

Sponsor: Musgrove

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA, that the attached Temporary Construction Easement between Target Corporation and the City of Florence is hereby approved, ratified and confirmed.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA, that the Mayor and City Clerk are hereby authorized, respectively, to execute and attest such Agreement on behalf of the City of Florence.

ADOPTED this _____ day of _____, 2018.

CITY COUNCIL

APPROVED this _____ day of _____, 2018.

MAYOR

ADOPTED & APPROVED this _____ day of _____, 2018.

CITY CLERK

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (this "Agreement") is dated _____, 201__ ("Effective Date"), by and between TARGET CORPORATION, a Minnesota corporation ("Target") and the City of Florence, Alabama ("Grantee").

RECITALS:

- A. Target is the owner of that certain tract of land [commonly known as 372 Cox Creek Pkwy, Florence, AL 35630 and legally described in the Operation and Easement Agreement dated as of April 2, 2000, filed on April 7, 2000, recorded at Fiche 2000-159, Frame 22 through Fiche 2000-160 Frame 48, Judge of Probate of Lauderdale County, Alabama as the "Target Tract" (the "Target Tract").
- B. To facilitate work to connect the Target to the adjacent tract via a drive (the "Construction Work") as depicted in Exhibit A, Grantee has requested that Target grant to Grantee the right to enter upon the certain limited area of the Target Tract, depicted as the "TEMPORARARY WORK AREA LIMITS" on Exhibit A (the "Temporary Construction Area").
- C. Target is willing to permit such temporary access, subject to the terms and conditions of this Agreement.

NOW THEREFORE, for valuable consideration, Target and Grantee agree as follows:

1. Grant of Easement. Target hereby grants unto Grantee a temporary, non-exclusive easement (the "Easement") to enter upon and use the Temporary Construction Area for the purpose of performing the Construction Work, subject to the terms of this Agreement. The Easement may be used by Grantee or its officers, employees, agents, general contractor, any subcontractors, materialmen, suppliers, or any other person or entity associated with the Construction Work (collectively, "Grantee's Permittees"). The Temporary Construction Area may only be accessed by Grantee or Grantee's Permittees from the public right-of-way, and the Easement does not include any right to access the Temporary Construction Area through any other portion of the Target Tract.

2. Term. The term of the Easement commences on the Effective Date and terminates on the earlier of; (i) the date of completion of the Construction Work or (ii) October 15, 2018.

3. Use of the Temporary Construction Area. The Easement is granted to Grantee only for the purpose stated herein and for no other purpose, and Grantee and Grantee's Permittees may not use the Temporary Construction Area or any other portion of the Target Tract for any other purpose. In connection with the use of the Temporary Construction Area:

- a. Grantee must, at Grantee's sole cost and expense, at all times keep the Temporary Construction Area and the Target Tract free from any and all debris and trash relating to the Construction Work.
- b. Grantee may not use the Temporary Construction Area, or cause or permit the same to be used, for any use or purpose in violation of this Agreement or any laws, ordinances, regulations, or requirements of any governmental entity.
- c. Grantee may not cause or permit the Temporary Construction Area to be put in an unsafe condition or cause a condition upon the Temporary Construction Area that could be categorized legally as an "attractive nuisance".
- d. Grantee may not bring to or upon, or cause or permit to be brought to or upon, the Target Tract any nuisances or any hazardous wastes or substances as defined by federal or state law.
- e. Grantee must comply with, or cause compliance with, all health, police, and safety statutes, ordinances, regulations, zoning, building, and code requirements governing the use of the Temporary Construction Area or the Construction Work.
- f. Grantee may not permit liens or claims of any nature to be filed or charged against the Target Tract. If any such lien is filed against the Target Tract, Grantee must, within 30 days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise.
- g. No existing improvements within the Temporary Construction Area may be removed or disturbed by Grantee or Grantee's Permittees. Grantee must use Grantee's best efforts to prevent any damage to the Target Tract, any interruption of utility service, interference with the use of the truck docks on the Target Tract, or any other interference with operations on the Target Tract. Any damage to the Target Tract caused by or related to the use of the Temporary Construction Area or performance of the Construction Work (including damage to landscaping, plants, or grass) must be immediately repaired by Grantee at Grantee's sole cost and expense. Grantee has no right of overhang or encroachment on, over, within, or under the Target Tract for any reason or in any manner whatsoever.
- h. Grantee assumes all risk of loss or damage to the property of Grantee or Grantee's Permittees associated with the Construction Work or use of the Temporary Construction Area, including any loss or damage caused by water, fire, windstorm, explosion, theft, or other cause. Grantee is responsible for all costs related to the use of the Temporary Construction Area pursuant to this Agreement and has sole responsibility for the security and safety of all persons and property directly or indirectly associated with the Construction Work or use of the Temporary Construction Area pursuant to this Agreement. Target is not liable to

