

AFTER RECORDING, RETURN TO:

INTERVEST-MORTGAGE INVESTMENT COMPANY
Attn: Brenda Lund
5005 S.W. Meadows Road, Suite 400
Lake Oswego, Oregon 97035



200906230088
Skagit County Auditor

6/23/2009 Page 1 of 18 3:40PM

Document Title: Second Modification of Promissory Note and Deed of Trust
Reference No. of Document Modified: 200605040053
Grantor: College Way Retail, LLC
Trustee: Chicago Title Insurance Company
Beneficiary: Intervest-Mortgage Investment Company
Legal Description: Portion of NW 1/4 of SW 1/4, Section 17, Township 34 North, Range 4 East, W.M., located in Skagit County, Washington. A complete legal description is attached as Exhibit "A."
Assessor's Property Tax Parcel/Account Number: 340417-0-057-0009 CHICAGO TITLE CO.
LC 38049

SECOND MODIFICATION OF PROMISSORY NOTE AND DEED OF TRUST

THIS SECOND MODIFICATION AGREEMENT is effective this 1st day of June, 2009, by and between COLLEGE WAY RETAIL, LLC, a Washington limited liability company (hereinafter referred to as "Borrower"), and INTERVEST-MORTGAGE INVESTMENT COMPANY (hereinafter referred to as "Lender").

RECITALS

1. On or about May 3, 2006, Borrower made, executed and delivered to Lender its Promissory Note (hereinafter "Note"), in writing, in the original principal amount of \$2,950,000.00, together with interest thereon at the rate equal to the one month LIBOR Rate (London Interbank Offer Rate) as published in the *Wall Street Journal*, plus 2.00%. The interest rate on all sums advanced shall be adjusted on the first day of the month following the date said rate is changed to equal the then present published one month LIBOR Rate plus 2.00%. Provided however that the interest rate shall never be less than 7.0587% per annum. The Note also allows Borrower to elect an interest calculation based on the Prime Rate as published in the Money Rates section of the *Wall Street Journal*. The Note, as extended, provides for maturity on June 1, 2009.

2. At the same time as the execution and delivery of the Note, and in order to secure repayment of the same, Borrower executed, in favor of Lender, a Deed of Trust, Assignment of Rents and Security Agreement (hereinafter "Deed of Trust"), encumbering certain real property located in Skagit County, Washington (the "Property"), and legally described in Exhibit "A" attached hereto. The Deed of Trust was thereafter recorded on May 4, 2006 under Auditor's File No. 200605040053, records of Skagit County, Washington.

3. At the same time as the execution and delivery of the Note and Deed of Trust, and in order to further secure repayment of the obligation of the Note, Borrower executed and delivered to Lender an Assignment of Leases and Cash Collateral (hereinafter "Assignment"), wherein Borrower assigned to Lender all of its rights under the leases, rents and income of the Property. The Assignment was recorded on May 4, 2006 under Auditor's File No. 200605040054, records of Skagit County, Washington.

4. At the same time as the execution and delivery of the Note and Deed of Trust, Borrower executed and delivered to Lender (i) its Certificate and Indemnity Regarding Hazardous Substances, which warrants to Lender that the Property has been and will continue to be used in conformity and in compliance with all local, state and federal ordinances, statutes, rules and regulations relating to the use, disposal, storage or transfer of hazardous substances, and agrees to indemnify and hold Lender harmless from any loss or damage caused by a breach of said warranties, and (ii) its Building Laws Indemnity, which warrants to Lender that the Property has been and will continue to be used in conformity and in compliance with all local, state and federal ordinances, statutes, rules and regulations relating to the development, use and operation of the Property, including the Americans With Disabilities Act, and agrees to indemnify and hold Lender harmless from any loss or damage caused by a breach of said warranties (hereinafter collectively referred to as the "Indemnity").

5. At the same time as the execution and delivery of the Note and Deed of Trust, and in order to further secure repayment of the obligation of the Note, John C. Graham and Lisa Graham ("Guarantors"), and each of them, guaranteed repayment of Borrower's indebtedness to Lender in their written Guaranty. Said Guaranty is unconditional and shall remain in full force and effect as to the indebtedness of said Borrower under the Note and Deed of Trust, as modified herein. Guarantors do hereby reaffirm and ratify their previous Guaranty.

6. On or about June 1, 2008, Borrower and Lender entered into a written modification agreement wherein the loan was modified and the maturity of the loan was extended to June 1, 2009 (hereinafter the "First Modification"). Said First Modification was thereafter recorded on June 17, 2008 under Auditor's File No. 200806170023, records of Skagit County, Washington.

7. At the same time as the execution and delivery of the Note and Deed of Trust, Borrower and Lender entered into a written Construction Loan Agreement (hereinafter "Loan Agreement") which sets forth the terms and conditions on which Lender will advance funds to Borrower for construction of improvements on the Property. As of June 1, 2009, construction is substantially complete and Lender has advanced \$2,481,068.21 to Borrower pursuant to the Loan Agreement.

