

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A CERTAIN PURCHASE AND SALE AGREEMENT FROM FRANCES H. FERBER FOR PROPERTY NEEDED FOR THE KENTON MORRISON/STATE ROAD 16 IMPROVEMENT PROJECT.**

**RECITALS**

**WHEREAS**, the owner of property on Kenton Morrison Road has executed and presented to the County a Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

**WHEREAS**, Frances H. Ferber has agreed to sell her property for the property needed for the alignment with Kenton Morrison; and

**WHEREAS**, this project is part of the approved Capiatal Improvement Project and is funded from the Transportation Trust Fund Bond Project; and

**WHEREAS**, it is in the best interest of the County to acquire this property for the safety improvements needed for the Kenton Morrison/State Road 16 Improvement Project.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of St. Johns County, Florida, as follows:

**Section 1.** The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

**Section 2.** The Board of County Commissioners hereby approves the terms of the Purchase and Sale Agreement and authorizes the County Administrator to execute the Purchase and Sale Agreement and move forward to close this transaction.

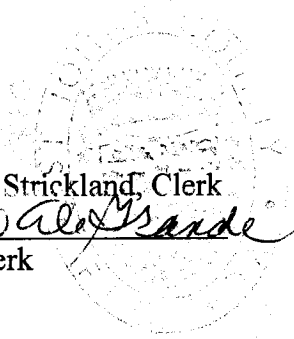
**Section 3.** The Clerk is instructed to file the original Purchase and Sale Agreement in the Clerks Office of St. Johns County.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 24 day of January, 2006.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant  
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk  
By: Alicia Alvarado  
Deputy Clerk



RENDITION DATE 1-26-06

EXHIBIT "A" TO RESOLUTION

**PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT ("Agreement")** is by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 ("Buyer") and **FRANCES H. FERBER, AS TRUSTEE OF THE FRANCES H. FERBER REVOCABLE TRUST** whose address is c/o ~~Prudential~~ <sup>COMMERCIAL</sup> Atlantic Community Properties, 8761 Perimeter Park Blvd., Suite 200, Jacksonville, Florida 32216 ("Seller").

**WITNESSETH:**

**WHEREAS**, the County is desirous of purchasing a portion of the property owned by the Seller and Seller is desirous of selling upon the terms and conditions hereinafter expressed; and

**WHEREAS**, it is in the public interest for the Buyer to acquire fee simple ownership of .55 acre located contiguous to Kenton Morrison Road for road improvements. The property is described in Exhibit "A," attached hereto, incorporated by reference and made a part hereof, (hereinafter "Property"); and

**WHEREAS**, the Property will be taken by eminent domain if the transaction does not close pursuant to this Agreement.

**NOW THEREFORE**, it is mutually agreed as follows:

1. Purchase Price and Deposit.

(a) The purchase price ("Purchase Price") of the Property is **\$191,664.00**. The Purchase Price shall be paid as follows:

	<u>Payment</u>	<u>Due Date</u>	<u>Amount</u>
(i)	Deposit to be held in Escrow by Escrow Agent	Due within thirty (30) days of Commission Approval (hereinafter defined)	<b>\$19,166.00</b>
(ii)	Cash to Close	Closing Day	<b>\$172,498.00</b>
	<b>TOTAL PURCHASE PRICE</b>		<b>\$191,664.00</b>

Payment of the Purchase Price shall be in cash or other immediately available funds.

2. Title Evidence.

(a) Buyer agrees, at its sole option and expense, to obtain within 30 days from the effective date, a title insurance commitment ("Commitment") issued by a title company authorized to do business in the State of Florida ("Title Company") satisfactory to Buyer through Action Title, as agent, agreeing to issue to Buyer, upon recording the Deed a policy of title insurance in the amount of the Purchase Price, insuring Buyer's title to the property subject only to the following (the "Permitted Encumbrances"):

(i) zoning, restrictions, prohibitions, regulations, ordinances and other requirements of any applicable governmental authority;

(ii) the lien of taxes and assessments for the calendar year of the Closing and all subsequent years; and

