



Doc#: 1014710055 Fee: \$48.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/27/2010 03:21 PM Pg: 1 of 7

**SUBORDINATION,  
NON-DISTURBANCE  
AND ATTORNMENT  
AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement"), made this 13 day of April, 2010, by and among HAL Series Acquisition, LLC Skyway, an Illinois limited liability company ("Landlord") with an address of 3767 North Racine, Chicago, Illinois; Aldi Inc., an Illinois corporation ("Tenant"), with an address of 197 E. Division Road, Valparaiso, Indiana 46383; and HAL SECURITY LLC Doc# 0635539037 with an address of 3767 N. Racine, Chicago, Illinois.

HAL-ILL-FLA (Assignee of LaSalle & LLC

**RECITALS**

A. Tenant is the tenant under a certain Ground Lease Agreement dated June 2, 2005, as amended by that undated Amendment to Ground Lease Agreement (collectively referred to as the "Lease"), with Landlord's predecessor covering certain real property located in Chicago, Cook County, Illinois, described in the Lease (the "Premises") as more particularly described in Exhibit A hereto.

B. Landlord is the successor in interest to Landquest XXXII, LLC, the original landlord in the Lease by virtue of that Agreement of Sale dated July 22, 2008 and the related Assignment and Assumption of Lessor's Interest In Lease dated \_\_\_\_\_, 2008.

C. This Agreement is being entered into in connection with certain loans, mortgages, assignment of rents, and other security instruments which Lender acquired and owns all right, title and interest in the security and benefits to the following (which are hereinafter collectively referred to as the "Loan Documents"):

- (i) Construction Mortgage dated August 18, 2005 and recorded August 30, 2005 as Document No. 0524239041 made by Landquest XXXII, LLC to LaSalle Bank, National Association in the amount of \$25,000,000.00.
- (ii) Assignment of Rents recorded August 30, 2005 as Document No. 0524239042 made by Landquest XXXII, LLC to LaSalle Bank, N.A.

S YES  
P 7  
S NO  
M NO  
SC YES  
E YES  
INT YES

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- P  
A  
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- (iii) ~~Mortgage dated January 5, 2004 and recorded January 29, 2004 as Document No. 0402904028 made by Standard Bank & Trust Company, as successor trustee to East Side Bank & Trust Company, as trustee under Trust Agreement dated January 23, 1998 and known as Trust No. 1786 to MB Financial Bank, N.A. in the amount of \$190,000.00.~~
  - (iv) ~~Assignment of Rents recorded January 29, 2004 as Document No. 0402904029 made by Standard Bank & Trust Company, as successor trustee to East Side Bank & Trust Company, as trustee under Trust Agreement dated January 23, 1998 and known as Trust No. 1786 to MB Financial Bank, N.A.~~
  - (v) ~~Mortgage dated April 1, 2002 and recorded April 10, 2002 as Document No. 0020410671, made by Palos Bank & Trust Company, as trustee under Trust Agreement dated August 17, 1987 and known as Trust No. 1-2631 to Palos Bank & Trust Company, to secure a note for \$494,000.00.~~
  - ~~Modification of Mortgage recorded July 22, 2003 as Document No. 0320346047.~~
  - (vi) ~~Assignment of Rents made by Palos Bank and Trust Company, as trustee under Trust Agreement dated August 17, 1987 and known as Trust No. 1-2631 to Palos Bank and Trust Company recorded April 10, 2002 as Document No. 0020410672.~~

**AGREEMENT**

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The above and foregoing recitals are true and correct and incorporated into this Agreement.
2. Tenant agrees that the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby is and shall be subject and subordinate in all respects to the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time.
3. Lender agrees that, if Lender exercises any of its rights under the Loan Documents such that it becomes the owner of the Premises, including but not limited to an entry by Lender pursuant to the Loan Documents, a foreclosure of any mortgage included in the Loan Documents, a power of sale or otherwise: (a) the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and subject to all the terms, covenants and conditions

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of the Lease, and (b) Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

4. Tenant agrees that, in the event of an exercise of the power of sale or foreclosure of the Loan Documents by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to ownership of the Premises, Tenant will attorn to and recognize Lender as its Landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

5. Lender shall not name Tenant in any foreclosure or other action or proceeding initiated in order for Lender to avail itself of and complete any such foreclosure or other remedy.

6. Lender shall have the right but no obligation to remedy any landlord default under the Lease or to cause any default of Landlord under the Lease to be remedied. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes the owner of the Premises. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Loan Documents.

7. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby acknowledges the making of the Assignment from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in the Assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, unless and until Lender forecloses the Mortgage or accepts a deed in lieu of foreclosure and becomes the owner of the Premises.

8. If Tenant is a corporation, each individual executing this Agreement on behalf of said corporation represents and warrants that she/he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. If Landlord is a partnership or limited liability company, each individual executing this Agreement on behalf of said partnership or limited liability company represents and warrants that she/he is duly authorized to execute and deliver this Agreement on behalf of said partnership or limited liability

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company in accordance with the partnership agreement for the partnership or operating agreement for the limited liability company.

9. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be to the address set forth in the introductory paragraph of this Agreement.

10. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes any successor and assign of the named Tenant herein.

11. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

12. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

13. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which shall be deemed one and the same instrument.

