

# UNOFFICIAL COPY

This instrument was prepared by and, after recording, return to:

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



Doc#: 1036416050 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/30/2010 03:10 PM Pg: 1 of 11

Permanent Real Estate Tax Index  
Nos.:  
See attached **Exhibit A**

Street Address:  
See **Exhibit A** attached

## ASSIGNMENT AND ASSUMPTION OF MORTGAGE

Re: Northbrook Property

**THIS ASSIGNMENT AND ASSUMPTION OF MORTGAGE** (this "Agreement") is entered into this 30<sup>th</sup> day of December, 2010, by and among **BRIAN K. MORAN, AS TRUSTEE** ("B. Moran Trustee") **UNDER THE TRUST AGREEMENT EXECUTED BY OWEN A. MORAN DATED SEPTEMBER 18, 1984, AS AMENDED** ("Old Mortgagor"), **2265 CARLSON LLC**, an Illinois limited liability company ("New Mortgagor"), and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois State Bank, its successors and assigns ("Lender").

### RECITALS

A. 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 Lender entered into that certain Loan and Security Agreement dated as of December 11, 2008 (the "Original Loan Agreement"), pursuant to which Lender agreed to make certain loans (collectively, the "Loan") to Borrower in the aggregate amount of Twenty Five Million Five Hundred Thousand and 00/100 Dollars

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(\$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"); (ii) a term loan in the principal amount of Five Million and 00/100 Dollars (\$5,000,000.00)(the "Term Loan"); 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").

B. The Original Loan Agreement was amended by that certain First Modification of Loan Documents dated as of December 11, 2009 (the "First Amendment"; the Original Loan Agreement, as amended by the First Amendment and as hereafter amended from time to time, is herein referred to as the "Loan Agreement"; all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), pursuant to which, among other things: (i) the Revolving Loan Maturity Date was extended from December 11, 2009 to December 11, 2011, (ii) the aggregate amount of the Revolving Loan Commitment was decreased from \$15,000,000.00 to \$12,500,000.00 and imposed a sublimit of \$1,000,000.00 for Letters of Credit to be issued under the Revolving Loan Commitment; (iii) the Revolving Loan Interest Rate was revised; (iv) the principal amount of the Term Loan Commitment was decreased from \$5,000,000.00 to \$4,404,762.00; (v) the Term Interest Rate was revised; (vi) the annual issuance fee due for Letters of Credit was increased from 1.0% to 1.5%, effective as of July 1, 2010 through the Letter of Credit Maturity Date, and (vii) certain financial covenants were revised, all as more fully set forth in the First Amendment.

C. The Loan is evidenced by (i) that certain Amended and Restated Revolving Note dated as of December 11, 2009 in the amount of \$12,500,000.00 given by Borrower to and for the benefit of Lender (the "Revolving Note"); and (ii) that certain Term Note dated as of December 11, 2008 in the amount of \$5,000,000.00 given by Borrower to and for the benefit of Lender (the "Term Note" and, together with the Revolving Note, the "Notes").

D. The Notes are secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 11, 2008 from B. Moran Trustee 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 ("Original Northbrook Mortgage"), which Original Northbrook Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto ("Northbrook Property").

E. The Original Mortgage was amended by the First Amendment, which was recorded with the Cook County Recorder's Office on December 31, 2009, as Document No. 0936533107 (the Original Mortgage, as amended by the First Amendment, is herein referred to as the "Mortgage").

F. The Loan Agreement, the Notes, the First Amendment, the Mortgage and all other documents evidencing and/or securing the Loan are herein referred to as the "Loan Documents".

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G. Pursuant to (i) that certain Limited Guaranty dated December 11, 2008 from B. Moran to Lender (the "B. Moran Guaranty"); and (ii) 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"), Guarantors jointly and severally guaranteed, subject to the limitations set forth in the Guaranty: (i) the payment of the amounts provided for in the Notes, the Loan Agreement, the Mortgage and the other Loan Documents, and (ii) the performance of the covenants to be performed and observed under the Notes, the Loan Agreement, the Mortgage and the other Loan Documents.

H. Original Mortgagor now desires to transfer and convey the Northbrook Property to the New Mortgagor (the "Transfer"). Accordingly, simultaneously with the recording of this Agreement, fee title interest in the Northbrook Property shall be vested solely with the New Mortgagor.

