

**MORTGAGE**

THIS MORTGAGE, made on October 1, 1999, WITNESSETH THAT:

ATG HOMES, LLC, an Indiana limited liability company  
One Professional Center, Suite 304, Crown Point, Indiana 46307  
(the "Mortgagor")

**MORTGAGES AND WARRANTS to**

UNION PLANTERS BANK, N.A., a national banking association  
437 South Street, Lafayette, Indiana 47901  
(the "Mortgagee")

99083571

the real property described on Exhibit A annexed hereto and made a part hereof, together with the buildings, structures and improvements now or hereafter located thereon, the fixtures affixed thereto, the rents, issues and profits therefrom and the appurtenances thereunto appertaining (hereinafter referred to as the "Premises").

This Document is the property of the Lake County Recorder!

The Premises shall also include all of the Mortgagor's right, title and interest in and to the following: all easements, rights-of-way, licenses, privileges and hereditaments; and land lying in the right-of-way of any public highway, road, street or the like, opened, proposed or vacated, adjoining the Premises; any strip or gore adjoining the Premises; all machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever located now or in the future in or upon the Premises and used or usable in connection with any present or future operation of the Premises (all of which is called "Equipment"), which Equipment shall be deemed to be part of the Premises, appropriated to the use of the real estate and, whether affixed or annexed or not, to be, for purposes of this Mortgage (unless the Mortgagee shall otherwise elect), real property subject to the lien of this Mortgage; all rights to coal, oil, gas and other minerals located on or under the Premises; all rights to water under or flowing in rivers or streams adjoining the Premises, and rights to timber growing on the Premises; all awards or payments, including interest, made as a result of the exercise of the right of eminent domain or of the alteration of the grade of any street, or of any loss of or damage to any building or other improvement on the Premises, or of any other injury to or decrease in the value of the Premises; and any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises.

The warranties of title and freedom from encumbrances made by the Mortgagor hereunder are absolute except for the liens and encumbrances set out on Exhibit B annexed hereto (the "Permitted Encumbrances").

LAWYERS TITLE INS. CORP.  
ONE PROFESSIONAL CENTER  
SUITE 215  
CROWN POINT, IN 46307  
66058

99 OCT -8 PM 2: 01  
MORTGAGE OFFICE

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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1. Indebtedness and Obligations Secured: This Mortgage secures:
- a. the payment, promptly when due, of the indebtedness evidenced by a note dated April 23, 1999, in the principal amount of Five Million Dollars (US\$5,000,000.00), maturing on July 1, 2001, executed and delivered by the Mortgagor to the Mortgagee, including any extensions, renewals, modifications or replacements without limit as to number or frequency;
  - b. the payment, promptly when due, of all other obligations and liabilities now or hereafter owing (direct or indirectly) by the Mortgagor to the Mortgagee, including (without limitation) reimbursement obligations under letter of credit application/reimbursement agreements, up to a maximum (including the indebtedness described in paragraph a) of Five Million Dollars (US\$5,000,000.00), other than obligations or liabilities incurred for personal, family or household purposes;
  - c. the observance and performance of all obligations to be observed and performed by the Mortgagor (as Borrower) under the Credit Agreement between the Mortgagor and the Mortgagee, as amended and restate in its entirety on April 23, 1999 (the "Credit Agreement"), or under any instrument made by the Mortgagor to the Mortgagee pursuant to the Credit Agreement; and
  - d. the payment, promptly when due, of all other sums owing by the Mortgagor to the Mortgagee under this Mortgage, including (without limitation) advances to protect security (together with interest thereon) and costs and expenses, including attorneys' fees, incurred by the Mortgagee in the foreclosure of this Mortgage or the collection of the indebtedness secured hereby.

2. Covenants of Mortgagor: The Mortgagor promises and agrees that:
- a. Payment of indebtedness and Performance of Obligations: The Mortgagor shall pay, promptly when due, whether by acceleration or otherwise, the indebtedness described in §§ 1(a) and 1(b) above and shall promptly perform all obligations to be performed by the Mortgagor under the Credit Agreement, this Mortgage or any other instrument made by the Mortgagor to the Mortgagee under the Credit Agreement.

b. Taxes: The Mortgagor shall pay, promptly when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which are or may become a lien on the Premises. If the Mortgagor fails to make any such payment, the Mortgagee may, at its option and at the expense of the Mortgagor, pay the amount due for the account of the Mortgagor. The Mortgagor shall, immediately upon the request of the Mortgagee furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien on all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.

