

# UNOFFICIAL COPY

This Document Prepared by and  
After Recording Return to:  
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Chicago, Illinois 60606  
Attn: Crystal Pruess Bush



Doc#: 1020733009 Fee: \$58.00  
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Cook County Recorder of Deeds  
Date: 07/28/2010 08:45 AM Pg: 1 of 12

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## NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS NONDISTURBANCE, AND ATTORNMENT AGREEMENT ("Agreement") is made as of July 14, 2010 by and among Chicago Title Land Trust Company (f/k/a LaSalle National Bank), as Trustee under Trust No. 53900, the sole beneficiary of which is Icahn Enterprises Holdings L.P. ("Landlord"), Rubloff Development Group, Inc., an Illinois corporation ("Tenant"), and Aldi Inc., an Illinois corporation ("Subtenant").

### RECITALS

Landlord, Tenant, and Subtenant acknowledge the following:

- A. Tenant, as assignee of KMart Corporation, is party to a lease (the "Lease") with Landlord, by which Tenant leases the real property described on Exhibit A attached hereto and incorporated by reference (the "Property").
- B. Subtenant is party to a sublease (the "Sublease") with Tenant, by which Subtenant subleases a portion of the Property (the "Premises") from Tenant, and that the Sublease is the only document or agreement governing the tenancy of Subtenant with respect to the Premises.
- C. Landlord is party to a ground lease (the "Ground Lease"), by which Landlord leases the Property and adjoining real property from the fee owner thereof.
- D. The parties desire to enter into this agreement upon the following terms.

### AGREEMENT

In consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, THE PARTIES AGREE:

- 1. Nondisturbance. For so long as Subtenant is not in default under the Sublease beyond any applicable cure period, Landlord shall not diminish or interfere with Subtenant's possession, use or occupancy of the Premises pursuant to the Sublease, or Subtenant's rights and privileges under the Sublease, and Landlord shall not disturb Subtenant's occupancy of the Premises subleased to Subtenant pursuant to the terms of the Sublease for any reason during the

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current term of the Sublease, or during any extension or renewal period; provided that upon succession to Tenant's interest under the Sublease, Landlord may exercise any right or remedy under the Sublease (including termination) if Subtenant at the time of Landlord's succession is, or thereafter becomes, in default under the provisions of the Sublease following notice and beyond all applicable grace or cure periods.

2. Joinder in Litigation. Landlord will not join Subtenant as a named party in an action to terminate the Lease or Tenant's right to possession under the Lease, unless joinder is necessary to terminate the Lease or Tenant's right to possession under the Lease, and then only to terminate the Lease or Tenant's right to possession under the Lease, and not for the purpose of terminating the Sublease or Subtenant's right to possession under the Sublease unless Subtenant is in default under the Sublease beyond any applicable cure period.

3. Attornment. If Landlord terminates the Lease or Tenant's right to possession under the Lease, or otherwise succeeds to Tenant's interest under the Sublease, Landlord shall have all of the rights of Tenant, and may rely on all of the provisions of the Sublease for the balance of the term of the Sublease, and any extension periods, with the same force and effect as if Landlord were the landlord under the Sublease. Subtenant shall attorn to Landlord as its landlord immediately on Landlord succeeding to the interest of Tenant under the Sublease, and such attornment shall occur without the execution of any further instruments by any of the parties to this Agreement, provided however that Subtenant shall promptly execute and deliver any instrument that Landlord may reasonably request to evidence such attornment. Subtenant shall have no obligation to pay rent to Landlord until Subtenant receives written notice from Landlord that Landlord has succeeded to Tenant's interest under the Sublease. Subtenant shall have all of its rights and obligations under the Sublease during any such period of attornment, and Landlord shall have all of the rights and obligations of Tenant during any such period. Upon such attornment the Sublease shall continue in full force and effect as, or as if it were, a direct lease between the Landlord and Subtenant upon all of the terms, covenants, conditions, agreements and provisions as are set forth in the Sublease, except as provided in Section 4 below.