I. Original Mortgagor, Borrower, Guarantors and New Mortgagor have now requested that Lender amend the Mortgage in order to reflect (i) Original Mortgagor's transfer of the Northbrook Property to the New Mortgagor; (ii) New Mortgagor's assumption of each and every obligation and liability of Original Mortgagor under the Mortgage; and (iii) Lender's consent to the Transfer.

J. Lender has agreed to the Transfer, provided that in connection with its agreement to the foregoing, New Mortgagor agrees to assume, comply with, be bound by and perform, satisfy and discharge all of the liabilities and obligations of Original Mortgagor under the Mortgage on the terms and upon the conditions contained in this Agreement.

Accordingly, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Original Mortgagor, New Mortgagor and Lender hereby agree as follows:

1. **Recitals**. The recitals set forth above are hereby incorporated herein and made a part hereof. Except as otherwise expressly indicated, all capitalized terms used herein or in any of the Recitals shall have the same meanings as ascribed to them in the Loan Agreement.

2. **Confirmation**. Original Mortgagor and New Mortgagor hereby confirm and certify to Lender that each representation and warranty contained in the Mortgage, as amended hereby, is true, complete and correct in all respects as of the date hereof.

3. **Assignment of Mortgage**. Original Mortgagor hereby assigns, transfers, and conveys to New Mortgagor all of its obligations, liabilities, rights, title and interests in and to the Mortgage. Original Mortgagor hereby acknowledges and agrees that as of the date of this Agreement, it does not have any defenses, claims or set-offs to the enforcement by Lender of Original Borrower's obligations and liabilities under the Mortgage and hereby further acknowledges that immediately prior to the effectiveness of this Agreement the Mortgage is enforceable against Original Mortgagor.

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4. **Assumption of Mortgage.** New Mortgagor hereby accepts the foregoing assignment and transfer of the interests of Original Mortgagor in, to and under the Mortgage and agrees to unconditionally and absolutely assume, comply with, be bound by and perform, satisfy and discharge all of the liabilities and obligations of Original Mortgagor under the Mortgage on the same basis as if New Mortgagor had executed such document on its face when originally delivered to Lender by Original Mortgagor. New Mortgagor hereby ratifies, reaffirms and confirms its obligations and liabilities under the Mortgage, as the same is being assigned hereby, and the liens and security interests created thereby, and acknowledges that as of the date of execution and delivery of this Agreement, New Mortgagor has no defenses, claims or set-offs to the enforcement by Lender of the obligations and liabilities of New Mortgagor under the Mortgage.

5. **Consents of Lender and Release of Original Mortgagor.** Subject to the assumption by New Mortgagor of the obligations and liabilities of Original Mortgagor under the Mortgage, Lender hereby (i) consents to the Transfer, and (ii) agrees that the Transfer and the other transactions contemplated hereby shall not, in and of themselves, constitute a breach, a default, an "Unmatured Event of Default" or an "Event of Default" each as defined in and/or under any of the Loan Documents. Upon the consummation of the Transfer and the assumption by New Mortgagor of the obligations and liabilities of Original Mortgagor under the Mortgage, Original Mortgagor shall be released from any further obligations and liabilities under the Mortgage; provided, however, that this release shall not be deemed a release of Original Mortgagor from any obligations and/or liabilities hereunder or under any of the other Loan Documents executed by it, all of which obligations and liabilities shall continue in full force and effect.

6. **Amendment of the Mortgage.** The "Mortgagor" under the Mortgage is hereby amended to be the New Mortgagor. New Mortgagor agrees that Lender shall have the right to record this Agreement to reflect the subject matter of this Agreement.

7. **Additional Requirements.** The obligations of Lender to enter into this Agreement shall be subject to Original Mortgagor, Borrower, Guarantors, New Mortgagor and others having delivered, or having caused to be delivered, to Lender, or the occurrence of the following items and conditions, all of which shall be in form and substance acceptable to Lender:

- (a) This Agreement executed by the appropriate parties;
- (b) An Endorsement to the Loan Policy issued by the Title Company insuring the Mortgage which (i) extends the effective date of the Loan Policy to the date of recording of this Agreement, (ii) reflects the recording of this Agreement, (iii) insures that the New Mortgagor is the title holder of the Northbrook Property and the mortgagor under the Mortgage, and (iv) insures the first priority of the lien of the Mortgage;
- (c) Certified copies of the Articles of Organization and the Operating Agreement for the New Mortgagor, together with a good standing certificate with respect to the New Mortgagor;

