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GRANT OF DRAINAGE EASEMENT

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THIS GRANT OF DRAINAGE EASEMENT is made/this 19th day of July, 2002, by and between Aldi (Indiana) L.P., an Indiana limited partnership (hereinafter referred to as "Aldi") and Whiteco Industries, Inc., a Nebraska corporation (hereinafter referred to as "Whiteco").

WITNESSETH:

WHEREAS, Aldi is the fee simple owner of real estate described as follows (hereinafter referred to as the "Aldi Parcel"):

Lot 2A in the Resubdivision of Lot 2 of CS2, as per plat thereof, recorded in Plat Book 91, page 89 in the Office of the Recorder of Lake County, Indiana.

WHEREAS, Whiteco is the fee simple owner of real estate described as follows (hereinafter referred to as the "Whiteco Parcel"):

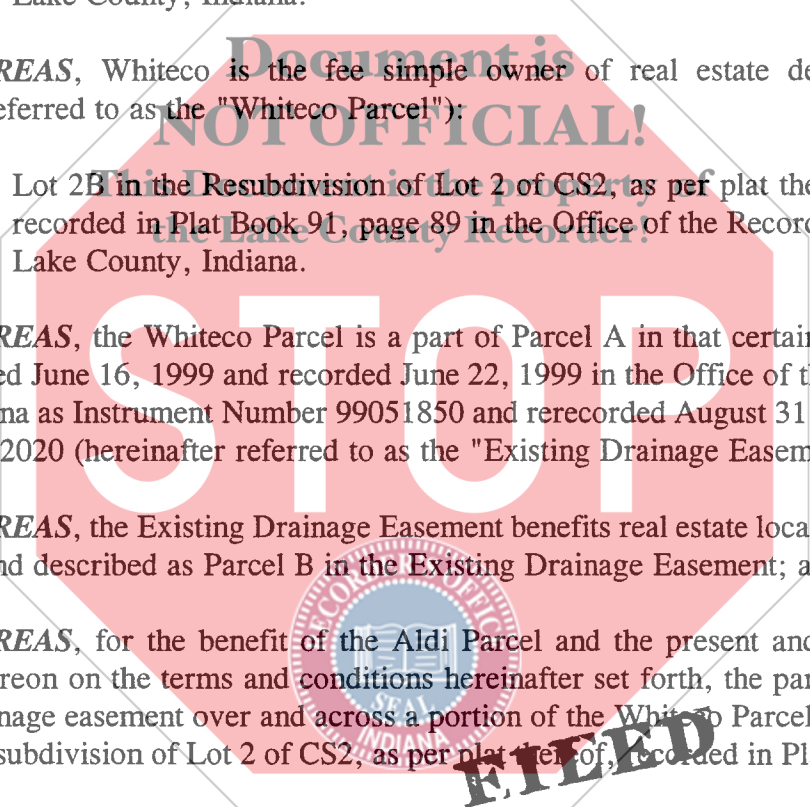
Lot 2B in the Resubdivision of Lot 2 of CS2, as per plat thereof, recorded in Plat Book 91, page 89 in the Office of the Recorder of Lake County, Indiana.

WHEREAS, the Whiteco Parcel is a part of Parcel A in that certain Grant of Drainage Easement dated June 16, 1999 and recorded June 22, 1999 in the Office of the Recorder of Lake County, Indiana as Instrument Number 99051850 and rerecorded August 31, 2002 as Instrument Number 99072020 (hereinafter referred to as the "Existing Drainage Easement"); and

WHEREAS, the Existing Drainage Easement benefits real estate located to the west of the Aldi Parcel and described as Parcel B in the Existing Drainage Easement; and

WHEREAS, for the benefit of the Aldi Parcel and the present and future owners and occupants thereon on the terms and conditions hereinafter set forth, the parties hereto desire to impose a drainage easement over and across a portion of the Whiteco Parcel being shown on the plat of the Resubdivision of Lot 2 of CS2, as per plat thereof, recorded in Plat Book 91, page 89

Chicago Title Insurance Company



JUL 25 2002

PETER BENJAMIN
LAKE COUNTY AUDITOR

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in the Office of the Recorder of Lake County, Indiana as the "Temporary Detention Pond Easement".

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Whiteco, subject only to the express conditions, limitations and reservations contained herein, hereby grants, establishes and covenants that Whiteco Parcel shall be burdened by and Aldi Parcel benefitted by the drainage easement as hereinafter set forth in this Grant.

1. **DEFINITIONS.** For purposes of this Grant:


(a) The term "Owner" or "Owners" shall refer to the present holder of fee simple title to Whiteco Parcel and/or Aldi Parcel, and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Subject Property, (as hereinafter defined), whether by sale, assignment, inheritance, operation of law, trustee sale, foreclosure or otherwise, but not including the holder of any lien or encumbrance on all or any portion of the Subject Property (as hereinafter defined).

