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THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

MELTZER PURTILL & STELLE LLC
1515 E. Woodfield Road, 2nd Floor
Schaumburg, Illinois 60173-5431
Attn: Michael J. Wolfe, Esq.



Doc#: 0936533107 Fee: \$88.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/31/2009 10:47 AM Pg: 1 of 24

Permanent Real Estate Tax No.:
See Exhibits A-1, A-2, A-3, A-4 and A-5

Property Address:
See Exhibits A-1, A-2, A-3, A-4 and A-5

der's use only

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 11th day of December, 2009, by and among ARMON, INC., a Delaware corporation, F.E. MORAN, INC., an Illinois corporation, F.E. MORAN, INC. FIRE PROTECTION, an Illinois corporation, F.E. MORAN, INC. FIRE PROTECTION OF NORTHERN ILLINOIS, an Illinois corporation, F.E. MORAN, INC. SPECIAL HAZARD SYSTEMS, a Delaware corporation, F.E. MORAN, INC. MECHANICAL SERVICES, an Illinois corporation, and FIRE PROTECTION INDUSTRIES, INC., an Illinois corporation, (each a "Borrower" and collectively, the "Borrower"), BRIAN K. MORAN, ("B. Moran") individually, and OWEN A. MORAN ("O. Moran"), individually (each a "Guarantor" and collectively, the "Guarantor") and THE PRIVATEBANK AND TRUST COMPANY, an Illinois State Bank, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made certain loans (collectively, the "Loan") to Borrower in the aggregate amount of Twenty Five Million Five Hundred Thousand and 00/100 Dollars (\$25,500,000.00) consisting of (i) a revolving loan in an amount not to exceed Fifteen Million and 00/100 Dollars (\$15,000,000.00) outstanding at any one time (the "Revolving Loan") as evidenced by that certain Revolving Note dated as of December 11, 2008 in the amount of the Revolving Loan given by Borrower to and for the benefit of Lender (the "Revolving Note"); (ii) a term loan in the principal amount of Five Million and 00/100 Dollars (\$5,000,000.00)(the "Term Loan") as evidenced by that certain Term Note dated as of December 11, 2008 in the amount of the Term Loan given by Borrower to and for the benefit of Lender (the "Term Note" and, together with the Revolving Note, the "Note"); and (iii) those certain Letter of Credit Obligations in the aggregate amount of Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00)(the "Letter of Credit Obligations"), pursuant to the terms and conditions of that certain Loan and Security Agreement dated as of December 11, 2008 between Borrower and Lender, (the "Loan Agreement"; all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement).

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B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 11, 2008 from Brian K. Moran (the "Trustee"), as Trustee under the Trust Agreement dated September 18, 1984 and executed by Owen A. Moran to Lender and recorded with the Recorder of Deeds in Cook County, Illinois (the "Cook County Recorder's Office") on December 12, 2008, as Document No. 0834733049 ("Northbrook Mortgage"), which Northbrook Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A-1** attached hereto ("Northbrook Property"), (ii) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 11, 2008 from Brian K. Moran, as Trustee under the Trust Agreement dated September 14, 1984 executed by Owen A. Moran as to an undivided ½ and by Jean E. Moran, as to an undivided ½, to Lender and recorded with the Cook County Recorder's Office on December 12, 2008, as Document No. 0834733051 ("Winnetka Mortgage"), which Winnetka Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A-2** attached hereto ("Winnetka Property"); (iii) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 11, 2008 from Owen A. Moran and Jean B. Moran to Lender and recorded with the Recorder of Deeds in Palm Beach County, Florida (the "Boca Recorder's Office") on December 16, 2008, as Document No. 20080448109 or Book 22996, Page 1303 ("Boca Mortgage"), which Boca Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A-3** attached hereto ("Boca Property"); (iv) that certain Deed of Trust, Security Agreement and Assignment of Rents dated December 11, 2008 from Trustee to Lender and recorded with the Recorder of Deeds in Gunnison County, Colorado (the "Crested Butte Recorder's Office" and, together with the Cook County Recorder's Office and the Boca Recorder's Office, the "Recorder's Office") on December 18, 2008, as Document No. 588194 ("Crested Butte Mortgage"), which Crested Butte Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A-4** attached hereto ("Crested Butte Property"); (v) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated March 31, 2009 from Buggy Ventures, LLC, an affiliate of Borrower, to Lender and recorded with the Cook County Recorder's Office on April 27, 2009, as Document No. 0911726031 ("Bugsy Mortgage" and, together with the Northbrook Mortgage, Winnetka Mortgage, Boca Mortgage and Crested Butte Mortgage, the "Mortgage"), which Buggy Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A-5** attached hereto ("Bugsy Property" and, together with the Northbrook Property, Winnetka Property, Boca Property and Crested Butte Property, the "Property"); (vi) that certain Environmental Indemnity Agreement dated December 11, 2008 from Borrower and Trustee to Lender (the "Indemnity Agreement"); (vii) that certain Limited Guaranty dated December 11, 2008 from B. Moran to Lender (the "B. Moran Guaranty"); (viii) that certain Limited Guaranty dated December 11, 2008 from O. Moran to Lender (the "O. Moran Guaranty" and, together with the B. Moran Guaranty, the "Guaranty"); and (ix) certain other loan documents (the Note, the Mortgage, the Indemnity Agreement, the Guaranty, and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents")

