

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Pacific Life Insurance Company  
700 Newport Center Drive  
Newport Beach, CA 92660  
Attn: Real Estate Investments  
Loan No. 219620201

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**SUBORDINATION, NON-DISTURBANCE, AND  
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT (this "Agreement") is made as of December 18, 2019 (the "Effective Date"), by and among PACIFIC LIFE INSURANCE COMPANY, a Nebraska corporation (together with its successors and assigns, "Lender"), Sterling Jewelers Inc, a Delaware corporation ("Tenant"), which operates under the trade name Jared-The Galleria of Jewelry, and University Place SPE L.L.C., a Utah limited liability company ("Landlord").

**RECITALS**

A. Landlord is the current owner of those certain premises commonly known as University Place Perimeter located in Orem, Utah, more particularly described in Exhibit A attached hereto (the "Real Estate").

B. Lender has made a loan (the "Loan") to Landlord pursuant to a Term Loan Agreement, by Landlord and Lender (together with all amendments thereto and restatements thereof, whether before or after the Effective Date, "Loan Agreement"), which Loan is evidenced by one or more promissory notes (together with all amendments, restatements, extensions, and replacements thereof and thereto, whether before or after the Effective Date, collectively, the "Note"), by Landlord payable to the order of Lender.

C. Landlord's obligations under the Note, the Loan Agreement, and all other Loan Documents (as defined in the Loan Agreement), are secured by that certain Deed of Trust, Financing Statement and Security Agreement (With Assignment of Rents and Fixture Filing), by Landlord in favor and for the benefit of Lender, dated December 18, 2019, and recorded in the Official Records of Utah County, Utah as Instrument No. 134187:2019 (together with all amendments thereto and restatements thereof, whether before or after the Effective Date, the "Security Instrument").

D. The Security Instrument encumbers, among other things, Landlord's entire interest in the Real Estate and the current and future improvements (the "Improvements") situated thereon (collectively, the "Property").

E. Under the terms of that certain Lease dated April 9, 2008, as amended by a First Amendment of Lease dated July 22, 2009 (collectively, the Lease), Landlord leased to Tenant a portion of the Property, as more particularly described in the Lease (the "Leased Premises").

NOW THEREFORE, to confirm the legal effect of the Security Instrument and the Lease and, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENTS

1. Subordination.

(a) The Lease and the leasehold estate created by the Lease and all of Tenant's rights under the Lease are and at all times shall be subordinate to the lien and charge of the Security Instrument, and to all substitutions, renewals, modifications, and amendments thereto (including, without limitation, any of the foregoing that increase the indebtedness secured thereby), subject to the terms and conditions set forth in this Agreement.

2. Non-Disturbance. In the event of foreclosure of the Security Instrument (by judicial process, power of sale, or otherwise) or conveyance in lieu of foreclosure (collectively, such foreclosure or conveyance in lieu thereof is called "Foreclosure"), which Foreclosure occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided and hereafter exercised thereunder, and so long as Tenant is not in default under any of the terms, covenants, and conditions of the Lease beyond any applicable grace or cure period, Lender covenants and agrees that (i) Tenant's quiet and peaceful possession of the Leased Premises under the terms of the Lease shall not be disturbed or interfered with so long as Tenant is not in default beyond any applicable cure periods of any of the terms, covenants, or conditions of the Lease; and (ii) Tenant's rights and remedies under the Lease shall not be limited, affected, modified, or diminished (including but not limited to Tenant's rights and remedies with respect to casualty insurance proceeds and condemnation awards), nor shall Tenant's obligations under the Lease be expanded, by Lender in the exercise of any of its rights or remedies under the Security Instrument. Lender further covenants and agrees that it shall not name Tenant as a party in any legal proceeding to foreclose or otherwise exercise any rights or remedies under the Security Instrument unless such joinder shall be required by applicable law; provided, however, that any such joinder shall not result in the termination of the Lease. Lender and Tenant agree that the covenant of quiet and peaceful possession of the Leased Premises as set forth in this Section 2 is intended to be binding on any person or entity, including Lender, who takes title to the Property as a result of a Foreclosure ("Purchaser"). From and after the date Purchaser acquires title to the Property and becomes the Landlord under the Lease, Lender shall have no liability for any acts or omissions of any Purchaser for violating such covenant or otherwise, unless Lender or a wholly owned affiliate of Lender is the Purchaser.

