, or claimed to have been furnished to Lessee or

Lessee's contractors, in connection with work of any character performed or claimed to have been performed on the demised premises by or at the discretion or sufferance of Lessee; provided, however, that Lessee shall have the right to contest the validity or amount of any such lien or claimed lien so long as title to the demised premises is not lost as a result of the enforcement of any such lien or claimed lien.

6. Lessee agrees to indemnify and save harmless Lessor from and against any and all claims, demands and causes of action of any nature whatsoever, and any expense incident to the defense of and by Lessor thereof, for injury to or death of persons or loss of or damage to property occurring on or about the demised premises and the adjoining sidewalks, which grow out of or are connected with Lessee's construction, repair, alteration, use and occupancy of the demised premises or of the adjoining sidewalks, or the condition thereof during the term of this Lease. Lessee further agrees to procure and maintain public liability insurance from a responsible insurance company or companies, with Lessee and Lessor as named insureds, to protect such insureds from liability, up to an amount of $1,000,000 for each occurrence, and $5,000,000 for any claims, demands, or causes of action of any person or persons arising out of accidents occurring on or about the demised premises during the term of this Lease or arising out of Lessee's use thereof, and if requested will deliver a copy of each policy of such insurance to Lessor.

7. Lessee at its sole expense shall comply with all laws, orders or regulations of Federal, State, County and municipal authorities and any direction of any public officer or officers, pursuant to law, which shall impose any

liability, order or duty upon Lessor or Lessee with respect to Lessee's use or occupancy of the demised premises.

8. Lessee shall pay to the public authorities charged with the collection thereof, on or before the last day on which payment may be made without penalty or interest, any taxes, permit, inspection and license fees, and other public charges, whether of a like or different nature, levied upon or assessed against the demised premises, buildings, or contents thereof, or arising in respect to the occupancy, use or possession of the demised premises, subsequent to the commencement of the term of this Lease; provided, however, Lessee shall have the right to contest the validity and amount of any such taxes, fees or charges.

9. Lessee during the term of this Lease, shall pay, all charges or assessments for telephone, water, sewer, gas, heat, electricity, power, refrigerations, garbage disposal, trash disposal, and any and all other utilities and services of whatever kind or nature which may be used in or upon the demised premises.

10. The Lessee agrees that in the event of the substantial destruction of any buildings or improvements on the demised premises by fire or otherwise, it will elect either, (a) at its own cost and expense, but utilizing the insurance proceeds to the extent available, to repair, restore or reconstruct said damaged or destroyed improvements, or (b) to cancel and terminate this Lease by giving to the Lessor notice in writing to such effect.

11. If any voluntary or involuntary petition or similar pleading under any act of Congress relating to bankruptcy shall be filed by or against Lessee or if any

voluntary or involuntary proceedings in any court or tribunal shall be instituted by or against Lessee to declare Lessee insolvent or unable to pay Lessee's debts or for reorganization or for an arrangement or for a composition or for the appointment of a receiver or a trustee of all or a part of Lessee's property, then and in any such event Lessor may, unless such proceeding is dismissed within thirty (30) days of its commencement, if Lessor so elects, with or without notice of such election and with or without entry or other action by Lessor, forthwith terminate this Lease, and neither Lessee nor any person claiming through or under Lessee or by virtue of any statute or order of any court shall be entitled to possession of the demised premises but shall forthwith quit and surrender the demised premises to Lessor.

12. If [a] Lessee defaults in the payment of rent or any additional charge or cost to be paid by Lessee as provided in this Lease, or [b] Lessee defaults in the prompt and full performance and observance of any of the terms and conditions of this Lease to be performed or observed by Lessee, or [c] Lessee abandons the demised premises, or [d] any execution, attachment or other order of court shall be issued upon or against the interest of Lessee in this Lease, then and in any such event Lessor shall give Lessee notice of such default in writing by certified or registered mail, and if such default is not cured, or steps taken to cure such default if it be a nature that an immediate cure cannot be effected, within thirty (30) days after receipt of such notice, Lessor may forthwith terminate this Lease and Lessee's ownership and right to possession of the demised premises and improvements thereupon.

13. In the event that the improvements be constructed pursuant to this Lease is appropriated or otherwise taken under power of eminent domain, then this Lease shall terminate at the time of the vesting in the appropriating or taking authority of legal title to the land or building or part thereof so appropriated or taken. Any and all proceeds or payments relating to appropriation of Lessee's leasehold interest and the buildings or improvements on the demised premises, and any and all relocation payments, shall be the property of Lessee.

14. The Lessee shall, upon termination of this Lease for any reason whatsoever, surrender to the Lessor the building, structures, fixtures and building equipment upon the demised premises, together with all additions, alterations and replacement thereof (excluding movable trade fixtures, machinery, furnishings and equipment), and all such buildings and improvements upon the demised premises shall then become the property of the Lessor. During the term of this Lease all such buildings and improvements placed on the demised premises shall be the sole property of Lessee.

Trade fixtures, or any other movable machinery, furnishings and equipment on the demised premises shall always remain the property of Lessee and may be removed or replaced during the term of this Lease and at the expiration of the term of this Lease, or other termination thereof.

15. Lessee shall have the unrestricted right at any time, and from time to time, to mortgage or otherwise pledge or encumber its leasehold interest in the demised premises and its improvements thereon, by mortgage or other security instrument. In connection with the construction,

reconstruction, renovation, remodeling or addition to improvements on the demised premises, and/or other hospital property of Lessee used in connection therewith, Lessee may from time to time require financing, refinancing and extensions and renewals of financing which may require the giving of mortgage liens on the demised premises or parts thereof, in which event or events Lessee may from time to time require Lessor to, and if requested Lessor will, join with Lessee in the execution of any such mortgage encumbering the demised premises or parts thereof, and constituting a lien on Lessor's fee title thereto and fee interest therein; provided, however, that no such mortgage or lien instrument shall create or constitute any debt or obligation of the Commonwealth of Kentucky, or any agency thereof.

16. Lessor hereby covenants that so long as Lessee pays all rents herein reserved and performs each and every of the covenants, undertakings, agreements and conditions on the part of the Lessee to be performed hereunder, Lessee shall peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid, and any renewal or extension thereof, free from molestation, eviction or disturbance by Lessor or any other person.

17. This Lease shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

18. Both parties agree, upon the request of the other, to execute, acknowledge and deliver a short form or memorandum of this Lease for recordation.

19. The provisions of this Lease, any short form or memorandum thereof, and said Agreement between the parties hereto dated August 12, 1981, constitute the entire

agreement between the parties, and no changes shall be made in any provisions unless in writing signed by the Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this Lease, by their duly authorized officers or agents, on the day and year first hereinabove written.

RECOMMENDED:

UNIVERSITY OF LOUISVILLE

Donald C. Swain

President

[signature]

~~Assistant~~ Director ~~for Property Management~~, Office of Facilities Management

LESSOR

COMMONWEALTH OF KENTUCKY, FOR THE USE AND BENEFIT OF THE UNIVERSITY OF LOUISVILLE

By: George E. [signature]

Secretary, Department of Finance

(When signed by the Secretary of Finance, this document also constitutes a finding of fact and order according to KRS Chapters 45 and 56, that this property is not currently needed for use by the Commonwealth of Kentucky.)

RECOMMENDED:

Tom C. Harper

Commissioner, Bureau of Public Property

EXAMINED:

[signature]

Attorney, Department of Finance

LESSEE

NKC, INC.

By: [signature]

Title: Pres.

Exhibit E

AGREEMENT

THIS AGREEMENT made and entered into this 12th day of August, 1981 by and between the University of Louisville, an agency of the Commonwealth of Kentucky (hereinafter "U of L"), and NKC, Inc., a Kentucky nonstock, nonprofit corporation (hereinafter "NKC").

WITNESSETH:

WHEREAS, NKC intends to construct a new pediatric facility to be part of Kosair-Children's Hospital, and located on the part of the old University Hospital (General Hospital) site, north of Chestnut Street in Louisville, Kentucky, which property is owned by U of L; and

WHEREAS, it will be to the mutual interests and benefit of the parties hereto, in the conduct of their respective programs, that said new pediatric facility be constructed on said property where it will provide pediatric care, service and education benefitting the U of L Medical School and the citizens of the Commonwealth of Kentucky; and

WHEREAS, NKC wishes to enter into a long term lease of said property from U of L.

NOW THEREFORE, for the consideration of the mutual covenants hereinafter contained, it is hereby agreed:

1. NKC will continue the practice of inviting a representative of the U of L School of Medicine staff to its Board of Directors and Executive Committee meetings, to assure full and open communication between them. In addition, upon the execution of the Lease as provided in Paragraph 4 hereof, NKC will also invite one member of the U of L Board of Trustees to regularly attend these meetings. The selection of this U of L board member shall be from a list of three U of L trustees selected by the U of L Board. The Board of Directors of NKC will then select one of these U of L trustees to attend NKC Board of Directors and Executive Committee meetings.

2. Upon the execution of the Lease as provided in Paragraph 4 hereof, and the construction by NKC of parking facilities as part of the pediatric facilities to be constructed on the leased property, NKC will provide U of L with two hundred (200) parking spaces in said parking facility which may be assigned by U of L at its discretion. U of L or the users of the parking spaces will pay to NKC a monthly charge to be determined by NKC, which will not exceed the lowest fee charged by NKC to other monthly parkers, which charge shall be related to the building cost and operating expense of the parking facility.

3. NKC agrees that the certain Affiliation Agreement between U of L and Children's Hospital dated December 12, 1962, shall be reviewed and updated by the appropriate

officers of the parties hereto, and a new revised Agreement executed by NKC and U of L. This Agreement covers the long-standing relationship between Children's Hospital (now Kosair-Children's Hospital Division of NKC) and U of L, particularly the Department of Pediatrics of U of L's Medical School.

4. U of L will recommend and seek to obtain the approval and authorization by the Kentucky Department of Finance to the execution by the Commonwealth of Kentucky of a Lease in form substantially as attached hereto, as a part hereof, subject however, to any changes thereto agreed upon by counsel for the parties. Upon receiving such approval and authorization, and the execution of said lease by the parties thereto, NKC will make a grant to the University of Louisville Foundation, Inc. in an amount equal to one hundred percent (100%) of the appraised value of the land subject to said long term lease, as described therein, to be used only for pediatric health care, pediatric education or pediatric research in the Louisville Medical Center. The appraised value of the aforesaid property has been determined by three qualified appraisers, one chosen by U of L, one chosen by NKC, and the third chosen by the other two appraisers, which third appraiser was acceptable to U of L and NKC. The three appraisals so received were added together and averaged, and said grant to be made by NKC to the

University of Louisville Foundation, Inc. has been so computed to be in the amount of FIVE HUNDRED NINETY TWO THOUSAND FORTY-ONE DOLLARS and SIXTY-SEVEN CENTS ($592,041.67).

WITNESS the signatures of the parties hereto by their duly authorized officers, on the day and year first hereinabove written.

UNIVERSITY OF LOUISVILLE

By: Donald C. Swain

Title: President

NKC, INC.

By: Wade Mountz

WADE MOUNTZ

Title: Pres.

President

Exhibit F

JACK CONWAY
KENTUCKY ATTORNEY GENERAL

Proposed Consolidation of Jewish Hospital Healthcare Services, Inc., CHI Kentucky, Inc., Catholic Health Initiatives, University Medical Center, Inc., Jewish Hospital & St. Mary's Healthcare, Inc., Flaget Healthcare, Inc., Saint Joseph Health System, Inc., and JH Properties, Inc., to create a statewide network healthcare entity (the Kentucky Statewide Network) sponsored by Catholic Health Initiatives (70%), Jewish Hospital Healthcare Services, Inc. (14%) and the University of Louisville (16%)

Report of the Attorney General
29 December 2011

I. OBJECTIVE AND SCOPE OF THE REPORT

On June 14, 2011, Jewish Hospital Healthcare Services, Inc. (JHHS), CHI Kentucky, Inc., Catholic Health Initiatives (CHI), University Medical Center, Inc., Jewish Hospital & St. Mary's Healthcare, Inc. (JHSMH), Flaget Healthcare, Inc. and Saint Joseph Health System, Inc. (Amended and Restated Consolidation Agreement dated December 15, 2011 adding JH Properties, Inc. as a party) (Consolidation Parties), entered into a Consolidation Agreement envisioning the consolidation of their respective assets. (See Consolidation Agreement and Amended and Restated Consolidation Agreement attached as Exhibits A and B respectively)(The Consolidation Agreement and the Amended and Restated Consolidation Agreement are collectively referred to as the Consolidation Agreement). The resulting entity, the Kentucky Statewide Network (KSN), would provide hospital and healthcare services throughout most of Kentucky. KSN would be controlled by three sponsors in accordance with their respective sponsorship percentages: Catholic Health Initiatives (70%), Jewish Hospital Healthcare Services, Inc. (14%) and the University of Louisville (16%) (Sponsors).