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- (d) Certified copies of the Trust Agreement of the Original Mortgagor;
- (e) Copy of the deed of the Northbrook Property from Original Mortgagor to New Mortgagor;
- (f) A UCC Financing Statement with respect to the New Mortgagor;
- (g) A Ratification and Acknowledgement executed by Borrower and Guarantors; and
- (n) Such other documents as Lender may reasonably require, including, without limitation, such insurance certificates as shall be acceptable to Lender showing that the New Mortgagor has appropriate insurance coverage for the Northbrook Property.

8. **Loan Expenses.** New Mortgagor shall pay all expenses, charges, legal fees, costs and other fees of Lender relating to this Agreement, all recording fees and charges, if any, title insurance charges and premiums, and all other expenses, charges, costs and fees referred to in or necessitated by the terms of this Agreement (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Lender within thirty (30) days after the written demand therefor by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate or may be paid by Lender at any time following said thirty (30) day written demand by disbursement of proceeds of the Loan.

9. **Representations and Warranties.**

(a) New Mortgagor and Original Mortgagor represent and warrant to Lender that: (i) each has full power and authority to execute and deliver this Agreement, and to perform their respective obligations hereunder and thereunder; (ii) upon the execution and delivery of this Agreement, this Agreement shall be valid, binding and enforceable upon New Mortgagor and Original Mortgagor, as the case may be, in accordance with their respective terms, and the Mortgage shall be valid, binding and enforceable upon New Mortgagor in accordance with its terms; (iii) execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under any agreement or any applicable law, rule, regulation, judgment, decree or order, or any agreement, indenture or instrument to which Original Mortgagor or New Mortgagor is a party or by which Original Mortgagor or New Mortgagor is bound or which is binding upon or applicable to the Northbrook Property, or any portion thereof; (iv) no default or event or condition which would become a default with the giving of notice and/or the passage of time, exists under the Loan Documents; (v) there is not any condition, event, or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the best of their knowledge threatened, affecting Original Mortgagor, New Mortgagor or the Northbrook Property, or which would prevent New Mortgagor from complying with or performing its obligations under the Mortgage within the time limits set forth therein for such compliance or performance, and the undersigned know of no basis for any such matter.

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(b) New Mortgagor represents and warrants to Lender that it is a limited liability company, validly existing and in good standing under the laws of the State of Illinois. Brian K. Moran, as Trustee of the Brian K. Moran Living Trust u/t/d September 21, 1998, as amended, is the sole managing member of the New Mortgagor.

## 10. Waiver of Defenses.

(a) As of the date of this Agreement, Original Mortgagor and New Mortgagor acknowledge that they have no defense, offset, or counterclaim to any of Original Mortgagor or New Mortgagor's obligations under the Mortgage. Original Mortgagor and New Mortgagor 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 Original Mortgagor, New Mortgagor, Borrower, either Guarantor and the Lender.

(b) As of the date of this Agreement, New Mortgagor acknowledges that it has no defense, offset, or counterclaim to any of New Mortgagor's obligations under the Mortgage.

11. No Course of Dealing New Mortgagor acknowledges and agrees that this Agreement is limited to the terms outlined herein. Neither this Agreement nor Lender's consent to the Transfer shall establish a course of dealing or be construed as evidence of any willingness on the Lender's part to consent to any further conveyances of the Northbrook Property, should any be requested.

## 12. Miscellaneous.

(a) Except as expressly amended herein or as contemplated hereby, the Mortgage and the other Loan Documents shall remain in full force and effect in accordance with their respective terms.

(b) This Agreement shall be binding on the Original Mortgagor, the New Mortgagor and their respective heirs, legatees, administrators, personal representatives, successors and permitted assigns, and shall inure to the benefit of Lender, its successors and assigns.

(c) This Agreement shall not be construed more strictly against Lender than against Original Mortgagor or New Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Original Mortgagor, Guarantors, Borrower, New Mortgagor and Lender have contributed substantially and materially to the preparation of this Agreement, and Original Mortgagor, New Mortgagor 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

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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.

