

WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 Oct 06 3:14 pm FEE 0.00 BY SB  
RECORDED FOR OREM CITY

**UTILITY EASEMENT**

This Utility Easement (this "Easement") is made and entered into this 4<sup>th</sup> day of OCTOBER 2000, by and between the TARGET CORPORATION, a Minnesota corporation (formerly known as Dayton Hudson Corporation and hereinafter referred to as "Grantor"), whose mailing address is 1000 Nicollet Mall, Minneapolis, Minnesota 55403, and WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation (hereinafter referred to as "Grantee"), whose mailing address is 4288 West Dublin-Granville Road, P. O. Box 256, Dublin, Ohio 43017.

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in the State of Utah, County of Utah and City of Orem, as more particularly described in **Exhibit A** which is attached hereto and made a part hereof (which real property is hereinafter referred to as "Grantor's Parcel"); and

WHEREAS, Grantor and Grantee desire to establish a utility easement pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor and Grantee agree as follows:

1. **Easement.** Grantor hereby grants, conveys and delivers to Grantee, its successors and assigns, a non-exclusive, perpetual easement, appurtenant to Grantee's adjacent real property which is more particularly described on **Exhibit B** attached hereto and incorporated herein by reference, for the purpose of constructing, installing, maintaining, repairing, using and operating an eight (8) inch water main line and connecting such line to the existing water main line on Grantor's Parcel over, upon, across, under and through that portion of Grantor's Parcel legally described on **Exhibit C**, and depicted as the Utility Easement on **Exhibit C-1**, attached hereto and made a part hereof (hereafter referred to as "Easement Area"). Grantee shall perform any installation, operation,

maintenance, repair and replacement as expeditiously as possible so as to minimize interference with the use of Grantor's Parcel and the improvements thereon, including the flow of pedestrian and vehicular traffic, and Grantee shall restore the Easement Area to a condition as good as that which existed prior to such action. This Easement shall include the right of Grantee to enter upon such other portions of Grantor's Parcel as are reasonably necessary for the purpose of maintaining and/or repairing the Easement Area.

2. Indemnity. Grantee and its successors, assignees, contractors or agents shall defend, indemnify, protect and hold harmless, Grantor, its employees, agents, customers and invitees from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorney's fees and cost of suit, arising out of or resulting from actions or omissions to act under this Easement.

3. Liens. In the event that any mechanics' lien is recorded against the Grantor's Parcel as a result of services performed or materials furnished for the use of Grantee, Grantee agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Grantee agrees to defend, protect, indemnify and hold harmless Grantor and its property from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorney's fees and cost of suit, arising out of or resulting from such lien.

4. Reservation. Grantor hereby reserves the right: (a) to use the surface area of the Easement Area for any purpose, other than construction of a building on the Easement Area, so long as such use does not substantially interfere with Grantee's rights as granted herein (the use of the surface area for pedestrian traffic and for landscaping shall be deemed not to substantially interfere with Grantee's rights herein); (b) to locate other utilities in the Easement Area; and (c) in its sole discretion to relocate, at its expense, to mutually acceptable new locations and routes such above described easement and related improvements from time to time (if such easement and related improvements are relocated, Grantor will grant to Grantee a new easement substituting the new easement area and Grantee will release the existing easement).

5. Abandonment. In the event Grantee, its successors and assigns shall abandon or no longer use all or any part of the easement rights herein granted for a period of two years, at the request of Grantor, Grantee shall release such easement rights to the part of the easement no longer used by Grantee and Grantor shall release such easement rights.

6. Disruption. In exercising any rights granted herein, Grantee shall not disrupt utility service to Grantor's Parcel at any time without first giving 48 hours written notice to Grantor (except in the case of an emergency in which case Grantee shall immediately notify Grantor of such emergency). Any permitted disruption in service (except in the case of an emergency) shall not occur during the hours in which a business is being operated on Grantor's Parcel. In the event of

such disruption of service Grantee shall promptly restore service and promptly notify Grantor in writing of such restoration of service.

7. Notices. All notices, demands and requests required or permitted to be given under this Easement must be in writing and shall be deemed to have been properly given or served either by personal delivery, by facsimile or by depositing the same in the United States mail, addressed to Grantor or Grantee, as the case may be, prepaid and certified or registered mail, return receipt requested, at the following address:

To Grantor: Target Stores - Real Estate  
1000 Nicollet Mall  
Minneapolis, MN 55403  
Attn: Property Administration  
Fax: (612) 761-3728

To Grantee: Wendy's Old Fashioned Hamburgers of New York, Inc.  
4288 West Dublin-Granville Road  
P.O. Box 256  
Dublin, Ohio 43017  
Fax: (303) 338-9090

Each such notice, demand or request shall be deemed to have been 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 herein for the party to be notified, as the case may be and in case of notice by facsimile, Each party shall be deemed notified upon written confirmation of the transmission of such facsimile, so long as the original or copy of such notice, demand or request facsimile shall also be concurrently delivered by recognized overnight delivery service. Each party shall have the right from time to time and at any time upon at least ten (10) days' written notice thereof, to change its respective address, and each party shall have the right to specify as its address any other address within the United States of America.

8. No Warranty of Authority. Grantee acknowledges and agrees that the easement granted herein is subject to the rights and authority of the City of Orem, Utah and any other party who may claim to hold an interest in water main line on Grantor's Parcel and any public utility easement associated therewith. Grantee agrees to obtain all third party consents and permits that may be necessary to exercise the rights grants herein. Grantor makes no representation or warranty as to its authority to grant the rights provided herein except to the extent that the easement granted herein relates to Grantor's rights as a fee owner of Grantor's Parcel.

