

**SECOND AMENDMENT TO
REDEVELOPMENT AND REIMBURSEMENT AGREEMENT**

This Second Amendment to Redevelopment and Reimbursement Agreement for 150 Main Street Property (“Second Amendment”) is made and entered into as of this _____ day of _____, 2017, by and between the CITY OF LONGMONT, a Colorado municipal corporation (the “City”), the LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”), and PFP LONGMONT HOLDINGS I, LLC, a Delaware limited liability company (the “Owner”) (the Authority, the City, and the Owner are also referred to collectively as the “Parties” or individually, as a “Party).

WITNESSETH

WHEREAS the City Council passed Resolution R-2015-13 approving a Redevelopment and Reimbursement Agreement dated March 17, 2015 (“Original Agreement”) among the Parties in order to create a public-private partnership to redevelop the Phase 1 Property; and

WHEREAS the Original Agreement established certain benchmarks for the redevelopment of 150 Main Street and the Other Properties; and

WHEREAS the City Council passed Resolution R-2015-102 approving the First Amendment to the Original Agreement dated December 1, 2015 (“First Amendment”) in order to extend certain of those benchmark deadlines; and

WHEREAS the Owner continues to make significant progress on this project including investment of over \$9 million to date in property acquisition, demolition, cleanup, and development plan costs; and

WHEREAS the Owner has submitted and the City has approved the vacation of right-of-way, plat and building construction plans for Buildings 1, 2 and 4 of the 150 Main Improvements;

WHEREAS the Owner and City continue to experience a number of development and approval delays, which have caused Owner and the City to be unable to meet certain benchmark deadlines; and

WHEREAS the Parties desire to further extend certain benchmark deadlines with respect to the 150 Main Street Property only in order to reflect the revised schedule for the approvals and completion of the redevelopment of the 150 Main Street Property; and

WHEREAS capitalized terms used in this Second Amendment shall have the meanings given to them in the Original Agreement, unless otherwise defined herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Paragraph 4.2 of the Original Agreement, as amended by the First Amendment, is revised to read as follows:

4.2 Owner Financing. The Owner shall provide written bi-monthly (every 2 months) updates to the City and the Authority on the status of Owner Financing approval process for the 150 Main Improvements, and upon receipt of a loan commitment therefore, shall provide a copy thereof to the City and Authority within 5 business days of such loan commitment.

2. Paragraph 4.3 of the Original Agreement, as amended by the First Amendment, is revised to read as follows:

4.3 Submittal of Construction Documents for 150 Main Improvements. Subject to Enforced Delays, the Owner shall diligently pursue all resubmittal approvals of all the remaining Construction Documents for the 150 Main Improvements, including public improvement plans and site plan, and the City shall diligently pursue all review and approvals of the same pursuant to Section 5.2 of the Original Agreement on or before April 30, 2017. The Public Improvement Agreement for the 150 Main Improvements shall be completed and executed by the Owner and the City prior to the Start of Construction.

3. Paragraph 4.4 of the Original Agreement, as amended by the First Amendment, is revised to read as follows:

4.4 Start of Construction; Completion of Construction for 150 Main Improvements. Subject to Enforced Delays, the Owner shall Start Construction of the 150 Main Improvements on or before December 31, 2017, and Complete Construction of the 150 Main Improvements on or before three (3) years from the Start Construction date.

4. Paragraph 5.1 of the Original Agreement is revised to read as follows:

5.1 Owner Financing. Within ten (10) business days of receipt of loan commitment documents pursuant Section 4.2, the City and the Authority shall approve or disapprove in writing the Owner Financing which shall not be unreasonably withheld or delayed, which shall be evidence of funds sufficient to Complete Construction of the 150 Main Improvements. Evidence of financing shall include, but not be limited to, bank statements, proof of funds and the loan commitment letter from lender. Approval of Owner Financing shall be determined in the reasonable opinion of the City acting by and through the City Manager, and the Authority acting by and through the Executive Director.

5. Paragraph 5.6 of the Original Agreement is revised to read as follows:

5.6 First and Emery Railroad Improvements. The Owner of 150 Main Street Property shall be responsible for fifty percent (50%) of the costs paid by the City which are

associated with the design, Public Utilities Commission (“PUC”) and BNSF Railway review and approval, and installation of any required public improvements associated with the extension of pedestrian and vehicular access along Emery Street to 1st Avenue including the intersection of Emery Street and 1st Avenue (the “First and Emery Railroad Improvements”), up to a maximum cost to Owner of \$900,000. If the Owner cost exceeds \$900,000, the Parties will use commercially reasonable efforts to discuss allocation of the additional costs among the Parties. This includes, but is not limited to, the installation of roadway and sidewalk improvements, crossing protection, and a traffic signal at the intersection of 1st and Emery. The Owner shall pay the City the \$900,000 upon receipt of one or more building permits for the 150 Main Improvements and prior to the City executing a contract with BNSF Railway or any private contractors performing work for the City for the First and Emery Railroad Improvements. The structure for payment is agreed to as follows: Owner shall pay \$450,000 in cash to the City at the time of issuance of the first residential building permit for the 150 Main Improvements, and up to \$450,000 shall be applied from the DIP Funds as stated below. The City shall provide the Owner at least thirty (30) days written notice of the anticipated contract execution date with BNSF Railway, which is currently estimated to occur no earlier than June 30, 2017. The Owner shall also have the right to, prior to the execution by the City of the construction contract(s) for the portion of the First and Emery Railroad Improvements in the City right of way, to review copies of the PUC application, construction budget, construction documents, and all bids from general contractors bidding on such project. The City shall also provide copies of any construction contracts, construction budget and construction documents from BNSF, as available, for the First and Emery Improvements in the BNSF right of way to the Owner upon City receipt of said documents from BNSF and written request from the Owner. The City shall be the lead applicant through the PUC for approval of the First and Emery Railroad Improvements, and will provide Owner, upon prior written request, with copies of all submittals prior to submission and a right to comment on such applications and submissions. The City retains sole discretion whether to accept any of Owner’s comments on such applications and submissions. Following the execution by the City of the construction contracts for the First and Emery Railroad Improvements, the Owner irrevocably waives its right to a permit fee refund pursuant Longmont Municipal Code 16.04.085.

