

## **PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2007 (the "Effective Date"), by and between THE AUCHTER COMPANY, a Florida corporation ("Seller") and THE UNIVERSITY OF NORTH FLORIDA BOARD OF TRUSTEES, a public body corporate of the State of Florida ("Buyer").

### **RECITALS**

A. Seller is the owner of that certain real property (including all buildings and other improvements located therein) in Duval County, Florida, being more particularly described on Exhibit "A" attached hereto, together with the following property and rights owned by Seller: (a) all strips and gores of land lying adjacent to the property, lands underlying any adjacent streets or roads, easements, privileges, rights-of-way, riparian and other water rights, and other appurtenances pertaining to or accruing to the benefit of the property (all of the foregoing items listed in this Paragraph A being referred to herein as the "Real Property"); (b) all transferable licenses, permits, authorizations and approvals pertaining to the ownership and/or operation of the Real Property, if any; (c) all equipment, systems and fixtures contained within the building(s) located on the Real Property; and (d) the contents of the building(s) located on the Real Property as described on Exhibit "B" attached hereto. The Real Property and all other property and rights described in this Paragraph A are collectively referred to as the "Property."

B. Buyer wishes to acquire the Property and Seller desires to sell the Property to Buyer for the price and pursuant to the terms and conditions of this Agreement.

### **AGREEMENT**

In consideration of the foregoing, the mutual covenants, and agreements herein, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged by the parties, it is agreed as follows:

1. **Incorporation.** The recitals to this Agreement and all Exhibits referred to in this Agreement are hereby incorporated into and made a part of this Agreement.

2. **Conveyance.** Subject to the terms and conditions of this Agreement, Seller agrees to convey and sell the Property to Buyer and Buyer agrees to purchase the Property from Seller in the manner provided in this Agreement.

3. **Purchase Price.** The purchase price for the Property shall be \$3,875,000.00 (THREE MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100) (the "Purchase Price"), payable by wire transfer. The purchase price is apportioned as follows: \$3,853,600.00 for the portion of the Property described in Recital A (a), (b) and (c); \$21,400.00 for the portion of the Property described in Recital A (d).

a. Within five (5) days after execution of this Agreement by Buyer and Seller, Buyer shall deposit the sum of \$10,000.00 (the "Deposit") with Seller. The Deposit shall be held and disbursed by Seller in accordance with the terms and provisions of this Agreement.

b. At Closing, Buyer shall pay to Seller the balance of the Purchase Price, increased or diminished by credits, prorations and adjustments as provided in this Agreement.

4. The Closing Date. The closing ("Closing") shall occur on or before December 31, 2007, unless extended pursuant to Paragraph 5b below (the "Closing Date").

5. Title and Survey Matters.

a. Condition of Title. At Closing, Seller shall convey fee simple title to Buyer by means of a Special Warranty Deed in recordable form conveying the Property to Buyer free and clear of all claims, liens and encumbrances created by Seller or arising subsequent to Seller's acquisition of title, except those Permitted Exceptions set forth in Paragraph 5b.

b. Title. Within thirty (30) days following the Effective Date, Seller, at its expense, shall obtain and deliver to Buyer a title commitment (the "Title Commitment") for the issuance of an ALTA Form B owner's policy of title insurance in the amount of the Purchase Price issued by a nationally recognized title company (the "Title Company").

The Title Commitment shall show Seller to be vested with fee simple title to the Real Property subject only to the exceptions described therein. Seller shall, on the Closing Date, cause the Title Commitment to be marked up to show a current effective date and the deletion of (i) all requirements, (ii) the "gap" exception, (iii) the mechanics' lien exception, (iv) the survey and parties in possession exceptions, and (v) other exceptions which may be removed by Seller on the Closing Date by payment, bonding, or otherwise of any lien or encumbrance against the Real Property of a liquidated amount capable of removal by the payment of money. As used herein, the term "Permitted Exceptions shall mean all the exceptions shown on the Title Commitment other than those deleted pursuant to the foregoing sentence. Within thirty (30) days following the Closing Date, Seller, at Seller's expense, will provide the owner's policy to Buyer.

