

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date"), between **MAMMOTH LAKES FOUNDATION**, a California nonprofit corporation, whose mailing address is P.O. Box 1815, Mammoth Lakes, CA 93546 ("MLF"), and **TOWN OF MAMMOTH LAKES**, a California municipal corporation, whose mailing address is P.O. Box 1609, Mammoth Lakes, California 93546 ("Town"). MLF and Town shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

A. MLF owns the real property located at 100 College Parkway, in Mammoth Lakes, California, consisting of APN 035-010-049-000 ("Property"). The Property includes approximately 7.94 acres of land and a 6794 square-foot building commonly known as Edison Hall, which includes offices, meeting rooms, a kitchen, restrooms, a theatre, storage, common areas, and furniture, fixtures, and equipment ("FF&E"). The Property is depicted in the Site Plan attached as Exhibit A.

B. Town and MLF intend to support and effectuate the construction of a new facility on the Property, commonly known as the Mammoth Arts and Cultural Center ("MACC"), that will be connected to and will incorporate the existing Edison Hall. A draft site plan for the MACC is attached as Exhibit B. The construction of the MACC has been a longstanding goal of the Town and MLF.

C. Town and MLF have concluded that their shared goal of constructing and operating the MACC can best be accomplished through the sale of the Property by MLF to Town.

D. MLF is in the process of completing necessary renovations to Edison Hall ("Improvements"), which are underway as of the Effective Date.

E. MLF intends to sell the Property, including the completed Improvements, to Town on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, MLF and Town agree as follows:

**Section 1. Purchase and Sale of Property.** MLF agrees to sell to the Property to Town, and Town agrees to purchase from the Property from MLF, on the terms and conditions of this Agreement.

**Section 2. Purchase Price.** The purchase price ("Purchase Price") for the Property shall be \$4,500,000.

**Section 3. MLF's Conditions Precedent to Closing.** MLF's obligation to sell the Property to Town pursuant to this Agreement shall be conditioned upon and subject to the conditions precedent set forth below, each of which is for MLF's sole benefit and may only be waived by MLF in writing, except as set forth below:

(a) Completion of Edison Hall Improvements. Subject to Town's rights pursuant to Section 4(a), MLF shall complete the Improvements to Edison Hall no later than September 30, 2024 (the "Improvements Completion Deadline"). If the Improvements have not been completed by the Improvements Completion Deadline, then, subject to Town's rights pursuant to Section 4(a): (i) MLF shall complete the Improvements as soon as practical after the Improvement Completion Deadline; (ii) MLF shall deliver final payment to its contractor promptly upon completion of the Improvements; (iii) the Closing shall take place no later than 30 days after MLF has completed the Improvements or as soon thereafter as the Parties may agree in writing.

(b) Performance by Town. Town shall have performed in all material respects its obligations under this Agreement on or before the Closing Date, to the extent such obligations are required to have been performed on or before the Closing Date.

**Section 4. Town's Conditions Precedent to Closing.** Town's obligation to purchase the Property from MLF shall be conditioned upon and subject to the conditions precedent set forth below, each of which is for Town's sole benefit and may only be waived by Town in writing:

(a) Completion of Edison Hall Improvements. MLF shall have completed the Improvements to Edison Hall. Notwithstanding any provision of this Agreement to the contrary, if the Improvements have not been completed by the Improvements Completion Deadline, Town may, in its sole discretion, waive the completion of the Improvements as a condition precedent to Closing on behalf of both Parties ("Town's Waiver Right"). Town shall notify MLF in writing of its exercise of Town's Waiver Right. In that event, the Purchase Price shall be reduced by the value of the incomplete work on the Improvements, and the Closing shall occur following mutual agreement by the Parties regarding the amount of such reduction. MLF hereby grants to Town and its employees, agents, and contractors a license to enter Edison Hall and adjacent portions of the Property commencing on September 23, 2024 and continuing until the completion of the Improvements, for purposes of inspecting the progress of the Improvements.

