

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

This Fourth Amendment to the Economic Development Agreement (this "**Amendment**") is entered into as of this 9 day of May, 2014 (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 third amendment to the Agreement was approved by the City Council of the City of Burleson at their meeting on June 1, 2009; and

**WHEREAS**, the parties wish to amend the Agreement for a fourth time to provide terms by which BCLP will develop additional acreage adjacent to Burleson Commons for the purpose of adding a Kroger Marketplace location; 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 fourth time by adding the following:

**Article 1. General Provisions**

1.02. BCLP has purchased certain land (the "**Property**") in the City of Burleson, Johnson County, Texas described on Exhibit A to that certain Chapter 380

Economic Development Agreement between the City and BCLP dated April 13, 2006 and as amended by the certain Amendment to Chapter 380 Economic Development Agreement dated March 20, 2008, that certain Second Amendment to Chapter 380 Development Agreement dated January 20, 2009 and that certain Third Amendment to Chapter 380 Economic Development Agreement dated June 1, 2009 (collectively and with this Amendment, described as the “**380 Agreement**”). BCLP has developed on the Property a retail/commercial center (the “**Development**”) which Development the City has found has and will contribute to an increase in economic development in the City. BCLP proposes to construct or cause to be constructed additional retail and commercial facilities on real estate adjoining the Property and legally described on Exhibit A attached hereto, consisting, in part of Kroger Marketplace having in excess of 90,000 square feet.

- (a) City and BCLP agree that upon BCLP notifying City and providing evidence that Kroger or a subsidiary has purchased the real estate described, or graphically depicted, on Exhibit B, the definition of Property and Development shall be amended to include the real estate described on Exhibit A, attached hereto.
- (b) The addition to the “Property” shall allow for all benefits of the 380 Agreement, as amended, to extend to the new acreage.
- (c) BCLP shall cause the dedication of 60’ of public right-of-way (the “ROW”) upon which will be constructed a New Road of 30’ in width as shown on Exhibit C. This dedication of ROW shall be from SH 174 through the entire property as shown on Exhibit B. Upon completion of construction of the “New Road” and acceptance by City in accordance with the City’s Community Facilities Policy the City shall be responsible for all maintenance, mowing, and repairs to the ROW and improvements constructed thereon.

## **Article 2. Payment Schedule and Term**

Sections 2.07, 2.08 and 2.09 of the 380 Agreement are hereby deleted in their entirety; the referenced theatre having been constructed and the City loan to Premiere having been repaid in full.

## **Article 3. Additional Economic Incentives Provided by the City of Burleson**

- 3.01 (d) The City agrees to provide one-time cash grant of \$325,000 (the “Infrastructure Grant”) to BCLP to support the installation of public infrastructure along SH 174 and “Road A”. Eligible public

infrastructure includes a signal along SH 174, realignment of the median on SH 174 and/or installation of turn /deceleration lanes to support the construction of a new road to be constructed and having a width of approximately 30 feet on the south of the Kroger Marketplace development as depicted in Exhibit C attached hereto and made a part hereof. One Hundred percent (100%) of the Infrastructure Grant shall be paid by the City to BCLP within fifteen (15) days after Kroger starts the formation of the foundations for the Kroger Marketplace.

**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: [Signature]  
Name Paul Cain  
Title: Dep City Mgr

Burleson Commons, L.P. A Texas Limited Partnership

By: Burleson Commons GP, LLC,  
A Missouri limited liability company  
Its General Partner

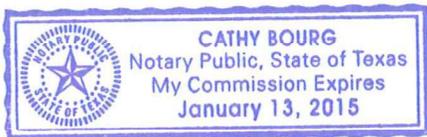
By: [Signature]  
Name CHRISTOPHER M. WEST  
Title: Manager

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on May 9, 2014 by Paul Cain, known personally by me to be the D. City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

[Signature]  
Notary Public, State of Texas



STATE OF Illinois  
COUNTY OF Cook

This instrument was acknowledged before me on April 29, 2014 by Christopher M. West, known personally by me to be the Manager of Burleson Commons GP, LLC, the general partner of Burleson Commons, L.P., on behalf of said limited partnership.

[Notary Seal]