Pursuant to the terms of the Consolidation Agreement, a proposed Sponsorship Agreement (attached as Exhibit C) and other related documents (Transaction Documents), KSN would control and operate all of the assets located in Kentucky being contributed by the Consolidation Parties, including the various hospitals and facilities owned or operated by them. Of particular note, pursuant to the Transaction Documents, KSN would control and operate University Medical Center, Inc. (UMC), and its assets. UMC's principal asset is the right to occupy and operate the University of Louisville Hospital (Hospital), a state owned asset, pursuant to the terms of the Amended and Restated Affiliation Agreement dated July 1, 2007 by and among the Commonwealth of Kentucky, the University of Louisville and UMC (Affiliation Agreement) (attached as Exhibit D) and a related Lease Agreement dated February 7, 1996 (Lease) (attached as Exhibit E).

Pursuant to the Affiliation Agreement, neither UMC nor the University of Louisville may sell, transfer, or assign (including by operation of law) any interest in the University of Louisville Hospital without the consent of the Commonwealth of Kentucky, by and through the Governor and Secretary of the Finance and Administration Cabinet. The Transaction Documents envision and include a new affiliation agreement (New Academic Affiliation Agreement) and a new lease (New Lease) (see proposed form of documents attached as Exhibits F and G) by and among the Commonwealth of Kentucky, the University of Louisville, UMC and KSN, the terms of which are materially different from the present Affiliation Agreement and the Lease.

Because the proposed consolidation includes the New Lease and the New Academic Affiliation Agreement, requiring the agreement and consent of the Commonwealth of Kentucky, by and through the Governor and Secretary of the Finance and Administration Cabinet, and because of the significant and unprecedented public policy issues associated with the inclusion or use of state owned assets by an entity controlled by a private corporation, and subject to certain ethical and religious directives; as well as the principal mission of the University of Louisville Hospital as a public hospital and the principal provider of indigent healthcare to the Louisville region; the Governor of the Commonwealth of Kentucky Steven L. Beshear has requested Attorney General Jack Conway, with the assistance of Auditor of Public Accounts Crit Luallen, to review and report on the proposed consolidation.

(Capitalized Terms herein, not otherwise defined herein, shall have the meaning assigned to them in the relevant Transaction Documents).

II. UNIQUE CHARACTER OF THE TRANSACTION

Hospital systems across the country are consolidating to capture cost savings and streamline medical services. Hospitals subject to religious doctrine have in some cases merged with private secular hospitals in a few states, including New York and Washington. The proposed consolidation under review to operate the Hospital, a publicly owned teaching hospital that also serves as the public safety net hospital, and CHI, a Catholic hospital system subject to ethical and religious directives, is the first transaction of its kind in Kentucky, and there does not appear to have been another transaction involving all of the issues raised in the current proposed transaction anywhere else in the country. The current proposal presents a host of legal and public policy issues outlined below.

III. HISTORICAL OPERATION OF UNIVERSITY OF LOUISVILLE HOSPITAL

The University of Louisville Hospital traces it origin to the 1817 establishment of the Louisville Hospital Company.[1] It was known as Louisville Marine Hospital until 1849; thereafter, it was known as Louisville City Hospital until 1942 when the name was changed to Louisville General Hospital.[2] By agreement with the City of Louisville, in 1927, the University of Louisville assumed responsibility for medical services at the Louisville General Hospital.[3] By 1939, the hospital had become officially affiliated with the University of Louisville and in 1979, the Hospital was deeded to the Commonwealth of Kentucky for the use and benefit of the University of Louisville. In the Commonwealth, by statute, property used by universities and other state agencies is titled in the name of the Commonwealth of Kentucky, and is designated for the use and benefit of the particular university or agency. This designation reflects the ongoing role of the Commonwealth in all property management aspects of universities and agencies. In the present case, the relevant property is a state asset operated as a teaching hospital by the University of Louisville for the benefit of the citizens of the Commonwealth, and subject to laws and regulations applicable to state assets.

Beginning in January of 1983, Humana Health Care operated the Hospital[4] on behalf of the University of Louisville, pursuant to an affiliation agreement signed by Humana of Virginia, Inc. and the University of Louisville. On February 6, 1996 the affiliation agreement, and related lease, with Humana Health Care, then known as Columbia/HCA, was terminated by the parties.

Due to the termination of the contract with Columbia/HCA, a Request for Proposals (1995 RFP) to operate the Hospital was issued in 1995 by the University of Louisville. Alliant Health System, Inc. (now Norton Healthcare, Inc.)(Norton), Jewish Hospital Healthcare Services, Inc. (subsequently Jewish Hospital & St. Mary's HealthCare, Inc.)(Jewish Hospital), and the University of Louisville formed UMC as a Kentucky nonprofit corporation for the purpose of responding to the 1995 RFP. There were four proposals submitted to operate the Hospital on behalf of the University of Louisville.[5] UMC's proposal was selected, and in 1996, the Commonwealth of Kentucky, the University of Louisville and UMC entered into the Affiliation Agreement and the Lease.

UMC is a Kentucky nonprofit corporation incorporated in 1995. Prior to July 1, 2007, UMC was controlled by Norton, Jewish Hospital and the University of Louisville. On July 1, 2007, Norton and Jewish Hospital withdrew from membership, and the University of Louisville assumed complete control of UMC.[6] This removal of the private members of UMC, with the only remaining controlling entity being the University of Louisville, was memorialized in the Affiliation Agreement by and between the Commonwealth of Kentucky, acting through the Governor and the Secretary of the Finance and Administration Cabinet, the University of Louisville, acting through its Board of Trustees, and UMC.

Since 2007, UMC, now solely controlled by the University of Louisville, has continued to operate the Hospital, and, pursuant to the Affiliation Agreement, has made significant financial payments to the University of Louisville in the nature of lease payments, fees for services and surplus cash flow to support the University's medical school health science programs. In exchange for the proposed continued use of state assets, i.e. the Hospital, similar payments are proposed to continue and increase, as well as additional financial benefits to the University of Louisville, if the proposed transaction is completed.

Current and Proposed Financial Benefits to the University of Louisville

Current

- UMC pays $11.0 million annually to UofL
- UMC pays $500,000/month in lease payments to UofL
- UMC makes fee-for-service payments to UofL

Proposed

- UMC pays UofL $11.0 million annually with CPI-based adjustments
- UMC pays $6 million/annually in lease payments to UofL
- UMC makes fee-for-service payments to UofL

1 http://www.uoflhealthcare.org/Default.aspx?tabid=358 (July 31, 2011); http://special.library.louisville.edu/display-collection.asp?ID=627 (December 19, 2011).
2 http://www.uoflhealthcare.org/Default.aspx?tabid=359 (July 31, 2011)
3 http://www.university-hospital.org/about-the-hospital/who-we-are/history/ (November 4, 2011).
4 http://www.university-hospital.org/about-the-hospital/who-we-are/history/ (November 4, 2011)
5 1995 WLNR 5076760
6 See 11-ORD-157

- UofL participates in distributions of KSN surplus net revenues, receiving 10% of initial surplus net revenues with 16% of the remaining surplus net revenues to be distributed.[7]

IV. NATURE OF UMC

The Attorney General determined, in 11-ORD-157 (attached as Exhibit H), that UMC is a public agency pursuant to KRS 61.870(1)(j) because it is an "agency which is 'established, created, and controlled' by a public agency as defined in the statute." See *University of Louisville Foundation, Inc. v. Cape Publications, Inc.*, 2003 WL 22748265 at p. 5 (Ky. App.). See also, *Cape Publications, Inc. v. University of Louisville*, 260 S.W.3d 818 at 822-823 (Ky. 2008).

UMC was established and created in June 1995 "to operate and maintain the hospital affiliated with the University of Louisville School of Medicine, and to provide medical care for the people who are in need of those, or related, medical services."[8] In October 1995, following the 1995 RFP, the University awarded the management contract for University Hospital to UMC. The "causal connection" between the formation of UMC in June 1995 and the execution of the Affiliation Agreement among UMC, the University and the Commonwealth in October 1995 is as clear and direct as the causal relationship between the University of Louisville Foundation and the University of Louisville recognized in *University of Louisville Foundation, Inc. v. Cape Publications, Inc.*, above." The University has, in its own words, "partnered" with UMC since its inception.[9]

Presently, control of the Hospital remains in the University's hands by virtue of its strong presence on UMC's Board of Directors and the powers reserved to it under the Affiliation Agreement. In 2007, when Norton and Jewish withdrew from UMC, the University credited the University president with achieving the goal of "sole U of L management" of "[t]he Board of Directors of University Hospital."[10]

UMC's Board of Directors consists of seventeen voting members and is chaired by the president of the University or his designee.[11] Unlike the other Board members, the chair of UMC's Board may not be removed by a majority vote.[12] Section 4.02(a) of UMC's bylaws authorizes the chair to appoint four to seven additional University directors who must include the Dean of the University's Medical School, the University's Executive Vice President for Health Affairs, the chair of one of the Medical School's clinical departments, and a member of the University's Board of Trustees. Although the remaining Board members are "community" members, nominated by the Board's nominating committee and voted on by the Board, the nominating committee is chaired by the president of the University or his designee and consists of an additional University member and two community members who are appointed by the chair.[13] The University therefore exercises broad control over all appointments to the Board through its president, or his designee. Not only is he authorized to appoint up to half of UMC's Board members, he significantly influences, if not controls, appointment of the remaining members through his role as chair of the nominating committee. Additionally, he cannot be removed.

Under the terms of the Affiliation Agreement, UMC agrees:

- that University Hospital will "serve as the principal adult teaching hospital of [the] University and shall be available for teaching, research, and clinical care programs of the University Schools of Medicine, Dentistry, Nursing and Public Health plus residency programs and other programs mandated by state law";[14]
- that it will obtain University approval before implementing new programs[15] or withdrawing any training pro-

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7 The proposed Sponsorship Agreement (see Exhibit C) sets forth the Sponsors' rights to receive contingent future mandatory KSN payments. Under Section 2.2(B)(2) of the Sponsorship Agreement, KSN compares its operating margin with the Median Operating Margin for not-for-profit freestanding hospitals with a credit rating of A1 as published by Moody's Investor Services, Inc. If KSN's operating margin exceeds the Median Operating Margin, then KSN makes payments to the Sponsors to further their charitable missions. The amount of the total payment is the amount of cash in excess of reasonable reserves established by the KSN board, including capital expenditure reserves, that does not cause KSN to fall below the Median Cash on Hand and Median Cash to Debt for not-for-profit freestanding hospitals with a credit rating of A1 after giving effect to such payments.

For the University of Louisville, under Section 2.2(B)(2)(a), the first 10% of the total payment is transferred to the University of Louisville for use in its health sciences schools and related life science activities. This distribution amount is not subject to change even if there is a change in the University's Membership Interest Percentage. Under Section 2.2(B)(2)(b), the University of Louisville thereafter participates by receiving a share of the remaining payment in accordance with its Membership Interest Percentage (16% upon the execution of the transaction). Payments to the University under the latter sub-part are not restricted to use in health sciences schools and related life science activities. The restriction is that the payments must be applied to further the charitable mission of the University of Louisville.

8 Articles of Incorporation of University Medical Center, Inc., Article 2A.[1].

9 University Hospital: History. http://www.woflhealthcareorg/AboutUs/History/tabid/358/Default.aspx

10 Minutes of the Regular Meeting of the Board of Trustees of the University of Louisville, July 12, 2007. http://louisville.edu/president/trustees/minutes/2007/minutes%207%2012%2007.pdf

11 UMC Bylaws (as amended January 2008), at 4.01 and 4.02(a).

12 UMC Bylaws 4.04.

13 Bylaws 6.01(B); 6.03.

14 Affiliation Agreement 5.1.1.

15 Affiliation Agreement 7.1.

gram;[16]

- that the Dean of the University's School of Medicine, or his designee, will serve as Chief of the Hospital's medical staff ;[17] and
- that it will obtain prior University approval for "all agreements between any member or members of the faculty and UMC or any Affiliate or party acting on UMC's behalf including network participation agreements, clinical practice agreements, or insurance, provider, or capitation products".[18]

The Affiliation Agreement also requires UMC to manage University Hospital without charging the University a management fee and to remit all "surplus cash flow arising throughout the term of this Agreement" to the University.[19] The contractually mandated financial distributions between the two entities further underscore the significant organizational interconnectivity.

This financial arrangement is important because of UMC's status as a non-profit, tax exempt 501(c)(3) organization. UMC cannot, without violating its fiduciary duty to confer benefits in conformity with its purpose, make a distribution to the University of Louisville unless the University is part of UMC.[20] Just as the University of Louisville Foundation could not receive "Bucks for Brains" money and contributions unless it was acting "as one and the same" with the University, so UMC cannot distribute surplus cash flow to the University unless it acts "as one and the same" with the University.