8. Borrower is desirous of extending the maturity of the Note. Lender is willing to extend the maturity of the Note upon the other terms and conditions set forth herein.

9. The Note, the Deed of Trust, the Assignment, Indemnity, Loan Agreement, Guaranty, First Modification and this Second Modification Agreement, and any other document executed in connection therewith or referred to therein, may hereinafter be referred to as the "Loan Documents."



AGREEMENT

NOW, THEREFORE, in consideration of their mutual benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree that the Loan Documents are modified as follows:

A. The maturity of the Note is hereby extended from June 1, 2009 to October 1, 2009. Borrower promises and agrees to pay principal and interest under the Note, as modified herein (a copy of the Modified Promissory Note is attached hereto as Exhibit "B" and by this reference made a part hereof), to Intervest-Mortgage Investment Company, 5005 S.W. Meadows Road, Suite 400, Lake Oswego, Oregon 97035, or at such other place as Lender may direct, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of private and public debts.

B. In consideration of Lender entering into this Second Modification Agreement, Borrower agrees to pay Lender a nonrefundable loan fee in the amount of Three Thousand Six Hundred Eighty-Seven and 50/100 Dollars (\$3,687.50), the receipt of which is hereby acknowledged. Borrower also agrees to pay for legal fees incurred in the preparation of this loan documentation, together with the cost of a modification endorsement to Lender's title policy, together with all costs of recording this Agreement with the Office of the Skagit County Auditor.

C. The standby permanent loan of the original Loan Commitment as referenced in section 19 of the Construction Loan Agreement is hereby withdrawn and cancelled by Lender; and Borrower understands that such standby permanent financing is no longer available from Lender.

D. The Deed of Trust includes a security agreement wherein Borrower granted to Lender a security interest in Borrower's personal property. As to all of the personal property which is or which hereafter becomes a "fixture" under applicable law, this Agreement constitutes a fixture filing under the Washington Uniform Commercial Code, as amended or recodified from time to time. Borrower hereby authorizes Lender to file a financing statement, with or without Borrower's signature, to perfect Lender's lien and security interest in the Personal Property and Improvements as described in the Loan Documents (including any required continuation statements, amendment statements or other such documents necessary to perfect and continue the lien) and Borrower hereby expressly ratifies any financing statements Lender may have filed prior to the date of this Second Modification Agreement.

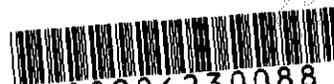
E. Borrower understands and agrees that the language of the Deed of Trust is amended in the following respects:

1. In addition to the items the Deed of Trust is given to secure, the Deed of Trust also secures:

Payment of all other sums, with interest thereon, which has been or may hereafter be loaned by Beneficiary (or its Affiliates) to Grantor (or its Affiliates), its successors, or assigns. "Affiliates" means a partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity of whatever nature in which such party has a 10% or greater ownership interest or over which such party exerts management or control or other material influence.

2. Section 1.20 is deleted in its entirety and the following replaces it:

1.20 Financial Statements.



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a. Grantor will keep full, complete and correct books of account reflecting transactions relating to the Property and at any and all times permit Beneficiary by its agents or attorneys to examine all of his books of accounts, records, reports and other papers relating to the Property, and to take copies and extracts therefrom and to examine the Property. Grantor will furnish to the Beneficiary as soon as available, and in any event within ninety (90) days after the end of each fiscal year of Grantor, certified as correct by Grantor or the Property manager, copies of operating statements showing the gross income (itemized as to minimum and percentage rent and other sources) during the preceding fiscal year received from the operations of the Property and the expenses of maintaining the Property (itemized including depreciation charges) during the preceding fiscal year. Concurrently with the furnishing of the aforesaid financial statements, Grantor will deliver to Beneficiary a statement of income of Grantor for such fiscal year. In addition, Grantor shall furnish Beneficiary, within thirty (30) days from the end of each fiscal year, a rent roll, including but not limited to a listing of each tenant, the space occupied, the amount of rent and the expiration of the lease. Grantor shall also furnish to Beneficiary, within thirty (30) days after the end of each calendar quarter, unaudited statements setting forth rental income and expenditures relating to the Premises for such quarter and Grantor's current financial statement and balance sheet, certified to as being correct by Grantor, together with any other financial information which may reasonably be required by Beneficiary. In the event Grantor fails to furnish any of the financial information hereinabove required, Beneficiary may cause an audit to be made, at Grantor's sole cost and expense, of the respective books and records. All financial reporting required in this Section 1.20 shall include, at Beneficiary's election, information from Grantor's Affiliates.