(b) Buyer shall notify Seller in writing ("Title Notice") within 10 days after Buyer's receipt of the Commitment if it discloses any defects in the title to the Property, other than the Permitted Encumbrances. Any such defects appearing in the Commitment not timely noted by Buyer in the Title Notice shall be deemed to have been waived by Buyer. In the event the Commitment discloses any defect and such defect is timely noted in a Title Notice, Seller, at Seller's expense, shall utilize its best efforts to cure such defects within 10 days of the date it receives the Title Notice (with a corresponding extension to the Closing Date as necessary). All monetary liens, encumbrances and obligations relating to the Property shall be paid by Seller and released at or before closing. Seller shall also obtain the release of any rights in and to the Property held by third parties, including but not limited to any rights of first refusal and/or options to purchase. Any party holding such rights shall be compensated by Seller at or prior to closing. If after the expiration of such 10-day period, Seller, utilizing its best efforts has not cured any title defects related to any other non-monetary encumbrances, obligations, liens and rights of third parties title, then in such event, Buyer's remedies shall be limited solely to either (x) accepting such title to the Property as Seller shall be able to convey, without adjustment to or diminution of the Purchase Price or (y) terminating this Agreement and receiving a return of the Deposit.

3. Identity and Obligation of Escrow Agent.

(a) Action Title, 3670 US 1 South, St. Augustine, Florida 32145, shall be Escrow Agent, at no additional charge to Seller or Buyer but with the right to serve as underwriter for the title insurance policy.

(b) If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or any other monies or documents which it holds or as to whom such Deposit, monies or documents are to be delivered, Escrow Agent shall not be obligated to make any delivery, but, in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by all the parties having an interest in such dispute directing the disposition of same, or in the absence of such authorization, Escrow Agent

may hold such Deposit, monies or documents until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, Escrow Agent may, but not required to, bring an appropriate interpleader action or proceeding for leave to deposit such Deposit, monies or documents in court, pending such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same constitutes gross negligence or willful misconduct and upon making delivery of the Deposit, monies or documents which Escrow Agent holds, in accordance with the terms of this Agreement, Escrow Agent shall have absolutely no further liability hereunder.

In the event Escrow Agent places the Deposit, monies or documents that have actually been delivered to Escrow Agent in the Registry of the Circuit Court in and for the County in which the Property is located and files an action of interpleader, naming the parties hereto, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith.

4. Closing. Unless extended by the terms of Section 2, or other provisions hereof, the closing of the sale of the Property ("Closing") shall take place at the offices of the Escrow Agent, Action Title 3670 US 1 South, St. Augustine, Florida 32145, on or before 30 days from the Effective Date of this Agreement ("Closing Date"), TIME BEING OF THE ESSENCE.

5. Seller's Representations. Seller represents to Buyer that (i) it owns fee simple title to the Property and has full right and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the terms, provisions and conditions hereof and (ii) Frances H. Ferber is the trustee of Seller, has the authority to execute this Agreement and perform the obligations set forth herein and execute and deliver all documents and instruments required hereunder.

6. Closing Procedure and Documents.

(a) At the Closing, simultaneously with the payment of the Purchase Price by Buyer, Seller shall deliver or cause to be delivered to Buyer the following:

(i) a General Warranty Deed ("Deed") conveying fee simple title to the Property, subject only to the Permitted Encumbrances;

(ii) a Non-Foreign Certificate and Request for Taxpayer Identification Number "FIRPTA" affidavit to be signed by Seller.

(iii) an affidavit in the form required by the Title Company to delete the standard printed exception relating to the "gap" and to remove the standard printed exceptions for mechanics' lien and parties in possession other than Occupancy Tenants (except to the extent the same constitute Permitted Encumbrances).

(b) At the Closing, Escrow Agent shall deliver the Deposit and Buyer shall deliver the cash to close, to Seller, in accordance with Section 1. Buyer shall execute and deliver to Seller such consents, authorizations and releases from third parties

as Seller may reasonably deem necessary to evidence the authority of Buyer to purchase the Property and to consummate all other actions required to be taken by Buyer under this Agreement.

(c) At the Closing, Seller and Buyer shall mutually execute and deliver to each other a closing statement in customary form.

(d) At the Closing, Seller and Buyer shall execute such further documents and agreements as are reasonably appropriate or reasonably necessary to consummate the transaction as herein contemplated.

7. Closing Expenses. Buyer shall pay the cost of the title policy issued pursuant to the Commitment, the deed and all of the expenses in connection with recording fees. Each party shall bear the expense of its own legal counsel.

