



**NOTICE OF A MEETING**  
**Brenham Community Development Corporation**  
**Thursday, September 8, 2022 @ 7:30 a.m.**  
**City Hall – 2<sup>nd</sup> Floor Conference Room**  
**200 W. Vulcan St.**  
**Brenham, Texas**

---

1. **Call Meeting to Order**
2. **Invocation and Pledges to the U.S. and Texas Flags**
3. **Discuss and Possibly Act Upon the Minutes from the August 18, 2022 Regular Meeting**
4. **Discuss and Possibly Act Upon a Performance Agreement Between the Brenham Community Development Corporation and Brenham CFA Series, LLC Related to an Economic Development Grant and Authorize the President to Execute Any Necessary Documentation**
5. **Board and Staff Updates**
  - **Economic Development**
  - **Parks & Recreation**
  - **Administration**

**Adjourn**

***CERTIFICATION***

*I certify that a copy of the agenda of items to be considered by the Brenham Community Development Corporation (BCDC) on Thursday, September 8, 2022 was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, Texas on Thursday, September 1, 2022 at 10:15 A.M.*

***Jeana Bellinger, TRMC, CMC***  
***City Secretary/BCDC Secretary***

Executive Sessions: The Brenham Community Development Corporation (BCDC) reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 – Consultation with Attorney, §551.072 – Real Property, §551.073 – Prospective Gifts, §551.074 - Personnel Matters, §551.076 – Security Devices, §551.086 - Utility Competitive Matters, and §551.087 – Economic Development Negotiations.

Disability Access Statement: This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.

I certify that this notice and agenda of items to be considered by the Brenham Community Development Corporation (BCDC) was removed by me from the City Hall bulletin board on \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_

Signature

**MINUTES**

**BRENHAM COMMUNITY DEVELOPMENT CORPORATION**

**August 18, 2022**

A regular meeting of the Brenham Community Development Corporation was held on Thursday, August 18, 2022 at City Hall, Conference Room 2A, 200 W. Vulcan, Brenham, Texas beginning at 7:30 a.m.

Board members present were Darrell Blum, John Hasskarl, Bill Betts, Ken Miller, Jim Kolkhorst, Charles Moser and Gary Crocker.

Board members absent: None

City of Brenham staff members present were Carolyn Miller, Jeana Bellinger, Dane Rau, Susan Cates, Stacy Hardy, Casey Redman, Kyle Branham, Jennifer Hill and Tammy Jaster.

Others present were Jared Engelke.

- 1. Chairman Charles Moser called the meeting to order**
- 2. Invocation and Pledges to the U. S. and Texas Flags – City Manager Carolyn Miller**
- 3. Discuss and Possibly Act Upon Minutes from the April 21, 2022 Regular Meeting and the May 27, 2022 and June 9, 2022 Special Meetings**

A motion was made by John Hasskarl and seconded by Ken Miller to approve the minutes from the April 21, 2022 Regular Meeting and the May 27, 2022 and June 9, 2022 Special Meetings.

Chairman Moser called for a vote. The motion passed with the Board voting as follows:

Chairman Charles Moser	Yes
Vice Chairman Darrell Blum	Yes
Board Member Bill Betts	Yes
Board Member Gary Crocker	Yes
Board Member John Hasskarl	Yes
Board Member Jim Kolkhorst	Yes
Board Member Ken Miller	Yes

#### 4. Discuss and Possibly Act Upon FY2021-22 Third Quarter Financial Statements

Director of Finance – Stacy Hardy presented this item to the Board. Hardy explained the following details about the financial statements:

##### Sales Tax Revenue

- Sales tax revenue budget increased by 3% over the prior year’s revised annual estimate. October thru June collections are \$269,527 above budget.

##### Financial Statements – Fund 250

- Economic Development: Currently have an operating surplus of \$347,925 for the third quarter of FY22. All operating expenditures are within budgeted levels.
- Recreation: Ended the third quarter with an operating surplus of \$266,248. Eleven (11) of the seventeen (17) approved projects were completed as of the end of the third quarter, June 30, 2022.

