





Interoffice Memorandum  
APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
DEC 01 2015 NP/CAS

REAL ESTATE MANAGEMENT ITEM 2

**DATE:** November 13, 2015

**TO:** Mayor Teresa Jacobs  
and the  
Board of County Commissioners

**THROUGH:** Ann Caswell, Manager   
Real Estate Management Division

**FROM:** Robin Giove, Lease Program Manager   
Real Estate Management Division

**CONTACT PERSON:** Ann Caswell, Manager

**DIVISION:** Real Estate Management  
Phone: 836-7082

**ACTION REQUESTED:** APPROVAL AND EXECUTION OF GROUND LEASE AGREEMENT BETWEEN WALKEM DEVELOPMENT COMPANY, INC., SUCCESSOR BY MERGER TO WALKEM DEVELOPMENT COMPANY OF KNOXVILLE, INC. AND ORANGE COUNTY AND DELEGATION OF AUTHORITY TO THE REAL ESTATE MANAGEMENT DIVISION TO EXERCISE RENEWAL OPTION, IF NEEDED, FOR FIRE STATION VEHICLE PARKING

**PROJECT:** Fire Station #32 – Ground Lease  
14896 E. Orange Lake Blvd.  
Kissimmee, Florida 34747  
  
District 1

**PURPOSE:** To provide parking for fire trucks.

**ITEM:** Ground Lease Agreement  
Cost: Donation  
Size: 12,763 square feet  
Term: 3 years, and 1 month  
Option: One, 2 year renewal

**APPROVALS:** Real Estate Management Division  
County Attorney's Office  
Fire Rescue Department  
Risk Management Division

**REMARKS:** **A file labeled "BCC Agenda Backup" containing a copy of this agenda item and all supporting documentation is in the top drawer of the BCC file cabinet in the supply room adjacent to Commissioner Thompson's office.**

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**WALKEM DEVELOPMENT COMPANY, INC.**

*and*

**ORANGE COUNTY**

**GROUND LEASE AGREEMENT**

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THIS GROUND LEASE AGREEMENT (“**Agreement**”) made as of the date fully executed below, by and between **WALKEM DEVELOPMENT COMPANY, INC.**, a Florida corporation, successor by merger to **WALKEM DEVELOPMENT COMPANY OF KNOXVILLE, INC.**, a Tennessee corporation, hereinafter referred to as “**LANDLORD**,” and **ORANGE COUNTY**, a charter county and political subdivision of the state of Florida, hereinafter referred to as “**TENANT**,” hereinafter collectively referred to as the “**Parties**.”

WITNESSETH

1. **PROPERTY:** In consideration of \$1.00 and the mutual covenants of the respective Parties hereto, each to the other to be performed by them at the time and in the manner hereinafter provided, LANDLORD does hereby lease and let unto the TENANT, and TENANT does hereby lease from LANDLORD, a portion of the land located at 8191 Irlo Bronson Memorial Highway, Kissimmee, Florida 34747, as further defined on **Exhibit “A,”** attached hereto and made a part hereof, hereinafter referred to as the “**Property**.” The Property is located within a parcel of land having a parcel number of 33-24-27-6377-00-050, the location of which is shown on **Exhibit “A,”** hereinafter referred to as the “**Parcel**.”
2. **USE:** This Agreement is made on the express condition that the Property shall be used in connection with a Fire Rescue Substation and storage for the Fire Rescue’s Substation’s vehicle(s) only. LANDLORD acknowledges the presence of and permits TENANT to continue to maintain its existing garage structure on the Property. TENANT shall have the right to install a second garage on the Property upon LANDLORD’S approval of the location and size thereof in writing and in Landlord’s sole and absolute discretion. TENANT shall not use or permit the use of the Property for any other purpose, without the written consent of the LANDLORD,

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which shall not be unreasonably withheld. LANDLORD grants TENANT use of the Property twenty-four (24) hours a day, seven (7) days a week.

3. TERM AND RENEWAL OPTION: This Agreement shall be for an initial term of three (3) years and one (1) month, commencing on November 1, 2015 and ending on November 30, 2018. TENANT shall have the option to renew this Agreement for an additional two (2) year term by notifying Landlord in writing no later than August 31, 2018 of its intent to renew. The Manager of TENANT'S Real Estate Management Division shall be authorized to approve and exercise this renewal option.

4. POSSESSION: As of November 1, 2015, LANDLORD shall grant TENANT continued possession and use of the Property and all terms and conditions set forth in this Agreement shall immediately commence.