C. Borrower and Guarantor now desire to amend the Loan Documents in order to, among other things, (i) extend the Revolving Loan Maturity Date from December 11, 2009 to

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December 11, 2011, (ii) decrease the aggregate amount of the Revolving Loan Commitment from \$15,000,000.00 to \$12,500,000.00 and include a sublimit of \$1,000,000.00 for Letters of Credit to be issued under the Revolving Loan Commitment; (iii) revise the Revolving Loan Interest Rate; (iv) decrease the principal amount of the Term Loan Commitment from \$5,000,000.00 to \$4,404,762.00; (v) revise the Term Interest Rate; (vi) increase the annual issuance fee due with for Letters of Credit from 1.0% to 1.5%, effective as of July 1, 2010 through the Letter of Credit Maturity Date; and (vii) revise certain financial covenants, all as more fully set forth below.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Revolving Loan Maturity Date.**

(a) The Revolving Loan Maturity Date of the Revolving Note is extended to December 11, 2011. Any reference in the Note, the Loan Agreement or any other Loan Document to the Revolving Loan Maturity Date shall mean December 11, 2011.

(b) The following definition in Section 1.1 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

“Revolving Loan Maturity Date” shall mean December 11, 2011, unless extended by the Bank pursuant to any modification, extension or renewal note executed by the Borrower and accepted by the Bank in its sole and absolute discretion in substitution for the Revolving Note.

2. **Decrease in Revolving Loan Commitment; Revolving Letters of Credit.**

(a) The Loan Agreement and each of the Loan Documents are hereby modified such that any reference in the Loan Agreement and each of the other Loan Documents to the amount of the Revolving Loan Commitment or the amount of \$15,000,000.00 (either in numbers or words, as the case may be) as the principal amount of the Revolving Loan Commitment or otherwise is hereby amended to be \$12,500,000.00 (either in numbers or words, as the case may be) as the maximum amount of such Revolving Loan Commitment, secured by each of the Loan Documents, such that each of said Loan Documents secure the full and prompt payment of the Amended Revolving Note (as hereinafter defined), and the full and prompt performance of all the terms, covenants and conditions relating to the Loan in this Agreement.

(b) The following definition in Section 1.1 is hereby amended and restated in its entirety to read as follows:

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“Letter of Credit Obligations” shall mean, at any time, an amount equal to the aggregate of the original face amounts of all Letters of Credit, including, without limitation, the Revolving Letters of Credit (as hereinafter defined), minus the sum of (i) the amount of any reductions in the original face amount of any Letter of Credit which did not result from a draw thereunder, (ii) the amount of any payments made by the Bank with respect to any draws made under a Letter of Credit for which the Borrower has reimbursed the Bank, (iii) the amount of any payments made by the Bank with respect to any draws made under a Letter of Credit which have been converted to a Revolving Loan as set forth in Section 2.6, and (iv) the portion of any issued but expired Letter of Credit which has not been drawn by the beneficiary thereunder. For purposes of determining the outstanding Letter of Credit Obligations at any time, the Bank’s acceptance of a draft drawn on the Bank pursuant to a Letter of Credit shall constitute a draw on the applicable Letter of Credit at the time of such acceptance.

