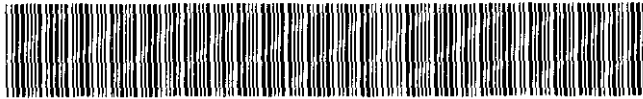




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Filed: AS RECEIVED

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/21/2006 10:48:21.57



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PAGE DOWN FOR BALANCE OF INSTRUMENT**

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DEL _____ SCAN _____ FV _____

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MEMORANDUM OF LEASE

MEMORANDUM OF LEASE, dated as of the 7th day of November, 2006, between **Gordman 133rd & Arbor, L.L.C.**, a Nebraska limited liability company ("**Landlord**"), and **Aldi Inc. (Kansas)**, a Kansas corporation ("**Tenant**").

FOR AND IN CONSIDERATION OF the sum of Ten Dollars and other valuable consideration paid by Tenant to Landlord, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Landlord, by lease dated March 27, 2006, as amended (collectively, the "**Lease**"), has leased to Tenant and Tenant has leased from Landlord, upon and subject to all of the terms, covenants and conditions set forth in the Lease, certain premises (the "**Premises**") designated as "Aldi" on the site plan attached hereto and made a part hereof as **Exhibit A**. The Premises constitute a portion of that certain parcel of land located at 2502 South 133rd Plaza in the City of Omaha, Douglas County, Nebraska, containing a shopping center development commonly known as Old Orchard West, more particularly described on **Exhibit B** attached hereto and hereby made a part hereof (the "**Shopping Center**").
2. The initial term of the Lease shall commence on the Commencement Date (as defined in the Lease) and shall expire on the 10th anniversary of the last day of the month in which the Commencement Date occurs. The Commencement Date is contemplated to be January 23, 2007.
3. Tenant may, at its option, extend the Lease for up to three (3) additional successive periods of five (5) years each. Each Option shall be exercised automatically, unless Tenant delivers to Landlord written notice not less than 180 days before the expiration of the Term (as it may have been previously extended) that Tenant elects to terminate the Lease at the expiration of the Term.
4. In accordance with the terms of the Lease, Landlord agrees that until the end of the Term, or any continuations or extensions thereof, Landlord shall not use or occupy, or permit the use of or occupancy of, the Shopping Center for any of the "**Restricted Uses**" set forth on **Exhibit C**, attached hereto and made a part hereof. The covenants made by Landlord in this Lease are covenants running with the land for the benefit of the Premises. Thus, all covenants made by

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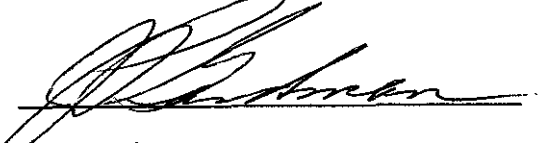
Landlord in this Lease, whether affirmative or negative in nature, are intended to and shall bind Landlord and each successive owner of the Shopping Center, or any portion thereof, and its respective heirs, successors and assigns. Notwithstanding anything in this Lease to the contrary, Tenant agrees that the permitted use provisions in the existing leases in the Shopping Center with Big Lots Stores, Inc. dated 3/3/04 and Dave & Busters, Inc. dated 12/16/04 do not violate any exclusivity clause or other restriction contained in this lease

5. In accordance with the terms of the Lease, Landlord shall not reduce the number of parking spaces, alter the configuration, construct or erect any improvements, make any change to the methods of ingress and egress, direction of traffic, lighting or curbing within the "**No-Build Area**" of the Shopping Center as shown on **Exhibit A**. In addition, Landlord shall make no changes to the Shopping Center that adversely affect the availability of convenient parking for, the ingress to or egress from, or the visibility of the Premises, without the consent of Tenant. Tenant, as well as its employees, agents and customers (collectively "**Customers**"), shall have and is granted complete, non-exclusive and undisturbed access to, and use of, all Common Areas, including, *inter alia*, the right to store shopping carts on the sidewalk of the Premises in accordance with Tenant's customary manner of operating its business. The location of the shopping carts shall be subject to Landlord's written approval, which approval shall not be unreasonably withheld or delayed. Landlord shall maintain all Common Areas in a condition similar to that of other shopping centers in the area, free of impediments to easy and safe movement within the Common Areas. For purposes of the Lease, "**Common Areas**" are those portions of, and facilities within, the Shopping Center, which are intended for the common use of the occupants, their customers, agents and employees, including, without limitation, parking areas, driveways, walkways, common loading zones and landscaping.
6. In accordance with the terms of the Lease, Landlord grants to Tenant an easement for the benefit of the Premises, during the Term of the Lease, to install, at Tenant's cost and expense, Tenant's two-sided, internally illuminated, graphic sign panel with Tenant's corporate logo on the south half of the existing Shopping Center's multi tenant pylon sign. Further, Landlord agrees to provide to Tenant prime signage positions on any future signage for the Shopping Center under Landlord's control.
7. The parties hereto incorporate by reference herein all the terms, covenants and conditions contained in the Lease and incorporate into the Lease all the terms, covenants and conditions contained herein. Landlord and Tenant hereby agree to observe, conform to and comply with such terms, covenants and conditions on the part of each of them to be observed and performed under the Lease and hereunder. Reference is hereby made to the Lease for a complete statement of the rights, privileges and obligations created under and by the Lease and of the terms, covenants and conditions contained therein.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed in appropriate and lawful manner as of the day and year first above written.

