

PREPARED BY AND RECORDING  
REQUESTED BY AND  
WHEN RECORDED RETURN TO:  
CARA A. AHOLA, ESQ.  
THE TJX COMPANIES, INC.  
770 COCHITUATE ROAD  
FRAMINGHAM, MA 01701

**ENTRY NO. 01075100**

08/09/2017 10:05:17 AM B: 2422 P: 1029  
Memorandum PAGE 1/6  
MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER  
FEE 31.00 BY NELSON CHRISTENSEN HOLLINGWORTH & WILLIAMS

PROPERTY TAX ID # \_\_\_\_\_ {To be inserted by Landlord}  
RS-1-1AM, RS-2-1AM, RS-3-1AM, RS-4-1AM, RS-5-1AM, RS-6-1AM, RS-7-1AM,  
RS-8-1AM, RS-9-1AM, RS-10-1AM, RS-20-1AM

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE**, made and entered into as of this 25<sup>th</sup> day of July, 2017, by and between BOYER SPRING CREEK, L.C., a Utah limited liability company (the "Landlord"), and HOMEGOODS, INC., a Delaware corporation (the "Tenant"), provides:

1. Lease. The provisions set forth in a written lease between the parties hereto dated as of July 25<sup>th</sup>, 2017 (the "Lease") are hereby incorporated by reference in this Memorandum.

2. Demised Premises. The Demised Premises are more particularly described as follows:

The Demised Premises consist of a one-story building, and contain twenty four thousand seven hundred ten (24,710) square feet of floor area having a frontage and other dimensions as shown and labeled Area A upon the plan attached to the Lease. The Demised Premises are a portion of the Shopping Center land more particularly described in Schedule A attached hereto as a part hereof. In addition, the Tenant shall have the exclusive right to use certain service areas adjacent to the Demised Premises which contain an exterior loading dock and trash storage area.

3. Term and Option to Extend Term. The original term of the Lease shall be the period of ten (10) years and a fraction of month commencing on the Commencement Date (as described below) and terminating on the last day of the month during which the tenth (10th) anniversary of the Commencement Date shall occur, except, however, that if the Commencement Date shall be a first day of a calendar month then the original term of this lease shall be the period of ten (10) years commencing on the Commencement Date and terminating on the day prior to the tenth (10th) anniversary thereof.

Tenant shall have the right, at its election, to extend the term of the Lease for four (4) extension periods of five (5) years each, each commencing upon the expiration of the original term, or the original term as thus previously extended. In addition, Tenant shall have the right, at its election, to extend the original term, or the original term as it may have been previously extended as aforesaid, for an extension period of a fraction of a year ending upon the January 31st next following the expiration of the original term, or the original term as previously extended, as the case may be. Such extensions shall be granted upon the terms and conditions set forth in the Lease.

4. Commencement Date. "An "Opening Day" shall be any Monday through Friday (except for legal holidays) between March 1 and the following April 30, and between August 1 and the following September 30. The "Commencement Date" shall be the first Opening Day after the later to occur of the following dates:

- (1) the one hundred fiftieth (150<sup>th</sup>) day after the Delivery Date and receipt by Tenant of permits for its work in the Demised Premises; and

(2) So long as both of the following conditions continue to be met: (a) a store shall remain open for business to customers in the Shopping Center under the trade name Bed, Bath & Beyond containing not less than twenty one thousand (21,000) square feet of floor area (or a "Qualified Replacement Store" (hereinafter defined) therefor, plus (b) a store shall remain open for business to customers in the Shopping Center under the trade name Petco containing not less than ten thousand (10,000) square feet of floor area (or a "Qualified Replacement Store" therefor), which shall be non-cancelable except for events such as are set forth in Articles X, XI and XIII hereof, and satisfactory evidence of all of the foregoing shall have been delivered to Tenant. Bed, Bath & Beyond and Petco are sometimes hereinafter individually referred to as an "Inducement Store" and collectively as the "Inducement Stores." As used herein, a "Qualified Replacement Store shall mean a retail store (which shall be deemed to exclude service, restaurant or entertainment (such as theater) uses) reasonably acceptable to Tenant that is (a) operated by a regional or national retailer, operating not less than fifty (50) stores in the United States or twenty five (25) stores in the Western region of the United States, each under the same trade name as the trade name of the store to be located in the Shopping Center and in first class shopping centers such as the Shopping Center, (b) operating on a year-round, non-seasonal basis under a multi-year lease with Landlord, (c) in compliance with all of the applicable provisions of this lease, including, without limitation, the provisions of Schedule B, Paragraph 4, (d) not a "closeout retailer" such as Big Lots and Odd Lots are currently operated, (e) is not a single price point retailer such as Dollar Tree, Dollar Wave and Dollar General are currently operated, and (f) occupies at least ninety percent (90%) of the premises occupied by the Inducement Store it is replacing.

