

DOCUMENT ROUTING FORM

CMU 5/20/2013
6/4/13
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NAME OF DOCUMENT: COMMERCIAL LEASE / ROY MIZELL & KURTZ FUNERAL HOME
POLICE SUBSTATION / SISTRUNK: \$98,800
[1291 & 1295 NW SIXTH ST/SISTRUNK BOULEVARD]

Approved Comm. Mtg. on MAY 7, 2013 CAR# 13-0632

ITEM: M - 16 PH - O - R -

Routing Origin: CAO ENG. COMM. DEV. OTHER

Also attached: copy of CAR copy of document ACM Form # _____ originals

By: _____ forwarded to: _____
Initials

1.) Approved as to Content: [Signature]
Department Director

Capital Improvements defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED YES NO
Capital Improvement Projects

2.) Approved as to Funds Available: by _____ Date: _____
Finance Director

Amount Required by Contract/Agreement \$98,800 Dept./Div. DSD/ECR

FUNDING SOURCE: Index/Sub-object DSD 060601 / 3319 Project # _____

3.) City Attorney's Office: Approved as to Form # _____ Originals to City Mgr. By: _____

Harry A. Stewart _____ Cole Copertino _____ Robert B. Dunkel XX
Ginger Wald _____ D'Wayne Spence _____ Paul G. Bangel _____
Carrie Sarver _____ DJ Williams-Persad _____

4.) Approved as to content: Assistant City Manager:

By: _____ By: _____
Stanley Hawthorne, Assistant City Manager Susanne Torriente, Assistant City Manager

2013 MAY 17 PM 1:57
RECEIVED
FLAUSSENDALE
CITY ATTORNEY'S OFFICE

5.) City Manager: Please sign as indicated and forward # _____ originals to Mayor.

6.) Mayor: Please sign as indicated and forward # _____ originals to Clerk.

7.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

8.) City Clerk: retains one original document and forwards _____ original documents to _____

Copy of document to _____ Original Route form to _____

Attach _____ certified copies of Reso. # _____ Fill-in date

COMMERCIAL LEASE

This lease is made between **ROY MIZELL & KURTZ FUNERAL HOME**, Inc., a Florida corporation, whose principal address is 1305 N.W. 6th Street, Fort Lauderdale, Florida 33311, herein called Lessor, and **CITY OF FORT LAUDERDALE**, a Florida municipal corporation whose principal address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301, herein called Lessee.

Lessee hereby offers to lease from Lessor the Premises situated in the City of FORT LAUDERDALE, County of BROWARD, State of FLORIDA, described as **1291 N.W. 6TH Street, Fort Lauderdale, FL 33311**, (more particularly described in Exhibit "A" attached hereto) upon the following TERMS and CONDITIONS.

1. Term and Rent. Lessor demises the above Premises for a term, effective date, Leasehold Improvements and rent as provided below:

(a) Effective Date. The Effective Date of this Lease shall be the date the Lease is fully executed by both parties.

(b) Leasehold Improvements. Lessee shall take possession of the Premises on or after the Effective Date for the purpose of making Leasehold Improvements in accordance with ¶ 1 (b.1) & (b.2) below. During the period between the Effective Date and the date the Premises receive a Certificate of Occupancy upon the completion of the Leasehold Improvements, no rent shall be due.

(b.1) Leasehold Improvements to be constructed, erected or completed by Lessor, at Lessor's sole cost and expense, shall include: (i) HVAC upgrades to two 3-ton central units, one for each bay. The units are "thru-the-wall" type and no duct work needs installation. (ii) West side restroom to be made ADA compliant. (iii) Restrooms in need of minor renovations.

(b.2) Leasehold Improvements to be constructed, erected or completed by Lessee, at Lessee's sole cost and expense, shall include: (i) construction of interior rooms in accordance with the Floor Plan attached hereto as Exhibit "A"; (ii) access door between bays; (iii) security upgrades; (iv) automated license plate reader ("ALPR"); (v) signage; and (vi) Information Technology ("IT") connections to City computer networks.

(b.3) By execution of this Lease, Lessor agrees to the foregoing Leasehold Improvements and allocation of obligations and responsibilities.

(c) Initial Lease Term. The term of this Lease shall be for a period of five (5) years (or until sooner terminated or extended, as the case may be, as hereinafter provided) (the "**Lease Term**") beginning on the "**Commencement Date**" (as hereinafter defined), except that if the **Commencement Date** is other than the first day of a calendar month, the term of this Lease shall be extended such that it expires on the last day of a calendar month.