5. MAINTENANCE: TENANT shall pay for its own utilities and services. LANDLORD shall mow the Property and Parcel.

6. ASSIGNMENT AND SUBLETTING: TENANT shall not assign this Agreement, or sublet the Property without LANDLORD'S written consent. If LANDLORD consents to any sublease or assignment, TENANT shall not be released from liability under this Agreement, and such consent shall not be deemed a waiver of the requirement for LANDLORD'S consent to any subsequent assignment or sublease.

7. ALTERATIONS: TENANT shall pay for all charges for labor, services and materials used in connection with any improvements to the Property undertaken by TENANT, as approved by Landlord in writing prior to commencement of such alterations.

8. SIGNS: TENANT may install signage at TENANT'S expense and in accordance with the declaration of protected covenants, conditions and restrictions for the Orange Lake East Town Center, as may be applicable. Upon termination of this Agreement, TENANT will remove signage at TENANT'S expense and repair any damages caused by such removal.

9. INSURANCE: TENANT is self-insured in accordance with Chapter 624, Florida Statutes. TENANT shall, at LANDLORD'S request from time to time, provide a certificate of self-insurance.

LANDLORD shall pay for and maintain, during the term of this Agreement, the following policies of insurance covering the Property and the Parcel:

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(1) Broad Form Comprehensive General Liability Insurance. Including, but not limited to, coverage for Personal Injuries with limits of not less than \$2,000,000 combined single limit for death, personal injury and property damage, per occurrence, and Contractual Liability.

(2) Flood Insurance. Flood insurance coverage for the Property, if the Property is designated on the applicable Flood Insurance Rate Map as being in a Special Flood Hazard Area, in a commercially reasonable amount.

TENANT and LANDLORD each hereby release the other, and waive their right of recovery against the other, for loss or damage arising out of, or incident to the perils actually insured against under this section including, without limitation TENANT's self-insurance, which perils occur in, on, or about the Property or the Parcel, TENANT, upon obtaining any policies of insurance in lieu of self-insurance, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement and shall obtain any necessary endorsements or riders to effect such waiver.

10. INDEMNIFICATION: TENANT, to the extent provided in Section 768.28, Florida Statutes, shall indemnify, defend (if requested by LANDLORD), and hold harmless the LANDLORD, its officials, and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the TENANT'S negligent performance under this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as a waiver of TENANT'S sovereign immunity. Any claims against TENANT must comply with the procedures found in § 768.28, Florida Statutes. The provisions of this paragraph shall survive the expiration of this Agreement.

11. LIABILITY OF TENANT: All property of any kind that may be on the Property during the continuance of this Agreement shall be at the sole risk of TENANT, except that LANDLORD shall be liable for damage to TENANT'S property to the extent arising from the negligence or wrongful act of LANDLORD.

12. ACCESS TO PROPERTY: LANDLORD shall have the right to enter the Property, during TENANT'S normal business hours, after 48-hour notice to TENANT, and in the presence of TENANT for the purpose of inspecting or conducting tests upon the same, except in an

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emergency, at which time no notice shall be required to inspect, maintain, repair or make replacements, additions or alterations to the Property.

13. DEFAULT AND REMEDIES: An event of Default under this Agreement shall occur if LANDLORD or TENANT fails to perform or observe any term, covenant or condition of this Agreement and such Party fails to cure such failure within thirty (30) days after receiving written notice thereof (or such longer period if the default cannot reasonably be cured within thirty (30) days and the Party has commenced to cure and thereafter proceeds diligently).

If the defaulting Party fails to correct the default, the other Party shall be entitled to any and all remedies available at law and in equity. Additionally, either Party may on behalf of the defaulting Party perform any obligations the defaulting Party failed to perform, and the cost of the performance will be payable by the defaulting Party upon demand.

If LANDLORD fails to perform its obligations under this Agreement and such failure interferes with TENANT'S use of the Property, as allowed herein, and continues for more than 60 days after written notice from TENANT to the LANDLORD of such failure, then TENANT shall have the right and option to cancel this Agreement by giving written notice to the LANDLORD within 15 days after the end of such 60 day period.

14. COVENANT AGAINST LIENS: The interest of LANDLORD in the Property shall not be subject in any way to any liens, including construction liens, for improvements to or other work performed with respect to the Property by or on behalf of TENANT. TENANT shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other estate of LANDLORD in the Property or in the Parcel and all mechanics, materialmen, contractors, artisans, and other parties contracting with TENANT or its representatives or privies with respect to the Property or any part of the Parcel are hereby charged with notice that they must look to the TENANT to secure payment of any bill for work done or material furnished or for any other purpose during this Agreement. The foregoing provisions are made with express reference to § 713.10, Florida Statutes. Notwithstanding the foregoing provisions, TENANT, at its expense, shall cause any lien filed against the Property or the Parcel for work or materials claimed to have been furnished to TENANT to be discharged of record or properly transferred to a bond pursuant to § 713.24, Florida Statutes, within twenty (20) days after receipt of notice thereof. Further, TENANT agrees to, defend, and save

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LANDLORD harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by LANDLORD as a result of any such lien. TENANT shall notify every contractor making improvements to the Property that the interest of the LANDLORD in the Property shall not be subject to liens for improvements to or other work performed with respect to the Property by or on behalf of TENANT.

