

NO  
CARTER  
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DEED OF TRUST

THIS DEED OF TRUST, is made as of the 26 day of February, 2010, by Jody G. Smith and Elizabeth M. Smith, husband and wife (hereinafter "Trustor," even though more than one), whose mailing address is 7352 Mercy Lane, Hickman, Nebraska 68372; Mark C. Brown, a licensed Nebraska Attorney (hereinafter "Trustee"), whose mailing address is 2935 Pine Lake Road, Suite D, Lincoln, Nebraska 68516; and Robert D. Carter and Diane M. Carter, husband and wife (hereinafter "Beneficiary," even though more than one), whose mailing address is 7300 Hickman Road, Hickman, Nebraska 68372.

FOR VALUABLE CONSIDERATION, Trustor irrevocably transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of real property, located in Lancaster County, Nebraska, and described as follows (the "Property"):

Unit 7352, Carter Condominiums, Hickman, Lancaster County, Nebraska, according to the Condominium Declaration and Restrictive Covenants for Carter Condominiums recorded October 13, 2006 as Instrument No. 2006051420; records of Lancaster County, Nebraska, more commonly described as 7352 Mercy Lane, Hickman, Lancaster County, Nebraska.

TOGETHER WITH all rents, easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, fixtures, improvements and buildings of any kind situated thereon and all personal property that may be or hereafter become an integral part of such buildings and improvements, all crops raised thereon, if any, and all water and mineral rights. The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "Trust Estate." Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Trust Estate, and that the Trust Estate is unencumbered.

FOR THE PURPOSE OF SECURING:

a. Payment of indebtedness in the total principal amount of **One Hundred Seventeen Thousand Six Hundred Ninety and 81/100 Dollars (\$117,690.81)**, with interest thereon, as evidenced by the associated Deed of Trust Promissory Note of this same date (the "Note") with a maturity date of the as stated in said Note, executed by Trustor, which has been delivered and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof;

b. Upon Beneficiary actually receiving the entire sum of \$7,000.00 in good collected funds from Trustor, representing the portion of the Federal First-Time Home Buyer Tax Credit which Buyer has agreed to pay to Seller, then the Beneficiary agrees the amount of principal due under these Loan Instruments shall be reduced by this same amount as required under the terms of the associated Promissory Note. In the event Beneficiary does not receive this entire payment within Five (5) days after actual receipt by Trustor, then the interest rate of the Loan Instruments shall increase to Eight Percent (8.0%) for the remainder of the term of the loan. In either event, a new amortization schedule for a new thirty (30) year term shall be prepared by Lender to reflect this change. The balloon date in the Promissory Note shall always remain the same;

c. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the increased "default" interest rate stated in the incorporated Promissory Note, if default occurs; and

d. The performance of all terms and covenants herein.

This Deed of Trust, the Note, assignment of leases and rents and any other subsequent agreement and instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to collectively as the "Loan Instruments." The parties agree this Instrument is intended to be secured against the subject Property as a First Deed of Trust, and that it shall not be subordinated during the term of this Loan.

CAN pay for 02.02 \$20,500

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**TO PROTECT THE SECURITY OF THIS DEED OF TRUST:**

1. **PAYMENT OF INDEBTEDNESS.** Trustor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, including future advances, prepayment and late charges, fees and all other sums as provided in the Loan Instruments.

2. **TAXES AND HOMEOWNER ASSOCIATION DUES.** Trustor shall timely pay monthly to the Beneficiary, simultaneous with each monthly installment of the principal and interest due hereunder, one-twelfth (1/12<sup>th</sup>) of the annual real estate taxes, homeowner association dues and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof. Borrower agrees that all monthly principal and interest, real estate tax payments and homeowner association dues shall be set up to be automatically withdrawn from a bank account designated by Borrower to be deposited into a bank account designated by Lender, and to promptly sign and deliver any documents required to establish this arrangement. If Beneficiary deems the account holding Trustor's funds to be likely to be deficient for payment of the taxes and association dues when due, Beneficiary shall give Trustor notice of this situation and shall notify Trustor of an amount that will be required to be deposited to provide a reasonable surplus in the account. Trustor shall have thirty (30) days from the date of receipt of the notice to pay the sum requested to Beneficiary. Beneficiary shall timely pay the insurance premiums and shall provide Trustor with evidence of the payment of the same by mailing Trustor a copy of the paid receipt no later than Fourteen (14) days after each tax payment has been made. Trustor shall be liable for all real estate taxes, homeowner association dues and special assessments which may be levied upon Beneficiary's or Trustor's interests herein or upon this Deed of Trust or the debt secured hereby, without regard to any law that may be enacted imposing payment of the whole or any part thereof upon the Beneficiary. If at some time during the term of this loan, Beneficiary agrees to allow Trustor to pay the taxes directly to the County Treasurer, which shall require the prior written consent of Beneficiary and which shall be solely at the Beneficiary's discretion, then Trustor shall pay each installment of all real estate taxes, homeowner association dues and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof, before delinquency, without notice or demand, and shall provide Beneficiary with evidence of the payment of the same by mailing Beneficiary a copy of the paid receipt no later than Fourteen (14) days after each semi-annual installment is due.

