

UNOFFICIAL COPY

This document was prepared by and after recording should be returned to:

96729766

Charles W. Morris, Esq.
Brown McCarroll & Oaks Hartline
300 Crescent Court, Suite 1400
Dallas, TX 75201

DEPT-01 RECORDING \$43.00
T#0012 TRAM 2117 09/24/96 14:56:00
#3659 : CG *-96-729766
COOK COUNTY RECORDER

MORTGAGE

(WITH SECURITY AGREEMENT AND ASSIGNMENT OF LEASES)

(Chicago, IL)

This MORTGAGE (WITH SECURITY AGREEMENT AND ASSIGNMENT OF LEASES) ("Mortgage") is made as of the 14th day of September, 1996 (the "Effective Date"), by STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company, not in its individual capacity, but solely as Trustee under that certain Declaration of Trust dated November 13, 1995 ("Mortgagor"), having an address at Two International Place, Fourth Floor, Boston, Massachusetts 02110 (Attn: Corporate Trust Department), in favor of CITICORP LEASING, INC., a Delaware corporation, in its capacity as Agent for the Noteholders (as defined in the Declaration of Trust) ("Mortgagee"), having an address at 450 Mamaroneck Avenue, Harrison, New York 10528 (Attn: FFL/CBL Credit Head). This Mortgage is one of the "Transaction Mortgages" contemplated in that certain Transaction Agreement dated November 13, 1995, State Street Bank and Trust Company (individually and in its capacity as Trustee under the Declaration of Trust), The Pep Boys Manny, Moe & Jack, a Pennsylvania corporation ("Lessee Parent"), and Citicorp Leasing, Inc. (as Agent). All capitalized terms used herein which are not otherwise defined shall have the meaning given to them in the Transaction Agreement.

Granting Clauses

In consideration of the sum of \$10.00 and other valuable consideration paid to Mortgagor, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby convey unto Mortgagee all of its right, title and interest in the following described property (herein called the "Mortgaged Properties"):

(a) the fee simple estate of Mortgagor in that certain tract of land described on Exhibit "A" attached hereto and incorporated herein for all purposes, together with any easements or other beneficial rights appurtenant thereto, including, without limitation, any such appurtenant rights or estates that may be listed on Exhibit "A" (the "Parcel");

(b) all structures, buildings and other improvements now or hereafter located on the Parcel, together with all of the right, title and interest of Mortgagor, and its successors and assigns, in the whole or any part of the Parcel and all roads, streets and rights-of-way adjacent

BOX 333-CTI

96729766

762819027 CA

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

or contiguous to the Parcel whether now owned or hereafter acquired, as well as all appurtenances, betterments and additions thereof and thereto (the "Improvements");

(c) all rights and interests of Mortgagor in and to that certain Master Lease dated November 13, 1995 (as amended, supplemented or otherwise modified from time to time, the "Lease"), by and between Mortgagor, as lessor, and several parties thereto, as "Lessee," including, without limitation, The Pep Boys Manny, Moe & Jack of California, a California corporation, which is the Lessee as to the Parcel and Improvements described above, as well as that certain Lease Guarantee of even date therewith executed by Lessee Parent with respect thereto, but excluding, in each case, amounts paid or payable thereunder to the Mortgagor in its individual capacity;

(d) all of Mortgagor's rights and interests in all of following items (i) through (v) inclusive (which are collectively called herein the "Collateral");

(i) all fixtures and equipment belonging to, or hereafter acquired by, Mortgagor, which are affixed to the Parcel and/or Improvements, and from time to time situated on or in and/or used in connection with the Parcel and/or the Improvements and not held for sale or resale to the public (herein called the "Fixtures"), including, but not limited to, lighting, heating, ventilating, air conditioning, sprinkling, mechanical and plumbing materials, fixtures and equipment, water and power systems, engines, boilers, ranges, furnaces, elevators, escalators, motors, refrigeration plants, certain carpeting and shrubbery, and all after-acquired property in the same and similar categories;

(ii) all contract rights held by Mortgagor of whatever nature relating to the Parcel, the Improvements, or Fixtures, including, without limitation, architectural and engineering plans, drawings, tests, reports or studies, parking agreements, and all warranties and guaranties under such contracts and rights under insurance policies;

(iii) the rights of Mortgagor under licenses, permits, authorizations, and other grants of rights or privileges, and all access rights which are personal property, related to the Parcel, Improvements or Fixtures;

