

RESTATED AGREEMENT OF AFFILIATION

THIS RESTATED AGREEMENT OF AFFILIATION made and entered into this 13th day of September, 1982, by and between KOSAIR CHARITIES COMMITTEE, INC., a Kentucky non-stock, nonprofit corporation (hereinafter called "Kosair"), and NKC, INC. (formerly NORTON-CHILDREN'S HOSPITAL, INC.), a Kentucky nonstock, nonprofit corporation (hereinafter called "Norton-Children's").

WHEREAS, by Memorandum of Agreement dated October 2, 1980 (Exhibit A attached hereto), by and between the parties hereto and their respective planning committees, the parties agreed in principle to an affiliation for the purpose of consolidating the hospital operations;

WHEREAS, on April 30, 1981, the parties amended said Memorandum of Agreement by an Agreement of Affiliation (Exhibit B attached hereto);

WHEREAS, by Articles of Amendment to its Articles of Incorporation dated April 21, 1981, Norton-Children's Hospital, Inc. changed its name to NKC, Inc.; and

WHEREAS, the parties now wish to amend further said Memorandum of Agreement and said Agreement of Affiliation and to merge the Memorandum of Agreement and the Agreement of Affiliation and all subsequent amendments thereto into this Restated Agreement of Affiliation;

WHEREAS, on March 13, 1982, the NKC, Inc. Board of Directors approved the action of its Executive Committee authorizing its Chairman to appoint a eleven-person committee, to be known as "the Swope Committee," which is charged with monitoring the Kosair-Children's Hospital planning process that involves the relocation of the Kosair-Children's Hospital, Eastern Parkway Hospital to the Medical Center and the related construction of a new pediatric hospital facility in the Medical Center as envisioned in the Memorandum of Agreement and the Agreement of Affiliation and with recommending acceptance, rejection or modification of said plans;

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

1. Purpose. This Restated Agreement of Affiliation sets forth the understanding of the parties and all previous understandings, agreements and amendments shall be merged into this Agreement. The provisions of said Memorandum of Agreement to the contrary notwithstanding, the consolidation referred to in the Memorandum of Agreement shall be a consolidation of operations rather than a corporate consolidation, which consolidated operations of the parties' hospital facilities shall be conducted by Norton-Children's under its Articles of Incorporation, amended to change its name to

NKC, Inc., and otherwise amended to accommodate Norton-Children's affiliation with Kosair as contemplated by said Memorandum of Agreement as amended and this Restated Agreement of Affiliation, all as set forth in Articles of Amendment to its Articles of Incorporation substantially in form as attached hereto, as a part hereof, marked Exhibit C.

2. Intention of Parties. It is the intention of the parties that the identification, existing purpose and programs of each institution shall be preserved in an appropriate manner so as to continue the name and public recognition of the original institutions.

3. Corporate Structure. NKC, Inc. shall conduct hospital operations under two separate divisions and shall be structured as follows:

A. NKC, Inc. shall carry out its purposes as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 and further shall [i] hold title, acquire, sell, dispose of, exchange, lease, pledge or mortgage all real or personal property now used or occupied by Norton-Children's, including parking facilities and property used for parking, together with all equipment and other personal property conveyed or transferred to NKC, Inc. or one of its divisions by Kosair and real and personal property acquired for the purpose of constructing a new hospital facility together with parking facilities; [ii] maintain and

operate a pediatric division which shall be known as Kosair-Children's Hospital; [iii] maintain and operate an adult division to be known as Norton Memorial Infirmary; and [iv] own, operate and control such subsidiary corporations as may be appropriate, including those corporations as are set forth in subparagraphs B and C hereof.

[1] NKC, Inc. shall be governed by a Board of Directors ("Board"), consisting of not more than sixty (60) directors ("Directors"), who shall be elected at the Board's annual meeting. The Directors of the initial Board shall be composed of three (3) classes of Directors with each class having a separate identity and shall be elected as follows: one-third (1/3) of the original Board shall be elected by each of the following institutions or divisions thereof ("Director Unit"):

Kosair Charities Committee, Inc.  
Twenty (20) Directors ("Kosair Directors")

Children's Hospital Division of Norton-Children's Hospitals, Inc.  
Twenty (20) Directors ("Children's Directors")

Norton Memorial Infirmary Division of Norton-Children's Hospitals, Inc.  
Twenty (20) Directors ("Norton Directors")

[5] The Board shall meet on the fourth Thursday of February, May and October of each year at a time and place to be designated by the Board. The annual meeting to serve as Directors of NKC, Inc. A quorum of eleven of the Board shall be held at the May meeting. Special

(11) Directors in each Director Unit shall be sufficient to elect Directors for that Director Unit.

[2] The term of the Directors shall be for a period of four (4) years. A Director who has served a full term of four (4) years shall be eligible to succeed himself in office for one (1) additional term of four (4) years. A one (1) year absence shall be required before election to the Board after a Director has served two (2) successive terms. A former Director who has not served as such for at least one (1) year shall again be eligible for election as a Director. There shall be no mandatory retirement based on age of the Director. There shall be a category for emeritus directors.