4. Acts of Prior Landlords. If Landlord succeeds to the Tenant's interest under the Sublease, Landlord shall not be (a) liable for any act or omission of any prior sublandlord or its predecessors in interest (including Tenant), except for acts or omissions of a continuing nature that constitute non-monetary defaults under the Sublease and which remain uncured after notice, given to Landlord after Landlord succeeds to Tenant's interest under the Sublease, and after the expiration of the applicable cure period; (b) subject to any credits, offsets, claims, counterclaims, demands or defenses Subtenant might have against any prior sublandlord or its predecessors in interest (including Tenant), except that Tenant shall be entitled to any rent abatement or credit specifically provided in the Sublease; (c) bound by any rent or additional rent Subtenant might have paid for more than one month in advance of the due date thereof; (d) bound by any modification of the Sublease made without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (e) liable to refund or otherwise account to Subtenant for any security deposit not actually paid over to Landlord; (f) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Sublease, or otherwise made by any prior sublandlord or its predecessors in interest (including Tenant); provided, however, indemnification provisions in the Sublease shall be applicable to Landlord's



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acts and omissions arising after Landlord succeeds to Tenant's interest under the Sublease; (g) responsible for any monies owing by Landlord to the credit of Subtenant; (h) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof; (i) bound by any obligation to make any payment to Subtenant or grant or be subject to any credits, except for services, repairs, maintenance and restoration provided for under the Sublease to be performed after the date of attornment and which landlords of like properties ordinarily perform at the Landlord's expense, it being expressly understood, however, that the Landlord shall not be bound by an obligation to make payment to Tenant with respect to construction performed by or on behalf of Tenant at the Premises; (j) required to remove any person occupying the Premises or any part of the Property; or (k) personally liable or obligated to perform any term, covenant or provision of the Sublease, such Landlord's liability being limited in all cases to its interest in the Premises. In no event shall Landlord be liable for damages, including consequential damages, caused by or resulting from the acts or omissions of any prior sublandlord, including Tenant.

5. Landlord Cure Rights. In the event of any act or omission of Tenant which would give Subtenant the right, immediately or after lapse of a period of time, to cancel or terminate the Sublease, or to claim a partial or total eviction, Subtenant shall not exercise such right (i) until it has given written notice of such act or omission to Landlord and affords Landlord the right to cure within a reasonable period of time such act or omission of Tenant, and (ii) to the extent such act or omission shall be one which is not capable of being remedied by Landlord within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice (which reasonable period shall in no event be less than the period to which Tenant would be entitled under the Sublease or otherwise, after similar notice, to effect such remedy), provided Landlord shall with due diligence give Subtenant written notice of its intention to, and commence and continue to, remedy such act or omission. Landlord shall have no obligations to Subtenant unless and until attornment has occurred under Section 3 or Landlord has elected to remedy a default of Tenant as provided in this Section 5.

6. Ground Lease Extension. Landlord acknowledges its obligation under the Lease to cause the Ground Lease to remain in force during the term of the Lease (as may be extended by Tenant in accordance with its provisions) and Landlord shall cause the term of the Ground Lease to be extended such that the Ground Lease remains in force at all times during the term of the Lease as may be extended by Tenant (or Subtenant on behalf of Tenant as provided below) in accordance with the provisions of the Lease. So long as the Sublease is in effect and so long as Subtenant is not in default under the Sublease beyond any applicable cure period, if the term of the Sublease (as may have been extended by Subtenant in accordance with its provisions) will expire after the last day of the term of the Lease (as may have been extended by Tenant) and Tenant has not provided Subtenant with evidence that Tenant has exercised the next extension option, such that the term of the Lease has been extended to or beyond the last day of the then current term of the Sublease, at least thirty days prior to the last day to exercise such option, then Subtenant shall have the right to exercise, on behalf of Tenant, the next extension option necessary to extend the term of the Lease to or beyond the last day of the then current term of the Sublease.

Notwithstanding any provision to the contrary, Landlord shall not be required to exercise the 1<sup>st</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding



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3<sup>rd</sup> Option to Extend under the Lease, the 2<sup>nd</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 4<sup>th</sup> Option to Extend under the Lease, the 3<sup>rd</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 5<sup>th</sup> Option to Extend under the Lease, the 4<sup>th</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 6<sup>th</sup> Option to Extend under the Lease, the 5<sup>th</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 7<sup>th</sup> Option to Extend under the Lease, the 6<sup>th</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 8<sup>th</sup> Option to Extend under the Lease, the 7<sup>th</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 9<sup>th</sup> Option to Extend under the Lease, and the 8<sup>th</sup> Extension Option under the Ground Lease until Tenant has exercised the corresponding 10<sup>th</sup> Option to Extend under the Lease. Upon Tenant's exercise of an Option to Extend under the Lease (or Subtenant's exercise on behalf of Tenant as provided above), Landlord agrees to exercise such corresponding Extension Option under the Ground Lease.

