

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT  
AGREEMENT**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of October 6, 2024 and among Protective Life Insurance Company, its subsidiaries and their successors and/or assigns ("Lender"), Highway 11/31, LLC ("Landlord") and HomeGoods Inc. ("Tenant").

**RECITALS:**

WHEREAS, Lender is the holder of a Promissory Note which is secured, inter alia, by a Mortgage and Security Agreement (the "Mortgage") and Assignment of Lease and Rents (the "Lease Assignment") covering certain real property more particularly described in the Mortgage known as Alabaster Promenade located in Alabaster, Alabama and described further in Schedule A, a copy of which is attached hereto (hereinafter referred to as "Property"); and

WHEREAS, Landlord and Tenant are the current holders of the interests of landlord and tenant under a Lease dated October 6, 2024 and the same has been amended from time to time (the "Lease"), whereby Landlord demised to Tenant a portion of the Property (the "Demised Premises"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Landlord and Lender, intending to be legally bound hereby, covenant and agree as follows:

1. **SUBORDINATION.** This Lease shall be and is hereby made subordinate to the lien of (but not the terms and conditions of) the Mortgage and to all increases, renewals, modifications, amendments, consolidations and extensions thereof.

2. **NON-DISTURBANCE.** Provided that Tenant is not in default under the Lease of such a nature as would permit Landlord to terminate the Lease pursuant to default provisions of the Lease, Lender shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage or the Lease Assignment, or otherwise available to Lender at law or in equity:

(i) disturb Tenant's possession, enjoyment, use or occupancy of the Demised Premises and the appurtenant rights thereto under the Lease during the term of the Lease (including any extensions, renewal, or modification thereof); or

(ii) join or name Tenant as a party to any foreclosure or other proceeding instituted by Lender to enforce the terms of the Mortgage or the Lease Assignment against Landlord.

In the event Lender comes into possession of or acquires title to all or any portion of the Property as a result of any enforcement of the Mortgage, or any other means, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises and the rights of Tenant appurtenant thereto for the term of the Lease as the same may be extended, subject to the terms, covenants, conditions, provisions and agreements thereof.

**3. ATTORNMENT.** In the event Lender comes into possession of or acquires title to all or any portion of the Property as a result of foreclosure or other enforcement of the Mortgage, or as a result of any other means, Lender agrees to recognize Tenant's possession of the Demised Premises and Tenant agrees to attorn to and accept Lender as landlord under the Lease for the balance then remaining of the term of the Lease, subject to all of the terms and conditions of the Lease.

Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and Lender and Lender will assume and perform all of Landlord's obligations under the Lease except that Lender shall not be:

(i) liable for any damages for any breach, act or omission of any prior landlord under the Lease except for acts or omissions of a continuing nature which continue after such time as Lender comes into possession of or acquires title to all or any portion of the Property; or

(ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord including Landlord except to the extent such right of offset or defense is specifically set forth in the Lease, or unless Lender was previously notified of the act or event giving rise to such offset or defense; or

(iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease, unless such prepayment is required pursuant to the terms of the Lease; or

(iv) bound by any amendment or modification to the Lease which has the effect of decreasing the rent payable under the Lease, or decreasing the term of the Lease made without Lender's written consent which consent shall not be unreasonably withheld, conditioned or delayed; or

(v) be liable for any security deposit unless actually received by Lender.

**4. RENTS.** Landlord hereby advises Tenant that the Lease Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Lease Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. After written notice is given to Tenant by Lender in form reasonably acceptable to Tenant, that Landlord has defaulted under the Mortgage and that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the direction of Lender all rentals and other monies due and to become due to the Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments as directed by Lender and hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Mortgage or the Lease Assignment. Furthermore, in connection with the aforesaid, and notwithstanding anything to the contrary contained elsewhere, Landlord, its successor and/or assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses, or damages incurred by Tenant resulting

from or arising out of claims by Landlord, its successors or assigns that such rental payments should not have been, or cannot be, made to Lender or the like.

5. **DEFAULT NOTICES TO LENDER.** So long as the Mortgage is in force and effect, Tenant agrees not to terminate the Lease by reason of default by Landlord under the Lease without giving prior written notice thereof to Lender and Lender shall have the right (but not the obligation until Lender comes into possession of or acquires title to all or any part of the Property) to cure any of Landlord's defaults under the Lease within the same time period as is available to Landlord for the curing thereof under the Lease after receipt of such notice except Tenant shall have the right to exercise its enumerated termination rights set forth in the Lease without giving Lender notice or the opportunity to cure.

6. **NOTICES.** All notices and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or Airborne Express, and shall be deemed given when received and addressed as noted below, or to such other address or addresses as shall from time to time be designated by notice by any party to the others as herein provided.

