

# UNOFFICIAL COPY



**RECORDATION REQUESTED BY:**

Bridgeview Bank Group  
7940 S. Harlem Ave.  
Bridgeview, IL 60455

Doc#: 0815811169 Fee: \$46.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/06/2008 12:43 PM Pg: 1 of 6

**WHEN RECORDED MAIL TO:**

Bridgeview Bank Group  
ATTN: Loan Operations  
4753 N Broadway  
Chicago, IL 60640

8420494L 70F7

**FOR RECORDER'S USE ONLY**

This Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate prepared by:

Lender  
Bridgeview Bank Group  
4753 N. Broadway  
Chicago, IL 60640

**NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated April 7, 2008 ("Agreement"), is made and executed among 76th & Ashland Investors, Inc., whose address is 12750 S. Derby Road, Lemont, IL 60439 ("Landlord"); Aldi Inc., whose address is 197 E. Division Road, Valparaiso, IN 46384 ("Tenant"); and Bridgeview Bank Group, 7940 S. Harlem Ave., Bridgeview, IL 60455 ("Lender").

**SUBORDINATED LEASE.** Tenant and Landlord have executed a lease dated May 4, 2007 of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: Ground Lease Agreement dated May 4, 2007, between 76th & Ashland Investors, Inc. and Aldi, Inc.

Premises located on the southeast side of 76th Street and Ashland Avenue, Chicago, IL.

Rent start date May 1, 2008

Rent paid in equal monthly installments on the first day of each month.

**REAL PROPERTY DESCRIPTION.** The Lease covers Premises located on the southeast side of 76th Street and Ashland Avenue, Chicago, IL of the following described real property (the "Real Property") located in Cook County, State of Illinois:

**BOX 334 CTI**

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LOTS 34 TO 51 IN OWEN MURRAY'S SUBDIVISION OF BLOCK 20 IN JONES' SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 38, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS PLATTED AND RECORDED NOVEMBER 28, 1888 AS DOCUMENT 1033914, IN COOK COUNTY, ILLINOIS.

The Real Property or its address is commonly known as 7601-7651 S. Ashland Ave., Chicago, IL 60620. The Real Property tax identification number is 20-29-304-001-0000, 20-29-304-002-0000, 20-29-304-003-0000, 20-29-304-004-0000, 20-29-304-005-0000, 20-29-304-006-0000, 20-29-304-007-0000, 20-29-304-008-0000, 20-29-304-009-0000, 20-29-304-010-0000, 20-29-304-011-0000, 20-29-304-012-0000.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to 76th & Ashland Investors, Inc. , secured by the Real Property (the "Superior Indebtedness"):

**Promissory Note dated April 7, 2008 in the amount of \$400,000.00 secured by a Junior Mortgage dated April 7, 2008 for property located at 7601-7651 S. Ashland Avenue, Chicago, IL 60620, and all business assets of 76th & Ashland Investors, Inc.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, dated April 7, 2008, from 76th & Ashland Investors, Inc. to Lender (the "Lender's Lien") and recorded in Cook County, State of Illinois as follows:

Mortgage recorded on 06-06-08 as Document Number 081581116.7

As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease and all of Tenant's rights in the Real Property ("Lease Rights").

**REQUESTED FINANCIAL ACCOMMODATIONS.** Landlord and Tenant each want Lender to provide financial accommodations to 76th & Ashland Investors, Inc. in the form of the Superior Indebtedness. Landlord and Tenant each represent and acknowledge to Lender that Landlord and Tenant will benefit as a result of these financial accommodations from Lender to 76th & Ashland Investors, Inc. , and Landlord and Tenant acknowledge receipt of valuable consideration for entering into this Agreement.

**IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:**

**ESTOPPEL CERTIFICATE.** Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

- (A) The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.
- (B) All requirements for the commencement and validity of the Lease have been satisfied.
- (C) Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.
- (D) There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.
- (E) None of the rent, which Tenant is required to pay under the Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.

**SUBORDINATION.** Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and

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assigns, without the prior written consent of Lender.

**NON-DISTURBANCE.** So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. If Tenants is named, Landlord pays equal costs. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

**ATTORNMEN.** If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

**NO LIABILITY FOR LENDER.** Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
- (B) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
- (C) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its reasonable consent; or
- (D) Liable for any construction obligation of any prior landlord, including Landlord; or
- (E) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

**NEW LEASE.** If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such transfer.

**ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD.** Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

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**Authority.** Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Illinois.

**Choice of Venue.** If there is a lawsuit, Landlord agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, State of Illinois.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity, or enforceability of any other provision of this Agreement.

**Successors.** This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED APRIL 7, 2008.**

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LANDLORD:

76TH & ASHLAND INVESTORS, INC.

By: [Signature]  
Ali D. Ata, President/Secretary of 76th & Ashland Investors, Inc.

LENDER:

BRIDGEVIEW BANK GROUP

X [Signature] SVP  
Authorized Officer

TENANT:

ALDI INC.

By: [Signature]  
Michael J. Jessen, Vice President of Aldi Inc.

## CORPORATE ACKNOWLEDGMENT

STATE OF IL

COUNTY OF Cook

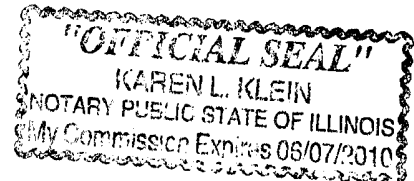
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On this 15<sup>th</sup> day of April, 2008 before me the undersigned Notary Public, personally appeared **Ali D. Ata, President/Secretary of 76th & Ashland Investors, Inc.**, and known to me to be an authorized agent of the corporation that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By [Signature] Residing Orland Park IL at

Notary Public in and for the State of IL

My commission expires 6/7/10





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## LENDER ACKNOWLEDGMENT

STATE OF IL \_\_\_\_\_ )

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COUNTY OF Cook \_\_\_\_\_ )

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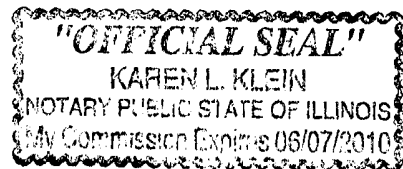
On this 15<sup>th</sup> day of April, 2008 before me, the undersigned Notary Public, personally appeared William V. Pawlita and known to me to be the S.E.V.P., authorized agent for **Bridgeview Bank Group** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **Bridgeview Bank Group**, duly authorized by **Bridgeview Bank Group** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **Bridgeview Bank Group**.

By Karen L. Klein \_\_\_\_\_

Residing Carol Park, IL at \_\_\_\_\_

Notary Public in and for the State of IL \_\_\_\_\_

My commission expires 6/7/10 \_\_\_\_\_



## CORPORATE ACKNOWLEDGMENT

STATE OF Indiana \_\_\_\_\_ )

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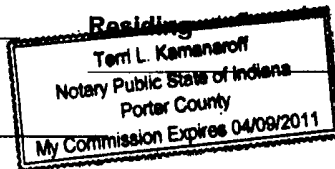
COUNTY OF Porter \_\_\_\_\_ )

) SS

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On this 11<sup>th</sup> day of April, 2008 before me, the undersigned Notary Public, personally appeared **Michael J. Jessen, Vice President of Aldi Inc.**, and known to me to be an authorized agent of the corporation that executed the Subordination, Non-Disturbance and Assignment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By Terr L. Kammeroff \_\_\_\_\_



Notary Public in and for the State of \_\_\_\_\_

My commission expires \_\_\_\_\_

at \_\_\_\_\_