In the proposed consolidation, the University stands to gain a minimum investment in the Teaching Hospital of $200 million from KSN, in addition to $11.0 million annually with CPI-based adjustments, $542,000 per month in lease payments, fee-for-service payments, and participation in distributions of KSN surplus net revenues of 10% of all surplus net revenues and 16% of all remaining surplus net revenues to be distributed.

Throughout, the University has been a, if not the, chief proponent of the consolidation. Yet, over the course of the last six months, University representatives have repeatedly asserted that the University is not a "party" to the consolidation, just UMC is. This repeated assertion is a distinction without a difference because: (i) the University is a principal beneficiary, financially and otherwise, of the proposed consolidation, (ii) the University is a formal party to the Sponsorship Agreement, (iii) the University shares legal counsel with UMC in the transaction, and (iv) the University presently controls UMC. The fact of the matter is that the University of Louisville is a party to the consolidation by virtue of being a party to the Sponsorship Agreement and by and through its alter ego, UMC.

V. THRESHOLD LEGAL ISSUES

A. Acquisition and Disposition of State Assets.

KRS Chapter 45A, relating to state owned assets, and KRS Chapter 164A, relating to higher education finance, provide a framework for the acquisition and disposition of state assets. The Finance and Administration Cabinet generally is the agency responsible for acquiring or disposing of state assets through a public process. However, pursuant to KRS 164A.550, state public universities may assume this role through enactment of a regulation. The University of Louisville elected, through its Board of Trustees, to manage purchasing, inventories, sale of surplus property, and bidding procedures through the enactment of 740 KAR 1:030. The regulation specifically provides that the University of Louisville will manage its interests in real property and contractual services in accordance with policies and procedures approved by the Board of Trustees, and subject to applicable portions of KRS Chapter 45A.

Consistent with its authority under KRS Chapter 164A and 740 KAR 1:030, the University of Louisville issued the 1995 RFP for operating the Hospital as described above. UMC was selected as the operator and the Commonwealth of Kentucky, the University of Louisville and UMC entered into the Affiliation Agreement and the Lease.

As part of the proposed consolidation, the Consolidation Parties and the Sponsors are requesting the Commonwealth of Kentucky to enter into the New Academic Affiliation Agreement and the New Lease. The terms of the proposed New Academic Affiliation Agreement and the New Lease present material differences from the current Affiliation Agreement and Lease, likely triggering the requirements of KRS Chapter 45A and KRS Chapter 164A as those statutes relate to the disposition of state assets by the University of Louisville, in this case the Hospital and the right to operate it.

First, the New Academic Affiliation Agreement and Lease significantly extend the term of years during which UMC operates and occupies the

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16 Affiliation Agreement 5.2
17 Affiliation Agreement 8.2
18 Affiliation Agreement 22
19 Affiliation Agreement 11.2 and 11.4
20 KRS 273.237 provides in pertinent part, "... A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes...."

Hospital. The present Affiliation Agreement and Lease have a term effectively ending on or about February 6, 2026. The New Academic Affiliation Agreement and the New Lease would extend the term by fifty-five years, effectively ending during calendar year 2081.

Second, while UMC will remain as a corporate entity within KSN, there will be a material change in control of UMC. As noted above, UMC presently is effectively and solely controlled by the University of Louisville.[21] Under the proposed transaction, UMC would be totally controlled by KSN. KSN in turn will be controlled by the Sponsors in accordance with their respective sponsorship percentages and pursuant to the proposed sponsorship agreement among the Sponsors (Sponsorship Agreement) (Sponsorship Agreement attached as Exhibit C). As a result, the University of Louisville will only have indirect and minority influence over the affairs of UMC and its use of state assets.

As a result of the foregoing material changes, and potentially as a result of additional material changes to the terms of the Affiliation Agreement and Lease, the University of Louisville must comply with state laws relating to the disposition of state property, codified in KRS Chapter 45A and KRS Chapter 164A, and its own policies and procedures adopted by the Board of Trustees, as they relate to the leasing or other disposition of state assets to private parties. KRS 164A.575(1) (attached as Exhibit I) contains exceptions to the competitive bidding process for contractual services where no competition exists and when services are available from only one source. KRS 164A.575(7) allows the governing board to sell or dispose of real property of the institution through an established process, requiring an express resolution of the board. Based on a review of the Transaction Documents and Board of Trustee minutes, and particularly the minutes from November 10, 2010[22] and June 9, 2011[23], it does not appear that the University of Louisville has yet complied with these applicable statutory provisions.

The foregoing relates to a disposition of state assets. Additionally, in the event of an unwind of the proposed consolidation, the University of Louisville would be forced to purchase assets in addition to retaking possession of the Hospital. If an unwind were to occur, this requirement would amount to a forced acquisition of new assets by the University of Louisville, without the procurement process required by KRS 164A, applicable portions of KRS 45A, and the policies and procedures of the University of Louisville[24] required by 740 KAR 1:030 (attached as Exhibit J).

Specifically, if there is a termination of the New Academic Affiliation Agreement for any reason, then KSN shall sell, assign, and otherwise transfer, and the University of Louisville shall purchase and acquire all of KSN's right, title, and interest in and to the "Teaching Hospital Business" (as defined under the Sponsorship Agreement, i.e. the downtown facilities utilized as the University of Louisville's teaching hospital, including the downtown Jewish Hospital, Frazier Rehab, and any facilities added as a result of the consolidation).

In addition, if there is a termination of the New Academic Affiliation Agreement for any reason set out therein, KSN would also have the right to force the University of Louisville to purchase all of KSN's right, title, and interest in and to some or all of the business and facilities operated by KSN in Jefferson County. In basic terms, this provides KSN the right to force the University of Louisville to purchase the JHHS/JHSMH Jefferson County contribution to KSN, and any additional facilities. Therefore, there is the possibility that the University of Louisville will have to acquire significantly more assets, as well as assume significantly more liabilities, in an unwind in order to regain control over the Hospital in its current form.

The above described potential acquisitions by the University of Louisville would require compliance by the University with the applicable provisions of KRS Chapters 45A and 164A, as well as and the policies and procedures of the University of Louisville required by 740 KAR 1:030.

B. A Potential Unwind of the Consolidation

In addition to the public disposition and procurement issues arising out of a potential unwind of the consolidation transaction, such unwind would have significant financial and operational implications. The proposed Sponsorship Agreement addresses events which could trigger an unwind of the consolidation.

1. CHI Change in Control

Section 7.1(B) of the Sponsorship Agreement addresses a CHI Change in Control. Under Section 7.1(B), a CHI Change of Control is a merger, sale, or disposition of all or substantially all the assets, or other transaction involving CHI that results in a new entity other than the CHI Board of Stewardship Trustees or Public Juridical Person, having the right to appoint a majority of the directors of CHI or the successor entity to CHI resulting from the Change of Control Transaction. If there is such an event, CHI will provide notice to the University requesting consent to the change in control transaction. Per the Sponsorship Agreement, the University's consent may not be unreasonably withheld. If the University

21 The Attorney General held in 11-ORD-157 (attached as Exhibit H) that UMC is a public agency for the purposes of the Open Records Act, due to University of Louisville control of UMC. The University of Louisville has appealed this decision to the Jefferson Circuit Court in University Medical Center In. vs. American Civil Liberties Union of Kentucky, Inc., et al, Case No. 11-CI-007219.

22 http://louisville.edu/president/trustees/minutes/2010/BOTmin11-11-10.pdf

23 http://louisville.edu/president/trustees/minutes/2011/BOT%20minutes%206-8-11.pdf

24 http://louisville.edu/purchasing/policies

does not consent, then for one year following the effective date of the change in control event, the University will use best efforts to negotiate in good faith with the new entity that controls CHI to determine if the University wants to continue as a Sponsor. If after one year the University does not want to continue as a Sponsor, then it must provide CHI, JHHS, and KSN with notice. Such Notice is an "Affiliation Termination Event" that terminates the New Academic Affiliation Agreement, and triggers an unwind of the University's interest in KSN.

2. Withdrawal of a Sponsor

Section 7.2 of the Sponsorship Agreement addresses a potential withdrawal of a Sponsor. Under Section 7.2(A)(1) of the Sponsorship Agreement, if the Sponsors receive an opinion from a qualified outside counsel retained by the withdrawing Sponsor that the continuation of that Sponsor's membership interest in KSN would result in the loss of the withdrawing Sponsor's federal tax-exempt status or the federal tax-exempt status of any bonds issued on its behalf and the cause of such loss cannot be cured and all appeals to the appropriate governmental authorities have been exhausted, then that Sponsor's withdrawal is permitted.

In addition to the potential withdrawal of any Sponsor as set forth above, under Section 7.2(A)(2) of the Sponsorship Agreement, JHHS is permitted to withdraw in the event of a change in the activities of KSN which would, in the reasonable opinion of JHHS, cause the Jewish Facilities (as defined in the Sponsorship Agreement) to not be in compliance with the Jewish Heritage and the cause of such non-compliance cannot be cured.

Both of the foregoing withdrawal events are subject to a dispute resolution process under the Sponsorship Agreement. Any withdrawal may have significant effect on the continuity of the consolidation. A withdrawal of JHHS under Section 7.2(A)(1) or (2) does not terminate the New Academic Affiliation Agreement, and would not trigger an unwind of the University's interest in KSN. A withdrawal of CHI or the University under Section 7.2(A)(1) is an unwind event; however, such a withdrawal is not defined as an "Affiliation Termination Event" under Section 8.1(A) of the Sponsorship Agreement, which would terminate the New Academic Affiliation Agreement.

In the event of a withdrawal of a Sponsor, Section 7.2(C)(1) of the Sponsorship Agreement, entitles the withdrawing Sponsor to receive from KSN consideration for the Sponsor's membership interest in an amount equal to 100% of the fair value of the membership interest as of the effective date of the withdrawal. Notably, this section does not expressly provide for the transfer of the Teaching Hospital to the University; therefore, there is a scenario in which the University could withdraw as a Sponsor while the Teaching Hospital remains with KSN.

To potentially protect against a scenario in which the University could withdraw as a Sponsor without ensuring the transfer of the Hospital back to the Commonwealth and the University, Section 19.2(c)(vi) of the New Academic Affiliation Agreement provides if the New Lease is terminated without the University's consent, then the New Academic Affiliation Agreement is terminated, and Section 8.1 of Sponsorship Agreement would be triggered requiring a transfer of the Hospital back to the University and the Commonwealth. Thus, the Commonwealth could force an unwind which would include a transfer of the Hospital to the University and the Commonwealth by terminating the New Lease in the event of a withdrawal of the University under Section 7.2 of the Sponsorship Agreement. However, in the event that the University consents to the termination of the New Lease, it is not clear that the New Academic Affiliation Agreement would expressly terminate, and it is not clear that the withdrawal under Section 7.2 of the Sponsorship Agreement would necessarily, by its terms, result in a transfer of the Hospital back to the University and Commonwealth. Hence, there appears a possibility of a scenario in which the University could withdraw as a Sponsor but the Hospital would stay with KSN.

3. Removal of a Sponsor

In addition to the potential withdrawal of a Sponsor, it is also possible for a Sponsor to be removed. Section 7.2(B) of the Sponsorship Agreement sets out the removal events. Removal occurs if there is a "Removal Event" (described below) and the Sponsors are unable to reach an alternate course of action through the dispute resolution process. In such an event, the non-breaching Sponsors have the right to provide notice to the breaching Sponsor of removal as a Sponsor of KSN.

<u>a. Expulsion or Suspension from Government Program</u>

Under Section 7.2(B)(1) of the Sponsorship Agreement, if the non-breaching Sponsors receive an opinion from qualified outside counsel that the continued membership of the breaching Sponsor would result in the expulsion or suspension of KSN from participation in any government program, e.g. Medicaid, and the cause cannot be cured, or the breaching Sponsor fails to commence the cure within thirty (30) days of notice, and all appeals to the appropriate governmental authorities have been exhausted, then the breaching Sponsor may be removed.

<u>b. Jeopardy to Tax-Exempt Status</u>

Under Section 7.2(B)(2) of the Sponsorship Agreement, if the non-breaching Sponsors receive an opinion from qualified outside counsel that the continued membership of the a Sponsor would result in the loss of KSN's federal tax-exempt status or the federal tax-exempt status of any bonds issued on behalf of the KSN, and the cause of the loss cannot be cured, or can be cured by the offending Sponsor but the offending Sponsor fails to commence the cure within thirty (30) days of notice, and all appeals to the appropriate Governmental Authorities have been exhausted, then the offending Sponsor may be removed.

c. Performance of Prohibited Procedures

Under Section 7.2(B)(3), if CHI reasonably determines that KSN or any of its facilities has provided or continues to provide procedures that are described as restricted or prohibited in the Sponsorship Agreement (identified on Exhibit G thereto) due to the willful and intentional actions of the offending Sponsor or any of its related entities, then the offending Sponsor may be removed.