If to Tenant                      c/o The TJX Companies, Inc.  
770 Cochituate Road Framingham, MA 01701 Attn:  
Vice President - Real Estate

If to Lender:                      Protective Life Insurance Company, its subsidiaries  
And their successors and/or assigns  
2801 Highway 280 South  
Birmingham, AL 35223  
Attn: Invest. Dept. [3-3ML]

If to Landlord:                      Highway 11/31, LLC  
2801 Highway 280, Suite 345  
Birmingham, AL 35223

Any party may change the place that notices are to be sent by written notice delivered in accordance with this Agreement.

7. **SUCCESSORS AND ASSIGNS.** As used in this Agreement, the term "Tenant" shall mean Tenant and any subsequent holder or holders of an interest of the lessee under the Lease, and the term "Lender" shall mean Lender or any other subsequent holder or holders of the Mortgage or any party becoming a mortgagee in possession or acquiring title to the Property or the Demised Premises by purchase at a foreclosure sale, deed in lieu of foreclosure, other enforcement of the Mortgage, by deed of the Lender, or otherwise. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The terms Lease, Mortgage and Lease Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceable shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**8. RECORDATION. Mortgagee agrees to record this agreement promptly upon full execution of the same. Upon recorded satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.**

This page ends here.

9. AUTHORITY. The individuals executing this Agreement hereby represent and warrant that they are empowered and duly authorized to so execute this agreement on behalf of the parties they represent.

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

WITNESS:

Katana Mauer

LENDER:


Protective Life Insurance Company

By: 

Name: AMY E. MERTLER

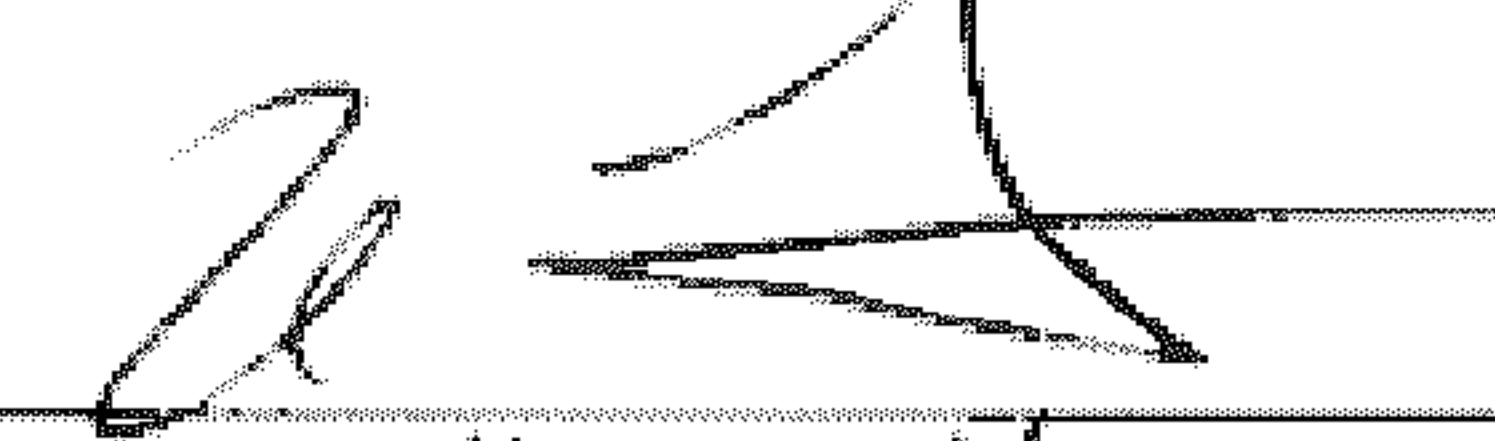
Its: VICE PRESIDENT  
INVESTMENTS

WITNESS:

  
STEVE NOBE

LANDLORD:

Highway 11/31, LLC

By: 

Name: William Lettau

Its: manager

WITNESS:

Susan L Beaumont

TENANT:

HomeGoods, Inc.