8. Survey and Legal Description. Between the Effective Date and Closing, Buyer shall have the Property surveyed. Buyer shall provide written notice ("Survey Notice") to Seller within 10 days after Buyer's receipt of any such new survey ("Survey") if the Survey discloses any encroachments or any other title defects affecting the Property (other than Permitted Encumbrances). All such encroachments or defects so noted in the Survey Notice are to be regarded for all purposes under this Agreement as title defects and, as such, are to be treated in the manner provided in Section 2. Any such title defects shown on the Survey and not timely noted in the Survey Notice to Seller shall be deemed to have been waived by Buyer.

9. Condition of Property and Buyer's Right of Inspection. Buyer shall have the right for twenty (20) days from the Effective Date ("Inspection Termination Date") to enter upon the Property for the purpose of physically inspecting the Property and conducting surveys, studies and tests or assessments including but not limited to Phase 1 Environmental Study, Real Estate Appraisal, and Engineering analysis to determine the Property's suitability for Buyer's intended purpose. Seller hereby gives Buyer the right to enter upon, test and inspect the Property at Buyer's sole cost and risk. If Buyer determines that the Property is unsuitable, Buyer shall give written notice to Seller advising of such unsuitability and electing to terminate this Agreement on or prior to the Inspection Termination Date. Such notice of termination must be given on or before the Inspection Termination Date. If such notice is timely given, the Deposit shall be returned to Buyer, and upon such return, this Agreement shall terminate.

10. Default.

(a) Default by Seller. If Seller defaults by performance of any of Seller's obligations in this Agreement or breaches any warranty or representation, Buyer may receive an immediate refund of the Deposit, and then at its option either may terminate this Agreement and sue for damages, sue for specific performance or maintain an action to condemn the Property.

(b) Default by Buyer. If Buyer defaults in the performance of any of Buyer's obligations in this Agreement for any reason, other than the Seller's default or the

termination of this Agreement pursuant to the specific provisions hereof, and such default is not cured within ten (10) days of the receipt of written notice from Seller specifying the event of default, Seller will be entitled to receive the Deposit as liquidated damages as Seller's sole and exclusive remedy for any such default, Seller hereby waiving any rights it might otherwise have to sue for damages or specific performance, and this Agreement and the rights of the parties hereunder shall immediately and automatically terminate.

11. Survival. All covenants, terms, provisions, representations and warranties set forth in this Agreement, except as specifically provided otherwise herein, shall at the Closing be merged into the Deed.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement.

13. Modification Must be in Writing. No modification or termination of this Agreement shall be valid unless executed in writing and signed by the applicable duly authorized representatives of Seller and Buyer.

14. No Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

15. Assignability. This Agreement may not be assigned by Seller or Buyer without the written consent of all parties.

16. Time. Time is of the essence of all provisions of this Agreement.

17. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms. It is agreed venue for determination of such disputes shall be in St. Johns County.

18. Notices. Any notice hereunder must be in writing and delivered personally or by United States Mail, Registered or Certified, Return Receipt Requested; United States Express Mail; or Federal Express or equivalent courier service, and shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall be set forth below or as may be designated by notice to the other from time to time.

Seller: Frances H. Ferber Trust <sup>COMMERCIAL</sup>  
c/o Prudential Atlantic Community Properties  
8761 Perimeter Park Blvd.  
Jacksonville, Florida 32216  
Attn: Robert Brathune

Buyer: St. Johns County  
Ben W. Adams, Jr., County Administrator  
4020 Lewis Speedway  
St. Augustine, Florida 32084

With a copy to: Smith Hulsey & Busey  
225 Water Street, Suite 1800  
Jacksonville, Florida 32202  
Attn: Bryan L. Putnal, Esq.

Escrow Agent: Action Title Services  
3670 US 1 South  
St. Augustine, Florida 32145

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no agreements, representations or warranties, oral or written which have not been incorporated herein.

20. Applicability. This Agreement shall be binding upon and shall inure to the benefits of the parties hereto and their respective successors and, to the extent that assignment is permitted hereunder, their assigns.

21. Commission Due. Buyer and Seller agree that there are no real estate commissions that may be owed as a result of this transaction.

22. Board of County Commission Approval. This Agreement is subject to the adoption of a Resolution by the Board of County Commissioners, of St. Johns County authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement by Buyer.

23. Effective Date. The "Effective Date" of this Agreement shall be the first date upon which this Agreement or its valid counterparties are properly executed by all named parties.

