

## Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Paul Cain, Deputy City Manager

Date: June 1, 2009

Subject: Chapter 380 Economic Development Agreement between the City of Burleson, Burleson Premiere Cinema, LLC and Premiere Cinema Corporation and Related Funding.

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### **Council Action Requested:**

It is recommended that the City Council:

1. Approve a Chapter 380 Economic Development Agreement between the City of Burleson, Burleson Premiere Cinema, LLC and Premiere Cinema Corporation; and
2. Authorize the transfer of \$182,000 from Equipment Replacement Fund balance as a loan to Burleson Premiere Cinema, LLC. as provided for in the 380 agreement.

### **Background Information:**

Burleson Premiere Cinema, LLC (BPC) began operation of a 12 screen theater at Burleson Commons in June of 2008. Later that same year, two additional theaters were added becoming the 14 screen multiplex in operation today. The purpose of this agreement is to provide BPC with bridge financing to convert the 14 screen multiplex to an all digital format. By converting to digital format, the theater's competitive position is expected to be improved likely resulting in the long term viability of the theater and the Burleson Commons development as well as an enhanced entertainment experience for citizens of Burleson and the surrounding area.

Digital cinema offers benefits in how movies are made, distributed and projected. Traditional movies (35mm format) cost the industry a great deal of money to produce prints of the film and ship the movie reels to theaters across the globe. In contrast, digital movies are large computer files that can be written to a DVD-ROM, sent via broadband or transmitted via satellite. Digital media also allows theaters to show special events (sports, conventions, etc.). For the movie going audience, digital cinema also offers advantages over traditional film. Because traditional film is laced through a

projector and then pulled across a lens, the quality of the film degrades as the number of showings increases and scratches often appear on the film. Digital cinema also provides an enhanced 3D experience over traditional film.

The cost to convert the 14 screen multiplex to all digital format is approximately \$1.5 million dollars. Approximately 70% of this amount has been secured via a Virtual Print Fee (VPF) arrangement with Cinedigm Digital Cinema Corporation wherein Cinedigm pays for the equipment and then recoups the cost of the equipment over time through payments from distributors (who pay the majority of the cost) and BPC.

BPC has requested the City provide a loan via this 380 agreement to provide a portion of the funding not provided by Cinedigm. The \$182,000 loan will have an interest rate of 2% and a term of 4 years (4 annual payments of \$47,797.52) with the first payment due July 1, 2010.

BPC must complete the digital conversion on or before November 15, 2009. The equipment installed must meet or exceed the "Digital Cinema System Specifications Version 1.2" and ""Stereoscopic Digital Cinema Addendum" as established by Digital Cinema Initiatives, LLC ("DCI").

BPC has agreed to conduct quarterly meetings at the Cinema to discuss operational issues of a non-proprietary nature (including but not limited to projection quality, cleanliness of the premises, etc.) and to invite and include representatives of Burleson Commons Limited Partnership (BCLP) and the City of Burleson in these meetings.

BPC acknowledges and understands the loan will be in default should any one of the following items occur:

- (a) Failure to operate the Cinema as a "first run multiplex"
- (b) Failure to complete installation of the required equipment
- (c) Failure to make annual payments in the manner and time required
- (d) Failure to conduct at least 75% of the meetings as required
- (e) Unauthorized transfer or assignment of this agreement
- (f) the Cinema receives more than 30 demerits on a health inspection;
- (g) the City or its duly authorized contractor orders the immediate closure of the Cinema due to violations of applicable health laws and/or codes;

- (h) The City Council finds and determines, following a public hearing, that Premiere has failed to operate the Cinema in a professional manner which conforms to generally-accepted industry standards for a multiplex and as comparable to other multiplex cinemas throughout Texas. A finding and determination of default will be deemed to have occurred upon the motion of default receiving the favorable vote of at least six (6) Councilmembers.

The loan is secured via two methods:

1. Corporate Guaranty: Premiere Cinema Corporation ("PCC"), as Guarantor, unconditionally and absolutely guarantees payment by Premiere (as Creditor) for the obligations arising under the Agreement.
2. Reduced rebate to Developer: (AGENDA ITEM 5D) The City's existing 380 agreement with the Developer (Burleson Commons Limited Partnership or BCLP) will be amended to provide that, should both BPC and PCC default on payment to the City, following the City's use of all reasonable efforts to collect the Loan from Premiere and/or its Guarantor (including enforcing repayment in a Court of Law), BCLP shall remedy the default by reducing the amount of the tax rebate (the "Maximum Grant Payment") (1) by the amount of the unpaid balance of the Loan at the time of the default said "unpaid balance" being the amount of principal outstanding plus accrued interest, and (2) annually thereafter by the amount of interest accrued.