##### BCDC Capital Projects – Fund 252

- A fund balance of \$,130,378 remains for the Brenham Family Park project expenditures. As of the end of the third quarter, the Texas Parks and Wildlife Grant of \$750,000 had not been received.

A motion was made by Darrell Blum and seconded by Ken Miller to approve the FY2021-22 third quarter financial report as presented.

Chairman Moser called for a vote. The motion passed with the Board voting as follows:

Chairman Charles Moser	Yes
Vice Chairman Darrell Blum	Yes
Board Member Bill Betts	Yes
Board Member Gary Crocker	Yes
Board Member John Hasskarl	Yes
Board Member Jim Kolkhorst	Yes
Board Member Ken Miller	Yes

#### 5. Discuss and Possibly Act Upon the Allocation of Funds for Design, Engineering and Construction Services Related to the City of Brenham Family Park’s Main Creek Crossing and Authorize the President to Execute Any Necessary Documentation

Public Works Director Dane Rau presented this item. Rau explained that in moving forward on enhancements to the Brenham Family Park and preparing for the long-term, staff has reached out to Strand Associates to design a vehicular creek crossing structure which will allow connection between the 38 acres on the south side of the park with the 70 + acres on the north side of the park.

Rau advised the Board that staff received a Professional Services Agreement from Strand to start the preliminary and final design, topographic survey, geotechnical work, as well as bidding and construction-related services for the crossing. The engineering work is valued at \$48,000 with the current estimate related to the construction of this project at \$270,000. Rau asked the Board to approve the allocation of \$48,000 for design, engineering, and construction services. The funds for construction will be requested at a later date.

A motion was made by Jim Kolkhorst and seconded by Ken Miller to allocate funds in the amount of \$48,000.00 for design, engineering, and construction services from Strand Associates Inc. related to the City of Brenham Family Park’s main creek crossing and authorize the President to execute any necessary documentation.

Chairman Moser called for a vote. The motion passed with the Board voting as follows:

Chairman Charles Moser	Yes
Vice Chairman Darrell Blum	Yes
Board Member Bill Betts	Yes
Board Member Gary Crocker	Yes
Board Member John Hasskarl	Yes
Board Member Jim Kolkhorst	Yes
Board Member Ken Miller	Yes

## 6. Board and Staff Updates

- **Economic Development – Director Susan Cates**
  - Updated the Board on several projects within the Southwest Industrial Park and the Brenham Business Center.
  - Provided update on Yellow Truck Market.
- **Parks and Recreation – Director Dane Rau**
  - Updated the Board on personnel changes within his department.
  - Provided an update on various parks and recreation projects.
- **Administration – City Secretary Jeana Bellinger**
  - Advised that the next meeting will be held on Thursday, September 8th

The meeting was adjourned.

---

Charles Moser  
Chairman

**ATTEST:**

---

Jeana Bellinger, TRMC, CMC  
City Secretary/BCDC Secretary

**MEMORANDUM**

**To: BCDC Board of Directors  
Carolyn Miller, City Manager**

**From: Susan Cates, Director of Economic Development**

**Subject: BCDC Performance Agreement with Brenham CFA Series LLC**

**Date: September 1, 2022**

---

For consideration at your September 8, 2022 meeting is a Performance Agreement between Brenham CFA Series LLC and BCDC for the development of a Chick fil A restaurant located on US290 between Cantey and Chappell Hill on the westbound service road in the Market Square Development.

The Economic Development Joint Sub-committee met on September 8, 2021 and discussed a total incentive to bring this project to Brenham of a community investment totaling \$250,000 upon completion of the facility and receipt of the Certificate of Occupancy by the developer. Both the City and County will recognize the tax benefits from this project, therefore the Economic Development Joint Sub-committee recommended that the \$250,000 incentive be shared between the City and County with the City funding \$200,000 (\$150,000 by BCDC and \$50,000 by City general fund) and the County funding \$50,000. This item was discussed with BCDC in Executive Session on September 16, 2021 at which time I was directed to pursue the agreement under these terms.

