

THIS LEASE AGREEMENT made this 12 day of October, 1981, between the City of Klamath Falls a municipal corporation of the State of Oregon (hereinafter referred to as "City") and Michael and Sandra O'Hair dba Klamath Cremation Service (hereinafter referred to as "Lessee").

W I T N E S S T H:

WHEREAS, City is the owner of the Klamath Memorial Park Cemetery located in the City of Klamath Falls, Klamath County, Oregon (hereinafter referred to as the "Cemetery"); and

WHEREAS, it is necessary for the accomodation of the cemetery-using public that a full range of cemetery services be made available at the cemetery; and

WHEREAS, City has solicited and received bids for the lease of space in the cemetery chapel for installation and operation of a cremation retort; and

WHEREAS, City has determined that the Lessee is the highest responsible and qualified bidder therefor; NOW, THEREFORE,

THE PARTIES AGREE AS FOLLOWS:

1) Premises. City, in consideration of the compensations and the sundry covenants and agreements set forth herein to be kept and performed by Lessee, does hereby demise and lease unto Lessee upon the conditions hereinafter set forth, all of which Lessee accepts, the smaller of the two rooms in the Chapel at the Klamath Memorial Park Cemetery.

2) Rent. Lessee, in consideration of the leasing of the demised premises, hereby covenants and agrees to pay rent to City at the office of the City Recorder of the City of Klamath Falls in the amount of \$50.00 per year, payable in advance, for the first ten (10) years of this agreement. For the following year, the yearly rent shall be increased to represent the percentage increase between the Portland Consumer Price Index (CPI) level for August 1, 1981 and August 1, 1991. For each succeeding year remaining in the agreement, the yearly rent shall be increased to represent the percentage increase between the Portland CPI level for August 1 of the prior year and August 1 of the calendar year in which the next year's rent is due. Beginning October 1991, and continuing each October thereafter until October 1995, the City shall obtain the August Portland CPI, make the necessary adjustment, and notify the Lessee in writing of the rent due, which amount shall be paid by Lessee within thirty (30) days of receipt of the bill.

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3) Term. The term of the agreement shall be for a period of fifteen (15) years commencing the date first above written, unless otherwise terminated as herein provided.

4) Services to be Performed by City.

(a) City, at City's expense, shall maintain and make all exterior and structural repairs (not made necessary by the fault of Lessee) to the demised premises, and maintain and repair all heating equipment, all wires, pipes, conduits and other equipment or facilities for supplying heat, light, power, and natural gas to the premises and those portions of all utility lines supplying said premises which are located outside the premises (unless such utility lines are maintained or repaired by utility companies). The provisions of this paragraph shall be complied with by City when necessary from time to time, but City shall not be liable to Lessee for damages or for abatement in rent on account of City's failure to perform the work required of City hereunder. The provisions of this paragraph shall not apply to any of the installations installed by Lessee as hereinafter provided.

(b) City will furnish adequate heat, electricity, and access to natural gas.

(c) City will not furnish janitorial service, guarding or custodial services, nor janitor material or supplies for the leased premises.

5) Services to be Performed by Lessee.

(a) Type of Operation. Lessee shall operate and maintain the cremation retort in a first-class manner, in accordance with the highest standards for this type of service. The service at all times shall be clean and efficient.

(b) Hours of Operation. Lessee shall have the right to operate the retort at any hour of any day. Provided, however, the retort shall not be operated during cemetery services using the chapel area and, during the hours of 8:00 a.m. to 5:00 p.m. on week days, Lessee shall obtain the permission of the City's Cemetery Superintendent prior to use of the retort.

(c) Cleanliness, Trash, Etc. Lessee shall maintain the demised areas in a clean and neat condition, maintaining adequate and suitable receptacles for trash and refuse. Lessee shall empty trash and refuse receptacles in a place to be designated by the Cemetery Superintendent.

(d) Operation. Lessee shall bear at his own expense all costs of operating the retort, and shall pay in addition to rental, all other costs connected with the use of the retort including maintenance (except building

structure, outside wall and roof), insurance, natural gas, janitor service, and supplies, and shall pay for all permits and licenses required by law.

(e) Maintenance and Inspection. Lessee shall allow City, its employees, or representatives, ingress and egress to leased premises for the purpose of inspecting same and for the purpose of maintaining, altering, or adding thereto in any manner or respect whatsoever. City shall not be liable for any loss in business or damages of any nature to Lessee occasioned by the performance of such work.

(f) Cremation Authorization. Lessee shall obtain all necessary written authorizations for cremations, and all necessary licenses and permits.