(c) The following definitions are hereby added to Section 1.1 to read in their entirety as follows:

“Revolving Letters of Credit” shall mean those Letters of Credit issued under the Revolving Loan Commitment in an amount not to exceed One Million and 00/100 Dollars (\$1,000,000.00) outstanding at any one time.

“Revolving Loan Availability” shall mean, at any time, an amount equal to the Revolving Loan Commitment minus the outstanding Revolving Letters of Credit.

(d) Sections 2.1(a), 2.1(c)(i), and 2.6 of the Loan Agreement are hereby amended and restated in their entirety to read as follows:

“(a) Revolving Loan Commitment. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties of the Borrower set forth herein and in the other Loan Documents, the Bank agrees to make such Revolving Loans at such times as the Borrower may from time to time request until, but not including, the Revolving Loan Maturity Date, and in such amounts as the Borrower may from time to time request, provided, however, that the aggregate principal balance of all Revolving Loans outstanding at any time shall not exceed the Revolving Loan Availability. Revolving Loans made by the Bank may be repaid and, subject to the terms and conditions hereof, borrowed again up to, but not including the Revolving Loan Maturity Date unless the Revolving Loans are otherwise accelerated, terminated or extended as provided in this Agreement. The Revolving Loans shall be used by the Borrower for the purpose of working capital.”

(i) Revolving Loan Mandatory Payments. All Revolving Loans hereunder shall be repaid by the Borrower on the Revolving Loan

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Maturity Date, unless payable sooner pursuant to the provisions of this Agreement. In the event the aggregate outstanding principal balance of all Revolving Loans exceeds the Revolving Loan Availability, the Borrower shall, without notice or demand of any kind, immediately make such repayments of the Revolving Loans. Also, if the Borrower chooses not to convert any Revolving Loan which is a LIBOR Loan to a Prime Loan as provided in Section 2.3(b) and Section 2.3(c), then such Revolving Loan shall immediately be due and payable on the last Business Day of the then existing Interest Period or on such earlier date as required by law, all without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

2.6 Letters of Credit. Subject to the terms and conditions of this Agreement and upon (i) the execution by the Borrower and the Bank of a Master Letter of Credit Agreement in form and substance acceptable to the Bank (together with all amendments, modifications and restatements thereof, the "Master Letter of Credit Agreement"), and (ii) the execution and delivery by the Borrower, and the acceptance by the Bank, in its sole and absolute discretion, of a Letter of Credit Application, the Bank agrees to issue for the account of the Borrower such Letters of Credit in the standard form of the Bank and otherwise in form and substance acceptable to the Bank, from time to time during the term of this Agreement, provided that the Letter of Credit Obligations may not at any time exceed the Letter of Credit Commitment plus the amount of the Revolving Letters of Credit and provided further, that no Letter of Credit shall be issued later than the Letter of Credit Maturity Date or have an expiration date later than two (2) years after the Letter of Credit Maturity Date. All disbursements and all repayment obligations shall be governed by the Master Letter of Credit Agreement, provided, however, all Letter of Credit Obligations are deemed Obligations under this Agreement and are secured by the Collateral set forth in this Agreement.

3. Revolving Loan Interest Rate.

(a) The Revolving Loan Interest Rate of the Revolving Note is hereby revised to be the Borrower's from time to time option of (i) a floating rate per annum equal to the Prime Rate, or (ii) the LIBOR Rate; provided however, that at no time shall the Revolving Loan Interest Rate be less than three percent (3.00%). Any reference in the Note, the Loan Agreement or any other Loan Document to the Revolving Loan Interest Rate shall mean the Revolving Loan Interest Rate as amended hereby.

(b) The following definition in Section 1.1 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

"Revolving Loan Interest Rate" shall mean the Borrower's from time to time option of (i) a floating rate per annum equal to the Prime Rate, or (ii) the LIBOR Rate; provided however, that at no time shall the Revolving Loan Interest Rate be less than three percent (3.00%).

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4. Term Interest Rate.

(a) The Term Interest Rate of the Term Note is hereby revised to be the LIBOR Rate; provided however, that at no time shall the Term Interest Rate be less than three percent (3.00%). Any reference in the Note, the Loan Agreement or any other Loan Document to the Term Interest Rate shall mean the Term Interest Rate as amended hereby.