Mr. Lisciotti and his attorney have reviewed and agreed to the terms as outlined in the proposed Performance Agreement. The Performance Agreement requires that the project receive Certificate of Occupancy by December 31, 2023 and that the investment of Brenham CFA will be a minimum of \$2.5 million exclusive of land acquisition. In 2020, Fox Business estimated the median sales volume of a Chick Fil A restaurant at \$6,884,271. With this estimate the sales tax revenue to City and County will be \$137,685 annually. This means that considering only sales tax revenue the community will reach our return on investment in less than two years.

Companion items will be on the City Council agenda on September 15<sup>th</sup> and on the County agenda on September 20<sup>th</sup>.

**PERFORMANCE AGREEMENT BETWEEN THE  
BREHAM COMMUNITY DEVELOPMENT CORPORATION  
AND BREHAM CFA SERIES LLC**

This Performance Agreement (the “Agreement”) is entered into as of \_\_\_\_\_, 2022 (the “Effective Date”) by and between the Brenham Community Development Corporation, a Type B Texas economic development corporation organized pursuant to Tex. Rev. Civ. Stat. Ann. art. 5190.6 §4B, as codified in Chapters 501 et seq. of the Texas Local Government Code located in Brenham, Washington County, State of Texas (the “BCDC”), by and through its President, and Brenham CFA Series LLC, a Delaware series limited liability company (“Brenham CFA”), collectively sometimes referred to herein as the “Parties.”

**WITNESSETH:**

**WHEREAS**, Brenham CFA seeks to construct and develop approximately 4,947 square feet of commercial space as a freestanding building with associated improvements (the “Project”) approximately as shown on the site plan attached hereto Exhibit “A” and incorporated herein for all purposes pertinent, on approximately 1.796 acres of land located at the northwest corner of west bound U.S. Highway 290E Service Road and Ryan Street in the City of Brenham (the “Property”); and

**WHEREAS**, Brenham CFA has presented an economic assistance request to the BCDC that will facilitate design and construction of the Project in a specified time described herein and according to all City of Brenham, Texas (“City”) development and design ordinances, guidelines, rules, and regulations; and

**WHEREAS**, the development of this Project by Brenham CFA will involve a capital investment of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000) exclusive of land acquisition costs, but including development, construction costs, and furniture, fixtures and equipment (“FF&E”).

**WHEREAS**, the Property, once completed will be initially leased to Chick-fil-A, Inc. to be operated as a quick serve restaurant open to the public; and

**WHEREAS**, based on correspondence the City received from Chick-fil-A, Inc., the BCDC estimates that the economic benefit to the Brenham community from the development of the restaurant will consist of:

- Approximately three (3) manager level jobs
- Approximately 45 to 55 additional employees (a combination of full-time and part-time positions), or approximately 30 additional full-time equivalent (“FTE”) employee positions
- Additional sales tax collected and remitted each year during the restaurant’s operation
- Additional sales tax paid in the first year on new equipment; and

**WHEREAS**, the BCDC has determined that construction of the Project will positively impact the local economy through expansion of the City’s ad valorem tax base, sales tax revenue, and creation of jobs in the community; and

**WHEREAS**, the BCDC Board of Directors supports the continued growth and expansion of economic development in the City by entering into this Agreement to promote and expand desirable commercial growth within the City;

**WHEREAS**, the BCDC is authorized by Chapter 501 et seq., Texas Local Government Code to promote state and local economic development and to stimulate business and commercial activity within the City of Brenham; accordingly the BCDC board of directors hereby determines and finds that the expenditure of BCDC funds as provided for by this Agreement will promote new or expanded business development in the City and the surrounding area;

**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.**  
**AUTHORIZATION AND FINDINGS**

1.01 The BCDC Board of Directors hereby enters into this Agreement to encourage economic development within the City, to promote state and local economic development and to stimulate business and commercial activity within the City of Brenham, and the BCDC Board of Directors finds and determines that this Agreement will effectuate the purposes of economic development, and that Brenham CFA’s performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

**ARTICLE 2.**  
**DEFINITIONS**

2.01 The terms “Agreement,” “Effective Date,” “City,” “Brenham CFA,” “Project,” “Property,” and “Parties” shall have the meanings provided herein above.

