

After Recording Return To:  
Robert W. Rieke, Esq.  
500 Energy Plaza  
Omaha, NE 68102



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RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

[FOR RECORDING PURPOSES]

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### DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (hereinafter called the "Deed of Trust") is made this 8th day of August, 1997, by and between CHILDREN'S HOSPITAL, a not-for-profit Nebraska corporation (hereinafter called "Trustor"), whose mailing address is 8301 Dodge Street, Omaha, Nebraska 68114, and whose federal identification number is 47-0379754, ROBERT W. RIEKE, ESQ. (hereinafter called "Trustee"), whose mailing address is 500 Energy Plaza, 409 South 17th Street, Omaha, Nebraska 68102, and the WALTER SCOTT, JR., TRUSTEE OF THE SUZANNE AND WALTER SCOTT CHARITABLE REMINDER UNITRUST (hereinafter called "Beneficiary"), whose mailing address is 500 Energy Plaza, 409 South 17th Street, Omaha, Nebraska 68102, and whose federal identification number is 91-1837038.

#### WITNESSETH:

WHEREAS, Trustor is indebted to Beneficiary in the principal sum of Eight Million Four Hundred Thousand Dollars (\$8,400,000.00) which indebtedness is evidenced by a promissory note in the original principal sum of Eight Million Four Hundred Thousand Dollars (\$8,400,000.00) made by Trustor dated of even date herewith and having a maturity date of September 1, 2027 (hereinafter called the "Note").

NOW THEREFORE, for the purpose of securing:

- (a) payment of the Note, together with interest thereon, late charges, prepayment premiums, penalties, charges and fees, any future advances, and all extensions, modifications, substitutions and renewals thereof,
- (b) payment of all other sums, fees or charges, together with interest thereon, advanced to protect the security of this Deed of Trust or the property secured hereby and the performance of the covenants and agreements of Trustor, whether or not set forth herein,

- (c) performance, discharge of and compliance with every term, covenant, obligation and agreement of Trustor contained or incorporated by reference herein or in any other security instrument, document or agreement at any time given to secure the Note, and
- (d) repayment of all other sums or future advances, with interest thereon, which may heretofore have been or hereafter be advanced by Beneficiary to Trustor or Trustor's successor in interest or title,

all of which is hereinafter collectively called the "Indebtedness", Trustor irrevocably grants, transfers and conveys to Trustee, in trust, WITH POWER OF SALE, the real estate described on Exhibit "A" attached hereto and incorporated by this reference, together with (i) all buildings, structures, additions, enlargements, modifications, repairs, replacements, and improvements now or hereafter located thereon, (ii) all fixtures, equipment, goods, machinery, and all other articles of personal property now or hereafter attached to said real estate, including without limitation, all heating, cooling, air conditioning, ventilating, refrigeration, generating, lighting, plumbing, power, water, lifting, laundry, maintenance, incinerating, cleaning, fire prevention and extinguishing, security and access control, gas, cooling, electric and communication fixtures, equipment and apparatus, all pipes, pumps, tanks, motors, engines, dynamos, conduits, transformers, ducts, oil burners, compressors, water heaters, furnaces and boilers, all escalators and elevators, all cabinets, partitions, built-in mirrors, mantels, panels, shades, windows and sashes, all carpeting, underpadding and draperies, and all furnishings of public spaces, halls, lobbies and common areas, (iii) all easements and rights of way appurtenant thereof, (iv) all leasehold estate, right, title and interest of Trustor in and to all leases, whether now or hereafter existing or entered into (including, without limitation, all cash and security deposits, advance rentals and deposits or payments of a similar nature) pertaining thereto, (v) all rents, issues, profits and income therefrom, (vi) all tenements, hereditaments, privileges and appurtenances belonging, used or enjoyed in connection therewith, and (vii) all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance and condemnation awards), all of which is hereinafter collectively called the "Trust Property".

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES AS FOLLOWS:**

1. Title. Trustor covenants, warrants and agrees with Beneficiary, and its successors and assigns, that Trustor owns the Trust Property free from any prior lien or encumbrance, that this Deed of Trust is and will remain a valid and enforceable first lien on the Trust Property, that Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a first and paramount lien upon the Trust Property and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Trustor, at its expense, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to

time. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be required by Beneficiary.

