



Doc#: 0326642334
Eugene "Gene" Moore Fee: \$36.00
Cook County Recorder of Deeds
Date: 09/23/2003 11:51 AM Pg: 1 of 7

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SAS294005

Property of Cook County Clerk's Office

This instrument was prepared by and should be mailed to:
Stone, Pogrund & Korey
James P. Ziegler
221 N. LaSalle Street, Suite 3200
Chicago, IL. 60601

SUBORDINATION AND ATTORNMENT AGREEMENT

THIS SUBORDINATION AND ATTORNMENT AGREEMENT (the "Agreement") is dated as of June 3, 2003, between **Royal American Bank** ("Mortgagee"), and **Kozy, Inc.** a Delaware corporation ("Tenant").

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RECITALS:

1. Tenant has entered into that certain lease agreement dated May ___ 2003 with Royal American Bank, as Trustee under Trust Agreement dated May 8, 2003 and known as Trust No. 101055 (the "**Landlord**"), as Lessor, which lease agreement covers certain premises (the "**Premises**") in that certain real property (the "**Property**") commonly known as 219 W. Erie, Chicago, IL 60610-3610 and more particularly described in Exhibit A attached hereto and made a part hereof (herein, said lease agreement, together with any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, are collectively referred to herein as the "**Lease**");
2. Mortgagee has agreed to make a loan to Landlord, to be secured by the lien of a mortgage from Landlord to the Mortgagee (herein, together with all amendments, modifications,

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extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, collectively referred to as the "**Mortgage**") on the Property; and

3. Tenant has agreed to subordinate the Lease to the lien of the Mortgage on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the Premises and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

- a. **Subordination.** The Lease (including all of the terms, covenants and provisions thereof) is and shall be subject and subordinate in all respects to the Mortgage, to the full extent of any and all amounts from time to time secured thereby and interest thereon, all with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.
- b. **Attornment.** Tenant, for itself and its successors and assigns, agrees that it will attorn to and recognize any purchaser of the Property at a foreclosure sale under the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if previously, at that time or thereafter exercised by Tenant) of the term of the Lease upon the same terms and conditions set forth in the Lease.
- c. **Mortgagee's Consent.** Landlord's consent, approval or waiver under or with respect to the Lease or the Premises or any matter related thereto shall not be effective unless such consent, approval or waiver is accompanied by the written consent of Mortgagee. Without limiting the generality of the foregoing, without the prior written consent of Mortgagee, Tenant will not (a) enter into any agreement amending or terminating the Lease, (b) cancel the term of, or surrender, the Lease, or (c) assign or sublet all or any part of the Premises, except only pursuant to any assignment or sublease which, under the express provisions of the Lease, Tenant is entitled to make without the consent of the Landlord.
- d. **Landlord's Default.** Tenant hereby agrees to provide Mortgagee with written notice of any casualty damage to the Premises and any default under the Lease by the Landlord and to provide Mortgagee the greater of (a) thirty (30) days or (b) such reasonable period of time as is necessary thereafter to cause such damage to be repaired (if Landlord is obligated under the Lease to repair or cause such damage to be repaired) or to remedy such default, as the case may be, prior to exercising any right or remedy of Tenant under the Lease. Notwithstanding the foregoing, Tenant agrees that Mortgagee shall have no obligation to remedy any such default.

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- e. **Estoppel Certificate.** Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Landlord, to Mortgagee or to any third party designated by Landlord or by Mortgagee within ten (10) days following Landlord's or Mortgagee's written request therefor, (a) a statement in writing certifying that the Lease is in full force and effect, that Landlord is not in default thereunder (or specifying any defaults by Landlord which Tenant alleges), that rent has not been prepaid more than one (1) month in advance, and specifying any further information about the Lease or the Premises which Landlord or Mortgagee or said third party may reasonably request; (b) a statement in writing that Tenant will recognize the Mortgagee as assignee of the Landlord's rights under the Lease; and (c) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Lease to any third party. Tenant understands that Mortgagee and/or prospective purchasers, other mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligation to deliver such certificates within ten (10) days as described above is a material obligation of Tenant hereunder and under the Lease.
- f. **Further Subordination.** Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, Tenant will not (a) enter into any subordination agreement with any person other than Mortgagee; or (b) agree to attorn to or recognize any purchaser of the Property at any foreclosure sale under any lien other than that of the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise under any lien other than that of the Mortgage (provided, however, that this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Property).
- g. **Insurance Proceeds and Condemnation Awards.** Tenant hereby agrees that any interest of Tenant in any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises shall be subordinate to the interests of Mortgagee in such proceeds or awards. Tenant will neither seek nor accept insurance, any condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises until all amounts secured by the Mortgage have been paid in full. However, Tenant reserves the right to make a separate claim for trade fixtures and moving expenses if separately allocated.
- h. **Notice.** Each notice, demand or other communication in connection with this Agreement shall be in writing and shall be deemed to be given to and served upon the addressee thereof on the earlier of (a) actual delivery to such addressee at its address set out above, or (b) the third business day after the deposit thereof in the United States mails, registered or certified mail, return receipt requested, first class postage prepaid, addressed to such addressee at its address set out above. By notice

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complying with this section, any party from time to time may designate a different address in the forty-eight (48) contiguous continental United States as its address for the purpose of the receipt of notice hereunder.

- i. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.
- j. **Recording.** The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located.
- k. **Counterparts.** This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, this instrument is effective as of the day and year first written above.

TENANT:

Kozy, Inc.

By: Ronald Koziel
Its president

MORTGAGEE:

Royal American Bank

By: Cecily Stovall
Its Senior Vice President

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STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, Patricia A. Hinder, Notary Public in and for said County, in the State aforesaid, do hereby certify that Ronald Koziel, President of Kozy Inc. personally known to me and known to be the same person whose name is subscribed to the foregoing instrument as such President, respectively appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein.

GIVEN UNDER MY HAND AND NOTARIAL SEAL this 3 day of June, 2003.
Patricia A. Hinder
Notary Public
My Commission Expires _____

OFFICE OF
PATRICIA A HINDER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 12/31/04

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EXHIBIT A

Legal Description

Lots 9, 10, and 11 in Block 15 in Newberry's Addition to Chicago in the East ½ of the West ½ of the Northeast ¼ of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-09-223-014-0000

commonly known as 219 West Erie, Chicago, IL 60610-3610