[3] The University of Louisville shall be invited to have representation at the Board and Executive Committee meetings.

[4] Any vacancy occurring among the Directors of the Board for any reason shall be filled by the election of a successor Director for the unexpired term of his predecessor in office by a majority of the remaining Directors of the Director Unit affected by the vacancy.

[5] The Board shall meet on the fourth Thursday of February, May and October of each year at a time and place to be designated by the Board. The annual meeting of the Board shall be held at the May meeting. Special members of the Executive Committee, Finance Committee and the officers of the Board.

meetings of the Board shall be called at the written request of not less than eight (8) members of the Board or by the Chairman of the Board or by the President.

[6] The Board at its annual meeting shall elect from its membership officers of the Board who shall consist of a Chairman, Vice Chairman and Secretary-Treasurer. It is the intention of the parties that the Board of NKC, Inc. rotate the officers among the Director Units, unless there exists a good reason for not rotating in any particular year.

[7] The term of the Chairman of the Board shall be for a period of one (1) year, and he shall be eligible to succeed himself for one (1) additional one (1) year term.

[8] The Board shall have three (3) standing committees, to-wit: Nominating Committee, Finance Committee and Executive Committee. The Standing Committees shall consist of an equal number of members appointed from each Director Unit.

[9] The Chairman of the Board shall appoint the Chairman and members of the Nominating Committee with the concurrence of the Board. The Nominating Committee shall consists of six (6) members with equal representatives from each Director Unit. The Nominating Committee shall be responsible for nominating prospective members of the Executive Committee, Finance Committee and the officers of the Board.

[10] The Board of NKC, Inc. shall employ a chief executive officer with the title of "President," who shall be responsible for the operation and management of NKC, Inc. and its subsidiary corporations. The Board of NKC, Inc. shall also employ a chief operating officer with a title of "Executive Vice President." The President shall select a Vice President for Operations for each of the two (2) hospital divisions and such other officers as the Board may designate.

[11] The Board shall elect an Executive Committee, consisting of fifteen (15) members, of which five (5) shall be elected from each Director Unit. The officers of the Board shall be the officers of the Executive Committee and count as members of the Executive Committee. During the intervals between meetings of the Board, subject to such limitations as may be prescribed by resolution of the Board, the Executive Committee shall have and may exercise all the authority of the Board, except as provided for in KRS 273.221.

[12] A majority of the Executive Committee shall be necessary to constitute a quorum for the transaction of any business. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Executive Committee.

[13] The Board shall elect a Finance Committee, consisting of nine (9) members, of which an equal

number shall be elected from each Director Unit. The Treasurer of NKC, Inc. shall be the Chairman and one of the members of the Finance Committee.

[14] The Chairman of the Board, with the concurrence of the Board, shall appoint the members of such other committees as shall be deemed necessary by the Chairman or the Board and shall make a reasonable effort to provide for equal representation from each Director Unit on each of such committees.

[15] Any vacancy occurring in any standing or other committee of the Board shall be filled by an appointment of a successor member for the unexpired term of his predecessor in office by the Chairman of the Board with the concurrence of the members of the Board. The successor member shall be a member of the Director Unit from which the vacancy occurred, unless otherwise provided for herein.

[16] Twenty (20) Directors shall constitute a quorum for the transaction of business, unless otherwise prohibited in the Articles of Incorporation or Bylaws. The act of the majority of Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law, the Articles of Incorporation or the Bylaws.

Inc. shall be for a period of four (4) years.



[17] The Bylaws of NKC, Inc. shall provide that upon the affirmative vote of not less than three-fourths (3/4) of the Directors present and voting therein the Board may adopt, amend or repeal the corporate Bylaws.

[18] The Articles of Incorporation shall provide that upon the affirmative vote of not less than three-fourths (3/4) of the voting Directors the Articles of Incorporation may be amended in accordance with KRS 273.263(1).

B. A new corporation by the name of NKC Properties, Inc. may be incorporated which may hold, acquire, sell, transfer, dispose of, exchange, lease, pledge, mortgage and manage all real and personal property, except the real property now used and occupied by the acute care facilities of Norton-Children's and the real property to be acquired from Kosair and used by NKC, Inc. as a hospital facility.

[1] NKC Properties, Inc. shall be a subsidiary of NKC, Inc. and shall be governed by a Board of Directors ("Directors") consisting of six (6) Directors.

[2] Two (2) Directors shall be nominated from each Director Unit and the Board of NKC, Inc. shall elect the Directors.

[3] The term of the Directors of NKC Properties, Inc. shall be for a period of four (4) years.

[4] A vacancy occurring for any reason among the Directors of the Board of NKC Properties, Inc. shall be filled by the nomination of a successor Director from the Director Unit affected by the vacancy and elected by the Board of NKC, Inc.