(d) Commencement Date. Upon issuance of a Certificate of Occupancy for the Premises after completion of the Leasehold Improvements, Lessee shall have a ten (10) day "move-in period" within which to move fixtures, equipment, furnishings, etc. accessory to the permitted use of the Premises. The Commencement Date of this Lease shall be the first day of the month next after expiration of the ten (10) day "move-in period." The expiration date of the Lease shall be five (5) Lease Years after the Commencement Date, unless Tenant timely exercises the Renewal Option(s), in which event the expiration date shall be at the end of the Renewal Option term.

(e) Anniversary Date. For the purposes of this Lease, **Lease Year** shall mean each twelve (12) month period beginning on the Commencement Date and each anniversary of the Commencement Date, extending until the last day of each twelve (12) full calendar month period thereafter. For example, if the Commencement Date is June 1, 2013, the first Lease Year shall begin on June 1, 2013 and end on May 31, 2014, and each Lease Year thereafter shall commence on June 1 and extend to May 31 of the following year until the end of the term of the Lease.

(f) Rent. The Base Annual Rent for the first year of the term shall be \$19,212.00, payable in equal monthly installments, in advance, on the first day of each months. For the 2nd, 3rd, 4th and 5th years of the Lease Term the Base Annual Rent shall be as follows:

2 nd Year	\$19,788.46
3 rd Year	\$20,382.01
4 th Year	\$20,993.47
5 th Year	\$21,623.28

(g) In the event Lessee exercises the Options to Renew, the Base Annual Rent commencing in the 6th year of the Lease Term and each additional year thereafter shall be subject to an annual adjustment as set forth below:

(1) Annual Adjustment. The Base Annual Rent for the 6th Lease Year shall be increased over the Base Annual Rent for the 5th Lease Year and for each successive Lease Year thereafter in accordance with the following. The Annual Base Rental shall be adjusted annually in accordance with anniversary date of the Commencement Date of this Lease. The Annual Base Rental shall be increased by percentage increase in the Cost of Living, not to exceed 3.0% per annum.

(2) The percentage increase in the Cost of Living shall be based on the fractional increase in the Consumer Price Index, as more particularly set forth below. The adjustment to the Annual Base Rental to be made

and therefore, the adjusted annual rent for the succeeding Lease Years at issue shall be determined as follows:

a. In the event the "Consumer Price Index for All Urban Consumers, U.S. City Average (1982 - 1984 = 100)" (hereinafter referred to as the "Price Index") published by the Bureau of Labor Statistics of the United States Department of Labor, or a comparable successor or substitute index designated by the Landlord, appropriately adjusted, reflects increases in the cost of living as contrasted with the cost of living as reflected by the Price Index for the month preceding the Commencement Date (hereinafter referred to as the "Base Price Index"), then the annual rent shall be adjusted in accordance with sub-subsection b. below.

b. The Annual Base Rental for the sixth Lease Year, and for all successive Lease Years thereafter, shall be adjusted by multiplying the Annual Base Rental for the preceding Lease Year by a fraction, the numerator of which shall be the Price Index for the month preceding the appropriate anniversary of the Commencement Date, and the denominator of which (for each such fraction) shall be the Base Price Index. In no event shall the adjusted rents hereunder be less than the amount of the annual rent specified above.

c. In the event the Price Index ceases to use the 1982-84 average of 100 as the basis of calculation, or if a substantial change is made in the terms or number of terms contained in the Price Index, or in the event the U.S. Department of Labor ceases to prepare and publish such Price Index, the adjustment of annual rent thereafter shall be in accordance with the most closely comparable price index published by the U.S. Department of Labor or U.S. Department of Commerce appropriately adjusted. If such is not determined by either of those Departments, then the most closely comparable price index as determined by the Landlord shall apply to the adjustments.

(h) **Sales or Use Tax.** Lessee is a municipal corporation and the Premises are being used for municipal purposes (i.e. Police Substation). As such Lessee qualifies for exemptions from the payment of sales or use taxes on its Rent. To the extent that Lessee is exempt from the payment of sales or use taxes on its Rent, it shall not be obligated to remit to Lessor sales or use tax on its Rent. However, to the extent required by law, then, in addition to the Annual Base Rent, Lessee shall pay to Lessor each month a sum equal to any sales tax, tax on rentals, and any other charges, or taxes now in existence or hereafter imposed, based upon the privilege of renting the Premises, or upon the amount of rental collected therefore, (hereinafter collectively "Sales Tax").