2.02 “Substantial Completion” shall mean the point that a Certificate of Occupancy is issued for the Project by the City.

2.03 “Grant Payment” shall mean the payment to Brenham CFA in the amount of Fifty Thousand Dollars (\$150,000.00) upon Substantial Completion of the Project.

**ARTICLE 3.**  
**TERM**

3.01 The term (“Term”) of this Agreement shall commence on the Effective Date herein above and, unless otherwise terminated earlier in accordance with this Agreement, shall terminate on the date Grant Payment is issued to Brenham CFA or December 31, 2023 whichever is



earlier. Notwithstanding the preceding sentence in this Section 3.01, or any other provision of this Agreement, this Agreement shall terminate no later than December 31, 2023; provided however, in the event Brenham CFA achieves Substantial Completion on or prior to December 31, 2023, this Agreement shall be automatically extended until the date the Grant Payment is issued to Brenham CFA.

**ARTICLE 4.**  
**COVENANTS OF BRENHAM CFA**

4.01 Covenants Regarding Construction and Development. In consideration of BCDC agreeing to pay Brenham CFA the Grant Payment in accordance with the terms, provisions, and conditions of this Agreement, Brenham CFA agrees to the following obligations that must be fulfilled in order to receive the Grant Payment:

- (A) Complete construction of the building and associated improvements to be occupied by the tenant, Chick-fil-A, Inc., or its operator, in the Project and obtain a Certificate of Occupancy issued by the City no later than December 31, 2023.
- (B) Design and construct the Project in accordance with the statutes, ordinances, rules, and regulations of the City of Brenham, as well as applicable local, County, state, and federal laws. Further, Brenham CFA will design and construct the Project in accordance with the Brenham Market Square – Architectural Enhancement Requirements set forth in Exhibit “B” attached hereto and incorporated herein for all purposes pertinent. Brenham CFA shall be deemed a “Developer” as that term is used in Exhibit “B.”
- (C) The total investment by Brenham CFA in Project design, development, installation, construction and FF&E shall be at least approximately Two Million Five Hundred Thousand Dollars (\$2,500,000). For the purposes of this Section 4.01(C), expenditures made by Brenham CFA for the acquisition of the Property shall be excluded in calculating the total amount of investment by Brenham CFA in the Project.
- (D) Brenham CFA shall timely pay and remain current on all property taxes imposed on the Project or any portion thereof, subject to appeal rights in accordance with applicable law, and subject to a right to cure any delinquency.
  - 1. Brenham CFA shall have the right to protest, contest, or litigate: (a) any assessment of the value of the Project by the Washington County Appraisal District which appraises real or personal property on all or any part of the Project; and, (b) any tax imposed on the Project by any taxing authority with jurisdiction that includes the Project.

**ARTICLE 5.**  
**COVENANTS OF THE BCDC**

5.01 Subject to Brenham CFA complying with all of its duties and obligations in this Agreement, the BCDC agrees to pay Brenham CFA a Grant Payment in the amount of One

Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) upon Brenham CFA's compliance with Section 4.01 and reaching Substantial Completion on the Project.

- 5.02 The BCDC agrees to pay the Grant Payment, in the amount specified in Section 5.01, within thirty (30) days of Brenham CFA reaching Substantial Completion in accordance with Section 4.01(A) herein above, and the BCDC's receipt of Brenham CFA's written certification that (a) Brenham CFA has completed the Project in accordance with Section 4.01(A), Section 4.01(B) and Section 4.01(C) of the Agreement, and (b) as of the date of certification, Brenham CFA is in compliance with the requirements of Section 4.01(D) of the Agreement, using the form attached hereto as Exhibit "C" and incorporated herein for all purposes pertinent.