On a related note, Under Section 7.3 of the Sponsorship Agreement, if CHI reasonably determines that it needs to amend Exhibit G of the Sponsorship Agreement so that CHI does not fall out of compliance with the ERDs, and the other parties do not agree after going through the dispute resolution process, then CHI has the option to provide JHHS and the University with a CHI Election Notice of an Affiliation Termination Event pursuant to Section 8.1(A). Such an election is deemed a non-renewal of the New Academic Affiliation Agreement and it triggers a transfer of the Hospital.

d. Additional Removal Events

Additionally, under Section 7.2(B)(4) of the Sponsorship Agreement, the bankruptcy, liquidation, or dissolution of a Sponsor or, under Section 7.2(B)(5), an uncured material breach by a Sponsor, are Removal Events under the Sponsorship Agreement.

e. Effect of Removal

As with the occurrence of a withdrawal, under Section 7.2(C)(1) of the Sponsorship Agreement, the effect of a removal of a Sponsor is that the effected Sponsor shall be entitled to receive from KSN consideration in an amount equal to 100% of the fair value of the effected Sponsor's Membership Interest as of the effective date of the removal. If the University is removed from KSN without its consent, the event terminates the New Lease. Also, as with the occurrence of a withdrawal, there are possible scenarios under which the University, if it is removed as a Sponsor, the transfer of the Hospital to the University and the Commonwealth possibly would not take place under Section 7.2 of the Sponsorship Agreement (see discussion in subsection 2 "Withdrawal of Sponsor" above).

4. Agreement of Sponsors to Terminate

Under Section 9.1 of the Sponsorship Agreement termination will occur upon the mutual written agreement of all of the Sponsors or when there is only one Sponsor. A termination of the Sponsorship Agreement under Section 9.1 does not address the transfer of the Hospital or the Jefferson County Business. Instead, under Section 9.2, if the Sponsorship Agreement is terminated in this manner, the Sponsors will mutually agree upon the effect of such termination and the dissolution and liquidation or other disposition of KSN and its assets and liabilities.

5. Termination of New Academic Affiliation Agreement

a. Expiration of Term

The New Academic Affiliation Agreement terminates at the end of the "Term" which means the "Initial Term" (twenty-five years) and any and all "Renewals Terms" (three renewal periods of fifteen years each).

b. Material Breaches

KSN may, under Section 19.2(b) of the New Academic Affiliation Agreement, terminate by providing a written termination notice to the University upon the occurrence of a material breach of certain sections of the New Academic Affiliation Agreement, but only after the expiration of the "Negotiation Period" described in Section 20.1 of the New Academic Affiliation Agreement.

The University may, under Section 19.2(c) of the New Academic Affiliation Agreement, terminate by providing a termination notice upon the occurrence of a monetary breach relating to a failure to pay an undisputed (in good faith) and agreed upon sum of money when due.

Under Section 19.2(c), the University may also terminate for a breach of any of the following events (but only after the expiration of the "Negotiation Period"):

(i) The University has an option, under Section 19.2(c)(i), to terminate if KSN's financial position renders it insolvent or KSN makes a general assignment for the benefit of creditors. Additionally, under Section 19.2(c)(i), the University may terminate if a petition in bankruptcy is filed by KSN, or such a petition is filed against and consented to by KSN or not dismissed within thirty (30) days. Finally, under this sub-part, the University may terminate if a bill in equity or other proceeding for an appointment of a receiver of KSN or other custodian for KSN's business or assets is filed and consented to by KSN, or if a receiver or other custodian of KSN's assets or property, or any part thereof, is appointed.

(ii) Under Section 19.2(C)(ii), the University may terminate upon the occurrence of a material breach of certain sections of the New Academic Affiliation Agreement including the failure of KSN to make any payments required under any approved "NTH (New Teaching Hospital) Investment Plan." However, the (a) failure of the NTH Committee (as defined in section 10 the Academic Affiliation Agreement) to present the NTH Investment Plan to the KSN Board, (b) the failure of the KSN Board to approve the NTH Investment Plan, and/or (c) the submission of a dispute regarding the NTH Investment Plan, do not constitute a breach of the New Academic Affiliation Agreement. Effectively, only a failure in payment is a breach.

(iii) Under Section 19.2(C)(iii), if KSN willfully, intentionally, and repeatedly breaches a material provision of the New Academic Affiliation Agreement after it has received written notice from the University with respect to the breach, the University may terminate the New Academic Affiliation Agreement.

(iv) Under Section 19.2(C)(iv), the University may terminate if KSN fails to comply in all material respects with any arbitration award granted under Section 20.2 of the New Academic Affiliation Agreement.

(v) Under Section 19.2(C)(v), the New Academic Affiliation Agreement terminates upon the closing of the purchase of the Hospital by the University pursuant to Section 8 of the Sponsorship Agreement.

(vi) Under Section 19.2(C)(vi), if the New Lease is terminated without the University's consent.

(vii) A default by UMC under the New Academic Affiliation Agreement is an event of default under Section 18(A)(e) of the New Lease.

6. Commonwealth's Termination Rights

By letter dated November 10, 2011 from the Sponsors and UMC to the Commonwealth (attached as Exhibit K),[25] the Sponsors and UMC agree, in consideration of the Commonwealth's entering into the New Academic Affiliation Agreement and the New Lease, in the event of (a) a breach of the Transaction Documents; (b) the expiration of any applicable cure periods; (c) the failure of any applicable dispute resolution procedures called for in the Transaction Documents to resolve such breach to the satisfaction of the University; and (d) the University's failure or refusal to exercise its rights, the Commonwealth will have the right, independent of the right of the University, to exercise any and all rights of the University to terminate or enforce the Transaction Documents in accordance with their respective terms.

While the foregoing grant of direct rights to the Commonwealth is significant, it should be noted that the Commonwealth may only exercise such rights if all conditions are satisfied, notably including the University's refusal to exercise the same rights. As such, the letter does not grant the Commonwealth independent rights to terminate any portion of the proposed consolidation.

C. Effect of Termination of New Academic Affiliation Agreement or a CHI Change in Control - Transfer of Teaching Hospital Pursuant to Sponsorship Agreement

The Sponsorship Agreement sets forth the agreement among the Sponsors in the event there is a required transfer of the Teaching Hospital to the University and the Commonwealth. If (i) the New Academic Affiliation Agreement is terminated or is not renewed at the end of its "Term" or any "Renewal Term," (ii) if the University delivers notice to CHI and JHHS following a CHI Change of Control, or (iii) if CHI delivers notice to JHHS and the University in connection with an unresolved dispute concerning a lack of agreement regarding an amendment to Exhibit G (the list of restricted or prohibited services), then KSN shall sell, assign and otherwise transfer, and the University shall purchase and acquire all of KSN's right, title and interest in and to the "Teaching Hospital Business." The three foregoing occurrences are the only expressly identified events which require a transfer of the Teaching Hospital Business to the University. (See above discussions titled "Withdrawal of a Sponsor" and "Removal of a Sponsor").

25 The letter remains unsigned as of the date hereof and would need to be fully executed prior to the approval or consummation of the proposed consolidation.

1. Purchase Price for Teaching Hospital Business (University of Louisville Hospital, the James Graham Brown Cancer Center, Jewish Hospital and Frazier Rehab Institute)

Section 8.1(D) of the Sponsorship Agreement identifies the formula for the Purchase Price for The Teaching Hospital Business. The purchase price for the Teaching Hospital Business is the sum of the Fair Value of the Teaching Hospital Business as of the Termination Closing Date less the amount of the Teaching Hospital Business Assumed Liabilities as of the Termination Closing Date, and less the Fair Value of the University's Membership Interest as of the Termination Closing Date. The Fair Value of each variable of the formula is determined by an appraiser mutually acceptable to the parties.

Because the Teaching Hospital Facilities under the Sponsorship Agreement are defined as the University of Louisville Hospital and the James Graham Brown Cancer Center as well as Jewish Hospital and Frazier Rehab Institute, the Teaching Hospital Business is by definition an interest greater than the "Old ULH" as that term is defined in the New Academic Affiliation Agreement. The significance of the difference is that Old ULH represents the UMC contribution to KSN. The University will be required to purchase and acquire assets in addition to those contributed by UMC. Therefore, if there is an unwind, it is likely that the application of a credit toward the Purchase Price of the Fair Value of the University's Membership Interest in KSN will not be sufficient to acquire the Teaching Hospital Business (and Assumed Liabilities).

2. Purchase Price for Teaching Hospital Business Plus Jefferson County Business (University of Louisville Hospital, the James Graham Brown Cancer Center, Jewish Hospital and Frazier Rehab Institute Plus Assets Contributed by JHHS/JHSMH, and Any Additional KSN Facilities in Jefferson County at Time of Unwind)

Under Section 8.1(B) of the Sponsorship Agreement, KSN has a "Put Right" to cause the University to purchase all of KSN's right, title and interest in and to some or all of the business and facilities operated by KSN in Jefferson County (the Jefferson County Business). Within 120 days after an Affiliation Termination Event, KSN may exercise the Put Right. If KSN exercises this right, then the University must purchase more than the Teaching Hospital Facilities. The formula for the Purchase Price is the Sum of the Fair Value of the Teaching Hospital Business and the Jefferson County Business as of the Termination Closing Date less the amount of Teaching Hospital Business Assumed Liabilities and Jefferson County Business Assumed Liabilities as the Termination Closing Date less the Fair Value of the University's Membership Interest as of the Termination Closing Date. As with a scenario in which KSN does not exercise its Put Right, the Fair Value of each variable of the formula is determined by an appraiser mutually acceptable to the parties. If there is an exercise of KSN's Put Right, the University will be required to purchase and acquire all of the Jefferson County assets contributed by JHHS/JHSMH. The credit for the University's Membership Interest in KSN will not be sufficient to satisfy the Purchase Price.

D. Termination of Contracts Pursuant to 200 KAR 5:312

Section 3 of KAR 200 KAR 5:312 (attached as Exhibit L) permits the Commonwealth of Kentucky to terminate a contract for the convenience of the Commonwealth "if the purchasing officer has determined that the termination will be in the Commonwealth's best interest." The Commonwealth provides the contractor with a thirty (30) calendar day written notice of the termination unless the Secretary of the Finance and Administration Cabinet or his designee makes a written determination that a shorter notice of termination for convenience is in the best interest of the Commonwealth.

The Commonwealth of Kentucky is being asked to enter into the New Lease for the use of the Hospital and the New Academic Affiliation Agreement. Section 28 of the New Lease recognizes that the New Lease is executed and delivered in the Commonwealth and subject to its laws. Section 23.6 of the New Academic Affiliation Agreement recognizes that the agreement is deemed to have been entered into in the Commonwealth of Kentucky. Each of these agreements is subject to a termination for convenience under KAR 200 KAR 5:312.

Nonetheless, neither of the proposed agreements expressly identifies the Commonwealth's power to terminate for convenience, as required by 200 KAR 5:312, Section 3. Further, it should be made clear that a termination for convenience of the Commonwealth is not subject to "Conflict Resolution" process set forth in the New Academic Affiliation Agreement.

With regard to the Sponsorship Agreement, the Secretary of Finance and Administration Cabinet is not proposed as a signatory to the agreement. However, by virtue of the University of Louisville's participation, 200 KAR 5:312 is a power exercised by the purchasing officer of the University of Louisville and is also likely applicable to the Sponsorship Agreement. It should be made express in the Sponsorship Agreement that a termination for convenience is a right reserved to the University of Louisville. Further, the provisions should state that the exercise of the right is not subject to the "Dispute Resolution Process" in the Sponsorship Agreement.

E. Constitutional Issues under the United States and Kentucky Constitutions

Among the Consolidation Parties, CHI Kentucky, Inc., CHI, JHSMH and Saint Joseph Health System, Inc. are subject to the Ethical and Religious

Directives for Catholic Health Care Services (ERDs).[26] UMC, as a non-religious stand-alone entity is not. However, UMC has agreed contractually not to perform certain procedures that would be prohibited under certain ethical and religious directives. (Schedule 1 of Common Purpose Agreement, attached as Exhibit M) As a result, the following medical procedures may not be performed at the Hospital: elective (direct) abortions (not presently performed at University Hospital), delivery of contraceptives, sterilizations (e.g. tubal ligations), fertility treatments and euthanasia (not permitted under Kentucky law). These restrictions on the performance of certain medical procedures at the Hospital, a public asset, have raised constitutional questions: namely, whether such restrictions of services at a public hospital violate the Establishment Clause of the United States Constitution, as it relates to excessive entanglement between state and religion; and Section 5 of the Kentucky Constitution, prohibiting a preference by law to any particular religious sect, society or denomination.