[5] The Board of NKC Properties, Inc. shall annually elect its officers who shall consist of a Chairman, Vice Chairman and Secretary. Said Board shall annually elect the officers of NKC Properties, Inc. who shall consist of a President, Vice Presidents and such other officers as the Board may designate.

C. A new corporation by the name of NKC Services, Inc. may be incorporated which may manage and operate the outreach programs of NKC, Inc. by providing for consulting, planning, management and technical services to small community hospitals.

[1] NKC Services, Inc. shall be a subsidiary of NKC, Inc. and shall be governed by a Board of Directors ("Directors") consisting of six (6) Directors.

[2] Two (2) Directors shall be nominated from each Director Unit and the Board of NKC, Inc. shall elect the Directors.

[3] The term of the Directors of NKC Services, Inc. shall be for a period of four (4) years.

[4] A vacancy occurring for any reason among the Directors of the Board of NKC Services, Inc. shall be

filled by the nomination of a successor Director from the Director Unit affected by the vacancy and elected by the Board of NKC, Inc.

[5] The Board of NKC Services, Inc. shall annually elect its officers who shall consist of a Chairman, Vice Chairman and Secretary. Said Board shall annually elect the officers of NKC Services, Inc. who shall consist of a President, Vice Presidents and such other officers as the Board may designate.

4. Institutional Identity. The entire pediatric facility of NKC, Inc., including the new pediatric facility which is to be constructed and the existing pediatric facilities presently occupying the third floor of Norton-Children's and all pediatric ancillary services now located in Norton-Children's, shall be named "Kosair-Children's Hospital." The new facility, which will be architecturally distinctive from existing facilities, will be named Kosair-Children's Hospital as well as the entrance to the third floor of Norton-Children's. All exterior signs and logos shall identify the facility as Kosair-Children's Hospital. All employees who work solely in Kosair-Children's Hospital shall wear name tags which shall identify such persons as personnel of Kosair-Children's Hospital. All identification and interior graphics within the complete pediatric facility and any ancillary services used exclusively for the use of patients of Kosair-Children's Hospital, shall be identified

by the use of the name Kosair-Children's Hospital in its operation. The Board of Directors of NKC, Inc. may authorize the use of separate letterhead stationery to identify institutions. The adult facility shall continue to use the name "Norton Memorial Infirmary" or such name as may be designated by NKC, Inc.'s Board of Directors.

5. Acquisition of Property. NKC, Inc. shall negotiate the acquisition of the real property now owned or controlled by the University of Louisville, located in the Health Science Center and situated on the north side of Chestnut Street and further described as being the property generally shown on the University of Louisville master plan for a four building pediatric complex. It is envisioned that the University of Louisville (especially the Pediatric Department of the Medical School) will play a significant role in occupying and staffing any new facility built on the aforementioned property.

6. Pediatric Facility. NKC, Inc. will plan, develop and construct a new pediatric facility utilizing the property on the north side of Chestnut Street and bridging Chestnut Street to connect to the present Norton-Children's. The new pediatric facility located on the north side of Chestnut Street shall at least provide hospital beds and facilities for all pediatric orthopedic patients of Kosair-Children's Hospital and space for Kosair Charities Committee, Inc. and The Children's Hospital Foundation and a board

room. The plans for the new pediatric hospital facility shall be subject to the approval of the Swope Committee as outlined in paragraph 14 of this Agreement. The decision as to what facility, additional to the foregoing, shall be included in the new facility shall be made by the NKC, Inc. Board of Directors. If planning dictates the building of space for other pediatric beds, first consideration shall be given to including those beds in the pediatric facility on the north side of Chestnut Street.

7. Alternate Site. In the event the University of Louisville is unwilling or unable to convey the property on the north side of Chestnut Street as the site for the new facility on terms deemed acceptable to the NKC Board of Directors, then the new pediatric facility shall be constructed on another site to be acceptable to three-fourths (3/4) of the members of the NKC Board of Directors, which new facility shall be located adjacent to, or connected with, the existing Norton-Children's Hospital, shall contain the same type of hospital rooms and other facilities as hereinbefore specified and shall be architecturally distinctive from existing facilities.

8. Employees. All incumbent personnel of the present Kosair Crippled Children Hospital and Norton-Children's will be assimilated into the new corporate structure at the time of consolidation. No employee from any of the institutions shall suffer loss of salary, tenure or benefits by reason of

the consolidation. It is anticipated that the Norton-Children's benefit structure will basically continue as it is since Norton-Children's employs the greater number of employees. It is intended that employees of Kosair Crippled Children's Hospital at the time of consolidation will be incorporated within the benefit programs available to employees of Norton-Children's.

The spin-off of Kosair Charities Committee, Inc. Revised Retirement Plan as it relates to the hospital employees who will become employed by NKC, Inc. upon such consolidation of operations shall be accomplished by the mutual agreement of Kosair and Norton-Children's, taking into consideration the best interest of the parties and the participants.