15. WAIVER: One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or conditions by the other Party, and the consent or approval by either Party to or of any act by the other Party requiring consent or approval shall not be construed a consent or approval to or of any subsequent similar act by the other Party.

16. CONDEMNATION: If the whole or any part of the Property hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this Agreement shall cease on the part so taken from the day the possession of that part shall be required for any public purpose, and if such portion of the Property is so taken as to destroy the usefulness of the Property for the purpose for which the Property were leased, then, from that day, this Agreement shall terminate.

The Parties agree that LANDLORD shall give TENANT notice of the filing of an action in eminent domain within ten (10) days of LANDLORD receiving such notice, even if the action has been filed by TENANT.

17. OBSERVANCE OF LAWS: The laws of the State of Florida shall govern this Agreement. The Parties agrees to observe, comply with and execute promptly at its expense during the term hereof, all laws, rules, requirements, orders, directives, codes, ordinances and regulations of any and all governmental authorities or agencies, of all municipal departments, bureaus, boards and officials, and of insurance carriers, due to its use or occupancy of the Property. All additions, alterations, installations, partitions, or changes shall be in full compliance with the aforementioned authorities.

18. RELATIONSHIP OF THE PARTIES: Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the Parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein,

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shall be deemed to create any relationship between the Parties hereto other than the relationship of LANDLORD and TENANT. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

19. QUIET ENJOYMENT: LANDLORD covenants and agrees that TENANT, upon TENANT'S compliance with the covenants and conditions herein, shall and may peaceably and quietly have, hold and enjoy the Property for the term of this Agreement.

20. NOTICES: Any notice provided for in this Agreement must, unless otherwise expressly provided herein, be in writing, and be forwarded by registered or certified mail, return receipt requested, postage prepaid, or nationally recognized overnight courier service such as FedEx or UPS. Such notices shall be deemed served, given and delivered on the earlier of the following: (i) the date of actual receipt; (ii) the third business day after any registered or certified notice was deposited in a sealed envelope in the United States mail, postage prepaid; (iii) the next business day after any notice was delivered (on a business day) to a receipted overnight delivery service; or (iv) the first attempted delivery date of any notice hereunder (regardless of whether the recipient of said notice accepted same). Either Party may change its address to any other address in the United States of America by notice in writing given to the other party in the manner herein provided.

TENANT shall forward all notices to LANDLORD at the following address:

Walkem Development Company, Inc.  
c/o Orange Lake Resorts  
8505 W. Irlo Bronson Memorial Hwy  
Kissimmee, FL 34747  
Attention: Michael J. Thompson

LANDLORD shall forward all notices to TENANT at the following address:

Manager  
Orange County Real Estate Management Division  
P.O. Box 1393  
Orlando, FL 32802

With a copy to:

County Attorney  
Orange County  
P.O. Box 1393  
Orlando, FL 32802



21. SUBORDINATION: LANDLORD reserves the right to sell, assign, transfer, mortgage or convey any and all rights it may have in the Parcel, the Property or this Agreement, and to subject this Agreement to the lien of any mortgage now or hereafter placed upon the Parcel or the Property. However, the subordination of this Agreement to any mortgage hereafter placed upon the building or the Property shall be upon the express condition that this Agreement is recognized by LANDLORD'S mortgagee and that the rights of TENANT hereunder shall remain in force despite any default in performance of LANDLORD, or foreclosure proceedings with respect to any such mortgage, provided TENANT is not in default in any of its obligations hereunder. Within twenty (20) days of TENANT's receipt of the request of LANDLORD, TENANT shall execute any and all instruments deemed by LANDLORD necessary to subordinate this Agreement, and the rights given TENANT by this Agreement, to such mortgages, as described above. For this purpose, the TENANT'S Manager, Real Estate Management Division is authorized to execute said instruments.

Any sale by LANDLORD of the Parcel or LANDLORD'S interest under this Agreement shall release and discharge LANDLORD from any and all further obligations under this Agreement, with exception to any default occurring prior to said transfer, provided that the purchaser of the building or LANDLORD'S interest under this Agreement shall recognize this Agreement and that the rights of TENANT hereunder shall remain in force and the obligations, of LANDLORD shall be assumed in full by the new owner, despite such sale. Upon the request of LANDLORD, TENANT, or the subsequent owner, an Assignment and Amendment of Lease Agreement shall be executed by the TENANT, LANDLORD, and subsequent owner to acknowledge the ownership change and modify those paragraphs related to the sale and conveyance.

