



200910150008

Skagit County Auditor

10/15/2009 Page 1 of 12 9:27AM

AFTER RECORDING, RETURN TO:

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

CHICAGO TITLE CO.

1038049

Document Title: Third Modification of Promissory Note and Deed of Trust

Reference No. of Document Modified: 200605040053 and 200605040054

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

THIRD MODIFICATION OF PROMISSORY NOTE AND DEED OF TRUST

THIS THIRD MODIFICATION AGREEMENT is dated this 7th day of October, 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%, adjusted monthly. 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*. Provided however that the interest rate shall never be less than 7.0587% per annum. The Note, as extended, provides for maturity on October 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. On or about June 1, 2009, Borrower and Lender entered into a written modification agreement wherein the loan was modified and the maturity of the loan was extended to October 1, 2009 (hereinafter the "Second Modification"). Said Second Modification was thereafter recorded on June 23, 2009 under Auditor's File No. 200906230088, records of Skagit County, Washington.

8. As of the date hereof, the principal balance of the Note is \$2,800,000.00, with interest paid through September 30, 2009.

9. 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.

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



11. Following the execution of this Third Modification, Lender will execute its assignment of the Note, Deed of Trust and Assignment of Leases to Sterling Savings Bank as assignee. Borrower hereby acknowledges and consents to such assignment.

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. Concurrently with the execution of this Agreement, Borrower shall pay to Lender accrued interest on the Note from October 1, 2009 through the date hereof. 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.

(1) Commencing on the date hereof, the indebtedness shall bear interest on the outstanding balance at the fixed rate of six and one half percent (6.50%) per annum.

(2) On the date hereof, interest shall be paid as calculated from the date hereof through October 31, 2009.

(3) Commencing December 1, 2009, and on the first day of each and every month thereafter, principal and interest shall be payable in monthly installments in an amount necessary to amortize the principal balance and interest in equal monthly payments over a thirty (30) year term ("Amortization Term").

(4) All payments made herein shall apply first against costs, if any, then against late charges, if any, then against accrued interest and then against the last maturing installment of principal.

(5) The entire principal and any accrued interest on the Modified Note shall be paid in full on November 1, 2014.

B. In consideration of Lender entering into this Third Modification Agreement, Borrower agrees to pay Lender a nonrefundable loan fee in the amount of Twenty-Eight Thousand Dollars (\$28,000.00), 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 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 Third Modification Agreement.



D. Borrower understands and agrees that the language of Section 1.20 of the Deed of Trust is amended to add the following subsection:

c. Grantor shall maintain a debt service coverage ratio of not less than 1.20 to 1.00 for the Trust Estate. Based on the financial information Grantor is required to provide to Beneficiary herein, and such other financial information as Beneficiary may reasonably request from Grantor, Beneficiary will annually assess the debt service coverage ratio of the Trust Estate based on Grantor's net income from the Trust Estate (before depreciation, amortization and interest expense) divided by Grantor's annual debt service for the Trust Estate. In the event such debt service ratio falls below 1.20 to 1.00, then such event shall be deemed an event of default hereunder.

E. Borrower ratifies the changes made to the Loan Documents made in the First Modification and Second Modification, except as amended herein.

F. 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.

G. 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.

H. 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.

I. The recitals set forth in Paragraphs 1 through 11 above are incorporated into the substantive provisions of this Agreement.



J. 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 [Signature]
John C. Graham, Manager

GUARANTORS:

[Signature]
JOHN C. GRAHAM

[Signature]
LISA GRAHAM

LENDER:

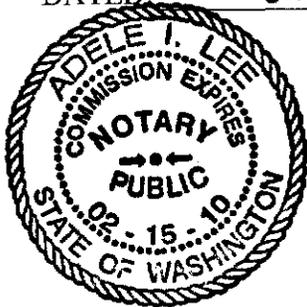
INTERVEST-MORTGAGE INVESTMENT
COMPANY

By [Signature]
Its [Signature] 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: October 7, 2009.



Adele I. Lee
Print Name: Adele I. Lee
Notary Public in and for the State
of Washington, residing at Lynnwood
My appointment expires: 2.15.10



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: October 7, 2009.



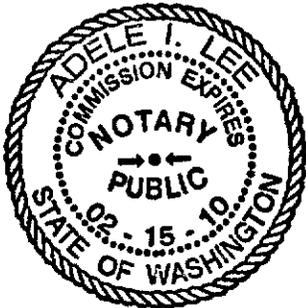
Adele I. Lee

Print Name: Adele I. Lee
Notary Public in and for the State
Of Washington, residing at Lynnwood
My appointment expires: 2-15-10

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: October 7, 2009.



Adele I. Lee

Print Name: Adele I. Lee
Notary Public in and for the State
Of Washington, residing at Lynnwood
My appointment expires: 2-15-10



State of Oregon)
) ss.
County of Clackamas)

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: OCTOBER 8, 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

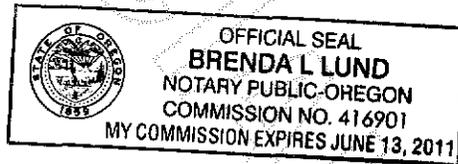


EXHIBIT "A"

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°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

\$2,800,000.00

Mount Vernon, Washington
October ____, 2009

The undersigned ("Maker"), for value received, promises to pay to the order of INTERVEST-MORTGAGE INVESTMENT COMPANY ("Lender") the principal sum of Two Million Eight Hundred Thousand Dollars (\$2,800,000.00), and to pay interest on the unpaid principal thereof at the rates hereinafter set forth, together with all costs and fees, including attorneys' fees, incurred by Lender in enforcing the obligations of this Modified Note. All interest due shall be computed on the basis of a 360-day year. The principal hereof and interest and premium, if any, hereon are payable to Lender c/o Intervest-Mortgage Investment Company, 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.