b. Grantor shall provide evidence to Beneficiary demonstrating that the value of the Property and Improvements supports a loan to value ratio of not more than 80%. Based on the financial information Grantor is required to provide to Beneficiary herein, and such other financial and valuation information as Beneficiary may reasonably request from Grantor, Beneficiary will annually assess the loan to value ratio of the Property. If Beneficiary determines in its sole discretion that the loan to value ratio may be greater than the percentage stated above, Beneficiary may engage, at Grantor's expense, an appraiser to conduct a written appraisal prepared in conformance with the requirements of applicable law, including without limitation the Financial Institutions Reform Recovery and Enforcement Act (FIRREA), confirming to the satisfaction of Beneficiary that the Note amount as a percentage of the fair market value of the Property and Improvements does not exceed 80%; provided, however, in the event such fair market value is not adequate to meet the required loan to value ratio, then Grantor shall, within fifteen (15) days after written demand from Beneficiary, pay down the outstanding principal balance of the Note such that the required loan to value ratio is satisfied. If the Note is not fully disbursed, any principal balance reduction shall reduce Beneficiary's commitment to make advances under the Loan Agreement by a like amount.

3. Section 4.01 is deleted in its entirety and the following replaces it:

4.01 Events of Default. Any of the following events shall be deemed an event of default hereunder:

a. If Grantor shall fail to make any payment of any installment of principal or interest on the Note or any other sum secured hereby when due; or

b. If Grantor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or



acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Grantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

c. If a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Grantor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or if any trustee, receiver or liquidator of Grantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Grantor; or

d. If a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages shall be entered against Grantor which shall become a lien on the Trust Estate or any portion thereof or interest therein; or

e. If Grantor shall transfer, assign, alienate, mortgage, encumber, pledge, hypothecate or grant an interest in Trust Estate without Beneficiary's prior written consent, unless otherwise allowed by the terms of this Deed of Trust; or

f. If any representation or statement made or furnished to Beneficiary by Grantor or on Grantor's behalf under the Loan Instruments is false or misleading in any material respect, either now or at the time made or furnished; or

g. If Grantor (or its Affiliates) shall default under any other loan, extension of credit, security agreement or any other agreement, whether now in effect or arising in the future, in favor of Beneficiary (or its Affiliates); or

h. If Grantor (or its Affiliates) shall default under any loan, extension of credit, security agreement, or any other agreement, whether now in effect or arising in the future, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Note or perform Grantor's obligations under the Note or any of the Loan Instruments; or

i. If any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party (or their Affiliates) of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies, becomes incompetent, suffers a material adverse change to its net worth, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by the Note. In the event of a death, Beneficiary, at its option, may, but shall not be required to, permit such guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Beneficiary, and, in doing so, cure any event of default; or

j. If there is any occurrence of any material change in management or other structural change in Grantor or in the partners, shareholders, venturers or members of Grantor, including, without limitation, any partnership, corporate, joint venture or member dispute which Beneficiary determines, in its sole and absolute discretion, may have a material adverse effect on Grantor's ability to



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repay the Note, on the Property or the Improvements, or on the ability of Grantor or its partners, shareholders, venturers or members to perform their obligations under the Loan Instruments; or

k. If there is discovered any hazardous materials in, on or about the Property or Improvements; or

l. If Grantor becomes aware of any event of default hereunder and fails to notify Beneficiary within fifteen (15) days of becoming so aware; or

m. 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 or any part thereof, not otherwise referred to in this Section 4.01.

If any event of default set forth above, other than a default in payment, is capable of being cured, Grantor shall have the opportunity to cure such default if, after receiving written notice from Beneficiary demanding cure of such default: (1) Grantor cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, Grantor immediately initiates steps which Beneficiary, in its sole discretion, deems to be sufficient to cure the default, and Grantor thereafter diligently continues and completes all reasonable and necessary steps to cause the default to be cured.

4. In addition to Lender's remedies upon default provided in Section 4.02 of the Deed of Trust, the following remedies are added:

e. To the extent permitted by applicable law, exercise its right to setoff in all of Grantor's accounts with Beneficiary (or its Affiliates) whether checking, savings, or some other account. This includes all accounts Grantor holds jointly with another party and all accounts Grantor may open in the future. Grantor hereby authorizes Beneficiary, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Beneficiary's option, to administratively freeze all such accounts to allow Beneficiary to protect Beneficiary's charge and setoff rights provided herein; and

f. Enter upon the Property, either by itself or through its agent, for the purpose of conducting, at Grantor's expense, an MAI appraisal of the Property and Improvements. The cost of the appraisal shall be payable by Grantor to Beneficiary on demand, and shall bear interest at the Note rate. It is expressly agreed and understood by Grantor that the occurrence of such a default shall be deemed to increase Beneficiary's risk hereunder, thereby creating a need for Beneficiary to have the information contained in an MAI appraisal of the Property and Improvements.