22. ESTOPPEL CERTIFICATE: TENANT shall, at any time and from time to time upon not less than twenty (20) days prior written request from LANDLORD, execute, acknowledge and deliver to LANDLORD a written certificate stating: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) the date to which rent has been paid; (iv) whether TENANT knows of any default on the part of LANDLORD and, if so, specifying the nature of such default; (v) that the improvements have been fully completed by LANDLORD in

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accordance with this Agreement and the plans and specifications approved by TENANT, and that TENANT is in full and complete possession thereof; and (vi) any other matters relevant to this Agreement as reasonably requested. For this purpose, the TENANT'S Manager, Real Estate Management Division is authorized to execute said Estoppel Certificate.

23. HAZARDOUS SUBSTANCES: As used in this Agreement, "**Hazardous Substances**" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Agreement, "**Environmental Law**" means Federal laws and laws of the jurisdiction where the Property are located that relate to health, safety or environmental protection.

TENANT shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances on or in the Property. TENANT shall not do anything affecting the Property that is in violation of any Environmental Law. The preceding two (2) sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal maintenance and office uses.

Each Party shall promptly give the other written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which such Party has actual knowledge. If a Party learns or is notified by any government or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, such Party will immediately notify the other Party and the Party responsible for such condition shall promptly take all necessary remedial actions in accordance with Environmental Law.

LANDLORD shall indemnify and hold TENANT fully harmless for any liabilities and remedial actions of Hazardous Substances for which LANDLORD is responsible under this Agreement. LANDLORD'S indemnification obligations under this Agreement shall survive the expiration or early termination of this Agreement.

24. SURRENDER AND HOLDOVER: Upon the expiration or early termination of this

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Agreement, TENANT agrees to peacefully surrender and yield possession of the Property to LANDLORD, without notice, in good order and condition, and pursuant to all applicable federal, state, and local laws. TENANT shall remove any TENANT structure(s) down to the cement pad, unless TENANT and LANDLORD agree in writing to leave the structure(s) in place.

25. SUCCESSORS AND ASSIGNS: The covenants, provisions, and agreements herein contained shall in every case be binding upon and inure to the benefit of the Parties hereto respectively and their respective heirs, executors, administrators, successors and assigns, as applicable, except that the right of TENANT to assign TENANT'S interest under this Agreement is and shall be subject to the written consent of LANDLORD as hereinabove provided, which provision it is not intended to waive, qualify or alter in any manner whatsoever by this clause or any other clause herein referring to assigns.

26. BROKERS: TENANT represents and warrants to Landlord that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating and making of this Agreement.

27. LANDLORD represents and warrants that it has title to the Parcel and legal authority to enter into the lease of the Parcel to the TENANT.

28. JURY WAIVER: LANDLORD and TENANT waive trial by jury in any action, proceeding, or counterclaim involving any matter whatsoever arising out of or in any way connected with (i) this Agreement, (ii) the relationship of LANDLORD and TENANT, (iii) TENANT'S use or occupancy of the Property, or (iv) the right to any statutory relief or remedy.

29. LEASE APPROVAL PROCESS: LANDLORD consents to TENANT'S lease approval process and shall deliver to TENANT three (3) original Agreements executed by LANDLORD. Approximately six (6) weeks from delivery by LANDLORD, TENANT will place the LANDLORD signed Agreement on the agenda for a Board of County Commissioners meeting. Upon approval by the Board of County Commissioners, this Agreement shall be fully executed.

30. ENTIRE AGREEMENT: This Agreement and the attached exhibits constitute the entire Agreement between LANDLORD and TENANT with respect to the subject matter hereof. No prior written, contemporaneous or subsequent oral promises or representations shall be binding. This Agreement shall not be modified or amended in any respect except by a written agreement executed by or on behalf of the Parties hereto, in the same manner as executed herein.

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IN WITNESS WHEREOF, the Parties hereto have hereunto executed this Ground Lease Agreement as of the date fully executed below.

ATTEST/WITNESS:

Cathi Lee

Print Name: Cathi Lee

Doreen Varricchio

Print Name: Doreen Varricchio

**LANDLORD:**  
WALKEM DEVELOPMENT  
COMPANY, INC.

By: [Signature]

Name: Brian T. Lower

Title: President

Date: 10-21-15

**TENANT:**  
ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: [Signature]  
Teresa Jacobs  
Orange County Mayor

Date: 12.1.15

(Official Seal)



ATTEST:  
Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: [Signature]  
Deputy Clerk

Date: DEC 01 2015

**Exhibit "A"**  
Property and Parcel