2. **Use.** Lessee shall use and occupy the Premises for the purpose of

POLICE SUB STATION, ADMINISTRATION AND COMMUNITY MEETINGS.

The Premises shall be used for no other purpose. Lessor represents that the Premises may lawfully be used for such purpose.

3. **Care and Maintenance of Premises.** Lessee acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the Premises in good and safe condition, including plate glass, and any other system or equipment upon the Premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all maintenance and repairs required, excepting the roof, exterior walls, structural foundations, and: electrical and telecommunications wiring and plumbing service outside the building; electrical wiring and telecommunications wiring with the balls of the building on the Premises; plumbing within the walls of the building on the Premises; lawns and shrubbery; HVAC equipment; electrical service and wiring to all outlets within the building on the Premises and all plumbing (gas, water and sewer), including fixtures (i.e. sinks, toilets, etc. which shall be maintained by Lessor, Lessee shall also maintain in good condition such portions of adjacent to the Premises, such as sidewalks, driveways, which would otherwise required to be maintained by Lessor.

4. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the Premises.

5. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.

6. **Assignments and Subletting.** Lessee shall not assign this lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall not be unreasonable withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.

7. **Utilities.** All applications and connections for necessary utility services on the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, trash removal and telephone services. Lessor represents that the water/sewer meter, gas meter (if any) and the electric meter provide utility service exclusively to the Premises and no other properties. In the event those meters provide utility service to properties other than the Premises, prior to the Commencement Date, Lessor shall secure, at its sole cost and expense, metering for the Premises that is exclusively for the Premises and no portion of any property or properties other than the Premises.

8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the Premises at reasonable times, upon reasonable notice and while Lessee personnel are present, for the purposes of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the Premises

any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

9. Possession. If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within days of the commencement of the term hereof.

10. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the Premises or any part thereof, and to the extent of the limitations of the legislative waiver of sovereign immunity as set forth in Sec. 768.28, Florida Statutes and no further, Lessee agrees to hold Lessor harmless from any claim for damages, no matter how caused.

11. Insurance. To the extent of the limitations of the legislative waiver of sovereign immunity as set forth in Sec. 768.28, Florida Statutes and no further, Lessee agrees to indemnify and hold harmless Landlord against and from any and all claims by or on behalf of any work or thing whatsoever done by Lessee in or about or from transactions of Lessee concerning the Premises, and will further indemnify and hold Landlord harmless against and from any and all claims arising from any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of Lessee to be performed pursuant to the terms of this Lease, or arising from any act or negligence of Lessee, or any of its agents, contractors, servants, employees, licensees or invitees, and from and against all costs, counsel fees, expenses and liabilities incurred in connection with any of the aforementioned claims or actions or proceedings brought thereon. Furthermore, in case any action or proceeding be brought against Lessor by reason of any of the aforementioned claims or liabilities, Lessee agrees to defend such action or proceeding at Lessee's sole expense by counsel reasonably satisfactory to Lessor. The provisions of this Lease with respect to any claims or liability, occurring prior to such expiration or termination shall survive any such expiration or termination, but no longer than a period of four (4) years from the date of expiration or termination of this Lease.

(a) With respect to workers' compensation, comprehensive general liability, including personal injury and property damage, Lessee/City, as a municipal corporation, is self-insured pursuant to the provisions of § 768.28 (15), Florida Statutes. To the extent Lessee/City fails to remain self-insured in any of the above referenced areas, then Lessee agrees to purchase at its own expense and to keep in force during the term of this Lease a such policy or policies of worker's compensation and comprehensive general liability insurance, including personal injury and property damage, with contractual liability endorsement, in the amount of One Million Dollars (\$1,000,000.00) for property damage and Two Million Dollars (\$2,000,000.00) per occurrence for personal injuries or deaths of persons occurring in or about the Premises for which Tenant/City fails to remain self-insured. Said policies shall: (i) name Lessor as an additional insured and insure Lessor's contingent liability under this Lease (except for the worker's compensation policy, which shall instead include waiver of subrogation endorsement in favor of Lessor), (ii) be issued by an insurance company which is acceptable to Lessor and licensed to do business in the State of Florida, and (iii) provide that said insurance shall not be canceled unless thirty (30) days prior written notice shall have been given to Lessor. Said policy or policies or certificates thereof shall be delivered to Lessor by Lessee upon commencement of the term of the Lease and upon each renewal of said insurance.