5. Section 4.08 is deleted in its entirety and the following replaces it:

4.08 Sale, Transfer, Vacation or Encumbrance of Property Prohibited. So long as any obligation secured hereby remains unpaid, Grantor covenants and agrees that neither said Property nor any portion thereof nor interest therein nor a greater than 10% cumulative ownership interest in Grantor (if a corporation or limited liability company) nor a general partnership interest in Grantor (if a partnership) shall be sold, conveyed, transferred or encumbered by Grantor without Beneficiary's prior written consent. If title to said Property or any portion or interest in said Property or a greater than 10% cumulative ownership interest in Grantor (if a corporation or limited liability company) or a general partnership interest in Grantor (if a partnership) shall pass from Grantor by deed or otherwise, voluntarily or involuntarily or if said Property or any portion or interest therein is sold on contract, or if the Property or any portion or interest therein is



vacated by Grantor, or if said Property or any portion or interest therein or a greater than 10% cumulative ownership interest in Grantor (if a corporation or limited liability company) or a general partnership interest in Grantor (if a partnership) is further encumbered without the consent of Beneficiary, such change in title or occupancy or interest of Grantor or further encumbrance shall be deemed to increase the risk of Beneficiary, and Beneficiary may declare all sums secured hereby immediately due and payable, or may at its sole option consent to such change in title or occupancy or interest of Grantor and increase the interest rate on the indebtedness hereby secured. In the event Beneficiary accelerates said indebtedness pursuant to the terms of this paragraph, Grantor shall pay, in addition to the indebtedness, the prepayment bonus as set forth in the Note, if any.

In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantor herein named, or if a controlling interest in Grantor (if a corporation or limited liability company) or a general partnership interest in Grantor (if a partnership) is sold or encumbered, Beneficiary may, without notice to Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

F. Borrower understands and agrees that the language of the Loan Agreement is amended in the following respects:

1. The following provisions are hereby added to Section 2:

Loan proceeds may be reallocated by Lender, in its sole discretion, among line items within the budget for cost overruns that have been approved by Lender in writing and disbursed in accordance with the provisions hereof, depending upon the intended use of any such funds and the amount of the contingency reserve and the cost savings in other budgeted items. If required by Lender, Borrower shall deposit additional equity funds into a separate account (hereinafter the "Borrower Funds Account"). Except as otherwise provided in this Agreement, all Borrower's funds deposited with Lender shall be placed in the Borrower Funds Account for disbursement pursuant to the terms of this Agreement. As additional security for Borrower's performance under the Loan Documents, Borrower hereby irrevocably pledges and assigns to Lender all monies at any time deposited in the Borrower Funds Account.

2. The following provisions are hereby added to Section 4:

Each application for progress payment shall constitute a representation and warranty by Borrower that Borrower is in compliance with all the conditions precedent to a disbursement specified in this Agreement and that all other representations and warranties in this Agreement and the Loan Documents are true and correct on the date of such application.

The disbursement procedure hereunder will require Borrower to establish a checking account with Lender or Lender's Affiliate ("Construction Account") into which loan proceeds advanced pursuant to approved draw requests will be deposited by Lender, and into which Borrower will make all deposits necessary to balance the construction budget (or deposited funds will be transferred from Borrower Funds Account) so that there are at all times on deposit in the Construction Account funds which, together with the undisbursed portion of the Loan, will be sufficient to cover all direct and indirect costs necessary to complete the construction in strict compliance with the Plans and Specifications approved by Lender. Disbursements will be made from the Construction Account by numbered checks prepared by Borrower made payable to persons or entities



entitled to payments on account of materials or labor furnished to the construction project. Such checks will be delivered to Lender accompanied by stamped envelopes addressed to each respective payee. If Lender approves a draw request or advance of loan funds, Lender will deposit the approved request or advance into the Construction Account and transmit the respective check, stamped with a lien waiver or release, in payment thereof to the payee(s) properly entitled to payment. Borrower hereby grants to Lender a security interest in the Construction Account as security for Borrower's obligation hereunder and under the Loan Documents. Borrower hereby irrevocably authorizes and directs that Lender shall have sole authority to authorize and process checks or other orders for withdrawal of funds from the Construction Account, order of offset, funds transfers, stop payment orders, instructions not to allow withdrawals, instructions to close the Construction Account, or instructions to transfer title of the Construction Account to another person, and any other instructions or requests concerning the Construction Account, notwithstanding any inconsistent or conflicting orders given to Lender by Borrower or any other person. Borrower shall have no right to withdraw funds from the Construction Account except as outlined above during the term of the Loan. In its discretion, Lender may establish any other reasonable system to disburse loan proceeds in lieu of that set forth herein. Lender may change the disbursement system at any time on five (5) days' written notice to Borrower.