The First Amendment's Establishment Clause provides that, "Congress shall make no law respecting an establishment of religion." The Supreme Court has evaluated Establishment Clause challenges based upon a test developed in Lemon v. Kurtzman, 403 U.S. 602 (1979), holding that government action violates the Establishment Clause if it has the principal purpose or primary effect of advancing religion or fosters an excessive entanglement with religion. In Larson v. Valente, 456 U.S. 228, 244 (1982), the U.S. Supreme Court interpreted the Establishment Clause to also contain a neutrality mandate, holding "The government may not favor one religion over another, or religion over irreligion."

Opponents of the proposed merger argue that approval of the transaction will have the impermissible effect of advancing religion by authorizing and requiring a public, state-owned hospital to be governed by the Catholic Church's religious directives. Opponents further allege that the denial of certain services by the Hospital due to religious doctrine is a violation of the neutrality mandate of the Establishment Clause.

Proponents of the merger present the alternate perspective that the proposed merger does not violate the Establishment Clause because neither the University of Louisville nor UMC will technically be bound by the ERDs, the merger has legitimate secular purposes, and the merger does not foster an excessive entanglement between government and religion. These arguments rely on the premise that UMC is not a public entity, an issue that has not yet been decided by a court of law.

Further complicating this issue is the evolution of the University's explanation of to what degree the Hospital will be subject to the ERDs. On June 14, 2011 the Dean of the University's School of Medicine stated that the University had "made a promise that we'll respect the Ethical and Religious Directives of the Catholic Church." On June 30, 2011 the CEO of UMC stated that the "partners have committed to honoring the rich academic heritage of UofL (and) Jewish Hospital and religious heritages, including the Ethical and Religious Directives of the Catholic Church." Then in October of 2011, the parties to the proposed consolidation revised their public position on the ERDs by stating that the Hospital "will not become a Catholic hospital, and will not be required to follow the ERDs. By contractual agreement, elective sterilizations, elective abortions and euthanasia will not be performed."[27] While this evolving explanation may represent an accurate description of the proposed legal structure of the consolidation, it has cast a cloud of vagueness and skepticism over the issue in the public eye.

The vagueness surrounding the ERD issue, as well as the proposed structure of the consolidation involving the University and the use of state assets may likely set the stage for a constitutional challenge of the consolidation. For these reasons, the Attorney General is not yet in a position to opine as to whether the proposed consolidation satisfies the United States and Kentucky Constitutions. This will ultimately be a matter for resolution by the courts. In any event, such litigation would undoubtedly be lengthy and would require the use of valuable state resources to defend.

E. Open Records/Transparency

On October 6, 2011, the Office of the Attorney General issued 11-ORD-157 wherein it determined that UMC is a public agency for purposes of the Kentucky Open Records Act. (See Exhibit H) Pursuant to the decision, the OAG determined that UMC is a "public agency" pursuant to KRS 61.870(1)(j) because it is an "agency which is established and created, and is controlled by a public agency…" As such, the records of UMC are public and must be available for public inspection absent one of the exceptions to disclosure set forth in KRS 68.878(1)(c).

If the proposed consolidation transaction is completed, UMC will be controlled by KSN, in which the University of Louisville is only a minority Sponsor, i.e. sixteen percent. This change in control of UMC by the University of Louisville may arguably take UMC out of the definition of a "public agency" under KRS 68.870(1)(j). Access to the records of UMC, however, could still be obtained indirectly, but only if the University of Louisville, in its capacity as a Sponsor, obtains control of records and reports supplied by or on behalf of KSN.

Under Section 2.5 of the Sponsorship Agreement, KSN must deliver a copy of the audited financial statements to each Sponsor. The University of Louisville will also, under Section 2.2(A)(2)(b)(ii), be allowed to review and audit necessary books and records to determine if fee-for-service payments to CHI, in amount and methodologies, are consistent with those imposed with respect to other CHI wholly-owned subsidiaries. Additionally, under the New Academic Affiliation Agreement, the Academic Medical Center Committee (which will be controlled by the University

26 http://www.usccb.org/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf
27 Howington, P. (Oct. 24, 2011), "Hospital merger stance softens," The Courier-Journal

of Louisville) will have a right to information regarding KSN's capital budgets, operating budgets, and strategic plans for the "New Teaching Hospital."

The loss of control of UMC, coupled with the absence of transparency provisions in the Transaction Documents, results in a clear loss of access by the public to documents related to a public asset, the Hospital. Prior to approving the transaction, the Commonwealth should ensure that the University of Louisville will receive all records and reports contemplated for transmittal under the agreements and any permitted record or report necessary for monitoring and supervising KSN and the New Teaching Hospital. Further, the Commonwealth should require the University of Louisville to expressly acknowledge that all such records shall be subject to the Kentucky Open Records Act.

G. Lending of the Credit of the Commonwealth

Section 177 of the Kentucky Constitution provides: "The credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State; nor shall the Commonwealth become an owner or stockholder in, nor make donation to, any company, association or corporation; nor shall the Commonwealth construct a railroad or other highway."

Section 2.4 of the Sponsorship Agreement states that no Sponsor will be obligated to make any additional contributions to the net assets of KSN nor fund any capital assessments, make any loans to, investments or other advances to KSN. Additional contributions are only authorized and required upon the unanimous agreement of the Sponsors. Furthermore, the Section 4.2(A)(6) of the Sponsorship Agreement confirms that unanimous agreement of the Sponsors is necessary for the approval of any additional contributions of capital. Finally, because KSN is a nonprofit corporation, it does not have any shares of capital stock.

While the Commonwealth and the University are beneficiaries of assets dedicated to a charitable or public purpose, neither the Commonwealth nor the University has an ownership interest in KSN as prohibited by Section 177 of the Kentucky Constitution. The implication of Section 177 was an initial concern, principally arising in connection with the University's role as a Sponsor and in a potential unwind scenario. However the parties have addressed the concern and the Attorney General is satisfied that the proposed consolidation does not violate Section 177 of the Kentucky Constitution on its face.

H. Protection of Charitable Assets

1. Presently Held Charitable Assets

With respect to presently held donations or charitable gifts made to or for the benefit of the "University of Louisville Hospital," UMC does not hold such donations or charitable gifts. In fact, in December of 2009, UMC dissolved its related charitable foundation. Instead, the University of Louisville Foundation is the entity that holds endowments and other restricted gifts in favor of "University of Louisville Hospital" or UMC. Given that the University of Louisville Foundation is not a party to or beneficiary of the proposed consolidation, the proposed transaction does not by itself pose a risk that charitable contributions made for the benefit of the Hospital and held by the University of Louisville Foundation would be used contrary to Kentucky laws relating to charitable assets.

With respect to UMC specifically, because UMC is a Kentucky nonprofit with Section 501(c)(3) status under the Internal Revenue Code, all of its assets are charitable assets. Consequently, UMC many not convert its assets to a non-charitable use. Based on the Transaction Documents, the proposed transaction does not appear to run afoul of this prohibition.

2. Distributions to Sponsors

The charitable and state assets proposed to be contributed by UMC to the consolidation may not be misdirected or otherwise applied in a manner inconsistent with their charitable or public purposes. On this point, there is the potential for misdirection under the proposed Sponsorship Agreement, namely that the Sponsors have the unrestricted right to the assets of KSN, including those of UMC.

Section 2.2(B)(1) of the proposed Sponsorship Agreement permits the Sponsors, by unanimous consent and without the approval of the board of directors of KSN, to approve payments by KSN to the Sponsors. Such payments to the Sponsors would have to be consistent with the original charitable purpose of assets and could not be distributions in the form of dividends to the Sponsors. If not, such payments could potentially violate Kentucky law, similar to what occurred with University Health Care, Inc. dba Passport Health Plan. While the terms of the proposed Sponsorship Agreement relating to the foregoing distributions appear permissible on their face, given the risk of improper distributions, it is important that the Sponsors exercise caution in such distributions. It is also essential that the University and the Commonwealth have the ability to monitor and scrutinize such distributions to ensure legal compliance and continued use of the assets consistent with their charitable and public purposes.

3. Additional Payments

In addition to the above-described distributions, the proposed Sponsorship Agreement provides for "Mission Payments" under Section 2.2(A)(1) and fee-for-service payments under Section 2.2(A)(2). These payments do not, on their face, raise concerns except for the "Capital Resource Pool" payments characterized as fee-for-service payments. Although characterized as a fee-for-service, the "Capital Resource Pool" payment is a transfer of assets for undesignated purposes. In simple terms, if KSN transfers cash or other assets out as a "Capital Resource Payment," it is very difficult, if not impossible, to determine the consideration returned to KSN for such payment. Such payments raise a concern for a number of reasons. First, it could result in a conversion of the original purpose of a charitable asset, e.g. an asset of UMC, to a purpose different than that for which it was originally dedicated. Second, from a broader financial perspective, such payments could result in a reduction in the net revenues potentially available to be distributed to the Sponsors. Third, it raises the issue of assets or revenues potentially being transferred out of Kentucky without a corresponding identifiable benefit in return.

I. Potential Dilution of Sponsorship Percentage

In addition to monitoring the ongoing use of the Hospital consistent with its public mission, the University and the Commonwealth must be able to ensure that its interest in the Hospital is not diluted. On this note, a change in the University's Membership Interest Percentage can potentially take place as set forth in the Sponsorship Agreement.

Under the Sponsorship Agreement, no Sponsor is obligated to make any additional contributions to the net assets of KSN; and there is no obligation for the Sponsors to make loans, advances, investments, or pay capital assessments to KSN. However, if the Sponsors unanimously agree to make additional contributions to the net assets of KSN under Section 2.4 of the Sponsorship Agreement, and a Sponsor fails to make its pro rata contribution, then that Sponsor is in breach of the Agreement. The Sponsor's Membership Interest Percentage would then be adjusted to a new percentage equal to the sum of the Fair Value of the Sponsor's Membership Interest Percentage as of the date the additional contribution was due plus the amount of any Additional Contribution that was made by the Sponsor (including any additional amount of the Additional Contributions made on behalf of the Noncontributing Sponsor) divided by the sum of the Fair Value of KSN as of such date plus the aggregate amount of such Additional Contributions made by all of the Sponsors.

In addition, Article XI of the Sponsorship Agreement permits KSN to satisfy all or any amounts owed by a breaching Sponsor to KSN, as determined by judgment of a court of competent jurisdiction, by reduction of the breaching Sponsor's Membership Interest Percentage. The reduction formula is the sum of the Fair Value of the breaching Sponsor's Membership Interest as of the date the amount first became due and payable less the amount owed by the breaching Sponsor divided by the Fair Value of the Network Entity as of the Due Date reduced by the amount owed. The remaining Sponsors' Membership Interest Percentages are proportionately increased.

While the foregoing issue is significant, the fact that the Sponsorship agreement requires unanimous agreement of the Sponsors before an additional contribution may be required mitigates the concern. Nonetheless, great caution should be exercised by the University in considering whether to ever agree to such an additional contribution. Further, given the fact that the Hospital is a public asset, the Commonwealth should have an oversight role in such a decision.

J. Restricted Services/Agreement to Not Compete

Article XI of the Sponsorship Agreement contains numerous restrictive covenants and limitations on services which would compete with KSN. As such, if the consolidation is consummated, the University would be limited in the types of medical services it provides, or desire to provide, outside of KSN.

Under Section 6.1(A) of the Sponsorship Agreement, the Sponsors shall not cause directly or indirectly competition with the services or products of KSN. The Restricted Services prohibition applies to the entirety of the Commonwealth of Kentucky except for Boone, Kenton, and Campbell Counties. The Restricted Services prohibition of Section 6.1(A) also applies to the Indiana counties of Floyd, Clark, and Scott (along with the entirety of the Commonwealth of Kentucky except for Boone, Kenton, and Campbell Counties, the "Restricted Territory").

Section 6.1(B) of the Sponsorship Agreement references an Exhibit E that contains activities that are not deemed Restricted Services. For the University, Exhibit E includes, and therefore does not prohibit, the University of Louisville Family Health Center, University of Louisville Physicians, Inc. (ULP), and University Physicians Associates, Inc. (UPA). With regard to ULP and UPA, which are not signatories to the Sponsorship Agreement, the University is under a duty to use its best efforts to use its influence and control to prevent ULP and UPA from competing with KSN in a manner that would violate the Restrictive Covenants section of the Sponsorship Agreement if the activities were conducted directly by the University School of Medicine.