9. Miscellaneous. By accepting this Easement, Grantee agrees to exercise reasonable care to avoid damage to said premises and all property that may at any time be thereon.

The easement granted herein shall be solely for the use and benefit of Grantee's Parcel and the owners from time to time of all or any part thereof. All provisions of this Utility Easement, including the covenants, benefits and burdens, shall run with the land and be binding upon and inure to the heirs, executors, administrators, personal and/or legal representatives, successors, and assigns of Grantee and Grantor.

Grantor agrees that Grantee may assign its rights herein to the City of Orem so that the Easement Area shall be deemed a public utility easement area and this Easement shall be deemed a public utility easement; provided, shall Grantee first notify Grantor in writing of such an assignment and further provided, Grantee shall remain liable to Grantor under this Easement in connection with all actions or omissions of Grantee, its contractors and employees in exercising any rights under this Easement.

IN WITNESS WHEREOF, this Easement is executed as of the day and year first above written.

Witnesses:

Laurie L. Kuusisto

Print Name: Laurie L. Kuusisto

Diana Congrie-Kline

Print Name: Diana Congrie-Kline

Darcy B. Mihal

Print Name: DARCY B. MIHAL

Erica E. Armentrout

Print Name: ERICA E. ARMENTROUT

Darcy

Print Name: DARCY B. MIHAL

Erica E. Armentrout

Print Name: ERICA E. ARMENTROUT

TARGET CORPORATION

By: [Signature]

**Scott A. Nelson**  
Vice President  
Target Stores

WENDY'S OLD FASHIONED  
HAMBURGERS OF NEW YORK, INC.

By: [Signature]

**RONALD E. WALLACE**  
Vice President

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

By: [Signature]

**RAYMOND W. BAKER**  
Vice President

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

Law Dept. [Signature]

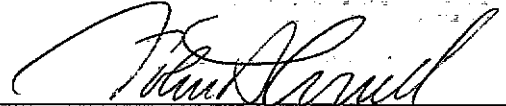
STATE OF Minnesota  
COUNTY OF Hennepin, SS:

On the 4<sup>TH</sup> day of OCTOBER, 2000, personally appeared before me SCOTT NELSON, who, being by me duly sworn, did say that he/she is the VICE PRESIDENT - TARGET STORES of Target Corporation, a Minnesota corporation, and said person acknowledged to me that said corporation executed the same.

Division

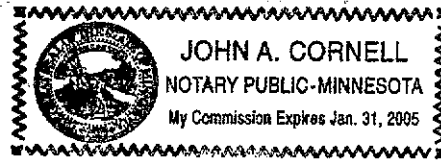
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)



Notary Public, residing in Plymouth, MN

My Commission Expires: \_\_\_\_\_



STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

On the 2<sup>nd</sup> day of October, 2000, personally appeared before me \_\_\_\_\_  
**RONALD E. WALLACE** and **RAYMOND W. BAKER** ho, being by me duly sworn, did say that he/she is  
the Vice President and Vice President, respectively, of Wendy's International,  
Inc., an Ohio corporation, and said person(s) acknowledged to me that said corporation executed  
the same.



**DARCY B. MIHAL**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUGUST 23, 2005  
Commission Expires: \_\_\_\_\_

Darcy B. Mihal  
Notary Public residing in Franklin City

Legal description of Grantor's Property:

Real Property located in Utah County, State of Utah, consisting of Lots 1 and 2, Block 1, Orem Retail Center Subdivision, Orem, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's office.



EXHIBIT B

Legal Description of Grantee's Property

Real Property located in Utah County, State of Utah, consisting of all of Lot 2, Plat A, Garden Park Square, Orem Utah, according to the official plat on file and of record in the Utah County Recorder's office.

A 20' Wide Public Utilities Easement, 10 Feet On Either Side Of The Following Described Centerline:

Beginning on the West line of Block 1 Orem Retail Center Subdivision, distant 137.32 feet S 0°55'15" W from the Southwest corner of Lot 2 of said Block 1; thence S 89°04'45" E 23.14 feet; thence S 44°04'45" E 43.00 feet; thence S 00°55'15" W 29.00 feet to a point on the Centerline of the existing 10' wide public utility easement recorded on the Orem Retail Center Subdivision and there terminating.

**Exhibit "C"**

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# GARDEN PARK SQUARE LOT 2 PLAT 'A'

N03507 E

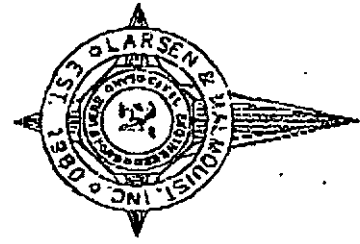
FOUND REBAR AND CAP  
RBC&C ENGINEERING

UTILITY  
EASEMENT

N 89°45' W 32.00'

N 47°45' W 44.00'

N 00°35' 15" E 29.00'



SCALE: 1" = 20'

PROPOSED 20' WIDE  
UTILITIES EASEMENT

PROPOSED 8" WATER MAIN

EXISTING 10' WIDE  
UTILITIES EASEMENT

WATER VALVE

FIRE HYDRANT

EXISTING 8" WATER MAIN

TARGET STORES

EXHIBIT C-1