

---

**FOUNDATION CAPITAL RESOURCES, INC.**

(Lender)

- and -

ENT 80057:2017 PG 1 of 10  
**Jeffery Smith**  
**Utah County Recorder**  
2017 Aug 17 09:54 AM FEE 29.00 BY MA  
RECORDED FOR First American Title NCS St. Louis  
ELECTRONICALLY RECORDED

**SHOPKO STORES OPERATING CO., LLC**

(Tenant)

---

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

---

Dated: As of August 15, 2017

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Foundation Capital Resources, Inc.  
Attn: Post-Closing  
3900 South Overland Avenue  
Springfield, MO 65807  
(Re: Loan No. 6005487)

When Recorded Return To: \_\_\_\_\_  
First American Title Insurance Company  
National Commercial Services  
8182 Maryland Avenue, Suite 400  
St. Louis, Missouri 63105  
File No: NCS 643638-3

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this “**Agreement**”) is made as of the 15<sup>th</sup> day of August, 2017, by and between **FOUNDATION CAPITAL RESOURCES, INC.**, a Georgia corporation, having its principal place of business at 3900 South Overland Avenue, Springfield, Missouri 65807 (together with its successors and/or assigns, “**Lender**”) and **SHOPKO STORES OPERATING CO., LLC**, a Delaware limited liability company, having an address at 700 Pilgrim Way, Green Bay, Wisconsin 54304 “**Tenant**”).

**RECITALS:**

A. Lender has advanced a loan to **RS OREM PARTNERS, LLC**, a Delaware limited liability company (“**Borrower**”) in the principal sum of **EIGHT MILLION ONE HUNDRED SIXTY NINE THOUSAND NINE HUNDRED EIGHTY FOUR DOLLARS 69/100 (\$8,169,984.69)** (the “**Loan**”) advanced pursuant to that certain Loan Agreement of even date herewith between Borrower and Lender (together with all extensions, renewals, modifications, substitutions and amendments thereof, the “**Loan Agreement**”).

B. The Loan is secured by, among other things, the Security Instrument (as defined in the Loan Agreement) which grants Lender a first lien on the Properties (as defined in the Loan Agreement) encumbered thereby and is further evidenced by the Note (as defined in the Loan Agreement).

C. Borrower has entered into a certain Lease Agreement dated as of the date hereof (the “**Lease**”) with Tenant, which Lease relates to the Properties.

D. Tenant has agreed to confirm the subordination of the Lease to the Security Instrument and to the liens thereof on the terms and conditions hereinafter set forth.

**AGREEMENT:**

For good and valuable consideration, Tenant and Lender agree as follows:

1. **Subordination.** The Lease (including any options to purchase or rights of first refusal to purchase) is and shall at all times be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the liens thereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **Non-Disturbance and Attornment.** If Lender or any other subsequent purchaser of the Properties shall become the owner of the Properties by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as “**Purchaser**”), provided no event of default exists under the Lease, (a) Purchaser shall not (i) disturb Tenant’s possession of the Properties nor (ii) name Tenant as a party to any foreclosure or other proceeding to enforce the terms of the Security Instrument and (b) any sale or other transfer of the Properties or of Borrower’s interest in the Lease, pursuant to

foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument, will be subject and subordinate to Tenant's possession and rights under the Lease; and (c) the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Properties shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (i) liable for the failure of any prior landlord (any such prior landlord, including Borrower and any successor landlord, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Properties; (ii) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Properties; (iii) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser; (iv) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless such sums are actually received by Purchaser; (v) bound by any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Lender's written consent; or (vi) any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Borrower and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease. Notwithstanding anything to the contrary contained in this Agreement, in the case of clauses (i) and (ii) herein, the foregoing shall not limit either (1) Tenant's right to exercise any offsets, defenses, claims, reductions, deductions or abatements otherwise available to Tenant because of events occurring before or after the date of attornment to the extent Lender has received notice thereof and the opportunity to cure within the time periods set forth in this Agreement (it being further agreed that offsets, reductions, deductions or abatements under the Lease that were deducted by Tenant prior to the date upon which Purchaser succeeds to the interest of Prior Landlord shall not be subject to challenge), or (2) Purchaser's liability for any defaults that continue after the date of attornment that violate Purchaser's obligations as landlord under the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Properties and shall in no event exceed such interest. Such attornment by Tenant shall be effective and self-operative without the execution of any further instrument. Provided Purchaser complies with the provisions of this Section 2, Tenant agrees to execute and deliver from time to time, for the benefit of Purchaser upon the request of Purchaser, (a) an instrument or certificate in form and substance acceptable to Tenant which, in the reasonable judgment of Purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect), (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, and (iv) that to Tenant's knowledge no default, or state of facts, which with the passage of time, or notice, or both, would constitute a default, exists on the part of either party to the Lease.