Section 6.1(B) of Sponsorship Agreement also permits the University to make charitable or eleemosynary grants provided that the conditions associated with the grants makes it a requirement that the grants not be used by the recipients to engage directly or indirectly in Restricted Services in the Restricted Territory as well as any activities of the University other than the clinical activities of the School of Medicine.

Under Section 6.1(C) of the Sponsorship Agreement, each Sponsor (including related entities) that desire to engage in Restricted Services in the Restricted Territory must notify KSN, which will have a right of first refusal regarding the provision of service. If the University is mandated by state law to engage in activities that would be Restricted Activities in the Restricted Territory, Section 6.3(E) provides KSN with an option to engage in those activities on the University's behalf. Further, KSN has a right of first refusal under Section 6.4 for Subsequent Acquisitions by Sponsors.

Under Section 6.1(D) of the Sponsorship Agreement, CHI shall not directly or indirectly allow any entity other than KSN to engage in any of the Restricted Services in Boone, Kenton, or Campbell counties without the consent of the University and JHHS except that it may continue a joint venture, TriHealth, Inc., in a manner consistent with a current contract. Per Section 6.2, KSN cannot engage in Restricted Services in these counties without the consent of TriHealth, Inc., if it would violate the contractual arrangement involving TriHealth. For these three Kentucky counties, under 6.1(E), there is a KSN right of first refusal similar to the right under Section 6.1(C). If the University or JHHS desires to engage in Restricted Services in Boone, Kenton or Campbell counties, it must notify KSN of the material terms and conditions regarding the provision of the Restricted Services, and KSN may elect to provide the services in these counties.

Section 6.3 of the Sponsorship Agreement contains special provisions regarding academic affiliations; however, before the University may take any action under this Section, it must provide notice to the other Sponsors who may invoke the dispute resolution process the Sponsorship Agreement. Per Section 6.3(A), if KSN fails to provide material financial support or otherwise ceases to support a material clinical service at the Teaching Hospital Facilities that is reasonably necessary for maintaining Accreditation for the School of Medicine or for the School to be a Competitive School of Medicine, the University may affiliate with entities other than KSN at facilities other than KSN facilities for providing teaching and education opportunities within such a service line. Under Section 6.3(B), neither CHI nor JHHS may enter into academic affiliations with schools of medicine at the University of Kentucky, Indiana University, Washington University, the University of Tennessee, or Vanderbilt University resulting in the provision of residency, teaching, or other academic programs in the Affiliation Restriction Territory or the Indiana counties of Spence and Warrick. Section 6.3(B) does not prevent CHI or JHHS from merging with or acquiring any entities that have an existing academic affiliation with parties other than the University of Louisville.

Section 6.3(D) addresses the Termination or Nonrenewal of the New Academic Affiliation Agreement. Basically, 6.3(D)(1), prohibits the University from entering into an similar academic affiliation agreement during the Applicable Period (defined below). The University may enter into an agreement for the management of the operations of the Teaching Hospital Facilities or an academic affiliation agreement with the entity that acquires the Teaching Hospital Business. With regard to KSN, Section 6.3(D)(2) provides that KSN will not enter into a similar academic affiliation agreement with any school of medicine within the Affiliation Restriction Territory during the Applicable Period. Section 6.3(D)(3) functions to prohibit JHHS and the University from entering into an academic affiliation agreement for similar services and programs, an agreement for co-ownership, management, or other joint venture of any of their respective health care facilities, or an agreement where one party supports another during the Applicable Period.

There are two different Applicable Period formulas for Section 6.3. If the termination of the New Academic Affiliation Agreement results from a KSN cause, the Applicable Period is the longer of 12 months following the commencement of the Transition Period (the termination or expiration of the Agreement) or completion of the Transition Period. Thus, for the first formula, there is a twelve month minimum. If the termination results from a University breach or a nonrenewal by the University, the Applicable Period is the longer of 24 months following the commencement of the Transition Period or the completion of the Transition Period.

VI. ISSUES OF PUBLIC POLICY

While the principal scope of this review is focused on legal issues arising out of the proposed consolidation, we must also identify a few of the many public policy issues at hand.

A. Ethical and Religious Directives/Reduced Level of Service

The Consolidation Parties and the Sponsors have pointed out that only the facilities currently identified as "Catholic" will be "Catholic" following the proposed consolidation. As such, only those Catholic entities will be completely subject to the Ethical and Religious Directives of the Roman Catholic Church (ERDs). Specifically, according to the Transaction Documents, neither UMC nor the Hospital will be identified or treated as a "Catholic" institution. (Common Purpose Agreement, Sections 1.2, 1.3 and 1.4, Exhibit M; Sponsorship Agreement, Section 5.3, Exhibit C) Nonetheless, UMC and the Hospital have contractually agreed not to perform certain procedures that would be prohibited by certain ethical and religious directives, including elective sterilizations, elective abortions and euthanasia. (See discussion of Establishment Clause above) (See

Schedule 1 of the Common Purpose Agreement, Exhibit M; Sponsorship Agreement, Section 5.3, Exhibit C) The Hospital does not practice elective abortions or euthanasia now. Although Contraceptives may still be prescribed in the event of consolidation, they will no longer be dispensed by the Hospital pharmacy.

Regarding sterilizations, the University has made arrangements for the restricted services to be provided outside of KSN facilities if the consolidation is approved. The University of Louisville and Baptist East Hospital have reportedly agreed that University of Louisville physicians will provide reproductive services, including tubal ligations, restricted by the ERDs at Baptist East Hospital, and the University of Louisville will pay Baptist East Hospital for use of the facility to provide the services. (See letter summarizing the agreement attached as Exhibit N)

Regardless of the reason, certain services will no longer be available at the Hospital, notably sterilizations, including tubal ligations, and delivery of contraceptives. This represents a material change in the level of service at the historically public Hospital, which is the principal provider of indigent care for the Louisville region.

B. Control of State Assets

The issue of ongoing control and protection of a state asset, i.e. the Hospital, arises principally out of the proposed control structure of KSN. As discussed above, the current operator of the Hospital is UMC. UMC is effectively controlled by the University of Louisville and the operation of the Hospital is governed by the current Affiliation Agreement. Pursuant to the proposed consolidation, UMC will remain as a corporate entity and will also be the corporate entity named as the operator of the Hospital in the New Academic Affiliation Agreement. However, if the proposed consolidation is completed, UMC will be wholly controlled by KSN. KSN will be controlled by CHI (the seventy percent sponsor, while the University of Louisville and JHHS will only have minority sponsorship percentages of sixteen percent and fourteen percent respectively).

In effect, UMC, the entity holding the lease rights and the right to operate the Hospital, a public asset, will be majority controlled by a private corporate entity subject to the ERDs. By holding a majority position in KSN, CHI will effectively control the scope of medical services, budget, and operations of KSN and the Hospital if the transaction is approved, instead of the University of Louisville.

While the University of Louisville will have a measure of input into the operations of KSN and the New Teaching Hospital, CHI is in firm control of both. Section 3.1 of the Sponsorship Agreement provides CHI with the ability to appoint a majority of KSN Board Members. Under Section 4.2(C) of the Sponsorship Agreement, CHI reserves the power to approve annual and long-term capital budgets of KSN. Under Section 4.4 of the New Academic Affiliation Agreement, the Academic Medical Center Committee has input on the development of capital budgets, operating budgets, and strategic plans for the New Teaching Hospital; however, the Board of KSN does not have to follow the recommendations. Under Section 8.1 of the New Academic Affiliation Agreement, KSN is responsible for the operations of the New Teaching Hospital and develops its operating budget.

From any perspective, the proposed arrangement represents a significant erosion of the University and Commonwealth's control over a major public asset.

V. CONCLUSION & RECOMMENDATIONS

The most fundamental fact at hand is that the University of Louisville Hospital is a public asset, dedicated to the public purpose of providing healthcare, particularly providing healthcare to the indigent. Since 1979, the Hospital has been owned by the Commonwealth of Kentucky for the use and benefit of the University of Louisville. The Commonwealth and the University presently contract with UMC to operate the Hospital consistent with and in furtherance of its long standing mission of being the safety net hospital for the greater Louisville community and beyond. UMC's right to operate the Hospital is memorialized in the Affiliation Agreement and related Lease.

Notably, UMC, the University and the Commonwealth of Kentucky, acting through the Governor and the Secretary of the Finance and Administration Cabinet, are all parties to the Affiliation Agreement and related Lease. It is for this reason that any modification of the Affiliation Agreement and related Lease requires the approval of the Governor. In considering whether to approve or disapprove of the proposed modifications as evidenced by the New Academic Affiliation Agreement and the New Lease, the Governor has the obligation to protect public assets and ensure that such assets continue to be used for the purposes for which they are dedicated.

It is indisputable that the Commonwealth of Kentucky is a party to the present Affiliation Agreement and Lease, and is a necessary party to the proposed New Academic Affiliation Agreement and New Lease. In addition, the Commonwealth, as well as the University, has fiduciary obligations to protect public assets. Nonetheless, the University of Louisville, presumed to negotiate the disposition and long term use of a clear public asset in an unprecedented venture rife with complexities and permanent implications for the future. The University did this without fully or timely engaging or consulting with the appropriate agencies of the Commonwealth, notably the office of the Governor and the Finance and Administration Cabinet.

On November 11, 2010, the University of Louisville Board of Trustees first authorized President James R. Ramsey to execute a letter of intent regarding the proposed consolidation. The minutes from that day reflect that the University had been in discussions with CHI, JHHS/JHSMH and UMC for "approximately a year" before then.[28] Yet, the University did not seek the Commonwealth's approval until after June of 2011, and only then after the Attorney General and the Governor raised the issue. In light of the Affiliation Agreement, Lease and the important public asset at issue, i.e. the Hospital, the Governor and the Secretary of the Finance and Administration Cabinet should have been involved in the negotiations much earlier.

In addition to the foregoing issues, the proposed consolidation raises significant legal and policy issues, as set forth above and summarized below along with, in some cases, associated recommendations.

- Acquisition and Disposition of State Assets. The history of the operation of the Hospital and the proposed New Affiliation Agreement trigger the provisions of KRS Ch. 45A, KRS Ch. 164A, and the University's Policies and Procedures. Based on a review of the Transaction Documents and Board of Trustee minutes, and particularly the minutes from November 11, 2010[29] and June 9, 2011[30], it does not appear that the University of Louisville has yet complied with these applicable statutory provisions. Further, it is unclear whether the applicable statutes can be complied with at all as it relates to a potential future forced acquisition of assets in addition to the Hospital in the event of an unwind.

- Effects and Risks of an Unwind. The largest risk associated with an unwind of the proposed consolidation is financial in nature. Namely, in the event of an unwind, the University would be required, under certain circumstances, to re-purchase not only the Hospital, but also the downtown Jewish Hospital and Frazier Rehab, and could be also be required to purchase all of KSN's assets located in Jefferson County. While the University's sponsorship interest may, in large part, offset as a credit the purchase of the Hospital, it likely would not cover the price of the additional facilities. It does not appear in any of the Transaction Documents, or elsewhere, that the University has made any plan for such contingent liabilities. Further, it is conceivable, that if the University is faced with financing the acquisition of significant assets beyond the Hospital, it may turn to the Commonwealth to assist. This risk for the Commonwealth, especially since it was not involved in the negotiations in advance, may not be in the public's interest. It would be advisable for the University to make better contingency plans to address a possible major financial obligation in connection with a potential re-purchase and operation of the Hospital and additional assets.

- Termination of Contracts Pursuant to 200 KAR 5:312. Pursuant to 200 KAR 5:312, the New Academic Affiliation Agreement, the New Lease, the Sponsorship, as well as any other agreement to which the Commonwealth or the University are a party, should be expressly acknowledged to be subject to 200 KAR 5:312 allowing termination if the applicable purchasing officer determines that it is in the Commonwealth's best interest.

- Constitutional Issues under the United States and Kentucky Constitutions. Because the Sponsors and Consolidation Parties include religiously affiliated organizations, including JHHS, CHI Kentucky, Inc., CHI, JHSMH and Saint Joseph Health System, Inc., and, with the exception of JHHS, those entities are subject to the Ethical and Religious Directives for Catholic Health Care Services, significant constitutional issues have been raised, including without limitation the Establishment Clause of the United States Constitution. Given the uncertain status of this issue in the Courts and the unique nature of the proposed consolidation, the Office of the Attorney General is not able to presently render a conclusive opinion to the constitutionality of the proposed transaction. Nonetheless, if litigation arises, it will undoubtedly be protracted and expensive.

