

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

ENT 134433:2019 PG 1 of 16  
Jeffery Smith  
Utah County Recorder  
2019 Dec 18 01:13 PM FEE 74.00 BY MA  
RECORDED FOR Stewart Title Insurance Agency of Utah  
ELECTRONICALLY RECORDED

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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"), TEXAS ROADHOUSE HOLDINGS LLC, a Kentucky limited liability company ("Tenant"), which operates under the trade name Texas Roadhouse #284), 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 Ground Lease dated November 16, 2009, as amended by that certain First Amendment to Ground Lease Agreement dated March 19, 2010, and as further amended by that certain Second Amendment to Ground Lease dated October 10, 2018 (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 all terms and conditions contained therein, 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.

(b) All condemnation awards and insurance proceeds paid or payable with respect to the Leased Premises and relating solely to Tenant's insurance required to be maintained under the Lease, whether or not received by Lender, shall be applied and paid in the manner set forth in the Lease; provided, however, nothing contained in this Section 1(b) shall be deemed to limit, alter, and/or otherwise change the disbursement of insurance proceeds required to be maintained by Landlord under the Security Instrument.

2. Non-Disturbance.

(a) Lender agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable notice or cure period: (A) Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Security Instrument or to enforce any rights under the Security Instrument or the bond or note or other obligation secured thereby, unless required by law; and (B) the possession by Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Security Instrument or the bond or note or other obligation secured thereby, or for the foreclosure of the Security Instrument or the enforcement of any rights under the Mortgage or any other documents held by the Security Instrument, or by any judicial sale or execution or other sale of the Property, or by any deed given in lieu of foreclosure, or by the exercise of any other rights given to Lender by any other documents or as a matter of law, or (ii) any default under the Security Instrument or the bond or note or other obligation secured thereby; and

(b) Additionally, 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 agrees that Lender shall take no action that disturbs Tenant in its quiet and peaceful possession of the Leased Premises, subject to the terms and conditions of the Lease and this Agreement. 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"). 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, (A) the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as tenant thereunder, and the then owner of the Landlord's interest in the Leased Premises, as landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease; (B) Tenant shall attorn to Purchaser and recognize Purchaser as Tenant's landlord under the Lease and shall be bound to Purchaser under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term); and (C) except as otherwise expressly set forth in in this Agreement and 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 and shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions Purchaser hereby agrees to assume and perform, 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. Following written notice, 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. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's compliance with Lender's demands and agrees to defend indemnify and hold Tenant harmless from and against any and all claims, demands, losses, or liabilities asserted by, through or under Landlord for any and all payments so made.

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. 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;

(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 Material Modification (as hereinafter defined) 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. As used in this Agreement, the term "Material Modification" shall mean any amendment or modification of the Lease which (i) shortens or extends the term of the Lease (excluding Tenant's renewal option(s) set forth in the Lease), (ii) results in a reduction of rent or other sums due and payable by Tenant pursuant to the Lease, (iii) increases Landlord's obligations under the Lease by more than a de minimus extent, or (iv) decreases Tenant's obligations under the Lease by more than a de minimus extent. Notwithstanding the foregoing, the parties acknowledge and agree that in no event shall a Material Modification include any amendment or modification of the Lease arising from the exercise of an express right granted to the Tenant under the Lease;

(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;

(e) be bound by any warranty or representation of Landlord relating to work performed prior to the Transfer Date by or on behalf of Landlord or any predecessor landlord under the Lease;

(f) be liable to Tenant for construction, restoration, or repair, or delays in construction, restoration, or repair, of the Improvements or the portion thereof leased to Tenant under the Lease or any tenant improvements (including, without limitation, any tenant improvement allowances); provided, however, the foregoing is not intended to limit, waive, or eliminate any restoration or repair obligations of Purchaser as the landlord under the Lease with

respect to matters first arising after the Transfer Date or matters that arose prior to, but have not yet been restored or repaired as of, the Transfer Date; or

(g) be bound by any purchase option or right of first offer or first refusal or similar right to purchase the Property or any portion thereof granted to Tenant under the Lease.