6. Survey. Within forty-five (45) days following the Effective Date, Seller, at Seller's expense, shall obtain and deliver to Buyer a current and accurate as-built survey (the "Survey") of the Real Property from a registered Florida land surveyor, meeting minimum technical requirements and certified to and for the benefit of Seller, Buyer and Title Company.

7. Representations and Warranties. Seller hereby represents and warrants to Buyer that Seller has full power and authority to execute this Agreement, to perform its obligations hereunder and to convey the Property to Buyer, and that this Agreement and all

documents to be delivered by Seller have been or will be duly authorized, valid, binding and enforceable, and not contrary to any law, rule or order binding on Seller.

Seller hereby represents and warrants to Buyer that it has not received and is unaware of the existence of any notice of non-compliance with any "environmental laws" (as hereinafter defined) as to any portion of the Property, including without limitation the presence of any asbestos, petroleum and petroleum by-products, UREA formaldehyde foam insulation, polychlorinated biphenyls, radon, any and all substances now or hereafter designated as "hazardous waste," "toxic substances," "solid waste," "toxic pollutant," "pollutant" as defined by any "environmental laws," and any substance now or hereafter regulated by any "environmental laws" (said substances are collectively herein defined as "Environmental Contaminants"). "Environmental Law" means any present or future federal, state or local laws, statutes, codes, ordinances, rules, regulations, standards, policies or guidelines, as well as common law, relating to protection of human health or the environment, relating to Environmental Contaminants. Seller hereby represents that it is unaware of the existence of mold in any portion of the building improvements on the Real Property.

Buyer hereby represents and warrants to Seller that Buyer has full power and authority to execute this Agreement, to perform its obligations hereunder and to purchase the Property from Seller, and that this Agreement and all documents to be delivered to Seller have been or will be duly authorized, valid, binding, enforceable and not contrary to any law, rule or order binding on Buyer.

8. Delivery of Documents by Seller and Due Diligence Inspection. Seller has delivered or made available or will make available to Buyer a copy of all of the following provided they are within Seller's possession (the "Documents"):

- a. all leases, service agreements, maintenance contracts, warranties, and any and all other contracts, guarantees or agreements, recorded or unrecorded, affecting the Property, or any portion thereof, if any (but Seller shall not be required to provide copies of any appraisals, other confidential information, or any of its insurance policies);
- b. the most recent surveys and real property tax receipts; and
- c. any environmental assessment reports prepared by third parties pertaining to the Real Property.

Subject to the provisions of Paragraph 11 herein, Buyer shall have a period of sixty (60) days commencing on the Effective Date (the "Inspection Period") to inspect the Title Commitment, the Survey, the physical condition of the Property and the Documents, and to conduct such other tests, feasibility studies, surveys and examinations, including environmental assessments (the "Inspections"), at its sole cost and expense, as it deems advisable.

Buyer, at Buyer's sole option, may terminate this Agreement during the Inspection Period. If Buyer terminates this Agreement within the Inspection Period, Seller shall return the Deposit to Buyer, whereupon the parties shall be released from all further obligations under this Agreement, except for those indemnities specifically surviving such termination or expiration. If Buyer does not notify Seller in writing of Buyer's election to terminate this Agreement pursuant to this Paragraph before the expiration of the Inspection Period, Buyer shall be deemed to have accepted the Property in its "AS IS" condition without abatement or reduction of the Purchase Price and the Deposit shall be non-refundable (subject to any other conditions to Closing expressly set forth in this Agreement), but applicable to the Purchase Price if Buyer closes in accordance with this Agreement.

9. "AS IS" Nature of Sale. Except as otherwise provided in this Agreement, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements 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: (a) the value, nature, quality or condition of the Property, including, without limitations, the water, soil and geology; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon; and (d) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property.

10. Public Body Corporate; Public Records; Statutory Contingency Statement. The University of North Florida is a constituent member of the Florida state university system existing pursuant to Section 7, Article IX of the Constitution of the State of Florida and is administered by Buyer, a public body corporate, pursuant to said Section and Section 1001.72, Florida Statutes. Seller shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement. Refusal by Seller to allow such public access shall be grounds for unilateral cancellation of this Agreement by Buyer. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

11. Access to Property and Information. From the Effective Date through the Inspection Period, Seller shall provide Buyer and its representatives full and free access to the Property to conduct such inspections as Buyer deems appropriate. Buyer shall comply with all laws, rules and regulations of any governmental authority and obtain all licenses and permits required in connection with the aforementioned activities. Buyer will reimburse Seller for any property damage to the Property resulting from the Inspections.