- Open Records/Transparency. If the proposed consolidation transaction is completed, UMC may no longer meet the definition of a "public agency" under KRS 68.870(1)(j). Access to the records of UMC and the Hospital, however, could still be obtained indirectly, but only if the University of Louisville obtains control of records and reports supplied by or on behalf of KSN. The loss of control of UMC by the University, coupled with the absence of transparency provisions in the Transaction Documents, results in a clear loss of access by the Commonwealth and public to documents related to a public asset, the Hospital. Prior to approving the transaction, the Commonwealth should ensure that the University of Louisville will receive all records and reports contemplated for transmittal under the agreements and any permitted record or report necessary for monitoring and supervising

28 http://louisville.edu/president/trustees/minutes/2010/BOTmin11-11-10.pdf
29 http://louisville.edu/president/trustees/minutes/2010/BOTmin11-11-10.pdf
30 http://louisville.edu/president/trustees/minutes/2011/BOT%20minutes%206-8-11.pdf

KSN and the New Teaching Hospital, and that such records are acknowledged to be subject to the Kentucky Open Records Act.

- Protection of Charitable Assets. The proposed Sponsorship Agreement permits the Sponsors, by unanimous consent and without the approval of the board of directors of KSN, to approve payments by KSN to the Sponsors. Such payments to the Sponsors would have to be consistent with the original charitable purpose of assets and could not be distributions in the form of dividends to the Sponsors. While the terms of the proposed Sponsorship Agreement relating to the foregoing distributions appear permissible on their face, given the risk of improper distributions, it is important that the Sponsors exercise caution in such distributions. The "Capital Resource Pool" payments characterized as fee-for-service payments under the Sponsorship Agreement also raise some concern. Although characterized as a fee-for-service, the "Capital Resource Pool" payment is a transfer of assets for undesignated purposes. Such payments raise a concern for a number of reasons. First, it could result in a conversion of the original purpose of a charitable asset. Second, from a broader financial perspective, such payments could result in a reduction in the net revenues potentially available to be distributed to the Sponsors. Third, it raises the issue of assets or revenues potentially being transferred out of Kentucky without a corresponding identifiable benefit in return.

  If the proposed consolidation is approved and goes forward, the Commonwealth and the University should require KSN to deliver to the Finance and Administration Cabinet audited and unconsolidated financial statements for both UMC and KSN. Further, the University and the Commonwealth would need to diligently monitor the operations of KSN to ensure the continued protection of the charitable assets.

- Restricted Services/Agreement to Not Compete. Section 6 of the Sponsorship Agreement contains numerous and significant restrictions on what services the University may provide outside of KSN, as set forth above. Most notable, is Section 6.3 which provides that the University may affiliate with another entity if KSN fails to provide material financial support or otherwise ceases to support a material clinical service at the Teaching Hospital Facilities that is reasonably necessary for maintaining Accreditation for the School of Medicine or for the School to be a Competitive School of Medicine. There is some concern regarding the sufficiency of the remedy for KSN's failure to financially support the Teaching Hospital in a manner necessary to maintain accreditation. This issue may require further explanation.

The proposed consolidation of Jewish Hospital Healthcare Services, Inc., CHI Kentucky, Inc., Catholic Health Initiatives, University Medical Center, Inc., Jewish Hospital & St. Mary's Healthcare, Inc., Flaget Healthcare, Inc., Saint Joseph Health System, Inc., and JH Properties, Inc. to create a statewide network healthcare entity sponsored by Catholic Health Initiatives, Jewish Hospital Healthcare Services, Inc. and the University of Louisville, raises unprecedented and complex legal and policy issues. While some of the legal and policy issues have been addressed by the parties, many remain unresolved. For these reasons, it is the opinion of the Attorney General that the Commonwealth of Kentucky, acting through the Governor and the Secretary of the Finance and Administration Cabinet, should not at this time enter into the proposed New Academic Affiliation Agreement and New Lease.

Exhibit G

JOINT VENTURE

LETTER OF INTENT

This letter of intent ("**Letter of Intent**" or "**LOI**"), effective as of August 22, 2013 ("**Effective Date**"), between Norton Healthcare, Inc., a Kentucky non-profit corporation ("**Norton**") and the University of Kentucky ("**UK**"), sets forth certain understandings in principle with respect to a contemplated affiliation of Kosair Children's Hospital, which is owned and operated by Norton, and Kentucky Children's Hospital, which is owned and operated by UK (the "**Joint Venture**"). Norton and UK are sometimes referred to herein individually as a "**Party**," and collectively as the "**Parties**," and Kosair Children's Hospital and Kentucky Children's Hospital are sometimes referred to herein as the "**Hospitals**".

<u>PURPOSE</u>

A. Norton and UK were formed, in part, to promote the general health and welfare of the citizens of the Commonwealth of Kentucky ("**Commonwealth**").

B. Increasing competition from other regional pediatric providers and the advent of the Affordable Care Act have prompted both Norton and UK to evaluate options to provide higher quality and more cost efficient care, more effectively serve a broader population and to better compete in the regional marketplace.

C. Norton owns and operates Kosair Children's Hospital in Louisville, Kentucky, which is the largest pediatric hospital in the Commonwealth.

D. UK owns and operates Kentucky Children's Hospital in Lexington, Kentucky.

E. UK and Norton believe that working together they can establish pre-eminent, national class pediatric academic medical centers operated as a cohesive, integrated, provider of pediatric services serving the entire Commonwealth and surrounding region.

F. Norton and UK will continue to meet the obligations and opportunities of their children's hospitals relative to the teaching, research, and clinical service needs of the Schools of Medicine of the University of Louisville and UK and will expand such opportunities where possible.

G. With the recognition that the cooperation and affiliation of Kosair Children's Hospital and Kentucky Children's Hospital is in the best interests of the citizens of the Commonwealth, Norton and UK intend to consummate the Joint Venture in the manner described below.

OVERVIEW OF CONTEMPLATED JOINT VENTURE TERMS AND CONDITIONS

1. **Intentions of the Parties**. The Parties intend to structure the Joint Venture as a joint venture agreement, joint operating agreement or other mutually agreed upon arrangement through which, together, they will more effectively compete in the regional and multistate specialty pediatric markets in which they provide care. Through the Joint Venture, the Parties will implement joint strategies and programs to minimize the outmigration of pediatric care from the Commonwealth, meet the needs and interests of the Commonwealth and pediatric patients and their families and maximize the impact of the resources, programs and services of Kosair Children's Hospital and Kentucky Children's Hospital.

2. **Integration**. In connection with the Joint Venture, the Parties will achieve clinical, operational and financial integration consistent with the following:

> Clinical Integration. The Parties will jointly develop and implement case management programs, clinical guidelines and protocols, disease management programs, patient registries, utilization standards and practice management programs. The Parties will apply these programs to pharmacy usage, electronic prescribing, prevention of surgical infections, surgery process improvements and other Hospital programs. As part of their joint operation, administration and delivery of care to pediatric patients, the Parties will actively monitor and evaluate public health drivers of pediatric morbidity and mortality and review and refine their joint initiatives to enhance the availability, effectiveness, safety and quality of care provided by the Hospitals for patients throughout the Commonwealth.
>
> Operational Integration, Financial Integration and Revenue Sharing. The Parties will jointly manage and engage in consolidated operations with respect to all aspects of patient care at the Hospitals, including without limitation, through joint implementation of patient care protocols, consolidated administration, joint protocols for professional and administrative staffing and personnel matters, jointly reviewing and combining approaches to supply chain, coding, billing and accounting, finance and revenue cycle programs and processes. To the maximum extent permissible, the Parties also shall undertake joint contracting with managed care plans and other payors. Additionally, the Parties will together pursue opportunities with respect to teaching, research and clinical services of the Schools of Medicine of UK and University of Louisville with a shared goal and commitment to jointly establishing the Hospitals as components of pre-eminent, national class pediatric academic medical centers recognized for providing cohesive, integrated and coordinated pediatric care throughout the Commonwealth. The increased availability of pediatric services in underserved areas of Kentucky also will be promoted.

Although the Parties will continue to own their respective assets and be responsible for their respective liabilities, they each will contribute capital, as necessary, for the joint operation and management of the Hospitals. Additionally, they will share in the profits and losses resulting from the operation of the Hospitals in proportions to be determined by the Parties. The Parties will jointly prepare and review capital and operating budgets and engage in joint decision making and financial stewardship regarding financial and resource commitments and expenditures to ensure the best use of health care investment dollars at the Hospitals. The Parties shall develop programs intended to provide savings to state government (Medicaid), other payers and the families of pediatric patients, as a result of the Parties' combined efforts to improve efficiencies and achieve reductions in the cost of caring for pediatric patients at the Hospitals and across the Commonwealth.

3. **Other Contemplated Initiatives**. In connection with the Joint Venture, the Parties will jointly promote Kentucky Children's Hospital, Kosair Children's Hospital, Kosair Children's Medical Center and the new Norton Women's and Kosair Children's Hospital in St. Matthews as a regional medical destination for pediatric services. They will strengthen partnerships and pediatric care consistency and continuity through the Commonwealth via joint outreach and affiliations and enhance their strategic alignment through joint planning and development in clinical education and research strategies. The Parties will jointly pursue expanded opportunities for research and the promotion of new knowledge focused primarily on pediatric health services delivery. Examples of potential pediatric initiatives to be undertaken jointly by the Parties include the following:

- Joint implementation of the Commonwealth's new perinatal guidelines by developing a statewide network and system of care by perinatal and neonatal care providers, which will help improve the care provided to high risk mothers and babies across the Commonwealth
- Joint recruitment, retention and placement of pediatric specialists in order to improve and expand the availability of pediatric specialty services at each of the Hospitals and to attract and retain specialists in the Commonwealth. These efforts are intended to help provide an environment that attracts, retains, and shares top talent and that is conducive to training of health care providers and scientists.
- Jointly develop and operate outreach clinics where feasible including multi-specialty pediatric clinics across the network in Kentucky by placing specialists on-site in clinics where feasible or by establishing telemedicine clinics.
- Work with the Kentucky Cabinet for Health and Family Services, the office of Medicaid services and, as applicable, the state's managed care organizations to develop a statewide system of care for all medically-complex pediatric patients, including high-cost

cases for the state's Medicaid patients, all for the purpose of improving clinical care, reducing costs to the state and patients, and maximizing services being provided as close to patients' homes as possible.

- Jointly develop and implement organized statewide programs for education, wellness and prevention, as well as early detection and intervention, to improve the health status of children across the Commonwealth, concentrating on identified areas of high need, such as for diabetes care.

4. <u>**Governance:**</u> The arrangement contemplated by the Parties will be governed in a mutually agreed upon manner set forth in the Joint Venture documents with representation by each of the Parties. The representation and relative rights and authorities of the Parties will take into account the various roles, responsibilities and contributions of each of the Parties with respect to the arrangement and shall comply with applicable law.

5. <u>**Medical Staff Membership and Privileges.**</u> The Hospitals will continue to have separate medical staffs, medical staff bylaws and rules and regulations.

6. <u>**Joint Venture Documents; Other Agreements and Obligations.**</u> The Joint Venture documents will include such agreements necessary or desirable to effectuate the Joint Venture, including, without limitation, such terms and conditions as are mutually agreed to by the Parties (the "**Joint Venture Documents**"). Nothing in this Letter of Intent or any agreement contemplated by it shall operate or be construed as obligating either Party to violate any explicit or implied obligations or covenants under any other agreement to which it or one of its affiliates is a party.

7. <u>**Effective Date of Joint Venture.**</u> Unless otherwise mutually agreed to by Norton and UK, the Joint Venture is expected to take effect on or before January 1, 2014 (the "**Joint Venture Effective Date**"). Between the Effective Date of this Letter of Intent and the Joint Venture Effective Date, the Parties will continue to operate Kosair Children's Hospital and Kentucky Children's Hospital, respectively, in the ordinary course of business and will notify one another of any material adverse developments.

8. <u>**Charity Care; Nondiscrimination**</u>. Each of Kosair Children's Hospital and Kentucky Children's Hospital will continue to be operated consistent with their charitable missions of promoting the health of the communities they serve, including the provision of charity care for the indigent based on community need. All care will be provided on a nondiscriminatory basis.

9. <u>**Required Approvals; Conditions to Close**</u>. The Joint Venture Documents will contain customary conditions with respect to the affiliation becoming effective, including the receipt of all required approvals, including, without limitation, corporate and governance approvals of the Parties, and all required state and federal governmental and regulatory approvals and clearances. The Parties shall promptly provide all required notices and cooperate on (i) completing and submitting all filings

and applications necessary to obtain required approvals for the Joint Venture and (ii) participating in any meetings with providers, governmental or university officials and other third parties as necessary or desirable to effectuate the Joint Venture.