6) Installation to be Performed by Lessee. Lessee, at its sole expense, shall install the retort in the predesigned location and all facilities necessary for operation of the retort within six (6) months of the date of this agreement. Such facilities shall include the smokestack and an exhaust fan capable of ventilating the retort room. Installation shall be performed in compliance with all applicable building codes and in a workmanlike manner. The roof shall be sufficiently sealed to assure that no leakage will occur. Lessee shall be responsible for the installation of a separate gas meter to measure natural gas used in operation of the retort.

All installation plans shall be subject to the prior approval of the City.

7) Surety Bond. Before beginning any construction hereunder, Lessee or its contractor or contractors, shall furnish a corporate surety bond, issued by a surety company licensed to transact business in the State of Oregon, naming the City as an obligee, in a sum not less than one hundred percent (100%) of the aforesaid total estimated cost of contemplated construction, guaranteeing payment for all materials, provisions, provender, supplies, equipment used in, upon, for, or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting City from any and all liability, loss, or damages arising from failure to make such payment. In lieu of said bond, Lessee or its contractor or contractors, may furnish City with cash or a certified check in the sum necessary to satisfy the requirements of this paragraph.

8) Right of Access. City hereby grants to Lessee the right of access and ingress to and egress from the demised premises by Lessee and its employees, contractors, suppliers, servicement, sublessee, guests, patrons and invitees; provided, that such rights of access, ingress and egress are at all times exercised in conformance with any and all regulations promulgated by City.

City further reserves the right of access to the Chapel furnace contained in the retort room for purposes of operation, service, and maintenance.

9) Development of Business. Lessee agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this lease and agreement.

10) Risks. Lessee shall assume all risks incident to or in connection with its business to be conducted hereunder and shall be solely responsible for all accidents or injuries of whatever nature or kind to persons or property caused by its operations at said cemetery and shall indemnify, defend and save harmless the City, its authorized agents and representatives, from any penalties for violation of any law, ordinance or regulation affecting its operations, and from any and all claims, suits, losses, damages or injuries to persons or property of whatsoever kind or nature arising directly or indirectly out of the operation of such business, or resulting from the carelessness, negligence, or improper conduct of the Lessee or any of its agents or employees.

11) Insurance. Lessee, at the expense of Lessee, shall keep in force, during the term of this lease, insurance issued by responsible insurance companies, licensed to transact business in the State of Oregon, and in form acceptable to the City for the protection against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered by reason of damage to the property of, injury to or death of any person or persons on account of any matter or thing which may occur on the demised premises, in a policy or policies in the amount equal to the maximum set by ORS 30.270 as now stated or hereafter amended. Said policy or policies shall contain a hold harmless endorsement sufficient to satisfy the requirements of Paragraph 10 above. Certificates of such insurance containing a thirty (30) day notice of cancellation provision shall be provided City prior to Lessee taking possession and prior to any contractor starting construction.

12) Right of Inspection. Operations to be conducted by the Lessee under this lease shall be done at the sole expense of the Lessee and shall be subject to general inspection by the City to insure a continuing quality of services commensurate with the standards provided for in this lease.

13) Licenses and Permit Fees. The cost of necessary licenses and permits shall be paid by Lessee.

14) Signs. Lessee shall not attach, affix or permit to be attached or affixed upon the inside or outside of the demised premises, without consent

in writing of the Cemetery Superintendent of the City first had and obtained, any flags, placards, signs, poles, wires, aerials, antennae or fixtures, other than those specifically contemplated by the terms of this agreement.

15) Termination by Default. In any of the following events City, at any time hereafter, shall have the right at City's election immediately to terminate this lease and agreement:

(a) Failure to Pay Rent. In the event Lessee shall fail to pay the rent in the amounts and at the times and in the manner herein provided and such failure shall continue for thirty (30) or more days after written notice thereof shall have been given to Lessee;

(b) Violation of Covenant. In the event Lessee shall fail to keep and perform or shall violate the terms, covenants and conditions of this lease and agreement on its part to be kept and performed and Lessee shall not have cured or corrected such failure or violation within thirty (30) days after written notice thereof shall have been given to Lessee.

(c) Abandonment. In the event Lessee shall vacate or abandon said premises without the consent of City first had and obtained.

16) Remedies.

(a) Repossession by City. Upon City's exercise of its election to terminate as provided in Paragraph 15 hereof, Lessee's right to possession of the demised premises shall terminate and Lessee shall surrender possession thereof immediately. In such event, Lessee hereby grants to City full and free license to enter into and upon said premises, or any part thereof, to take possession thereof with or without process of law, and to expel and remove Lessee or any other person who may be occupying the said premises, or any part thereof, and City may use such force in and about expelling and removing Lessee and said other person as may reasonably be necessary; and City may repossess itself of the said premises as of its former estate, but said entry of said premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue hereof, nor a waiver of any covenant, agreement or promise in said lease contained, to be performed by Lessee. Lessee shall make no claim of any kind against City, its agents or representatives by reason of such termination or any act incident thereto.