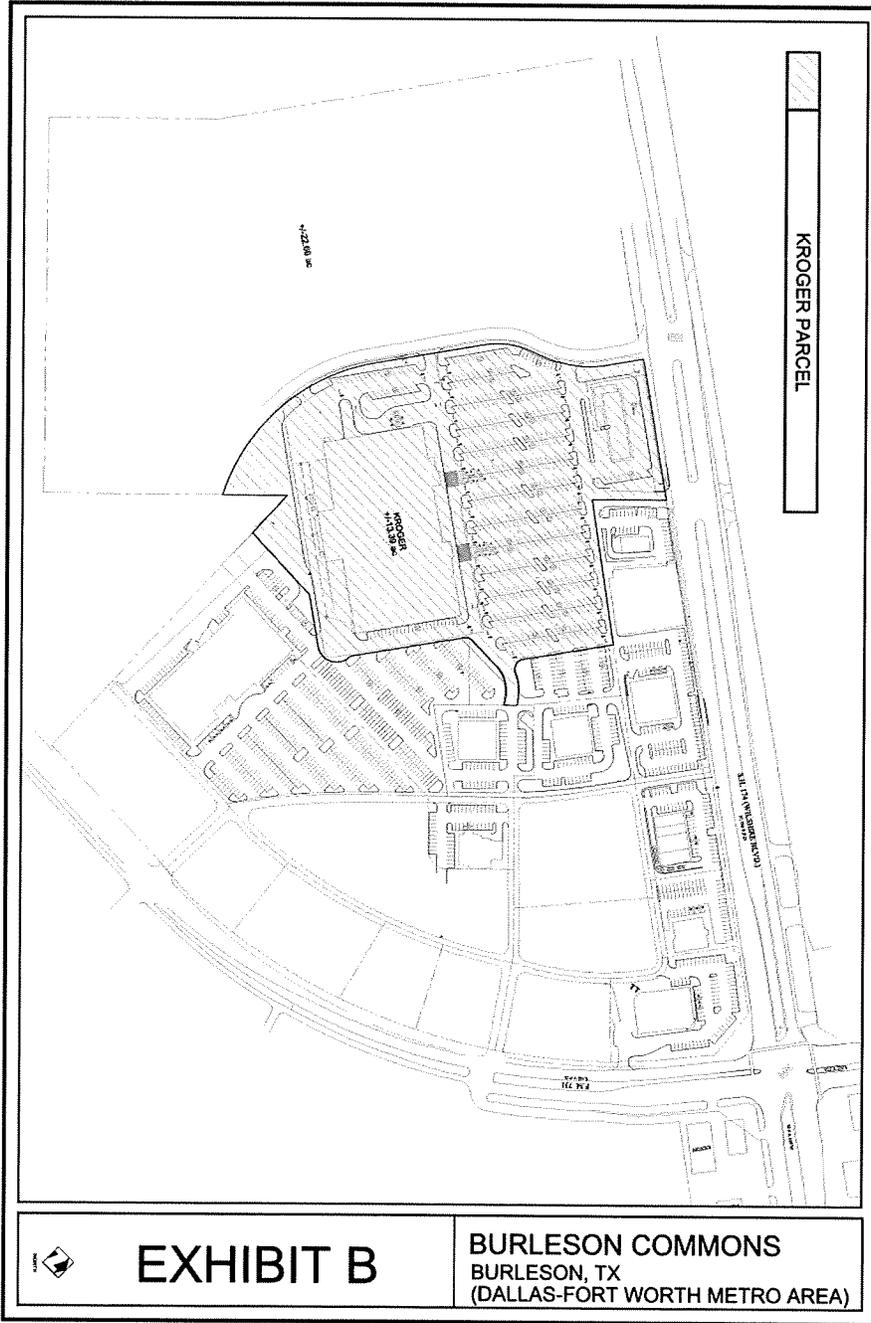


Mary C. Colletti  
Notary Public, State of Illinois

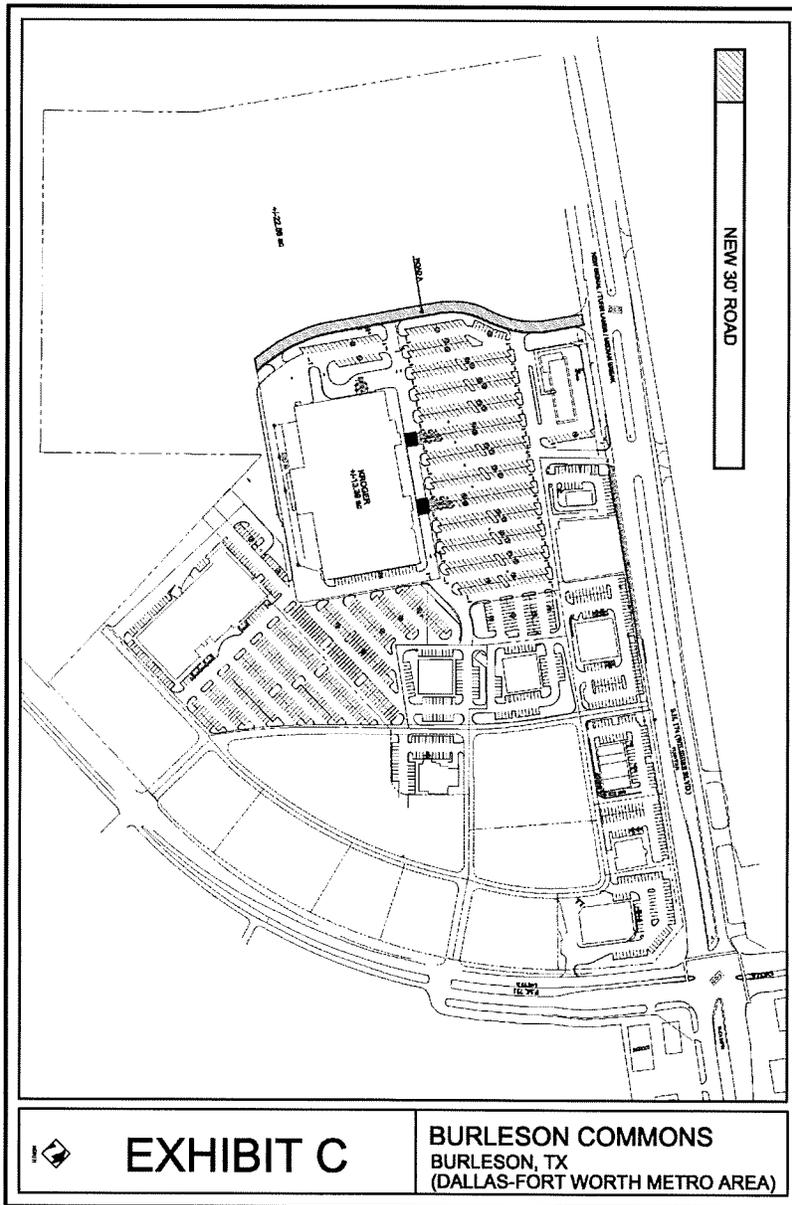


# Exhibit B

Additional Acreage to be Added to Agreement for Kroger Development



**Exhibit C**  
Kroger Marketplace Development  
(Site Plan and Renderings)



**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 1<sup>st</sup> day of June, 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:

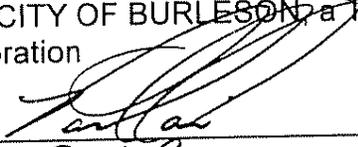
(1) The Maximum Grant Payment as described in Article 2 of the Agreement, including all amendments thereto, shall be reduced: (a) by the amount of the costs expended by the City in an attempt to collect said loan in addition to the unpaid balance of the Loan at the time of the default said "unpaid balance" 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 collection costs incurred by the City. In the event that BCLP is successful in collecting any unpaid balance plus collection costs incurred by the City, 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 Paul Cain

Title: Deputy City Manager

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 June 17, 2009 by Paul Cain, known personally by me to be the Dep. City Mgr. of the City of Burleson, on behalf of said City.

[Notary Seal]



[Signature]  
Notary Public, State of Texas

STATE OF Illinois  
COUNTY OF DuPage

This instrument was acknowledged before me on June 9th, 2009 by Chris West, known personally by me to be the Manager of Burleson Commons, L.P. on behalf of said corporation.