3. Attornment. In the event Foreclosure occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided and hereafter exercised thereunder, then notwithstanding the subordination of the Lease provided for herein, Tenant shall

Subordination, Non-Disturbance, and Attornment Agreement

attorn to Purchaser and recognize Purchaser as Tenant's landlord under the Lease. So long as Tenant is in possession of the Leased Premises and is not in default under any of the terms, covenants, and conditions of the Lease beyond any applicable grace or cure period, Purchaser shall recognize and accept Tenant as its tenant thereunder, whereupon the Lease shall continue, without further agreement, in full force and effect as a direct lease between Purchaser and Tenant for the remaining term thereof, together with all extensions and renewals now provided thereunder, upon the same terms, covenants, and conditions as therein provided, subject to the provisions contained in Section 4 and Section 8 below. Tenant shall thereafter make all rent payments directly to or at the direction of Purchaser, subject to the limitations and other provisions contained in Section 4 and Section 8 below. Landlord hereby authorizes Tenant to make such rent payments directly to Purchaser and waives all claims against Tenant for any sums so paid at Purchaser's request and direction. Such attornment as provided herein shall be self-operative without further aid or execution of further instruments by parties to this Agreement, immediately upon Purchaser succeeding to the interest of Landlord under the Lease.

4. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event Foreclosure occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided and hereafter exercised thereunder, the liability of Purchaser shall be limited as set forth below in Section 8. In addition, Purchaser also shall not:

(a) be liable to Tenant for any act, omission, or default on the part of the original Landlord or any other landlord under the Lease and Tenant shall have no right to assert the same or any damages arising therefrom as (i) a claim, defense, or deficiency against Purchaser or its successors or assigns, or (ii) an offset against Purchaser or its successors or assigns, except in either case Tenant may exercise any express rights to abate rent or to terminate the Lease where express conditions arise under which Tenant had rights to abate rent or terminate the Lease. Notwithstanding the foregoing, with respect to uncured defaults of a prior landlord under the Lease that are susceptible of cure by Purchaser and are continuing on the date Purchaser acquires title to the Property (the "Transfer Date"), and for which liability of Purchaser is not excluded by other subsections of this Section 4 ("Continuing Defaults"), Tenant shall have the same remedies against Purchaser as it would have against the prior landlord, but Purchaser shall be liable for damages only to the extent they accrue after the Transfer Date;

(b) be liable to Tenant for the return of any deposit, rental security, or any other sums deposited with the original Landlord or any other landlord under the Lease and not delivered to Purchaser, as the case may be; provided that Purchaser shall be liable to Tenant under the terms of the Lease to the extent of any such deposit or rental security actually received by Purchaser that is free and clear of any interest of Landlord or any other landlord under the Lease;

(c) be bound by any cancellation, surrender, or termination of the Lease (except those Tenant cancellation, surrender, or termination rights expressly contemplated by the Lease that do not require Landlord's prior consent), or by any amendment, waiver of rights, or modification of the Lease after the Effective Date, in each case if not consented to in writing by Lender, which consent will not be unreasonably withheld, conditioned, or delayed; or

(d) be bound by or subject to any defense or offset on Tenant's part for any payment of rent more than 30 days in advance of the date due under the terms of the Lease, unless Lender actually received such rent or Lender has consented to such advance payment in writing, which consent Lender may grant or withhold in its sole and absolute discretion.

5. Further Documents. Except as expressly provided for herein, the foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of any party hereto. Tenant agrees, however, to execute and deliver to Lender, Purchaser or to any person to whom Tenant agrees to attorn pursuant hereto such other instruments as Lender, Purchaser or such person shall reasonably request in order to confirm said attornment.