Funds allocated for the payment of interest from the interest reserve set forth in Exhibit "B" will be disbursed directly to Lender for the payment of interest which accrues and becomes due under the Note provided that at the time of any such disbursement (i) Borrower is not in default, (ii) each of the conditions set forth in Section 3 are satisfied, as applicable, and (iii) the representations and warranties of Borrower contained in this Agreement and the other Loan Documents are true and correct. Lender is hereby authorized to charge the Loan and Borrower Funds Account directly for such interest payments when due. Periodically, Lender shall provide to Borrower a statement reflecting such disbursements. If the Property begins to generate net operating income prior to the depletion of the interest reserve, Borrower shall apply such net operating income toward monthly interest due on the Note prior to drawing against the interest reserve. Depletion of the interest reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, without limitation, payment of all accrued interest and the deposit of Borrower's Funds with Lender pursuant to Section 2 or 6 of this Agreement. The interest reserve not disbursed as provided herein shall be retained by Lender until such time as all obligations due and owing from Borrower to Lender are satisfied and paid in full or the interest reserve is otherwise released by Lender. In the event of a default, Lender may, in its discretion, retain any amounts in the interest reserve and credit such sum against the outstanding obligations owing from Borrower to Lender under the Loan Documents.

3. Section 6 is deleted in its entirety and the following replaces it:

6. Anything herein or in the Note, Deed of Trust and other Loan Documents to the contrary notwithstanding advances shall be suspended and the Loan hereunder shall become immediately due and payable at the option of Lender upon the occurrence of any one or more of the following events:

(a) In the event that any lien is filed against the property and/or improvements with respect to labor and/or materials furnished, or if Lender or its agent receives a stop notice pursuant to RCW 60.04 et seq. from any person or entity performing labor or furnishing materials for the construction of the Improvements on the Property and such lien or stop notice is not promptly discharged as required in Section 1.17 of the Deed of Trust; or

(b) In the event that Borrower fails to comply with each and every term and condition of this Agreement and every other agreement relating to the



Loan in the construction to be effected, or any Guarantor fails to comply with each and every term and condition of their Guaranty; or

(c) In the event that Borrower or any Guarantor files a bankruptcy petition; offers to creditors an assignment for their benefit or terms of composition; or in the event a receiver is appointed to take care of its affairs; or

(d) The failure to be true or the breach of any representation or warranty of Borrower in any of the Loan Documents; or any material adverse change in the financial condition of Borrower, Guarantor or any other person or entity in any manner obligated to Lender under the Loan Documents from the financial condition represented to Lender on the date hereof; or

(e) The death or incapacity of Borrower or any Guarantor, if an individual; or

(f) The occurrence of any material management or other structural change in Borrower or in the partners, shareholders, venturers or member of Borrower, including, without limitation, any partnership, corporate, joint venture or member dispute which Lender determines, in its sole and absolute discretion, may have a material adverse effect on the Loan, on the Property or the Improvements, or on the ability of Borrower or its partners, shareholders, venturers or members to perform their obligations under the Loan Documents, as applicable; or

(g) The General Contractor fails to comply with or maintain any and all licenses required by applicable law or ordinances.

(h) Borrower changes the intended purpose of the Improvements, even if such change does not materially alter the Plans and Specifications; or

(i) The leasing/sales/absorption of the Improvements fails to progress according to the estimate set forth in the appraisal of the project submitted to Lender at the time of the underwriting of the Loan; or

(j) The discovery of any Hazardous Materials in, on or about the Property or Improvements; or

(k) The occurrence of any default under Section 4.01 of the Deed of Trust; or

(l) If at any time title to the Property is not satisfactory to Lender by reason of any lien, encumbrance or defect (even though the same may have existed at the time of any prior advance), except those matters affecting title which have at any time been consented to in writing by Lender and such lien, encumbrance or other defect be not corrected within thirty (30) days after notice to Borrower or if the title company shall fail or refuse to insure any advance to be secured by the Deed of Trust on the Property as a valid first lien on the mortgaged property subject to those matters affecting title which have at any time been consented to in writing by Lender; or

(m) If, prior to completion of construction, Borrower assigns this Agreement or any advance to be made hereunder or any interest in either, or if the Property or any part thereof be conveyed, assigned, mortgaged, pledged or encumbered in any way without the prior consent of Lender; or



(n) If Borrower does not erect on the Property and equip the Improvements in accordance with the Plans and Specifications and all laws, rules, regulations and requirements now existing or hereafter enacted, adopted or promulgated of all governmental authorities having jurisdiction of the Property, or if Borrower fails to file with the appropriate departments of any governmental authority having jurisdiction of the Property amended or supplemental plans and specifications if required by law, or if Borrower fails to furnish to Lender written certificates issued by such departments approving the plans or specifications; or

(o) If Borrower fails to comply with any requirement of any governmental authority having jurisdiction of the Property within fifteen (15) days after notice in writing of such requirement shall have been given to Borrower or, if such governmental requirement cannot by its nature be complied with within fifteen (15) days, no default shall accrue so long as Borrower commences to satisfy such governmental requirement and diligently pursues such compliance to completion; or

(p) If for any cause whatsoever the construction of the improvement is at any time, in the judgment of Lender, not carried on with reasonable dispatch after notice to Borrower (subject, however, to strikes, lockouts, inability to obtain labor or materials, or any cause beyond the control of Borrower).

G. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO, OR ANY OF THEM, WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

H. Guarantors understand and agree that their Guaranty is amended with respect to financial reporting as follows:

Guarantor shall provide Lender with (1) complete copies of Guarantor's current tax returns within fifteen (15) days of the date of filing, (2) updated financial statements of Guarantor within thirty (30) days of the end of each calendar quarter, such statement to be prepared in a form and in accordance with accounting principles acceptable to Lender, and (3) such other credit and financial information as Lender may require; provided however updated financial statements and other financial information shall be submitted by Guarantor to Lender at any time following thirty (30) days written request from Lender. All financial reporting required herein shall include, at Lender's election, Guarantor's Affiliates. "Affiliates" means a partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity of whatever nature in which Guarantor has a



10% or greater ownership interest or over which Guarantor exerts management or control or other material influence.

I. The financial accommodations provided under this Agreement are conditioned upon the representations and warranties of Borrower set forth in the Loan Documents having been true and correct when made or given, and being true and correct as of the date hereof. By executing and delivering this Agreement, Borrower confirms that such representations and warranties were true and correct when made or given, and are true and correct as of the date of this Agreement. Borrower makes the following additional representations and warranties:

(a) As of the date of this Agreement, (i) the Loan Documents are in full force and effect; (ii) Borrower is liable to Lender for the payment and performance of all of its obligations under the Loan Documents, as set forth therein, in accordance with their terms and without set off, recoupment, or counter claim; (iii) Lender has performed all of its obligations with respect to the Loan Documents to this date; and (iv) there are no events of default under the Loan Documents that are not otherwise resolved by this Agreement.

(b) As of the date of this Agreement, Borrower has no disputes with or claims against Lender, and expressly waive(s) any claim with respect to breach or violation by Lender, if any, of the terms and conditions of the Loan Documents in existence as of this date.

(c) There are no other loan commitments, verbal or written, made or claimed to have been made by Lender to Borrower which are not contained in this Agreement and the Loan Documents.

(d) Borrower shall indemnify, defend (using counsel reasonably acceptable to Lender) and hold Lender harmless from and against any and all losses, costs, damages, claims, or expenses (including reasonable attorneys' fees) which have been or may be asserted against or incurred by Lender as a result of or in connection with the above matters represented and warranted to Lender by Borrower.

J. It is agreed and understood that all of the agreements, covenants and conditions of the Loan Documents shall remain in full force and effect, except for the amendments and modifications expressly mentioned herein.

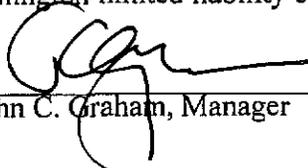
K. Nothing herein contained shall in any manner affect the validity or priority of the lien established by the Deed of Trust encumbering the property referred to in Paragraph 2 above.

L. The recitals set forth in Paragraphs 1 through 9 above are incorporated into the substantive provisions of this Agreement.

M. BORROWER ACKNOWLEDGES THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

BORROWER:

COLLEGE WAY RETAIL, LLC,
a Washington limited liability company

By 
John C. Graham, Manager



GUARANTORS:

[Signature]
JOHN C. GRAHAM

[Signature]
LISA GRAHAM

LENDER:

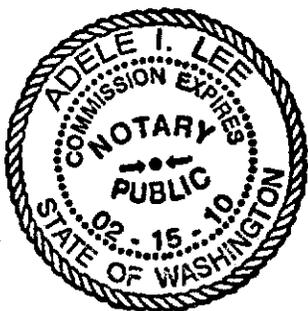
INTERVEST-MORTGAGE INVESTMENT
COMPANY

By [Signature]
Its Senior Vice President

State of Washington)
County of King) ss.

I certify that I know or have satisfactory evidence that John C. Graham is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Manager of College Way Retail, LLC, to be the free and voluntary act of such party, for the uses and purposes mentioned in the instrument.

DATED: June 16, 2009.



Adele I. Lee

Print Name: Adele I. Lee
Notary Public in and for the State
of Washington, residing at Lynnwood
My appointment expires: 2-15-2010



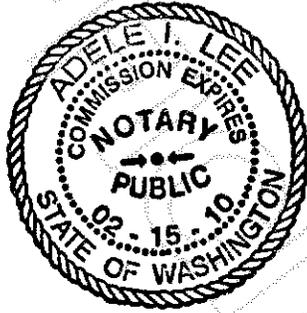
200906230088
Skagit County Auditor

6/23/2009 Page 12 of 18 3:40PM

State of Washington)
County of King } ss.

I certify that I know or have satisfactory evidence John C. Graham is the person who appeared before me, and said person signed this instrument and acknowledged it to be his free and voluntary act, for the uses and purposes mentioned in the instrument.

DATED: June 16, 2009.



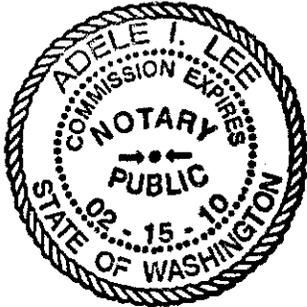
Adele I. Lee

Print Name: Adele I. Lee
Notary Public in and for the State
Of Washington, residing at Lynnwood
My appointment expires: 2-15-2010

State of Washington)
County of King } ss.