2. Payment of Indebtedness. Trustor shall punctually pay the principal of and interest on the Indebtedness secured hereby.

3. Payment of Charges. Trustor agrees to pay all taxes, assessments and other charges levied upon or assessed, placed or made against, or measured by, the Trust Property and this Deed of Trust.

4. Application of Payments. All payments received by Beneficiary as to any debt, liability or obligation owed to Beneficiary by Trustor may be applied by Beneficiary to the payment of the Indebtedness or to any such other debt, liability or obligation, in any order or manner of application which Beneficiary, in its absolute discretion, deems appropriate. Unless otherwise elected by Beneficiary, any such payment shall be deemed applied first to the payment of any debt, liability or obligation other than the Note.

5. Charges; Liens. Trustor will keep the Trust Property free from all charges, liens and encumbrances, whether consensual, statutory, voluntary or involuntary, which are or could be superior to this Deed of Trust, excluding however: (a) non-delinquent real estate tax liens, and (b) non-delinquent special assessment liens.

6. Insurance. Trustor shall keep the buildings and other improvements now existing or hereafter erected on the Trust Property insured by insurance carriers satisfactory to Beneficiary against loss by and abatement of rental income on an "all risks" basis, including fire, hazards included in the term "extended coverage", vandalism, and malicious mischief, and such other hazards, casualties and contingencies as may be reasonably required by Beneficiary, in an amount not less than the full replacement value thereof and for such periods of time as may be required by Beneficiary. The policy or policies of insurance shall be in form acceptable to Beneficiary, provide that the same may not be modified without thirty (30) days prior written notice to Beneficiary, provide that any loss shall be payable notwithstanding any negligent or intentional act or omission which might otherwise result in the forfeiture of such insurance, and shall have non-contributing loss payable provisions in favor of and in form acceptable to Beneficiary, entitling Beneficiary to collect any and all proceeds payable under such insurance policies. All premiums on insurance policies shall be paid by Trustor on or before the due date thereof. Beneficiary shall have the right to hold the policies and renewals thereof and Trustor shall promptly furnish to Beneficiary all renewal notices and all paid premiums receipts received by Trustor. In no event shall Beneficiary or Trustee be held responsible for failure to pay insurance premiums or for any loss or damage arising out of a defect in any policy or arising out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Trustor to effect the insurance required hereunder. In the event of loss, Trustor shall give prompt notice by mail to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly or in proper form by Trustor. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to Beneficiary as additional security for the payment of the Indebtedness. In the event of Beneficiary's exercise of the power of sale contained herein, or in the event of foreclosure, all right, title and interest of Trustor

in and to any insurance policy then in force shall pass to the purchaser at the trustee's sale or foreclosure sale. In case of any loss, the insurance proceeds may, at the option of Beneficiary, be applied by Beneficiary upon the Indebtedness, or any part thereof, and in such order and amount as Beneficiary may determine (but without the application of any prepayment premium or penalty); or said insurance proceeds may, at the option of Beneficiary, either be used in replacing or restoring the Trust Property partially or totally destroyed to a condition satisfactory to Beneficiary; or said insurance proceeds or any portion thereof may, at the option of Beneficiary, be released to Trustor. Unless otherwise provided in the Note, any such application of insurance proceeds shall not extend or postpone the due date of the Note, or any installments called for therein, or change the amount of such installments. If the Trust Property is acquired by Beneficiary pursuant to the exercise of the power of sale or other foreclosure, all right, title and interest of Trustor in and to any insurance proceeds payable as a result of damage to the Trust Property prior to the sale or acquisition shall pass to Beneficiary and shall be applied first to the costs and expenses, including attorney fees, incurred in collecting such proceeds, then in the manner and in the order provided in this Deed of Trust. Trustor further agrees to maintain comprehensive public liability insurance covering claims for bodily injury, death and property damage, in such amounts as Beneficiary may reasonably require and naming Beneficiary as an additional insured.