10. **Confidentiality of Information.**

a. Subject to applicable law, each Party agrees that it will hold the Confidential Information (as defined below) provided by the other Parties in the strictest confidence. The Parties further agree that, subject to applicable law, they will not disclose, divulge or communicate, directly or indirectly, intentionally or inadvertently, the Confidential Information provided to them to any person, except directors, officers, employees, attorneys, accountants, agents and consultants of the Parties who need to know the disclosed Confidential Information to evaluate and provide advice regarding the Joint Venture. The obligations under this Section 10 shall survive the expiration or termination of this Letter of Intent. Notwithstanding any statement herein to the contrary, Norton may share this Letter of Intent with the University of Louisville.

b. The term "**Confidential Information**" shall mean and include, with respect to each of the Parties, any and all information disclosed or furnished by one Party to another Party, regardless of form and including all copies thereof, including the fact that discussions are taking place regarding the Joint Venture. By way of example, but not of limitation, Confidential Information with respect to a Party shall include: (i) any information that is specifically designated "Confidential" by the disclosing Party; or (ii) any information that a reasonable businessperson in the health care industry would treat as confidential or proprietary in nature.

c. Subject to applicable law, the restrictions set forth in this Section 10 shall not apply to Confidential Information with respect to a Party which:

i. Is, at the time of disclosure by such Party, a part of the public domain or which thereafter becomes a part of the public domain through no violation or breach of the provisions of this Letter of Intent; or

ii. The disclosing Party can demonstrate was properly in its possession prior to its receipt from another Party; or

iii. Is hereafter acquired by another party through an independent third party who has no obligation of confidence to such party as to which the Confidential Information relates.

11. **Due Diligence Review; Access to Information.** Completion of the Joint Venture is subject to agreement by the Parties on the Joint Venture Documents and satisfactory completion of a due diligence review by Norton and UK. Unless and until this Letter of Intent expires or is terminated, and subject to the terms and condition of this Letter of Intent, each Party will permit the other Party and its respective representatives, consultants, accountants, attorneys, lenders and other mutually agreed

upon representatives to complete a due diligence review of the other Party's business operations and facilities with respect to pediatric services. The scope and timing for the due diligence process will be mutually determined by the Parties.

12. **Expenses**. Each Party shall bear its own expenses including any due diligence costs in connection with the Joint Venture contemplated by this Letter of Intent regardless of whether Joint Venture Documents are executed.

13. **Termination**. This Letter of Intent will automatically terminate on the Joint Venture Effective Date unless sooner terminated. Either Party may terminate this Letter of Intent without penalty or recourse upon written notice to the other Party. Upon termination of this Letter of Intent, the Parties will have no further obligations hereunder except for the Binding Provisions set forth herein.

14. **Binding/Non-binding Provisions**. Except for Sections 10, 12, 13, 14, 15 and 20 of this Letter of Intent, which shall be binding on the Parties and their respective successors and assigns (the "**Binding Provisions**"), this Letter of Intent is not intended to be a binding agreement and shall not give rise to any obligations between the Parties. Except for the Binding Provisions, no binding contractual agreement shall exist between the Parties unless and until the Parties have executed and delivered the Joint Venture Documents. Nothing in this Letter of Intent shall obligate a Party to execute the Joint Venture Documents.

15. **Equitable Remedies**. The Joint Venture contemplated by this Letter of Intent is unique and the Parties acknowledge that the breach or threatened breach of the confidentiality provisions of this Letter of Intent would cause irreparable harm to the Party aggrieved by such breach for which an award of monetary damages would be inadequate. Accordingly, in addition to and not in limitation of any other remedies available for breach or threatened breach of confidentiality provisions of this Letter of Intent by any Party, the aggrieved Party shall be entitled to an injunction restraining the breaching Party from continuing such breach or threatened breach.

16. **Amendment; Waiver**. The provisions of this Letter of Intent may not be amended, waived, or terminated except by an instrument in writing signed by each Party hereto.

17. **Entire Agreement**. This Letter of Intent contains the entire understanding and agreement among the Parties hereto with respect to the subject matter hereof, and supersedes all prior discussions, understandings, and agreements (whether oral or written) between them with respect thereto.

18. **Public Announcements**. Any and all public announcements concerning this Letter of Intent or the Joint Venture shall be jointly planned and coordinated by and between the Parties. No Party shall act unilaterally in this regard, without the prior written approval of the other Party.

19. **Notices and Consents**. Each of the Parties shall cooperate in good faith to identify all governmental, contractual and other notices and consents necessary to effectuate the Joint Venture and to timely obtain all such notices and consents.

20. **Governing Law**. This Letter of Intent shall be governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law provisions. Venue for any actions brought by either of the Parties with respect to this Letter of Intent shall be in Franklin County, Kentucky.

21. **Notices**. Any notices delivered under this Letter of Intent will be deemed delivered when personally delivered, or five days after they are deposited with the United States Postal Service, certified mail, return receipt requested, or upon delivery by reputable overnight carrier with signature upon receipt required, addressed to the Parties at their addresses set forth below. Any Party may change the address to which notices are to be sent by mailing written notice thereof to the other Party as provided in this Letter of Intent.

If to UK

University of Kentucky
301 Main Building
Lexington Kentucky 40506-0032
Attention: William (Bill) E. Thro, General Counsel

If to Norton:

Norton Healthcare, Inc.
4967 U.S. Highway 42, Suite 101
Louisville, Kentucky 40222-6363
Attention: Robert B. Azar, Chief Legal Officer

22. **Counterparts**. This Letter of Intent may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

The foregoing Letter of Intent is hereby agreed to by the Parties as of the Effective Date.

NORTON HEALTHCARE, INC.,
a Kentucky nonprofit corporation

By:
Stephen A. Williams

Its: Chief Executive Officer

Date: 8-22-13

UNIVERSITY OF KENTUCKY

By:
Eli Capilouto, DMD, Sc.D

Its: President

Date: 8-22-13

By:
Michael Karpf, M.D.

Its: Executive Vice President for Health Affairs

Date: 8-21-13

Exhibit H

From: "Dunn,David Lewis" <david.dunn@louisville.edu<mailto:david.dunn@louisville.edu>>
Date: January 21, 2014 at 2:19:13 AM EST
To: "Williams, Steve" <Steve.Williams@nortonhealthcare.org<mailto:Steve.Williams@nortonhealthcare.org>>
Subject: Re: Understanding of current status

The most fundamental issue that the Commonwealth per their directive must be a party to the deliberations, which you assiduously continue to ignore...

Sent from my iPhone

On Jan 20, 2014, at 10:23 PM, "Williams, Steve"
<Steve.Williams@nortonhealthcare.org<mailto:Steve.Williams@nortonhealthcare.org>> wrote:

And, generally, what terms of the land lease amendment are unacceptable ?

From: Dunn,David Lewis [mailto:david.dunn@louisville.edu]
Sent: Monday, January 20, 2014 10:01 PM
To: Williams, Steve
Subject: Re: Understanding of current status

Steve: yes, with the exception that I was explicit that the some of the terms proposed for the land lease were unacceptable and would require input from the Commonwealth, which you acknowledged to be the case and needed further discussion an negotiation with the Commonwealth at the table.

Best, David

Sent from my iPad

On Jan 20, 2014, at 9:44 PM, "Williams, Steve" <Steve.Williams@nortonhealthcare.org<mailto:Steve.Williams@nortonhealthcare.org>> wrote:

David, the following reflects the understanding that Russ and I had from our phone conversation on Friday at 12:10 PM. As you will recall, we went over it point by point with you twice on the phone to make sure we were all in agreement. This, in turn, was what we provided to our attorneys to begin work on appropriate documents, so that we could all maximize what we accomplish this week, and would be the starting point, of course, for the anticipated meeting tomorrow. Please confirm this is your basic understanding of where we are.

1. We take the existing 2008 Affiliation Agreement, as is, and roll it over to a five year agreement, beginning 1-1-2014, with an auto-renewal for additional five year terms.

2. NHC makes lump sum payment of $10.75 million to UL and UL agrees that the payments covers all claims of any payments UL believes NHC owes or committed to UL. This will include $3.3 in payments for contracts having already being submitted to UL last July for approval, resubmitted last week to Dr. Dunn, and made retroactive to 7-1-13. The remaining $7.4 million will be made in a lump sum and shall be used for pediatrics. (We have a list of how it could be allocated or labeled if needed.)

3. NHC's proposed "fix" for land lease amendment that we had submitted (Cincy on through mid Dec) will be agreed to by UL, and we jointly propose to state for approval. It will be made clear that .....

a. If UofL discontinues the affiliation agreement with NHC, UL cannot then use that as basis for notice of breach in order to try to take the hospital property.

b. NHC must continue to make the hospital available to UL and can't discontinue the affiliation and exclude UL from the hospital, thereby jeopardize UL's pediatric program

4. UL and NHC "stand down" on litigation: UL withdraws the Notice of Breach, NHC withdraws the Request for Declaratory Judgment.

5. Tolling agreement is extended for 30 days to finalize above agreements. Tolling agreements can be terminated by either party with 5 days notice.

6. We will get together next Tuesday, Jan 21, with attorneys, and expedite development of agreements.

7. We then get to state authorities as soon as possible, hopefully next week (now this week), to seek conceptual approval, so that before NHC mgmt and board leave town next Friday, Jan 24, we have an understanding as to whether we have a deal or not, subject perhaps to final documentation with state and signatures.

Thanks.

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged or exempt from disclosure under applicable law. Any patient health information must be delivered immediately to intended recipient(s). If you are not the intended recipient(s), you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the named recipient(s), please notify the sender at either the e-mail address or telephone number above and discard this e-mail. Thank you.

Exhibit I

From: Williams, Steve [Steve.Williams@nortonhealthcare.org]
Sent: Monday, January 20, 2014 9:00 PM
To: 'Dunn,David Lewis'
Subject: Understanding of current status (Updated 10 PM)

I realized I left out of previous email one other item of agreement of Friday. Below is the corrected list.
Thanks. . :

David, the following reflects the understanding that Russ and I had from our phone conversation on Friday at 12:10 PM. As you will recall, we went over it point by point with you twice on the phone to make sure we were all in agreement. This, in turn, was what we provided to our attorneys to begin work on appropriate documents, so that we could all maximize what we accomplish this week, and would be the starting point, of course, for the anticipated meeting tomorrow. Please confirm this is your basic understanding of where we are.

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3. **NHC's proposed "fix" for land lease amendment that we had submitted (Cincy on through mid Dec) will be agreed to by UL, and we jointly propose to state for approval. It will be made clear that .....**
   a. **If UofL discontinues the affiliation agreement with NHC, UL cannot then use that as basis for notice of breach in order to try to take the hospital property.**
   b. **NHC must continue to make the hospital available to UL and can't discontinue the affiliation and exclude UL from the hospital, thereby jeopardize UL's pediatric program**
4. **There would be nothing in any agreement that would prohibit NHC from proceeding with the UK LOI, with the understanding that we would continue our commitment to include UofL appropriately in statewide initiatives, etc. UL agrees to**

cooperate and will release its people to plan for peds coverage on the St. Matthews campus.

5. UL and NHC "stand down" on litigation: UL withdraws the Notice of Breach, NHC withdraws the Request for Declaratory Judgment.
6. Tolling agreement is extended for 30 days to finalize above agreements. Tolling agreements can be terminated by either party with 5 days notice.
7. We will get together next Tuesday, Jan 21, with attorneys, and expedite development of agreements.
8. We then get to state authorities as soon as possible, hopefully next week (now this week), to seek conceptual approval, so that before NHC mgmt and board leave town next Friday, Jan 24, we have an understanding as to whether we have a deal or not, subject perhaps to final documentation with state and signatures.

Thanks.

Exhibit J

From: "Dunn,David Lewis" <david.dunn@louisville.edu>
Date: January 21, 2014 at 11:20:29 AM EST
To: "Williams, Steve" <Steve.Williams@nortonhealthcare.org>
Subject: Meeting...

Steve:

I enjoyed talking with you this morning about the business terms of a potential five year renewable agreement. I thought that our discussions concerning the land lease were productive and that our attorneys should be able to get language that provides mutual protections in the event that either party seeks to terminate the affiliation agreement. Once we identify these mutual protections and confirm the business to be included in the new affiliation agreement, we can schedule a meeting with the Commonwealth in short order to bring this to a conclusion. As I mentioned, we are comfortable leaving the 2008 academic affiliation agreement in place and craft a very simple addendum to include things that were not in dispute from our previous discussions, including:

- $30.8 MM per annum base support guaranteed
- $3 MM Incentive Fund years 3-5, not guaranteed
- UofL sole ACGME Program with obligation to provide reasonable participation with other universities, including UK
- UofL Faculty are Service Chiefs
- No new service lines closed to UofL Faculty
- Exclusivity as per previous agreed upon exhibit
- Integrated Neonatology Group

Our team came into the office early this morning and we are disappointed your team could not meet with us as scheduled at 10. I offered for our team to come to your office to meet with you in person today. Our team is still here and ready to talk. I would repeat our offer to come out to your office to wrap this up as soon as possible.

Best, David

Sent from my iPad
