

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is made this _____ day of _____, 2020 (the "Effective Date") by and between the Town of Vail, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), and the Children's Garden of Learning ("CGL"), a Colorado nonprofit corporation with an address of 129 North Frontage Road West, Vail, CO 81657 (each a "Party" and collectively the "Parties").

WHEREAS, for 30 years, CGL and its predecessors have offered preschool and primary educational services to young children whose parents are employed by, reside in, are employed in, and are otherwise connected to the Town;

WHEREAS, CGL's learning environment is uniquely focused on providing a nature-based education for young learners through observation, intentional planning, creative environments, and active exploration of materials (the "CGL Philosophy");

WHEREAS, in August 2004, the Parties entered into a lease and sublease agreement pursuant to which the Town leased to CGL the premises located at 129 North Frontage Road West, Vail, CO 81657 (the "Premises") for use as a Child Education Center ("CEC");

WHEREAS, CGL has since August 2004 continuously occupied the CEC from the Premises, and now occupies it pursuant to that certain Lease Agreement ("Lease") dated February 12, 2020;

WHEREAS, the Town has identified the Premises as potentially suitable for a future deed-restricted employee housing development and, by notice dated August 19, 2020, provided CGL with a notice to terminate the Lease, effective September 15, 2021;

WHEREAS, CGL's ability to continue to operate and serve the Vail community is uncertain without support from the Town;

WHEREAS, similar to providing for deed restricted employee housing and environmental stewardship, maintaining the CEC in a suitable location in the Town is of great importance to the Town;

WHEREAS, the Parties have had preliminary discussions about possible temporary and permanent alternate locations for CGL to operate the CEC and wish to memorialize those discussions in this MOU while the Parties continue to develop an agreement which would set forth the obligations of the Parties as they relate to relocating the CEC to a suitable temporary location; and

WHEREAS, the Parties agree that a collaborative partnership is essential to achieve each Party's goals and objectives.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this MOU is to set forth the expectations of the Parties regarding the relocation of CGL to a suitable temporary and/or permanent location for the CEC. Nothing in this MOU shall affect the Town's quasi-judicial authority or limit the Town's police power. By entering into this MOU, the Town is not pre-judging any development application or guaranteeing that any development application will be approved.

2. Task Force. The Parties agree to establish an *Early Childcare Advisory Task Force* to assist in identifying a permanent CGL location and additionally identifying the overall childcare needs in the Valley that can be served by CGL while still honoring the CGL Philosophy. The Committee shall at a minimum include representation from CGL, Vail Town Council, Vail Town staff, Eagle County and other stakeholders as mutually agreed upon.

3. Time is of the Essence. The Parties acknowledge the importance of actively participating and acting in good faith in an effort to realize the desired outcomes of this MOU. Further, the Parties understand, accept and commit to implement the relocation of the CEC in a timely manner that allows CGL to deliver seamless service to the families it serves. The Parties further commit to assigning the resources needed to realize the shared and individual desired outcomes.

4. Desired Outcomes. Following are the desired outcomes to be realized by both Parties:

a. *Town*.

i. Unobstructed access to the Premises on September 15, 2021.

ii. Maintain CGL as an integral member of the Town of Vail community in order to serve the families, employees and employers who live, work, and do business within the Town of Vail.

iii. Cooperation with CGL to provide for all reasonable assistance to CGL relating to the relocation of the CEC to be set forth more specifically in a future agreement between the Parties.

b. *CGL*.

i. Indefinitely maintaining CGL as an integral member of the Town of Vail community in order to serve the families, employees and employers who live, work, and do business within the Town of Vail.

ii. Independence in decisions relating to the program offered by CGL so as to enable CGL to best achieve CGL's Philosophy.

- iii. A new lease for a suitable temporary location for the CEC which will be available for CGL's occupancy at the commencement of its 2021/2022 school year.
- iv. A continued subsidy from the Town relative to operating and maintaining the CEC, which subsidy shall include an annual lease rate of \$10 per year.
- v. Financial and physical assistance from the Town of Vail in connection with relocation from the Premises to the temporary location.
- vi. Transition from the temporary location to a permanent location within five (5) years of commencement of occupancy of the temporary location.

5. Deal Points. To achieve the desired outcomes set forth above, the final agreement between the Parties will include the following deal points:

- a. The Town will have access to the Premises by September 15, 2021.
- b. The Town will use its commercially reasonable best efforts to renovate and make available the Town-owned Community Development Building located at 111 S. Frontage Road West, Vail, CO or other suitable location ("Temporary Location") for the CEC by the start of CGL's school year in August, 2021. The Town shall make the Temporary Location available not later than September 15, 2021, and the Town agrees that CGL may have access to and use the Premises for fifteen (15) calendar days after the Temporary Location is first made available to CGL for occupancy.
- c. Unless an alternate location is agreed upon by the Town and CGL by September 15, 2020, the Community Development Building shall be the Temporary Location.
- d. The Town will bear responsibility for all improvements necessary to renovate the Temporary Location including standard basic interior finishes and a suitable outdoor play space as required by the State Licensing agency. The Town agrees that it shall provide snow removal for parking areas, and sidewalks serving the Temporary Location.
- e. Any CEC, whether temporary or permanent, will meet all life safety and Colorado Department of Human Services licensing requirements.
- f. The Temporary Location will, at a minimum, be capable of accommodating not less than 57 students, with accompanying staff.
- g. So long as the Town provides a subsidy to CGL, the Town will have a member of Town Council or designee serve as a regular voting member of the CGL Board of Directors.
- h. The Town and CGL agree to use their good faith efforts to collaborate on the design of the Temporary Location in an effort to both minimize its cost and maximize

its suitability for CGL's use. The Town will involve CGL in the planning and design process, and will provide CGL with regular tours of the Temporary Location during construction to allow CGL to provide meaningful input into design selections, to highlight progress, and to prepare for CGL's operations at the Temporary Location. The Town shall have the final decision-making authority regarding the design of the Temporary Location.

6. Term and Termination. This MOU shall commence upon the Effective Date and terminate one year thereafter, provided that any Party may terminate this MOU earlier than such date upon 30 days' prior written notice to the other Party. The term of the MOU may be extended upon mutual written agreement of the Parties.

7. Miscellaneous.

a. *Modification*. This MOU may only be modified by subsequent written agreement of the Parties.

b. *Severability*. If any provision of this MOU is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

c. *Governing Law and Venue*. This MOU shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

d. *No Legal Obligation*. Nothing in this MOU shall create a legal obligation, right or remedy on behalf of either Party.

e. *Third Parties*. There are no intended third-party beneficiaries to this MOU.

f. *Costs*. Each Party shall be responsible for its own fees and costs associated with this creation and execution of this MOU.

g. *No Joint Venture*. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this MOU, and the Town shall never be liable or responsible for any debt or obligation of any participant in this MOU.

[Signature page follows]

