



Doc#: 1035629085 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 12/22/2010 12:31 PM Pg: 1 of 3

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, entered into as of this 17 day of December, 2010, by and between **COLE TH OAKLAWN IL, LLC**, a Delaware limited liability company, whose address is c/o Cole Real Estate Investments, 2555 East Camelback Road, Suite 400, Phoenix, Arizona 85016 (the "**Landlord**"), and **THORNTONS INC.**, a Delaware corporation, whose address is 10101 Linn Station Road, Louisville, Kentucky 40233 (the "**Tenant**").

WITNESSETH:

WHEREAS, Landlord and Tenant have heretofore entered into a certain Lease dated as of the date hereof (the "**Lease**") covering certain real property located in Cook County, Illinois, more particularly described on Exhibit A attached hereto upon which there is constructed and located certain improvements (together the "**Premises**"), and

WHEREAS, it is the desire of both Landlord and Tenant to memorialize the Lease and set forth certain pertinent data with respect thereto,

NOW THEREFORE, with respect to the Lease, Landlord and Tenant hereby acknowledge and agree as follows:

1. Demise. The Premises have been and are hereby demised, let and leased by Landlord to Tenant, and taken and accepted by Tenant from Landlord, all pursuant to and in accordance with the Lease.

2. Term. The initial term of the Lease is from the date hereof until 11:59 p.m. on December 31, 2025. Tenant has the right, privilege and option to renew and extend the initial term of the Lease for up to five (5) additional periods of five (5) years each, subject to the provisions and conditions of the Lease.

3. Possession. Landlord has delivered possession of the Premises to Tenant and Tenant has accepted delivery and taken possession of the Premises from Landlord.

4. Liens on Landlord's Interest Prohibited. Except as expressly permitted by the Lease, Landlord's interest in the Premises may not be subjected to liens of any nature by reason of Tenant's construction, alteration, repair, restoration, replacement or reconstruction of any improvements on or in the Premises, including those arising in connection with or as an incident to the renovation of the improvements located on the Premises, or by reason of any other act or

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omission of Tenant (or of any person claiming by, through or under Tenant) including, but not limited to, mechanic's and materialmen's liens. Accordingly, all persons dealing with Tenant are hereby placed on notice that such persons shall not look to Landlord or to Landlord's credit or assets (including Landlord's interest in the Premises) for payment or satisfaction of any obligations incurred in connection with the construction, alteration, repair, restoration, renovation, replacement or reconstruction thereof by or on behalf of Tenant. Tenant has no power, right or authority to subject Landlord's interest in the Premises to any mechanic's or materialmen's lien or claim of lien.

5. Subordination and Attornment. The Lease specifically provides that the Lease and Tenant's leasehold interest in and to the Premises are junior, inferior, subordinate and subject in all respects to any mortgage, deed of trust or deed to secure debt granted by Landlord now or hereafter in force and effect upon or encumbering the Premises or any portion thereof, provided that Tenant's possession and use of the Premises are recognized and not disturbed by the holder or beneficiary thereunder or its successors or assigns as long as Tenant is not in default under the Lease. Tenant shall, and has agreed to, attorn to any successor to the interest of Landlord under the Lease, including the purchaser at any foreclosure sale occasioned by the foreclosure of any such mortgage, deed of trust or deed to secure debt, for the balance of the Lease Term (as such term is defined in the Lease) of the Lease remaining at the time of the succession to such interest by such successor, provided that such successor to the interest of Landlord shall not disturb Tenant's possession of the Premises so long as Tenant is not in default under the Lease.

6. Right of First Refusal. The Lease grants Tenant the right to match offers to purchase the Premises pursuant to the terms and conditions of the Lease.

7. Operating Lease. Landlord and Tenant intend that (i) the Lease is a "operating lease" and not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of the Lease are those of a true lease; and (ii) the business relationship created by the Lease and any related documents is solely that of a long-term commercial lease between Landlord and Tenant and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Lease.

8. Inconsistent Provisions. The provisions of this Memorandum of Lease constitute only a general description of the content of the Lease with respect to matters set forth herein. Accordingly, third parties are advised that the provisions of the Lease itself shall be controlling with respect to all matters set forth herein. In the event of any discrepancy between the provisions of the Lease and this Memorandum of Lease, the provisions of the Lease shall take precedence and prevail over the provisions of this Memorandum of Lease.

9. Termination of Lease. All rights of Tenant in the Premises shall terminate upon the expiration or earlier termination of the Lease, which may be evidenced by a written notice of such expiration or termination recorded or filed by Landlord among the appropriate land records of the county in which this Memorandum of Lease is recorded.

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10. Counterparts. This Memorandum of Lease may be executed in counterparts by the parties hereto and each shall be considered an original, but all such counterparts shall be construed together and constitute one Memorandum of Lease between the parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

Property of Cook County Clerk's Office

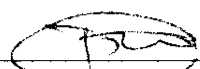
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IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be duly executed on or as of the day and year first above written.

Landlord:

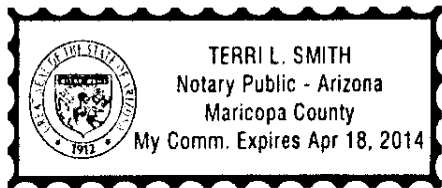
COLE TH OAKLAWN IL, LLC, a
Delaware limited liability company

By: Cole REIT Advisors III, LLC, a
Delaware limited liability company, its
Manager

By: 
Name: Todd J. Weiss
Its: Senior Vice President

STATE OF ARIZONA
COUNTY OF MARICOPA

The instrument was acknowledged before me on this 16th day of December, 2010 by Todd J. Weiss, as Senior Vice President of Cole REIT Advisors III, LLC, a Delaware limited liability company and the Manager of Cole TH Oaklawn IL, LLC, a Delaware limited liability company, on behalf of said limited liability companies.




Notary Public, State of Arizona

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EXHIBIT A TO MEMORANDUM OF LEASE

Legal Description

PARCEL 1:

LOT 35 (EXCEPT THE EAST 17 FEET) IN C.N. LOUCK'S ADDITION TO OAK LAWN GARDENS, BEING A SUBDIVISION OF LOT 4 IN THE ADMINISTRATOR'S DIVISION OF THE EAST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE SOUTH 86.21 FEET OF THE EAST 8 FEET OF THE 16 FOOT VACATED ALLEY LYING WEST OF AND ADJACENT TO LOT 35 ALL IN C.N. LOUCK'S ADDITION TO OAK LAWN GARDENS, A SUBDIVISION IN THE EAST 1/2 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

BEING A PART OF THE SAME ALLEY VACATED BY THE BOARD OF TRUSTEES OF OAK LAWN, ILLINOIS PURSUANT TO ORDINANCE NO. 83-9-14 ADOPTED APRIL 26, 1983 AND DESCRIBED IN THE PLAT ATTACHED THERETO, SUCH ORDINANCE BEING RECORDED DECEMBER 8, 1983 AS INSTRUMENT NO. 26890488 IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 24-04-406-020-0000

For informational purposes only, the property is known as:

9138 S. Cicero Avenue
Oaklawn, IL 60459

~~Prior instrument reference: Document # _____ of the Cook County, Illinois Recorder's Office.~~