(b) Performance by MLF. MLF shall have performed in all material respects its obligations under this Agreement on or before the Closing Date, to the extent such obligations are required to have been performed on or before the Closing Date.

**Section 5. Closing.**

(a) Closing; Closing Date. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on a date mutually agreed upon by Town and MLF (the "Closing Date") which shall be not later than 30 days after either: (i) MLF has completed the

Improvements to Edison Hall, or (ii) the Parties have reached mutual agreement regarding the reduced Purchase Price following Town's exercise of Town's Waiver Right.

(b) Funds to be Delivered by Town. On or before the Closing Date, Town shall deliver to MLF immediately available funds in the amount equal to the sum of: (i) the Purchase Price, plus (ii) any costs or prorations chargeable to Town under this Agreement.

(c) Documents to be Delivered by MLF. On or before the Closing Date, MLF shall deliver to Town an original grant deed substantially in the form attached as Exhibit C, conveying fee simple title to the Property to Town ("Grant Deed").

(d) Closing Prorations and Fees. Real property taxes and assessments on the Property shall be prorated as of the Closing (on the basis of actual days elapsed and a 365-day year) based upon the latest available bills. Town and MLF shall each pay all attorneys' fees and costs incurred by it in connection with the negotiation, execution, delivery and performance of this Agreement. Town shall pay (i) all recording fees, (ii) all County and Town documentary transfer taxes applicable to this transaction, and (iii) the premium for any title insurance coverage obtained by Town. This Section 5(d) shall survive the Closing.

(e) Events Subsequent to Closing. Upon delivery of the funds and documents pursuant to Section 5(b) and Section 5(c), Town shall record the Grant Deed.

**Section 6. MLF Capital Contribution.** MLF shall contribute \$3,500,000 to Town, to be used to offset MACC construction costs, upon Town's issuance of a solicitation of bids for construction of the MACC, or on the Closing Date, whichever occurs later. Nothing in this Agreement shall preclude MLF from undertaking additional fundraising efforts or contributing a greater amount to Town for construction or operation of the MACC at any time.

**Section 7. Assignment and Assumption of Kern Community College District Agreement.** To the extent legally permissible and mutually beneficial, MLF shall assign to Town, and Town shall assume, MLF's agreement with Kern Community College District ("KCCD"), by which KCCD has agreed to transfer \$7,500,000.00 to MLF toward the construction of the MACC. If the assignment is not legally permissible and mutually beneficial, then MLF shall obtain the funds from KCCD pursuant to the agreement and transfer the funds to Town as soon as is practicable, but in no event later than Town's award of a contract for construction of the MACC (which the Parties acknowledge may occur subsequent to the Closing Date). Notwithstanding the foregoing, the Parties acknowledge that KCCD's participation and consent will be required for the assignment by MLF and assumption by Town of the KCCD agreement and the disbursement of funds, and no delay in MLF's performance of its obligations under this paragraph shall constitute a breach of this Agreement by MLF if MLF is attempting to comply in good faith but KCCD has not yet consented or disbursed funds.

**Section 8. Assignment of HMC Architects Contract for MACC.** To the extent legally permissible and mutually beneficial, MLF shall assign, and Town shall assume, MLF's contract with HMC Architects for design services related to the MACC, including without limitation the rights to all architectural plans and specifications produced for the MACC. If the assignment is not legally permissible and mutually beneficial, then MLF shall authorize Town to manage the

HMC contract on MLF's behalf and, upon completion of the MACC, shall transfer to Town the rights to all architectural plans and specifications produced for the MACC. Town shall provide regular project updates to MLF regarding the MACC.

**Section 9. Construction of the MAAC.** After the Closing and as soon as practical after its solicitation of bids, Town shall secure all entitlements and permits required to construct the MACC as a conventionally constructed structure (i.e. not a tensile fabric structure) attached to Edison Hall, in accordance with plans and specifications approved by Town as they may be amended, shall commence construction of the MACC reasonably promptly thereafter, and shall proceed with the construction with its best efforts and due diligence until completion, subject to delays due to weather and other causes outside Town's control.