9. Medical Staffs. There shall be two (2) medical staffs: one for the pediatric facility of Kosair-Children's Hospital and one for the adult facility of Norton Memorial Infirmary. The Kosair-Children's Hospital medical staff shall consist of physicians who are presently admitted to membership on the Children's Hospital medical staff and the Kosair medical staff. No incumbent member of the Children's Hospital medical staff or the Kosair medical staff shall be denied membership on the new medical staff at the time of consolidation. The medical staff of Norton Memorial Infirmary shall continue as it is presently constituted.

10. Continuance of Kosair Charities Committee, Inc. and the Children's Hospital Foundation, Inc. Both the Kosair Charities Committee, Inc. and Children's Hospital Foundation, Inc. shall continue as independent fund raising organizations. Each corporation shall maintain control of its own endowment funds and programs and will conduct and coordinate independent fund raising efforts for the benefit of Kosair-Children's Hospital. It is envisioned that a joint capital fund raising drive will be conducted to raise money for the development and construction of the new pediatric facility. In no event shall the corpus of the endowment fund of Kosair be hypothecated, pledged or otherwise encumbered for the payment of any obligation of NKC, Inc.

11. Financial Commitments. Prior to the actual consolidation of Kosair Crippled Children's Hospital and Norton-Children's, all planning and consultants' costs shall be shared equally by Kosair and Norton-Children's. Upon consolidation of the institutions, NKC, Inc. shall be responsible for the total operation and management of the hospitals and subsidiary corporations.

It is the intention of the parties that Kosair Crippled Children's Hospital will continue to operate as a hospital for children at its present facility until the construction of the new pediatric facility is completed. If it becomes imperative to cease the operations of Kosair Crippled Children's Hospital, such a decision shall only be

made upon the affirmative vote of not less than three-fourths (3/4) of the voting Directors of the Board of NKC, Inc. at a meeting called for that purpose. Notice in writing of the time, place and purpose of such meeting shall be given by the Secretary-Treasurer to each member of the Board not less than ten (10) days before the day specified for such meeting. Such notice shall be either delivered in person to each member or sent by certified mail, postage prepaid and return receipt requested, addressed to the member at his address last recorded with the Secretary-Treasurer of the Board.

A. Upon completion of the consolidation of operations, NKC, Inc. will continue to operate Kosair Crippled Children's Hospital on Eastern Parkway as a hospital for children and utilize the facilities unless the operation of Kosair Crippled Children's Hospital at said site is terminated as provided for hereinabove.

B. Upon completion of the construction of the new pediatric facility or upon an earlier termination of the operation of Kosair Crippled Children's Hospital at its present site on Eastern Parkway, prior to the completion of the construction of the new pediatric facility, NKC, Inc. shall surrender possession to Kosair of the Kosair Crippled Children's Hospital real property and any personal property used in connection therewith not conveyed to NKC, Inc. by Kosair. However, notwithstanding the foregoing, if NKC,



Inc. notifies Kosair, within six months prior to the cessation of operation of said facilities as a hospital for children at the Eastern Parkway site, of its desire to continue to use said facilities on Eastern Parkway for some other purpose, Kosair shall have the option of negotiating with NKC, Inc. in regard to the terms and provisions of any proposed continued use of said facilities and premises by NKC, Inc. During the period of time from consolidation of operations until the operation of Kosair Crippled Children's Hospital as a hospital for children ceases as provided for herein, NKC, Inc. shall have the right to use and occupy the hospital building and the building in which the brace shop is located and shall have the nonexclusive right with others to use the existing parking spaces, and in consideration thereof NKC, Inc. shall either [1] be responsible and bear the expense of all normal operating costs incurred in connection with and resulting from the operation of the hospital at the Eastern Parkway site, including but not limited to necessary and normal maintenance and repairs (excluding structural or capital repairs or improvements), janitorial services, utilities and its proportionate share of property insurance covering the premises in possession of NKC, Inc. and the cost of comprehensive general liability and boiler and machinery insurance, or [2] the parties may enter into a written lease which will take the above-mentioned costs and expenses into consideration in determining the rental and other terms.

C. Upon the surrender of said premises and facilities to Kosair, it will then determine the future use and/or disposition of the property; provided, however, that it will not utilize said property for any purpose that would be in competition with NKC, Inc., without first obtaining the consent of NKC, Inc., which consent should not be unreasonably withheld.

D. Upon completion of the consolidation or at such other time as may be determined by the Board of NKC, Inc., the real property known as 200 East Chestnut Street owned by Norton-Children's shall be conveyed to NKC, Inc.

E. The Children's Hospital Foundation shall continue to contribute to the Children's Division of Norton-Children's, and after consolidation it shall contribute to NKC, Inc. for the exclusive use and benefit of Kosair-Children's Hospital.

F. Upon completion of the consolidation or at such other time as may be determined by the Board of NKC, Inc., the ownership of all equipment and other personal property used in connection with the operation of Kosair Crippled Children's Hospital shall be conveyed and transferred to NKC, Inc.