3. **Notices.** All notices required or permitted hereunder shall be given and become effective as provided in Loan Agreement. Notices to the Tenant shall be addressed as follows:

ShopKo Stores Operating Co., LLC  
700 Pilgrim Way  
Green Bay, WI 84304  
Attention: Chief Financial Officer and General Counsel

and

Klehr, Harrison, Harvey, Branzberg & Ellers, LLP  
260 South Broad Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19102  
Attention: Bradley A. Krouse, Esq.

4. **Lender's Right of Access.** Tenant agrees that Lender shall have the rights of access to the Properties for the purpose of curing a default under the Lease as granted to Borrower pursuant to the terms of the Lease and Lender agrees not to disturb the normal business operations of Tenant at such Properties in connection therewith.

5. **Notice to Lender.** Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any offset right or termination right, Tenant agrees that it shall deliver to Lender a copy of any written notice of the breach or default by Borrower giving rise to same (the "**Default Notice**"), and, thereafter, the opportunity to cure such breach or default as provided for below.

6. **Cure.** After Lender receives a Default Notice, Lender shall have the same period of time available to Landlord under the Lease in which to cure the breach or default by Borrower. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Borrower, except to the extent that Lender agrees or undertakes otherwise in writing.

7. **Proceeds and Awards.** Provided that Tenant is not in default under the terms of the Lease (beyond any applicable cure periods), Lender agrees that, notwithstanding any provision hereof to the contrary, the terms of the Lease shall continue to govern with respect to the disposition of any insurance proceeds or eminent domain awards.

8. **Payment of Rent.** From time to time, if Landlord and Lender send a written notice to Tenant that an Event of Default exists under the Security Instrument, or any related loan document, then notwithstanding anything in the Lease to the contrary, Tenant will pay all Base Rent in accordance with such notice, with the same force and effect as if the Base Rent had been paid directly to Landlord, and Tenant shall continue making such payment in accordance with such notice, until Landlord and Lender provides Tenant with a written notice to the contrary.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.


10. **Governing Law.** This Agreement shall be deemed to be a contract entered into pursuant to the laws of the state in which the Premises is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state in which the Premises is located.

11. **Miscellaneous.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.


**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

**FOUNDATION CAPITAL RESOURCES, INC.**

By:   
Name: Joshua L. Bartlotti  
Title: Vice President

**SHOPKO STORES OPERATING CO., LLC**

By:   
Name: Donna Capichano  
Title: Vice President Store Development

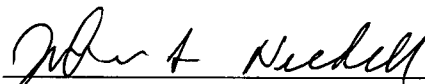
THE UNDERSIGNED ACCEPTS AND AGREES TO THE PROVISIONS HEREOF:

**RS OREM PARTNERS, LLC,**  
a Delaware limited liability company

BY: RS INVESTORS, LLC,  
a Delaware limited liability company, its Sole Member

By: Redwood Real Estate Partners, LLC,  
a Delaware limited liability company, its Manager

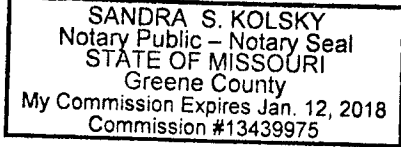
By: Kairos Investment Management Company, LLC,  
a Delaware limited liability company, its Manager

By:   
Name: Jonathan A. Needell  
Title: President and CIO

STATE OF MISSOURI }  
 } ss.  
COUNTY OF GREENE }

On this 15th day of August, 2017, before me, Sandra S. Kolsky, a Notary Public in and for said state, personally appeared Joshua L. Bartlotti, Vice President of Foundation Capital Resources, Inc., known to me to be the person who executed the within instrument in behalf of said corporation, and acknowledged to me that he executed the same for the purposes therein stated.