6. Notice and Cure. Tenant agrees that if a default by Landlord occurs under the Lease:

(a) A copy of each notice given to Landlord pursuant to the Lease shall also be given simultaneously to Lender, and no such notice shall be effective for any purpose under the Lease unless so given to Lender; and

(b) If Landlord fails to cure any default within the time prescribed by the Lease (or within a reasonable time if no such time period is provided), Lender shall have an additional 30 days after the later of (i) the expiration of Landlord's cure period or (ii) Lender's receipt of Tenant's written notice of such default within which to cure such default before Tenant has the right to terminate the Lease or exercise any self-help rights from which a right of setoff would arise. If such default cannot reasonably be cured by Lender within such additional 30-day period because in order to cure such failure Lender must acquire control or ownership of the premises demised under the Lease, then Lender shall have such additional time as may be reasonably necessary to diligently pursue foreclosure proceedings or otherwise acquire title to or control of the Improvements (but in no event longer than one hundred twenty (120) days), if such proceedings are commenced within such additional 30-day period and thereafter diligently pursued to completion.

7. Notices. All notices, demands, and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when personally served or if sent by U.S. registered or certified mail, postage prepaid, or by recognized overnight delivery service, addressed as set forth below when received. Concurrently with the delivery of any such notice, demand, or request sent to Lender by one of the methods specified in the immediately preceding sentence, a copy thereof shall also be sent by email to Lender at the email address for Lender sent forth below.

Lender: PACIFIC LIFE INSURANCE COMPANY  
700 Newport Center Drive  
Newport Beach, California 92660  
Attn: Commercial Servicing Operations  
Real Estate Investments  
Loan No. 219620201

Email: REDocumentManagement@pacificlife.com

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Tenant: Sterling Jewelers Inc  
375 Ghent Road  
Akron, OH 44333  
Attn: Legal Department (#S2501)

With a copy to:

Email: [Legal.notices@jewels.com](mailto:Legal.notices@jewels.com)

Landlord: University Place SPE L.L.C.  
c/o Woodbury Corporation  
2733 East Parleys Way  
Salt Lake City, UT 84109  
Attn: Lease Administration; [leaseadmin@woodburycorp.com](mailto:leaseadmin@woodburycorp.com)  
with a copy to: Joe Nelson; [joe.nelson@woodburycorp.com](mailto:joe.nelson@woodburycorp.com)

8. Limitation of Personal Liability. Notwithstanding anything to the contrary herein or in the Lease, Purchaser shall have no obligation, nor incur any liability, beyond the interest, if any, of Purchaser in the Property. For the purposes of this Agreement, Purchaser's interest in the Property shall include (i) the rents issues, profits and income from such land and buildings comprising the Property, (ii) the proceeds from the sale or other disposition of all or any portion of such interest, but if Lender or an affiliate of Lender is the Purchaser, then such amount shall be exclusive of the amount of the Loan indebtedness (including principal, interest and all other amounts payable by Landlord in respect of the Loan). Upon any subsequent sale or transfer of the Property by any Purchaser and assignment of the Lease in connection therewith, the selling or transferring Purchaser shall be released from all further duties, liabilities and obligations to Tenant and its successors or assigns arising or accruing under the Lease from and after the date of such sale or transfer. By executing this Agreement, Landlord agrees that nothing contained in this Section 8 shall impair, limit, affect, lessen, abrogate or otherwise modify Landlord's obligations to Tenant under the Lease.

9. Tenant's Trade Fixtures. Lender acknowledges and agrees that Tenant has or will install in or on the Premises Tenant's Trade Fixtures (as defined in the Lease). Lender covenants and agrees that it has no interest and waives any interest in Tenant's Trade Fixtures, or any insurance proceeds which are payable with respect thereto, it being understood that Tenant's Trade Fixtures are and shall remain the personal property of Tenant which shall not be subject to any lien or security interest of Lender against the Property, the Premises, or any other property of Landlord.

10. Binding Effect. Upon mutual execution of this Agreement by all of the parties hereto, the terms, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

11. Modification. This Agreement may not be modified orally or in a manner other than by an agreement signed by the parties hereto or their respective successors in interest.

12. Choice of Law. This Agreement shall be governed by the internal law (and not the law of conflicts) of the State of Utah.

13. Counterparts. This Agreement may be executed in two or more counterparts, all of which, when taken together, shall constitute one and the same original. Tenant and Landlord hereby authorize Lender to fill in applicable dates and recording information in this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the Effective Date.