(iv) all rights of Mortgagor under completion bonds, performance bonds and payment bonds related to the Parcel, Improvements or Fixtures; and

(v) all other general intangibles related to the Parcel, Improvements or Fixtures;

and

(e) all rents, issues, profits and Proceeds (as defined in the Lease) arising from or relating to the Parcel, Improvements or Collateral, including, without limitation, Proceeds from insurance, condemnation Proceeds and litigation Proceeds given in lieu of, in replacement of,

96729766

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-01-01 10:00:00

UNOFFICIAL COPY

or for loss of or damages to, the Parcel, Improvements, or Collateral, but excluding amounts paid or payable to the Mortgagor in its individual capacity.

The Mortgagor agrees to execute, acknowledge and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm and protect the lien of this Mortgage on any of the foregoing, under the provisions of the Uniform Commercial Code or otherwise, and this Mortgage shall also be considered to be and shall be construed as a security agreement, Mortgagor hereby granting, and by this presents Mortgagor does hereby grant, to Mortgagee a Uniform Commercial Code security interest in all of the foregoing, and all proceeds thereof.

Habendum Clause

TO HAVE AND TO HOLD the Mortgaged Properties unto the Mortgagee and any assignee thereof, for the uses and purposes set forth herein, Mortgagor hereby binds itself, its successors and assigns, to warrant the title to the Mortgagee and the assigns of Mortgagee, against all persons whomsoever claiming or to claim the same, or any part thereof, subject, however, to the permitted encumbrances set forth on Exhibit "B" attached hereto, said warranty to be void upon condition that all payments secured hereby are paid.

Obligation Secured

This conveyance is made, however, to secure the following (collectively, the "Obligation"):

(a) payment of the Notes (as defined in the Transaction Agreement), including any extensions, renewals, replacements or increases thereof. As of the date hereof, the Notes consist of a Series A Note in the amount of \$42,000,000.00 and a Series B Note in the amount of \$6,000,000.00, each issued by Mortgagor pursuant to the Declaration of Trust and payable to the order of Citicorp Leasing, Inc. It is expressly acknowledged, however, that pursuant to the Declaration of Trust Mortgagor may issue additional Notes (either in full or partial replacement of Notes previously issued and/or to evidence any increase in the amounts available to be advanced to Mortgagor by Noteholders of the Notes under the Transaction Agreement. It is reasonably expected that the aggregate amount of Notes secured hereby may be increased above the original \$48,000,000.00 face amount of Notes issued as of the date hereof;

(b) the performance and discharge of all of the obligations of Mortgagor to the Noteholders contained herein, in the Transaction Agreement and in the other Transaction Documents;

(c) advances, if any, made by Mortgagee with respect to the Mortgaged Properties, for the payment of real estate taxes, assessments, insurance premiums, or costs incurred for the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

protection of the properties together with interest at the Default Rate from the date of such advance; and

(d) all amounts from time to time due and owing to Mortgagee pursuant to, or otherwise secured by, any other of the Transaction Mortgages heretofore or hereafter executed pursuant to the Transaction Agreement by Mortgagor or co-trustees duly appointed from time to time by Mortgagor.

Mortgagor covenants and agrees that it will pay the principal of and interest on the indebtedness evidenced by the Notes and any amounts due and payable by Mortgagor to Mortgagee under any of the Transaction Documents at the times and in the manners provided in the Notes and in the Transaction Documents, respectively.

Rights of Subrogation

To the extent that any of the Obligation represents funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Mortgaged Properties or any part thereof, Mortgagee shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any such outstanding indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior titles and equities are by the holder(s) thereof assigned to Mortgagee or released; provided Mortgagee shall not acquire by such subrogation rights against Mortgagor which are greater than those provided herein or in the Transaction Documents.

If Obligation is Paid

Upon payment in full of the Obligation, this Mortgage shall become of no further force or effect and Mortgagee or other holder(s) of the Obligation shall at Mortgagor's expense and upon Mortgagor's written request surrender the Notes and this Mortgage to Mortgagor and execute in recordable form a release of this Mortgage which shall be in form and substance satisfactory to both the Mortgagor and the party which is to execute the release.