Grantee, or those claiming through Grantee (including Grantee's Permittees), for injury, death, or property damage occurring on or about the Temporary Construction Area.

- i. All activity within the Temporary Construction Area must be coordinated with representatives of Target. If a representative of Target reasonably believes that activity within the Temporary Construction Area is creating or could create a risk of interruption of utility service, interference with the use of the truck docks on the Target Tract, or any other interference with operations on the Target Tract, and the representative provide notice (oral, written, or electronic) to Grantee thereof, then Grantee must immediately cease or cause the cessation of such activity and remediate such risk to the reasonable satisfaction of Target.
- j. The Temporary Construction Area may not be used for storage or staging of any materials or equipment. No vehicles or other construction equipment may be left overnight on the Temporary Construction Area.

4. Default. If Grantee, or any of Grantee's Permittees, at any time breaches one or more of the provisions of this Agreement, Target may notify Grantee of such breach in writing. If such breach is not cured within five (5) days following receipt of such notice by Grantee, Target may (in addition to all other rights and remedies at law or in equity) elect to reasonably cure such default at Grantee's sole risk and expense, or terminate this Agreement and the Easement granted herein, or both. Notwithstanding the foregoing, if the breach is an emergency condition, Target may (in addition to all other rights and remedies at law or in equity) elect to reasonably cure such breach at Grantee's sole risk and expense upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as reasonably possible thereafter, or immediately terminate this Agreement and the Easement granted herein, or both. If Target elects to reasonably cure such breach, Grantee must reimburse Target for all costs and expenses incurred in connection with such curative action within thirty (30) days after receipt of demand therefor.

5. Indemnification. To the extent not expressly prohibited by law, Grantee must defend, indemnify, and hold Target harmless from and against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees and court costs) incurred by Target as a result of or in connection with (a) the use of the Temporary Construction Area hereunder by Grantee or Grantee's Permittees or (b) the Construction Work. To the extent not expressly prohibited by law, Grantee will bear, pay, and discharge, promptly as and when the same become due and payable, any and all such judgments or claims for damages, penalties, or otherwise, against Target and must hold Target harmless against all such claims, losses, damages, liabilities, costs, and expenses, and Grantee will assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions, or government agencies arising out of any of the occurrences covered by the foregoing indemnification obligation.

6. Insurance. On or before the commencement of any use of the Temporary Construction Area, Grantee must provide to Target evidence of the insurance described in Exhibit B attached hereto for any contractors who are to perform the Construction Work.

7. Notices. All notices, terminations, demands, acceptances, requests, and approvals required or permitted to be given under this Agreement (each of which is herein sometimes referred to as a "Notice") must be in writing and must be delivered personally or by prepaid nationally recognized overnight or second day courier, addressed in each instance to Target or Grantee, as the case may be, at the following addresses:

If to Target:

Target Corporation
Property Development
Attn: Real Estate Portfolio Management [City, State]
1000 Nicollet Mall
Minneapolis, Minnesota 55403

If to Grantee:

Each such Notice will be deemed given as of the date the same is personally delivered to the party to be notified or the date the same is delivered to the address designated hereunder for the party to be notified, as the case may be, but rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given will be deemed to be receipt of the notice, demand, or request. Each party may from time to time and at any time upon at least ten (10) days' written notice thereof, change its respective address, and each party may specify as its address any other address within the United States of America.

8. Attorneys' Fees. If a suit is brought to enforce the terms and provisions of this Agreement, or for damages as a result of a party's breach of any term, covenant, agreement or other provision contained herein, the successful party will be entitled to an award against the other party for the successful party's reasonable attorneys' fees and court costs incurred in connection with any such suit.

9. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State in which the Target Tract is located.

