

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT AND PLANNED UNIT
DEVELOPMENT AGREEMENT
(Transfer Warehouse and Stronghouse Parcels)**

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT AND PLANNED UNIT DEVELOPMENT AGREEMENT (“Amendment”), is entered into and made effective as of March 7, 2018 (“**Effective Date**”) by and between the Town of Telluride, a home rule municipality and political subdivision of the State of Colorado (“**Town**”) and The Telluride Transfer Company, LLC a Colorado limited liability company (“**Owner**”). The Town and Owner are collectively referred to herein as the “**Parties**”. The Parties hereby agree as follows:

DEFINITIONS

Capitalized terms used herein but not defined shall have the meanings assigned to them in the Development Agreement (as defined below).

RECITALS

The Parties acknowledge and agree to the following recitals (“**Recitals**”) and further agree that each of the Recitals: (a) form a portion of the basis of this Amendment; and (b) are incorporated in this Amendment.

A. The Parties entered into a Development Agreement and Planned Unit Development Agreement dated January 17, 2017 and recorded in the San Miguel County office of Clerk and Recorder official records (the “**Official Records**”) at Reception No. 446046 (the “**Development Agreement**”) setting forth the Parties’ agreement with respect to the development of the Transfer Warehouse Parcel and the Transfer Warehouse Building located thereon.

B. Pursuant to Section 3.3 of the Development Agreement, Owner is required to undertake certain renovations described therein as Required Transfer Warehouse Renovations, which include completion of the Transfer Warehouse Building to a “shell condition,” as more particularly set forth in Section 3.3.2 of the Development Agreement.

C. In connection with the Development Agreement, the Parties entered into that certain Transfer Warehouse Renovation Completion Guaranty Agreement dated May 26, 2017 (the “**Owner Guaranty Agreement**”), pursuant to which Owner provided the Town with a letter of credit in an amount equal to the estimated costs of completing the Required Transfer Warehouse Renovations under the Development Agreement (the “**Owner Letter of Credit**”), which was intended to further insure completion of the Required Transfer Warehouse Renovations.

D. At a regular meeting on August 9, 2016 and as approved by Resolution No. 18, Series of 2016 recorded in the Official Records at Reception No. 446044, Telluride Town Council identified Telluride Council for the Arts and Humanities, a Colorado nonprofit corporation, d/b/a/ “*Telluride Arts*” (“**Telluride Arts**”) to be a qualified Transfer Warehouse Owner and approved the “Telluride Transfer Warehouse Preliminary Program Summary” as an acceptable Transfer Warehouse Management Usage Plan pursuant to the Transfer Warehouse Covenant.

E. Upon the closing of Telluride Arts’ purchase of the Transfer Warehouse Parcel and Transfer Warehouse Building pursuant to the Purchase and Sale Agreement dated June 22, 2015 between Owner and Telluride Arts (as amended, the “**Purchase Agreement**”) and following any reviews and approval required by the Town to confirm its status a Transfer Warehouse Owner in accordance with the Development Agreement and the Transfer Warehouse Covenant, as amended by the First Amendment to

the Declaration of Covenants and Restrictions dated March 7, 2018 and recorded in the Official Records at Reception No. 452524 (together, the "First Amended Transfer Warehouse Covenant"), Telluride Arts will be deemed the Transfer Warehouse Owner.

F. Telluride Arts, in its capacity as the future Transfer Warehouse Owner, reviewed the Required Transfer Warehouse Renovations and its intended final design of the Transfer Warehouse Building with its architects, engineers and consultants, as well as Owner and Owner's architects, engineers and consultants, and determined that (i) having Owner complete the Required Transfer Warehouse Renovations as originally contemplated by the Development Agreement would hinder Telluride Arts' intended final design for, and use of, the Transfer Warehouse Building; and (ii) Telluride Arts' needs and the public benefit would be better served by having Owner complete only a portion of the initially contemplated Required Transfer Warehouse Renovations, with Telluride Arts being responsible for completing the remainder of the renovations to the Transfer Warehouse Building necessary for Telluride Arts' use thereof (including additional shell renovations above and beyond those originally contemplated by the Required Transfer Warehouse Renovations).