(b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the Subject Property (as hereinafter defined), that is, Whiteco Parcel and Aldi Parcel, and any future subdivisions thereof.


(c) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such parcel, and/or (ii) such tenant(s) or occupant(s).

(d) The term "Subject Property" shall mean all of the real property covered by this Grant, that is, Whiteco Parcel and the Aldi Parcel, taken together.

2. **GRANT OF DRAINAGE EASEMENT.**

(a) Subject only to the express conditions, limitations or reservations contained herein, Whiteco hereby grants, establishes and covenants that Aldi Parcel, and all Owners and Permittees of Aldi Parcel, shall be benefitted by a non-exclusive and perpetual easement, imposed upon the 

Whiteco Parcel, and all present and future Owners and Permittees of Whiteco Parcel, upon, under, over, above and across that portion of the Whiteco Parcel being shown on the plat of the Resubdivision of Lot 2 of CS2, as per plat thereof, recorded in Plat Book 91, page 89 in the Office of the Recorder of Lake County, Indiana as the "Temporary Detention Pond Easement" (the "Easement Area"), for the discharge, drainage, use, detention and retention of storm water runoff, and for the installation, maintenance, repair and replacement of storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across the Easement Area, all for the non-exclusive benefit of the Owner and Permittees of the Aldi Parcel, over any portion thereof. A detention basin for storm water collection and retention shall be reconstructed by Whiteco on the Easement Area, which modification and reconstruction has been approved by the Owners, Walgreen Co. and the owner of Parcel B pursuant to paragraph 4 (b) of the Existing Drainage Easement. The storm water detention areas and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith within the Easement Area shall hereinafter be referred to as the "Water Detention and Drainage Facilities". The easement granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. The Water Detention and Drainage Facilities shall be reconstructed by Whiteco as a part of the initial development of improvements on the Aldi Parcel, and in the event that Whiteco shall not have performed the reconstruction, Aldi may undertake such work in accordance with the terms of the Site Improvement Escrow Agreement by and between Aldi and Whiteco. Whiteco has approved all plans, specifications, engineering and drainage calculations for the Water Detention and Drainage Facilities. The Owner of the Whiteco Parcel shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Detention and Drainage Facilities located upon the Whiteco Parcel and make any and all repairs and replacements that may from time-to-time be required with respect thereto. If the Owner of the Whiteco Parcel fails to operate, maintain or repair within ten (10) days of receipt of written notice from the Owner or Permittees of the Aldi Parcel any matter relating to the operation, maintenance or repair of the Water Detention and Drainage Facilities, such Owner or Permittee shall have the right to enter upon the Whiteco Parcel and cause the necessary changes or repairs to be made.


(b) The cost of the initial reconstruction of the Water Detention and Drainage Facilities shall be borne solely by Whiteco. The cost of the future operation, maintenance and repair of the Water Detention and Drainage Facilities shall be borne by the Owner of the Whiteco Parcel and 

the owners of any land served by the Water Detention and Drainage Facilities. Within thirty (30) days of receipt of copies of invoices for work Aldi shall reimburse or cause its tenant to reimburse the Owner of Whiteco Parcel for a proportionate share of the cost of the operation, maintenance and repair, of the Water Detention and Drainage Facilities. The percentage share of the costs of operation, repair and/or maintenance of the Water Detention and Drainage Facilities attributable to Aldi shall be equal to the acreage contained in the Aldi Parcel, divided by the sum of the acreage contained in the Aldi Parcel, the Whiteco Parcel, Parcel B (as defined in the Existing Drainage Easement), and any contiguous lands served by the Water Detention and Drainage Facilities. The percentage share of the costs of operation, repair and/or maintenance of the Water Detention and Drainage Facilities attributable to the owner of any lands subsequently served by the Water Detention and Drainage Facilities, shall be equal to the acreage contained in such owners lands, divided by the sum of the acreage contained in all lands served by the Water Detention and Drainage Facilities.

(c) During initial reconstruction Whiteco shall have the right to remove and utilize the spoils of the excavation of the Water Detention and Drainage Facilities, for its purposes, without compensation for same.

3. **INDEMNIFICATION.** Whiteco shall indemnify and hold Aldi harmless from and against all claims, liabilities and expenses (including reasonable attorney's fees) relating to acts, injuries, loss or damage of or to any person or property arising from the negligence, intentional or willful acts or omissions, of the Owner or Permittee of the Whiteco Parcel, its contractors, employees, agents or others acting on behalf of such Owner or Permittee with respect to the reconstruction of the Water Detention and Drainage Facilities.

