

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: February 5, 2018

RE: **Contract for Purchase and Sale Re: 305 Eastside Drive –
Construction and Maintenance Expansion**

Attached hereto as Exhibit "A" is a proposed Purchase and Sale Agreement between the City of Lakeland and RMX SE LLC, for property at 305 Eastside Dr. The property is located west of Combee Rd. south of the CSX railroad tracks and adjacent and across Eastside Dr. from the City's Construction and Maintenance facility. The parcel is depicted on the parcel map attached as Exhibit "B".

This parcel, consisting of approximately 7 acres, is directly adjacent to the City's current Construction & Maintenance and Stormwater operations facilities. The existing operation has outgrown the current bay space and there is now a need to store the new (and expensive) WeeDoo aquatic harvester boat and the new airboat. Other Public Works divisions can utilize the property as well.

The Solid Waste Division could utilize this property as a centralized location for the container maintenance operation for both residential and commercial operations. One of the current buildings onsite could be utilized for new and out of service automated container storage and a small repair shop for carts, roll offs, and front loader containers. A portion of the property could be utilized for outdoor storage of ready and out of service roll off and front loader commercial containers.

Additional storage is needed for Lakes & Stormwater equipment that does not fit into our present warehouse space, including turbidity curtain, aquatic plant herbicide chemicals, and other equipment such as mowers, chain saws, weed eaters, etc. that are used by our Operations Support Tech and Environmental Tech. These items are currently stored on a trailer and should ideally be stored indoors or under cover.

With the continued growth associated with these operations, the need for expansion, and the need to secure equipment, the staff is recommending acquisition. Purchase price is \$395,000.

The property was formerly owned by Cemex Corporation who operated a concrete batch plant on the property. A level one and two environmental report indicates no areas of concern. Wetlands appear to be present at the Combee Rd. frontage and impacts a portion of the site. There is also a use restriction that runs with the land that prohibits use of the property in any manner that would compete with any Cemex business for a period of 25 years. The contract is subject to a release of the restriction.

The terms of the agreement are 5% deposit and cash at closing subject to the typical proration and allocation of expenses. It is recommended that the appropriate city officials be authorized to execute this agreement and close this transaction.

attachments

EXHIBIT "A"

305 EASTSIDE DRIVE
LAKELAND FLORIDA

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT (“Agreement”) dated as of January __, 2018, between RMX SE LLC, a Delaware limited liability company having an address at 885 Third Avenue 19th Floor, New York, New York 10022 (“Seller”) and CITY OF LAKELAND, having an address of 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (“Buyer”).

BUYER AND SELLER HEREBY AGREE:

Buyer shall deposit the sum of Five Thousand And No/100 Dollars (\$5,000.00) (“Deposit”), with Advantage Title, Christine Favara Monti of Advantage Title (cmonti@advantagetitle.com) 631-424-6100, address of 201 Old Country Road, Suite 200, Melville, NY 11747 (“Escrow Agent” and “Title Company”) within two (2) business days of the Effective Date, as a deposit on account of the purchase of the following described property situated in the City of Lakeland County of Polk, State of Florida, together with all buildings and improvements located thereon and more particularly described on Exhibit A attached hereto and commonly known as 305 (315) Eastside Drive, Lakeland Florida (collectively, the “Property”).

PURCHASE PRICE

Deposit	\$ 5,000.00
Balance payable at Closing in cash (subject to adjustment)	\$ 385,000.00
FOR A TOTAL PURCHASE PRICE OF (subject to adjustment)	----- \$ 390,000.00

DATES

1. Effective Date means the date that the last party to sign this Agreement executes and delivers this Agreement to the other party.
2. Diligence Expiration Date means 5:00P.M. on the fourteenth (14th) day following the Effective Date. The period from the Effective Date to the Diligence Expiration Date being the Due Diligence Period.
3. Closing Date means the date that is ten (10) days (or sooner if agreed to by the parties in writing) after the Diligence Expiration Date.