If Buyer elects to conduct intrusive environmental inspections (e.g., subsurface sampling), Buyer agrees to first obtain the prior written consent of Seller and further, independent of the outcome of the proposed sale, Buyer agrees to: (i) select a qualified third party consultant; (ii) make arrangements with Seller for a representative of Seller to be present

during such intrusive inspections; (iii) immediately advise Seller of any environmental matters discovered during the course of such inspection; (iv) to the extent permitted by law, treat such information as confidential; (v) provide Seller a copy of any associated analytical data and reports resulting from the inspection whether or not the transaction contemplated hereunder actually closes; and (vi) immediately return the Property to its condition prior to the inspection and remove from the Property any waste material, debris or equipment used in or resulting from such inspection.

12. Closings Prorations.

a. Prorations. The following adjustments shall be made at the Closing by proration of the amounts as specified below as of 12:01 am. on the date of the Closing:

(1) Ad valorem real estate and personal property taxes applicable to the Property for the current year, such apportionment to be based on the current year's taxes with allowance made for the maximum allowable discount. If the current year's taxes are not available such apportionment shall be made on the basis of the previous year's taxes, subject to re-proration upon the receipt and availability of the current year's taxes. The provisions for re-proration of taxes are intended to and shall survive the Closing of this transaction.

(2) Water and sewer fees, charges for the supply of electricity, gas, trash collection and other utilities and service charges.

(3) Fees or charges assessed under any recorded instrument affecting the Property.

(4) Charges and receipts under service, maintenance, and other like contracts affecting the Property, if any. The amount of charges paid by Seller prior to the Closing and attributable to a period after the Closing shall be credited to Seller. Any amounts received prior to the Closing and attributable to a period after the Closing shall be credited to Buyer. Any amounts received by Buyer after closing attributable to periods before the Closing shall be paid over to Seller.

(5) All other proratable items with respect to the Property.

b. All items to be adjusted for which figures are not available at the Closing, including real estate and personal property taxes for the current year, will be adjusted, and payment therefor will be made by Seller to Buyer or by Buyer to Seller, as appropriate, as soon as figures are available after the Closing.

13. Liens and Assessments. Other than ad valorem tax liens, all statutory liens or assessments, special or otherwise, which are certified against the Property as of the date of

Closing shall be paid at Closing by Seller or credited to Buyer, and any pending liens shall be paid or assumed by Buyer.

14. Closing Documents.

a. Seller's Obligations. At Closing, and as a condition precedent to Buyer's obligation to close, Seller shall deliver to Buyer the following:

(1) Special Warranty Deed in recordable form, conveying title to the Real Property subject only to the Permitted Exceptions.

(2) A Bill of Sale conveying good and marketable title to the portion of the Property described in Exhibit "B."

(3) A construction lien, possession and gap affidavit, and any other such affidavits or documents as may be reasonably required by the Title Company.

(4) A certification that all representations and warranties made by Seller in this Agreement are true and correct as of the Closing Date.

(5) A non-foreign affidavit, in compliance with the provisions of Section 1445 of the Internal Revenue Code of 1986, as amended, in which Seller, under penalty of perjury, affirms: (i) that Seller is not a "foreign person" as defined in the Internal Revenue Code of 1986, as amended, and (ii) the United States taxpayer identification number of Seller. If Seller fails to furnish an affidavit as required, Buyer shall withhold ten percent (10%) of the Purchase Price, in lieu of payment thereof to Seller, and instead, shall pay such amount to the Internal Revenue Service in such form and manner as may be required by law.

(6) Closing Statement.

(7) An Assignment and Assumption of all contracts, service agreements and all other agreements and intangible property, affecting the Property, to the extent Buyer has consented to their assumption.

(8) An estoppel certificate relating to fees and charges assessed or to be assessed under any recorded instrument affecting the Property.

(9) Such other documents as are reasonably necessary to consummate this Agreement.