c. Insurance: Until the indebtedness secured hereby shall have been fully paid, the Mortgagor shall keep the Premises and all buildings and other improvements now or hereafter situate on the Premises insured (for the benefit of the Mortgagor and the Mortgagee, as their interests may appear) at replacement cost, against loss or damage resulting from fire and such other hazards and risks as are customarily covered by the standard form or extended coverage endorsement available in the State of Indiana, and against loss or damage resulting from flood, if the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or flood insurance is otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it, and shall furnish such other appropriate insurance as the Mortgagee may require from time to time. All insurance policies and renewals must be acceptable to Mortgagee, must provide for payment to the Mortgagee in the event of loss regardless of any act or omission by the Mortgagor, must require thirty (30) days notice to the Mortgagee in the event of non-renewal or cancellation, and must be delivered to the Mortgagee. Should the Mortgagor fail to insure or fail to pay the premiums on any insurance or fail to deliver the policies or certificates or renewals to the Mortgagee, then the Mortgagee at its option may have such insurance written or renewed and pay the premiums for the account of the Mortgagor. In the event of loss or damage, the proceeds of the insurance shall be paid to the Mortgagee alone. No loss or damage shall itself reduce the indebtedness secured hereby. The Mortgagee is authorized to adjust and compromise a loss without the consent of the Mortgagor, to collect, receive and receipt for any proceeds in the name of the Mortgagor and to endorse the Mortgagor's name upon any check in payment of proceeds. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds and then toward payment of the



indebtedness or any portion of it, whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part of the proceeds, to the repair or rebuilding of the Premises, provided that Mortgagor is not then or at any time during the course of restoration of the Premises in default under this Mortgage, and has complied with all requirements for application of the proceeds to restoration of the Premises as Mortgagee in its sole discretion may establish. The remaining portion of the proceeds (if any) shall be paid to the Mortgagor.

d. Payment of Other Obligations: The Mortgagor shall pay all obligations for repairs or improvements made on the Premises which may become liens or charges against the Premises and shall also pay for any other goods, services, or utilities furnished to the Premises, and shall not permit or suffer any lien or charge of any kind securing the repayment of borrowed funds (including the deferred purchase price for any property) to attach to and remain outstanding against the Premises.

e. Permitted Encumbrances: The Mortgagor shall pay, promptly when due, all indebtedness and timely perform all obligations secured by the Permitted Encumbrances. The Mortgagor shall provide copies of all documents pertaining to the Permitted Encumbrances, and the Mortgagee is authorized to request and receive that information from any other person without the consent or knowledge of the Mortgagor.

f. Waste: The Mortgagor shall not commit or permit waste on the Premises nor do any other act causing the Premises to become less valuable. The Mortgagor shall keep the Premises in good order and repair and in compliance with all material respects with any law, regulation, ordinance or contract affecting the Premises and, from time to time, make all needful and proper replacements so that fixtures, improvements and Equipment will at all times be in good condition, fit and proper for their respective purposes. Should the Mortgagor fail to effect the necessary repairs, the Mortgagee may, at its option and at the expense of the Mortgagor, make the repairs for the account of the Mortgagor. The Mortgagor consents to the appointment of a receiver under Indiana law should Mortgagee elect to seek such relief. The Mortgagor shall use and maintain the Premises in conformance with all applicable laws, ordinances and regulations. The Mortgagee or its authorized agent shall have the right to enter upon and inspect the Premises at all reasonable times. The Mortgagor unconditionally agrees to timely pay all fees with respect to inspections of the Premises.

g. Alterations: Except in the ordinary course of its business of building and selling houses, the Mortgagor shall not remove, demolish or substantially alter any building, structure, improvement, fixture, personal property or Equipment constituting any part of the Premises without the prior written consent of the Mortgagee.

h. No Additional Liens: The Mortgagor shall not execute any mortgage, security agreement, assignment of leases and rents or other agreement granting a lien on the Premises or any interest therein without the prior written consent of Mortgagee, and then only when the document granting that lien expressly provides that it shall be junior and subordinate to the lien of this Mortgage and that the indebtedness secured by that lien shall be subordinate to the indebtedness secured by this Mortgage.

3. Assignment of Leases and Rents: As additional security for the indebtedness secured hereby, the Mortgagor assigns to Mortgagee all oral or written leases of the Premises or any part thereof not existing or hereafter entered into, and all rents payable thereunder, including (without limitation) all revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security, together with the right (but not the obligation) to collect, receive, demand, sue for and recover the same when due or payable. Upon the request of Mortgagee, Mortgagor shall deliver to Mortgagee all original leases of all or any portion of the Premises, together with assignments of such leases from Mortgagor to Mortgagee, which assignments shall be in form and substance satisfactory to Mortgagee. The Mortgagor shall perform all of the obligations to be performed by it under such leases.