(b) The following definition in Section 1.1 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

“Term Interest Rate” shall mean the LIBOR Rate; provided however, that at no time shall the Term Interest Rate be less than three percent (3.00%).

5. Letter of Credit Issuance Fee.

(a) Borrower and Lender hereby agree that, effective as of July 1, 2010, the annual issuance fee for each Letter of Credit issued under and pursuant to the Loan Agreement or the Master Letter of Credit Agreement shall be increased from one percent (1.0%) of the face amount of such standby Letter of Credit to one and one-half percent (1.5%) of the face amount of such standby Letter of Credit. Any reference in the Note, the Loan Agreement or any other Loan Document to the annual issuance fee for a Letter of Credit shall mean the annual issuance fee as amended hereby.

(b) Section 5.3 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

“5.3 Letters of Credit. All Letters of Credit shall bear such application, issuance, renewal, negotiation and other fees and charges, and bear such interest as charged by the Bank or otherwise payable pursuant to the Master Letter of Credit Agreement. In addition to the foregoing, each standby Letters of Credit issued under and pursuant to this Agreement or the Master Letter of Credit Agreement shall, from the date hereof through and including July 1, 2010, bear an annual issuance fee equal to one percent (1.0%) of the face amount of such standby Letter of Credit and, from July 1, 2010 through and including the Letter of Credit Maturity Date, bear an annual issuance fee equal to one and one-half percent (1.5%), payable by the Borrower prior to the issuance by the Bank of such Letter of Credit and annually thereafter on the outstanding amount of such Letter of Credit, until (i) such Letter of Credit has expired or has been returned to the Bank, or (ii) the Bank has paid the beneficiary thereunder the full face amount of such Letter of Credit.

6. Financial Covenants.

(a) Borrower and Lender hereby agree that, effective as of March 31, 2010, the following financial covenants shall be amended as follows:

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(i) the financial covenant regarding the maximum leverage ratio of (x) consolidated Liabilities minus consolidated Subordinated Debt to (y) consolidated Tangible Net Worth shall be reduced from (I) 6.50:1.00 to (II) 4.75:1.00. Any reference in the Note, the Loan Agreement or any other Loan Document to the maximum leverage covenant shall mean the maximum leverage covenant as amended hereby.

(ii) the financial covenant regarding Borrower's minimum consolidated Tangible Net Worth shall (x) be increased from \$8,000,000.00 to \$11,500,000.00, and (y) deduct amounts due to from Affiliates (excluding the \$1,536,000.00 due from B. Moran as of September 30, 2009), tax receivables and goodwill. Any reference in the Note, the Loan Agreement or any other Loan Document to the Tangible Net Worth covenant shall mean the Tangible Net Worth covenant as amended hereby.

(b) The following definition in Section 1.1 of the Loan Agreement and Sections 10.2 and 10.3 of the Loan Agreement are hereby amended and restated in their entirety to read as follows:

"Tangible Net Worth shall mean at any time the total of Tangible Assets minus Liabilities plus Subordinated Debt minus any amounts due from Affiliates, tax receivables and goodwill.

10.2 Leverage. As of the end of each of its fiscal quarters, commencing with the fiscal quarter ending on December 31, 2008 and continuing through the fiscal quarter ending on March 31, 2010, the Borrower and its Subsidiaries shall maintain a ratio of (i) consolidated Liabilities minus consolidated Subordinated Debt to (ii) consolidated Tangible Net Worth which shall not exceed 6.50 to 1.00. Commencing with the fiscal quarter ending on March 31, 2010, the Borrower and its Subsidiaries shall maintain a ratio of (i) consolidated Liabilities minus consolidated Subordinated Debt to (ii) consolidated Tangible Net Worth which shall not exceed 4.75 to 1.00.

10.3 Tangible Net Worth. As of the end of each of its fiscal quarters, commencing with the fiscal quarter ending on December 31, 2008 and continuing through the fiscal quarter ending on March 31, 2010, the Borrower and its Subsidiaries shall maintain consolidated Tangible Net Worth in an amount not less than Eight Million and 00/100 Dollars (\$8,000,000.00). Commencing with the fiscal quarter ending on March 31, 2010, the Borrower and its Subsidiaries shall maintain consolidated Tangible Net Worth in an amount not less than Eleven Million Five Hundred Thousand and 00/100 Dollars (\$11,500,000.00)."

