

ORDINANCE NO. 0-2015-15

AN ORDINANCE AUTHORIZING THE LEASE OF CITY-OWNED PROPERTY AT GREENMOUNT CEMETERY TO HOOD MORTUARY, INC. AND DECLARING AN EFFECTIVE DATE.

WHEREAS, in November of 1989, the City of Durango entered into a twenty-five year lease agreement with Hood Mortuary, Inc. to lease a portion of Greenmount Cemetery for the crematorium; and

WHEREAS, the lease agreement has expired and it is the desire of both parties to renew the lease agreement for the property located at 900 Cemetery Road in Greenmount Cemetery; and

WHEREAS, the term of the new lease is for ten (10) years commencing January 1, 2015 and ending on December 31, 2024; and

WHEREAS, the City will receive \$3,000.00 annually from Hood Mortuary, Inc. for the term of the lease agreement; and

WHEREAS, Article II, §11(d) of the Charter of the City of Durango, Colorado requires the adoption of an ordinance to convey or lease or authorize the conveyance or lease of any real property owned by the City; and

WHEREAS, a public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the approval of a ten (10) year lease agreement with Hood Mortuary, Inc. would be beneficial to the community and in the best interests of the citizens of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. The City Council of the City of Durango does hereby authorize and approve the ten (10) year lease agreement between the City, as Lessor, and Hood Mortuary, Inc., as Lessee, as described in the Lease Agreement, which is attached hereto as Exhibit 'A' and by this reference incorporated herein.

Said lease shall provide for an annual amount of \$3,000.00, payable in advance on the first day of each year of the term of the lease, commencing January 1, 2015.

Section 2. This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF
DURANGO

Attest:

_____	_____
City Clerk	Mayor
STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

I, Amy Phillips, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2015-15 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 5th day of May, 2015, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 10 day of May, 2015, prior to its final consideration by the City Council.

City Clerk

I further certify that said Ordinance No. O-2015-15 was duly adopted by the Durango City Council on the 19 day of May, 2015, and that in accordance with instructions received from the Durango City Council, said ordinance was published by title only in the Durango Herald on the 24 day of May, 2015.

City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered as of the ____ day of ____, 2015 by and between The City of Durango, a Colorado Home-Rule Municipality (hereinafter referred to as "Lessor"), and Hood Mortuary, Inc., a Colorado Non-profit Corporation (hereinafter referred to as "Lessee").

ARTICLE 1. DEMISE OF LEASED PREMISES

1.01 For and in consideration of the rents, covenants, and promises herein contained to be kept, performed, and observed by Lessee, Lessor does hereby lease and demise to Lessee, and Lessee does hereby rent and accept from Lessor, a parcel of real property located in the Greenmount Cemetery with an address of 900 Cemetery Road, Durango, Colorado 81301 which area is more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (hereinafter referred to as the "Leased Premises").

1.02 The parties acknowledge and agree that the Leased Premises was originally leased to the Lessee by the Lessor in a Lease Agreement dated November 13, 1989 for a period of twenty five years, which said lease has expired. The original lease was in the nature of a ground lease, and all improvements currently on the Leased Premises have been constructed by the Lessee or their predecessors and are owned by the Lessee as is further set forth herein.

ARTICLE 2. LEASE TERM

2.01 **Term.** This Lease shall be for a primary term of ten (10) years (hereinafter referred to as the "Primary Term"), commencing on January 1, 2015 and ending on December 31, 2024 (the "Termination Date"), subject however, to earlier termination as provided in this Lease, or unless renewed and extended in accordance with Paragraph 2.02 hereof.

2.02 **Renewal or Extension.** Subject to the Termination provisions of section 2.03 or as otherwise provided herein, the parties agree to negotiate to renew or extend the terms of this lease agreement prior to the end of the Primary Term.

2.03 **Termination.** Notwithstanding any other provision contained herein, either party may terminate this Lease, without cause, on one (1) year's written notice to other party.

ARTICLE 3. RENT

3.01 The rent for the Primary Term of the Lease shall be three thousand dollars per year, payable in advance on the first day of each year of the term of the Lease. The rent payments shall be paid to the City of Durango at Greenmount Cemetery located at 900 Cemetery Road, Durango, Colorado 81301.

ARTICLE 4. TAXES

4.01 Lessor shall pay and discharge all taxes, general and special assessments, and other charges of every description which during the term of this Lease may be levied on or assessed against the Leased Premises and all improvements and other property thereon. Lessee shall be responsible for taxes assessed against any property of Lessee placed within the Leased Premises.

ARTICLE 5. UTILITIES

5.01 Lessee shall pay or cause to be paid all charges for utilities and other services provided to the Leased Premises, including but not limited to electricity, trash removal, recycling, water, heat, gas, sewer, internet connection charges, cable television and snowplowing.

ARTICLE 6. USE OF PREMISES

6.01 **Intended Use.** The sole intended use of the Leased Premises by Lessee shall be for the location and operation of a crematorium and related activities approved by the Lessor.

