



1012739011

Doc#: 1012739011 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/07/2010 09:14 AM Pg: 1 of 6

EXHIBIT D

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

AGREEMENT made this 19 day of August, 2009 by and between Banco Popular North America ("Mortgagee"), and THE PEP BOYS - MANNY MOE & JACK OF CALIFORNIA, a California corporation ("Tenant").

RECITALS

Mortgagee is now the owner and holder of a mortgage (the "Mortgage") dated July 30, 2001 [and recorded Aug. 16, 2001 in Book No. __, Page ____] [to be recorded concurrently herewith] in the Official Records of Cook County, Illinois on the real property ("Land") commonly known as 23-25 S. Harlem Ave., Forest Park, IL, Cook County, Illinois, and more particularly described on Exhibit A attached hereto. Tenant is the tenant under that certain Lease Agreement (the "Lease") dated August 19, 2009, by and between Tenant and Midwest Bank & Trust Co. as T/U/T No. 84-05-4410, ("Landlord"), for the premises more particularly described on Exhibit B hereto (the "Premises"). Tenant and Mortgagee desire to confirm certain understandings with respect to the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Mortgagee and Tenant hereby agree and covenant as follows:

1. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms and provisions on Tenant's part to be performed under the Lease, whether or not the Lease has been rejected in any proceeding under the Bankruptcy Code, 11 U.S.C., 101 et seq. (the "Code"), involving Landlord, Tenant's possession of the Premises and Tenant's rights and privileges provided for in the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term provided for in the Lease or any such extensions or renewals thereof.

2. Mortgagee acknowledges receipt of a copy of the Lease, approves the Lease, and agrees that this Agreement satisfies any condition or requirement in the Mortgage or any other instrument evidencing, securing or relating to the indebtedness secured by the Mortgage relating to the approval by Mortgagee of the Lease.

3. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms and provisions of the Lease on Tenant's part to be performed, whether or not the Lease has been rejected in any proceeding under the Code involving Landlord, Mortgagee will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage provided however that Mortgagee may join Tenant as a party in such a proceeding if joinder is necessary for completion of a foreclosure and provided further that Mortgagee shall not seek to terminate Tenant's interest and estate by such joinder.

S	<u>NO</u>
P	<u>6</u>
S	<u>/</u>
M	<u>no</u>
SC	<u>yes</u>
E	<u>yes</u>
INT	<u>he</u>

UNOFFICIAL COPY

4. If Mortgagee or its personal representatives, successors or assigns shall, by foreclosure, conveyance in lieu of foreclosure or otherwise, succeed to the interest of Landlord under the Lease and/or in the Premises (Mortgagee or said party being herein called "Successor Landlord"), whether or not the Lease has been rejected in any proceeding under the Code involving Landlord, Successor Landlord shall be bound to Tenant under all the terms and provisions of the Lease and Tenant shall be bound to Successor Landlord under all the terms and provisions of the Lease and Tenant agrees, from and after such event, to attorn to Successor Landlord, all rights and obligations under the Lease to continue as though the interest of Landlord had not been terminated or such foreclosure proceedings not been brought, and Tenant shall have the same remedies against Successor Landlord for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Successor Landlord had not succeeded to the interest of Landlord; provided, however, that Successor Landlord shall not be:

(a) bound by any rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(b) bound by any amendment or modification of the Lease resulting in or effecting a change in the Base Annual Rent, Term or Land made without its consent.

Tenant shall, however, be under no obligation to pay rent to Successor Landlord until Tenant receives written notice from Successor Landlord that it has succeeded to the interest of Landlord under the Lease (or if the Lease has been rejected in any proceeding under the Code involving Landlord, the interest of Landlord in the Premises) and is entitled to receive the rents under the Lease directly from Tenant, and Successor Landlord hereby agrees to indemnify, defend and hold Tenant harmless from all liabilities, costs and expenses, including attorneys' fees, arising out of any claims made by Landlord or any trustee of Landlord with respect to monies paid by Tenant to Successor Landlord at the direction of Successor Landlord. Whether or not the Lease has been rejected in any proceeding under the Code involving Landlord, the respective rights and obligations of Tenant and Successor Landlord upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

5. If there is any condemnation or eminent domain proceedings are commenced with respect thereto or a settlement in lieu thereof is made, Mortgagee and any Successor Landlord shall be bound by the terms and provisions of Article XVII of the Lease, including but not limited to the provisions regarding the allocation and application of condemnation proceeds set forth therein.

6. Neither the Mortgage nor any other security instrument executed in connection therewith shall cover, or be construed as subjecting in any manner to the liens thereof, any of Tenant's Fixtures (as defined in the Lease).

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. This Agreement may not be modified orally or in any manner other than

UNOFFICIAL COPY

by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective personal representatives, successors and assigns, including, without limitation, a mortgagee, its successors or assigns who shall have succeeded to the interest of Landlord or Tenant in the Premises or acquired possession thereof by, through or under foreclosure, purchase in lieu of foreclosure or otherwise.

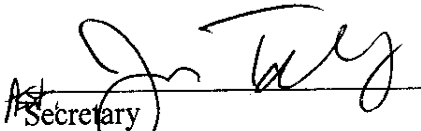
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

ATTEST:


(Assistant) Secretary

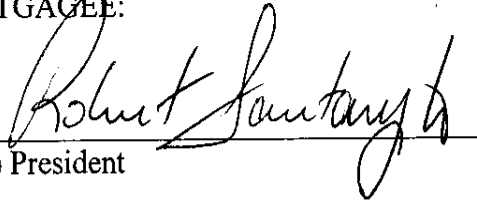
[CORPORATE SEAL]

ATTEST:



Secretary

[CORPORATE SEAL]

MORTGAGEE:

By: 
(Vice) President

THE PEP BOYS – MANNY MOE & JACK OF CALIFORNIA

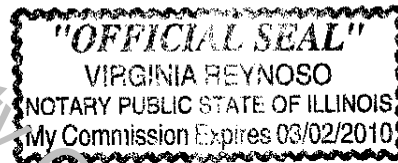
By: 
(Vice) President
Draft Real Estate

UNOFFICIAL COPY

STATE OF Illinois)
) SS.
 COUNTY OF Cook)

On this 2nd day of December 2009, before me,
Virginia Reynoso, a Notary Public in and for said County and State
 aforesaid, personally appeared Robert Santangelo & Terry Sutherland, known to me
 to be the person whose name is subscribed to the within instrument and acknowledged
 that he/she executed the same for the purposes therein contained.

Virginia Reynoso
 Notary Public



My Commission Expires 3/2/2010

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

SITE PLAN OF THE DEVELOPMENT

As Legally Described below:

Lots 1, 2, 3, 4, and 5 in Block 1 in Railroad Addition to Harlem in the Southeast Quarter of Section 12, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois

PIN 15-12-405-022

Property of Cook County Clerk's Office