7. Issuance of Amended and Restated Revolving Note. Borrower and Lender agree that the Revolving Note shall be amended and restated in its entirety and that Borrower shall execute and deliver an Amended and Restated Revolving Note in the amount of Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00) and in form and substance acceptable to Lender (the "Amended Revolving Note"), and that, upon execution and delivery by

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Borrower of the Amended Revolving Note and satisfaction of all other conditions contained herein, Lender shall cancel the Revolving Note and return the executed original of the Revolving Note to Borrower. Such cancellation shall not be deemed and/or construed as a novation of Borrower's obligations evidenced thereby, all of which shall remain in full force and effect as provided in the Amended Revolving Note.

8. **Amendment of Mortgage.** The Mortgage is hereby amended to reflect the terms hereof including, without limitation, the extension of the Revolving Loan Maturity Date and the decrease in the Revolving Loan Commitment. Any references in the Mortgage to the Property shall be deemed to mean and refer to the Property as amended hereby. Borrower and each Guarantor each agree that Lender shall have the right to record this Agreement in the appropriate Recorder's Office to reflect the subject matter of this Agreement.

9. **Other Conforming Amendments.** The Loan Documents are hereby amended to reflect the terms of this Agreement including, without limitation, the extension of the Revolving Loan Maturity Date, the decrease in the Revolving Loan Commitment and the decrease in the Term Loan Commitment.

10. **Representations and Warranties of Borrower and Guarantor.** Borrower and each Guarantor hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof and shall continue to be, true and correct until the Loan is indefeasibly repaid in full and neither Borrower nor either Guarantor knows of any default under any of the Loan Documents.

(b) Borrower and each Guarantor are in full compliance with all of the terms and conditions of the Loan Documents to which they are a party, and no Event of Default has occurred and is continuing with respect to any of the Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower and each Guarantor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of the Property, Borrower, either Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) There is no litigation or administrative proceeding pending or, to the knowledge of Borrower or either Guarantor, threatened to restrain or enjoin the transactions contemplated by this Agreement or any of the Loan Documents, or questioning the validity thereof, or in any way contesting the existence or powers of any of the Borrower or either Guarantor, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement or any of the Loan Documents, or would result in any material adverse change in the financial condition, properties, business or operations of the Borrower or either Guarantor.

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(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

11. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policies numbered (a) 1410 008440969 [Northbrook Property]; (b) 1410 008440964 [Winnetka Property]; (c) 10 2346 010 00008232 [Boca Property]; (d) G8-496, file no. 1/12/R304 & 1/12/R305 [Crested Butte Property]; and (e) 1410 008462858 [Bugsy Property] (collectively, the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the appropriate Mortgage, subject only to the exceptions and encumbrances expressly agreed to by Lender in writing.

12. **Reaffirmation of Guaranty.** Each Guarantor ratifies and affirms their respective Guaranty and agrees that such Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of each Guarantor in his respective Guaranty are, as of the date hereof, true and correct and no Guarantor knows of any default thereunder. Each Guaranty continues to be the valid and binding obligation of its respective Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty. All waivers set forth in the Guaranty are hereby incorporated herein by this reference.

13. **Additional Requirements.** The obligations of Lender to amend the Loan shall be subject to Borrower and others having delivered, or having caused to be delivered, to Lender, the following items, all of which shall be in form and substance acceptable to Lender:

- (a) This Agreement, executed by all parties;
- (b) The Amended Revolving Note, executed by Borrower;
- (c) The date down endorsements from the Title Company, as required by Section 13 hereof;
- (d) A good standing certificate with respect to each Borrower;
- (e) Resolutions of the directors of each Borrower; and
- (f) Such other documents as Lender may reasonably require.

14. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with

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this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

15. **Bankruptcy Provisions.** Borrower and each Guarantor hereby acknowledge and agree that, if a petition under any section, chapter or provision of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") or similar law or statute is filed by or against Borrower or either Guarantor, (i) they shall not contest, and they shall consent to, the relief requested in any motion or application of Lender made in any court of competent jurisdiction seeking sale pursuant to 11 U.S.C. § 363, or a modification or termination of any automatic stay or other injunction against the Lender resulting from such filing, and (ii) they shall execute any order or other document necessary to effectuate such modification or termination. If at any time Borrower or either Guarantor seeks relief under the Bankruptcy Code, including, without limitation, the filing of a petition under Chapter 7 or 11 thereof, Borrower or such Guarantor shall be deemed to have taken such action in bad faith. Furthermore, if such action is taken against Borrower or either Guarantor by a third party, Borrower or such Guarantor shall take all action necessary to have (A) the petition filed by such third party dismissed, including consenting to the immediate dismissal thereof, and (B) any additional relief requested by such third party denied, unless instructed in writing to the contrary by Lender. Lender is specifically relying upon the representations, warranties, covenants and agreements contained in this Agreement and such representations, warranties, covenants and agreements constitute a material inducement to accept the terms and conditions set forth in this Agreement and, but for the receipt of the benefit of such representations, warranties, covenants and agreements, the Lender would not have agreed to such terms and conditions.

16. **Waiver of Defenses.** As of the date of this Agreement, Borrower and each Guarantor acknowledge that they have no defense, offset, or counterclaim to any of Borrower or either Guarantor's obligations under the Loan Documents. Borrower and each Guarantor hereby irrevocably waive and release any and all claims, actions, causes of action, suits and defenses which such party might hereafter have against Lender for or by reason of any matter, cause, or thing whatsoever which relates to the Loan, this Agreement, or any discussion between the Borrower, either Guarantor, and the Lender.

17. **Release of Claims.** Borrower and each Guarantor hereby fully and forever remise, release and discharge the Lender from any and all claims, demands, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, accounts, damages, judgments, losses and liabilities of whatever kind or nature in law, equity or otherwise, whether known or unknown, existing as of the date hereof or arising at any time in the future, which the Borrower or either Guarantor had, may have had, now has, or can, shall or may have, for or by any reason of any and all matters, causes or things whatsoever from the beginning of time to and including the day the Note is repaid in full.

18. **No Course of Dealing.** Borrower and each Guarantor acknowledge and agree that this Agreement is limited to the terms outlined herein, and shall not be construed as an amendment of any other terms or provisions of the Loan Documents. This Agreement shall not establish a course of dealing or be construed as evidence of any willingness on the Lender's part to grant other or future amendments, should any be requested.

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19. **No Joint Venture.** Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or either Guarantor nor shall privity of contract be presumed to have been established with any third party.

20. **Binding Agreement.** This Agreement shall not be construed more strictly against Lender than against Borrower or either Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, each Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, each Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

21. **Entire Agreement.** Borrower, each Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, each Guarantor and Lender, and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

22. **Construction of Agreement.** Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular. The Borrower, each Guarantor and their respective legal counsel have participated in the drafting of this Agreement, and accordingly, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

23. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

24. **Amendments, Changes and Modifications.** This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

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25. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

26. **Time of the Essence.** Time is of the essence of each of Borrower and each Guarantor's obligations under this Agreement.

27. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

28. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

29. **VENUE.** TO INDUCE LENDER TO ACCEPT THIS AGREEMENT, BORROWER AND EACH GUARANTOR IRREVOCABLY AGREE THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER, OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED IN COURTS WITHIN COOK COUNTY, STATE OF ILLINOIS AND EACH OF THEM HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. BORROWER AND EACH GUARANTOR EACH HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT OR HIM OR ANY OF THEM BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH OR UNDER THE NOTE AND/OR MORTGAGE.

30. **WAIVER OF JURY TRIAL.** BORROWER AND EACH GUARANTOR IRREVOCABLY WAIVES, TO THE EXTENT APPLICABLE, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR WITH THE NOTE OR LOAN DOCUMENTS, AND/OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR ANY INSTRUMENT, DOCUMENT, OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY, TO THE EXTENT SUCH MATTER IS TRIED AT ALL.