By: 

Name: Lisa A. Schwartz

Its: Authorized Signatory

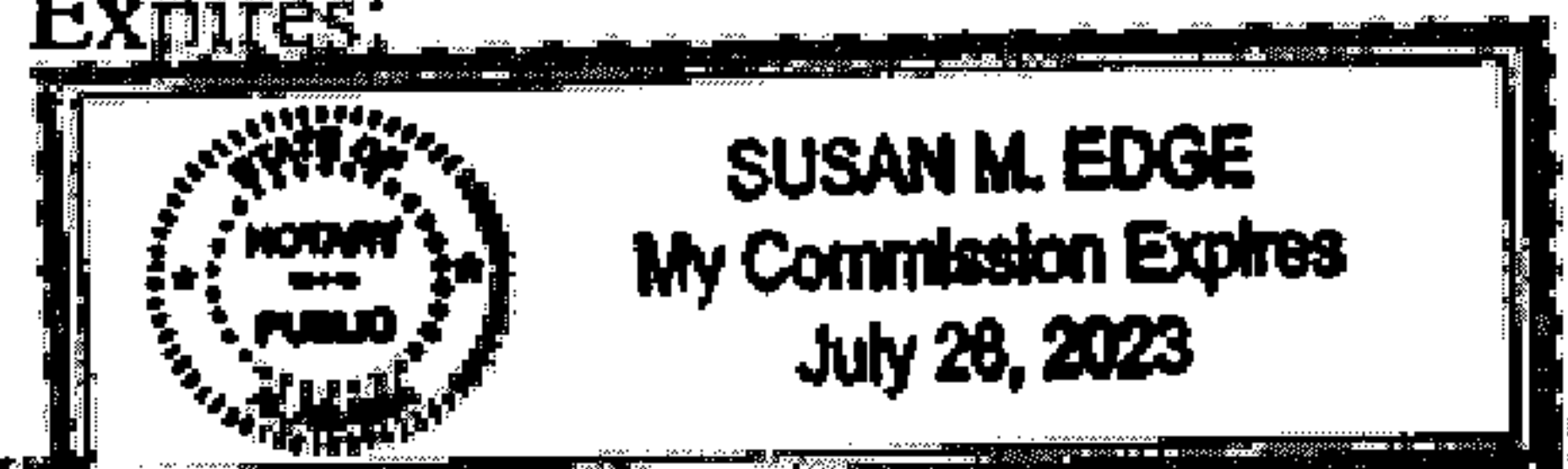


**LENDER'S ACKNOWLEDGEMENT**

State of Alabama )  
 ) SS.  
County of Jefferson )

The foregoing instrument was acknowledged before me this 11 day of March,  
2020 by Amy E. Martler and \_\_\_\_\_ on behalf of  
Protective Life Insurance Company

Susan M. Edge  
Notary Public  
My Commission Expires:



**LANDLORD'S ACKNOWLEDGEMENT**

State of Alabama )  
 ) SS.  
County of St. Clair )

The foregoing instrument was acknowledged before me this 11th day of March,  
2020 by William Leitner and Steve Noble on behalf of  
Hwy 1131, LLC

Heather Hardin  
Notary Public  
My Commission Expires:





Poor Quality

**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 twenty thousand nine hundred five (20,905) square feet of floor area having a frontage and width of approximately one hundred three (103) 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 "HomeGoods" on the Lease Plan. The area labeled "No Change Area" on 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 no event shall any changes to the Lease Plan (whether or not in the No Change Area) adversely affect the visibility of Tenant's storefront or signs or accessibility of the Demised Premises to and from any other portion of the Shopping Center or the Main Streets. In addition, Tenant shall have the exclusive right to use certain service areas adjacent to the Demised Premises which contain one (1) 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 (defined in Section 6.1) for purposes of Article VI for purposes for Paragraph 10 of Schedule B. If, after completion of Landlord's Construction Work, the Demised Premises shall contain less than the floor area required above then, in addition to all other remedies of Tenant, as a result thereof, the minimum rent payable by Tenant pursuant to Section 5.1 shall be reduced proportionately. Landlord agrees that the name of the Shopping Center shall not contain the trade name of any business operated in the Shopping Center.

The Demised Premises are situated within the so-called Alabaster Promenade (the "Shopping Center"), on the Southeast corner of U.S. Highway 31 and Interstate Highway 65 (herein collectively referred to as the "Main Streets") in Alabaster, Shelby County, Alabama. The Shopping Center is the land, together with the buildings and other structures from time to time thereon, shown on the Lease Plan, and is more particularly described as follows:

See below Legal Description.

**Legal Description****Parcel I:**

Lots 5 and 6 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

**Parcel II:**

Lots 2 and 8 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

**Parcel III:**

Lots 9, 10, 11, 12 and 13 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

**Parcel IV:**

Lots 14-A and 19-A according to the survey of Colonial Promenade Alabaster South No. 2 as recorded in Map Book 43, Page 104, in the Probate Office of Shelby County, Alabama.

4825-4436-9590v2  
2914155-003007 03/05/2020



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
08/19/2024 11:53:33 AM  
\$43.00 CHARITY  
20240819000258250

*Allen S. Bayl*