4. **REASONABLE USE OF EASEMENTS.**

(a) The easement hereinabove granted shall be used and enjoyed in such a manner so as not unreasonably interfere with, obstruct or delay the conduct and operation of the business of the Owner of Permittee of the Aldi Parcel at any time conducted thereon, including without limitation, public access to and from any businesses located thereon and receipt of delivery of merchandise in connection therewith. 


(b) Once the Water Detention and Drainage Facilities are installed and reconstructed pursuant to the easement granted above, no permanent building, structure, trees or other improvements inconsistent with the use and enjoyment of such easement (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon the Easement Area as it may exist from time-to-time. Once reconstructed, the Water Detention and Drainage Facilities may be modified, altered, relocated or otherwise changed by Whiteco upon thirty (30) day prior written notice to and the written consent of the Owner of the Aldi Parcel and Walgreen Co. Such notice shall include plans, specifications, engineering and drainage calculations for the proposed modification, alteration, relocation or other change ("change"). Failure of the Owner of the Aldi Parcel and/or Walgreen Co. to provide written consent or objection to the proposed change within thirty (30) days of receipt of all such material shall be deemed consent. Any object shall include an alternate proposal with respect to the matters to which a specific objection is made. The parties agree to negotiate in good faith to resolve any disputes as to the proposed changes to the Water Detention and Drainage Facilities. Any relocation of any portion of the Water Detention and Drainage Facilities shall be made only after a replacement is in place and operational. The Owner of the Aldi Parcel and Walgreen Co. shall not unreasonably withhold their consent to the reasonable relocation of such installations requested by the Owner of the Whiteco Parcel and the remaining provisions of this Grant are complied with.

(c) Once commenced, reconstruction of the Water Detention and Drainage Facilities on the Whiteco Parcel shall be diligently prosecuted to completion so as to minimize any interference with the business of the Owner of the Aldi Parcel and Parcel B, and their Permittee(s). Except in cases of emergency, the right of the Owner of the Aldi Parcel to enter upon the Whiteco Parcel for the exercise of any right granted pursuant to the easement set forth herein, or to prosecute work on the Whiteco Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the Owner of the Whiteco Parcel and the Owner of Parcel B, or their Permittees.

5. **INSURANCE THROUGHOUT THE TERM OF THIS GRANT.** The Owner of the Whiteco Parcel shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under any indemnity contained in this Agreement), death or property damage occurring

upon the Easement Area, with single limit coverage of not less than an aggregate of Two Million and 00/100 Dollars (\$2,000,000.00), including umbrella coverage, if any, and naming the Owner of the Aldi Parcel as an additional insured. The Owner of the Whiteco Parcel may elect to self-insure (provided the Owner maintains a net worth of One Hundred Million and 00/100 Dollars (\$100,000,000.00)) and/or carry insurance required hereunder under master or blanket policies of insurance.

6. **REMEDIES AND ENFORCEMENT.** In the event of a breach or threatened breach by either the Owner of the Whiteco Parcel or the Aldi Parcel or their Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall be entitled forthwith to full and adequate relief by injunction and/or such other available relief and equitable remedies from the consequences of such breach including payment of any amounts due and/or specific performance. Any Owner shall have the right, but not the obligation to enforce this grant, and/or to cure a breach or obligation to enforce this grant, and/or to cure a breach or default hereunder by the Owner of the other Parcel, which enforcement or cure shall be accepted by the other Owner as if effected by the Owner. Upon written consent of the Owner of the other Parcel, the rights of each Owner under this paragraph are assignable to any tenant under a valid written lease of that Owner's Parcel.

In addition to all other remedies available at law or at equity, upon the failure of a defaulting Owner to cure a breach under this Grant within thirty (30) days following written notice thereof by an Owner (unless with respect to any such breach the nature of which cannot reasonably be cured within such thirty-day period, and then the defaulting Owner commences such cure within such thirty-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligations contained in this Grant on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable cost thereof together with interest at the prime rate charged from time-to-time by First Chicago NBD (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency or (ii) blockage or material impairment of the easement rights granted herein, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the rate as above described. 

The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Grant. This Grant, and the rights created hereunder shall not be defeated or rendered invalid by the lien or any mortgage or deed of trust upon any Parcel. The easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel (including mortgagees), covered hereby whose title thereto is acquired by foreclosure, trustee, sale or otherwise.

7. **TERM.** The easements, covenants and conditions contained in this Grant shall be effective commencing on the date of recordation of this Grant in the Office of the Lake County, Indiana Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Grant is modified, amended, canceled or terminated by the written consent of all then-record Owners of the Whiteco Parcel and the Aldi Parcel, and any portions thereof.