(the balance of this page is intentionally left blank)

UNOFFICIAL COPY

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

ARMON, INC., a Delaware corporation

By: [Signature]
Name: BRIAN K. MORAN
Title: PRESIDENT

F.E. MORAN, INC., an Illinois corporation

By: [Signature]
Name: MICHAEL V MCCOUBIE
Title: PRESIDENT

F.E. MORAN, INC. FIRE PROTECTION, an Illinois corporation

By: [Signature]
Name: BRIAN K. MORAN
Title: EXECUTIVE VICE-PRESIDENT

F.E. MORAN, INC. FIRE PROTECTION OF NORTHERN ILLINOIS, an Illinois corporation

By: [Signature]
Name: BRIAN K. MORAN
Title: EXECUTIVE VICE-PRESIDENT

F.E. MORAN, INC. SPECIAL HAZARD SYSTEMS, a Delaware corporation

By: [Signature]
Name: BRIAN L. RAMSEY
Title: PRESIDENT


F.E. MORAN, INC. MECHANICAL SERVICES, an Illinois corporation

By: [Signature]
Name: RYAN CARROLL
Title: PRESIDENT

Property of Cook County Clerk's Office


UNOFFICIAL COPY

FIRE PROTECTION INDUSTRIES, INC., an
Illinois corporation

By: 
Name: Brian R. Moran
Title: EXECUTIVE VICE-PRESIDENT

Agreed and accepted:

THE PRIVATEBANK AND TRUST COMPANY, an
Illinois State Bank

By: 
Name: Matthew S. Massa
Title: MANAGING DIRECTOR

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that BRIAN K. MORAN, PRESIDENT of ARMON, INC., a Delaware corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Miskell

Notary Public



My Commission Expires: 01/17/12

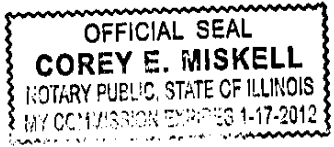
STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL J. MCCOMBIE, PRESIDENT of F.E. MORAN, INC., an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Miskell

Notary Public



My Commission Expires: 01/17/12

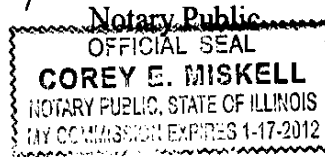
UNOFFICIAL COPY

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that BRIAN K. MORAN, EXECUTIVE V.P. of F.E. MORAN, INC. FIRE PROTECTION, an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Miskell



My Commission Expires: 01/17/12

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that BRIAN K. MORAN, EXECUTIVE VP of F.E. MORAN, INC. FIRE PROTECTION OF NORTHERN ILLINOIS, an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Miskell

Notary Public



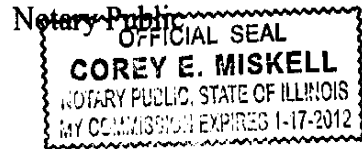
UNOFFICIAL COPY

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that BRIAN L. RAMSEY, PRESIDENT of F.E. MORAN, INC. SPECIAL HAZARD SYSTEMS, a Delaware corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Miskell

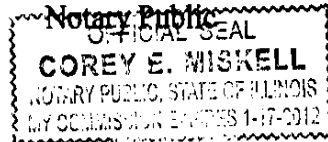


STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that RICHARD CARLI, PRESIDENT of F.E. MORAN, INC. MECHANICAL SERVICES, an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Miskell



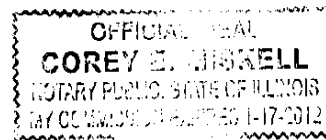
UNOFFICIAL COPY

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that BRIAN K. MORAN, EXECUTIVE V.P. of FIRE PROTECTION INDUSTRIES, INC., an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Corey E. Missell
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Matt Macsa, Managing Director of THE PRIVATEBANK AND TRUST COMPANY, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2009.

Jusant Le
Notary Public

Property of Cook County Clerk's Office

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EXHIBIT A-1

NORTHBROOK PROPERTY

Parcel 1:

Lot 2 in Moran Northbrook Resubdivision of part of Lot 6 and all of Lot 7 in Glenbrook Industrial Park Unit No. 2, being a subdivision of the East ½ of the Southwest ¼ of Section 15, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lot 1 in Lockwood Northbrook Resubdivision of Lot 8 in Glenbrook Industrial Park Unit No. 2, being a subdivision of the East ½ of the Southwest ¼ of Section 15, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