(SEAL)



*Sandra S. Kolsky*  
\_\_\_\_\_  
Notary Public  
Type or Print Name Sandra S. Kolsky

My commission expires: 1/12/18

ACKNOWLEDGEMENTS

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-named \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, and to me known to be the persons who executed the foregoing instrument and acknowledged the same.

*see attached*

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission: \_\_\_\_\_

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF BROWN )

Personally came before me this 8 day of August, 2017, the above-named Donna Capichano, to me known to be the VP Store Development of Shopko Stores Operating Co., LLC, and to me known to be the persons who executed the foregoing instrument and acknowledged the same.



Mary E Brown  
Notary Public, State of Wisconsin  
My Commission: Exp. 8/10/19



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.

**All-Purpose Acknowledgement**

State of California )  
County of Orange )

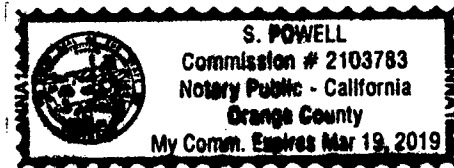
On August 10, 2017 before me, S. Powell, Notary Public, personally appeared  
*Date* *Name and Title*

Jonathan A. Needell who proved to me on the basis of satisfactory evidence to be the  
*Name of Signer*  
person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 S. Powell  
*Notary Public*



*Place Notary Seal Above*

**EXHIBIT "A"****Legal Description**

The following property located in Utah County, Utah:

**PARCEL 1:**

Lot 1, PLAT "D", BOYER RETAIL CENTER, according to the Official Plat thereof recorded October 17, 2002, as Entry No. 122669:2002 under Pap No. 9755 of Official Records.

**PARCEL 2:**

Those rights appurtenant to Parcel 1, as set forth in that certain Declaration of Restriction executed by Family First Federal Credit Union, f.k.a. Orem Geneva Federal Credit Union, dated August 29, 1989, and recorded September 8, 1989, as Entry No. 26561 in Book 2626 at Page 66 of Official Records and that certain Corrected Declaration of Restriction recorded February 28, 1990, as Entry No. 6182 in Book 2669 at Page 113 and re-recorded March 6, 1990, as Entry No. 6818 in Book 2670 at Page 555 of Official Records.

**PARCEL 3:**

Those rights appurtenant to Parcel 1, as set forth in that certain Grant of Easement recorded September 8, 1989, as Entry No. 26564 in Book 2626 at Page 74 and re-recorded September 11, 1989, as Entry No. 26675 in Book 2626 at Page 385 and re-recorded February 15, 1990, as Entry No. 4759 in Book 2665 at Page 860 of Official Records and also in that certain amended and restated Grant of Easements recorded April 30, 2001, as Entry No. 41575:2001 of Official Records.

**PARCEL 4:**

Non-exclusive easement rights created by Cross-Easement Agreement dated August 31, 1989, by and between Shopko Stores, Inc., d/b/a/ Uvalko Shopko Stores, Inc., a Minnesota corporation, Smith's Food King Properties, Inc., a Utah corporation, and Boyer Orem Associates, a Utah limited partnership, recorded September 8, 1989, as Entry No. 26572 in Book 2626 at Page 123, re-recorded February 15, 1990, as Entry No. 4760 in Book 2665 at Page 869, Utah County Recorder's Office, First Amendment recorded February 14, 1991, as Entry No. 6165 in Book 2764 at Page 50, Second Amendment to Cross-Easement Agreement recorded October 12, 1995, as Entry No. 69315 in Book 3790 at Page 187, Third Amendment to Cross-Easement agreement recorded April 11, 2001, as Entry No. 33819:2001 and Fourth Amendment to Cross-Easement Agreement recorded June 1, 2005, as Entry No. 58459:2005 of Official Records.

Commonly known as 125 South State Street, Orem, Utah