12. Eminent Domain. If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

13. Destruction of Premises. In the event of a partial destruction of the Premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement cost, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

14. Lessor's Remedies on Default. If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 14 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 5 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than 3 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

15. Security Deposit. Lessee shall deposit with Lessor on the signing of this lease the sum of **NO SECURITY DEPOSIT REQUIRED** as security deposit for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

16. Tax Increase. In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to zero % of the increase in taxes upon the land and building in which the leased premises are situated.

17. Common Area Expenses. [This paragraph is intentionally deleted.]

18. Attorney's Fees. In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all reasonable costs incurred in connection with such action, including reasonable attorney's fee.

19. Waiver. No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

20. Notices. Any notice which either party may, or is required to give, shall be given mailing same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such other places as may be designated by the parties from time to time.

21. Heirs, Assigns, Successors. This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

22. Option to Renew. Provided that Lessee is not in default in the performance of this lease, Lessee shall have options to renew the lease for two (2) ~~an~~ additional four (4) years terms commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term. The annual rent during the option terms shall continue in accordance with the annual adjustment formula provided in subparagraph 1.(g) hereof. The option shall be exercised by written notice given to Lessor not less than sixty (60) days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

23. Subordination. This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

24. Radon Gas Disclosure. As required by law, Lessor makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Additional information regarding radon and radon testing may be obtained from your county public health unit.

25. LATE FEES. Pursuant to the Local Government Prompt Payment Act, § 218.70, et seq. Fla. Stat., in the event any installment of Rent is not paid within thirty (30) days of the due date, Lessee agrees to pay a late charge equal to one percent (1.0%) per month on the unpaid balance of the Rent installment. Any overdue period of less than one (1) month is considered as one (1) month in computing interest. Unpaid interest is compounded monthly. For the purposes hereof, the term "one (1) month" means a period beginning on any day of one month and ending on the same day of the following month.

26. Locks/Keys. Lessee (Tenant) cannot change locks without informing Lessor. Lessee must provide Lessor with a key if locks are changed.

27. License/Permits. Lessee must meet all city requirements including all permit and occupational license for opening and operating a business.

28. Alterations. Any alterations to the building made by Lessee must be restored to the original state of building upon termination of the lease.

29. Entire Agreement. The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof.

EXHIBIT "A" – PREMISES
EXHIBIT "B" – FLOOR PLAN

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

AS TO LESSOR:

WITNESS:

**ROY MIZELL & KURTZ FUNERAL HOME,
INC.,**
a Florida corporation

Julie & Michael
EVELINE WILCOX
[Witness type or print name]

Richard A. Kurtz
Richard A. Kurtz, President

Derrick Donaldson
Derrick Donaldson
[Witness type or print name]

STATE OF FLORIDA)

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 25 day of April, 2013 by **Richard A. Kurtz**, as President of **ROY MIZELL & KURTZ FUNERAL HOME, INC.**, a Florida corporation. He is personally known to me or has produced (personally known to me) as identification and did not (did) take an oath.

(SEAL)

Erica Frederick
Notary Public, State of Florida
Print Name Erica Frederick

My Commission Expires:

Commission Number



ERICA FREDERICK
MY COMMISSION # EE 022337
EXPIRES: September 30, 2014
Bonded Thru Budget Notary Services

AS TO LESSEE:

WITNESSES:
municipal corporation

Saleem Ali

Saleem Ali
[Witness type or print name]

Arka Seno

Arka Seno
[Witness type or print name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE, a Florida

By [Signature]
John P. "Jack" Seiler, Mayor

By [Signature]
Lee R. Feldman, City Manager

ATTEST:

[Signature]
Jonda K. Joseph, City Clerk

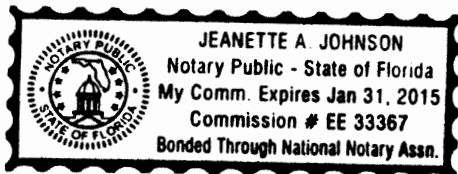
Approved as to form:

[Signature]
Robert B. Dunckel Asst. City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 30th day of May, 2013, by **JOHN P. "JACK" SEILER**, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)



Jeanette A. Johnson
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Jeanette A. Johnson
Name of Notary Typed, Printed or Stamped

My Commission Expires: 1/31/15

Commission Number EE 33367

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 24th day of May, 2013, by **LEE R. FELDMAN**, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)



[Signature]
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

WENDY S. GONYEA
Name of Notary Typed, Printed or Stamped

My Commission Expires: 3/29/14

DD 976509
Commission Number