3. **INSURANCE AND REPAIRS.** During the term of this Deed of Trust, Trustor shall timely pay the condominium property casualty insurance premiums directly to Trustor's insurer for fire and extended coverage insurance, or its equivalent, insuring the improvements and buildings constituting part of the Trust Estate for an amount not less than the amount of the unpaid principal balance of the Note. Such condominium insurance policy shall contain a standard mortgage clause in favor of Beneficiary, with loss payable to the parties as their interests appear at the time of the loss. During the term of this Deed of Trust, Trustor shall carry property and casualty coverage, listing Beneficiary as an additional insured party and loss payee, in the minimum single limit amount of **\$500,000** per individual and per occurrence. This policy shall not be cancelable, terminable or modifiable without Ten (10) days prior written notice to Beneficiary. The parties agree the insurance company is hereby directed to immediately notify Beneficiary if the premium is not paid on the due date. Trustor shall pay any deductible under the policy. Trustor shall pay the first year of insurance premium in advance prior to the time of closing and shall pay all future premiums in advance prior to delinquency. Trustor shall provide Beneficiary with receipts showing payment of the same at closing and with receipts showing that subsequent insurance premiums have been paid and that the insurance is in effect upon request by the Trustee or Beneficiary. In the event of loss, all insurance proceeds shall be applied to the restoration of the premises or shall be used to reduce the principal debt due Beneficiary. Trustor shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall the Trustor commit waste on or to the Trust Estate. Trustor may improve the structures located on the premises, but shall not tear down any structures during the term of this Deed of Trust.

4. **ACTIONS AFFECTING TRUST ESTATE.** Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Beneficiary and/or Trustee, each in his, her or their own discretion, without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to

protect the security hereof. Trustor shall, immediately upon demand therefor by Trustee or Beneficiary, pay all costs and expenses incurred by Trustee or Beneficiary in connection with the exercise by Trustee or Beneficiary of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and Trustee's fees and attorney's fees. Any such costs and expenses not paid within Ten (10) days of written demand shall draw interest at the same increased "default" interest rate stated in the incorporated Promissory Note.

**5. EMINENT DOMAIN.** Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner including deed in lieu of Condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at Beneficiary's option, to commence, appear in and prosecute in Beneficiary's own name any action or proceedings. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights or action and proceeds awarded to Trustor (the "Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary, Trustee or any third party may require to allow payment to Beneficiary. Any payments made to the Beneficiary pursuant to this Article shall represent a credit to any unpaid balances due to the Beneficiary hereunder. In the event that any such payments received exceed the amount of all sums due hereunder to the Beneficiary, all excess proceeds are vested in the Trustor.

**6. APPOINTMENT OF SUCCESSOR TRUSTEE.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the County in which the Trust Estate is located, and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to the Trustee named herein or acting hereunder.

**7. SUCCESSORS AND ASSIGNS.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

**8. INSPECTIONS.** Beneficiary, or Beneficiary's agents, representatives, contractors or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments. Unless an emergency occurs, the Trustor shall be given personal notice at least 24 hours in advance of such inspection or entry onto the property.

**9. HAZARDOUS MATERIALS AND SUBSTANCES.** Trustor shall keep the Property in compliance with all applicable laws, ordinances and regulations relating to industrial hygiene and environmental protection (collectively referred to herein as "environmental laws"). Trustor shall keep the Property free from all substances deemed to be hazardous or toxic under any environmental laws (collectively referred to herein as "hazardous materials"). Trustor hereby warrants and represents to Lender that there are not hazardous materials on or under the Property. Trustor hereby agrees to indemnify and hold harmless Beneficiary, and any agents and successors in interest, from and against any and all claims, damages losses and liabilities arising in connection with the presence, use, disposal or transport of any hazardous materials on, under, from or about the Property. **THE FOREGOING WARRANTIES AND REPRESENTATIONS, AND TRUSTORS' OBLIGATIONS PURSUANT TO THE FOREGOING INDEMNITY, SHALL BE DEEMED PERPETUAL AND SHALL SURVIVE RECONVEYANCE OF THIS DEED OF TRUST.**

**10. EVENTS OF DEFAULT.** Any of the following events shall be deemed an event of default hereunder:

**A.** Trustor shall have failed to make payment of any installment of interest, principal, or principal and interest or any other sum secured hereby within Thirty (30) days of when due; or

**B.** If all or any part of the Property or any interest therein is sold either outright or by land contract or otherwise transferred by Trustor without Beneficiary's prior written consent excluding (i) The creation of a lien or encumbrance subordinate to this Deed of Trust, (ii) The creation of a purchase money security interest for household appliances, (iii) A Transfer by devise, descent or by operation of law upon the death of a joint tenant, or (iv) The grant of any leasehold interest of three years or less not containing an option to purchase; or