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 reasonable 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 default notice given to Landlord pursuant to the Lease shall also be given simultaneously 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 (if curable by Lender within such 30-day period) before Tenant has the right to terminate the Lease. 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, if such proceedings are commenced within such additional 30-day period and thereafter diligently pursued to completion. Notwithstanding anything to the contrary contained in this Section 6, nothing contained in this Agreement shall be deemed to limit Tenant's right to exercise its self-help rights permitted by and in accordance with the Lease.

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 set 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

Tenant: Texas Roadhouse Holdings LLC  
6040 Dutchmans Lane  
Louisville, KY 40205  
Attn: Legal Department  
Email: legal@texasroadhouse.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  
with a copy to: Joe Nelson; 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. In calculating Purchaser's interest in the Property, the fair market value of the Property shall be reduced by the greatest of the following: (a) the actual aggregate amount of any financing secured by a lien on the Property; (b) if there is no such secured financing, then a deemed aggregate amount of financing equal to 80% of the fair market value of the Property; or (c) if Lender or an affiliate of Lender is the Purchaser, then the amount of the Loan indebtedness (including principal, interest and all other amounts payable by Landlord in respect of the Loan) at the time of Foreclosure. Upon any subsequent sale or transfer of the Property by any Purchaser, the selling or transferring Purchaser shall be released from all further duties, liabilities and obligations to Tenant and its successors or assigns first 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. 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.

10. 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.

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

12. 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.

13. Tenant's Personal Property. Lender hereby acknowledges and agrees that all fixtures and equipment whether owned by Tenant or any subtenant or leased by Tenant from a lessor/owner (hereinafter called the "Equipment Lessor") installed in or on the Leased Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant or any

such Equipment Lessor and may be removed by Tenant or any such Equipment Lessor at any time. In no event (including a default under the Lease or the Security Instrument) shall Lender have any liens, rights or claims in Tenant's or Equipment Lessor's fixtures and equipment, whether or not all or any part thereof shall be deemed fixtures; and Lender expressly waives all rights of levy, distraint, or execution with respect to said fixtures and equipment.

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]*







~~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

**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: *O. Randall Woodbury*  
Name: O. Randall Woodbury  
Its: President

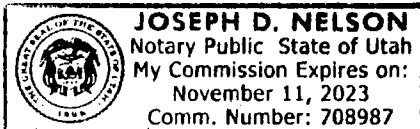
By: *W. Richards Woodbury*  
Name: W. Richards Woodbury  
Its: Chairman

Address: [See Section 7 above.]

**NOTARY ACKNOWLEDGMENT**

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

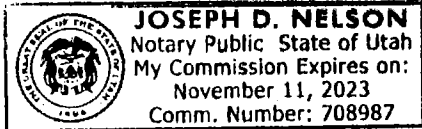
The foregoing instrument was acknowledged before me this 13 day of December, 2019, by O. Randall Woodbury, President of Woodbury Corporation, a Utah corporation, manager of Woodbury Management Company, L.C., a Utah limited liability company, manager of University Place SPE L.L.C., a Utah limited liability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



*J D Nelson*  
NOTARY PUBLIC  
Residing at: *Layton, UT*

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

The foregoing instrument was acknowledged before me this 13 day of December, 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.



*J. D. Nelson*  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: Clayton, UT


*[Handwritten mark]*

*[Handwritten mark]*

*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**

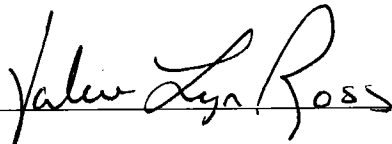
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

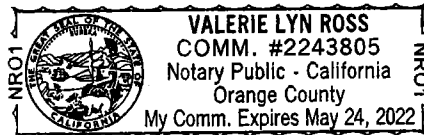
State of California )  
County of Orange )

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 

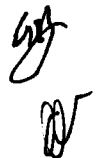




**EXHIBIT A**

**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**