4. Security Agreement: This Mortgage also constitutes a security agreement within the meaning of the Indiana Uniform Commercial Code ("UCC"), and Mortgagor grants to Mortgagee a security interest in any Equipment and other personal property included within the definition of the Premises. Accordingly, the Mortgagee shall have all of the rights and remedies available to a secured party under the UCC. Upon the occurrence of an event of default under this Mortgage, the Mortgagee shall have, in addition to the remedies provided by this Mortgage, the right to use any method of disposition of collateral authorized by the UCC with respect to any portion of the Premises subject to the UCC.

5. Reimbursement of Advances: If the Mortgagor fails to perform any of its obligations under this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the Premises (including without limitation a quiet title or ejectment action, an action to determine lien priorities, a condemnation action, code enforcement, insolvency, bankruptcy or probate proceedings), then the Mortgagee at its sole option may engage counsel, appear in such action or proceeding, disburse sums (including

without limitation disbursement of reasonable attorneys' fees) and take any action (including entry upon the Premises to make repairs) it may deem necessary to protect its interest. All amounts disbursed shall become additional indebtedness secured hereby, shall be immediately due and payable upon notice from the Mortgagee to the Mortgagor, and shall bear interest at the rate of 18% per annum until paid.

6. Due on Transfer: If the Mortgagor should transfer (or enter into any agreement to transfer) all or any part of the Premises or any interest in the Premises except (i) sales made in the ordinary course of the Mortgagor's business of building and selling houses, or (ii) other sales made with the Mortgagee's prior written consent, the Mortgagee may, at its sole option, declare the indebtedness secured hereby to be immediately due and payable.

7. Eminent Domain: Notwithstanding any taking under the power of eminent domain, alteration of the grade of any road, alley, or the like, or other injury or damage to or decrease in value of the Premises by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay the indebtedness secured hereby in accordance with the terms of the Credit Agreement until any award or payment shall have been actually received by Mortgagee. By executing this Mortgage, the Mortgagor assigns the entire proceeds of any award or payment and any interest to the Mortgagee. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee, including reasonable attorneys' fees of the Mortgagee in collecting the proceeds, and then toward payment of the indebtedness secured hereby (whether or not then due), or the Mortgagee at its option may apply the proceeds, or any part, to the alteration, restoration or rebuilding of the Premises. The remaining portion of the proceeds (if any) shall be paid to the Mortgagor.

8. Environmental: The Mortgagor has executed and delivered or will from time to time execute and deliver Environmental Certificates to the Mortgagee, which include representations, covenants, indemnities and rights of entry. The most recent Environmental Certificate shall supersede all prior Environmental Certificates, and its provisions are incorporated into this Mortgage by reference thereto.

9. Events of Default and Acceleration: Upon the occurrence of any of the following events, the Mortgagor shall be in default hereunder, and the Mortgagee shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law:

- a. The Mortgagor fails to pay any installment of the indebtedness secured hereby prior to the tenth (10<sup>th</sup>) calendar day after the same has become due;



b. The Mortgagor or a Guarantor fails to observe or perform any other term the Credit Agreement or the Note, and such failure continues for thirty (30) calendar days after written notice from the Mortgagee; provided that if such default cannot reasonably be cured within such thirty (30) calendar day period and the Mortgagor (or such Guarantor, as the case may be) shall have commenced to cure such default within such thirty (30) calendar day period and shall thereafter diligently and expeditiously proceed to cure the same, such thirty (30) calendar day period shall be extended for so long as it shall require the Mortgagor (or such Guarantor, as the case may be) in the exercise of due diligence to cure the default, it being agreed that no such extension shall be for a period in excess of sixty (60) calendar days after the notice from the Mortgagee referred to above;

c. There is an event of default under the Credit Agreement or under any instrument made by the Mortgagor to the Mortgagee pursuant to the Credit Agreement and the grace period (if any) allowed for the cure thereof has expired; or

d. Any financial statement or other information delivered by the Mortgagor to the Mortgagee, or any other representation made by the Mortgagor to the Mortgagee, is or proves to be materially incorrect or misleading.

10. Remedies upon Default: Upon the occurrence of any event of default, the Mortgagee may, at its option:

a. declare the entire indebtedness secured hereby, both principal and interest, to be immediately due and payable, without prior notice or demand;

b. commence foreclosure proceedings against the Premises in any court of competent jurisdiction, and in such action, obtain the appointment of a receiver, ex parte and without notice, to take possession of the Premises and to conduct the business formerly conducted thereon by the Mortgagor;

c. exercise any of its rights, powers or remedies pursuant to the UCC; and

d. exercise any other remedy available to it at law or in equity.