**ARTICLE 6.**  
**AUTHORITY; COMPLIANCE WITH LAW**

- 6.01 Brenham CFA hereby represents and warrants to the BCDC that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Brenham CFA and this Agreement constitutes the legal, valid, and binding obligation of Brenham CFA, and is enforceable in accordance with its terms and provisions.
- 6.02 Notwithstanding any other provision of this Agreement, Brenham CFA shall comply with all federal, state, and local laws and regulations.
- 6.03 Brenham CFA certifies that Brenham CFA does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If Brenham CFA is convicted of a violation under 8 U.S.C. § 1324a(f), that is proven to have occurred during the term of this Agreement, Brenham CFA shall repay the full amount of the public Grant Money provided under this Agreement plus interest, at the rate of the prime rate plus two percent (2%) per annum, not later than the 120<sup>th</sup> day after the date the BCDC notifies Brenham CFA of the violation.

**ARTICLE 7.**  
**BREACH AND REMEDY; TERMINATION; ADDITIONAL REMEDIES**

- 7.01 Except as otherwise provided in this Section 7.01 and Subsection 7.03(E), should either party fail to comply with any of the material terms or conditions of this Agreement, and any such failure (hereinafter, a "breach") specified, remains uncured for ninety (90) days following the breaching party's receipt of written notice (the "Breach Notice") from the non-breaching party, delivered in accordance with Section 12.09 herein below, of the event and nature of such breach; provided, however, that if such breach is not reasonably susceptible of cure within such ninety (90) day period and the breaching party has commenced and is continuing to diligently pursue the cure of such breach, then after first advising the non-breaching party of such cure efforts, the breaching party shall automatically receive an additional ninety (90) day period within which to cure such

breach. The non-breaching party may authorize additional time to cure any such breach but is not obligated to grant such additional time. Notwithstanding anything expressed or implied herein to the contrary, no breach shall exist if the failure of either party to fully perform its obligations hereunder is the result of a force majeure event as defined in Article 8 herein below. Further time for cure of a breach by the breaching party shall be extended by the reasonable time the breaching party is delayed by a force majeure event. The provisions of this Section 7.01 providing the parties hereto with a right to cure a breach are not applicable to Subsection 7.03(E) of this Agreement.

- 7.02 Upon the occurrence and during the continuation of any uncured breach, the BCDC shall have the right to suspend the Grant Payment specified in Article 5 herein above, pursuant to a notice (the “Suspension Notice”) delivered in accordance with Section 12.09 herein below. If the BCDC delivers a Suspension Notice pursuant to this Section 7.02, then Brenham CFA shall thereafter have no right to receive the Grant Payment specified in Article 5 herein above unless and until Brenham CFA has cured the breach or breaches specified in the Breach Notice.
- 7.03 This Agreement shall terminate upon any one of the following:
- (A) Except as set forth in Section 3.01 above, on December 31, 2023; unless mutually extended by Brenham CFA and the BCDC acting through its Board of Directors, or at such time when the BCDC has paid a Grant Payment totaling One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00), whichever occurs first.
  - (B) Subject to the right to cure described in this Article 7, upon written notice from Brenham CFA to the BCDC, upon any breach by the BCDC of its obligations specified in this Agreement.
  - (D) Subject to the right to cure described in this Article 7, upon written notice from the BCDC to Brenham CFA, upon a breach by Brenham CFA of its obligations specified in this Agreement.
  - (E) By the BCDC, immediately upon written notice to Brenham CFA, with no right to cure as described in this Article 7, if Brenham CFA: 1) has not completed the Project and obtained a Certificate of Occupancy to be occupied by the tenant, Chick-fil-A, Inc. or its operator, by December 31, 2023.

**ARTICLE 8.**  
**FORCE MAJEURE**

Performance of the parties' obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and the parties' obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, unreasonable delay in issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), unreasonable delay in governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions, pandemic, epidemic or other public health emergency, or other causes beyond the parties' reasonable control, including but not limited to, any governmental order or restriction, or any court order or judgment resulting from any litigation affecting the Project, Property or this Agreement.

**ARTICLE 9.**  
**GIFT TO PUBLIC SERVANT OR TO BRENHAM CFA REPRESENTATIVE**

- 9.01 **No Benefit.** Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 9.02 **Right of Reimbursement.** Notwithstanding any other legal remedies, BCDC may obtain reimbursement for any expenditure or Grant Payment made to Brenham CFA as a result of the improper offer, agreement to confer, or conferring of a benefit to a BCDC employee or official.