(d) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

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

14. **VENUE.** TO INDUCE LENDER TO ACCEPT THIS AGREEMENT, ORIGINAL MORTGAGOR AND NEW MORTGAGOR 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. ORIGINAL MORTGAGOR AND NEW MORTGAGOR EACH HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT OR ANY OF THEM BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH OR UNDER THE MORTGAGE, AS AMENDED HEREBY.

15. **WAIVER OF JURY TRIAL.** ORIGINAL MORTGAGOR AND NEW MORTGAGOR IRREVOCABLY WAIVE, 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 MORTGAGE, THE NOTES OR THE OTHER LOAN DOCUMENTS, AND/OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, THE MORTGAGE OR ANY INSTRUMENT, DOCUMENT, OR AGREEMENT, AND AGREE 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.


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This Agreement has been entered into as of the date first above written.

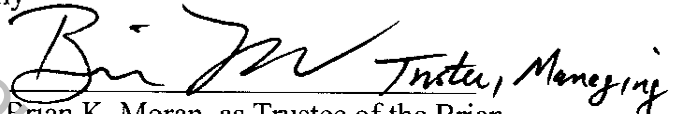
**ORIGINAL MORTGAGOR:**

**BRIAN K. MORAN, AS TRUSTEE UNDER  
THE TRUST AGREEMENT EXECUTED BY  
OWEN A. MORAN DATED SEPTEMBER 18,  
1984, AS AMENDED**

  
Brian K. Moran, as Trustee aforesaid

**NEW MORTGAGOR:**

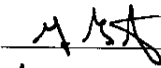
**2265 CARLSON LLC, an Illinois limited liability  
company**

By:   
Brian K. Moran, as Trustee of the Brian  
K. Moran Living Trust u/t/d September 21,  
1998, as amended

Its: Managing Member

**LENDER:**

**THE PRIVATEBANK AND TRUST  
COMPANY, an Illinois State Bank**

By:   
Its: MANAGING DIRECTOR

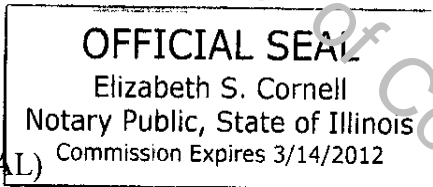


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STATE OF ILLINOIS        )  
                                      )  
COUNTY OF Cook        )        SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Brian K. Moran, as Trustee of the Brian K. Moran Living Trust, u/t/d September 21, 1998, as amended, the Managing Member of 2265 CARLSON LLC, an Illinois limited liability company (the "LLC"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 30<sup>th</sup> day of December, 2010.

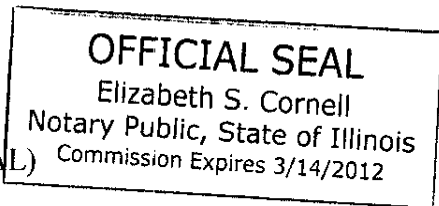


Elizabeth S. Cornell  
NOTARY PUBLIC

STATE OF ILLINOIS        )  
                                      )  
COUNTY OF Cook        )        SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that BRIAN K. MORAN, AS TRUSTEE UNDER THE TRUST AGREEMENT EXECUTED BY OWEN A. MORAN DATED SEPTEMBER 18, 1984, AS AMENDED, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Trustee, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 30<sup>th</sup> day of December, 2010.



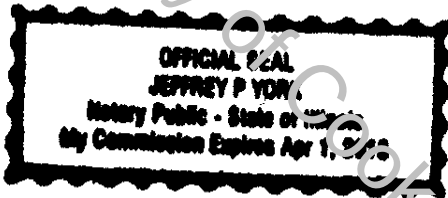
Elizabeth S. Cornell  
NOTARY PUBLIC

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STATE OF ILLINOIS        )  
   )  
 COUNTY OF COOK         )        SS.

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

GIVEN under my hand and notarial seal, this 30th day of December, 2010.



(SEAL)

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Notary Public

My Commission expires: \_\_\_\_\_

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## EXHIBIT A

### 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, according to the plat thereof recorded March 12, 1997 as Document 97170185, 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, according to the plat thereof recorded July 15, 1998 as Document 98611566, in Cook County, Illinois.

Property Address: 2265 Carlson Drive, Northbrook, Illinois

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