6.02 **Compliance with Law.** Lessee shall comply with any applicable laws, licensing requirements, and regulations of any governmental agency, including but not limited to any agency of the state of Colorado that has jurisdiction over the activities of Lessee, and all ordinances and codes of the City of Durango.

6.03 **Undue Hazard.** Lessee shall not engage in any activity that is hazardous to the Leased Premises or the property, or any neighboring property, or the health and safety of any person. If the Lessee conducts any activity which is deemed hazardous by Lessor or Lessor's insurer, or requires repair and/or requires extra insurance premiums to be paid by the Lessor, then the Lessee shall repair any unsafe condition or cease any unsafe activity and reimburse Lessor for any expenditures made by Lessor in connection with such hazardous activity, within thirty (30) days after receiving written notice from Lessor.

6.04 **Waste.** Lessee shall remove all waste and shall not permit rubbish, debris, waste material, anything noxious or detrimental to safety or health, anything likely to create objectionable odors or a fire hazard, or anything subject to deterioration to accumulate on the Leased Premises or to be improperly disposed of.

ARTICLE 7. IMPROVEMENTS ON LEASED PREMISES

7.01 **Improvements by Lessee.** The Lessee shall submit any and all plans for any proposed structural improvements on or amendments to the Leased Premises in writing to the Lessor for review and approval prior to the commencement of any work.

7.02 **Lessee's Ownership of Improvements and Fixtures.** It is expressly understood and agreed that all buildings, improvements, fixtures, of whatsoever nature at any time constructed, placed, or maintained on any part of the Leased Premises shall remain the property of Lessee.

7.03 Removal of Improvements and Fixtures Upon Expiration or Termination. Unless otherwise agreed in writing prior to the termination of this Agreement, Lessee shall remove all structures, fixtures, installations or improvements owned by Lessee or constructed on the Leased Premises by Lessee at any time at Lessee's sole expense, within sixty (60) days after the termination of this Agreement. As part of any removal of the improvements and structures at the end of the Lease, the parties agree to conduct a review of the condition of the Leased Premises to determine if there is any reasonable evidence of contamination of the soil or water attributable to the Lessee's use of the property during the term of this Lease Agreement. In the event the City determines that there is reasonable evidence of that contamination, then the City shall be allowed to demand that the Lessee obtain a Phase One Environmental Assessment for the Leased Premises from a reputable firm engaged in that business. That assessment shall include, at a minimum, an evaluation of any potential soil contamination, potential ground and surface water contamination, the existence of asbestos or other potentially hazardous environmental conditions on the Leased Premises. The Lessee shall remediate any environmental contamination, residue or other condition that is identified in the Phase One Environmental Assessment as being related to or caused by the Lessee's uses, including but not limited to removal of any hazardous substance, contaminated soils, asbestos and the completion of any other similar remedial action to assure that the property is left vacant in a condition similar to that prior to the Lessee's possession of the property under the prior lease. Following any remediation and prior to delivery of possession of the Leased Premises to the Lessor, the Lessee shall provide a written certification or other proof acceptable to the Lessor that all such remediation has been completed in accordance with all local, state and federal requirements. If Lessee's performance of its obligations under paragraph is delayed due to fire, catastrophe, strikes, acts of God, or any other cause beyond its control, the period of delay shall be added to Lessee's time for performing such obligations. If Lessee fails to remove any such property, the Lessor may, at its option, remove the property, store the property at Lessee's expense, and on three (3) days' written notice to Lessee sell such property at public or private sale, or if it is unsalable, may dispose of it in any other manner without liability. Lessee shall be liable for all expenses incurred by the Lessor for the removal, storage, or sale of such property, and for any additional costs incurred by the Lessor for cleanup of the site and any expenses incurred to remediate any contamination or environmental issues on the site to meet all local, state and federal standards.

ARTICLE 8. ENCUMBRANCE OF LEASEHOLD ESTATE

8.01 Liens. Lessee shall not encumber the leasehold interest or to allow any liens to be placed against the Leased Premises at any time.

ARTICLE 9. REPAIRS

9.01 Lessee's Duty to Repair. Except as otherwise provided herein, Lessee, at Lessee's own cost, hereby agrees to keep and maintain, or cause to be kept and maintained, all buildings and

improvements located on the Leased Premises in a good state of appearance and repair. Lessor may notify Lessor of any defect in or need for repairs to the Leased Premises.

ARTICLE 10. INSURANCE

10.01 The Lessee shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Lessor. All coverages shall be continuously maintained from the date of commencement of this Lease Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

10.02 Worker's Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work on the Leased Premises and Employers' Liability insurance with minimum limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease – policy limit, and One Million Dollars (\$1,000,000) disease – each employee.

10.03 Comprehensive General Liability insurance with minimum single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Lessees, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

10.04 The policies required above, except for the Workers' Compensation insurance and Employer's Liability insurance, shall be endorsed to include the Lessor, and its officers and employees, as additional insured. Every policy required above shall be primary insurance, and any insurance carried by the Lessor, its officers or its employees, shall be excess and not contributory insurance to that provided by Lessee. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Lessee shall be solely responsible for any deductible losses under each of the policies required above.