G. Accordingly, Owner by and through Telluride Arts submitted an application for an amendment to the Development Agreement, which was conditionally approved by the Planning and Zoning Commission on November 19, 2015 and was extended by the Planning and Zoning Commission on September 22, 2016.

H. The Planning and Zoning Commission reviewed and approved an amendment to the Planned Unit Development at a regular meeting on November 16, 2017.

I. Owner has offered to extend certain "seller carry-back financing" to Transfer Warehouse Owner, which will be secured by a deed of trust lien on the Transfer Warehouse Property ("Seller Financing"). The Parties recognize that in the event that Transfer Warehouse Owner closes on the Transfer Warehouse Property and subsequently defaults on the Seller Financing, Owner shall have the right and is anticipated to pursue its remedies under the loan documents reflecting the Seller Financing, which would likely result in the Transfer Warehouse being re-conveyed to Owner by trustee deed, deed in lieu or otherwise.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated as part of the agreements of the Parties and in further consideration of the mutual obligations and promises set forth below, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as provided for below.

SECTION ONE: MODIFICATION OF DEVELOPMENT AGREEMENT SECTION 3.2.2.

1.1 The following section of the Development Agreement hereby is amended to read as follows:

3.2.2. Condition of the Transfer Warehouse. The Transfer Warehouse Building will either be: (a) rehabilitated to a shell condition referred to as Required Transfer Warehouse Renovations (as defined and provided for in Section 3.3 of the Development Agreement) concurrently with the free market development of the Stronghouse Parcel, which shall be completed by Owner and then conveyed to the Transfer Warehouse Owner; or (b) alternatively renovated in accordance with the Alternative Rehabilitation Plan and the respective duties and obligations of Owner (with respect to the Owner Retained Renovation Obligations) and the Transfer Warehouse Owner, as defined and provided for below in Section Six of this Amendment.

SECTION TWO: ADDITION OF NEW SECTION SIX

2.1 A new Section Six is added to the Development Agreement as follows:

SECTION SIX: ALTERNATIVE COMPLETION OF RENOVATION AND REHABILITATION OF TRANSFER WAREHOUSE BUILDING

6.1. As an alternative means of satisfying Section 3.3 of the Development Agreement, Owner may pursue an alternative completion of renovation and rehabilitation of the Transfer Warehouse Building (“Alternative Rehabilitation Plan”).

6.2. If the Owner pursues the completion of the Alternative Rehabilitation Plan, the Owner shall complete a certain portion of the Required Transfer Warehouse Renovations (“Owner Retained Renovation Obligations”), as identified in Exhibit A to the First Development Agreement Amendment, which the Parties acknowledge and agree has been fully completed and accepted by the Town]. The Owner shall sell the Transfer Warehouse Building to a Qualified Transfer Warehouse Owner within 90 days of the completion of the Owner Retained Renovation Obligations (the “Closing”). For the purpose of this Section 6.2, the 90-day time period shall not begin prior to the execution of the First Development Agreement Amendment.

6.3. If the Owner does not sell the Transfer Warehouse Building to a Qualified Transfer Warehouse Owner within 90 days after completion of the Owner Retained Renovation Obligations, the terms of the original Development Agreement shall remain in effect, including the requirement for Owner to undertake the remaining elements of the Required Transfer Warehouse Renovations at or before the time that the Town issues a Certificate of Occupancy for the Stronghouse Parcel New Construction.

6.4. At the Closing and purchase of the Transfer Warehouse Building, Transfer Warehouse Owner shall be responsible for either retaining in place or replacing the Owner Letter of Credit with a letter of credit, or other Town approved financial guaranty, of the same amount (“Transfer Warehouse Owner Letter of Credit”) and enter into a guaranty agreement with the same terms as the Owner Guaranty Agreement (“Transfer Warehouse Owner Guaranty Agreement”).