(b) Damages. In addition to terminating this lease and agreement, City may sue for and recover all damages and rent accrued or accruing under this lease and agreement or arising out of any breach thereof.

(c) Other Remedies. City may, if it so elects, pursue any other remedies provided by law for the breach of this lease and agreement or any of its terms, covenants, conditions or stipulations. No right or remedy herein conferred upon or reserved to City or Lessee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

17) Waiver of Default. The acceptance of rent by City, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof by Lessee, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except an express waiver in writing, shall not be construed as a waiver of City's right to act or of any other right hereby given City, or as an election not to proceed under the provisions of this lease.

18) Termination by City. This lease may be terminated by City at any time upon sixty (60) days written notice to Lessee in the event City determines to sell the Klamath Memorial Park Cemetery.

19) Disposition of Equipment. Upon the termination of this lease by lapse of time or otherwise, except for Lessee's default, Lessee shall have the right (subject only to the preemption hereinafter stated) and on direction from City shall be obligated to remove all equipment and fixtures and personal property installed or located within the demised premises by Lessee pursuant to Paragraph 6 and whether or not such equipment shall be deemed real or personal property. Lessee shall have a reasonable time, not to exceed thirty (30) days, to remove such equipment and fixtures and personal property and shall within said thirty (30) days restore the premises to the condition in which they were in when originally delivered to Lessee, ordinary wear and tear excepted. Lessee shall be deemed to have abandoned to the City any of such equipment and fixtures and personal property which it has failed to remove from the demised premises within said thirty (30) days, unless City shall grant a further period in writing for this purpose.

20) Addresses.

(a) City. In every case where, under the provisions of this lease, it shall be necessary or desirable for Lessee to give to or serve upon City any notice of demand, it shall be sufficient to send the notice or demand by certified mail, postage prepaid, addressed as follows: City Manager, P. O. Box 237, Klamath Falls, OR 97601 with copy of said notice or demand to Cemetery Superintendent, P. O. Box 237, Klamath Falls, OR 97601.

(b) Lessee. In every case where, under the provisions of this lease, it shall be necessary or desirable for City to give to or serve upon Lessee any notice or demand, it shall be sufficient to send a written or printed copy of said notice or demand by certified mail, postage prepaid, addressed as follows: Michael and Sandra O'Hair dba Klamath Cremation Service, 515 Pine Street, Klamath Falls, OR 97601.

21) Not Joint Venture. It is mutually understood and agreed that nothing contained in this lease and agreement is intended, or shall be construed, as in anywise creating or establishing the relationship of co-partners or joint venturers between the parties hereto or as constituting the Lessee as the agent or representative of the City for any purpose or in any manner whatsoever.

22) City's Right to Improve Cemetery. Except as to the demised premises, the City reserves the right to regulate, police, and further develop, improve, reconstruct, modify, or otherwise alter said cemetery and any portion thereof, including the building in which the demised premises are located, in such manner as City sees fit, regardless of the desires or views of the Lessee.

23) Inurement. This instrument shall be binding upon and shall inure to the benefits of the parties hereto and their respective successors, legal representatives and assigns. This paragraph shall not be deemed to authorize Lessee to make an assignment of its interest in this lease except as herein expressly provided.

24) Assignment, Subletting, etc. This lease is personal to Lessee and the Lessee shall not assign, transfer, pledge, hypothecate, surrender or dispose of this lease agreement, or any interest herein, or permit any other person or persons whomsoever to occupy the demised premises, or any portion thereof, without the written consent of City being first obtained, the Lessee's interest in whole or in part cannot be sold, assigned, transferred, seized or taken by operation at law, or under the virtue of any execution or legal

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process, attachment or proceedings or insolvency proceedings had in regard to the Lessee, or in any manner, except as above mentioned. City shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstance.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY:

LESSEE:

By:

George C. Hittrell
Mayor

Michael O'Hair
dba Klamath Cremation Service

Attest:

David J. Jural
Recorder

Sandra M. O'Hair
dba Klamath Cremation Service

At: 515 Pine St.
Klamath Falls, Ore. 97601

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Michael O'Hair
this 15th day of October A. D. 19 81 at 11:38 o'clock A.M., and
duly recorded in Vol. M81, of Deeds on Page 18084

EVELYN BIEHN, County Clerk

By [Signature]

Fee \$32.00