**Board/Citizen Input:**

N/A

**Financial Considerations:**

Funds for this loan in the amount of \$182,000 are available for loan from the Equipment Replacement Fund balance.

**Attachments:**

380 Agreement executed by BPC and PCC.

**Staff Contact:**

Paul Cain, Deputy City Manager  
Telephone: 817-447-5400 x211  
Email: [pcain@burlesontx.com](mailto:pcain@burlesontx.com)

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF BURLESON,  
BURLESON PREMIERE CINEMA, LLC, AND PREMIERE CINEMA  
CORP.**

This Economic Development Agreement (this "**Agreement**") is entered into as of \_\_\_\_\_, 2009 (the "**Effective Date**") by and between the City of Burleson, Texas (the "**City**"), a Texas municipal corporation of the Counties of Johnson and Tarrant, State of Texas, and Burleson Premiere Cinema, LLC, ("Premiere") acting by and through its General Partner, Gary Moore, and Premiere Cinema Corp, acting by and through its President, Gary Moore.

**WITNESSETH:**

**WHEREAS**, on August 9, 2007, the City adopted Resolution No. R-1093-07 establishing an Economic Development Program (the "Program") pursuant to Section 380.001 of the Texas Local Government Code (Section 380.001); and

**WHEREAS**, Premiere desires to participate in the Program by entering into this Agreement; and

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Premiere's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**Article 1. General Provisions**

1.01. The City Council finds and determines that this Agreement is authorized and governed by Section 380.001 and by the Program.

1.02. Premiere is the operator of Premiere Cinema (the "Cinema") in the City of Burleson, Johnson County, Texas. Premiere Cinema is, and throughout the term of this agreement shall continue to be, a 14 screen first run multiplex with stadium seating located at 1581 SW Wilshire Boulevard. For purposes of this agreement, "First Run Multiplex" means:

*a theater that offers motion pictures to the public for viewing during the initial new release period of each such film in the Dallas/Fort Worth metropolitan area including motion pictures that are released to a limited number of theaters on a "preview" basis provided said motion pictures are offered by Premiere during the period when such films are offered by similarly situated theaters in the*

*Dallas/Fort Worth metropolitan area. Motion pictures that have been generally available for public viewing at theaters in the Dallas/Fort Worth metropolitan area prior to first being offered at the Premiere Cinema shall not be considered "first run" motion pictures. Nothing herein shall prevent Premiere from periodically showing content other than motion pictures, such as concerts and sporting events presented via simulcast, provided that the theater's principal business is offering motion pictures as set forth above.*

1.03. The Property is not owned or leased by any member of the Burleson City Council or any member of the City Planning and Zoning Commission.

1.04. On or before November 15, 2009, Premiere will cause to be installed digital projection equipment necessary to convert the Cinema to all digital projection. Said digital projection equipment installed will meet or exceed the "Digital Cinema System Specifications Version 1.2" and "'Stereoscopic Digital Cinema Addendum" as established by Digital Cinema Initiatives, LLC ("DCI").

## **Article 2. Economic Incentive**

2.01 Loan Authorized: To partially fund the acquisition and installation of the digital projection equipment described in 1.04 above, the City agrees to provide, subject to the terms and conditions contained herein, a loan to Premiere in the amount of One Hundred, Eighty-Two Thousand Dollars (\$182,000.00). The City shall provide funds for the loan to Premiere within 20 days after the equipment is installed.

2.02 Terms of the loan: The loan shall have the following terms:

Principal Amount:	\$182,000.00
Interest Rate:	2%
Term (Years)	4
Annual Payments:	\$ 47,797.52
Total Amount to be Paid (principal & interest)	\$191,190.08

2.03 Schedule of Payments: Premiere agrees to repay the loan amount in four annual payments including principal and interest as follows:

<u>Due Date</u>	<u>Amount</u>
July 1, 2010	\$47,797.52
July 1, 2011	\$47,797.52
July 1, 2012	\$47,797.52
July 1, 2013	\$47,797.52

Annual payments are payable to "City of Burleson", reference "380 Loan-Premiere", and mailed or delivered to:

Director of Finance  
City of Burleson  
141 W. Renfro St.  
Burleson, TX 76028

**Payments received more than five (5) days after the due date shall be considered late if City has sent a statement for the payment to Premiere thirty (30) days before the due date**

2.04 Meetings Required:

- (a) At least quarterly during the term of this agreement, Premiere shall hold meetings at the Cinema to discuss operational issues of a non-proprietary nature (including but not limited to projection quality, cleanliness of the premises, etc.). Premiere shall invite and include representatives of Burleson Commons Limited Partnership (BCLP) and the City of Burleson in these meetings.
- (b) In addition to the quarterly meetings, a representative from BCLP and the City will have a standing invitation to attend and, participate in other operational meetings and to make recommendations at any time.