- a. Commencing on the date hereof, the indebtedness shall bear interest on the outstanding balance at the fixed rate of six and one half percent (6.50%) per annum.
- b. On the date hereof, interest shall be paid as calculated from the date hereof through October 31, 2009.
- c. Commencing December 1, 2009, and on the first day of each and every month thereafter, principal and interest shall be payable in monthly installments in an amount necessary to amortize the principal balance and interest in equal monthly payments over a thirty (30) year term ("Amortization Term").
- d. All payments made herein shall apply first against costs, if any, then against late charges, if any, then against accrued interest and then against the last maturing installment of principal.
- e. The entire principal and any accrued interest on this Modified Note shall be paid in full on November 1, 2014.

Maker may prepay the principal amount outstanding in whole, but not in part, upon any regular monthly payment date designated by Maker ("Prepayment Date") by giving thirty (30) days' prior written notice to Lender. In the event that the loan evidenced hereby is prepaid as set forth above, it shall be prepaid upon payment of the Prepayment Fee as set forth in Schedule 1 attached hereto. Notwithstanding anything contained herein to the contrary, during the ninety (90) day period immediately preceding the maturity date of this Note, the entire outstanding principal balance and all accrued unpaid interest on this Note may be prepaid in whole, but not in part, without incurring the Prepayment Fee.

Following default in the payment of any installment of principal or interest when due hereunder, or default under any of the covenants or conditions of the Deed of Trust which secures this Modified Note or any other document executed in connection with or to secure this Modified 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 Modified 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



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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 Modified Note or the Loan Documents, or if this Modified Note is placed in the hands of an attorney for collection or if suit be brought to enforce this Modified 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 Modified 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.

The undersigned acknowledges that the Deed of Trust, Assignment of Rents and Security Agreement ("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 the holder hereof.

The undersigned 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. The holder hereof may accept additional or substitute security, or may release in whole or in part the security described in the Loan Documents and now or hereafter securing the Modified Note without in anyway affecting or impairing the indebtedness evidenced hereby or the liability of the undersigned and any endorsers, guarantors or sureties hereof.

This Modified 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 Modified 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 Modified 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 MODIFIED 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

UNOFFICIAL DOCUMENT



Schedule 1

Prepayment Fee Calculation

In the event Maker elects to prepay this Note (in whole, but not in part) as provided herein, Maker shall pay to Lender the Prepayment Fee which shall be an amount which is the greater of:

- (i) one percent (1%) of the outstanding principal balance of this Note at the time of prepayment, or
- (ii) the sum of
 - (A) the Present Value (as hereinafter defined) of the scheduled monthly payments due under this Note from the Prepayment Date to the earlier of the next scheduled interest rate adjustment or the maturity date, plus
 - (B) the Present Value of the amount of principal and interest due under this Note on the earlier of the next scheduled interest rate adjustment or the maturity date (assuming all scheduled monthly payments due prior to such dates were made when due), minus
 - (C) the outstanding principal balance of this Note as of the Prepayment Date.

The "Present Value" described in (A) and (B) shall be computed on a monthly basis as of the Prepayment Date discounted at a rate equal to the yield-to-maturity of the U.S. Treasury Note or Bond closest in maturity to the earlier of the next scheduled interest rate adjustment or the maturity date, as reported in the *Wall Street Journal* (or if the *Wall Street Journal* is no longer published, as reported in such other daily financial publication of national circulation as designated by Lender) on the fifth business day preceding the Prepayment Date. Maker shall be obligated to prepay this Note on the Prepayment Date as set forth in the written notice to Lender required hereinabove, after such notice has been delivered to Lender.

Notwithstanding the foregoing or any other provision herein to the contrary, if Lender elects to apply insurance proceeds, condemnation awards, court awards or settlement amounts with tenants, or any escrowed amounts, if applicable, or any other amounts Lender elects to apply (other than due to a default by Maker) to the reduction of the outstanding principal balance of this Note in the manner provided in the Deed of Trust, then no Prepayment Fee shall be due or payable as a result of such application.

In the event the maturity date is accelerated by Lender at any time due to a default by Maker in the payment of principal and/or interest due under this Note or in the performance of the terms, covenants or conditions contained in this Note, the Deed of Trust or any of the other Loan Documents (as hereinafter defined), then a tender of payment in an amount necessary to satisfy the entire outstanding principal balance of this Note together with all accrued unpaid interest hereon made by Maker, or by anyone on behalf of Maker, at any time prior to, at, or as a result of, a foreclosure sale or sale pursuant to power of sale, shall constitute a voluntary prepayment hereunder prior to the contracted maturity date of this Note thus requiring the payment to Lender of the Prepayment Fee as calculated above; provided, however, that in the event such Prepayment Fee is construed to be interest under applicable state law, such Prepayment Fee shall not be required to the extent that the amount thereof, together with other interest payable hereunder, exceeds the maximum rate of interest that may be lawfully charged under applicable state law.