(10) Full and complete possession of the Property.

b. Buyer's Obligations. At Closing, Buyer shall deliver to Seller the following:

(1) The Purchase Price less the Deposit, increased or diminished by credits, prorations, and adjustments as provided herein.

(2) Closing Statement.

(3) A certification that all representations and warranties made by Buyer in this Agreement are true and correct as of the Closing Date.

(4) Such other documents as are reasonably necessary to consummate this Agreement.

15. Closing Costs. Seller shall be responsible for the cost of State documentary stamps and any applicable surtax due on the Special Warranty Deed, abstracting and Title Commitment costs, the premium for the owner's policy of title insurance, the cost of the Survey, and the cost of recording any satisfaction of mortgage or other lien. Buyer shall pay the cost of recording the Special Warranty Deed, and the cost of the Inspections. Seller shall pay the cost of recording any corrective instruments if necessary to clear title pursuant to Paragraph 5b. Each party shall pay its own attorney's fees.

16. Brokerage Commissions. Each party warrants to the other that the warranting party has not engaged any real estate agent, broker or finder in any way entitled to compensation as a consequence of the sale of the property to Buyer. Each party hereby indemnifies, defends and holds the other party harmless from and against any loss, cost (including reasonable attorneys' fees and court costs at trial and all appellate levels), damage, claim, demand or liability for any damages or fees incurred by the indemnified party arising out of a breach by the indemnifying party of the foregoing representation and warranty in this Paragraph 16. The provisions of this Paragraph shall survive the Closing and any cancellation or termination of this Agreement.

17. Condemnation or Eminent Domain. In event of any condemnation or eminent domain proceedings for any public or quasi-public purpose at any time prior to Closing resulting in a taking of any material part of all of the Property, Buyer may at its election, either: (a) cancel this Agreement by written notice to Seller, in which event Seller shall return the Deposit to Buyer, whereupon both parties shall be released from all further obligations under this Agreement, except as otherwise expressly set forth in this Agreement, or (b) close the transaction contemplated by this Agreement, in which event the Purchase Price shall not be reduced, provided, however, that Seller shall assign any condemnation or eminent domain award pertaining to the Property to Buyer.

18. Risk of Loss; Property Insurance. If the improvements are damaged by fire or other casualty before Closing and can be restored to substantially the same condition as now exist within a period of six (6) months thereafter, Seller may restore the improvements and the

date of Closing shall be extended accordingly. If Seller fails to so restore or gives notice that it intends not to so restore, Buyer shall have the option of (a) taking the Property as is together with the insurance proceeds payable by reason of such casualty with no reduction in the Purchase Price, or (b) canceling the Agreement, whereupon the Deposit shall be forthwith returned to the Buyer and the parties released of any further liability. Seller shall maintain all-risk commercial property insurance on the Property with a nationally recognized and solvent commercial insurance carrier in the amount of the full replacement cost thereof through the date of Closing.

19. Maintenance of Improvements. Through the date of Closing, Seller shall maintain the improvements, all existing HVAC, plumbing, electrical, and communications systems, equipment fixtures, parking areas and drives, landscaping, and building contents in their condition as of the date of this Agreement, ordinary wear and tear excepted.

20. Default.

a. Seller's Default. If Seller should fail to consummate the transaction contemplated herein for any reason except Buyer's default, Buyer, at its option, shall have the right to: (i) terminate this Agreement and receive a full and immediate refund of the Deposit held by Seller; (ii) seek specific performance of Seller's obligations hereunder; or (iii) avail itself of any remedy available at law or in equity.

b. Buyer's Default. If Buyer should fail to consummate the transaction contemplated herein for any reason except: (i) Seller's default, or (ii) the failure of the Seller to satisfy any of the conditions to Buyer's obligations expressly set forth herein, the Seller may demand and receive from Seller the disbursement of the Deposit, such sum being paid as consideration for the release of Buyer by Seller as agreed upon liquidated damages for failure of Buyer to perform its obligations under this Agreement. Because actual damages are not readily ascertainable, it is hereby agreed that the Deposit constitutes reasonable liquidation thereof and is intended not as a penalty, but as liquidated damages.