(3) the ninetieth (90<sup>th</sup>) day after Landlord shall have delivered to Tenant all of the fully executed and acknowledged instruments referred to in Paragraph 8 of Schedule B to this lease; and

(4) the tenth (10<sup>th</sup>) day after Landlord shall have delivered to Tenant a current certificate of occupancy (or its equivalent depending on the jurisdiction) for the Demised Premises, if the same shall be issuable in accordance with local law or custom. Notwithstanding clause (4) immediately preceding to the contrary, if Landlord shall have completed the Landlord's Delivery Obligations and Tenant shall be unable to obtain a certificate of Occupancy solely because of construction work then still to be performed by Tenant then the date referred to in said clause (4) shall be deemed the Delivery Date; and

(5) the sixtieth (60<sup>th</sup>) day after Tenant's receipt of the necessary governmental permits and approvals for Tenant's exterior signs as provided in Section 9.2 below (Tenant agrees to timely apply for and diligently pursue such permits after the Delivery Date)."

Notwithstanding anything in the Lease contained to the contrary, if the Demised Premises shall be opened for business with customers prior to the Commencement Date determined as above provided, such date of opening shall be the Commencement Date.

5. Duplicate originals of the Lease are in the possession of the Landlord and Tenant and reference should be made thereto with respect to any questions arising in connection therewith. The addresses for Landlord and Tenant are as follows:

Landlord:

**The Boyer Company  
101 South 200 East, Suite 200  
Salt Lake City, Utah 84111  
Attention: Scott Verhaaren**

Tenant:

**The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, Massachusetts 01701  
Attn: Vice President-Real Estate**

6. The Lease contains certain restrictions upon the remainder of the Shopping Center property described in Schedule A, as set forth in Schedule B of the Lease, including without limitation, the following:

(A) Landlord agrees that the Shopping Center shall not be used for the Restricted Uses listed on Schedule F below. (Collectively the uses described herein are referred to as the "Prohibited Uses".)

(B) Landlord agrees that, from the date hereof until expiration of the term of this lease, no other single premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of furnishings for the home including the following categories of items: linens and domestics, window treatments, floor coverings, bathroom items, bedding, furniture, wall décor, housewares, table top goods, glassware, flatware, cookware, kitchen utensils, giftware and/or closet, shelving and storage items and home accessories (“**homegoods**”). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of homegoods. (all of the foregoing is hereinafter referred to as the “**Exclusive Use**” and the merchandise referred to therein as the “**Protected Merchandise**”).

(C) In addition to all other remedies available to Tenant at law and in equity for a breach of the covenants contained in Paragraphs (A) and (B) of this Paragraph 4, if an occupant or tenant in the Shopping Center engages in the Exclusive Use or a Prohibited Use, Tenant shall be entitled to any of the following remedies on a non-exclusive basis: (i) Tenant may pay Alternate Rent (as defined in Section 4.3(B) of the lease) until such Exclusive Use or Prohibited Use ceases, except that Landlord shall have three (3) months to attempt cure before Tenant may pay Alternate Rent when Landlord has not consented to the Exclusive Use, (ii) Tenant may terminate this lease if the Exclusive Use or Prohibited Use continues for more than one hundred eighty (180) consecutive days by giving thirty (30) days’ notice to Landlord or (iii) Tenant may seek injunctive relief to enjoin or restrain such occupant or tenant from engaging in the Exclusive Use or a Prohibited Use. Notwithstanding anything to the contrary contained herein, so long as Landlord is using its best efforts to diligently enforce the restrictions contained in this Paragraph 4 against any tenant or occupant engaged in the Exclusive Use or a Prohibited Use in violation of its lease, Tenant’s termination right under this Paragraph 4(C) shall be stayed.

(D) The provisions of this Paragraph 4 shall not apply with respect to rights previously granted to tenants or occupants and their successors under leases or agreements existing as of the date hereof (collectively “Existing Leases”) for only so long as such Existing Leases continue in full force and effect and only to the extent such Existing Leases permit such Prohibited Uses or the Competing Uses. Landlord agrees not to amend any Existing Leases to permit the Prohibited Uses or the Competing Uses. Landlord warrants and represents that all of the Existing Leases are listed on Schedule K attached hereto.”

7. It is understood and agreed that the only purpose of this Memorandum of Lease is to give notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect to the Demised Premises. The Lease contains additional rights, terms and conditions not enumerated in this instrument. This instrument is not intended to vary the terms of the Lease, including such rights, terms and conditions and in the event of any inconsistency between the provisions of this Memorandum of Lease and the Lease, the provisions of the Lease shall control.

DOCUMENT CONTINUES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization.