6.5. In the event that the Owner sells the Transfer Warehouse Parcel and Transfer Warehouse Building, pursuant to Section 6.3, and the Transfer Warehouse Owner Letter of Credit and Guaranty Agreement are provided pursuant to Section 6.4, then the Town shall release the Owner Letter of Credit and the Owner Guaranty Agreement will be released and Section 3.3.3 of the Development Agreement will be waived in order to allow the Owner to obtain a Certificate of Occupancy for the Stronghouse Parcel New Construction without any dependence upon the completion of the Required Transfer Warehouse Renovations. Upon the Closing and conveyance of the Transfer Warehouse Parcel and the Transfer Warehouse Building to Transfer Warehouse Owner, Owner shall be deemed to have fully and finally performed any and all duties and obligations arising in connection with the Town Approvals related to the Transfer Warehouse Covenant and shall have no further or continuing duties and obligations with respect to (a) the completion of the Transfer Warehouse Final Finishes and/or the operation, repair or maintenance of the Transfer Warehouse Parcel or the Renovated Transfer Warehouse Building, including any related funding, (b) the formation and/or funding of Transfer Warehouse Owner, and/or (c) the sufficiency of Transfer Warehouse Owner’s required performances under the Transfer Warehouse Covenant.

6.6. Upon the Closing and sale of the Transfer Warehouse Building to Transfer Warehouse Owner, Transfer Warehouse Owner shall be responsible for completing either (a) the rehabilitation of the Transfer Warehouse Building in a manner beyond the scope work anticipated in the Development Agreement and as further described below (“Expanded Restoration Completion Work”, or (b) the rehabilitation of the Transfer Warehouse Building in a manner similar to the scope of work identified in Section 3.3.2 of the Development Agreement as the Required Transfer Warehouse Renovations and further specified below (“Restoration Completion Work”).

6.7. Expanded Restoration Completion Work

6.7.1 Transfer Warehouse Owner may pursue the Expanded Restoration Completion Work pursuant to a currently undefined scope of work in order to allow for increased preservation of the Transfer Warehouse Building and provide the possibility of a more successful adaptive use and alteration of the structure. Transfer Warehouse Owner may pursue the Expanded Restoration Completion Work subject to the following conditions:

a. Transfer Warehouse Owner shall obtain all required development approvals from the Town, including but not limited to Historic and Architectural Review Commission Approvals and Planning and Zoning Commission Approvals; and

b. Transfer Warehouse Owner shall obtain sufficient cost estimates of the full capital construction costs of the Expanded Restoration Completion Work, which shall include Transfer Warehouse Final Finishes; and

c. Transfer Warehouse Owner shall demonstrate that it has raised funds in an amount sufficient to meet or exceed the construction costs via verifiable deposits or legally binding agreements; and

d. Transfer Warehouse Owner shall provide all information detailed in subsections a through c, above, to the Telluride Town Council by October 27, 2022. The Telluride Town Council timely and in good faith shall review the proposal and associated documentation to determine whether the proposed Expanded Restoration Completion Work is consistent with both (i) the Transfer Warehouse Covenant, as amended, and (ii) the PUD Amendment approval of November 16, 2017 from the Planning and Zoning Commission. Unless the Telluride Town Council identifies in writing specific material deficiencies and/or inconsistencies and Transfer Warehouse Owner fails to timely cure such deficiencies or inconsistencies, the Telluride Town Council shall timely authorize the Transfer Warehouse Owner to complete the Expanded Restoration Completion Work.

e. Prior to issuance of any building permit for the Expanded Restoration Completion Work, Transfer Warehouse Owner shall provide a surety for the full cost of the scope of that construction only (and not including any Transfer Warehouse Final Finishes) and also shall execute an associated guaranty agreement with the Town.

f. Both the Expanded Restoration Completion Work, and the Transfer Warehouse Final Finishes must be completed, and a Certificate of Occupancy obtained, by no later than October 27, 2024. The Telluride Town Council may provide any extensions of time it deems reasonably appropriate to allow for reasonable construction delays that may occur.