[Notary Seal]

[Signature]  
Notary Public, State of Illinois



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

This Second Amendment to the Economic Development Agreement (this "Amendment") is entered into as of this 20<sup>th</sup> day of January, 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. 583 and Section 380.001 of the Texas Local Government Code (Section 380.001), said Agreement incorporated herein; and

**WHEREAS**, the Agreement was Amended by the Parties on the 20<sup>th</sup> day of January 2009, said Amendment having been approved by the City Council of the City of Burleson at their meeting of March 13, 2008; and

**WHEREAS**, the parties which to amend the Agreement to reflect changes to the development as submitted by BCLP and approved by the City; and

**WHEREAS**, the City Council finds and determines that this Second Amendment 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 Agreement** by replacing Article 1, Section 1.02 as follows:

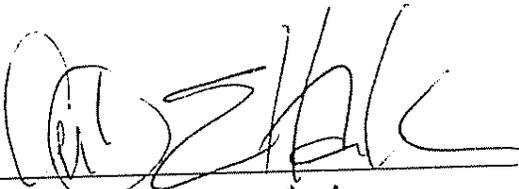
**Article 1. General Provisions**

1.02. BCLP has purchased certain land (the "Property") in the City of Burleson, Johnson County, Texas described on Exhibit A attached hereto and made a part hereof. BCLP proposes to develop on the Property a retail/commercial center (the "Development") which Development the City has found will contribute to an increase in economic development in the City. The parties agree the Development may be revised from time to time via the City's approval of site plans, preliminary and final plats which may include all or a portion of the Property. Said site plans, preliminary and final plats, once approved by the City Council are included within the definition of the "Development" for purposes of this Agreement. This provision shall apply to all site plans, preliminary and final plats approved

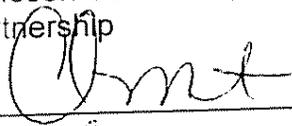
by the City since April 18, 2006 as well as any future preliminary and final plats approved for the Property.

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: Curtis E. Hawk  
Title: City Manager

Burleson Commons, L.P. A Texas Limited Partnership

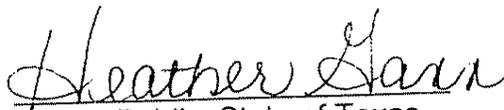
By:   
Name: Curtis E. Hawk  
Title: City Manager

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on Jan. 21<sup>st</sup>, 2009 by Curtis E. Hawk known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]



  
Notary Public, State of Texas

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

This Amended Economic Development Agreement (this "**Amendment**") is entered into as of this 21<sup>st</sup> day of March, 2008 (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. 583 and Section 380.001 of the Texas Local Government Code (Section 380.001), said Agreement incorporated herein; and

**WHEREAS**, the City and BCLP wish to amend the Agreement to provide additional incentives so as to improve the development; and

**WHEREAS**, the City Council finds and determines that this Amendment 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 Agreement** by replacing Articles 1 through 8 thereof with the following:

**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. BCLP has purchased certain land (the "**Property**") in the City of Burleson, Johnson County, Texas described on Exhibit A attached hereto and made a part hereof. BCLP proposes to develop on the Property a retail/commercial center described in Exhibit B hereto (the "**Development**") which Development the City has found will contribute to an increase in economic development in the City.

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.

## Article 2. Payment Schedule and Term

2 01 In partial consideration of BCLP's constructing the Development, in accordance with the provisions of this Agreement, City agrees that, subject to the terms and conditions contained herein, BCLP shall be entitled to Economic Development Program grant payments equal to the amount of taxes paid to the City of Burleson including (a) ad valorem taxes on the Development, and (b) sales taxes paid by businesses within the Development to the Texas Comptroller of Public Accounts and sent to City by said Comptroller, as provided for in terms set forth below in this Agreement

Under no circumstances, however, shall the grant payments include any amount attributable to receipts from imposition of the economic development sales taxes imposed by the City pursuant to Section 4A and/or Section 4B of the Economic Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes.

2 02 TERM. The grant payments shall be for a period of twenty (20) years commencing on the earlier of January 1 of the year following the year which the Development receives its final certificate of occupancy or January 1, 2009 (the 'Commencement Date"), and ending on the earlier of:

- (a) December 31 of the twentieth year after the Commencement Date, or
- (b) the date upon which the maximum amount of grant payments (as defined in 2 03 below) has been paid to BCLP by City.

2 03 MAXIMUM PAYMENT AND SCHEDULE OF PAYMENTS: The maximum amount of grant payments to be paid to BCLP is Five Million, Eight Hundred Thousand dollars and no cents (\$5,800,000), said maximum payment to be paid in annual installments equal to the following percentage of taxes paid (taxes as defined in 2 01 above) during each year throughout the term of this agreement:

|             |      |
|-------------|------|
| Years 1-5   | 100% |
| Years 6-10  | 90%  |
| Years 11-15 | 80%  |
| Years 16-20 | 50%  |

2 05 Grant payments due BCLP under this agreement shall be made annually on or before May 1<sup>st</sup> of the year following each year contained within the term of this agreement

2 06 Each calendar year BCLP agrees to provide or have provided to the City a release that will allow the Texas Comptroller of Public Accounts to release to the City the amount of local sales tax collected by the Comptroller from each business located within the Development. The City shall have the right if it deems necessary to examine the business' appropriate records

## 2 07 CONDITIONS FOR GRANT PAYMENTS

In addition to the other provisions of this Agreement, BCLP must comply with the following conditions to receive the grant payments.

- (a) BCLP shall open the 12 screen theater with stadium seating by December 1, 2008 and cause said theater to operate as a "First Run Multiplex";
- (b) BCLP shall cause relocation of the concession area by December 1, 2008,
- (c) BCLP shall complete construction of improvements to the existing 12 screen motion picture multiplex consisting of two additional 250-300 stadium seat auditoriums (500-600 total seats added) on or before May 1, 2009. Prior to commencement of construction, BCLP shall obtain the City's written consent for the site and building improvements (which shall be generally as shown on Exhibit B attached hereto), which such consent shall not be unreasonably withheld

For purposes of this agreement, "First Run Multiplex" means:

*a theater that primarily 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 BCLP 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 BCLP multiplex shall not be considered "first run" motion pictures*

Nothing herein shall prevent BCLP from periodically showing content other than motion pictures, such as concerts and sporting events presented via simulcast, provided that the theatre primarily offers motion pictures as set forth above.

In the event of default of this section 2 07 the maximum amount of grant payments in section 2 03 above will be reduced by Three Million, Five Hundred Thousand Dollars (\$3,500,000) to Two Million, Three Hundred Thousand Dollars (\$2,300,000)

The following conditions shall not be considered an event of default under the terms of this agreement.