7. Preservation and Maintenance of Trust Property. Trustor will keep the buildings and other improvements now or hereafter erected on or constituting the Trust Property in good repair and condition and will not commit or permit waste, will not do any act or thing which would unduly impair or depreciate the value of the Trust Property and will not abandon the Trust Property. Trustor will not remove any fixtures constituting the Trust Property unless the same are promptly replaced with like property subject to the lien and security interest of this Deed of Trust and of at least equal value and utility. Trustor will comply with all present and future ordinances, requirements and regulations of any governmental body which are applicable to the Trust Property and to the occupancy and use thereof.

8. Inspection. Beneficiary or its agents may, at all reasonable times upon reasonable prior notice, enter upon the Trust Property for the purpose of inspection. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it makes or fails to make any such inspection.

9. Protection of Security. If Trustor fails to perform any of the covenants and agreements contained in this Deed of Trust and such failure continues for a period of thirty (30) days after written notice from Beneficiary to Trustor (except in the event of emergency in which case no notice need be given to Trustor), or if any action or proceeding is commenced which does or may adversely affect the Trust Property or the interest of Trustor or Beneficiary therein or the title of Trustor thereto, then Beneficiary, at its option, may perform such covenants and agreements, make such appearances, defend against and investigate such action or proceeding and take such other action as Beneficiary deems necessary to protect its interest including, but not limited to, disbursement of reasonable attorney fees and entry upon the Trust Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this paragraph 9, with interest thereon, shall constitute Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon demand from Beneficiary to Trustor, and shall bear inter-

est from the date of disbursement at the highest rate permitted by law. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Trustor irrevocably authorizes and empowers Beneficiary to enter upon the Trust Property as Trustor's agent and, in Trustor's name or otherwise, to perform any and all covenants and agreements to be performed by Trustor as herein provided. Beneficiary shall, at its option, be subrogated to any encumbrance, lien, claim or demand and to all rights and securities for the payment thereof paid or discharged by Beneficiary under the provisions hereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Trust Property, or any part thereof, or for conveyance in lieu of or in anticipation of condemnation, are hereby assigned to and shall be paid to Beneficiary. Trustor irrevocably authorizes and empowers Beneficiary, in the name of Trustor or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the proceeds. The proceeds of any award or claim may, after deducting all reasonable costs and expenses, including attorney fees, which may have been incurred by Beneficiary in the collection thereof, at the sole discretion of Beneficiary, be released to Trustor, applied to restoration of the Trust Property, or applied to the payment of the Indebtedness (but without the application of any prepayment premium or penalty). Unless otherwise provided in the Note, any such application of proceeds to Indebtedness shall not extend or postpone the due date of the Note or the payment of any installments called for thereunder.

11. Trustor Not Released. Extension of the time for payment or modification of any amortization of the Indebtedness granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor or Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the Indebtedness by reason of any demand made by Trustor or Trustor's successors in interest.

12. Assignment of Rents. Trustor hereby assigns to Beneficiary all rents, issues and profits now due or which may hereafter become due under or by virtue of any lease, whether written or verbal, or letting of, or of any agreement for the use or occupancy of the Trust Property, or any part thereof (hereinafter called the "Rents") and Trustor hereby confirms upon Beneficiary the right, power and authority to collect all Rents hereby irrevocably appointing Beneficiary its true and lawful attorney-in-fact to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in the name of Trustor for all Rents and to apply the same to the Indebtedness. Without limiting the foregoing, Beneficiary shall have the right to notify all tenants and occupants of the Trust Property to pay Beneficiary all Rents due or to become due. Notwithstanding the foregoing, Beneficiary shall not exercise its rights under this paragraph to collect the Rents prior to the occurrence of an Event of Default.

13. Time of Essence. Time is of the essence in all of Trustor's obligations and duties hereunder.

14. Assignment of Deposits. In the event construction of improvements in or upon the Trust Property is hereafter undertaken, Trustor hereby transfers and assigns to Beneficiary, as addi-

tional security for the Indebtedness, all right, title and interest to any and all monies deposited by or on behalf of Trustor with any city, county, public body or agency, sanitary district, utility company, and any other body or agency, for the installation or to secure the installation of any utility or improvement by Trustor, pertaining to the Trust Property.