ARTICLE I

Defaults and Remedies

1.1 Upon a "Default" (as hereafter defined), if the full amount of the Obligation is not paid to the Noteholders pursuant to the terms of the Lease and the Declaration of Trust within sixty (60) days after such Default, Mortgagee may exercise any right, power or remedy permitted to it by law, including, at the option of Mortgagee, any or all of the following:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-01-28 10:40:00

UNOFFICIAL COPY

(a) The entire unpaid principal balance of the Notes, together with unpaid accrued interest and any other monetary obligation constituting a portion of the Obligation shall become immediately due and payable without further notice to Mortgagor.

(b) When the indebtedness hereby secured shall become due, as a result of the occurrence and continuance of a Default or at maturity, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenses which may be paid or incurred by or on behalf of Mortgagee for court costs, attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree or judgment) of procuring all such abstracts of title, title searches and examination, title guarantee policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree and true condition of the title to or the value of the Mortgaged Properties, provided that all such costs are reasonable and reasonably incurred. All reasonable expenses of the nature in this paragraph mentioned and any other reasonable sums expended by Mortgagee pursuant to the exercise of any right shall become so much additional indebtedness secured hereby and immediately due and payable with interest thereon at the Default Rate.

(c) The proceeds of any foreclosure sale of the Mortgaged Properties shall be distributed and applied in the following priority: first, on account of all reasonable costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in paragraph (b) above; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Notes; fourth, any overplus to Mortgagor.

(d) Upon, or at any time after the filing of a bill to foreclose the lien of this Mortgage, the court in which such bill is filed may appoint a receiver of the Mortgaged Properties. Such appointment may be made either before or after sale, with notice, without giving bond on the application, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Properties or whether the same shall be then occupied as a homestead or not and the party nominated by the plaintiff in the action may be appointed as such receiver. In addition, all the rents, issues and profits of and from the Mortgaged Properties are hereby expressly assigned and pledged for the payment of the indebtedness secured hereby on a parity with the real property itself, and this provision for appointment of a receiver is expressly a condition upon which the loan hereby secured was made. Such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Properties during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

there be redemption or not, and all other powers which may be necessary or are usual in such case of the protection, possession, control, management and operation of the Mortgaged Properties during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands, after repair and maintenance, in payment in whole or in part of: (i) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, or insurance premiums when due, provided such application is made prior to foreclosure sale; and (ii) the deficiency in case of a sale and deficiency, with any surplus after deducting all reasonable costs and expenses of collection paid to Mortgagor.

(e) Mortgagor further agrees that in case of the occurrence and continuance of a Default, as a concurrent remedy and measure for making effective the terms, provisions and purposes thereof, Mortgagee, its agents or attorneys, may, at any time during the continuance of such Default, lawfully enter upon and take complete possession of and exercise full management and control of and over the Mortgaged Properties and in the name of Mortgagor or in its name, may hold, manage and control the Mortgaged Properties and rent or lease the same on such terms as to it may seem advisable and dispossess any defaulting tenant or tenants and collect and receive all the rents, issues and profits of the Mortgaged Properties, whether overdue, due or to become due, and apply the same after payment of its expenses of management and operation of the Mortgaged Properties, including reasonable attorneys' fees, on needful repairs, taxes, assessments, public impositions, charges, levies and dues, insurance premiums and upon the indebtedness secured hereby. The exercise of this right and power shall not impair, restrict, suspend or modify any other right or remedy of Mortgagee.

For purposes hereof the term "Default" means (i) any failure of the Mortgagor to timely make any payments due by Mortgagor to the Noteholders under the terms of the Notes or other Transaction Documents as and when due (other than any such failure which results directly from the non-payment by Lessee of corresponding amounts due from Lessee to Mortgagor under the Lease or other Transaction Documents in amounts sufficient to permit Mortgagor to make such payments) or (ii) the occurrence of an Event of Default (as defined in the Lease).

1.2 Any right or remedy herein provided for shall not be exclusive or in derogation of any other right or remedy given by the terms hereof or now or hereafter existing at law or in equity, but shall be cumulative.

1.3 The failure by Mortgagee promptly to exercise any right, power or remedy provided herein or at law or in equity shall not constitute or be construed as a waiver of the same, nor shall Mortgagee be estopped from later exercising such right, power or remedy.