G. Kosair shall commit the income derived from its endowment fund on the following basis:

[1] Upon the completion of the consolidation of Kosair Crippled Children's Hospital with Norton-

Children's Hospitals, Kosair will annually contribute an amount equal to not less than 70% of its endowment income to the Kosair-Children's Hospital Division of NKC, Inc. for a period of thirty (30) years. One year prior to the expiration of said thirty (30) year period, Kosair will decide the extent and the duration of its support of Kosair-Children's Hospital after said thirty (30) year period and will notify the Board of NKC, Inc. of its decision. The relationship of the parties shall continue if:

[a] at least 70% of the endowment income of Kosair is committed to direct support of the Kosair-Children's Hospital Division of NKC, Inc.;  
or

[b] at least 70% of the endowment income of Kosair will be contributed to Kosair-Children's Hospital Division of NKC, Inc. either in direct support or in indirect support of a type acceptable to the Board of NKC, Inc. If the proposed support by Kosair is less than that described in the foregoing sentence, then [i] the Board of NKC, Inc. may accept the proposed support by Kosair and the relationship of the parties will continue; or [ii] the Board of NKC, Inc. may terminate its relationship with Kosair, may remove the Kosair identity with the hospital and shall remove the

Kosair identity with the hospital at the written request of Kosair, and may require the resignation of the Kosair Directors from the Board of NKC, Inc. It is the purpose of this paragraph to permit Kosair and the Board of NKC, Inc. to reassess the level of care, indigent burden, and future role of Kosair-Children's Hospital at this juncture to see, in effect, whether the goals and functions of the NKC, Inc. corporation continue to be acceptable to all parties.

[c] "Endowment income" of Kosair is defined to mean income from endowment fund corpus, including all dividends, interest and rents from endowment property, less only commissions, fees and expenses directly connected with such income, including legal fees arising from legal services in connection with income. Stock dividends, gains from the sale of capital assets, proceeds from the sale of fractional shares, bequests, devises, memorials, income from trusts and gifts (other than gifts for the joint capital fund raising drive as contemplated in paragraph 10 hereof) shall continue to be a part of the corpus of the endowment fund and shall not be considered "endowment income." In addition and for the purpose of this Agreement, the net funds received as a result

of the annual fund raising efforts of Kosair Campaign Office for the benefit of Kosair-Children's Hospital Division of NKC, Inc. shall become a part of the corpus of the endowment fund and shall not be considered as "endowment income." The amount of endowment income committed to Kosair-Children's Hospital Division of NKC, Inc. will be paid not less than annually as soon as practical after June 30th of each fiscal year of Kosair. Kosair shall pay from its retained share of the endowment income the costs and expenses of fund development and costs of operation of said committee, except commissions, fees and expenses hereinabove provided and except expenses incurred in connection with the joint capital fund raising drive as contemplated in paragraph 10 hereof.

[2] Kosair will retain up to an amount equal to 30% of its endowment income for fund development and operational expenses, establishment of a special funding program for Shriner's referrals to the hospital, and for other charitable purposes in accordance with its Articles of Incorporation; provided, however, that it shall not utilize any of said funds or the property on Eastern Parkway known as Kosair Crippled Children's Hospital for any purpose that would be in competition with Kosair-Children's Hospital without first obtaining

the consent of NKC, Inc., which consent shall not be unreasonably withheld. As used hereinabove, "competition with Kosair-Children's Hospital" shall mean operating a program, service or facility which is similar to a program, service or facility which is at the time of reference being operated by Kosair-Children's Hospital, including, but not limited to, an acute pediatric facility, a brace shop and a pediatric ambulatory unit.

[3] Upon completion of the consolidation or at such other time after consolidation as may be determined by the Board of NKC, Inc., Kosair shall contribute to NKC, Inc. the sum of Two Million Dollars (\$2,000,000).

[4] Kosair covenants and agrees that it will continue to maintain its endowment fund in the same manner that it is now maintained so as to preserve the same to produce income in the same manner as it now does; that it will not deplete the principal of said fund; that it will continue to deposit in said fund all of the gifts or bequests mentioned in subparagraph F hereinbelow; and that it will otherwise maintain and preserve said fund in order to further the intent of this Restated Agreement of Affiliation.

[5] It is understood that funds contributed by Kosair to Kosair-Children's Hospital, a Division of NKC, Inc. are to be used primarily for the benefit of

Kosair-Children's Hospital, and that funds generated by Norton Memorial Infirmary are to be used primarily for the benefit of that division. However, NKC, Inc. agrees that it will, after the consolidation herein contemplated, continue to operate its fiscal affairs in substantially the same manner as Norton-Children's Hospitals, Inc. is currently doing.

H. All gifts or bequests made in the name of Children's Hospital or The Children's Hospital Foundation, or any other name wherein it is the intention of the donor, testator or testatrix that the gift or bequest is for Children's Hospital, the amount of such gift or bequest shall be paid to The Children's Hospital Foundation.

I. All gifts or bequests made in the name of Kosair Crippled Children Hospital, Kosair Charities Committee, Inc., Kosair Hospital, Shriner's Hospital for Children, or any other name wherein it is the intention of the donor, testator or testatrix that the gift or bequest is for Kosair Crippled Children's Hospital, the amount of such gift or bequest shall be paid to the Kosair.