- (1) BCLP is unable to procure an adequate number of first run films due to a reduction in the quantity of films released by the studio(s), distributor or studio restrictions (including but not limited to the industry process of "clearing" by or as a result of any competing theater), or
- (2) Due to the timing of the opening of the theatre, the theater initially presents for viewing motion pictures that may have been shown previously in other theatres in order to present a motion picture on each screen of the first run multiplex at and within 3 months of its opening; or

- (3) Delays or failure to operate as a First Run Multiplex due to force majeure events (as defined in Section 7 of this agreement), or
- (4) repair of damage caused by force majeure events, or
- (5) Remodeling to the theater complex, provided that each such period of remodeling does not exceed four (4) consecutive months during any 12 month period.

## 2.08 TIME FOR CURE

In the event BCLP fails to operate a First Run Multiplex as required by Section 2.07 and such failure is caused by a default by the theatre operator in its obligations to BCLP, BCLP shall be given up to two (2) years from the date of the default (the "cure period") in which to restore the theater as a First Run Multiplex; either through causing compliance by the existing theatre operator or bringing about a new operator. During the cure period, grant payments payable from the City to BCLP pursuant to Section 2.03 hereof shall be reduced to thirty-nine and 66/100 percent (39.66%) of the amount otherwise due from the City not to exceed a maximum grant payment of \$2.3 million dollars (\$2,300,000). Should BCLP fail to restore the theater as First Run Multiplex within the cure period, the maximum grant payment for the remaining term of this agreement shall be reduced to \$2.3 million dollars (\$2,300,000).

Should BCLP restore operation of the theater as a First Run Multiplex during the cure period, the maximum grant payment shall revert to \$5.8 million dollars (\$5,800,000) as provided in Section 2.03 and the termination date for this agreement as defined in Section 2.02(a) above shall be extended by the time required to cure, but in no case more than two (2) years.

2.09 Approval of Operator. BCLP covenants to the City that Burleson Premiere Cinema, LLC, acting by and through its General Partner Gary Moore, shall be the operator of the first run multiplex via a lease and option to purchase agreement with BCLP. The City consents to the selection of Burleson Premiere Cinema, LLC as the theater operator. However, in its consent, the City does not guarantee or warranty Burleson Premiere Cinema, LLC's ability to fulfill the terms of any agreement it may have with BCLP nor shall the City be responsible for any default by Burleson Premiere Cinemas, LLC in any agreements it may have with BCLP.

## Article 3. Additional Economic Incentives Provided by the City of Burleson

3.01 As partial consideration for the construction of the Development and the creation of jobs and other economic benefits anticipated in connection with the operation of the Development, the City also agrees to provide the following incentives and benefits to BCLP.

- (a) The City agrees to assist BCLP in discussions with the Texas Department of Transportation (TxDOT) concerning improvements to any TxDOT facility which may be required for this Development.
- (b) The City agrees to expedite the process for all hearings, reviews, inspections, and contacts with City staff in order to ensure the timely completion of the construction process.
- (c) The City agrees to consider any other reasonable requests made by BCLP in order to assist it in constructing its Development.

#### **Article 4. Effect of Sale and Assignment**

4.01 BCLP 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 BCLP or any other business entity that will own or occupy all or any portion of the Property for the purpose of operating the Development provided that BCLP 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 corporation of BCLP,
- (2) Any wholly owned subsidiary of BCLP or BCLP's parent corporation,
- (3) Any business entity succeeding to substantially all of BCLP's assets as a result of a consolidation or merger, or
- (4) Any business entity to which all or substantially all of BCLP'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 consent after receipt by the City of BCLP's written notification of such proposed transfer at least sixty (60) days before the effective date thereof, provided that the City's consent shall not unreasonably be withheld, conditioned, or delayed.

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 BCLP, whereupon the parties hereto shall be relieved of all duties hereunder except that BCLP shall be entitled to the pro rata portion of the grant payment attributable to sales taxes that were paid prior to the date of such termination, provided, however, that such termination shall not be effective if, within ten days after its receipt of the City's termination notice, BCLP shall notify the City that BCLP has rescinded such attempted transfer or assignment.

4.04 Effective as of the effective date of a transfer or assignment pursuant to Section 4.01 above, BCLP will be released of any further duties or obligations under this Agreement, provided however, that the transferee or assignee must agree in writing to assume and be bound by the terms of this Agreement before BCLP will be so released

4.05 BCLP shall further have the right to pledge its interest under this Agreement in connection with the grant of security for a loan.

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

5.01 In executing this Agreement and in performing their respective obligations hereunder, the City and BCLP 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. Documentation**

6.01 The parties agree that the dollar amount of the part of the grant payment attributable to retail sales taxes will be calculated based upon sales and sales tax information furnished by the Office of the Comptroller of Public Accounts of the State of Texas or any successor agency charged with collecting such information and preparing such reports.

#### **Article 7. Force Majeure**

7.01 BCLP 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 BCLP has prudently and promptly acted to take any and all steps that are within BCLP's control to ensure performance and to shorten the duration of the event of Force Majeure. If BCLP 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 a default or a ground for termination.

#### **Article 8. Notice**

8.01 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 BCLP:**

Burleson Commons, L.P.  
211 Fulton Street  
Suite 700  
Peoria, IL 61602

**To the City:**

City of Burleson  
Attn: City Manager  
141 W. Renfro  
Burleson, Tx 76028

#### **Article 9. Miscellaneous**

9.01. This Amended Agreement was approved by the City Council at its meeting on March 13, 2008.

9.02 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.

9.03. 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.

9.04. The City may record a copy of this Agreement in the official records of Johnson County, Texas.

9.05. 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

9.06 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.

9.07 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

9.08 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.

9.09 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.

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

9.11 BCLP agrees to, at all times throughout the life of this agreement, pay any and all taxes on or before their due date. Should taxes on the Development become delinquent and not be remedied within 150 days after receiving notification from the

respective taxing body, this Agreement shall be terminated. This section shall not be construed as to limit the right of BCLP to challenge taxes as provided for under law.

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

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: [Signature]  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

Burleson Commons, L.P. A Texas Limited Partnership

By: Burleson Commons GP, LLC, a Missouri limited liability company  
By: [Signature]  
Name: \_\_\_\_\_  
Title: One of its Managers

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on March 14, 2008 by Curtis E. Hawk, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]



[Signature]  
Notary Public, State of Texas

STATE OF ~~Missouri~~ Missouri  
COUNTY OF St Louis

This instrument was acknowledged before me on 3/18, 2008 by David Galaner, known personally by me to be the One of its Managers of Burleson Commons, L.P. on behalf of said corporation.