**C.** There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments.

**11. ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES.** Should an event of default occur, Beneficiary may declare all indebtedness secured hereby to be immediately accelerated and due and payable and the same shall thereupon become due and payable without any presentment, demands, protest or notice of any kind, except as provided in the Article herein entitled "Request for Notice." Thereafter, Beneficiary may:

**A.** Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in Beneficiary's own name or in the name of Trustee, engage advisors or assistants, act upon their advice, delegate or release powers, and do any acts which Beneficiary deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof, and with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale;

**B.** Commence an action to foreclose this deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

**C.** Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, which notice Trustee shall cause to be duly filed for record in the appropriate official records of the County in which the Trust Estate is located.

**12. FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

**A.** Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

**B.** As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (i) all sums expended under the terms hereof, not then repaid, with accrued interest at the same increased "default" interest rate stated in the incorporated Promissory Note; (ii) all other sums then secured hereby; (iii) to the payment of junior trust deeds, mortgages or other lien holders; and (iv) the remainder, if any, to the person or persons legally entitled thereto.

**C.** Trustee may, in the manner provided by law, postpone sale of all or any portion of the Trust Estate.

**D.** For each election to foreclose by exercise of the Power of Sale herein, the Trustee shall be paid expenses and a reasonable fee for services rendered. Trustee fees shall not be waived by Beneficiary's acceptance of principal or interest. Only Trustee may waive Trustee's fees, which shall be in writing.

**13. REMEDIES NOT EXCLUSIVE.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the such indebtedness and obligations secured hereby may not or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers

herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to rely upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by and any of the Loan Instruments to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law.

**14. ASSIGNMENT OF RENTS.** For the purpose of providing further security for the debt secured hereby, Trustor hereby assigns, transfers and sets over to Beneficiary, to be applied toward the payment of the Note and all other sums secured hereby or evidenced by the Loan Instruments, in case of default in the performance of any of the terms or conditions of this Deed of Trust, or the said Note, or the terms of any Loan Instruments, a security interest in all the rents, revenues and incomes, if any, to be derived from the Property during such time as the Note shall remain unpaid. Beneficiary shall have the power to take any actions allowed under the leases, including, but not limited to, taking possession of the Property, through suit or otherwise, and to appoint any agent(s) of Beneficiary's choice for the purpose of repairing the Property and of renting the same and collecting the rents, revenues and income. The agent(s) may pay out of said income all expenses of repairing the Property and necessary commissions and expenses incurred in renting and managing the same and of the payment of insurance premiums and of collecting rentals therefrom. The remaining balance of such collections, if any, to be applied toward the discharge of the Note. The remedies in this paragraph are cumulative with other remedies and not to be construed as a limitation, even if considering the terms of the leases or other documents. Beneficiary and Trustee are liable to account only for those rents actually received.

**15. REQUEST FOR NOTICE.** Trustor, Beneficiary and Trustee hereby request a copy of any notice of default and that any notice of sale hereunder be mailed to them at the address set forth in the introductory paragraph of this Deed of Trust or any more current address of these parties in the possession of the mailing party.

**16. GOVERNING LAW.** This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. These instruments cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought. Each of the parties hereto waives the benefits of any homestead exemption and personal property exemption laws as to this real property and debt.

**17. RECONVEYANCE BY TRUSTEE.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and delivery to Trustor, and after payment of Trustee's reconveyance fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." The cost of preparation of the Deed of Reconveyance, not to exceed \$200.00, and the recording fee therefor at the Register of Deeds shall be paid by the Trustor to the Trustee prior to the Trustee providing the Deed of Reconveyance.

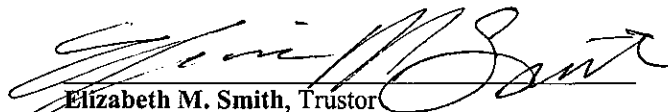
**18. NOTICES.** Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the

beginning of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**19. TRUSTEE LIABILITY.** So long as the Trustee shall act in good faith and in reliance upon notices and other information which Trustee, in Trustee's sole discretion may deem to be reliable, and so long as Trustee shall exercise reasonable prudence and care in Trustee's administration hereunder, Trustee shall not be liable for any loss or damage sustained or incurred by the Trustors or any Beneficiary or by any other persons whomsoever, it being expressly agreed that the Trustee shall be liable only for gross negligence and willful default.

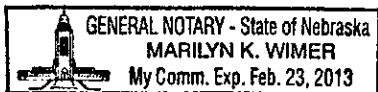
**20. ACCEPTANCE BY TRUSTEE.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

  
Jody G. Smith, Trustor

  
Elizabeth M. Smith, Trustor

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

The foregoing Deed of Trust was acknowledged before me on this 26 day of February, 2010, by Jody G. Smith and Elizabeth M. Smith, husband and wife, Trustors.



  
Marilyn K. Wimer  
Notary Public