1.4 All grants, conditions and provisions hereof shall apply and extend to and bind all persons claiming any interest in the Mortgaged Properties by, through or under Mortgagor and shall inure to the benefit of Mortgagee, its successors and assigns. Breach of any provision or condition herein contained shall be a material breach going to the substance of this Mortgage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Any notice to be given hereunder or under any other documents securing the indebtedness shall be given in accordance with the provisions of the Transaction Agreement.

1.5 Mortgagor represents and covenants that the herein described real estate is not the residence of the Mortgagor and that the debt secured by this Mortgage is credit obtained for business purposes.

1.6 All rights of the Mortgagee under this Mortgage and any and all instruments evidencing or securing the Obligation are cumulative and concurrent and may be exercised singly, successively or concurrently.

1.7 To the extent Mortgagor may lawfully do so, Mortgagor waives any and all rights of appraisal, marshalling, valuation, stay or extension law, sale and/or redemption laws under the laws of the State of Illinois to the extent such rights and/or laws exist, whether now or hereafter in force.

ARTICLE 2

Assignment of Leases

Mortgagor hereby directly (and not merely collaterally) assigns to Mortgagee all existing and future leases, including subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof, upon or affecting any part of the Mortgaged Properties (collectively, the "Leases"), including, without limitation, the Lease. Mortgagor hereby further assigns to Mortgagee all guaranties of tenants' performance under the Leases.

ARTICLE 3

Additional Provisions

3.1 Mortgagee's Right to Release, Extend, Modify. The granting to Mortgagor or to any other person or party of any extension(s) of time for the payment of the Obligation or the performance of any covenant or agreement contained herein, or the taking of other or additional security for the payment of the Obligation, or any part thereof, or the releasing of any part of the security for the Obligation, shall not release Mortgagor or any other person or party obligated for the payment of the Obligation, or release or impair this Mortgage or any other security held in connection with the Obligation, except to the extent Mortgagee releases a person, party or property in writing. Moreover, the taking of additional security, or the renewal, extension, modification or rearrangement of the Obligation or any part thereof, shall at no time release or impair the Lien and rights granted hereby; and this Mortgage, as well as any instrument given to secure any renewal, extension, modification or rearrangement of the Obligation, or any part thereof, shall be and remain a first and prior lien subject only to the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

encumbrances set forth herein, on all of the Mortgaged Properties not released, until the Obligation is completely paid.

3.2 Invalid Provision. If any provision in this Mortgage is invalid or unenforceable in whole or in part, this instrument shall in all other respects remain in full force and effect.

3.3 Joint and Several Liability. All obligations of Mortgagor hereunder shall be joint and several if Mortgagor is more than one person or party.

3.4 Binding Effect. All of the provisions hereof shall apply to and be binding upon Mortgagor and its successors and assigns, and shall apply to and inure to the benefit of Mortgagee and its successors and assigns, including all future holders of the Obligation.

3.5 APPLICABLE LAW. THIS MORTGAGE SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

3.6 Captions. The captions and headings used herein are provided solely for convenience and shall not be used in construing any provision hereof.

3.7 Modifications. This Mortgage may not be changed, amended or modified except by a writing executed by both Mortgagor and Mortgagee.

3.8 Release Rights. At such time as Mortgagor is obligated to transfer the Mortgaged Properties or any portion thereof to the Lessee under the terms of the Lease, Mortgagee shall release this Mortgage as to the Mortgaged Properties (or portion thereof) so transferred upon receipt by Mortgagor of the Offer Purchase Price (as defined in the Lease) therefor, and the applications and distribution of the Offer Purchase Price in accordance with the terms of the Declaration of Trust.

3.9 Non-Recourse. It is expressly understood and agreed that this Mortgage is executed and delivered by State Street Bank and Trust Company ("State Street"), not in its individual capacity, but solely as Trustee under the Declaration of Trust, in the exercise of the powers and authority conferred and vested in it as trustee thereunder, that each of the undertakings and agreements herein made on the part of the Mortgagor is made and intended not as a personal undertaking and agreement by State Street, individually, but is made and intended for the purpose of binding only the Trust Estate (as defined in the Declaration of Trust) created by the Declaration of Trust, and nothing herein contained shall be construed as creating any liability on State Street, individually, to perform any obligation of the Mortgagor, either expressed or impliedly contained herein, all such liability being expressly waived by the parties hereto and by any person claiming by, through, or under such parties and under no circumstances shall State Street personally liable for the payment of any indebtedness or expenses of the Mortgagor or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Mortgagor under this Mortgage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3.10 Redemption. Pursuant to 735 ILCS 5/15-1601, Mortgagor hereby waives any right of redemption after a foreclosure sale of all or any portion of the Mortgaged Properties.