**Section 10. MLF's Use of Edison Hall.** As additional consideration for the sale of the Property to Town and MLF's satisfaction of its obligations hereunder, until either (i) MLF ceases to remain in good standing with the California Secretary of State as a non-profit public benefit corporation or as a comparable non-profit successor entity; or (ii) 50 years have elapsed from the Closing Date, MLF shall have the right to use the Property, Edison Hall, and the MACC as follows:

(a) MLF shall have exclusive access and use rights to two office spaces in Edison Hall, and non-exclusive access and use rights to one office space in Edison Hall, to accommodate no more than three people who are employees of or volunteers for MLF while actually engaged in volunteering for MLF, as identified in Exhibit D or as the parties may agree upon in writing, and shall own and maintain the FF&E within those offices as the FF&E exist as of the Effective Date. Nothing herein shall obligate Town to replace the FF&E. For avoidance of doubt, "exclusive access and use rights" shall mean the sole right to access and use the designated office spaces and store and secure documents and materials therein. "Non-exclusive access" shall mean the right to access and use the designated office space and store and secure documents and materials therein, subject to Town's right to allow others to use such spaces at any time of day (or on any day) when the spaces are not actually being occupied by employees or contractors of MLF. MLF shall arrange and pay for its own telephone and Internet access. In addition, if MLF consumes other utility services, including without limitation water, propane, and electricity, at a rate that is excessive and unreasonable, the Parties shall negotiate in good faith for MLF to reimburse Town for the cost of such services.

(b) MLF shall have non-exclusive access and use rights, including the keys commonly provided to Town employees, to all common areas located on the Property and within Edison Hall, including the parking lot(s), external pathways, internal hallways, meeting rooms, restrooms, storage areas, the kitchen, the common area FF&E, and all public WIFI services, provided that Town shall have no obligation to clean or maintain the offices used by MLF, and Town's snow removal activities on the Property shall be as determined by Town;

(c) MLF shall have exclusive access to the MACC for up to six weekend days and/or evenings per year and for up to six weekdays and/or weekday evenings per year, to accommodate fundraising events, live performances, student orientation, graduation and scholarship ceremonies, and other activities which support education and the arts. Notwithstanding the foregoing, MLF shall not have access to the MACC on any federally recognized or state-recognized holiday or the

day after any such holiday. MLF shall request each such date of access as far in advance as is practicable, and in no event fewer than 60 days prior to the requested date of access. Town may reject a request for any specific date based on conflicts with other events and activities scheduled for the MACC by Town, but shall endeavor to work with MLF to find mutually acceptable substitute dates.

(d) MLF's rights pursuant to this Section 9 are personal to MLF, and may not be delegated, assigned, or sublet. All such rights shall be exercised as authorized or directed by the MLF board of directors as a whole. MLF may not sublet any space in Edison Hall or allow any third party to make use of MLF's rights to use the MACC, except as part of an event organized by MLF and for which MLF is primarily responsible.

(e) In the event that Edison Hall is no longer habitable, including without limitation due to damage, deterioration, or destruction, Town shall provide comparable replacement space to MLF for the remainder of the term set forth in this Section 9.

(f) The Parties shall memorialize the rights and obligations set forth in this Section 10 in a lease agreement, which shall be executed prior to the Closing and take effect upon the Closing.

**Section 11. Naming Rights and Donor Wall.** Town agrees that upon completion of construction, the MACC shall be named the "Dave and Roma McCoy Arts and Cultural Center." The Town and MLF shall also agree upon the location, design, and content of a "donor wall" within the MACC, which lists the names of individuals and entities that have made (or will make) significant financial contributions to the construction and/or operation of the MACC, including but not limited to the Town, KCCD, MLF, and the Tambour Foundation. MLF shall be solely responsible for the cost of the donor wall, including any information or displays attached thereto. For purposes of this paragraph, "donor wall" refers only to a decorative and informational fixture attached to an interior wall of the MACC, not to the interior wall itself or any other structural component of the MACC.