10. Binding Effect. This Agreement inures to the benefit of and bind the respective successors, heirs, personal representatives, and permitted assigns of the parties hereto. This Agreement may not be assigned by Grantee, voluntarily or involuntarily, by operation of law or otherwise. Any purported or attempted assignment in violation of this Agreement is null and void and of no effect.

11. Recitals: Entire Agreement. The Recitals set forth above are hereby incorporated into and are a part of this Agreement. This instrument constitutes the entire agreement between the parties respecting the Easement. This Agreement cannot be amended except in writing executed by all of the parties hereto.

12. No Joint Venture or Easement. Nothing contained in this Agreement may be construed to create a joint venture between the parties hereto.

13. Authority; Condition. Target and Grantee each represents and warrants to the other that it has the full capacity, right, power and authority to execute, deliver and perform under this Agreement and that all required actions, consents and approvals therefor have been duly taken and obtained. Grantee accepts the Easement without any warranty or representation regarding the Easement or the Temporary Construction Area whatsoever, in their "AS-IS", "WHERE-IS", "WITH ALL FAULTS" condition, and subject to all valid and existing Easements, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations, and conditions affecting the Target Tract or affecting access thereto.

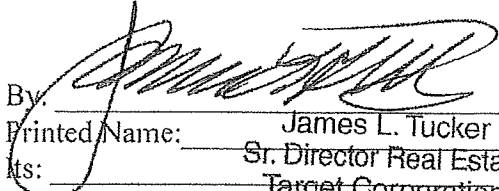
14. Construction; Captions; Counterparts. This Agreement may not be construed strictly for or against any party. The captions set forth herein are for convenience only and are not a part of this Agreement. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one instrument.

15. Survival. All of the covenants, agreements, and indemnities of the parties made herein will survive the expiration or earlier termination of the Easement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above set forth.

TARGET:
TARGET CORPORATION,
a Minnesota corporation

By: 
Printed Name: James L. Tucker
Its: Sr. Director Real Estate
Target Corporation