**ARTICLE 10.**  
**ASSIGNMENT**

Brenham CFA may not assign any part of this Agreement without express written approval by the BCDC Board of Directors, which approval will not be unreasonably withheld, provided that any approved assignee assumes, in writing, all of Brenham CFA's obligations under this Agreement.

**ARTICLE 11.**  
**INDEMNIFICATION**

- 11.01 BRENHAM CFA EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BCDC, AND ITS DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND VOLUNTEERS AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR**

**PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF BRENHAM CFA OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE BCDC, OR ITS DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR VOLUNTEERS.** Nothing in this paragraph may be construed as waiving any governmental immunity or other defense available to the BCDC under state or federal law except as expressly provided herein. This provision is solely for the benefit of Brenham CFA and the BCDC and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 11.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The BCDC (including its past, present and future officers, elected officials, directors, employees and agents of the BCDC) does not assume any responsibility to any third party in connection with Brenham CFA's construction of the Development.

**ARTICLE 12.**  
**MISCELLANEOUS MATTERS**

- 12.01 Time is of Essence. Time is of the essence in this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 12.02 Applicable Law and Venue. This Agreement is made subject to and in accordance with the City of Brenham Home Rule Charter and ordinances of City, as amended, and all applicable local, state and federal laws and regulations. This Agreement is performable in Washington County, Texas. Exclusive venue for any action arising under or involving this Agreement shall lie in the State District Courts of Washington County or if in federal court, the United States District Court for the Western District of Texas.
- 12.03 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.
- 12.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 12.05 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative,

trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

- 12.06 Governmental Powers. By execution of this Agreement, the BCDC does not waive or surrender any governmental immunities, powers or rights.
- 12.07 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 12.08 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without mutual written agreement of the parties to be attached and made a part of this Agreement.
- 12.09 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) three business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

**Brenham CFA:**

Brenham CFA Series LLC  
c/o Lisciotti Development Corp.  
83 Orchard Hill Park Drive  
Leominster, MA 01453  
ATTN: Gregg P. Lisciotti

**With a copy to:**

Fellman Kapilian Law, P.C.  
54 Jaconnet Street, Suite 300  
Newton, MA 02461  
ATTN: Scott H. Kapilian, Esq.  
[skapilian@fellmankapilian.com](mailto:skapilian@fellmankapilian.com)

**City:**

Brenham Community Development Corporation  
200 W. Vulcan St.  
Brenham, TX 77833  
ATTN: Carolyn D. Miller, President

**With a copy to:**

Cary L. Bovey  
Bovey & Cochran, PLLC

2251 Double Creek Dr., Suite 204  
Round Rock, Texas 78664  
(512) 904-9441  
Fax (512) 904-9445  
[cary@boveycochran.com](mailto:cary@boveycochran.com)

- 12.10 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.
- 12.11 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.
- 12.12 Attorney's Fees. The parties hereto agree that the prevailing party in any dispute, lawsuit or other legal proceeding between the parties arising out of this Agreement shall be entitled to recover its reasonable attorney's fees and costs.

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

**BRENHAM COMMUNITY DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: Carolyn D. Miller  
Title: President

**STATE OF TEXAS**

**COUNTY OF WASHINGTON**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by Carolyn D. Miller, President of the Brenham Community Development Corporation, a Type B Texas economic development corporation organized pursuant to Tex. Rev. Civ. Stat. Ann. art. 5190.6 §4B, as codified in Chapters 501 et seq. of the Texas Local Government Code, on behalf of said economic development corporation.

[Notary Seal]

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



APPROVED AS TO FORM

By: \_\_\_\_\_  
Cary L. Bovey, City Attorney

**BRENHAM CFA SERIES LLC,**  
a Delaware series limited liability company

By: \_\_\_\_\_  
Name: Gregg P. Lisciotti  
Title: Manager

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022  
by Gregg P. Lisciotti, the Manager of Brenham CFA Series LLC, a Delaware series limited liability  
company.

[Notary Seal]

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