15. Corporate Existence. Trustor is a not-for-profit corporation duly organized and existing under the laws of the State of Nebraska. Trustor agrees to maintain its corporate existence until the Indebtedness is paid in full.

16. Forbearance by Beneficiary Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or payment of taxes or the discharge of liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the Indebtedness.

17. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

18. Successors and Assigns Bound; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective permitted successors and assigns of Beneficiary, Trustee and Trustor. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

19. Notice. Except for any notice required under applicable law to be given in another manner, all notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Trustor at its mailing address set forth above or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and addressed to Beneficiary at its mailing address set forth above or at such other address as Beneficiary may designate by notice to Trustor as provided herein. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

20. Governing Law; Severability. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions and to this end the provisions of this Deed of Trust are declared to be severable.

21. Hazardous or Toxic Substances. Trustor represents and warrants to, and covenants with, Beneficiary and Trustee as follows:

- (a) For purposes of this paragraph 21, the following terms are hereby defined:
- (i) "Clean Up" shall mean the removal and/or remediation of Contamination in accordance with Environmental Laws.
  - (ii) "Contaminants" shall mean all substances and compounds of the type, quantity or condition prohibited or reportable under any Environmental Law, including without limitation, materials containing asbestos or urea formaldehyde, explosives, gasoline and petroleum products, and radioactive materials.
  - (iii) "Contamination" shall mean the presence of, disposal, discharge or release on, from or to the Trust Property of Contaminants and the storage or disposal of Contaminants which violates Environmental Laws.
  - (iv) "Environmental Laws" shall mean any and all federal, state, county or municipal laws, whether now in force or as amended or enacted in the future, pertaining to health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, and the Superfund Amendment and Reauthorization Act of 1987.
  - (v) "Regulatory Actions" shall mean any claim, action or proceeding brought or instigated by any governmental authority in connection with any Environmental Law.
- (b) Trustor covenants and agrees that:
- (i) Trustor will not do, and will exercise due care to prevent anything that will cause the Trust Property to be in violation of, or would subject the Trust Property to remedial obligations under, Environmental Laws,
  - (ii) Trustor will immediately notify Beneficiary, in writing, of any existing, pending or threatened Regulatory Action or Contamination of the Trust Property,
  - (iii) Trustor will take all steps reasonably necessary under the circumstances to determine whether Contamination with respect to the Trust Property has occurred; Trustor shall not use the Trust Property in a manner which will result in Contamination and will Clean Up any Contamination promptly upon notice or discovery of such Contamination at no cost to Beneficiary or Trustee.
- (c) If Beneficiary has reason to believe that Contamination may have occurred on the Trust Property, Trustor, at its expense and upon written request of Beneficiary, shall immediately cause an environmental audit or assessment

to be prepared with respect to the Trust Property in form reasonably satisfactory to Beneficiary and cause the same to be immediately delivered to Beneficiary.

- (d) Trustor hereby agrees to indemnify and hold harmless Beneficiary and Trustee, and their respective agents, employees and contractors, from and against:
  - (i) all costs and expenses of, and from all claims arising out of, Contamination and Clean Up,
  - (ii) all liability, loss, cost or expense, including reasonable attorney fees and expenses, arising from or relating to the imposition or recording of a lien on the Trust Property in connection with any Contamination of the Trust Property or pursuant to any Environmental Law, and
  - (iii) any and all liability incurred by Beneficiary arising out of Regulatory Actions.

Trustor shall have the right to control any action for which indemnity is required through counsel of its choice, subject to Beneficiary's consent, which consent shall not be unreasonably withheld or delayed; provided however, at Beneficiary's option, Beneficiary may participate in such action and appoint its own counsel. The representations, warranties, covenants and agreements of Trustor contained herein shall survive the release or reconveyance of this Deed of Trust, whether through full payment of the Indebtedness, foreclosure or otherwise.

- (e) Notwithstanding anything to the contrary contained herein, Trustor and any tenant of the Trust Property may use or store nonmaterial amounts of commonly known and used materials which may be deemed Contaminants hereunder provided that such use or storage (i) does not constitute a remunerative activity of Trustor or such tenant, (ii) is incidental to Trustor's or such tenant's primary use of the Trust Property and does not constitute a primary use, and (iii) complies at all times with all applicable Environmental Laws.