2.05 Default and Remedy: Premiere acknowledges and understands the loan will be in default should any one of the following items occur:

- (a) Failure to operate the Cinema as a "first run multiplex" as defined in 1.02 above.
- (b) Failure to complete installation of the equipment in accordance with 1.04 above.
- (c) Failure to make annual payments in the manner and time required by 2.03 above.
- (d) Failure to conduct at least 75% of the meetings as required by 2.04 above.
- (e) Unauthorized transfer or assignment of this agreement as described in 4.03 below.
- (f) the Cinema receives more than 30 demerits on a health inspection conducted by the City of Burleson or its duly authorized contractor;
- (g) the City of Burleson or its duly authorized contractor orders the immediate closure of the Cinema due to violations of applicable health laws and/or codes;
- (h) The City Council finds and determines, following a public hearing, that Premiere has failed to operate the Cinema in a professional manner which conforms to generally-accepted industry standards for a multiplex and as comparable to other multiplex cinemas throughout Texas. A finding and determination of default will be deemed to have occurred upon the motion of default receiving the favorable vote of at least six (6) Councilmembers.

**The City shall notify Premiere in writing of a default. As the sole remedy for a default, Premiere shall pay to the City any of the loan's unpaid principal plus accrued interest (said unpaid principal plus accrued interest hereinafter referred to collectively as the "outstanding balance") within 30 days of receipt of the City's written notice of default unless such default has been otherwise cured as provided herein.**

2.06 Term of Agreement: This agreement shall expire upon the earlier of: (a) the date upon which the loan is paid in full; or (b) in the event of a default, the date on which the default is remedied by payment of the outstanding balance to the City.

### Article 3. Securitization of the Loan

3.01 Corporate Guaranty: As a guarantee and pledge to securitize the loan provided in Article 2 above Premiere Cinema Corporation ("PCC"), as Guarantor, unconditionally and absolutely guarantees payment by Premiere (as Creditor) for the obligations arising under this Agreement. Within 10 days of the effective date of this agreement, Premiere and PCC agree to provide financial statements to the City and BCLP evidencing its financial position as Guarantor. Further, throughout the term of this agreement, Premiere and PCC shall provide the City with financial statements and related information as requested not to exceed once annually. Any and all financial statements provided to the City by Premiere and/or PCC shall be considered proprietary and shall be returned to Premiere and PCC upon the City's review.

3.02 Payment by Guarantor: Should an event of default occur and Premiere fail to remedy the default by making payment of the outstanding balance as required in 2.05 above, the City shall provide PCC written notification of Premiere's failure to remedy the default. Within 10 days of PCC's receipt of this written notification, PCC shall remit the outstanding balance to the City.

### Article 4. Effect of Sale and Assignment

4.01. Premiere shall have the right, without the City's consent, to transfer or assign this Agreement, in whole or in part, to an Affiliate (hereinafter defined) of Premiere provided that Premiere shall notify the City in writing of such transfer or assignment within ten days after the effective date thereof. For purposes of this Agreement, **Affiliate** (herein so called) shall mean:

- (1) A parent or Premiere-related entity;
- (2) Any business entity succeeding to substantially all of Premiere's assets as a result of a consolidation or merger; or
- (3) Any business entity to which all or substantially all of Premiere's assets have been sold.

4.02 The transfer or assignment of this Agreement, in whole or in part, to an entity which does not satisfy the requirements of Section 4.01 above shall require the City's written consent in advance of any such transfer or assignment.

4.03 Any attempted transfer or assignment of this Agreement in violation of the terms set forth in this Article 4 shall be void ab initio, and shall entitle the City to terminate this Agreement by written notice to Premiere and Premiere Cinema Corp whereupon the parties hereto shall be relieved of all duties hereunder except that City shall be paid the outstanding balance of the loan as provided for in Article 2 or, if applicable, in Article 3, of this agreement.

4.04 In the event of a transfer or assignment permitted by this Article 4, Premiere will be released of any further duties or obligations under this Agreement at

such time as the transferee or assignee agrees, in writing, to assume and be bound by the terms of this Agreement.