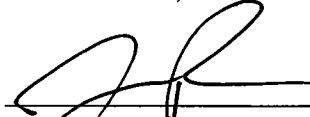
*[Remainder of page intentionally left blank; signature pages follow]*



**Tenant's Signature Page for Subordination, Non-Disturbance, and Attornment Agreement**

**TENANT:**

Sterling Jewelers Inc., a Delaware corporation

By:   
Name: Jeremy D. Rine  
Title: Vice President and Associate General Counsel

Address: [See Section 7 above.]

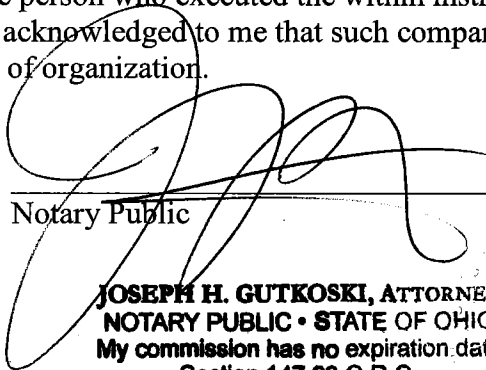
**NOTARY ACKNOWLEDGMENT**

STATE OF OHIO )

: ss.

COUNTY OF SUMMIT )

On this 19<sup>th</sup> day of July 2019, before me personally appeared Jeremy D. Rine, to me personally known to be the Vice President and Associate General Counsel of Sterling Jewelers Inc., a Delaware corporation, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

  
\_\_\_\_\_  
Notary Public

**JOSEPH H. GUTKOSKI, ATTORNEY  
NOTARY PUBLIC • STATE OF OHIO  
My commission has no expiration date  
Section 147.03 O.R.C.**



~~Landlord's Signature Page for Subordination, Non-Disturbance, and Attornment Agreement~~

**LANDLORD:**

UNIVERSITY PLACE SPE L.L.C., a Utah limited liability company

By: WOODBURY MANAGEMENT COMPANY, L.C., a Utah limited liability company, Its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Address: [See Section 7 above.]

**NOTARY ACKNOWLEDGMENT**

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known to be the \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

\_\_\_\_\_  
Notary Public



STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known to be the \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

\_\_\_\_\_  
Notary Public

*[Handwritten signature]*  
*[Handwritten initials]*

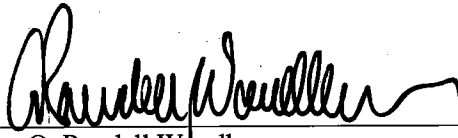
**Landlord's Signature Page for Subordination, Non-Disturbance, and Attornment Agreement**

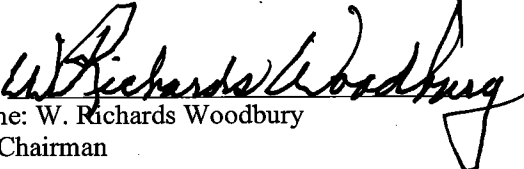
**LANDLORD:**

UNIVERSITY PLACE SPE L.L.C., a Utah limited liability company

By: WOODBURY MANAGEMENT COMPANY, L.C., a Utah limited liability company, Its Manager

By: WOODBURY CORPORATION, a Utah corporation, Its Manager

By:   
Name: O. Randall Woodbury  
Its: President

By:   
Name: W. Richards Woodbury  
Its: Chairman

Address: [See Section 7 above.]

**NOTARY ACKNOWLEDGMENT**

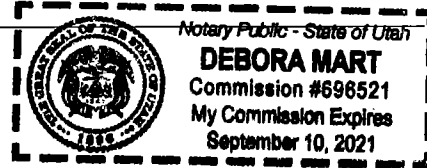
STATE OF UTAH )  
 : ss. )  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of Dec, 2019, by O. Randall Woodbury, President of Woodbury Corporation, a Utah corporation, manager of Woodbury Management Company, L.C., a Utah limited liability company, manager of University Place SPE L.L.C., a Utah limited liability company.