GRANTEE:
CITY OF FLORENCE, ALABAMA

By: _____
Printed Name: _____
Its: _____

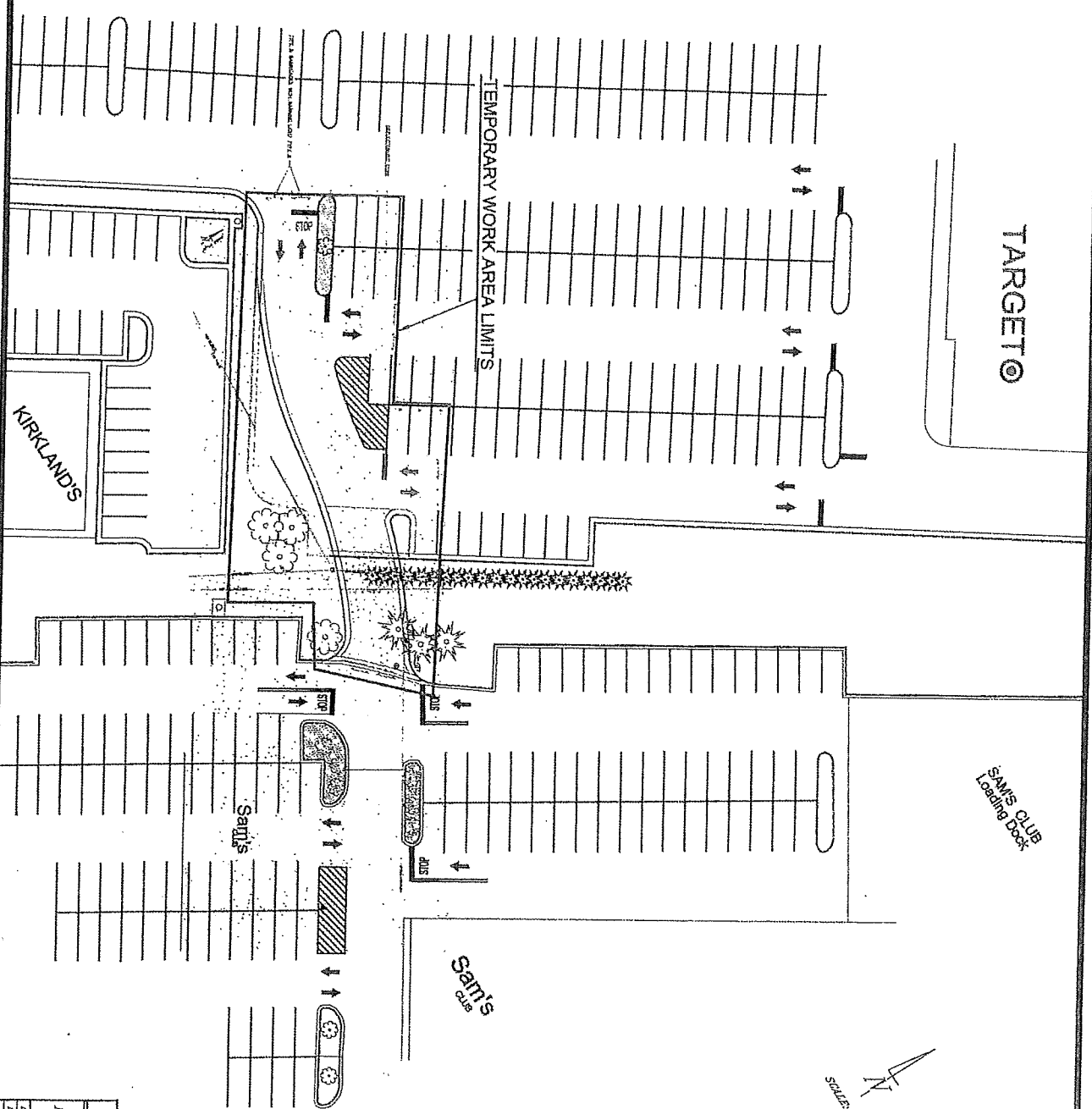
EXHIBIT A

Temporary Construction Area

TARGETO

SAM'S CLUB
Loading Dock

TEMPORARY WORK AREA LIMITS



SCALE: 1"=200'

CITY OF FLORENCE, AL.
SOUNDING DEPARTMENT

©TARGET & SAM'S
PROP. PARKING LOT CONNECTION
TRAFFIC CONTROL PLAN

| | | |
|-----------|--------|--------|
| DATE: | SCALE: | SHEET: |
| JUNE 2018 | 1"=20' | 6 |

EXHIBIT B

Insurance Requirements

Before commencing any use of the Temporary Construction Area, Grantee must obtain, or must cause each of its contractors and subcontractors to obtain, and thereafter maintain, so long as any use of the Temporary Construction Area is occurring, at least the minimum insurance coverages set forth below:

1. Workers' Compensation and Employer's Liability insurance:
 - (a) Worker's Compensation insurance as required by any applicable law or regulation.
 - (b) Employer's Liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

2. Commercial General Liability insurance covering all operations by or on behalf of the Contractor, which shall include the following minimum limits of liability and coverages:
 - (a) Required coverages:
 - (i) Premises and Operations.
 - (ii) Products and Completed Operations.
 - (iii) Contractual Liability, insuring the indemnity obligations assumed by the Contractor under the contract documents.
 - (iv) Broad Form Property Damage (including Completed Operations).
 - (v) Explosion, Collapse and Underground Hazards.
 - (vi) Personal Injury Liability.
 - (b) Minimum limits liability:
 - (i) \$1,000,000 each occurrence (for bodily injury and property damage).
 - (ii) \$1,000,000 for Personal Injury Liability.

- (iii) \$2,000,000 general aggregate applying separately to the work contemplated under the Agreement.
3. Automobile Liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability must be not be less than \$2,000,000 combined single limit each accident for bodily injury and property damage. The Contractor must require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

Target must be named as an additional insured on each policy (for the Commercial General Liability policy, pursuant to a CG 2010 11-85 version Form B endorsement, or equivalent), and each policy must provide that the same may not be cancelled, allowed to expire, or reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to Target. If any of the insurance policies are cancelled or expire, or the amount or coverage thereof is reduced below the level required, then Grantee must immediately stop or cause to be stopped all work on and use of the Temporary Construction Area until either the required insurance is reinstated, or replacement insurance is obtained, and evidence thereof is given to Target. All insurance required above must be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X which are authorized to do business in the State in which the Target Tract is located.