J. Should a question arise as to whether a gift or bequest should be paid to Kosair or The Children's Hospital Foundation or a new Norton foundation, or to NKC, Inc., such a question shall be resolved by an eighty percent (80%) majority vote of the members of the Finance Committee of NKC, Inc. If the Finance Committee is unable to reach an

eighty percent (80%) majority, the matter shall be referred to the Executive Committee of NKC, Inc. which shall resolve the matter by a vote of eighty percent (80%) of its members.

K. The construction of the new pediatric facility will be financed from a joint capital fund raising drive of NKC, Inc., Kosair and The Children's Hospital Foundation, governmental or other sources, if available, and from appropriate borrowing.

L. A new endowment fund or foundation may be established by NKC, Inc. for the benefit of the Norton Hospital Division of NKC, Inc.

M. A new endowment fund or foundation may be established by NKC, Inc. for the benefit of Kosair-Children's Hospital Division of NKC, Inc. One-half (1/2) of the governing board of this fund or foundation shall be elected by Kosair.

12. Conditions Precedent to Consolidation. The consolidation of their respective operations and their affiliation as contemplated herein and by said Memorandum of Agreement as amended will be finalized when the parties have accomplished the following acts, which they agree to exercise their best efforts to accomplish:

A. Norton-Children's shall have:



[1] Obtained approval by the Secretary of Housing and Urban Development and its Board of Directors of, and filed with the Secretary of State of Kentucky and the County Clerk of Jefferson County, Kentucky, as required by law, Articles of Amendment to its Articles of Incorporation substantially in form as attached hereto marked Exhibit C;

[2] Received a Section 1122 review of the consolidation of operations, as contemplated herein, by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, and received approval from that agency and all other governmental agencies required to approve such consolidation of operations;

[3] Adopted by act of its Board of Directors amended Bylaws to become effective upon the approval and filing of Articles of Amendment to its Articles of Incorporation as aforesaid, such amended Bylaws to be substantially in the form attached as Exhibit D;

[4] Filed assumed name certificates permitting Norton-Children's to operate under the assumed names, "Norton Hospital" or "Norton Memorial Infirmary" or "Norton Memorial Hospital," which name or names shall apply to the adult division of the corporation, and "Kosair-Children' Hospital," which name shall apply to the pediatric division of the corporation; and

[5] Assumed and undertaken the operation of Kosair Crippled Children's Hospital, including the assimilation of the employees thereof as the employees of Norton-Children's.

B. Kosair shall have:

[1] Designated twenty (20) persons, constituting the initial "Kosair Directors" class of the Norton-Children's Board of Directors, who have accepted their appointments as such directors, five (5) each of whom, as designated, shall serve initial terms expiring at the time of Norton-Children's annual Board of Directors' meetings in 1981, 1982, 1983 and 1984;

[2] Contributed to Kosair-Children's Hospital the sum of Two Million Dollars (\$2,000,000);

[3] Conveyed to Norton-Children's free and clear of all liens and encumbrances all of Kosair's equipment and other personal property used in connection with the operation of Kosair Crippled Children's Hospital, excluding only that property listed in Schedule A to the form of Bill of Sale and Assignment attached hereto as a part hereof, marked Exhibit E, and including all business and trade accounts receivable, subject to the assumption by Norton-Children's of all business and trade accounts payable, both incurred in the normal course of business by Kosair in the operation of Kosair Crippled Children's Hospital, such conveyance to be by

Bill of Sale and Assignment in the form attached hereto, or as changed pursuant to the agreement of the parties; and

[4] Done all acts and things as required to transfer the use of real estate, operations, business, functions and employees of Kosair Crippled Children's Hospital to Norton-Children's.

13. Termination of Agreement. In the event Norton-Children's is unable to obtain the approval of the Secretary of Housing and Urban Development to Articles of Amendment to its Articles of Incorporation in form substantially as attached hereto as Exhibit C, or in such other form acceptable to the parties hereto as required to accomplish the purposes hereof; or in the event Norton-Children's Board of Directors does not approve Articles of Amendment to its Articles of Incorporation or adopt amended Bylaws substantially in the forms attached hereto as Exhibits C and D, respectively, or in such other form as is acceptable to the parties hereto as required to accomplish the purposes hereof; or in the event the parties are unable to obtain any other governmental agency approval required for the consolidation of operations as contemplated hereby, then, in any such event, this Restated Agreement of Affiliation and said Memorandum of Agreement shall be null and void and neither party shall have any further obligation one to the other by virtue thereof.