LANDLORD:

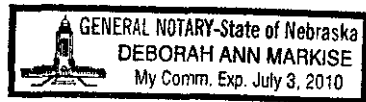
Gordman 133rd & Arbor, L.L.C.,
a Nebraska limited liability company

By: 
Name: Terone P. Gordman
Its: President

**** FILED: AS IS**

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

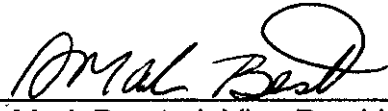
The foregoing instrument was acknowledged before me, the undersigned, a notary public in and for said state, personally appeared Terone P. Gordman, personally known to me or provided to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.



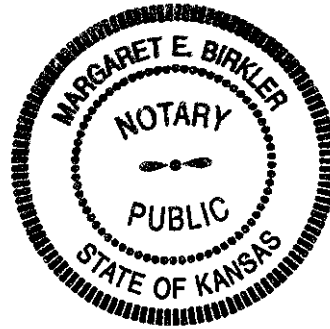
Deborah Ann Markise
Notary Public for: _____
My Commission Expires: _____

TENANT:

Aldi Inc. (Kansas),
a Kansas corporation

By: 
G. Mark Bersted, Vice President

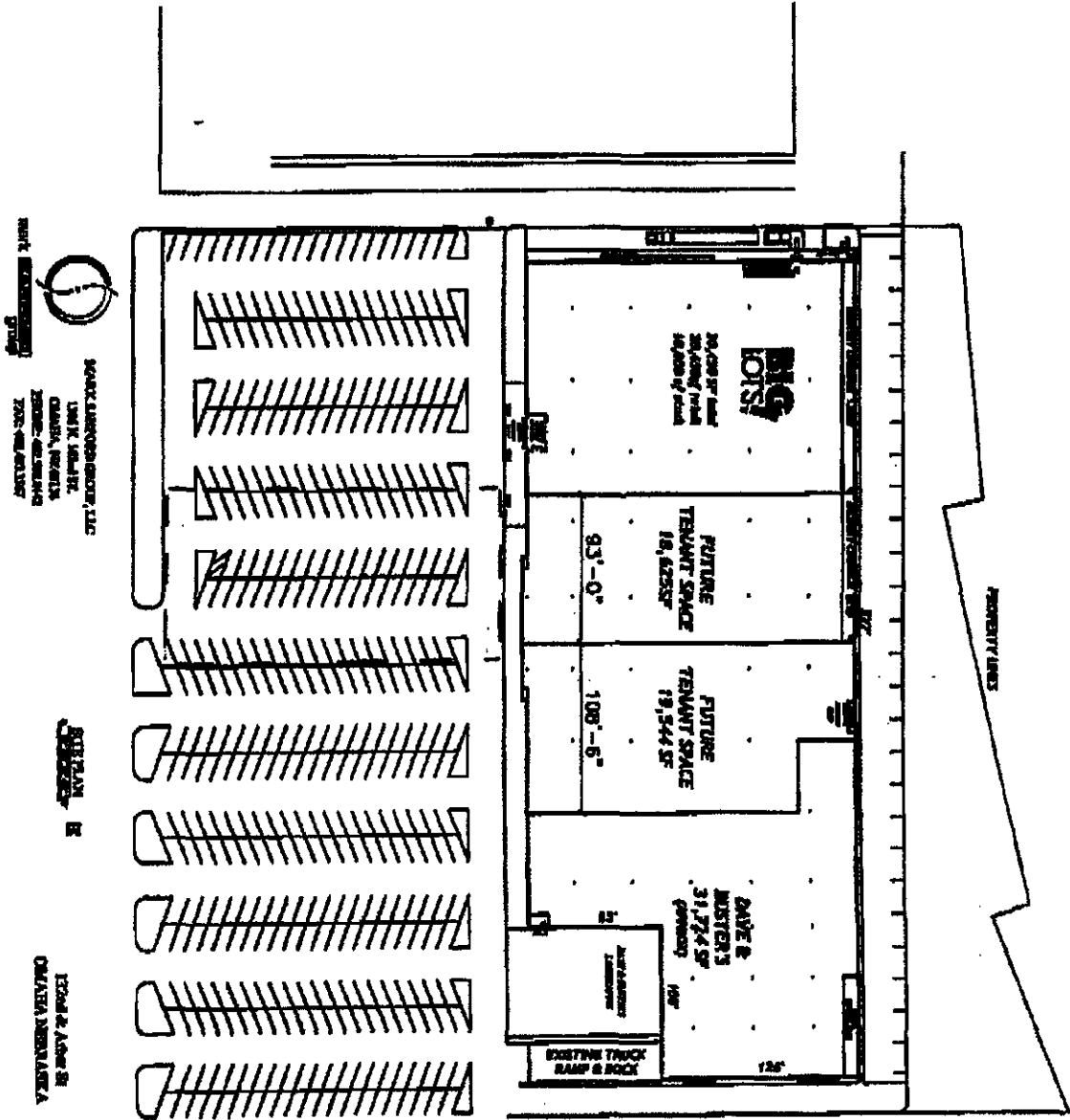
STATE OF KANSAS)
)
COUNTY OF JOHNSON)