21. Notices. Any notice to be given or served upon any party hereto in connection with this Agreement must be in writing, and shall be given by certified or registered mail, or by nationally recognized overnight courier service, and shall be deemed to have been given and received upon actual receipt or refusal of delivery. Such notices shall be given to the parties hereto at the following address:

If to Buyer:                      Attention: Shari Shuman, Vice President  
University of North Florida  
1 UNF Drive



Jacksonville, Florida 32224

With a copy to: Attention: P. C. Wrenn  
Office of the General Counsel  
University of North Florida  
1 UNF Drive  
Jacksonville, Florida 32224

If to Seller: The Auchter Company

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may, by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which notice shall be given.

22. General Provisions.

a. Governing Law. This Agreement and all questions of interpretation, construction and enforcement hereof and all controversies arising hereunder, shall be governed by the applicable statutory and common law of the State of Florida.

b. Severability. If any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

c. Binding Effect; Entire Agreement; Modification. This Agreement shall be binding upon, and shall insure to the benefit of the successors and permitted assigns of the parties hereto. This Agreement embodies the entire agreement between the parties hereto with respect to the Property and supersedes any an all prior agreements and understandings, written or oral, formal or informal. No modifications or amendments to this Agreement, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by the party against whom enforcement is sought.

d. Captions. Captions and Paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement nor the intent of any provision hereof.

e. Assignment. Buyer may assign its rights under this Agreement to an entity affiliated with Buyer, controlled by Buyer, or controlling Buyer, including, without limitation, a direct support organization of Buyer, without Seller's consent; provided, however, that (a) the original Buyer shall remain liable for the performance of all Buyer's obligations hereunder accruing through the Closing Date (whether Seller seeks to enforce such obligations prior to Closing, or after Closing, as to obligations that survive Closing); (b) Seller shall incur no additional expenses on account of such assignment; and (c) Buyer shall disclose the identity of such assignee to Seller, and shall supply to Seller all information regarding such assignee as may be reasonably requested by Seller. Any assignment to an entity not affiliated with or controlled by Buyer shall be subject to Seller's prior written consent, in Seller's sole discretion.

f. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing, 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 as to any other instances or items.

g. 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. This Agreement may be executed by facsimile signature which shall, for all purposes, serve as an original executed counterpart of this Agreement upon delivery of an executed copy hereof by facsimile.

h. Construction. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders to the extent appropriate. All parties to this Agreement have participated fully in the negotiation and the preparation hereof and, accordingly, this Agreement shall not be construed more strictly against either one of the parties hereto by virtue of one party's attorney having drafted this Agreement.

i. Time. Time is of the essence with respect to all matters contained herein.

j. Further Assurances. The parties hereto agree to take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

k. Computation of Time. In computing any period of time prescribed by this Agreement, the day of the act, event or default in which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is

Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

I. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department. Buyer agrees that Buyer is solely responsible for determining the existence and levels of radon that may exist at the Property as part of its due diligence investigations, and Buyer acknowledges that neither Seller nor any of its agents or representatives have made any representation as to such matters.

23. No Offer. This Agreement has been submitted for discussion purposes only and shall not be deemed to be an offer by either party to the other to enter into this Agreement or deemed to be a binding agreement. This Agreement shall not be effective in any manner until a fully signed copy or an original executed by both Seller and Buyer is delivered to Buyer.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Witnesses:

SELLER:

THE AUCHTER COMPANY  
a Florida corporation

\_\_\_\_\_  
Print Name \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

Date: \_\_\_\_\_, 2007

BUYER:

THE UNIVERSITY OF NORTH FLORIDA  
BOARD OF TRUSTEES,  
a public body corporate

\_\_\_\_\_  
Print Name \_\_\_\_\_

By: \_\_\_\_\_  
John A. Delaney, Secretary;  
President, The University of North Florida

\_\_\_\_\_  
Print Name \_\_\_\_\_

Date: \_\_\_\_\_, 2007

**EXHIBIT "A"**

Legal Description

Lot 4, FIRST COAST TECHNOLOGY PARK, according to plat thereof recorded in Plat Book 60, pages 121-130, current public records of Duval County, Florida

**EXHIBIT "B"**

Description of Building Contents