SECTION I. DUE DILIGENCE:

1. Inspections: Prior to the Diligence Expiration Date, Buyer shall have the right (i) to enter the Property to inspect and examine the Property and the physical components thereof and to obtain a survey, Phase 1, soils and geology reports or any other third-party reports as Buyer determines is necessary (collectively, “Due Diligence Inspections”).
 - a. Buyer shall not damage or alter the Property in any respect as a result of Buyer’s Due Diligence Inspections. Buyer shall be responsible for restoring the Property to substantially the condition existing prior to the conducting of such Due Diligence Inspections.

_____/_____
BUYER / SELLER
INITIALS

- b. Neither Buyer, its agents or representatives shall undertake any surveys, tests, or environmental studies which involve intrusion to the surface of the Property without obtaining Seller's prior written consent to such work or activities, which consent may be withheld in Seller's sole discretion. Buyer shall ensure that no liens are placed on the Property during its Due Diligence Inspections.
 - c. In any case that Buyer or its representatives enters the Property for the purpose of conducting Due Diligence Inspections, then prior to any entry on to the Property Buyer or Buyer's representative must deliver to Seller proof of insurance satisfactory to the Seller.
 - d. To the extent provided by Fla. Stat. 768.28, Buyer shall indemnify, defend and hold Seller and Seller's respective partners, shareholders, offices, members, directors, agents, lenders and employees (the "Seller Indemnified Parties") harmless from any and all losses, costs, liens, claims, causes of action, liability, damages, expenses, and liability (including without limitation, court costs, and reasonable attorneys' fees) incurred in connection with or arising in any way from the Due Diligence Inspections conducted by, on behalf of or at the request of, Buyer. This indemnity provision shall survive termination or expiration of this Agreement. If any proceeding is filed for which indemnity is required hereunder, Buyer agrees to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.
2. **Diligence Materials:** To the extent in Seller's possession as of the date hereof, Seller will provide within five (5) business days of the Effective Date, the following materials (collectively, the "Diligence Materials"): (i) all leases, amendments, agreements with the tenant at the Property, if any; (ii) all existing surveys and Phase I reports; and (iii) a copy of the previous deed for the Property which includes a restrictive covenant that runs with the Property (the "Deed Restriction").
 3. **Title Commitment:** Seller shall cause the Title Company to furnish to Buyer a commitment for title insurance for an owner's policy in the amount of the purchase price for fee simple title subject to Permitted Exceptions (the "Title Commitment") within fifteen (15) days of the Effective Date, including a copy of the previous deed for the Property which includes a restrictive covenant that runs with the Property (the "Deed Restriction").
 4. **Deed Restriction Contingency:** During the Due Diligence Period, Buyer shall endeavor to reach agreement with Cemex regarding the Deed Restriction. If Buyer does not reach agreement with Cemex to Buyer's satisfaction, in Buyer's sole and absolute discretion, then Buyer shall have the right, in Buyer's sole discretion, to terminate this Agreement by giving Seller and Escrow Agent written notice thereof at any time on or before the Diligence Expiration Date, in which event Escrow Agent shall promptly return the entire Deposit, together with all interest earned thereon, if any, to Buyer without any requirement for Seller or Seller's attorney's consent, and all rights and liabilities of the parties hereto by reason of this Agreement (except those obligations and liabilities specifically set forth herein to survive termination) shall be deemed at an end.
 5. **Approval Contingency:** Buyer's obligations herein are contingent on Buyer's approval from the Lakeland City Commission (the "Commission"). If Buyer does not obtain approval from the Commission on or before February 6th, then Buyer shall have the right, in Buyer's sole discretion, to terminate this Agreement by giving Seller and Escrow Agent written notice thereof at any time on or before the Diligence Expiration Date, in which event Escrow Agent shall promptly return the entire Deposit, together with all interest earned thereon, if any, to Buyer without any requirement for Seller or Seller's attorney's consent, and all rights and liabilities of the parties hereto by reason of this Agreement (except those obligations and liabilities specifically set forth herein to survive termination) shall be deemed at an end.

6. Diligence Objection:

- a. If Buyer is not satisfied with the results of its Due Diligence Inspections or its review of the Title Commitment for any reason or no reason, Buyer shall have the right, in Buyer's sole discretion, to provide a written list of Buyer's objections to Seller (an "Objection Notice") or to terminate this Agreement by giving Seller and Escrow Agent written notice thereof at any time on or before the Diligence Expiration Date (a "Diligence Termination Letter"), in which event Escrow Agent shall promptly return the entire Deposit, together with all interest earned thereon, if any, to Buyer without any requirement for Seller or Seller's attorney's consent, and all rights and liabilities of the parties hereto by reason of this Agreement (except those obligations and liabilities specifically set forth herein to survive termination) shall be deemed at an end.
- b. If Buyer provides an Objection Notice as described above, Seller shall have two (2) business days from the date of delivery to respond to the Objection Notice, including a description of how and whether Seller is willing to cure some, all or none of the objections included in the Objection Notice (the "Seller's Objection Response"). Seller shall have no obligation to cure any objections listed in the Objection Notice. Upon receipt of Seller's Objection Response, Buyer may, at Buyer's sole discretion (i) accept Seller's Objection Response, and proceed to Closing, such closing subject only to the cure provisions contained in Seller's Objection Response, or (ii) terminate this as described in Section I #4(a).
- c. If Buyer does not timely deliver a written termination of this Agreement as described in this Section I #4, this condition shall be deemed waived and shall be deemed to be Buyer's acknowledgement that it has examined the Property, the condition of title, the Title Commitment, all applicable records and tenant agreements (if any) to its satisfaction and agrees: (i) to purchase said Property in its existing condition as of the Diligence Expiration Date, (ii) that all exceptions to the Title Commitment, including the Deed Restriction, shall be deemed Permitted Exceptions, and (iii) that it is not purchasing in reliance upon any statements or representation as to the condition of said Property made by either Seller or any broker except those expressly made herein. If Buyer does not terminate this Agreement by sending a Diligence Termination Letter on or before the Diligence Expiration Date as set forth herein, the Deposit shall become non-refundable except in the case of Seller's default, but shall be applied to the purchase price payable at the closing of title pursuant to this Agreement.

SECTION II. CLOSING:

Buyer and Seller agree this transaction shall close on the Closing Date via an escrow arrangement in the office of the Escrow Agent (the "Closing").

At closing, Seller shall convey fee simple title to the Property to Buyer by Special Warranty Deed (the "Deed"). Title to the Property is to be free and clear of all liens and encumbrances except for the Permitted Exceptions, hereinafter defined. Title shall be conveyed to Buyer subject only to: (a) general and special taxes for the current year which are not due and payable as of the date of Closing; (b) covenants, conditions, restrictions, reservations, and easements of record as of the date of this Agreement, including without limitation, the Deed Restriction; (c) all matters of record to which the Buyer does not object or otherwise accepts; and (d) any exceptions included on the Title Commitment (the "Title Exceptions") that are waived or otherwise accepted by Buyer (collectively, the "Permitted Exceptions"). The Deed shall recite the Title

Exceptions, including the Deed Restriction. Buyer's acceptance of the Deed shall confirm that Buyer has received and read the Deed Restriction, consents to abiding by the terms and conditions of such Deed Restriction.

1. Personal Property: At closing, all fixtures, equipment and other personal property located at and appurtenant to the operation of the aforesaid Property shall be conveyed to Buyer at Closing, provided that no part of the purchase price shall be allocable to such personal property. Seller shall not remove any fixtures, equipment or other personal property from the Property unless same are replaced with items of at least equal quality and utility prior to Closing.
2. Real estate taxes, water charges, sewer rents, and other expenses, if any, of said Property shall be prorated to the date of Closing in accordance with the customs of the county in which the Property is located.

SECTION III. TRANSACTION COSTS:

1. Buyer and Seller agree to pay their own transaction costs incurred in connection with the negotiation, documentation and closing of this transaction (included, but not limited to attorney's fees).
2. Buyer and Seller agree to each pay their portion of customary cost of sale (including recording fees, transfer taxes, escrow fees charged by escrow agent, premium for title insurance company) as determined by the Title Company, except that any extended title insurance coverage or endorsements requested by Buyer, shall be at Buyer's sole cost and expense.
3. Buyer agrees to pay its own costs associated with Buyer's financing including, without limitation, lender's fees, fees for recording the mortgage, the cost of the lender's policy of title insurance, any endorsements required by the lender and mortgage tax stamps.

SECTION IV. BUYER'S REPRESENTATIONS & WARRANTIES:

1. Buyer has the full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and this Agreement has been duly and validly delivered by Buyer.

SECTION V. SELLER REPRESENTATIONS & WARRANTIES:

2. Seller is not a "foreign person" as defined in Internal Revenue Code Section 1445 and regulations issued thereunder. At closing Seller shall deliver a customary FIRPTA certificate, certifying same; If Seller fails to deliver the aforesaid certificate or if Buyer is not entitled under FIRPTA to rely on such certificate, Buyer shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

3. Seller is in compliance with the requirements of Executive Order No. 133224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders").

SECTION VI. DEFAULT

1. Buyer's Default. Buyer and Seller agree that it would be impractical or extremely difficult to ascertain actual damages in the event of Buyer's default hereunder. Therefore, the amount of the total Deposit shall be deemed to be a reasonable estimate of Seller's damages. Should Buyer fail to complete the purchase of the aforesaid Property by reason of any default on its part, Seller shall be released from its obligation to sell said Property to Buyer and the parties agree that Seller shall retain Buyer's total Deposit by way of liquidated damages
2. Seller's Default. Buyer and Seller agree that if Seller shall be unable to convey title to the Property at Closing in accordance with the provisions of this Agreement, if Seller otherwise defaults in the performance of its obligations hereunder or in the event of a breach of any of Seller's representations and warranties set forth herein, Buyer shall be entitled to choose one of the following as Buyer's exclusive remedy for such breach or default: (i) terminate this Agreement and receive a refund of the Deposit, (ii) waive the breach or default and proceed to Closing in accordance with the provisions of this Agreement without reduction of the purchase price or (iii) pursue the remedy of specific performance, to the extent such remedy is available to Buyer at law. In no event shall Seller be liable to Buyer for any loss or damages related to failure to consummate the transaction contemplated herein.

SECTION VII. CLOSING DELIVERABLES:

At Closing, Seller shall deliver the following to Buyer (or the Title Company), and Buyer's obligation to close shall be conditioned upon receipt of the following:

1. The Special Warranty Deed, properly executed by Seller and in proper form for recording;
2. Such affidavits and documents as the Title Company shall reasonably require in order to close escrow, issue the owner's policy of title insurance and omit from its title insurance policy all exceptions to title not expressly permitted hereunder; and
3. Possession of the Property in the condition required by this Agreement.

At Closing, Buyer shall deliver the following to Seller (or the Title Company), and Seller's obligation to close shall be conditioned upon delivery of the following:

1. The purchase price as described in this Agreement; and
2. Such affidavits and documents as the Title Company shall reasonably require in order to release escrow and proceed to closing.

SECTION VIII. BROKERS:

Seller and Buyer each represents and warrants to the other that it has not dealt with any broker in connection with this sale other than Crosby and Associates, Inc. (Chip Fortenberry) and the applicable party shall pay each broker any commission earned as described and determined pursuant to a separate agreement between

Email:jmiller@twentylake.com

Email:amommsen@jhattorneys.com

If to Escrow Agent:

Advantage Title
201 Old Country Road, Suite 200,
Melville, NY 11747

Attn: Christine Favara Monti

cmonti@advantagetitle.com

SECTION X. ESCROW INSTRUCTIONS:

Escrow Agent shall hold the Deposit until Closing or sooner termination of this Agreement and shall pay over or apply the Deposit in accordance with the terms of this paragraph. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrow Agent upon request. At Closing, the Deposit shall be paid by Escrow Agent to Seller. If for any reason, Closing does not occur and either party gives notice to Escrow Agent demanding payment of the Deposit, Escrow Agent shall give prompt notice to the other party of such demand. If Escrow Agent does not receive notice of objection from such other party to the proposed payment within 10 business days after the giving of such notice, Escrow Agent is hereby authorized and directed to make such payment. If Escrow Agent does receive such Notice of objection within such 10-day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by notice from the parties to this Agreement or a final, non-appealable judgment, order or decree of a court. However, Escrow Agent shall have the right at any time to deposit the Deposit and the interest thereon with the clerk of a court in the county in which the Property is located and shall give notice of such deposit to Seller and Buyer. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder. The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience and that Escrow Agent shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent. Seller and Buyer jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrow Agent), indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent. Escrow Agent may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel. By signing in the place indicated on the signature page of this Agreement, Escrow Agent acknowledges receipt of the Deposit by check subject to collection and Escrow Agent's agreement to the provisions of this paragraph.

SECTION XI. LOCAL LAW PROVISIONS

Prior to the Diligence Expiration Date, Buyer and Seller shall cooperate with and rely upon the Title Agent or local realtor or broker to attach to this Agreement any disclosures or other materials required under applicable state law as Exhibit B (the "Local Requirements"). Seller will comply with any commercially

reasonable Local Requirements. To the extent that Seller determines any Local Requirement is commercially unreasonable or the compliance with such Local Requirement alters the economic terms of this transaction, Seller may terminate this Agreement by written notice to Seller within two (2) business days of the Diligence Expiration date, in which case the Deposit shall be refunded to Buyer and thereafter the parties shall have no further obligation to each other.

SECTION XII. "AS-IS" PURCHASE. The terms of this Section XII shall not be merged upon execution, delivery or recordation of the deed contemplated herein, and shall survive closing indefinitely. The Property is being sold AS IS and WITH ALL FAULTS, subject only to any warranties and/or representations expressly made herein. Buyer, having been given the opportunity in this Agreement to inspect the property and review information and documentation affecting the property, will rely solely on its own investigation of the property and review of such information and documentation. Buyer acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information prepared by third parties except as may otherwise be provided herein. Buyer hereby represents and warrants to Seller that Buyer has had an opportunity to consult with legal counsel with respect to the transaction contemplated by this Agreement.

BUYER AGREES AND ACKNOWLEDGES THAT:

EXCEPT AS MAY BE EXPRESSLY PROVIDED, WARRANTED, OR REPRESENTED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, (i) THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS-IS" AND "WITH ALL FAULTS" BASIS, AND (ii) SELLER HAS NO OBLIGATIONS TO MAKE ANY REPAIRS, REPLACEMENTS OR IMPROVEMENTS. EXCEPT AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER AGREES THAT IT WILL ACCEPT THE PROPERTY FROM AND AFTER CLOSING, IN ITS THEN EXISTING CONDITION "AS-IS" AND "WITH ALL FAULTS", INCLUDING WITHOUT LIMITATION, ANY FAULTS AND CONDITIONS SPECIFICALLY REFERENCED IN THIS AGREEMENT. NO PERSON ACTING ON BEHALF OF SELLER OR ANY OTHER SELLER PARTY IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, SELLER AND ALL OTHER SELLER PARTIES HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, CONTRACTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

THE VALUE OF THE PROPERTY AND THE INCOME TO BE REALIZED;

THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING ANY DEVELOPMENT OF THE PROPERTY;

THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY;

THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY;

THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY;

THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY AND THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS;

THE MANNER, CONDITION OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY;

COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR OTHER ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, THE ENDANGERED SPECIES ACT, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990 OR ANY OTHER LAW, RULE OR REGULATION GOVERNING ACCESS BY DISABLED PERSONS, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING;

THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, ABOUT OR ADJACENT TO THE PROPERTY;

THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY, INCLUDING ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER;

THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE OR OTHER HAZARDOUS GEOLOGICAL CONDITION; AND

THE EXISTENCE OF LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY.

Buyer's Initials indicate review and acceptance of this Section XII: _____

SECTION XIII. OTHER CONDITIONS:

1. All risk of loss shall remain with Seller until Closing. If all or any portion of the Property is destroyed or damaged by fire or other casualty prior to the Closing, Buyer shall have the right, at its option, to terminate this Agreement by written notice to Seller and Escrow Agent within five (5) business days of receipt of notice of such casualty, in which case the Deposit shall be refunded to Buyer and thereafter the parties shall have no obligation to each other. If Buyer does not so terminate this Agreement, Buyer shall be obligated to proceed to Closing in accordance with the terms of this Agreement and Seller shall, if said damage is covered under Seller's insurance policy, assign to Buyer all insurance proceeds and claims relating to such damage. Seller shall notify Buyer in writing of any damage to or destruction of the Property, or any portion thereof, within two (2) days after Seller learns of such damage or destruction.
2. All prior understandings, agreements, representations and warranties, oral or written, between Seller and Buyer are merged in this Agreement; it completely expresses their full agreement and

has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement.

3. Neither this Agreement nor any provision thereof may be waived, changed or cancelled except in writing. This Agreement shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Agreement.
4. Buyer may assign this Agreement only with Seller's written consent. If Buyer assigns this Contact, Buyer and assignee shall execute an assignment and assumption of this Agreement reasonably acceptable to Seller and Buyer shall remain jointly and severally liable with assignee for all obligations and covenants contained herein. Failure of Buyer to comply with the terms of this paragraph will nullify any assignment made by Buyer.
5. This Agreement shall be governed by and construed in accordance with the law of the State where the Property is located. This Agreement may be executed in counterparts, and a facsimile or email copy of this Agreement will be considered an original
6. Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this Agreement may require it. The term "business days" shall be defined as weekdays including Monday through Friday, excluding Saturday, Sunday and national holidays. Should any performance date or deadline contained herein fall on a weekend or national holiday, said date will automatically be extended to the next business day. The time in which any act required under this Agreement is to be performed shall be computed by excluding the day on which the triggering event occurs (i.e. the acceptance date or the day on which the title commitment is delivered) and including the last day of such period. The first day shall be the date after the day on which the triggering event occurs for such period. All chronological times referred to in this Agreement, and all other documents relating to this Agreement, shall be deemed to be Eastern Standard Time. Whenever a provision of this Agreement establishes a date by which an event must occur, it shall be deemed to establish 5:00 PM EST on such date as the deadline for such event, unless stated otherwise. **TIME IS OF THE ESSENCE WITH RESPECT TO EVERY PROVISION OF THIS AGREEMENT.**
7. This Agreement shall not constitute an offer capable of acceptance and shall not be binding or effective unless and until signed and delivered by Seller and Buyer. If this Agreement has been executed by Buyer, this Agreement shall be deemed automatically null and void unless executed by Seller and delivered to Buyer or its attorney within (5) five calendar days after the date hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the last date written below by their duly authorized representatives.

BUYER:
CITY OF LAKELAND

By: _____
Name: _____
Title: _____

Date: _____

SELLER:
RMX SE LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Date: _____

The undersigned Escrow Agent acknowledges receipt of the Deposit and agrees to the provisions of Section I, Section II and Section X of this Agreement.

ESCROW AGENT:

By: _____
Name: _____
Title: _____

EXHIBIT A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF POLK, STATE OF FLORIDA, AND DESCRIBED AS FOLLOWS:

BEGIN 500 FEET NORTH OF THE SOUTHEAST CORNER OF THE NE 1/4 OF SE 1/4 OF SECTION 16, TOWNSHIP 28 SOUTH, RANGE 24 EAST, RUN THENCE WEST 828.5 FEET TO THE CENTER OF COMBEE ROAD, THENCE NORTH 486.7 FEET, MORE OR LESS, TO THE RIGHT OF WAY OF THE ATLANTIC COAST LINE RAILROAD, THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY 772.5 FEET, MORE OR LESS, TO THE EAST LINE OF SAID NE 1/4 OF SE 1/4, THENCE SOUTH 406.5 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. SUBJECT TO ROAD RIGHT OF WAY FOR STATE ROAD 5-33-A ALONG THE EAST SIDELINE THEREOF AND SUBJECT TO ROAD RIGHT OF WAY FOR OLD COMBEE ROAD OVER, ON, AND ACROSS THE WEST 30 FEET THEREOF.

305 EASTSIDE DRIVE
LAKELAND FLORIDA

EXHIBIT B

STATE LAW PROVISIONS

TO BE ATTACHED PRIOR TO THE END OF DUE DILIGENCE

Exhibits to Lakeland PSA

____ / ____
BUYER / SELLER
INITIALS

EXHIBIT "B"