The foregoing remedies shall be cumulative and not exclusive and may be exercised at any time and from time to time as the occasion may demand.

In any foreclosure sale, the Premises may be sold in its entirety or in such parcels, manner and order as Indiana law may permit. The proceeds of such sale shall be applied first to court costs, sheriff's fees and other foreclosure expenses, next to attorneys' fees and other expenses reasonably incurred by the Mortgagee in the prosecution and in preparation for prosecution of such foreclosure action (including environmental investigation and remediation), next to reimbursement of the Mortgagee for all sums disbursed by it to protect its security interest and the priority of the lien of this Mortgage, next to interest accrued on the indebtedness secured hereby to the date of foreclosure sale, and finally to the principal amount of the indebtedness secured hereby. Any surplus remaining shall be disbursed to the Mortgagor. The Mortgagor shall remain liable for any deficiency paid for by the Mortgagee and reasonable attorneys' fees. By executing this Mortgage, the Mortgagor waives, in the event of foreclosure of this Mortgage or the exercise by the Mortgagee of any other rights and remedies it may have, any rights it might otherwise have to marshaling of assets securing the indebtedness secured hereby or to require the Mortgagee to pursue its remedies against any other assets.

11. Notices: Notice from one party to another relating to this Mortgage shall be deemed effective if made in the manner set out in the Credit Agreement.

12. Miscellaneous:

a. If any provision of this Mortgage is held to conflict with any statute or rule of law or to be unenforceable for any reason whatsoever, then that provision shall be invalid to the extent of the conflict or unenforceability, and it shall be severed from this Mortgage, but the invalidity of that provision shall not invalidate any other provisions of this Mortgage. Neither the failure of the Mortgagee to exercise any right or remedy available to it hereunder in the event of a default hereunder or to insist on strict performance by the Mortgagor of its obligations hereunder nor any delay on the part of the Mortgagee in doing so shall be deemed a waiver of a continuing or repeated default, whether or not of the same or a similar nature.

b. This Mortgage shall be binding upon the Mortgagor and its successors and assigns, and inure to the benefit of the Mortgagee and its successors and assigns.

c. This Mortgage shall be governed by Indiana law except to the extent it is preempted by federal law or regulations.



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b. This Mortgage shall be binding upon the Mortgagor and its successors and assigns, and inure to the benefit of the Mortgagee and its successors and assigns.

c. This Mortgage shall be governed by Indiana law except to the extent it is preempted by federal law or regulations.

13. Waiver of Right to Trial by Jury: The Mortgagor and the Mortgagee, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waive any right either of them may have to a trial by jury on any issue involved in any litigation based upon or arising out of this Mortgage, or the Credit Agreement, or any instrument made by the Mortgagor to the Mortgagee pursuant to the Credit Agreement, or any of the transactions contemplated by this Mortgage, or any course of conduct, dealing, statements (whether oral or written), or actions of either party. Neither the Mortgagor nor the Mortgagee shall seek to consolidate, by counterclaim or otherwise, any action in which the right to trial by jury cannot be or has not been waived. These provisions shall not be deemed to have been relinquished or modified in any respect by either party hereto except by a written instrument executed by both of them.



State of Indiana)  
 ) SS  
County of Lake

Before me, a Notary Public in and for said County and State, personally appeared Eric T. Gastevich, known to me to be the President of ATG Homes, LLC, and on behalf of said limited liability company, acknowledged the execution of the foregoing Mortgage, and certified that all action required to authorize the execution and delivery of said Mortgage by him as the representative of said Mortgage by him as the representative of said limited liability company has been taken.

Witness my hand Notarial Seal this October 1, 1999.

[SEAL]

Brenda M. Shelton  
Signature of Notary Public

**NOT OFFICIAL!**  
BRENDA M. SHELTON  
Printed Name of Notary Public  
This Document is the property of  
the Lake County Recorder!

My Commission Expires: Sept 28, 2006.

Resident of Lake County, Indiana

This Instrument Prepared By:  
STUART & BRANIGIN  
by: Roger D. Branigin, Jr.  
P.O. Box 1010  
Lafayette, IN 47902-1010

When recorded, please return to:  
Brent M. Talcott  
Union Planters Bank  
437 South Street  
Lafayette, Indiana 47901





**EXHIBIT A**

**Legal Description**

**Lots 13, 14 and 15, The Townhomes at White Oak Estates, Block 7 as shown in Plat Book 86, Page 67, Lake County, Indiana.**

**Lots 7, 8 and 9, Wildwood Court Condominiums, as shown in Plat Book 86, Page 60, Lake County, Indiana.**