I certify that I know or have satisfactory evidence Lisa Graham is the person who appeared before me, and said person signed this instrument and acknowledged it to be her free and voluntary act, for the uses and purposes mentioned in the instrument.

DATED: June 16, 2009.



Adele I. Lee

Print Name: Adele I. Lee
Notary Public in and for the State
Of Washington, residing at Lynnwood
My appointment expires: 2-15-2010



State of Oregon }
County of Clackamas } ss.

I certify that I know or have satisfactory evidence that JOANNE ECONOMAKI personally appeared before me, and on oath stated that she was authorized to execute the instrument and acknowledged it, as SR VICE PRESIDENT of INTERVEST-MORTGAGE INVESTMENT COMPANY, to be the free and voluntary act of such person, for the uses and purposes mentioned in the instrument.

DATED: JUNE 19, 2009.

Brenda L Lund
Print Name: BRENDA L LUND
NOTARY PUBLIC in and for the State
of Oregon, residing at WILSONVILLE
My appointment expires: 06/13/11

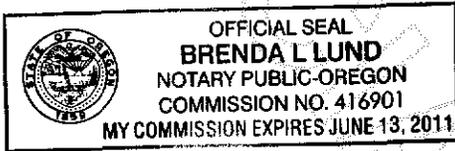


EXHIBIT "A"

That portion of the Northwest Quarter of the Southwest Quarter of Section 17, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at a point where the South right-of-way line of the Furber Road No. 208, now known as State Route 538, as said road existed on August 25, 1921, intersects the West right-of-way line of the Great Northern Railway Company, the said point being 30 feet South and 1,158.95 feet East along the East and West center line from the West Quarter corner of Section 17, Township 34 North, Range 4 East of the Willamette Meridian;
thence South $58^{\circ}41'$ West along the West line of the right-of-way of the Great Northern Railway Company a distance of 759.6 feet, more or less, to the North line of the South Half of the Northwest Quarter of the Southwest Quarter of said Section 17;
thence West along said North line a distance of 63.5 feet, more or less, to the East line of the right-of-way of the Pacific Northwest Traction Co.;
thence North along the East line of the right-of-way of the Pacific Northwest Traction Co. a distance of 654.4 feet, more or less, to the South line of the right-of-way of said Furber Road No. 208;
thence East along the South line of said right-of-way of said Furber Road No. 208 a distance of 368.61 feet to the point of beginning;

Except that portion conveyed to the State of Washington for highway purposes by deed recorded July 30, 1951, under Auditor's File No. 463811, records of Skagit County, Washington;

Also except all portion of said premises lying Northerly of a line drawn parallel with and 40 feet Southerly of, when measured at right angles to, the SR 538 survey line of SR 538, Jct. SR 5 to Laventure Road, as conveyed by right-of-way deed recorded on September 13, 1991, under Auditor's File No. 9109130066, records of Skagit County, Washington;

Situated in Skagit County, Washington.



EXHIBIT "B"

MODIFIED
PROMISSORY NOTE

\$2,950,000.00

Mount Vernon, Washington
June 1, 2009

The undersigned, jointly and severally ("Maker"), for value received, promises to pay to the order of INTERVEST-MORTGAGE INVESTMENT COMPANY ("Lender") the principal sum of Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00), and to pay interest on the unpaid principal thereof from the date of disbursement of principal at the rates hereinafter set forth, together with all costs and fees, including attorneys' fees, incurred by Lender in enforcing the obligations of this Note. The principal hereof and interest and premium, if any, hereon are payable to Lender at 5005 S.W. Meadows Road, Suite 400, Lake Oswego, Oregon 97035, or such other place as Lender may direct, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Principal and interest shall be payable as follows:

a. Each loan advance shall bear interest from the date of such advance. Maker may elect interest calculated from the following two options (currently the LIBOR Rate is in effect):

(1) The annual rate of interest shall be equal to two percent (2.00%) in excess of the one month LIBOR Rate (London Interbank Offer Rate) as published in the *Wall Street Journal*. The interest rate on all sums advanced shall be adjusted on the first day of each month, to equal the then present published one month LIBOR Rate plus two percent (2.00%). Provided however, the interest rate hereon shall never be less than 7.0587% per annum. LIBOR Rate is based on the British Banker's Association average of interbank offered rates for dollar deposits in the London market based on quotations at 16 major banks. If the one month LIBOR Rate ceases to be published or announced, Lender will set the interest rate by using a comparable index or reference rate. Reference rate, as used herein, or any prime rate used as a substitute therefor, is only a standard or index for measuring rates. It is not itself necessarily a rate commonly charged to any class of borrowers, nor is it necessarily the lowest or best rate offered by Lender.