22. Events of Default. Each of the following occurrence shall constitute an event of default hereunder (hereinafter called an "Event of Default"):

- (a) Trustor shall fail to pay when due any principal, interest, or principal and interest on the Note, or any part thereof, and such failure shall continue for a period of ten (10) days;
- (b) any warranty of title made by Trustor herein shall be untrue;



- (c) Trustor shall fail to observe or perform any of the covenants, agreements or conditions in this Deed of Trust and such failure shall continue for a period of thirty (30) days after written notice from Beneficiary to Trustor (provided, if the matter to be cured is of such a type that it cannot reasonably be cured within said thirty (30) day period, then such period shall be extended for such additional period Beneficiary may deem reasonable under the circumstances if Trustor commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion;
- (d) a trustee, receiver or liquidator of the Trust Property or of Trustor shall be appointed, or any of the creditors of Trustor shall file a petition in bankruptcy against Trustor, or for the reorganization of Trustor pursuant to the United States Bankruptcy Code, or any similar law, whether federal or state, and if such order or petition shall not be discharged or dismissed within sixty (60) days after the date on which such order or petition was filed;
- (e) Trustor shall file a petition pursuant to the United States Bankruptcy Code or any similar law, federal or state, or if Trustor shall be adjudged bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall consent to the appointment of a receiver of all or any part of the Trust Property;
- (f) Trustor shall sell, convey, transfer, or otherwise dispose of the Trust Property, or any part thereof, or any interest therein, or shall be divested of its title, or any interest therein, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which consent may be given or withheld in the sole discretion of Beneficiary;
- (g) Trustor shall fail to observe or perform any of the covenants, agreements or conditions in, or a default or event of default shall occur under, any subordinate mortgage, deed of trust or similar security instrument against the Trust Property; or
- (h) Trustor shall dissolve or be liquidated.

23. Acceleration of Debt; Foreclosure. Upon the occurrence of any Event of Default, or any time thereafter, Beneficiary may, at its option, declare all the Indebtedness secured hereby immediately due and payable and the same shall thereupon bear interest at the rate of sixteen percent (16%) per annum and, irrespective of whether Beneficiary exercises said option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

- (a) Beneficiary may enter upon, take possession of, manage and operate the Trust Property or any part thereof; make repairs and alterations and do any

acts which Beneficiary deems proper to protect the security thereof, and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees and Beneficiary's costs, upon the Indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and shall make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust Property, the collection of any rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default or notice of sale hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default, including the right to exercise the power of sale. Any actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary may determine without regard to the adequacy of any security for the Indebtedness secured hereby.

- (b) Beneficiary shall, without regard to the adequacy of any security for the Indebtedness secured hereby, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of, protect and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom.
- (c) Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.
- (d) Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give such notice of default and notice of sale as may be then required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the price bid, Trustee shall apply the proceeds in the following order: (i) to the costs and expenses of exercising the power of sale and of the sale, including the payment of trustee's fees actually incurred not to exceed \$500.00 plus one-half of one percent of the gross sale price, (ii) to the Indebtedness, and (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, rea-

sonable attorney fees and court costs, shall, to the extent permitted by law, be and constitute Indebtedness secured hereby.

24. Duties of Trustee. Trustor agrees that:

- (a) the duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee;
- (b) no provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers;
- (c) Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon; and
- (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within its discretion or rights or powers conferred upon it by this Deed of Trust.

25. Security Agreement and Fixture Filing. This Deed of Trust shall constitute a security agreement and, after recording, shall be effective as a financing statement filed as a fixture filing under the Nebraska Uniform Commercial Code with respect to all goods constituting a part of the Trust Property which are or are to become fixtures related to the real estate described herein, together with all substitutions and replacements therefor and all other property of Trustor, either similar or dissimilar to the same, together with all proceeds thereof. For this purpose, the following information is provided:

- (a) Name & Address of Debtor: Children's Hospital  
8301 Dodge Street  
Omaha, Nebraska 68114  
Federal I.D. No. 47-0379754
- (b) Name & Address of Secured Party: Walter Scott, Jr., Trustee of the Suzanne and Walter Scott Charitable Remainder Unitrust  
500 Energy Plaza, 409 South 17th Street  
Omaha, Nebraska 68102  
Federal I.D. No. 91-1837038
- (c) This document covers goods which are or are to become fixtures.