The foregoing instrument was acknowledged before me, the undersigned, a notary public in and for said state, personally appeared **G. Mark Bersted**, personally known to me or provided to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

Margaret E. Birkler
Notary Public for: Aldi Inc.
My Commission Expires: 11/09/09

EXHIBIT A - SITE PLAN




 SOUTH
 SPANX LANDSCAPE GROUP, LLC
 LANDSCAPE ARCHITECT
 7200 W. 104TH ST
 OVERLAND PARK, KS 66211


 SEITZMAN
 ARCHITECT

132nd & Arbor St
 OMAHA NEBRASKA

 SEITZMAN ARCHITECT		PARKING LAYOUT 132nd & Arbor St OMAHA NEBRASKA	
SCALE: AS SHOWN DATE: 08/20/2001	PROJECT NO.: 02-08-2001	DRAWING NO.: A1.01	SHEET NO.: 1 OF 1



-  = CONTROLLED ACCESS PROPERTY
-  = NO-BUILD AREA

EXHIBIT B

LEGAL DESCRIPTION OF SHOPPING CENTER

Lot 5, Old Orchard West, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

EXHIBIT C
USE RESTRICTIONS

Landlord hereby covenants and agrees that it will not lease, rent, sell or otherwise permit to be owned, controlled, leased, used or occupied any portion of the Shopping Center as:

- a. a retail grocery store; the term "retail grocery store" shall include, without limitation a supermarket, meat market, grocery store, fruit and vegetable store or stand, frozen or otherwise processed food store and any store where more than 50 food items are sold for off-premises consumption; "retail grocery store" shall not include a delicatessen, drug store or any restaurant wherein prepared food is sold for on-premises consumption or for "take-out" consumption, and any dollar store operation (including but not limited to: Big Lots, Dollar Tree, Dollar General, Tuesday morning), liquidator or hardlines closeout store; further, no portion of the Shopping Center shall be owned, controlled, leased, used or occupied for the conduct of a food market or food department in any department store or variety store occupying or using any part of the Shopping Center; any such department store or variety store using or occupying any part of the Shopping Center shall refrain from conducting thereon a food department or food market, but may operate a restaurant and may deal in candies. The term "owned" shall also include any indirect ownership as through partnership, land trust, corporations and the like. Notwithstanding the foregoing provisions hereof to the contrary, this Item (a) shall not apply to the Premises. Notwithstanding anything in these use restrictions to the contrary, Landlord may enter into a lease, sell or offer to sell, or permit any party, to conduct a store containing a food department provided such food department does not exceed more than 4,000 square feet (including the aisles directly adjacent to the food items) of the floor space of the premises operated by Landlord or occupied by such party;
- b. dry cleaning establishment, provided, the foregoing restriction shall not include an establishment for dry cleaning drop-off and pick-up only, with no cleaning services being performed at the subject property;
- c. ~~a pet store~~ *OMB*
- d. a pool or billiard hall (unless operated as part of a large scale family recreation or entertainment facility);
- e. a business selling alcoholic beverages for on-premises consumption except for a restaurant with sit down table service as its primary operation in which the sale of alcoholic beverages does not exceed 50% of its gross sales;
- f. auto repair shop;
- g. gasoline station;
- h. adult book store;
- i. bingo parlor;
- j. a business which would emit or produce noxious fumes or gases or loud noises;
- k. an assembly or manufacturing operation;
- l. a distillation, refining, smelting, industrial, agricultural, drilling or mining operation;
- m. a junk yard, stock yard or animal raising operation;
- n. a dump or disposal, or any operation for the incineration or reduction of garbage or refuse;
- o. a mortuary;
- p. an establishment selling or exhibiting pornographic materials;
- q. a nightclub, discotheque or dance hall;
- r. a lot for the sale of used motor vehicles;
- s. a use or operation which is generally considered to be an environmental risk to any portion of the Shopping Center or surrounding properties.