3.11 Surrender of Notes. Mortgagor hereby agrees that since the Notes are secured by property other than the Mortgaged Properties, in the event of foreclosure of the Mortgage, any court having jurisdiction over such foreclosure shall enter a special order directing the clerk of such court to enter the judgment of record without requiring that the Notes be surrendered for cancellation.

3.12 Receipt of Mortgage. Mortgagor hereby acknowledges receipt of a complete and accurate copy of this Mortgage on the date of its execution.

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound, has executed this Mortgage on the attached Signature Page as of the date first above stated.

[SEE ATTACHED SIGNATURE PAGE]

Property of Cook County Clerk's Office

96729766

UNOFFICIAL COPY

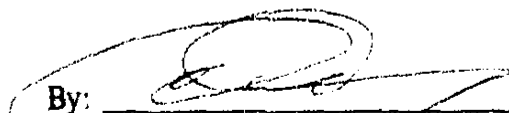
Property of Cook County Clerk's Office

UNOFFICIAL COPY

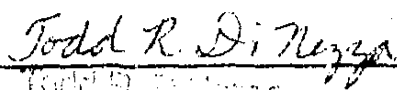
SIGNATURE PAGE ATTACHED TO MORTGAGE (WITH SECURITY AGREEMENT AND ASSIGNMENT OF LEASES)

MORTGAGOR:

STATE STREET BANK AND TRUST COMPANY,
a Massachusetts trust company
(solely in its capacity as Trustee under the
Declaration of Trust and not individually)

By: 
Donald E. Smith, Vice President

(Corporate Seal)

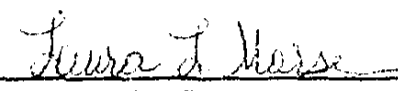
By: 
Name: Todd R. DiNezza
Title: [Assistant] Secretary

COMMONWEALTH OF MASSACHUSETTS §
§
COUNTY OF SUFFOLK §

I, the undersigned, a Notary Public, do hereby certify that DONALD E. SMITH, known to me to be the Vice President of STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company, and Todd R. DiNezza, known to me to be the [Assistant] Secretary of said trust company and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officers they signed and delivered the said instrument pursuant to authority given by said trust company, as their free and voluntary act, and as the free and voluntary act and deed of said trust company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 4th day of September, 1906.

(SEAL)


Notary Public, Commonwealth of Massachusetts
My Commission Expires: _____

LAURA MORSE
Notary Public
My Commission Expires July 26, 2002

DAL:118 23.1
17672 91/23

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A"

Description of Parcel

The North Half of the following described parcel of land:

That part of the Northwest 1/4 of the Southeast 1/4 of Section 18, Township 38 North, Range 14 East of the Third Principal Meridian, described as follows:

Beginning at the intersection of the East line of South Western Avenue with a line parallel with and 282.74 feet North from the South line of the Northwest 1/4 of the Southwest 1/4 of Section 18; thence Northward along said East line of South Western Avenue a distance of 557.91 feet to an intersection with a line parallel with and 490.91 feet South from the North line of said Northwest 1/4 of the Southwest 1/4; thence Eastward along said parallel line a distance of 280.00 feet to an intersection with a line parallel with and 280.00 feet East from said East line of South Western Avenue; thence Southward along said parallel line a distance of 557.54 feet, to an intersection with the aforementioned line drawn parallel with and 282.74 feet North from the South line of the Northwest 1/4 of the Southwest 1/4 of Section 18; thence West along said parallel line a distance of 280.00 feet to the Point of Beginning; in Cook County, Illinois.

20-18-300-006 + 007
6017 S. WESTERN AV, CHICAGO, IL

Cook County Clerk's Office

96729766

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B"

Permitted Encumbrances

1. Taxes for the year 1996, not yet due and payable.
2. Encroachment of fence along the west line of the land onto property west and adjoining (S. Western Ave.) By approximately 0.57 feet varying to 0.41 feet, as shown by Survey dated June 3, 1996, revised June 26, 1996, made by Chicago Guaranty Survey Company.

Property of Cook County Clerk's Office

96729766

UNOFFICIAL COPY

Property of Cook County Clerk's Office