7. Successors and Assigns. This Agreement shall bind Landlord, Tenant, and Subtenant, and each of their heirs, administrators, representatives, successors, and assigns, and all parties having an interest in the Sublease, and shall inure to the benefit of Landlord, Tenant and Subtenant and their respective successors and assigns.

8. Notices. Any notice that a party to this Agreement may desire, or may be required, to give to any other party shall be in writing, and shall be mailed by certified mail, or its equivalent, as follows:

If to Landlord:

Chicago Title Land Trust Company (f/k/a LaSalle National Bank),  
as Trustee under Trust No. 53900  
c/o Icahn Enterprises Holdings L.P.  
445 Hamilton Avenue, Suite 1210  
White Plains NY 10601

If to Tenant:

Rubloff Development Group, Inc.  
4949 Harrison Avenue, Suite 200  
Rockford, IL 61108  
Attention: President

If to Subtenant:

Aldi Inc.  
1200 North Kirk Road  
Batavia, IL 60510  
Attention: Director of Real Estate

A party may change its notice address by sending written notice to the other parties designating a new address to which the other parties may send notices.

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9. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered will be an original and all of which together shall constitute one instrument.

[Signatures are on Following Page]

Property of Cook County Clerk's Office



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Dated as of the date set forth above.

**SUBTENANT:**

ALDI INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
*[Signature]*  
*Vice President*

**TENANT:**

RUBLOFF DEVELOPMENT GROUP, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

CHICAGO TITLE LAND TRUST COMPANY  
(f/k/a LaSalle National Bank),  
as Trustee Under Trust No. 53900

By: \_\_\_\_\_  
Its Sole Beneficiary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Attachments:**

Exhibit A - Legal Description of Property

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Dated as of the date set forth above.


**SUBTENANT:**

ALDI INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

RUBLOFF DEVELOPMENT GROUP, INC.

By:   
Title: President

**LANDLORD:**

CHICAGO TITLE LAND TRUST COMPANY  
(f/k/a LaSalle National Bank),  
as Trustee Under Trust No. 53900

By: \_\_\_\_\_  
Its Sole Beneficiary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Attachments:**

Exhibit A - Legal Description of Property



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Dated as of the date set forth above.

**SUBTENANT:**

ALDI INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

RUBLOFF DEVELOPMENT GROUP, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD:**

CHICAGO TITLE LAND TRUST COMPANY  
(f/k/a LaSalle National Bank),  
as Trustee Under Trust No. 53900

By: Icahn Enterprises Holdings L.P.  
Its Sole Beneficiary

By: Felicia P. Buebel  
Felicia P. Buebel, Assistant Secretary of Icahn  
Enterprises G.P., Inc. its general partner

**Attachments:**

Exhibit A - Legal Description of Property



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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF Kane )

Before me the undersigned Notary Public in and for said county personally appeared Scott Patton, to me known to be Vice-President of Aldi Inc., whose signature is affixed to the foregoing as **SUBTENANT**, and being first duly sworn acknowledged execution of the same.

Dated this 25th day of May, 2010.

\_\_\_\_\_  
Notary Public



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, to me known to be \_\_\_\_\_ of Rubloff Development Group, Inc., whose signature is affixed to the foregoing as **TENANT**, and being first duly sworn acknowledged execution of the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, to me known to be \_\_\_\_\_ of \_\_\_\_\_, the sole beneficiary of Chicago Title Land Trust Company (f/k/a LaSalle National Bank), Trust No. 53900, whose signature is affixed to the foregoing on behalf of **LANDLORD**, and being first duly sworn acknowledged execution of the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, to me known to be \_\_\_\_\_ of Aldi Inc., whose signature is affixed to the foregoing as **SUBTENANT**, and being first duly sworn acknowledged execution of the same.