[Notary Seal]

[Signature]  
Notary Public, State of ~~Missouri~~ Missouri

Donna Mae Jordan  
Notary Public - Notary Seal  
State of Missouri  
St. Louis County  
My Commission Expires: 1-9-2012  
Commission #08462485

## EXHIBIT A

### Legal Description of Land

#### TRACT 1

BEING all that tract of land in the City of Burleson, Johnson County, Texas, a part of the JOSHUA MINETT SURVEY, ABSTRACT No. 548, and being all of that 32.365 acre tract of land conveyed to Burleson Commons, LP as recorded in Volume 3378, Page 544, Johnson County Deed Records, all of that 4.761 acre tract of land conveyed to Burleson Commons, L.P. as recorded in Volume 3893, Page 39, Johnson County Deed Records, and being further described as follows:

BEGINNING at a one-half inch iron rod found at the southeast corner of said 32.365 acre tract, said point being the northeast corner of Lot 1, Block 1, Sander's Addition, an addition to the City of Burleson as recorded in Volume 8, Page 28, Johnson County Plat Records, said point being in the west line of F.M. Road 731 (variable width right-of-way);

THENCE South 88 degrees 14 minutes 48 seconds West, 818.03 feet to a one-half inch iron rod with "JBI" yellow cap set at the southwest corner of said 32.365 acre tract, said point being the northwest corner of said Lot 1, said point being in the northeast line of that 64.164 acre tract of land conveyed to Wilshire 174 Joint Venture as recorded in Volume 2433, Page 135, Johnson County Deed Records;

THENCE with the northeast line of said 64.164 acre tract as follows:

North 44 degrees 30 minutes 10 seconds West, 554.41 feet to a one-half inch iron rod with "JBI" yellow cap set at a west corner of said 32.365 acre tract, said point being in the south line of said 4.761 acre tract;

North 44 degrees 37 minutes 15 seconds West, 350.90 feet to a spike found at the west corner of said 4.761 acre tract, said point being in the southeast line of State Highway 174 (variable width right-of-way);

THENCE North 35 degrees 56 minutes 30 seconds East, with the southeast line of State Highway 174, at 424.52 feet passing a one-half inch iron rod with "JBI" yellow cap set at the north corner of said 4.761 acre tract, in all a total of 635.30 feet to a one-half inch iron rod with "JBI" yellow cap set for corner in the northwest line of said 32.365 acre tract;

THENCE with the northwest line of said 32.365 acre tract with the southeast line of State Highway 174 as follows:

North 36 degrees 26 minutes 22 seconds East, 603.35 feet to a concrete monument found for corner;

North 84 degrees 50 minutes 02 seconds East, 126.15 feet to a TXDOT monument found for corner, said point being the intersection of the southeast line of State Highway 174 with the west line of F.M. Road 731;

THENCE with the east line of said 32.365 acre tract with the west line of F.M. Road 731 as follows:

South 50 degrees 05 minutes 48 seconds East, 100.82 feet to a TXDOT monument found for corner;

Southeasterly, 1248.94 feet with a curve to the right having a central angle of 47 degrees 45 minutes 27 seconds, a radius of 1498.39 feet, a tangent of 66.33 feet, whose chord bears South 26 degrees 12 minutes 02 seconds East, 1213.10 feet to a broken TXDOT monument found for corner;

South 03 degrees 35 minutes 58 seconds West, 72.91 feet to a one-half inch iron rod with "JBI" yellow cap set for corner;

South 01 degrees 46 minutes 19 seconds West, 405.53 feet to the POINT OF BEGINNING and containing a GROSS AREA of 1,617,285 square feet or 37.128 acres of land.

#### SAVE & EXCEPT

BEING all that tract of land in the City of Burleson, Johnson County, Texas, a part of the JOSHUA MINETT SURVEY, ABSTRACT No. 548, and being all of that 5.402 acre tract of land conveyed to Margaret Foster, Larry Foster and Candy Foster as recorded in Volume 3920, Page 809, Johnson County Deed Records, and being further described as follows:

COMMENCING at a one-half inch iron rod found at the southeast corner of that 32.365 acre tract of land conveyed to Burleson Commons, LP as recorded in Volume 3378, Page 544, Johnson County Deed Records, said point being the northeast corner of Lot 1, Block 1, Sander's Addition, an addition to the City of Burleson as recorded in Volume 8, Page 28, Johnson County Plat Records, said point being in the west line of F.M. Road 731 (variable width right-of-way);

THENCE North 26 degrees 50 minutes 31 seconds West, 442.70 feet to a point at the south corner of said 5.402 acre tract and the POINT OF BEGINNING of this tract of land;

THENCE with the southwest line of said 5.402 acre tract as follows:

North 53 degrees 33 minutes 38 seconds West, 38.80 feet to a point for corner;

Northwesterly, 235.70 feet with a curve to the right having a central angle of 09 degrees 00 minutes 11 seconds, a radius of 1500.00 feet, a tangent of 118.09 feet, whose chord bears North 49 degrees 03 minutes 32 seconds West, 235.46 feet to a point for corner;

North 44 degrees 33 minutes 27 seconds West, 201.21 feet to a point for corner;

North 45 degrees 25 minutes 35 seconds East, 120.26 feet to a point for corner;

Northeasterly, 78.54 feet with a curve to the left having a central angle of 90 degrees 00 minutes 00 seconds, a radius of 50.00 feet, a tangent of 50.00 feet, whose chord bears North 00 degrees 25 minutes 35 seconds East, 70.71 feet to a point for corner;

North 44 degrees 34 minutes 25 seconds West, 152.86 feet to a point for corner;

North 45 degrees 28 minutes 22 seconds East, 92.34 feet to a point for corner;

North 48 degrees 51 minutes 53 seconds West, 335.57 feet to a point for corner;

THENCE with the north line of said 5.402 acre tract as follows:

North 36 degrees 27 minutes 52 seconds East, 143.87 feet to a point for corner;

Northeasterly, 54.96 feet with a curve to the right having a central angle of 89 degrees 58 minutes 34 seconds, a radius of 35.00 feet, a tangent of 34.99 feet, whose chord bears North 81 degrees 27 minutes 09 seconds East, 49.49 feet to a point for corner;