(2) The annual rate of interest shall be equal to the Prime Rate as published in the Money Rates section of the *Wall Street Journal*. The interest rate on all sums advanced shall be adjusted on the first day of each month, to equal the then present published Prime Rate. Provided however, the interest rate hereon shall never be less than 7.0587% per annum. Prime Rate is published in the Money Rates section of the *Wall Street Journal* and is based on the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. If the Prime Rate ceases to be published or announced, Lender will set the interest rate by using a comparable index or reference rate. Prime rate, as used herein, or any reference rate used as a substitute therefor, is only a standard or index for measuring rates. It is not itself necessarily a rate commonly charged to any class of borrowers, nor is it necessarily the lowest or best rate offered by Lender.

Accrued interest shall be paid monthly on the first day of each month on the outstanding balance. So long as Maker is not then in default under any of the provisions of any of the Loan Documents referred to herein, or with respect to any payment provided for herein, Maker may elect to change the interest rate from one of the above options to the other. Maker shall give Lender written notice of Maker's election to change the rate at least ten



(10) days prior to the end of a month, with the new rate becoming effective on the first day of the following month.

b. The entire principal and any accrued interest on this Note shall be paid in full on or before October 1, 2009.

Maker shall have the right, at any time, to prepay the whole or any part hereof without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent installments or change the amount of such installments, unless Lender shall otherwise agree in writing.

Following default in the payment of any installment of interest when due hereunder, or default under any of the covenants or conditions of the Deed of Trust which secures this Note or any other document executed in connection with or to secure this Note (the "Loan Documents"), Lender may elect to (i) declare the whole amount then unpaid due and collectible, whether due by lapse of time or not, and/or (ii) declare an increase in the rate of interest so that this Note shall thereafter bear interest at the rate contained herein, plus three percent (3.00%) per annum, initially determined on the date of default and adjusted as any variable rate changes. Lender may exercise either or both of the foregoing remedies, and failure to exercise either of these options shall not constitute a waiver of the right to exercise the same at any other time.

In the event that any payment or portion thereof is not paid within fifteen (15) days after the date it is due, Lender may collect, and Maker agrees to pay with such payment, a "late charge" of Four Cents (\$0.04) for each dollar so over due as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate by the parties of a fair average compensation due to the failure of Maker to make timely payments. Such late charge shall be paid without prejudice to the rights of the Lender to collect any other amounts provided to be paid or to declare a default hereunder, under the Deed of Trust or under the Loan Documents.

In the event that Lender consults an attorney in connection with the default by Maker regarding the enforcement of any of Lender's rights under this Note or the Loan Documents, or if this Note is placed in the hands of an attorney for collection or if suit be brought to enforce this Note or the Loan Documents, Maker promises to pay all costs thereof, including attorneys' fees. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal or in any proceedings under the Bankruptcy Code or state receivership statutes. Maker and any endorsers severally waive presentment, protest and demand, notice of protest, demand of dishonor, and expressly agrees that this Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of Maker and any endorsers hereof.

This Note is issued under the provisions of a Construction Loan Agreement dated May 3, 2006 between Maker and Lender. This Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust") on real and personal property situated in Skagit County, Washington, dated May 3, 2006, and an Assignment of Leases and Cash Collateral ("Assignment") dated May 3, 2006, to which reference is hereby made for a description of the nature and extent of the security provided thereby and the rights and limitations of rights of Lender and Maker in respect of such security.

Maker acknowledges that the Deed of Trust contains certain provisions restricting the conveyance, transfer or further encumbrance of the property encumbered by the Deed of Trust without the prior written consent of Lender.

Maker particularly waives the right to demand any marshalling of assets as a condition to or in connection with the bringing of action hereon against it. Lender may accept additional or substitute security, or may release in whole or in part the security described in the Loan Documents now or hereafter securing the Note without in any way affecting or impairing the



indebtedness evidenced hereby or the liability of Maker and any endorsers, guarantors or sureties hereof.

This Note is to be governed by and construed in accordance with the laws of the State of Washington. At the option of Lender, the venue of any action hereon may be laid in Skagit County, Washington, or in any county wherein is situate property subject to the Deed of Trust or the Loan Documents. In the event of any action hereon or for the enforcement hereof or in the event of the referring of this Note for collection, the Maker promises to pay all costs pertaining to the security therefor and all sums required to be paid under any of the Loan Documents.

This Note is given for an actual loan of the above amount and is secured by a Deed of Trust dated May 3, 2006, as modified by a modification agreement of even date herewith, which is a lien upon the property therein described.

EACH AND EVERY MAKER HEREOF AGREES THAT IT HAS RECEIVED VALUABLE CONSIDERATION HEREUNDER, THAT IT SIGNS THIS NOTE AS MAKER AND NOT AS A SURETY, AND THAT ANY AND ALL SURETYSHIP DEFENSES ARE HEREBY WAIVED.

MAKER ACKNOWLEDGES THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

COLLEGE WAY RETAIL, LLC,
a Washington limited liability company

EXHIBIT B – DO NOT SIGN

By _____
John C. Graham, Manager