

Memorandum

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

From: Paul Cain, Deputy City Manager

Date: June 1, 2009

Subject: Third amendment to the Chapter 380 Economic Development Agreement between the City of Burleson and Burleson Commons, L.P.

Council Action Requested:

Approve a third amendment to Chapter 380 Economic Development Agreement between the City of Burleson and Burleson Commons, L.P.

Background Information:

[THIS ITEM IS A COMPANION OF ITEM 5C]

On April 18, 2006 the City and BCLP entered into that certain Economic Development Agreement in accordance with City Resolution No. 583 and Section 380.001 of the Texas Local Government Code. The City Council approved an amendment to this original agreement on March 13, 2008. The second amendment, to revise Exhibit B to reflect the City Council's June 12, 2008 waiver of the requirement for detention ponds, was approved on January 20, 2009. The second amendment also provided for approval of minor modifications to the exhibit through the site plan and platting processes without formally revising the exhibit.

This third amendment provides for BCLP securitization of the \$182,000 loan to be granted by the City to Burleson Premiere Cinema, LLC (BPC) and Premiere Cinema Corporation (PCC) [see Agenda Item 5C]. Under this amendment, BCLP would secure payment of the above loan to the City in the event of a default by either BPC or PCC. This securitization is via a reduction in the tax rebate previously approved by the City Council for BCLP.

Board/Citizen Input:

N/A

Financial Considerations:

There is no expenditure of municipal funds associated with this item.

Attachments:

Third Amendment to Chapter 380 Economic Development Agreement Between The City Of Burleson And Burleson Commons, L.P.

Staff Contact:

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**THIRD AMENDMENT TO THE
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
BURLESON AND BURLESON COMMONS, L.P.**

This Third Amendment to the Economic Development Agreement (this “**Amendment**”) is entered into as of this ___ day 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 Commons, L.P. (BCLP), a Texas Limited Partnership.

WITNESSETH:

WHEREAS, on April 18, 2006 the City and BCLP entered into that certain Economic Development Agreement (the “**Agreement**”) pursuant to City Resolution No. 642 and Section 380.001 of the Texas Local Government Code (Section 380.001), said Agreement incorporated herein; and

WHEREAS, the first amendment to the Agreement was approved by the City Council of the City of Burleson at their meeting on March 13, 2008; and

WHEREAS, the second amendment to the Agreement was approved by the City Council of the City of Burleson at their meeting on January 20, 2009; and

WHEREAS, the parties wish to amend the Agreement for a third time to provide terms by which BCLP shall provide securitization of a loan to be provided by the City to Burleson Premiere Cinema, LLC via a separate agreement (incorporated herein as Attachment A); and

WHEREAS, the City Council finds and determines that this Amended Agreement will effectuate the purposes set forth in the Program, and that BCLP’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 to amend the original Agreement a third time by adding the following:

2.09 Guarantee of Loan from City to Premiere Cinema, LLC.

(a) **BCLP acknowledges the City has entered into that certain Economic Development Agreement with Burleson Premiere Cinema, LLC (“Premiere”), said agreement being incorporated herein as Attachment A and hereinafter referred to as the “Loan”, wherein the City has loaned Premiere \$182,000 according to the terms and conditions of the Loan.**

(b) Should, following the City providing a “notice of default” in accordance with the terms of the Loan, an event of default by Premiere occur under the terms of the Loan and Premiere and/or its Guarantor (Premiere Cinema Corp) fail to remedy the default in accordance with the terms of the Loan and 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 as follows:

(1) The Maximum Grant Payment as described in Article 2 of the Agreement, including all amendments thereto, shall be reduced: (a) 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 (b) annually thereafter by the amount of interest accrued.

(2) In conjunction with any default and any reduction in the Maximum Grant Payment as described in (b)(1) above, the City agrees to assign all rights to the Loan to BCLP. BCLP shall have the right to pursue all legal remedies available to collect any unpaid balance plus accrued interest. In the event that BCLP is successful in collecting any unpaid balance plus accrued interest, BCLP will issue payment to the City within thirty (30) days of the amount that is collected, less all reasonable costs associated with making the collection (as such collection costs are detailed in supporting documentation to be submitted by BCLP to the City in order to substantiate its cost of collections). Upon receipt of payments to the City , the City agrees to increase the Maximum Grant Payment by an amount equal to payments received from BCLP, however, in no case shall the Maximum Grant Payment exceed the amount previously agreed to by the parties, that amount being Five Million, Eight Hundred Thousand Dollars (\$5,800,000).

All other terms of the Agreement, as previously amended, remain unchanged.

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 Commons, L.P. A Texas Limited Partnership

By: *[Signature]*
Name: CHRISTOPHER M. WEST
Title: ITS MANAGER

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 Illinois
COUNTY OF DuPage

This instrument was acknowledged before me on May 21st, 2009 by Chris West, known personally by me to be the manager of Burleson Commons, L.P. on behalf of said corporation.

[Notary Seal]

Mary C. Colletti
Notary Public, State of Illinois