**Section 12. Display of McCoy Memorabilia.** As long as MLF grants its permission, the MACC and/or Edison Hall shall house for public display items from the McCoy family's collection of art, photographs, artifacts, writings, and other memorabilia. The items to be displayed, and the location(s) in which they will be displayed, shall be agreed upon by and between the Parties, and may be changed from time to time upon agreement of the Parties. MLF shall be responsible to maintain the McCoy Memorabilia in cooperation with the Town. The Parties agree that the Town may also display rotating collections of works by local artists within Edison Hall and the MACC. Town shall not be liable or otherwise responsible for loss or damage to any item of McCoy Memorabilia, shall not be obligated to insure against such loss or damage, and no claim shall be made against any policy of insurance or self-insurance maintained by Town in the event of loss or damage.

**Section 13. Restrictive Covenant Regarding Rezoning of the Property.** MLF acknowledges that Town possesses the authority, pursuant to Title 7 of the California Government Code, to determine the permissible uses of the Property. Town acknowledges that the Purchase Price and

other consideration for the Property have been determined with respect to the zoning and permitted uses of the Property as of the Effective Date, rather than with respect to any hypothetical zoning or permitted uses that could increase the value of the Property. Accordingly, the Parties agree that the Grant Deed for the Property shall contain a restrictive covenant prohibiting the Town from rezoning the Property unless Town concurrently and identically or similarly rezones MLF's neighboring property located at 10 Wagon Wheel Drive and bearing Mono County APN 035-010-052-000, unless MLF notifies Town that it does not wish some or all of its remaining property to be rezoned. Notwithstanding the prior sentence, MLF shall have the ongoing right to independently apply to change the zoning of 10 Wagon Wheel Drive at any time.

**Section 14. Condition of Property.** Town and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and related matters as Town and its representatives may desire. Town acknowledges and agrees that the Property is to be accepted by Town in an "as is" condition with all faults. MLF makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, MLF makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record), or the physical, environmental, and/or geotechnical condition of the Property. Town acknowledges that it is entering into this Agreement on the basis of Town's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Town assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Town acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the Parties with respect to its subject matter and the purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

**Section 15. Default and Remedies.**

(a) MLF's Remedies. If Town fails to complete the Closing as contemplated by this Agreement, or if Town defaults under the terms of this Agreement, and such default continues for more than 30 days following MLF's notice to Town of such default, then MLF shall have the right to exercise one of the following remedies (such decision to be in MLF's sole discretion): (i) MLF shall have the right to terminate this Agreement by giving written notice of such termination to Town, in which case, Town shall promptly return to MLF (and/or KCCD, as appropriate) the full amount of any contributions that MLF has made or assigned to Town, as referred to in Sections 6 and 7 above, MLF may require Town to remove all improvements that it has installed on the Property and restore the Property as close as reasonably feasible to its condition prior to the Effective Date, and neither Party shall have any further obligations or liabilities under this Agreement, except for any that expressly survive the expiration or termination of this Agreement; or (ii) MLF shall have the right to institute and prosecute an action to compel specific performance of this Agreement against Town.

(b) Town's Remedies. If the Closing fails to occur due to a default by MLF under this Agreement, and such default continues for more than 30 days following Town's notice to MLF of such default, then Town shall have the right to exercise one of the following remedies (such decision to be in Town's sole discretion): (i) Town shall have the right to terminate this Agreement by giving written notice of such termination to MLF, in which case, neither Party shall have any further obligations or liabilities under this Agreement, except for any that expressly survive the expiration or termination of this Agreement; or (ii) Town shall have the right to institute and prosecute an action to compel specific performance of this Agreement against MLF.