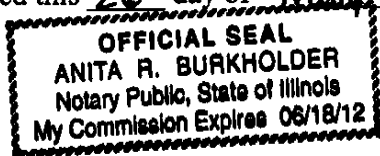
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF Winnebago )

Before me the undersigned Notary Public in and for said county personally appeared MARIA ROBINSON, to me known to be President of Rubloff Development Group, Inc., whose signature is affixed to the foregoing as **TENANT**, and being first duly sworn acknowledged execution of the same.

Dated this 26<sup>th</sup> day of MAY, 2010.



Anita R. Burkholder  
\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, to me known to be \_\_\_\_\_ of \_\_\_\_\_, the sole beneficiary of Chicago Title Land Trust Company (f/k/a LaSalle National Bank), Trust No. 53900, whose signature is affixed to the foregoing on behalf of **LANDLORD**, and being first duly sworn acknowledged execution of the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, to me known to be \_\_\_\_\_ of Aldi Inc., whose signature is affixed to the foregoing as **SUBTENANT**, and being first duly sworn acknowledged execution of the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**Notary Public**

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, to me known to be \_\_\_\_\_ of Rubloff Development Group, Inc., whose signature is affixed to the foregoing as **TENANT**, and being first duly sworn acknowledged execution of the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

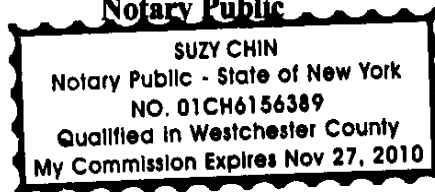
\_\_\_\_\_  
**Notary Public**

STATE OF NEW YORK )  
 ) SS  
COUNTY OF WESTCHESTER )

Before me the undersigned Notary Public in and for said county personally appeared Felicia P. Buebel, to me known to be Assistant Secretary of Icahn Enterprises G.P., Inc., the sole beneficiary of Chicago Title Land Trust Company (f/k/a LaSalle National Bank), Trust No. 53900, whose signature is affixed to the foregoing on behalf of **LANDLORD**, and being first duly sworn acknowledged execution of the same.

Dated this 14 day of July, 2010.

\_\_\_\_\_  
**Notary Public**



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## EXHIBIT A

### Legal Description of Property

That part of the Entire Tract as hereinafter set forth, described as follows: Commencing at the northeast corner of said tract; thence south along the east line of said tract 495.52 feet to the south line of said tract; thence west along the south line of said tract 212.33 feet; thence south along the east line of said tract 230 feet to the south line of said tract; thence west along the south line of said tract 256.68 feet; thence north along a line parallel to the east line of said tract 175 feet; thence west along a line parallel to the south line of said tract 284.90 feet to the west line of said tract; thence north along the west line of said tract 30 feet; thence east along a line parallel to the south line of said tract, 240 feet; thence north along a line parallel to the west line of said tract, 520.85 feet to a point on the north line of said tract, said point being 240 feet east of the northwest corner of said tract; thence east along the north line of said tract 508.12 feet to the point of beginning.

**Entire Tract:** The following parcels of land taken as one tract: Lot 4 (except the north 826 feet thereof) and Lot 5 in C.R. Ball's subdivision of the north  $\frac{1}{2}$  of the northwest  $\frac{1}{4}$  of Section 18, Township 40 North, Range 13, east of the Third Principal Meridian (except school lot) and of the north 25.40 acres of the northeast  $\frac{1}{4}$  of Section 13, Township 40 North, Range 12, east of the Third Principal Meridian, also the north 230 feet of the west 281.68 feet of the east 1001.68 feet of the south  $\frac{1}{2}$  of the northwest  $\frac{1}{4}$  of Section 18, Township 40 North, Range 13, east of the Third Principal Meridian, also the north 170 feet (except the east 1001.68 feet) of the south  $\frac{1}{2}$  of the northwest  $\frac{1}{4}$  of Section 18, Township 40 North, Range 13, east of the Third Principal Meridian, in Cook County, Illinois.

Property Address: 4701 N. Harlem Avenue, Harwood Heights, Illinois 60706

Permanent Index Numbers: 13-18-100-117-0000 and 13-18-100-118-0000