Southeasterly, 335.99 feet with a curve to the right having a central angle of 27 degrees 33 minutes 28 seconds, a radius of 698.56 feet, a tangent of 171.31 feet, whose chord bears South 39 degrees 46 minutes 49 seconds East, 332.76 feet to a point for corner;

North 56 degrees 13 minutes 29 seconds East, 212.01 feet to a point for corner, said point being in the east line of said 32.365 acre tract, said point being in the west line of said F.M. Road 731;

THENCE with the east line of said 5.402 acre tract as follows:

Southeasterly, 196.95 feet with a curve to the right having a central angle of 07 degrees 31 minutes 52 seconds, a radius of 1498.39 feet, a tangent of 98.62 feet, whose chord bears South 30 degrees 00 minutes 35 seconds East, 196.81 feet to a point for corner in the east line of said 32.365 acre tract;

South 63 degrees 45 minutes 21 seconds West, 212.01 feet to a point for corner;

Southeasterly, 526.60 feet with a curve to the right having a central angle of 23 degrees 27 minutes 17 seconds, a radius of 1286.38 feet, a tangent of 267.04 feet, whose chord bears South 14 degrees 31 minutes 00 seconds East, 522.93 feet to a point for corner;

South 03 degrees 10 minutes 04 seconds West, 85.13 feet to the POINT OF BEGINNING and containing 235,322 square feet or 5.402 acres of land.

Containing a NET AREA of 1,381,963 square feet or 31.726 acres of land.

#### **TRACT 2:**

BEING all that tract of land in the City of Burleson, Johnson County, Texas, a part of the JOSHUA MINETT SURVEY, ABSTRACT No. 548, and being all of that 5.402 acre tract of land conveyed to Margaret Foster, Larry Foster and Candy Foster as recorded in Volume 3920, Page 809, Johnson County Deed Records, and being further described as follows:

COMMENCING at a one-half inch iron rod found at the southeast corner of that 32.365 acre tract of land conveyed to Burleson Commons, LP as recorded in Volume 3378, Page 544, Johnson County Deed Records, said point being the northeast corner of Lot 1, Block 1, Sander's Addition, an addition to the City of Burleson as recorded in Volume 8, Page 28, Johnson County Plat Records, said point being in the west line of F.M. Road 731 (variable width right-of-way);

THENCE North 26 degrees 50 minutes 31 seconds West, 442.70 feet to a point at the south corner of said 5.402 acre tract and the POINT OF BEGINNING of this tract of land;

THENCE with the southwest line of said 5.402 acre tract as follows:

North 53 degrees 33 minutes 38 seconds West, 38.80 feet to a point for corner;

Northwesterly, 235.70 feet with a curve to the right having a central angle of 09 degrees 00 minutes 11 seconds, a radius of 1500.00 feet, a tangent of 118.09 feet, whose chord bears North

49 degrees 03 minutes 32 seconds West, 235.46 feet to a point for corner;  
North 44 degrees 33 minutes 27 seconds West, 201.21 feet to a point for corner;  
North 45 degrees 25 minutes 35 seconds East, 120.26 feet to a point for corner;  
Northeasterly, 78.54 feet with a curve to the left having a central angle of 90 degrees 00 minutes 00 seconds, a radius of 50.00 feet, a tangent of 50.00 feet, whose chord bears North 00 degrees 25 minutes 35 seconds East, 70.71 feet to a point for corner;  
North 44 degrees 34 minutes 25 seconds West, 152.86 feet to a point for corner;  
North 45 degrees 28 minutes 22 seconds East, 92.34 feet to a point for corner;  
North 48 degrees 51 minutes 53 seconds West, 335.57 feet to a point for corner;

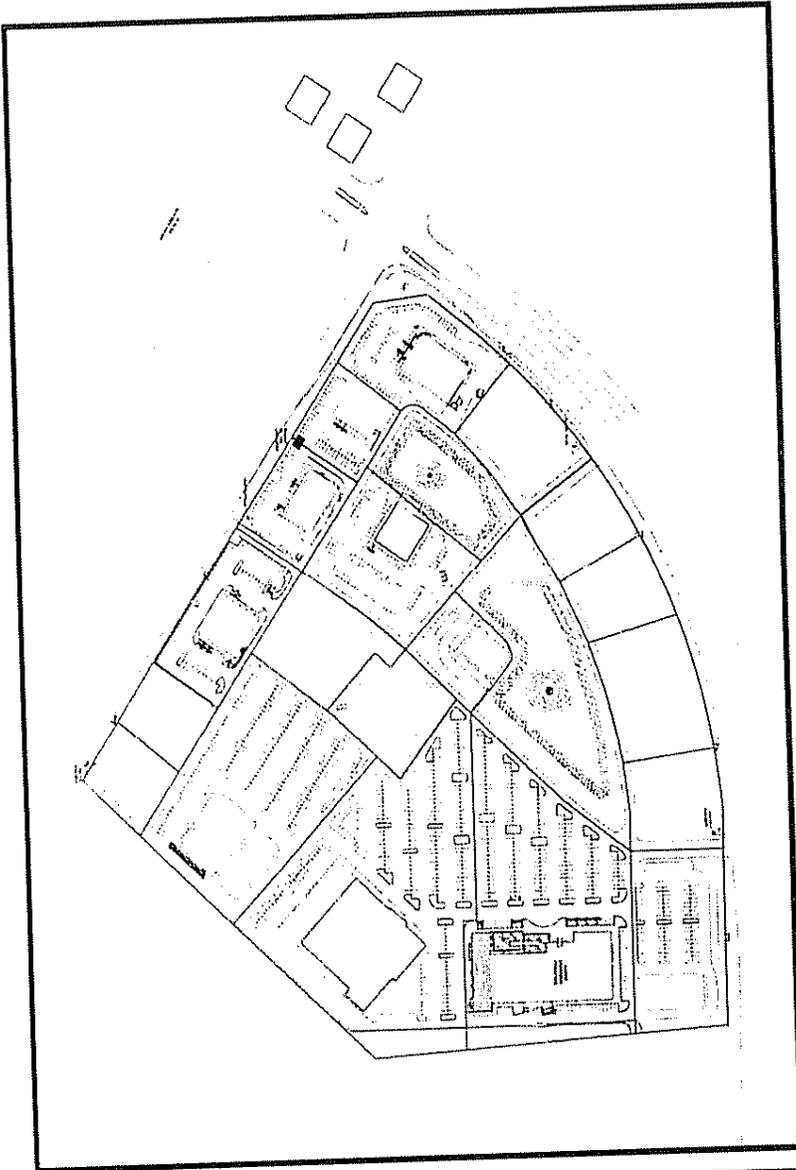
THENCE with the north line of said 5.402 acre tract as follows:

North 36 degrees 27 minutes 52 seconds East, 143.87 feet to a point for corner;  
Northeasterly, 54.96 feet with a curve to the right having a central angle of 89 degrees 58 minutes 34 seconds, a radius of 35.00 feet, a tangent of 34.99 feet, whose chord bears North 81 degrees 27 minutes 09 seconds East, 49.49 feet to a point for corner;  
Southeasterly, 335.99 feet with a curve to the right having a central angle of 27 degrees 33 minutes 28 seconds, a radius of 698.56 feet, a tangent of 171.31 feet, whose chord bears South 39 degrees 46 minutes 49 seconds East, 332.76 feet to a point for corner;  
North 56 degrees 13 minutes 29 seconds East, 212.01 feet to a point for corner, said point being in the east line of said 32.365 acre tract, said point being in the west line of said F.M. Road 731;

THENCE with the east line of said 5.402 acre tract as follows:

Southeasterly, 196.95 feet with a curve to the right having a central angle of 07 degrees 31 minutes 52 seconds, a radius of 1498.39 feet, a tangent of 98.62 feet, whose chord bears South 30 degrees 00 minutes 35 seconds East, 196.81 feet to a point for corner in the east line of said 32.365 acre tract;  
South 63 degrees 45 minutes 21 seconds West, 212.01 feet to a point for corner;  
Southeasterly, 526.60 feet with a curve to the right having a central angle of 23 degrees 27 minutes 17 seconds, a radius of 1286.38 feet, a tangent of 267.04 feet, whose chord bears South 14 degrees 31 minutes 00 seconds East, 522.93 feet to a point for corner;  
South 03 degrees 10 minutes 04 seconds West, 85.13 feet to the POINT OF BEGINNING and containing 235,322 square feet or 5.402 acres of land.

**EXHIBIT B**



|                                    |                  |  |
|------------------------------------|------------------|--|
| SHOPPING<br>CENTER<br>SITE<br>PLAN | <b>Exhibit B</b> | <b>BURLESON COMMONS</b><br>BURLESON, TEXAS<br>DALLAS-FORT WORTH METRO AREA |
|------------------------------------|------------------|--|

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

This Economic Development Agreement (this "Agreement") is entered into as of April 13, 2006 (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 May 27, 1993, the City adopted Resolution No 583 establishing an Economic Development Program (the "Program") pursuant to Section 380.001 of the Texas Local Government Code (Section 380.001); and

**WHEREAS**, BCLP 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 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 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. BPLLC has purchased certain land (the "Property") in the City of Burleson, Johnson County, Texas described on Exhibit A attached hereto and made a part hereof BCLP proposes to develop on the Property a retail/commercial center described in Exhibit B hereto (the "Development"), said Development to include a 12 screen "first run" motion picture theater with stadium seating, which Development the City has found will contribute to an increase in economic development in the City

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.

## Article 2. Refund Schedule and Term

2.01 In partial consideration of BCLP's constructing the Development, in accordance with the provisions of this Agreement, City agrees that, subject to the terms and conditions contained herein, BPLLC shall be entitled to Economic Development Program grant payments equal to the amount of taxes paid to the City of Burleson including: (a) ad valorem taxes on the Development, and (b) sales taxes paid by businesses within the Development to the Texas Comptroller of Public Accounts and sent to City by said Comptroller, as provided for in terms set forth below in this Agreement. Under no circumstances, however, shall the grant payments include any amount attributable to receipts from imposition of the economic development sales taxes imposed by the City pursuant to Section 4A and/or Section 4B of the Economic Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

2.02 The grant payments shall be for a period of fifteen (15) years commencing on the earlier of: (a) January 1 of the year following the year which the Development receives its final certificate of occupancy, (b) upon notification to the City by the Developer they wish to commence the rebate schedule, (c) or January 1, 2009, and ending on the earlier of:

- (a) December 31 of the fifteenth year after the commencement date; or
- (b) the date upon which the maximum amount of grant payments (as defined in 2.03 below) has been paid to BCLP by City

2.03 The maximum amount of grant payments is the lesser of:

- (a) Three Million, Five Hundred Thousand dollars and no cents (\$3,500,000); OR
- (b) the actual costs expended by BCLP for the following:
  - Water Infrastructure—Costs to extend public water supply mains & lines to the Development, specifically excluding the costs of all interior lines not located within a public easement or right of way.
  - Wastewater Infrastructure—Costs to extend public wastewater collection mains and lines to the Development, specifically excluding the costs of all interior lines not located within a public easement or right of way.
  - Stormwater Infrastructure—Costs to (1) receive and carry through the Development offsite stormwater equivalent to a minimum 25 year flood event as such is defined by professional hydraulic analysis reasonably acceptable to the City Engineer, and (2) receive and carry all stormwater runoff generated by or on the Development. The cost of stormwater infrastructure not located within a public easement or right of way are excluded.
  - Traffic Signal—Cost to construct a traffic signal on FM 731 to serve the Development and the adjacent Shenendoah Town Homes located at 1151 Remington Circle.

- Turn Lanes and Deceleration Lanes—Cost to construct additional left turn lanes on.
  - (1) southbound TX 174 at its intersection with FM 731, and
  - (2) northbound FM 731 at its intersection with TX 174
 such turn lanes being necessary to the success of the development and right and left turn lanes into the site from 174 and 731, inclusive of deceleration lanes and related items incidental thereto (including but not limited to pavement markings).
- Wetlands Mitigation – Costs to mitigate the on-site wetlands including soft costs and payment to a mitigation bank

Costs shall be defined as the actual hard construction costs and the associated engineering costs and contractor's overhead and general expenses.

2.04 Grant payments due BCLP under this agreement shall be made annually on or before May 1<sup>st</sup> of the year following each year contained within the term of this agreement.

2.05 Each calendar year BCLP agrees to provide or have provided to the City a release that will allow the Texas Comptroller of Public Accounts to release to the City the amount of local sales tax collected by the Comptroller from each business located within the Development. The City shall have the right if it deems necessary to examine the business' appropriate records

2.06 BCLP agrees to provide city with whatever reasonable and customary documentation the City deems necessary to verify actual costs expended by BCLP for the improvements listed in 2.03(b) above.