(c) No Other Remedies. MLF and Town acknowledge that their respective rights and remedies resulting from a default under this Agreement by the other Party shall be limited to those set forth in Section 15(a) and Section 15(b) above and Section 15(d) below, and all other rights and remedies that may be available to MLF or Town at law or in equity are hereby waived; provided, however, that nothing herein shall limit a Party's remedies with respect to any obligations or liabilities of the other Party that survive the expiration or earlier termination of this Agreement. Without limiting the foregoing, neither Party shall be liable for any other remedies, including any claims for any other damages, including, without limitation, additional compensatory damages, special damages, consequential damages (including, without limitation, damages for lost profits, delay, changes in market conditions, etc.) or punitive damages, based upon any breach or default under this Agreement or any other act, error or omission by a Party.

(d) Notwithstanding the foregoing, upon an exercise by MLF of its right to terminate this Agreement as described above, MLF and Town shall negotiate in good faith for a sale, lease, license, or other form of right allowing Town to occupy and use the Property or a portion thereof for purposes including without limitation the construction and maintenance of improvements thereon generally consisting of a dog park and childcare center.

## **Section 16. Notices.**

Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by reputable private courier or delivery service, or given by mail or email. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the Party to receive at the following address or at such other address as the Party may from time to time direct in writing:

MLF: MAMMOTH LAKES FOUNDATION  
P.O. Box 1815  
Mammoth Lakes, CA 93546  
Telephone: (760) 934-3781  
Attention: Luan Mendel, Board Chair  
Email: lmendel@gmail.com

With a copy to:

Mark Carney  
Reicker Pfau  
1421 State Street

Santa Barbara, CA 93101  
Telephone: (805) 966-2440  
Email: rmcарney@rppmh.com

Town: TOWN OF MAMMOTH LAKES  
Attn: Town Manager  
P.O. Box 1609  
Mammoth Lakes, CA 93546  
Telephone: (760) 965-3601  
Email: rpatterson@townofmammothlakes.ca.gov

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service, certified or registered, return receipt requested. Email notices actually received by a Party shall be deemed to be given upon receipt.

**Section 17. Waiver of Breach.** A waiver by either Party of a breach by the other Party of any covenant or condition of this Agreement shall not impair the right of the Party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either Party to insist upon strict performance of any term, covenant or condition of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or right.

**Section 18. Time of the Essence.** Time is of the essence of this Agreement.

**Section 19. Governing Law and Venue.** This Agreement shall be governed in all respects by the laws of the State of California. The venue for any action to interpret or enforce this Agreement shall be the Mono County Superior Court.

**Section 20. Provisions Surviving Closing.** The terms of Sections 6-13 of this Agreement shall survive the Closing.

**Section 21. No Brokers.** The negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Parties without the intervention of any person which would give rise to any valid claim against either of the Parties for brokerage commissions or other like payment. Each Party shall indemnify and hold harmless the other Party against and from any and all claims for brokerage commission or other like payment arising out of the transaction contemplated by this Agreement and occasioned by the actions of such indemnifying Party.

**Section 22. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns.

**Section 23. Severability.** In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions shall remain in full force and effect and such provision shall be enforced to the



maximum extent possible so as to affect the intent of the Parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

**Section 24. Drafting.** The Parties agree that this Agreement is the product of joint draftsmanship and negotiation, and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous, and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting Party. As used in this Agreement, “including” or “such as” means “including without limitation” or “such as without limitation”.

**Section 25. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by electronic means) as against the Party signing such counterpart, and all of which together shall constitute one and the same instrument. An electronic or DocuSign signature to this Agreement shall have the same force and effect, for all purposes, as the original signature.

**Section 26. Entire Agreement.** It is understood and agreed that all prior understandings and agreements, whether written or oral, between the Parties are merged into this Agreement, which alone fully and completely expresses their agreement, that neither Party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both Parties.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the Effective Date first herein written.

**SELLER:**

**MAMMOTH LAKES FOUNDATION,**  
a California nonprofit corporation

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

**TOWN OF MAMMOTH LAKES,**  
a California municipal corporation

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**Site Plan Depicting Property**

(Attached)

**EXHIBIT B**

**Site Plan for MACC**

(Attached)

**EXHIBIT C**

**Form of Grant Deed**

(Attached)

**EXHIBIT D**

**Edison Hall Offices Accessible to MLF**

(Attached)