14. Basis for Disaffiliation. When, in the sole opinion of the Swope Committee, it has received sufficient information from the Building Committee of the NKC Board of Directors to determine the location, size, nature, use and scope of the new pediatric hospital facility, it will submit a report to the NKC, Inc. Board of Directors and the Kosair Board of Directors recommending acceptance, rejection or modification of the plans for the construction of a new pediatric hospital facility in the Medical Center and for the relocation of the Kosair-Children's Hospital, Eastern Parkway, to the Medical Center. Unless the Swope Committee recommends acceptance or modification of such plans and the NKC, Inc. Board of Directors and the Kosair Board of Directors both approve and accept the recommendations of the Swope Committee within a reasonable time after such Committee's report is made, Kosair may disaffiliate itself from NKC, Inc. as provided in Subparagraph A of this Paragraph 14. If the NKC Board of Directors and the Kosair Board of Directors fail to make a decision regarding the recommendation of the Swope Committee by January 1, 1984, then in such event, Kosair may disaffiliate itself from NKC as provided in Subparagraph A of this Paragraph 14. If both the NKC, Inc. Board of Directors and the Kosair Board of Directors approve and accept the recommendations of the Swope Committee regarding the plans for the construction of the new

pediatric hospital facility as set forth above and if thereafter NKC, Inc. does not complete construction of the new pediatric hospital facility in accordance with said plans within four (4) years from the date of its acceptance and approval of said plans, Kosair may disaffiliate itself from NKC, Inc. as provided in Subparagraph A of this Paragraph 14. Until the NKC Board of Directors and the Kosair Board of Directors shall both have made a decision regarding the recommendations of the Swope Committee or until January 1, 1984, whichever occurs first, Kosair shall annually hold in escrow 50% of its annual commitment to NKC, pursuant to Subparagraph G[1] of Paragraph 11 above, in an income producing account for the benefit of Kosair-Children's Hospital, a Division of NKC, Inc. Such amount shall be calculated from May 1, 1981. If the Swope Committee recommends the acceptance or modification of the plan and the NKC, Inc. Board of Directors and the Kosair Board of Directors both approve and accept the recommendations of the Swope Committee, Kosair will transfer the funds held in escrow to Kosair-Children's Hospital, a Division of NKC, Inc. plus any earnings thereon from date of deposit to the escrow account to the date of transfer. In the event Kosair exercises its right to disaffiliate itself from NKC, Inc., as provided in Paragraph 14, then Kosair will retain such funds held in escrow, together with the earnings thereon and

its financial obligations to NKC, Inc. as provided in Paragraph 11 entitled "Financial Commitments" shall terminate as of the date of disaffiliation.

A. Action Upon Disaffiliation. In the event Kosair desires to disaffiliate itself from NKC, Inc., as set out above, it shall give notice thereof to NKC, Inc. by delivering in person said notice to an officer of NKC, Inc. or by mailing said notice by certified mail, postage prepaid and return receipt requested, addressed to the intended recipient. The parties shall use their best efforts to accomplish the following in a timely manner, but in any event the following actions shall be accomplished no later than ninety (90) days from the date of receipt of said notice, except as otherwise provided hereinafter:

[1] NKC, Inc. shall:

[a] Join with Kosair in preparing and making a joint press release setting forth that the disaffiliation is on an amicable basis and is mutually agreeable to both parties;

[b] Deliver to Kosair a certificate of deposit in the amount of Two Million Dollars (\$2,000,000), which it is presently holding, together with interest earned thereon which has accrued from the date of affiliation to date of delivery;

earnings thereon from date of transfer to the NKC Plan to date of transfer to the Kosair

[c] Relieve and release Kosair from its financial commitments as set forth in Subparagraph G of Paragraph 11 above, effective thirty (30) days after the receipt of notice of disaffiliation;

[d] Transfer to Kosair, free and clear of all liens and encumbrances, all equipment and other personal property heretofore transferred by Kosair to NKC, Inc. by Bill of Sale and Assignment dated May 1, 1981;

[e] Cancel the lease of the premises known as Kosair Crippled Children Hospital, 982 Eastern Parkway, Louisville, Kentucky, dated May 1, 1981, between Kosair and NKC, Inc.;

[f] Immediately grant Kosair the right to use the name "Kosair Children's Hospital";

[g] Allow all NKC, Inc. employees who were former employees of Kosair Crippled Children Hospital to terminate their employment with NKC, Inc., and become employed by Kosair. NKC, Inc. shall transfer, to the Kosair's Revised Retirement Plan (the "Kosair Plan") from the NKC, Inc., Retirement Plan or any successor thereto (the "NKC Plan") the sum of \$954,666.00 (the "Kosair Fund"), plus any earnings thereon from date of transfer to the NKC Plan to date of transfer to the Kosair

Plan, adjusted by [a] gains and losses under the NKC Plan with respect to that sum after the date the Kosair Fund is transferred to the NKC Plan, [b] benefit payments, attributable to the Kosair Fund, to former Kosair employees, and [c] the amount necessary to fund benefits accrued, after April 30, 1981, under the NKC Plan, by employees who transfer employment from NKC, Inc., to Kosair; less the present value of accrued benefits of employees who do not terminate their employment with NKC, Inc., and become employed by Kosair.