#### **Article 5. Independent Contractor/Indemnity**

5.01. In executing this Agreement and in performing their respective obligations hereunder, the City and Premiere are acting independently and not in any form of partnership or joint venture. The City assumes no responsibilities or liabilities to any third parties in connection with this Agreement.

#### **Article 6. Force Majeure**

6.01 Premiere may be excused from performance under this agreement when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that Premiere has prudently and promptly acted to take any and all steps that are within Premiere's control to ensure performance and to shorten the duration of the event of Force Majeure. If Premiere suffers an event of Force Majeure, it shall provide notice of the event to the City immediately. Subject to this provision, such nonperformance shall not be deemed an event of default.

#### **Article 7. Notice**

7.01. All notices required or permitted by this Agreement will be delivered either (a) by certified mail, postage prepaid, effective five days after mailing, or (b) by hand delivery, effective upon delivery, in either case addressed as follows (or to such other address as a party may specify to the other party by notice delivered in accordance with the terms hereof):

**To Premiere:**

Burleson Premiere Cinema  
c/o Premiere Cinema Corp.  
109 West Fourth Street  
Big Spring, TX, 79710

**To the City:**

City of Burleson  
Attn: City Manager  
141 West Renfro  
Burleson, TX 76028

**To Premiere Cinema Corp:**

109 West Fourth St.  
Big Spring, TX 79720

## Article 8. Miscellaneous

8.01. This Agreement was approved by the City Council at its meeting on \_\_\_\_\_.

8.02. If any section, subsection, paragraph, sentence, phrase, or word of this Agreement is held invalid for any reason, the balance of this Agreement will remain in effect and will be read as if the parties intended at all times not to include the invalid section, subsection, paragraph, sentence, phrase, or word.

8.03. This Agreement will be construed under the laws of the State of Texas and the venue of any lawsuit arising hereunder shall be in district court in Johnson County, Texas.

8.04 If on account of any breach or default by a party of its obligations under the terms, conditions, or covenants of this Agreement, it shall be necessary for the other party to employ or engage an attorney or attorneys or use its own attorneys to enforce or defend any of the rights or remedies hereunder, and should the other party prevail, other party shall be entitled to any reasonable attorney's fees, costs, or expenses it incurs in connection herewith.

8.05 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof.

8.06 No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

8.07 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

8.08 No waiver by a party in any event of default, or breach of any covenant, condition or stipulation herein contained shall be treated as waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

8.09 This Agreement may be executed by the parties in multiple counterparts, all of which counterparts when taken together constituting one agreement.

8.10 Premiere agrees to, at all times throughout the life of this agreement, pay any and all taxes levied on the personal property within the Cinema on or before their due date. Should said taxes become delinquent and such delinquency not be remedied within 150 days after receiving notification of delinquency from the respective taxing body, this Agreement shall be terminated. This section shall not be construed as to limit the right of Premiere to challenge the appraised value of its personal property as provided for under law.

June 1, 2009  
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8.11 This agreement shall be governed and construed in accordance with the laws of Texas. Venue of any legal action arising out of this agreement shall be exclusively in Johnson County, Texas

***[Remainder of page intentionally left blank; signatures follow]***

June 1, 2009


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EXECUTED on the respective dates of acknowledgment, to be effective as of the date first set forth above.

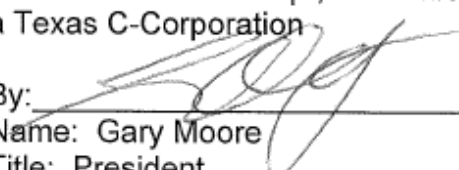
THE CITY OF BURLESON, a Texas municipal corporation

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

Burleson Premiere Cinema, LLC  
a Texas Limited Liability Company

By:  \_\_\_\_\_  
Name: Gary Moore  
Title: Managing Member

Premiere Cinema Corp., as Guarantor  
a Texas C-Corporation

By:  \_\_\_\_\_  
Name: Gary Moore  
Title: President

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 2009 by \_\_\_\_\_, known personally by me to be the \_\_\_\_\_ of the City of Burleson, on behalf of said City.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF HOWARD

This instrument was acknowledged before me on MAY 8, 2009 by Gary Moore, known personally by me in the capacity of Managing Member of Burleson Premiere Cinema, LLC on behalf of said entity.

[Notary Seal]



Kathleen Epley  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF HOWARD

This instrument was acknowledged before me on MAY 8, 2009 by Gary Moore, known personally by in the capacity of President of Premiere Cinema Corp., on behalf of said corporation.

[Notary Seal]



Kathleen Epley  
Notary Public, State of Texas