WITNESS:

**BOYER SPRING CREEK, L.C.**  
a Utah limited liability company

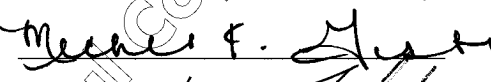

By: The Boyer Company, L.C., its manager

Anne H. DeLore


By:   
Name: **Brian Gochnour**  
Its: **Manager**

WITNESSES AS TO BOTH:

**HOMEGOODS, INC.**  
a Delaware corporation

By:   
Alicia C. Kelly  
Secretary

By:   
David L. Averill  
Vice President

WITNESSES AS TO BOTH:

**HOMEGOODS, INC.,** a Delaware corporation.

\_\_\_\_\_

By: \_\_\_\_\_  
Alicia C. Kelly  
Secretary

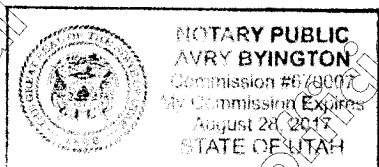
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By: \_\_\_\_\_  
David L. Averill  
Vice President

**LANDLORD'S ACKNOWLEDGMENT**

STATE OF UTAH )  
 ) SS.  
CITY/COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 12 day of July, 2017 by Brian Gochneur as Manager of The Boyer Company, L.C, the manager of Boyer Spring Creek, L.C.



Amy Bepko  
Notary Public  
My Commission Expires:

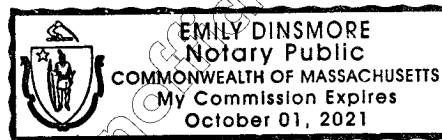
**TENANT'S ACKNOWLEDGMENT**

COMMONWEALTH OF MASSACHUSETTS )  
 ) SS.  
COUNTY OF MIDDLESEX )

On this 25th day of July, 2017, before me, the undersigned notary public, personally appeared Alicia C. Kelly as Secretary and David L. Averill as Vice President, respectively, of HOME GOODS, INC. on behalf of the corporation, proved to me through satisfactory evidence of identification, which is personal knowledge of the identity of both, to be the people whose names are signed on the preceding document and who acknowledged that they signed it voluntarily and executed same in their authorized capacities for its stated purpose.

Emily Dinsmore  
Notary Public

My Commission Expires:



SCHEDULE A

DESCRIPTION OF SHOPPING CENTER AND DEMISED PREMISES

The “**Demised Premises**” consist of a portion of a one-story building, to be renovated by Landlord as herein provided, and contain approximately twenty four thousand seven hundred ten (24,710) square feet of ground floor area having a frontage and width of one hundred \_\_\_\_\_ feet (\_\_\_\_’) and such other dimensions as shown upon the plan attached hereto (the “**Lease Plan**”), and are a portion of the premises within the Shopping Center referred to hereinbelow labeled AREA A on the Lease Plan. The Lease Plan shall not be modified in any way without Tenant’s consent, which may be withheld at Tenant’s sole and absolute discretion. In addition, Tenant shall have the exclusive right to use certain service areas adjacent to the Demised Premises which contain an exterior loading dock and trash storage area for Tenant’s delivery and removal activities and for Tenant’s compactor, dumpster and/or trash receptacles. It is expressly understood and agreed that said service areas shall not be included in computing minimum rent pursuant to Section 5.1 of the lease or Tenant’s Fraction or Tenant’s Portion (defined in Section 6.1) for purposes of Article VI and Paragraph 10 of Schedule B or for purposes of calculating other charges due under this lease. For purposes of this lease, floor area shall be measured from the outside face of exterior walls and the center of interior partition walls. If after completion of Landlord’s Delivery Obligations the Demised Premises shall contain less than the ground floor area required above then, in addition to all other remedies of Tenant, as a result thereof, the rent payable by Tenant pursuant to the lease shall be reduced proportionately and if the Demised Premises contains less than twenty three thousand seven hundred ten (23,710) square feet of ground floor area, Tenant may terminate this lease by giving notice to Landlord. Notwithstanding anything to the contrary contained in this lease, in no event shall minimum rent, additional rent or other charges due under this lease be based on the Demised Premises containing more than twenty four thousand seven hundred ten (24,710) square feet of ground floor area. Landlord agrees that the name of the Shopping Center shall not contain the trade name of any business operated in the Shopping Center.

Tenant acknowledges that the applicable county ordinance pertaining to the Shopping Center requires all deliveries be made between the hours of 6:00 a.m. and 10:00 p.m. daily, and Tenant agrees to abide by said ordinance; provided, however, that Landlord shall promptly notify Tenant of any changes to such ordinance or its repeal.

The Demised Premises are situated within the so-called Redstone Center Shopping Center, located at the Southeast corner of the intersection of Redstone Center Drive and Highway 224 (together with Newpark Boulevard, herein collectively referred to as the “**Main Streets**”) in Park City, County of Summit, Utah. The **Shopping Center** is the land, together with the buildings and other structures from time to time thereon, shown on the Lease Plan attached hereto as Schedule A-1, and is more particularly described as follows:

LEGAL DESCRIPTION OF SHOPPING CENTER

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 & 20 of the REDSTONE AMENDMENT NO. 1, according to the official plat recorded November 25, 2003 as Entry No. 681341, records of Summit County, Utah.