6.8. Restoration Completion Work

6.8.1 As an alternative to the Expanded Restoration Completion Work set forth in Section 6.7, Transfer Warehouse Owner shall have the right to pursue Restoration Completion Work in order to restore the Transfer Warehouse Building in a manner

similar to the scope of work identified in Section 3.3.2 of the Development Agreement. Transfer Warehouse Owner shall not have the obligation to complete the Restoration Completion Work unless Transfer Warehouse Owner does not implement the Expanded Restoration Completion Work, which would result in an obligation on the Transfer Warehouse Owner to complete the Restoration Completion Work. Transfer Warehouse Owner shall be allowed to pursue the Restoration Completion Work, subject to the following conditions:

a. For the purposes of this Section 6.8., the Required Transfer Warehouse Renovations will include completion of the Transfer Warehouse Building to a "shell condition" as follows: (i) full structural stabilization of the Transfer Warehouse Building walls, slab and foundation and installation of a roof; (ii) windows and exterior doors; (iii) concrete slab to be clean and unsealed throughout (with option to leave out slab in interior of space for future plumbing rough-ins); (iv) sprinkler heads turned up to the roof; (v) mechanical units (and specifically heating and ventilation units) installed with distribution to one or more points in the grid; (vi) electrical service to be provided to a distribution panel (but without breakers or feeders); and (vii) plumbing main line installed under slab (or subgrade, as applicable).

b. Transfer Warehouse Owner shall obtain all required development approvals from the Town, including but not limited to Historic and Architectural Review Commission Approvals and Planning and Zoning Commission Approvals; and

c. Prior to issuance of any building permit for Restoration Completion Work, if the full cost of work (not including any Transfer Warehouse Final Finishes) exceeds the Transfer Warehouse Owner Letter of Credit and Transfer Warehouse Owner Guaranty Agreement held by the Town, then Transfer Warehouse Owner shall provide a surety for the full cost of the scope of such construction and also execute an associated guaranty agreement with the Town.

d. Transfer Warehouse Owner shall obtain a building permit for the Restoration Completion Work and Transfer Warehouse Finishes by October 27, 2020 and obtain a Certificate of Occupancy for the Restoration Completion Work by October 27, 2024.

6.9 Architect Certification

6.9.1 The provisions of Section 3.3.4 shall be required, regardless of whether the Expanded Restoration Completion Work or the Restoration Completion Work is completed by Transfer Warehouse Owner.

6.9.2 If the Town accepts the Architect Certification, the terms of the Development Agreement and the First Development Agreement Amendment shall be satisfied.

6.10 Notwithstanding the foregoing, Owner is not required to undertake or otherwise pay for any of (a) the Restoration Completion Work or the Expanded Restoration Completion Work required by Sections 6.6, 6.7 or 6.8; or (b) the Transfer Warehouse Finishes, and the obligation for such undertakings shall not be an obligation of the Owner under the Development Agreement as amended by the First Development Agreement Amendment.