10.05 Certificates of insurance shall be completed by the Lessee's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and copies of such certificates shall be forwarded to the Lessor prior to the commencement date of this Lease. Each certificate shall identify the Leased Premises and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Lessor. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Lessor

reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

10.06 Failure on the part of the Lessee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Lessor may immediately terminate this Lease Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Lessor shall be repaid by the Lessee to the Lessor upon demand.

ARTICLE 11. ASSIGNMENT AND SUBLEASE

11.01 **Assignment and Subletting by Lessee.** This Lease may not be assigned or sublet without the prior written consent of Lessor.

11.02 **Assignment by Lessor.** Lessor is expressly given the right to assign any or all of its interest under the terms of this Lease.

ARTICLE 12. DEFAULT AND REMEDIES

12.01 **Termination on Default.** Should Lessee default in the performance of any covenant, condition, or agreement in this Lease, and such default is not corrected within thirty (30) days after receipt of written notice from Lessor to Lessee, Lessor may declare this Lease, and all rights and interest created by it, to be terminated. Upon Lessor electing to terminate, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof.

12.02 **Other Remedies** Any termination of this Lease as herein provided shall not relieve Lessee from the payment of any sum or sums that shall then be due and payable to Lessor hereunder, or any claim for damages then or theretofore accruing against Lessee hereunder, or from any obligations under 7.03, and any such termination shall not prevent Lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default thereunder. No waiver by Lessee of a breach of any of the covenants, conditions, or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

ARTICLE 13. WARRANTIES

13.01 **Lessor's Warranty of Title.** Lessor hereby represents and warrants that it is the owner in fee simple absolute of the Leased Premises subject to covenants, conditions, restrictions, easement, and other matters of record.

13.02 Lessor's Warranty of Quiet Enjoyment. Lessor covenants and agrees that Lessee on observing and keeping the covenants, conditions, and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Lease without hindrance or molestation of Lessor or any person claiming under Lessor except such portion of the Leased Premises, if any, as shall be taken under the power of eminent domain.

ARTICLE 14. GENERAL PROTECTIVE PROVISIONS

14.01 Right of Entry and Inspection. Lessee shall permit Lessor or Lessor's agents, representatives, or employees to enter on the Leased Premises for the purpose of inspection, to determine whether Lessee is in compliance with the terms of this Lease and for the purposes of maintaining, repairing or altering the Leased Premises.

14.02 No Partnership. The relationship between Lessor and Lessee at all times shall remain solely that of landlord and tenant and not be deemed a partnership or joint venture.

14.03 Force Majeure. It is expressly understood and agreed that the performance of any other covenants, agreement, obligations, or undertaking herein contained is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations or interferences, fire or other casualty, or any circumstances beyond the control of the party obligated or permitted under the terms hereof to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, each such party shall be excused from doing or performing the same during such period of delay.

14.04 No Waiver. No waiver by Lessor of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

14.05 Hold Harmless Indemnification. To the fullest extent permitted by law, the Lessee agrees to indemnify and hold harmless the Lessor, and its officers, its employees and agents, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Lessee's business at the Leased Premises, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent act, omission, or other fault of the Lessee or any subcontractor of the Lessee, or any officer, employee, or agent of the Lessee or any subcontractor, or any other person for whom Lessee is responsible. The Lessee shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Lessee's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Lessor.

ARTICLE 15. MISCELLANEOUS

15.01 **Notices.** All notices provided to be given under this Agreement shall be given by hand delivery to the proper party. The date of any notice under this Agreement shall be deemed to be the date of hand delivery and shall be effective from such date. The addresses of the parties to this Agreement are as follows:

LESSOR:	LESSEE:
City of Durango	Hood Mortuary, Inc.
Attn: City Manager	Attn: Ryan Phelps
949 E 2 nd Avenue	1261 E. 3 rd Avenue
Durango CO 81301	Durango, CO 81301

15.02 **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

15.03 **Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Colorado, and all obligations of the parties created hereunder are performable in La Plata County, Colorado.

15.04 **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.05 **Prior Agreements Superseded.** This Agreement represents the entire and integrated agreement between the Lessor and the Lessee and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Lessor and the Lessee.

15.06 **Amendments.** No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

15.07 **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either party shall not preclude

or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

15.08 Attorney's Fees. In the event of a breach of any of the terms of this Agreement resulting in the party not in default having to employ an attorney to protect or enforce its rights hereunder through litigation, the prevailing party in such litigation shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

15.09. Appropriation. Any expenditure required of the Lessor herein shall be subject to and contingent on the appropriation of funds for that purpose by the City Council.

THIS LEASE has been executed by the parties on the date and year first above written.

LESSOR:

LESSEE:

CITY OF DURANGO

HOOD MORTUARY, INC.

By: _____

By: _____

Ron Le Blanc

Name _____

City Manager

Title _____

949 E 2nd Avenue

Address _____

Durango CO 81301

EXHIBIT “A”

Description of Leased Premises

EXHIBIT A



GREENMOUNT CEMETERY