The Parties agree that Owner may apply \$450,000 of DIP Grant funds, as provided for in Paragraph 7.2 as amended, to fulfill its obligations under this Paragraph.

6. Paragraph 6.9 of the Original Agreement is revised to read as follows:

6.9 First and Emery Railroad Improvements. The City shall be responsible for fifty percent (50%) of the costs paid by the City associated with the First and Emery Railroad Improvements (as defined in Paragraph 5.6), up to a maximum cost to City of \$900,000. If the City cost exceeds \$900,000, the Parties will use commercially reasonable efforts to discuss allocation of the additional costs among the Parties. This includes, but is not limited to, the installation of roadway and sidewalk improvements, crossing protection, and a

traffic signal at the intersection of 1st and Emery. The Owner shall be responsible for such portion of the First and Emery Improvements costs as described in Paragraph 5.6.

7. Paragraph 7.2 of the Original Agreement is revised to read as follows:

7.2 DIP Grant. Provided the Owner of 150 Main Property has first complied with the Authority's Development Incentive Program requirements on or before the date set forth in Section 4.4, within 20 business days after mutual agreement between Owner and Authority of completed documentation of costs, including paid invoices, of the 150 Main Improvements, the Authority agrees to pay the Owner a DIP Grant for the 150 Main Street Property in an amount not to exceed the actual dollars contributed to the DIP Fund for the 150 Main Improvements, subject to the following provisions. It is estimated that the DIP Grant for the Phase 1 Improvements will be approximately \$850,000.

Notwithstanding the foregoing paragraph, the Parties agree that up to \$450,000 of actual dollars contributed to the DIP Fund for the 150 Main Improvements shall be applied to the Owner's obligation to contribute \$900,000 toward the First and Emery Railroad Improvements per Paragraph 5.6, as amended. Within 20 days after Owner has paid all fees and costs associated with one or more its building permit for the 150 Main Improvements, the Authority shall cause up to \$450,000 of actual dollars contributed to the DIP Fund from such building permit(s) to be transferred from the DIP Fund to the City, and the Owner shall immediately be credited that amount toward the total Owner obligation as stated in Section 5.6. If less than \$450,000 of actual dollars have been contributed to the DIP Fund from the 150 Main Improvements building permit(s), the Owner shall be responsible to fund the difference in cash from other funding sources, but shall be eligible to receive such difference from subsequent actual dollars contributed to the DIP Fund by Owner's payment of additional 150 Main Improvements permit(s) fees. This DIP Grant transfer to the City does not require documentation of costs. However, all remaining DIP Grant disbursements shall follow the procedures in the preceding paragraph.

For final approval, plans must go through the City development review process, as well be reviewed by the Authority Board, including final site plan and design options, and including use of upgraded materials that complement Downtown Longmont's historical character. Funds will only be used for eligible and approved DIP improvement costs (excluding soft costs) paid by the Owner and not otherwise reimbursed by the Authority or City, including exterior building façade improvements facing Main Street, 2nd Avenue, and Emery Street, including but not limited to the following: lighting, eligible and approved exterior building façade improvements not reimbursed under the FIP, and interior building and fire code related improvements to make commercial space restaurant ready; and public improvements adjacent to or in reasonable proximity to and directly related to and benefiting the proposed project, including but not limited to the following: public utility upgrades, public landscaping and streetscape improvements, and the First and Emery Railroad Improvements per Paragraph 5.6 as amended.

8. All other provisions of the Original Agreement and First Amendment shall remain in full force and effect.
9. This Second Amendment, the First Amendment and the Original Agreement may be assigned to a future owner of the 150 Main Street Property in a written assignment approved by the City, the Authority, Owner and future owner as required by Section 5.8 of the Original Agreement. Said assignment shall not be unreasonably withheld or delayed by the City and Authority.

EXECUTED AND EFFECTIVE this _____ day of _____, 2017.

CITY

THE CITY OF LONGMONT,
a municipal corporation

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Date

APPROVED AS TO FORM AND SUBSTANCE:

Originating Department

Date

AUTHORITY:

THE LONGMONT DOWNTOWN
DEVELOPMENT AUTHORITY

ATTEST:

By: _____
Chair

Secretary/Executive Director

OWNER:

PFP LONGMONT HOLDINGS I, LLC
a Delaware limited liability company

By: 150 Main, LLC, Co-Manager

By: _____
Printed Name: _____
Title: Co-Manager