NOTARY PUBLIC

Residing at: \_\_\_\_\_



STATE OF UTAH )

: ss. )

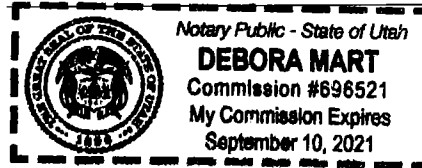
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of Dec, 2019, by W. Richards Woodbury, Chairman of Woodbury Corporation, a Utah corporation, manager of Woodbury Management Company, L.C., a Utah limited liability company, manager of University Place SPE L.L.C., a Utah limited liability company.



NOTARY PUBLIC

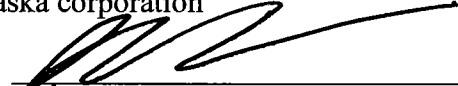
Residing at:



*Lender's Signature Page for Subordination, Non-Disturbance, and Attornment Agreement*

**LENDER:**

PACIFIC LIFE INSURANCE COMPANY,  
a Nebraska corporation

By:   
Name: Jennifer L. Portnoff  
Title: Vice President

By:   
Name: Raphaela A. Taylor  
Title: Assistant Secretary

Address: [See Section 7 above.]

**NOTARY ACKNOWLEDGMENT**

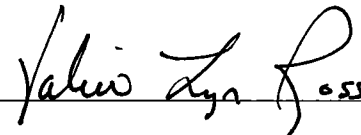
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

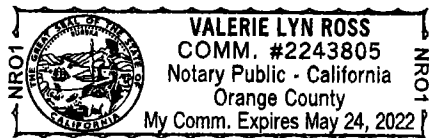
State of California )  
County of Orange )



On December 17, 2019, before me, Valerie Lyn Ross, a Notary Public, personally appeared Jennifer Portnoff and Raphaela Taylor, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



**EXHIBIT A**

**Description of Real Estate**

That certain real property situated in the State of Utah, County of Utah, City of Orem, and described as follows:



**Exhibit A****LEGAL DESCRIPTION****Parcel 1:**

Lots 1, 2, 3, 3D, 3E, 4, 5B, 6A, 7, 8C, 8D, 9, 10, 12, 20, 21, 22, 24, and 25, University Place Subdivision Plat 'B', according to the Official Plat thereof, recorded December 12, 2019, as Entry No. 131493:2019, Map Filing No. 16877, in the Office of the Utah County Recorder, State of Utah.

**Parcel 2:**

Non-exclusive easements for ingress and egress as set forth in that certain Cross Access Easement Agreement dated December ~~18~~<sup>14</sup>, 2019 between University Place SPE L.L.C., a Utah limited liability company and University Mall Shopping Center, L.C., a Utah limited liability company, said instrument recorded December ~~18~~, 2019 as Entry No. ~~134144:2019~~, over the following described property, to wit:

Lots 23, 26, 30 and 33, University Place Subdivision Plat 'B', according to the Official Plat thereof, recorded December 12, 2019, as Entry No. 131493:2019, Map Filing No. 16877, in the Office of the Utah County Recorder, State of Utah.

**Parcel 3:**

Non-exclusive easement for parking as set forth in that certain Parking Easement Agreement dated December ~~18~~<sup>10</sup>, 2019 between University Place SPE L.L.C., a Utah limited liability company and University Mall Shopping Center, L.C., a Utah limited liability company, said instrument recorded December ~~18~~, 2019 as Entry No. ~~134146:2019~~, over the following described property, to wit:

Lots 30 and 33, University Place Subdivision Plat 'B', according to the Official Plat thereof, recorded December 12, 2019, as Entry No. 131493:2019, Map Filing No. 16877, in the Office of the Utah County Recorder, State of Utah.

**Parcel 4:**

Non-exclusive easement as set forth in that certain Cross Easement Agreement dated May 30, 2008 and the terms and provisions thereof, between University Mall Shopping Center L.C., a Utah limited liability company and Utah Transit Authority, a public transit district (UTA) and KC PROPCO, LLC, a Delaware limited liability company, recorded March 5, 2009 as Entry No. 23588:2009.

**Parcel 5:**

**Lots 202 and 204, University Mall Plat A – Lot 201-205 Subdivision, according to the official plat thereof, recorded November 29, 2017 as Entry No. 117896:2017 and Map Filing No. 15792, in the office of the Utah County Recorder.**

**Exhibit A**