8. **AMENDMENT.** The provisions of this Grant may be modified or amended in whole or in part, or terminated, only by the written consent of all record Owners of the Whiteco Parcel and the Aldi Parcel, and any portions thereof, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Office of the Lake County, Indiana Recorder.

9. **CONSENTS.** Wherever in this Grant the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any requests for consent or approval shall: (a) be in writing; (b) specify the provision hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Grant, to be effective, must be given, denied or conditioned expressly and in writing, unless otherwise specific provision is made to the contrary. ~~AT~~



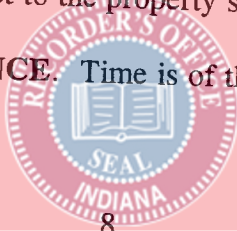
10. **NO WAIVER.** No waiver of any default or any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11. **NO AGENCY.** Nothing in this Grant shall be deemed or construed by either party or by any third party to create the relationship of principal and agent or of limited or general partners or of joint ventures or any other association between the parties.

12. **COVENANTS TO RUN WITH THE LAND; ASSIGNABILITY.** It is intended that the easement, covenants, conditions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefitted thereby, shall bind every person having any fee, leasehold or other interest therein, and shall inure to the benefit of the respective parties and their successors, assigns, heirs and personal representatives. Nothing contained herein shall be deemed to constitute a limitation or prohibition on the right of Whiteco to transfer and convey all or any part of its right, title and interest in and to the Whiteco Parcel to any third party. The benefits and burdens herein created shall inure to any such third party in proportion to the acreage conveyed. Any such conveyance shall not be deemed to increase the benefits or lessen the burdens of either party thereto or of such third party; and the conveyance to any such third party will specifically reference, and be given subject to the terms and conditions of this Grant.

13. **GRANTEE'S ACCEPTANCE.** The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party, or from a subsequent Owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs and personal representatives, covenant, consent and agree to and with the other party to keep, observe, comply with and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

14. **TIME OF THE ESSENCE.** Time is of the essence of this Grant. 



15. **ENTIRE AGREEMENT.** This Grant contains the complete terms and conditions with respect to all matters referred to herein.

16. **NOTICES.** Notices or other communications hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, via telefacsimile, or by national overnight courier company, or personal delivery as follows:


Aldi (Indiana) L.P.
197 E. Division Road
Valparaiso, Indiana 46383

Whiteco Industries, Inc.
1000 E. 80th Place, Suite 700 North
Merrillville, Indiana 46410

Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time-to-time their respective address for notice purposes by like notice to the other party.

17. **GOVERNING LAW.** The laws of the State of Indiana shall govern the interpretation, validity, performance and enforcement of this Grant.

18. **ESTOPPEL CERTIFICATES.** Each Owner within twenty (20) days of its receipt of a written request from the other Owner shall from time-to-time provide the requesting Owner a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any Owner or Permittee is in default or violation of this Grant, and if so, identify such default or violation; and (b) that this Grant is in full force and effect and identifying any amendments to the Grant as of the date of such certificate.

19. **BANKRUPTCY.** In the event of any bankruptcy affecting any Owner or Permittee of any Parcel, this Grant shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity. 

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

Aldi (Indiana) L.P., an Indiana limited partnership
By: Aldi (Indiana) LLC, its general partner

By: Michael J. Jessen
Michael J. Jessen
Manager

Whiteco Industries, Inc., a Nebraska corporation

By: Dennis E. Kalkos
Dennis E. ~~Kalkos~~ Kalkos
Financial Vice President

STATE OF INDIANA)

COUNTY OF PORTER)

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This Document is the property of Porter County Recorder!

Before me, a Notary Public in and for said county and state, do hereby certify that Michael J. Jessen and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and deed and for the purposes therein set forth.

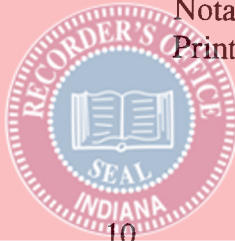
Given under my hand and notarial seal this 17th day of July, 2002.

Marcia E. Palmer
Notary Public

Printed: MARCIA D PALMER

My Commission Expires:

March 24, 2008



MARCIA D PALMER
NOTARY PUBLIC STATE OF INDIANA
PORTER COUNTY
MY COMMISSION EXP. MAR. 24, 2008

STATE OF INDIANA)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said county and state, do hereby certify that Dennis E. Kackos and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and deed and for the purposes therein set forth.

Given under my hand and notarial seal this 17th day of July, 2002

Marguerite E. Drake
Notary Public

My Commission Expires: 02-26-09 Resident County: Lake Printed: Marguerite E. Drake



This instrument prepared by:

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