Property Address: 2265 Carlson Drive, Northbrook, Illinois

PINS: 04-15-301-019-0000; 04-15-301-020-0000

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EXHIBIT A-2

WINNETKA PROPERTY

Lot 1 in Nergard's Subdivision of the West $\frac{1}{2}$ of Section 29, Township 42 North, Range 13, East of the Third Principal Meridian, and that part of the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 29, Township 42 North, Range 13, East of the Third Principal Meridian, lying South of the North 865.7 feet and North of the North line of said Lot 1, excepting however from all of said land that part lying East of a line 830 feet West of and parallel to the East line of the Northwest $\frac{1}{4}$ of Section 29; and also excepting that part of Lot 1 in Nergard's Subdivision of and the aforesaid described 24 foot strip lying Northwesterly of the following described curved line; Beginning at a point in the South line of the North 865.7 feet, 252.8 feet East of the West line of said East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$, running thence Southwesterly in a curved line of 174.21 foot radius convex Southeasterly, 113.92 feet measured along the chord, to a point of compound curve; thence Southwesterly in a curved line of 955 foot radius, convex Southeasterly, tangent to the last described curved line at the point of compound curve, 243.95 feet measured along the chord, to a point in the West line of said Lot 1 of Nergard's Subdivision, said point being 219.85 feet South of the Northwest corner of said Lot 1, all in Cook County, Illinois.

Property Address: 15 Woodley Road, Winnetka, Illinois

PIN: 05-29-101-015-0000

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EXHIBIT A-3

BOCA PROPERTY

Lot 24, Block 2, ROYAL PALM YACHT AND COUNTRY CLUB SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 26, Page 57 of the Public Records of Palm Beach County, Florida.

Property Address: 396 Coconut Palm Road, Boca Raton, Florida

PIN: 06-43-47-29-10-002-0240

Property of Cook County Clerk's Office

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EXHIBIT A-4

CRESTED BUTTE PROPERTY

Units R304 and R305, SKI CENTER CONDOMINIUMS, according to the Condominium Map thereof filed May 23, 1973 bearing Reception No. 294345, and the Condominium Declaration pertaining thereto recorded May 23, 1973 in Book 453 at page 249, subject to the terms, conditions, provisions and obligations of said Condominium,

Town of Mt. Crested Butte,
County of Gunnison,
State of Colorado.

Property Address: 304 and 305 Whatstone Mt., Crested Butte, Colorado

PIN: 317726108012

UNOFFICIAL COPY

EXHIBIT A-5

BUGSY PROPERTY

Parcel 1:

PART OF THE SOUTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF THE SOUTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 24 AFORESAID, SAID POINT BEING 333.00 FEET WEST OF THE EAST LINE OF LOTS 16 TO 27, BOTH INCLUSIVE, IN BLOCK 9 IN GEO. F. NIXON & COMPANY'S FIRST ADDITION TO NORTHFIELD; THENCE SOUTH $79^{\circ}59'00''$ WEST, ALONG THE NORTH LINE OF THE SOUTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 24, A DISTANCE OF 271.64 FEET; THENCE SOUTH $00^{\circ}01'57''$ EAST ALONG THE WEST LINE OF LOT 34 IN COUNTY CLERK'S DIVISION IN SAID SECTION 24, A DISTANCE OF 260.16 FEET; THENCE NORTH $89^{\circ}58'03''$ EAST 271.48 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 05 SECONDS EAST ALONG THE CENTER LINE OF BRISTOL STREET, EXTENDED SOUTH 260.08 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

WHICH IS DESCRIBED OF RECORD AS

THE NORTH 260 FEET OF THAT PART OF LOTS 17 AND 34 IN COUNTY CLERK'S DIVISION OF SECTION 24, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTH LINE OF DRURY LANE, AS RECORDED (SAID LANE, BEING ONE OF THE EAST AND WEST STREETS IN GEORGE F. NIXON'S FIRST ADDITION TO NORTHFIELD AND SAID SOUTH LINE THEREOF BEING THE NORTH LINE OF THE SOUTH $\frac{1}{2}$ OF LOT 17 AND THE NORTH LINE OF LOT 34 AND WEST OF THE CENTER LINE OF BRISTOL STREET), ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT APPURTENANT FOR THE BENEFIT OF PARCEL 1 FOR ACCESS, INGRESS AND EGRESS OVER AND ACROSS A PARCEL OF PROPERTY AS CONTAINED IN TRUSTEE'S DEED RECORDED AS DOCUMENT 0404008154.

Property Address: 12 Bristol Road, Northfield, Illinois

PIN: 04-24-412-045-0000