14. This Agreement shall be construed in accordance with the laws of the State where the Premises is located.

*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement as of the date first above written.

MORTGAGEE:

By: Harry A. Langer  
 Name: HARRY A. LANGER  
 Title: MANAGER OF BOTH MORTGAGEES  
 Date: 4-13-10

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TENANT:  
ALDI INC.

By: Michael J. Jessen  
Name: Michael J. Jessen  
Title: Vice-President  
Date:

The undersigned Landlord hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement.

LANDLORD:  
HAL SERIES ACQUISITION LLC SKYWAY

By: Harry A. Langer  
Name: H. A. Langer  
Title: Manager  
Date:

This instrument prepared by:

Todd A. Leeth  
Hoepfner Wagner & Evans LLP  
103 East Lincolnway  
Post Office Box 2357  
Valparaiso, Indiana 46384-2357  
(219) 464-4961

March 1, 2010 X:\Aldi 6307\Indianapolis Avenue-Chicago (129)\Documents\SNDA 2010-03-01.doc

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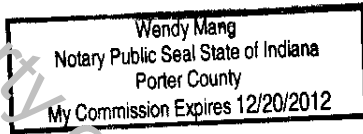
STATE OF INDIANA        )  
                                   )  
 COUNTY OF PORTER        )        SS:

Before me, the undersigned, a Notary Public for Porter County, State of Indiana, personally appeared Michael J. Jessen as Vice President of Aldi Inc. and being first duly sworn by me upon oath, says that the facts alleged in the foregoing instrument are true. Signed and sealed this 7 day of May, 2010.

My Commission Expires:

12-20-12

Wendy Mang  
 Notary Public  
 Printed: Wendy Mang  
 County of Residence: Porter



Property of Cook County Clerk's Office



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EXHIBIT A

## LEGAL DESCRIPTION

LOTS 1 THROUGH 15, INCLUSIVE, IN BLOCK 43 IN IRONWORKER'S ADDITION TO SOUTH CHICAGO, BEING A SUBDIVISION OF THE SOUTH FRACTIONAL  $\frac{1}{2}$  OF FRACTIONAL SECTION 8, TOWNSHIP 37 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALSO:

BEGINNING AT THE NORTHERNMOST CORNER OF LOT 35 IN AFORESAID BLOCK; THENCE ON AN ASSUMED BEARING OF SOUTH 39 DEGREES 06 MINUTES 41 SECONDS EAST ALONG THE NORTHEAST LINE OF A VACATED ALLEY, A DISTANCE OF 224.81 FEET; THENCE NORTH 89 DEGREES 45 MINUTES 08 SECONDS WEST, A DISTANCE OF 141.88 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH AVENUE "B"; THENCE NORTH 00 DEGREES 01 MINUTES 12 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 70.00 FEET; THENCE SOUTH 89 DEGREES 45 MINUTES 08 SECONDS EAST, A DISTANCE OF 58.85 FEET TO THE WESTERLY LINE OF A VACATED ALLEY; THENCE NORTH 39 DEGREES 06 MINUTES 41 SECONDS WEST ALONG SAID WESTERLY LINE, A DISTANCE OF 68.80 FEET; THENCE SOUTH 50 DEGREES 54 MINUTES 15 SECONDS WEST, A DISTANCE OF 19.92 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH AVENUE "B"; THENCE NORTH 00 DEGREES 01 MINUTES 12 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 63.25 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS, AND ALSO:

EXCEPTING THEREFROM THAT PART OF LOT 1 TAKEN BY THE CITY OF CHICAGO, DEPARTMENT OF TRANSPORTATION FOR RIGHT OF WAY PURPOSES, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF SAID LOT 1, BEING ALSO THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SOUTH INDIANAPOLIS AVENUE AND THE EAST LINE OF SOUTH AVENUE "B"; THENCE SOUTH 39 DEGREES 19 MINUTES 31 SECONDS (39 DEGREES 05 MINUTES 45 SECONDS AS MEASURED) EAST, A DISTANCE OF 31.00 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 1; THENCE SOUTH 50 DEGREES 40 MINUTES 29 SECONDS (50 DEGREES 50 MINUTES 02 SECONDS AS MEASURED) WEST, A DISTANCE OF 18.82 (18.78 AS MEASURED) FEET TO A POINT, SAID POINT BEING 35.92 FEET SOUTH OF THE NORTHERLY CORNER OF SAID LOT 1, AS MEASURED ALONG THE WEST LINE OF SAID LOT 1 AND 5.00 FEET EAST OF THE WEST LINE OF SAID LOT 1, AS MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTH 03 DEGREES 56 MINUTES 46 SECONDS (04 DEGREES 06 MINUTES 19 SECONDS AS MEASURED) WEST, A DISTANCE OF 70.18 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1, SAID POINT BEING 105.92 FEET SOUTH OF THE NORTHERLY CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 08 MINUTES 22 SECONDS WEST (NORTH 00 DEGREES 01 MINUTES 12 SECONDS EAST AS MEASURED), A DISTANCE OF 105.92 FEET ALONG THE WEST LINE OF SAID LOT 1 TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

26-08-408-026-0000; 26-08-408-023-0000; 26-08-408-024-0000; 26-08-408-003-0000;  
26-08-408-014-0000; 26-08-408-013-0000; 26-08-408-028-0000;