2.07 In the event that BCLP fails to construct, or have constructed, a 12 screen "first run" motion picture theater with stadium seating by the time and date in paragraph (a) of this section **OR** once constructed, should the operation of said motion picture theater change so that the theater no longer offers "first run" motion pictures at the then market rate for newly released motion pictures, the portion of the grant payments attributable to the motion picture theater shall be terminated and the maximum amount of grant payments in section 2.03 above will be reduced.

For purposes of calculating the grant payment attributable to the motion picture theater, the parties agree as follows:

- a. If a certificate of occupancy is not issued for said theater by December 31, 2008, the amount of grant payments attributable to the theater is stipulated by the

parties to be one million dollars (\$1,000,000) which amount shall be subtracted from the maximum amount of grant payments in section 2.03 above

- b. If the theater is constructed in accordance with 2.08 (a) above but during the term of this agreement operation of said motion picture theater changes so that the theater no longer offers "first run" motion pictures at the then market rate for newly released motion pictures, then the maximum amount of grant payments in section 2.03 above shall be reduced by the amount of sales taxes and property taxes paid by theater for the most recent complete fiscal year multiplied by the number of years remaining in the term of this agreement. *For illustrative purposes, assume the theater no longer operates as a first run theater with seven years left in the term of this agreement. The parties would determine the actual amount of local (one percent) sales tax and ad valorem (property) tax paid by the theater during the previous calendar year. Assume, for illustrative purposes, that amount is \$100,000. The maximum amount of grant payments in 2.03 above would be reduced by \$700,000 (\$100,000 multiplied by the 7 remaining years left in the term of the agreement).*

Should, during the term of this agreement, the theatre re-commence as a first run cinema, then the maximum amount of grant payments in 2.03 above will be increased for the remainder of the term of this agreement. The increase will be equal to the total amount of sales and property taxes paid by the theater for the year which "first run" motion pictures were offered multiplied by the number of years remaining in the term of this agreement.

### **Article 3. Additional Economic Incentives Provided by the City of Burleson**

3.01. As partial consideration for the construction of the Development and the creation of jobs and other economic benefits anticipated in connection with the operation of the Development, the City also agrees to provide the following incentives and benefits to BCLP.

- (a) The City agrees to assist BCLP in discussions with the Texas Department of Transportation (TxDOT) concerning improvements to any TxDOT facility which may be required for this Development.
- (b) The City agrees to expedite the process for all hearings, reviews, inspections, and contacts with City staff in order to ensure the timely completion of the construction process.
- (c) The City agrees to consider any other reasonable requests made by BCLP in order to assist it in constructing its Development.

### **Article 4. Effect of Sale and Assignment**

4.01. BCLP shall have the right, without the City's consent, to transfer or assign this Agreement to an Affiliate (hereinafter defined) of BCLP or any other business entity that will occupy the Property for the purpose of operating the Development provided that BCLP 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 corporation of BCLP,
- (2) Any wholly owned subsidiary of BCLP or BCLP's parent corporation,
- (3) Any business entity succeeding to substantially all of BCLP's assets as a result of a consolidation or merger; or
- (4) Any business entity to which all or substantially all of BCLP's assets have been sold.

4.02. The transfer or assignment of this Agreement to an entity which does not satisfy the requirements of Section 4.01 above shall require the City's consent as evidenced by an ordinance duly enacted by the City Council after receipt by the City of BCLP's written notification of such proposed transfer at least sixty (60) days before the effective date thereof, provided that the City's consent shall not unreasonably be withheld, conditioned, or delayed.

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 BPLLC, whereupon the parties hereto shall be relieved of all duties hereunder except that BPLLC shall be entitled to the pro rata portion of the grant payment attributable to sales taxes that were paid prior to the date of such termination; provided, however, that such termination shall not be effective if, within ten days after its receipt of the City's termination notice, BCLP shall notify the City that BCLP has rescinded such attempted transfer or assignment.

4.04. Effective as of the effective date of a transfer or assignment pursuant to Section 4.01 or 4.02 above, BPLLC will be released of any further duties or obligations under this Agreement, provided however, that the transferee or assignee must agree in writing to assume and be bound by the terms of this Agreement before BPLLC will be so released.

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

5.01. In executing this Agreement and in performing their respective obligations hereunder, the City and BPLLC 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. Documentation**

6.01. The parties agree that the dollar amount of the part of the grant payment attributable to retail sales taxes will be calculated based upon sales and sales tax information furnished by the Office of the Comptroller of Public Accounts of the State of Texas or any successor agency charged with collecting such information and preparing such reports

**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 BCLP:**  
Burleson Commons, L.P.  
211 Fulton Street  
Suite 700  
Peoria, IL 61602

**To the City:**  
City of Burleson  
Attn: City Manager  
141 W Renfro  
Burleson, Tx 76028

**Article 8. Miscellaneous**

8.01. This Agreement was approved by the City Council at its meeting on April 13, 2006.

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. The City may record a copy of this Agreement in the official records of Johnson County, Texas.

8.05. 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

8.06 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.

8.07 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.

8.08 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.

8.09 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.

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

8.11 BCLP agrees to, at all times throughout the life of this agreement, pay any and all taxes on or before their due date. Should taxes on the Development become delinquent and not be remedied within 150 days after receiving notification from the respective taxing body, this Agreement shall be terminated. This section shall not be construed as to limit the right of BCLP to challenge taxes as provided for under law.

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

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: [Signature]  
Name Curtis Hawk  
Title: City Manager

Burleson Commons, L.P. A Texas Limited Partnership

By: [Signature]  
Name Jeffery D. Giebelhausen  
Title: Manager

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on 4/13, 2006 by Curtis Hawk known personally by me to be the City Manager of the City of Burleson on behalf of said City.

[Notary Seal]

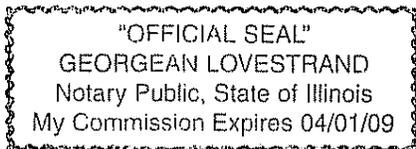


[Signature]  
Notary Public, State of Texas

STATE OF Illinois  
COUNTY OF PEORIA

This instrument was acknowledged before me on April 13, 2006 by Jeff Giebelhausen known personally by me to be the Manager of Burleson Commons, L.P. on behalf of said corporation.

[Notary Seal]



[Signature]  
Notary Public, State of Illinois

EXHIBIT A

Legal Description of Land

Abstract 548, Tract 4, J Minett Survey

Located at 1493 SW Wilshire Blvd , Burleson, Tx 76028