26. Reconveyance. Upon payment of all Indebtedness secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Trust Property and shall surrender this Deed of Trust and the Notes evidencing the Indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Trust Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

27. Substitute Trustee. Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Trust Property, the successor trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.

28. Miscellaneous Rights of Beneficiary. Any personal property owned by Trustor and remaining upon the Trust Property after the Trust Property has been possessed or occupied by Beneficiary, its agent or any purchaser following trustee's sale, foreclosure or under deed in lieu of trustee's sale or foreclosure, shall be conclusively presumed to have been abandoned by Trustor.

29. Nonrecourse. Notwithstanding any provision to the contrary in the Note, this Deed of Trust or any other instrument or agreement by which the Note is secured and except as otherwise provided in this paragraph, the liability of Trustor shall be limited to the interest of Trustor in the Trust Property, including all rents, issues, proceeds and profits thereof. In the event of foreclosure of this Deed of Trust, no judgment for any deficiency upon the Indebtedness shall be sought or obtained by Beneficiary against Trustor. Nothing contained in this paragraph shall:

- (a) limit or impair Beneficiary's right to declare an Event of Default in the event of the failure of Trustor to make any payment or to perform any obligation under the Note and this Deed of Trust within the time periods provided for therein and herein,
- (b) be construed as limiting the obligations of Trustor to any tenant under any lease of the Trust Property, or any portion thereof, or
- (c) in any way limit or impair the lien or enforcement of this Deed of Trust pursuant to the terms hereof.

Notwithstanding the foregoing, Trustor shall be personally liable to Beneficiary for:

- (d) Trustor's failure to comply with paragraphs 3 (Payment of Charges) and 6 (Insurance),
- (e) any event or circumstance for which Trustor indemnifies Beneficiary under paragraph 21 (Hazardous or Toxic Substances),
- (f) any rents or other income regardless of type or source of payment from the Trust Property which Trustor receives or has a right to receive after an Event


of Default and which are not applied to (i) expenses of operation and maintenance of the Trust Property and the taxes, assessments, utility charges and insurance on the Trust Property, and (ii) payment of principal, interest and other charges due under the Note and this Deed of Trust,

- (g) any security deposits of tenants not turned over to Beneficiary upon conveyance of the Trust Property to Beneficiary pursuant to foreclosure or power of sale or by deed in lieu of foreclosure acceptable to Beneficiary,
- (h) misapplication or misappropriation of tax reserve accounts, tenant improvement accounts, security deposits, prepaid rents or other similar sums paid to or held by Trustor or any other entity or person in connection with the operation of the Trust Property,
- (i) any waste committed or allowed by Trustor with respect to the Trust Property, and
- (j) any insurance or condemnation proceeds or other similar funds or payments applied by Trustor in a manner other than as expressly provided in this Deed of Trust.

30. Request for Notice. Trustor and Beneficiary hereby request that copies of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Trustor and Beneficiary at their mailing addresses set forth above.

IN WITNESS WHEREOF, this Deed of Trust has been executed by Trustor as of the day and year set forth above.

CHILDREN'S HOSPITAL,  
a Nebraska not-for-profit corporation

By   
Title: President & CEO

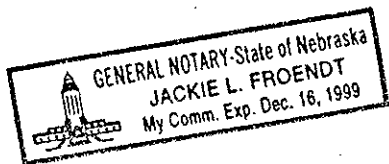
STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

On this 8th day of August, 1997, before me, a notary public in and for said county and state, personally came David A. Perkins, President & CEO of CHILDREN'S HOSPITAL, a Nebraska not-for-profit corporation, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]

*Jackie L. Froendt*  
\_\_\_\_\_  
Notary Public



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

**EXHIBIT "A"**

All of Lots 11, 12, 13 and 14, and all of Lot 15, except the West 17 feet thereof, in Block 1, Beverly Hills, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska.