

RESOLUTION NUMBER 15-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A PURCHASE AND SALE AGREEMENT FOR THE TOWN'S PURCHASE OF REAL PROPERTY LOCATED AT 2523 AND 2525 ESTERO BOULEVARD FOR CITY HALL PURPOSES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AUTHORIZING AND DIRECTING THE TOWN MANAGER ADMINISTRATIVE STAFF, CLERK, AND SPECIAL LEGAL COUNSEL TO TAKE ALL STEPS NECESSARY FOR CLOSING OF THE PURCHASE IN A TIMELY MANNER; CONFIRMING THAT THE PURCHASE IS UNDER THE THREAT OF CONDEMNATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution and Statutes provide that municipalities such as the Town of Fort Myers Beach shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; including exercise of the power of eminent domain; and

WHEREAS, the Charter of the Town of Fort Myers Beach empowers the Town to enter into agreements including for the purchase of real estate for governmental purposes; and

WHEREAS, the Town has leased the property located at 2523 and 2525 Estero Boulevard (the Property) from the owner or its predecessors in interest since the Town's incorporation in 1995; and

WHEREAS, Council has notified the Owner of the Property of its intent to purchase the Property City Hall and Town administrative purpose (public purposes) and has notified the Owner of its intent to purchase the property by use of the Town's eminent domain power, if necessary; and

WHEREAS, the Town has had the property appraised by a qualified appraiser; and has made a good faith offer as required by statute; which offer has been accepted by Owner, subject to approval by Town Council, execution of a written Purchase and Sale Agreement, and closing; now therefore:

IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The Town Council hereby approves the purchase in fee simple of the real property located at 2523 and 2525 Estero Boulevard, Fort Myers Beach, Lee County, Florida, for the sum of One Million One Hundred Thousand Dollars (\$1,100,000.00) from Owner First States Investors 5200, LLC, a Delaware limited liability company, pursuant to a Purchase and Sale Agreement a copy of which, (including the legal description of Parcel 1 (fee) and Parcel 2 (easement), accompanies this Resolution .

Section 2. The Mayor is hereby authorized to execute said Agreement, including making non-substantial changes; and the Town Manager, his administrative staff, the Town Clerk and the Town's Special Legal Counsel are authorized to take such actions as may be necessary for closing of the purchase in a timely manner.

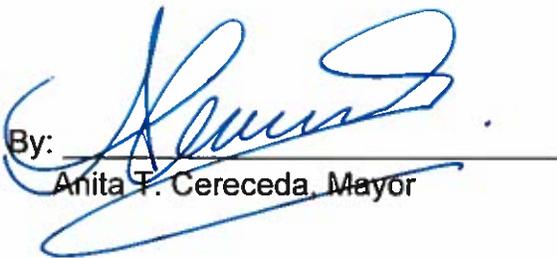
Section 3. It is hereby expressly confirmed and reiterated that this purchase is under the threat of condemnation by the Town.

Section 4. Effective Date. This resolution shall take effect immediately upon its adoption by the Town Council.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Hosafros and seconded by Council Member Stockton, and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	aye	Dan Andre, Vice Mayor	aye
Alan Mandel, Council Member	aye	Rexann Hosafros, Council Member	aye
Summer Stockton, Council Member	aye		

DULY PASSED AND ADOPTED THIS 4<sup>TH</sup> DAY OF MAY, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By:   
Anita T. Cereceda, Mayor

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By:   
Derek Rooney, Gray\Robinson, Town Attorney

**Property Name: BBD2 - 5273 – FORT MYERS BEACH, FL**

**PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (this "Agreement") is entered into this \_\_\_\_ day of [\_\_\_\_], 2015 (the "Effective Date"), by and between FIRST STATES INVESTORS 5200, LLC, a Delaware limited liability company ("Seller"), and [TOWN OF FORT MYERS BEACH], a [Florida municipal corporation] ("Purchaser"). In consideration of the mutual agreements herein set forth, the parties hereto, intending to be legally bound, agree as follows.

1. Defined Terms/Riders:

<b>Business Day:</b>	Each day of the week except Saturdays, Sundays and federal holidays.
<b>Closing Date:</b>	10:00 AM prevailing Eastern Time on the date that is one (1) Business Day following the Effective Date.
<b>Escrowee:</b>	First American Title Insurance Company 633 Third Avenue New York, New York 10017 Attention: Phil Salomon Email: psalomon@firstam.com
<b>Exhibits:</b>	<u>Exhibit A</u> – Legal Description <u>Exhibit B</u> – Permitted Exceptions <u>Exhibit C</u> - Bill of Sale
<b>Improvements:</b>	The buildings, structures and improvements erected or located on the Land (hereinafter defined), together with equipment and trade fixtures customarily considered to be part of real property, if any (and only to the extent located on the Land or within a building or other structure).
<b>Land:</b>	That certain tract(s) or parcel(s) of land situated at [2523/2525] Estero Boulevard, Fort Myers Beach, FL 33931, as more fully described on <u>Exhibit A</u> attached hereto.
<b>Person:</b>	Any individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity.
<b>Purchase Price:</b>	\$1,100,000.00
<b>Purchaser's EIN:</b>	[_____]
<b>Purchaser's Notice Address:</b>	[_____]

	<p>[            ]  [            ]  Attention:</p> <p>With a copy to:</p> <p>[            ]  [            ]  [            ]</p>
<b>Purchaser's Transfer Tax Share:</b>	100%
<b>Seller's EIN:</b>	
<b>Seller's Notice Addresses:</b>	<p>First States Investors 5200, LLC  c/o Gramercy Property Trust Inc.  521 Fifth Avenue, 30<sup>th</sup> Floor  New York, NY 10175  Attention: Allan B. Rothschild  Email: arothschild@gptreit.com</p> <p>With a required copy to:</p> <p>First States Investors 5200, LLC  c/o Gramercy Property Trust, Inc.  521 Fifth Avenue, 30<sup>th</sup> Floor  New York, NY 10175  Attention: Office of the General Counsel  Email: ematey@gptreit.com</p>
<b>Seller's Transfer Tax Share:</b>	0%
<b>Transfer Tax:</b>	Any tax, levy or documentary stamp required to be paid or purchased in connection with recordation of the Deed (hereinafter defined) and the cost of which is determined by the amount of the Purchase Price.

2. Agreement to Sell. For the Purchase Price and subject to the terms and conditions hereof, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and take from Seller, all of Seller's right, title and interest in and to all and singular the following (which are herein sometimes collectively referred to as the "Property"):

- (i) the Land;
- (ii) the Improvements;
- (iii) the tenements, hereditaments, appurtenances, rights of way, strips, gores, easements, rights and privileges in any way pertaining or beneficial to the Land or Improvements; and
- (iv) all damages, awards, claims and causes of action now or hereafter payable or assertable with respect to any of the foregoing by reason of any exercise of the power of eminent domain, any change of grade of any street, road, highway, avenue or alley, or any damage, destruction, loss or removal of any of the foregoing.

3. Purchase Price. The Purchase Price for the Property, subject to the prorations and adjustments herein provided for and shall be payable at Closing either (i) in cash, (ii) by bank, cashier's or certified check provided that such check is received no later than two (2) Business Days prior to the scheduled Closing Date, or (iii) by wire transfer to an account designated by Seller.

4. Closing.

(A) "Closing" shall mean the consummation of each of the actions set forth below in this Section 4, or the waiver of such action by the party in whose favor such action is intended. At the Closing, Seller shall transfer ownership of the Property by deed, the form of which deed shall be in substantially the same form in which title to the Property is vested in Seller (the "Deed"), and Purchaser shall pay the Purchase Price. Closing shall be held at 10:00 A.M. prevailing local time on the Closing Date. Closing, delivery of all closing documents and settlement shall take place through an escrow with the offices of Escrowee.

(B) At Closing, Seller shall deliver or cause to be delivered the following documents to Purchaser (the "Seller Deliverables"):

- (i) the Deed sufficient to vest in Purchaser title to the Land and the other portions of the Property that constitute real property in accordance with this Agreement;
- (ii) a release to satisfy the lien of any presently existing mortgage financing affecting the Property in form and substance reasonably acceptable to Escrowee;

(iii) a bill of sale remising and transferring to Purchaser title to any portion of the Property that is not conveyed by the Deed (collectively, the "Personal Property"), without recourse or warranty, in substantially the form attached hereto as Exhibit C;

(iv) two counterparts of Purchaser's confirmation of responsibility for utility charges from and after the Closing Date (the "Utility Transfer Letter"), executed by Seller;

(v) confirmation of the existence and subsistence of Seller, and the authority of those executing for Seller, including without limitation, the following: (a) a good standing certificate in the state of Seller's organization and (b) a duly executed certificate from any officer of Seller confirming the incumbency of the signatories and the current force and effect of the resolution authorizing the execution of the documents under this Agreement; and

(vi) such other instruments as may be required by the terms of this Agreement to be delivered by Seller at the Closing.

(C) At Closing, Purchaser shall deliver or cause to be delivered the following documents to Seller (the "Purchaser Deliverables"):

(i) the amounts required to be paid to Seller pursuant to this Agreement;

(ii) confirmation of the existence and subsistence of Purchaser, and the authority of those executing for Purchaser, including without limitation, the following: (a) a good standing certificate in the state of Purchaser's organization and (b) a duly executed certificate from any officer of Purchaser confirming the incumbency of the signatories and the current force and effect of the resolution authorizing Purchaser to purchase the Property;

(iii) two counterparts of the Utility Transfer Letter duly executed by Purchaser;

(iv) confirmation that Purchaser has caused all utilities servicing the Property, if any, to be transferred as of the Closing Date into the name of Purchaser and that Purchaser has posted such deposits or other security required by any utility provider; and

(v) such other instruments as may be required by the terms of this Agreement to be delivered by Purchaser at the Closing.

(D) The acceptance of the Deed by Purchaser shall be deemed to be the completed and full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement.

5. Title. At Closing, title to the Property shall be subject to those matters described on Exhibit B attached hereto and made apart hereof, except that Seller shall deliver a release to satisfy the lien of any presently existing mortgage financing affecting the Property as part of the Seller Deliverables.

6. Seller's Representations, Warranties and Covenants.

(A) Seller represents and warrants to Purchaser as follows:

(i) Seller is duly organized and validly existing under the laws of its state of formation. Seller has the right, power and authority to enter into this Agreement, to convey the Property in accordance with the terms and conditions of this Agreement, to engage in the transactions contemplated in this Agreement and to perform and observe the terms and provisions hereof.

(ii) Seller has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and upon the execution and delivery of any document to be delivered by Seller on or prior to the Closing, this Agreement and such document shall constitute the valid and binding obligation and agreement of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

(iii) Neither the execution, delivery or performance of this Agreement by Seller, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Property or any portion thereof pursuant to the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Seller is bound.

(iv) To Seller's actual knowledge, Seller has not received written notice of any pending suit, action or proceeding, which (A) if determined adversely to Seller, materially and adversely affects the use or value of the Property, or (B) questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

(v) Neither Seller nor, to Seller's actual knowledge, any of Seller's respective constituents or affiliates nor any of their respective agents acting or benefiting in any capacity in connection with the purchase of the Property is in violation of any laws relating to terrorism or money laundering, including but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), as amended from time to time, and the U.S. Bank Secrecy Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and as otherwise amended from time to time (collectively, with the Executive Order, the "Anti-Terrorism Law").

(vi) Neither Seller nor, to Seller's actual knowledge, any of Seller's respective constituents or affiliates nor any of their respective agents acting or benefiting in any capacity in connection with the purchase of the Property is a "Prohibited Person" under the Anti-Terrorism Law.

(vii) To Seller's actual knowledge, other than Purchaser's Lease (hereinafter defined), there are no other third party occupancy leases that are currently existing and which affect the Property.

If Closing occurs, Purchaser hereby expressly waives, relinquishes and releases any right or remedy available to it at law or in equity, under this Agreement or otherwise to make a claim against Seller for damages that Purchaser may incur, or to rescind this Agreement and the transaction, as the result of any of Seller's representations being untrue, inaccurate or incorrect in any respect. The provisions of this paragraph shall expressly survive the Closing or earlier termination of this Agreement.

(B) Seller's Covenants and Agreements.

(i) Leasing Arrangements. During the pendency of this Agreement, Seller will not enter into any new lease affecting the Property without Purchaser's prior written consent in each instance.

(ii) New Contracts. During the pendency of this Agreement, Seller will not enter into any contract, or modify, amend, renew or extend any existing contract, that will be an obligation affecting the Property or any part thereof subsequent to the Closing without Purchaser's prior written consent in each instance (which Purchaser agrees not to withhold, condition or delay unreasonably), except contracts entered into in the ordinary course of business that are terminable without cause (and without penalty or premium) on 30 days (or less) notice.

(iii) Operation of Property. During the pendency of this Agreement, Seller shall continue to operate the Property in a good and businesslike fashion consistent with Seller's past practices.

(iv) Insurance. During the pendency of this Agreement, Seller shall, at its expense, continue to maintain its current insurance policies covering the Improvements.

7. Purchaser's Representations, Warranties and Covenants.

(A) Purchaser represents and warrants to Seller as follows:

(i) Purchaser is duly organized and validly existing under the laws of Purchaser's State of formation. Purchaser has the right, power and authority to enter into this Agreement and to purchase the Property in accordance with the terms and conditions of this Agreement, to engage in the transactions contemplated in this Agreement and to perform and observe the terms and provisions hereof.

(ii) Purchaser has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and upon the execution and delivery of any document to be delivered by Purchaser on or prior to the Closing, this Agreement and such document shall constitute the valid and binding obligation and agreement of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforceability may be

limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors.

(iii) Neither the execution, delivery or performance of this Agreement by Purchaser, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Purchaser is bound.

(iv) To Purchaser's actual knowledge, Purchaser has received no written notice that any action or proceeding is pending or threatened, which questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

(v) Purchaser has not (A) made a general assignment for the benefit of creditors, (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser's creditors, (C) suffered the appointment of a receiver to take possession of all, or substantially all, of Purchaser's assets, (D) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, (E) admitted in writing its inability to pay its debts as they come due, or (F) made an offer of settlement, extension or composition to its creditors generally.

(vi) Neither Purchaser nor, to Purchaser's actual knowledge, any of Purchaser's respective constituents or affiliates nor any of their respective agents acting or benefiting in any capacity in connection with the purchase of the Property is in violation of any laws relating to terrorism or money laundering, including but not limited to, the Anti-Terrorism Law.

(vii) Neither Purchaser nor, to Purchaser's actual knowledge, any of Purchaser's respective constituents or affiliates nor any of their respective agents acting or benefiting in any capacity in connection with the purchase of the Property is a "Prohibited Person" under the Anti-Terrorism Law.

If, after the execution of this Agreement, any event occurs or condition exists that renders any of the foregoing representations and warranties untrue or misleading, Purchaser shall promptly notify Seller. All such representations and warranties shall be deemed made by Purchaser on the date of this Agreement and at the time of Closing.

(B) Purchaser's Covenants and Agreements.

Utilities. At Closing, Purchaser shall cause all utilities servicing the Property, including without limitation, electric, natural gas, telephone and tele-communication providers, steam, water, sewer, and any other providers of utility services (collectively, the "Utilities"), to be transferred into an account established by or on behalf of Purchaser and for which Seller will have no liability for Utility charges after the Closing. Seller, at no out-of-pocket expense, liability or potential liability to Seller, shall reasonably cooperate with Purchaser to assist Purchaser's transfer of the Utilities from Seller to Purchaser as of the Closing Date. Purchaser shall be responsible prior to Closing to post with the providers of the Utilities any and all

deposits, letters of credit or other security required to transfer the Utilities to Purchaser. **PURCHASER ACKNOWLEDGES AND UNDERSTANDS THAT SELLER SHALL DIRECT ALL PROVIDERS OF UTILITIES TO TERMINATE SERVICE TO THE PROPERTY AS OF THE CLOSING DATE AND PURCHASER'S FAILURE TO TRANSFER THE UTILITIES MAY RESULT IN THE INABILITY OF PURCHASER TO USE THE UTILITIES. SELLER SHALL HAVE NO LIABILITY TO PURCHASER AS A RESULT OF (i) PURCHASER'S FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION 7(B) OR (ii) SELLER'S TERMINATION OF SERVICE TO THE PROPERTY AS PROVIDED FOR IN THIS SECTION 7(B).** *[Note: Seller checking and will advise Purchaser if Seller currently has bonds or guaranty posted with utility provider.]*

8. **Condition of Property.** Seller makes no representation, promise or guaranty with respect to the Property information provided to Purchaser under this Agreement, the condition or character of the Property (including without limitation the subsoil condition thereof) or the use or uses to which the Property may be put. Purchaser acknowledges that Purchaser will be purchasing the Property on the basis of its own examination and investigation and not in reliance on any representation or warranty of Seller or any agent, employee or representative of Seller. Purchaser realizes that the Property is being sold in "AS IS, WHERE IS" condition "WITH ALL FAULTS" as of the Effective Date.

9. **Compliance with Laws.** The Property is sold, and Purchaser shall accept same, subject to any and all violation of law, rules, regulations, ordinances, orders, or requirements noted in or issued by any Federal, state, county, municipal, or other department or government agency having jurisdiction against or affecting the Property whenever noted or issued (collectively, "Violations") and any conditions which could give rise to any Violations. Seller shall have no obligation to cure or remove any Violations.

10. **Apportionments at Closing; Transfer Taxes; Closing Costs.**

(A) **Apportionments.** The following charges, pro-rations and apportionments shall be made on a per diem basis between Purchaser and Seller at Closing as of 12:01 A.M. prevailing time in the city where the Property is located on the Closing Date on the basis of a 365-day year, with Purchaser deemed the owner of the Property on the entire Closing Date:

(i) **Real Estate Taxes.** Real estate taxes, personal property taxes, and business improvement district assessments (if any) against the Property for the year or quarter in which Closing is held shall be apportioned on a per diem basis between Purchaser and Seller as of the date of Closing, and all tax adjustments shall be based on the fiscal year used by the taxing authority with due allowance made for the maximum discount allowable. If Closing occurs at a date when the current year's millage is not fixed and the current year's assessment is available, then taxes will be prorated based on such assessment and the prior year's millage. If the current year's assessment is not available, then taxes will be prorated based on the prior year's tax, and such proration shall be final and not subject to post-Closing adjustment pursuant to the last paragraph of this Section 10(A).

(ii) Water and Sewer Charges. All water, sewer and other utility charges assessed against or incurred on or with respect to the Property based on the fiscal year used by the assessing authority.

(iii) Utility Deposits/Letters of Credit. Seller shall be entitled to any deposits, if any, made with utility companies servicing the Property, and, if same are not refundable to Seller without a replacement by Purchaser, Purchaser shall either (A) deliver the required replacement deposits to the utility company on or prior to the Closing, or (B) pay to Seller at the Closing the amount of such deposits, in which case Seller shall transfer all of Seller's right, title and interest to such deposits to Purchaser. Seller shall be entitled to the return of any bonds, guarantees or letters of credit posted with any governmental authority, if any (a "Guaranty") in connection with the Property. If a Guaranty is not refundable prior to the Closing Date without a replacement by Purchaser, Purchaser shall deliver the required replacement Guaranty to the applicable governmental authority on or prior to the Closing Date. If a Guaranty is a cash deposit with the applicable governmental entity, Seller shall receive a credit in the amount of such cash deposit at the Closing, in which case Seller shall transfer all of Seller's right, title and interest to such Guaranty to Purchaser. *[Note: Seller checking and will advise Purchaser if Seller currently has bonds or guaranty posted with utility provider.]*

(iv) Rent, Income and Other Expenses. Rents and any other amounts payable by Purchaser under Purchaser's Lease shall be prorated as of the Closing Date and be adjusted against the Purchase Price on the basis of a schedule which shall be prepared by Seller and delivered to Purchaser for Purchaser's review and approval prior to Closing.

(v) Security Deposit Under Purchaser's Lease. Seller shall transfer or provide Purchaser a credit against the Purchase Price for such security deposit paid by Purchaser under Purchaser's Lease at the Property, if any. After such transfer or credit against the Purchase Price, Purchaser shall hold Seller harmless from and against any claims for the return of the security deposit, if any.

(vi) Assessments. If the Property is affected by any assessment imposed by any governmental authority which is or may become payable in annual installments, then Seller shall pay the unpaid installments of any such assessment which are due and payable on or before the Closing Date to the extent such assessments are applicable to periods prior to the Closing Date, and Purchaser shall assume full responsibility for the payment of all installments which become due and payable after the Closing Date. Any annual installments of assessments for the year or quarter in which Closing is held shall be apportioned on a per diem basis between Purchaser and Seller as of the date of Closing.

If any adjustment or apportionment is miscalculated at Closing, or the complete and final information necessary for any adjustment is unavailable at the Closing, the affected adjustment shall be calculated after the Closing. All prorations shall be made based on the number of calendar days in such year or month, as the case may be. Either party owing the other party a sum of money based on proration(s) calculated after the Closing Date shall promptly pay said sum to the other party, together with interest thereon at the lesser of (a) ten percent per annum or (b) the

maximum lawful rate of interest, from the date the invoice is delivered to the date of payment, if payment is not made within 30 days after delivery of a bill therefor. The provisions of this Section 10(A) shall survive the Closing and delivery of the Deed from Seller to Purchaser for a period of six months.

(B) Transfer Tax/Documentary Stamps. Seller shall pay Seller's Transfer Tax Share and Purchaser shall pay Purchaser's Transfer Tax Share of all Transfer Taxes imposed in connection with the Closing or the recording of the Deed.

(C) Closing Costs.

(i) Seller shall pay at Closing:

- a. any recording fees for the satisfaction of the lien of any presently existing mortgage affecting the Property;
- b. recording fees due on recording of corrective instruments, if any; and
- c. Seller's attorney's fees and costs.

All costs and expenses to be paid by Seller at Closing shall be disbursed from the balance of the Purchase Price payable by Purchaser at Closing and shall reduce the net cash payable to Seller.

(ii) Purchaser shall pay at or prior to Closing:

- a. all recording fees due on the Deed;
- b. all title examination fees, title insurance premiums (including without limitation premiums for endorsements and extended coverage);
- c. the cost of any survey obtained by Purchaser;
- d. all costs and expenses of any financing of Purchaser's acquisition of the Property (including, without limitation, all intangible taxes, documentary stamp taxes and recording and filing fees due on any financing document, and lender's attorneys' fees and expenses); and
- e. Purchaser's attorney's fees and costs.

11. Time of the Essence. Time wherever specified herein for satisfaction of conditions or performance of obligations by Purchaser is of the essence of this Agreement.

12. Possession and Condition. It is understood and agreed that the Property is being purchased by Purchaser in its present physical "AS IS" condition. At Closing, Seller shall transfer to Purchaser possession of the Property in substantially the same condition the Property is in on the date hereof, reasonable wear and tear excepted and subject to the terms and conditions of Sections 15 and 16 hereof.

13. Purchaser's Default. If at the time of Closing Purchaser is in default in the observance or performance of Purchaser's obligations hereunder, then Seller shall have the right, in addition to any other remedies Seller may have at law and equity, to terminate this Agreement and thereafter the parties shall have no further rights or obligations hereunder, except those rights that expressly survive the Closing or earlier termination of this Agreement.

14. Seller's Default. If Seller fails or shall be unable to perform its obligation to convey the Property to Purchaser in accordance with the terms of this Agreement, then Purchaser, at its sole option and as its sole and exclusive remedy, may terminate this Agreement, in which event neither party shall thereafter have any further rights or obligations hereunder except those rights that expressly survive the Closing.

15. Casualty. If, prior to the Closing Date, a Significant Portion (hereinafter defined) of the Property is destroyed by fire or other casualty, Seller shall notify Purchaser in writing of such fact and Purchaser shall have the option to terminate this Agreement upon ten (10) days' notice to Seller given not later than ten (10) days after receipt of Seller's notice, which notice from Seller shall include an estimate from Seller as to the aggregate percentage of the Improvements affected; provided, however, that within such ten (10) day period, Seller may, at its option, notify Purchaser that it intends to repair such damage at its sole cost and expense, and Seller may, upon such notice, postpone the Closing for a period of time reasonably necessary, but not to exceed one hundred twenty (120) days in the aggregate, to make such repairs. For purposes of this Section 15 and Section 16 of this Agreement, a "Significant Portion" shall mean twenty (20%) percent or more in the aggregate of the Improvements at the Property. If Purchaser shall elect to terminate this Agreement as aforesaid, (provided that Purchaser's failure to elect to terminate shall be deemed an election to close) and Seller shall not notify Purchaser within such ten (10) day period of its intention to make such repairs, this Agreement shall terminate and neither party shall have any further rights or obligations hereunder. If Purchaser does not elect to terminate this Agreement as provided above, or if the portion of the Property so damaged or destroyed is not a Significant Portion then Purchaser shall accept the Property in its then "AS IS" condition with no abatement of the Purchase Price, and at the Closing, Seller shall assign and turn over to Purchaser, and Purchaser shall be entitled to receive and keep, all of Seller's interest in and to all casualty insurance proceeds payable in connection with such casualty (except that the proceeds of any business interruption or rental value insurance payable to Seller shall be retained by Seller), and, to the extent the casualty was a Significant Portion, Purchaser shall receive a credit against the Purchase Price at the Closing in the amount of any deductible payable by Seller in connection with the casualty coverage.

16. Condemnation. If, prior to the Closing Date, all or any Significant Portion of the Property is taken or rendered unusable for its current purpose or reasonably inaccessible by eminent domain, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement upon notice to Seller given not later than five Business Days after receipt of Seller's notice. If this Agreement is terminated as aforesaid, neither party shall thereafter have any further right or obligation hereunder. If either party does not elect to terminate this Agreement or if the portion of the Property which is taken or rendered unusable or reasonably inaccessible by eminent domain is not a Significant Portion, then Purchaser shall accept so much of the Property as remains after such taking in its then "AS IS" condition with no

abatement of the Purchase Price, and at the Closing, Seller shall assign and turn over to Purchaser, and Purchaser shall be entitled to receive and keep, all of Seller's interest in and to all awards for such taking by eminent domain.

17. Notices. All notices (including without limitation approvals, consents and exercises of rights or options) required by or relating to this Agreement shall be in writing and shall either be (i) hand delivered, (ii) delivered by nationally recognized overnight courier service, (iii) mailed United States registered or certified mail, return receipt requested, postage prepaid, or (iv) electronic mail (provided that any delivery by electronic mail is also simultaneously deposited for delivery by one of the delivery methods set forth in subsections (i), (ii) or (iii)). All notices shall be addressed to the other respective party at its address above set forth, or at such other address as such other party shall designate by notice, and shall be effective when delivered to such address.

18. Brokers. Seller represents and warrants to Purchaser that it has not dealt with any broker, finder or like agent in connection with this transaction and Seller hereby indemnifies and holds Purchaser harmless from and against any and all claims for any commission, fee or other compensation by any person or entity who shall claim to have dealt with Seller in connection with this transaction and for any costs and expenses incurred by Purchaser in connection with any such claims, including, without limitation, reasonable attorneys' fees and disbursements. Purchaser represents and warrants to Seller that it has not dealt with any broker, finder or like agent in connection with this transaction and Purchaser hereby indemnifies and holds Seller harmless from and against any and all claims for any commission, fee or other compensation by any person or entity who shall claim to have dealt with Purchaser in connection with this transaction and for any costs and expenses incurred by Seller in connection with any such claims, including, without limitation, reasonable attorneys' fees and disbursements. The provisions of this Section 18 shall survive Closing or any earlier termination of this Agreement.

19. Whole Agreement; Amendments. This Agreement sets forth all of the agreements, representations, warranties and conditions of the parties hereto with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, representations, warranties and conditions. The exhibits, schedules and riders referred to above constitute parts of this Agreement. No alteration, amendment, modification or waiver of any of the terms or provisions hereof, and no future representation or warranty by either party with respect to this transaction, shall be valid unless the same be in writing and signed by the party against whom enforcement of same is sought.

20. Captions; Pronouns. The captions of the sections of this Agreement are for convenience only and have no meaning with respect to this Agreement or the rights or obligations of the parties hereto. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: "hereof", "herein" and "hereunder" and other words of similar import refer to this Agreement as a whole; "Agreement" includes these presents as supplemented or amended from time to time by written instrument(s) entered into by Seller and Purchaser; "Purchaser" includes Purchaser's heirs, successors and assigns; "Seller" includes Seller's successors and assigns; and "parties" means Purchaser and Seller. Whenever the context

may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns or nouns shall include the plural and vice versa.

21. Governing Law. The laws of the state where the Property is located shall govern this Agreement and all issues arising hereunder.

22. [Intentionally Omitted]

23. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement, with the same effect as if the signatures thereto and hereto were upon the same instrument. For purposes of this Agreement, a telecopy or electronic format of an executed counterpart shall constitute an original. Any party delivering an executed counterpart of this Agreement by telecopier or electronic format shall also deliver an original executed counterpart of this Agreement, but the failure to deliver an originally executed counterpart shall not affect the validity of this Agreement.

24. Drafts Not an Offer to Enter into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, including, without limitation, all of the exhibits, schedules and riders hereto, and each of Seller and Purchaser have fully executed and delivered to each other a counterpart of this Agreement, including, without limitation, all exhibits, schedules and riders hereto.

25. Seller's Limited Liability. It is hereby expressly agreed that any liability of Seller arising hereunder, for any reason whatsoever, shall be limited to Seller's interest in and to the Property and the proceeds thereof. It is further hereby expressly agreed that in no event shall any member, manager, officer, trustee, director, shareholder, employee, agent or representative of Seller have any personal liability in connection with this Agreement or the transaction envisioned herein. The provisions of this Section 25 shall survive Closing or any termination of this Agreement.

26. No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by Purchaser. A violation of this prohibition shall constitute a material breach by Purchaser of this Agreement.

27. Severability. If any provision in this Agreement, or its application to any person or circumstance, is held to be invalid or unenforceable to any extent, that holding shall not affect the remainder of this Agreement or the application of that provision to persons or circumstances other than that to which it was held invalid or unenforceable.

28. No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

29. Waiver of Trial by Jury. EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY OF THE DOCUMENTS AND/OR INSTRUMENTS EXECUTED IN CONNECTION HERewith, THE PROPERTY OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

30. General Release. TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER HEREBY UNCONDITIONALLY AND IRREVOCABLY RELEASES AND FOREVER DISCHARGES SELLER, SELLER'S OFFICERS, MEMBERS, MANAGERS, TRUSTEES, DIRECTORS, PARTNERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, AND EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, MEMBERS, MANAGERS, TRUSTEES, DIRECTORS, PARTNERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (EACH A "SELLER PARTY" AND COLLECTIVELY THE "SELLER PARTIES") FROM ANY AND ALL LIABILITY OR RESPONSIBILITY FOR CLAIMS, LOSSES AND DEMANDS OF PURCHASER, INCLUDING WITHOUT LIMITATION THOSE ARISING FROM PERSONAL INJURY OR DEATH, AND ALL CONSEQUENCES THEREOF (INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OR INTERFERENCE WITH ANY BUSINESS OR ACTIVITIES BEING CONDUCTED ON THE PROPERTY AND ANY LOSS OF OPPORTUNITY), WHETHER NOW KNOWN OR NOT, WHICH MAY ARISE FROM, IN WHOLE OR IN PART (1) ANY LATENT OR PATENT DEFECTS, ANY HIDDEN OR CONCEALED CONDITIONS, OR ANY SUBSOIL, GROUNDWATER OR GEOLOGICAL CONDITIONS LOCATED ON THE PROPERTY, (2) THE CONDITION, STRUCTURAL INTEGRITY, OPERABILITY, MAINTENANCE OR REPAIR OF ANY BUILDINGS, EQUIPMENT, FURNITURE, FURNISHINGS OR IMPROVEMENTS LOCATED ON THE PROPERTY, (3) THE PRESENCE OF ANY HAZARDOUS OR TOXIC MATERIALS OR SUBSTANCES LOCATED ON THE PROPERTY, (4) THE COMPLIANCE OF THE PROPERTY WITH, OR VIOLATION OF, ANY LAW, STATUTE, ORDINANCE, RULE OR REGULATION OF ANY GOVERNMENTAL ENTITY, INCLUDING WITHOUT LIMITATION APPLICABLE ENVIRONMENTAL LAWS, ZONING ORDINANCES, AND BUILDING AND HEALTH CODES OR (5) ANY OTHER MATTER OR THING AFFECTING OR RELATED TO THE PROPERTY OR THE OPERATION OF THE PROPERTY.

Purchaser acknowledges and agrees that the provisions of this Section 30 are a material factor in Seller's acceptance of the Purchase Price and that Seller would be unwilling to sell the Property unless Seller and the other Seller Parties are expressly released in accordance with the foregoing provisions of this Section 30. The provisions of this Section 30 shall survive Closing or any termination of this Agreement.

31. Survival. Except for the rights and obligations of Seller and Purchaser which by their express terms shall survive, none of the rights and obligations of Purchaser and Seller shall survive Closing or the earlier termination of this Agreement.

32. Purchaser's Lease. Seller and Purchaser acknowledge and agree that Seller, as landlord, and Purchaser, as tenant, are currently parties to that certain office lease dated as of January 13, 1998, as amended, for certain premises located at the Property ("Purchaser's Lease"). Upon completion of Closing and recording of the Deed, Purchaser shall be owner of the fee estate in the Property and Purchaser hereby acknowledges and agrees that thereafter the fee estate of Purchaser and the leasehold interest of Purchaser (created pursuant to Purchaser's Lease) shall be deemed to merge and Purchaser's Lease shall automatically terminate and be of no further force and effect with no further action required by the parties hereto. Notwithstanding the foregoing, Purchaser shall remain responsible for and shall pay to Seller at Closing any rent, additional rent or other charges due Seller, as landlord, under Purchaser's Lease through the Closing Date.

Furthermore, Purchaser expressly acknowledges and agrees that, as of the date hereof, and notwithstanding anything contained in that certain seventh amendment to Purchaser's Lease, dated as of February 6, 2015 (the "Seventh Amendment") to the contrary, Seller shall no longer be responsible for (i) constructing or completing Landlord's Work (as such term is defined in the Seventh Amendment) or incurring any charges or expending any sums of money to do so, and (ii) providing any Allowance (as such term is defined in the Seventh Amendment) to Tenant for Tenant's Work (as such term is defined in the Seventh Amendment). Purchaser further acknowledges and agrees that (x) Purchaser shall accept the Property in its current "as is" "where is" condition on the date hereof and (y) Seller shall not be obligated to provide Purchaser with any credit or other reduction or abatement against the Purchase Price at Closing as a result of the provisions of this Section 32. The provisions of this Section 32 shall survive Closing.

**[Remainder of page intentionally left blank; Signatures to follow]**

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

SELLER:

FIRST STATES INVESTORS 5200, LLC  
a Delaware limited liability company

By: KBS CAPITAL ADVISORS LLC,  
a Delaware limited liability company,  
as authorized agent

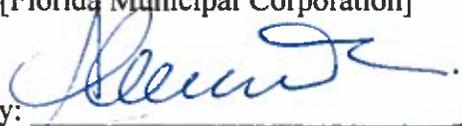
By: \_\_\_\_\_

Name: David E. Snyder

Title: Chief Financial Officer

PURCHASER:

[TOWN OF FORT MYERS BEACH],  
a [Florida Municipal Corporation]

By:   
Name: ANITA T. QERECEDA

Title: MAYOR,

**Exhibit A**

**Legal Description**

**Ft. Myers Beach  
Lee County, Florida  
Page 1 of 1**

**Exhibit "A"  
Legal Description**

Record Legal

PARCEL 1

Begin at the Southwest corner of Lot 31 of T.P. Hill's Subdivision, as recorded in Plat Book 3, Page 84, of the public records of Lee County, Florida, thence North along the West line of said Lot for 400.0 feet; thence East, perpendicular to said lot line for 161.47 feet to the West right-of-way of Tropical Shores Way (as described in Deed Book 236, Page 158); thence South along said right-of-way for 463.42 feet to the Northerly right-of-way of Estero Boulevard (25 feet from centerline), thence Northwesterly along said right-of-way for 173.18 feet to the Point of Beginning.

PARCEL 2

Together with an underground easement of way for drainage purposes under the following described property: Begin at the Southwest corner of Lot 31 of T.P. Hill's Subdivision, as recorded in Plat Book 3, Page 84, of the public records of Lee County, Florida; thence North along the West line of said Lot 31 for 400.0 feet; thence East perpendicular to said West line for 120.0 feet to the Point of Beginning of the centerline (3 feet each side) of a 6 foot wide drainage easement, thence North, parallel to the West line of said Lot 31 for 40.0 feet more or less to the waters of a certain canal in the unrecorded Tropical Shores Subdivision and the end of the centerline of said 6 foot wide (3 feet each side of centerline) drainage easement.

## **Exhibit B**

### **Permitted Exceptions**

1. Current real estate taxes which are not yet due and payable.
2. Such facts or conditions that an inspection or accurate survey would disclose.
3. Restrictions and all other matters appearing on the plat or otherwise common to the subdivision.
4. Existing zoning laws, ordinances and regulations and other laws, ordinances and regulations respecting and/or affecting the Property.
5. Assessments for improvements begun or completed after the date of this Agreement.
6. All easements, covenants, restrictions and agreements of record.
7. All outstanding oil, gas and mineral rights of record without right of entry.
8. All other exceptions to title set forth of record.

**Exhibit C**

**Bill of Sale**

**THIS BILL OF SALE** is given this \_\_\_\_ day of [\_\_\_\_\_,] 2015 by FIRST STATES INVESTORS 5200, LLC, a Delaware limited liability company ("Seller"), to [TOWN OF FORT MYERS BEACH], a [Florida municipal corporation] ("Purchaser").

The Seller, for good and valuable consideration received from the Buyer, the receipt and sufficiency of which are hereby acknowledged, hereby remises, conveys and quitclaims to the Buyer all furnishings, furniture, equipment, supplies and other personal property, including, without limitation, intangible personal property (hereinafter collectively referred to as the "Personal Property") of the Seller located on and used in connection with the real property located at [2523/2525 Estero Boulevard, Fort Myers Beach, FL 33931], to have and to hold the Personal Property unto Buyer, its successors and assigns, forever. Nothing contained in this Bill of Sale shall be construed to include in the definition of Personal Property any furniture, furnishings, trade fixtures, equipment or other personal property of any tenant occupying such real property.

Except as otherwise set forth herein, the Personal Property is being transferred by the Seller to the Buyer in its "AS IS" condition, without any representation or warranty of any kind or nature, express, implied, statutory or otherwise.

**IN WITNESS WHEREOF**, the Seller has hereunto executed this Bill of Sale as of the date first above written.

**SELLER:**

FIRST STATES INVESTORS 5200, LLC,  
a Delaware limited liability company

By: KBS CAPITAL ADVISORS LLC,  
a Delaware limited liability company,  
as authorized agent

By: \_\_\_\_\_  
Name: David E. Snyder  
Title: Chief Financial Officer