6.10 Circumstances In the Event of Re-Conveyance to Owner Following Default on Seller Financing. In the event of a default under the Seller Financing which results in the Transfer Warehouse Property and the Transfer Warehouse Building being re-conveyed to Owner, as evidenced by the recordation of a deed vesting title in the Owner ("Re-Conveyance Date"), the Parties agree to proceed as follows with respect to the implementation of and compliance with the terms and conditions of the Development Agreement and this Amendment: (a) the Owner shall be subject to all of the obligations and requirements of the Development Agreement, except the requirement for Owner to undertake the remaining elements of the Required Transfer Warehouse Renovations at or before the time that the Town issues a Certificate of Occupancy for the Stronghouse Parcel New Construction, which requirement and contingency shall be released with the sale of the Transfer Warehouse Property and the Transfer Warehouse Building to the Transfer Warehouse Owner as provided for in Section 6.5 of this Amendment; (b) Owner shall elect, in its discretion, to either: (i) identify and close on title to the Transfer Warehouse Property and the Transfer Warehouse Building with a qualified Transfer Warehouse Owner (acceptable to the Town), seeking to undertake and complete the Restoration Completion Work or the Expanded Restoration Completion Work consistent with the requirements of the Transfer Warehouse Owner as provided for in Section 6.1 through 6.9 as provided above, which closing shall occur within 12 months of the Re-Conveyance Date, or (ii) undertake and complete the Required Transfer Warehouse Renovations within 24 months of the Re-Conveyance Date and then identify and close on title to the Transfer Warehouse Property and the Transfer Warehouse Building with a qualified Transfer Warehouse Owner (acceptable to the Town) within 18 months from the completion of the Required Transfer Warehouse Renovations.

SECTION THREE: MISCELLANEOUS

- 3.1 Counterparts; Facsimile. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Amendment may be executed by facsimile or scanned/emailed transmission.
- 3.2 Ratification. Except as expressly set forth in this Amendment, all other terms and conditions of the Development Agreement shall remain unmodified, the same being ratified, confirmed and republished hereby.
- a. Notices. Any notice provided or permitted to be given hereunder shall be in writing and may be given by personal delivery, facsimile transmission (include electronic mail) or by depositing the notice in the United States mail, postage prepaid, certified with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the foregoing manner shall be deemed received three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when actually received by the party to be notified. For purposes of notice, the addresses of the Parties shall be as set forth below until changed. Any Party, by notifying the other Parties hereto in the manner provided in this Section, may designate a different address for receipt of subsequent notices.

<p><u>Owner:</u> Telluride Transfer Company, LLC c/o 3390 Valmont Road, Ste 1 Boulder, Colorado 80301 Attn: Garrett Simon Phone: (970) 596-6642 Email: gsimon@meriwetherco.com</p>	<p><u>Town:</u> Town of Telluride P.O. Box 397 Telluride, CO 81435 Phone: (970) 728-2155 Fax: (970) 728-3078</p>
<p><u>With a Copy to</u> Thomas G. Kennedy, Esquire P.O. Box 3081 Telluride, CO 81435 Phone: (970) 728-2424 Email: tom@tklaw.net</p>	<p><u>With a Copy to</u> Town Attorney Town of Telluride P.O. Box 397 Telluride, CO 81435 Phone: (970) 728-2153 Fax: (970) 728-3078 Email: kgeiger@telluride-co.gov</p>

(Signature Page Follows)

EXHIBIT A

OWNER RETAINED RENOVATION OBLIGATIONS

Exhibit "A"
OWNER RETAINED RENOVATION OBLIGATIONS

Task Name
1 TELLURIDE TRANSFER WAREHOUSE STABILIZATION
2 TOWN APPROVALS
3 SUBMIT FOR PERMIT FOR STABILIZATION
4 SUBMIT FOR PERMIT & HARC APPROVAL FOR
5 TEMPORARY STABILIZATION AND BRACING
6 REINFORCE WINDOW RO'S
7 PRE SLAB AND INSTALL PLATES
8 DRILL WALL PLATES
9 INSTALL STEEL MESH CONTAINMENT
10 INSTALL BRACES
11 VERTICAL CONSTRUCTION
12 DEMOLISH CENTER SECTION OF WEST WALL
13 MOBILIZE SHORING RIG
14 INSTALL FOUNDATION PIERS
15 STONE MASONRY
16 EXISTING MASONRY REHABILITATION
17 REPOINTING PER ANA PLAN
18 ANCHOR ROD INSTALLATION
19 CRACK REPAIR
20 VAULT DEMO
21 TUBE STEEL LINTEL INSTALLATION