[h] Immediately cancel the certificate filed with the Secretary of State on April 30, 1981, and with the Clerk of the Jefferson County Court, Jefferson County, Kentucky, on May 1, 1981, permitting NKC, Inc. to conduct and transact business in the assumed name of Kosair-Children's Hospital as the pediatric division of NKC, Inc.;

[i] Immediately notify the proper governmental authority of its intent not to proceed with the obligation of capital expenditures approved under certificate of need No. 056-06,181(25X), issued February 26, 1982, and to surrender said certificate of need to the appropriate governmental agency;



[j] Immediately take such appropriate action as is necessary to obtain governmental approval for the transfer back to Kosair of the license to operate 100 acute care pediatric beds at 982 Eastern Parkway, Louisville, Kentucky, to Kosair, which license was therefore transferred to NKC, Inc. from Kosair;

[k] Immediately remove the Kosair identity from the hospital, its employees and NKC, Inc., by amending its Articles of Incorporation to remove the letter "K" from NKC, Inc.;

[1] Do all acts and things which are necessary to accomplish the foregoing in order to put the parties in the same position that they were on the date of affiliation.

[2] Kosair shall:

[a] Obtain the written resignations of the Kosair Directors from the Board of NKC, Inc. as of the date of disaffiliation.

[b] NKC, Inc. and Kosair Charities Committee, Inc. shall pay its respective costs incurred in the disaffiliation, if any, and any expenses incurred in the planning process shall be paid by NKC, Inc.

[c] Join with NKC, Inc. in preparing and making a joint press release setting forth that

disaffiliation is mutually agreeable to both parties and that the parties are disassociating themselves with each other on an amicable basis.

C. Chestnut Street Property. Upon disaffiliation, NKC, Inc. shall have the sole authority to use the property located along Chestnut Street, Louisville, Kentucky (the "Demised Premises") as more particularly described under that certain lease agreement made by and between the Commonwealth of Kentucky and NKC, Inc. dated December 8, 1981. If within two (2) years from the date of disaffiliation and, in NKC's sole discretion, NKC, Inc. shall decide not to use the Demised Premises for any purpose whatsoever, or if the Commonwealth of Kentucky does not consent to the proposed use of said property by NKC, Inc. then in either of such events NKC, Inc. shall surrender the lease to the Commonwealth of Kentucky and use its best efforts to assist Kosair in obtaining a lease of said property from the Commonwealth of Kentucky for the use and benefit of the University of Louisville.

IN TESTIMONY WHEREOF, the parties hereto, by their duly authorized officers, have executed this Restated Agreement of Affiliation on the day and year first hereinabove written but effective as of October 2, 1980.

KOSAIR CHARITIES COMMITTEE,  
INC. PLANNING COMMITTEE

NORTON-CHILDREN'S HOSPITALS,  
INC. PLANNING COMMITTEE

By \_\_\_\_\_

By \_\_\_\_\_

This Restated Agreement of Affiliation has been adopted and ratified by the Board of Directors of NKC, Inc. (formerly Norton-Children's Hospitals, Inc.) and by the Board of Directors of the Kosair Charities Committee, Inc.

IN WITNESS WHEREOF, the Chairmen of the respective corporations have affixed their signatures this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

KOSAIR CHARITIES COMMITTEE,  
INC.

NKC, INC., FORMERLY NORTON-  
CHILDREN'S HOSPITALS, INC.

By Samuel B. Searge BY

W. S. Goldberger

Handwritten notes and initials on the right margin, including a circled '3' and '6/2'.

KOSAIR CHARITIES COMMITTEE, INC.

PLAINTIFF

v.

**ORDER GRANTING MOTION TO DISMISS**

NORTON HEALTHCARE, INC., *et al.*

DEFENDANTS

\*\*\*\*\*

Defendants Norton Healthcare, Inc. and Norton Hospitals, Inc. (collectively "Norton"), having moved pursuant to CR 12.02 and 9.02 for an Order dismissing Plaintiff Kosair Charities Committee, Inc's ("KCC") Claims,

IT IS HEREBY ORDERED that Norton's motion is granted. KCC's claims are dismissed with prejudice as follows:

1. Count I is dismissed to the extent that it requests an accounting.
2. The following claims contained in Court II are dismissed:
  - a. KCC's claim that Norton breached the Various Agreement by "failing to keep separate accounting of Kosair's contributions to KCH";
  - b. KCC's claim that Norton breached the Various Agreement by "not operating its fiscal affairs in the same way it had been doing before affiliating with Kosair";
  - c. KCC's claim that Norton breached the Various Agreement by "failing to preserve Kosair's institutional identity in a manner consistent with Kosair's mission";
  - d. KCC's claim that Norton breached the Various Agreement by misusing the "Kosair" name in "fundraising efforts";

e. KCC's claim that Norton breached the implied covenant of good faith and fair dealing.

3. Counts III, IV, V, VI, VII, VIII, IX, and X are dismissed in their entirety.

4. All dismissals are with prejudice.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge, Jefferson Circuit Court, Division 3

**Tendered by:**

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