24. Execution by Seller. Seller shall execute this Agreement on or before December 21, 2005 and this offer to sell may not be revoked by Seller unless Buyer fails to execute this Agreement on or before February 28, 2006.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement or its counterparties.

**SELLER:**

Lana Mason  
Witness Name LANA MASON

\* Frances H. Ferber  
**FRANCES H. FERBER, TRUSTEE OF  
THE FRANCES H. FERBER  
REVOCABLE TRUST**

Robert Beattie  
Witness Name ROBERT BEATTIE

Date: 12/21/2005

**BUYER:**

**ST. JOHNS COUNTY, FLORIDA**

\_\_\_\_\_  
Witness Name \_\_\_\_\_

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

\_\_\_\_\_  
Witness Name \_\_\_\_\_

Ben W. Adams, Jr.  
County Administrator

Date: \_\_\_\_\_

00515266.2



**EXHIBIT "A"**

PARCEL B (FERBER TRUST PARCEL)

A PART OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD NUMBER 16 AS NOW ESTABLISHED AS A 216 FOOT RIGHT OF WAY WITH THE EASTERLY RIGHT OF WAY LINE OF KENTON MORRISON ROAD AS NOW ESTABLISHED AND AS SHOWN ON COUNTY ROAD PLAT BOOK 1, PAGE 2 AS RECORDED IN THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA; THENCE SOUTH 00016'00" WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 300.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89038'16" EAST, ALONG THE NORTHERLY LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS 1211, PAGE 143 OF SAID PUBLIC RECORDS, A DISTANCE OF 100.00 FEET; THENCE SOUTH 11033'06" WEST A DISTANCE OF 408.78FEET; THENCE SOUTH 89038'16" WEST, ALONG THE SOUTHERLY LINE OF THOSE AFOREMENTIONED LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1211, PAGE 143, A DISTANCE OF 20.00 FEET; THENCE NORTH 00016'00" EAST, ALONG THE AFOREMENTIONED EASTERLY RIGHT OF WAY LINE OF KENTON MORRISON ROAD, A DISTANCE OF 400.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.55 ACRES, MORE OR LESS.

00515266.2

**RELEASE OF OPTION TO PURCHASE**

This Release of Option to Purchase ("Release") dated 10/25/2000 is by and between **FIDELITY FIRST INVESTMENT CORPORATION** ("Fidelity") and **FRANCES H. FERBER, AS TRUSTEE OF THE FRANCES H. FERBER REVOCABLE TRUST** ("Trust").

**Recitals**

1. St. Johns County is desirous of purchasing a portion of the property owned by the Trust, which property is also subject to an Option to Purchase in favor of Fidelity dated October 25, 2000.
2. The Trust has agreed to sell the property and has requested that Fidelity release its Option to Purchase from the property being sold to St. Johns County, Florida.
3. Fidelity has agreed to release its Option to Purchase the property being sold to St. Johns County, Florida, provided the Trust, in consideration, for the release without payment of any funds, extends the term of the option by five (5) years to October 25, 2011.

NOW THEREFORE, in consideration of TEN DOLLARS (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Fidelity hereby releases the property described in Exhibit "A" from the Option to Purchase. This shall not release any other property from the Option to Purchase.
2. The term of the Option to Purchase is hereby extended from October 25, 2006 to October 25, 2011.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year stated above.

Lara Mason  
Witness

Frances H. Ferber  
FRANCES H. FERBER, AS TRUSTEE OF  
THE FRANCES H. FERBER  
REVOCABLE TRUST

Date: 12/21/2005

Witness

Lana Mason

Witness

\_\_\_\_\_  
Witness

FIDELITY FIRST INVESTMENT  
CORPORATION

By: [Signature]

Name: ROBERT E. BRATHUNE

Title: PRESIDENT

Date: 12/21/2005

00516964.DOC

# KENTON MORRISON/SR16 ROAD IMPROVEMENT ACQUISITION



Disclaimer: This map is provided by the St. Johns County Real Estate Division and is for estimate purposes only. The Real Estate Division disclaims all responsibility for the accuracy or completeness of data shown herein. Data are from multiple sources with varying degrees of accuracy. This map should not be used for final site-specific land use decisions.



PREPARED BY:  
**ST. JOHNS COUNTY**  
REAL ESTATE DIVISION