

CAGLE TERRACE CORPORATION

Date: August 23, 2019

To: Board of Directors

From: Tracee B. Pross, Secretary/Treasurer

Subject: **INITIAL AGENDA**
Initial Meeting of the Board of Directors
Thursday, August 29, 2019, 5:00 p.m.
901 N. Broadway
Knoxville, Tennessee 37917

1. Call to Order.

REDEVELOPMENT/LEGAL ISSUES (Brad Peters)

2. Resolution regarding the formation and organizational matters.
(attached)
3. Adjourn

BOARD ACTION FORM

MEETING DATE	August 29, 2019
AGENDA ITEM DESCRIPTION	Resolution regarding the formation and organizational matters of Cagle Terrace Corporation.
SUBMITTED BY	Name & Title: Brad Peters, VP of Redevelopment/Legal Services Department: Executive Management
MEETING TYPE	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Special
AGENDA CLASSIFICATION	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Regular
BUDGET / FINANCIAL IMPACT	Budgeted: <u>N/A</u> Expenditure: <u>filing fees</u> Source of Funds:
APPROVAL/REVIEWS	<input checked="" type="checkbox"/> Department Head /Vice President <input type="checkbox"/> Budget/Finance <input checked="" type="checkbox"/> Legal Counsel Name of Reviewer: <u>Mark Mamantov</u> <input checked="" type="checkbox"/> Executive Director/CEO <input type="checkbox"/> Other - Name & Title: _____
STAFF RECOMMENDED ACTIONS	Approve: <input checked="" type="checkbox"/> Deny: <input type="checkbox"/> Defer: <input type="checkbox"/>
<u>BACKGROUND</u>	
<p>1. What's the objective of the requested action? In order to facilitate the rehabilitation of Cagle Terrace through an FHA loan, KCDC is forming Cagle Terrace Corporation.</p> <p>2. Why is the action needed now? The formation of a bankruptcy remote entity is a requirement to be able to close an FHA loan.</p> <p>3. Who are the parties involved and what are their roles (if appropriate)? Cagle Terrace Corporation is an instrumentality of KCDC. KCDC will be the party responsible for rehab and management of the units.</p> <p>4. What are the long term and short term exposures to KCDC? There are no short term exposures except normal construction risks. The long term exposures relate to the ability of the corporation to have positive cash flow through the loan term.</p>	
HISTORICAL / TRANSACTIONAL INFORMATION (who, when, where)	The original RAD Chap was received from HUD on November 8, 2018.
ATTACHMENTS	Resolution

RESOLUTION NO. 2019-_____

**RESOLUTION OF THE BOARD OF DIRECTORS OF
CAGLE TERRACE CORPORATION REGARDING
FORMATION AND ORGANIZATIONAL MATTERS**

The board of directors of Cagle Terrace Corporation, a Tennessee nonprofit corporation (the "Corporation"), has met pursuant to proper notice and does hereby resolve:

Action of Incorporator

RESOLVED, that the Action of the Incorporator of the Corporation taken by written consent dated as of August __, 2019, and all actions reflected therein, be, and the same hereby are, ratified, approved, and adopted by the undersigned for the benefit of the Corporation; and

FURTHER RESOLVED, that the Incorporator be, and the same hereby is, discharged of any further obligations, duties or liability to the Corporation.

Charter

RESOLVED, that the Charter of the Corporation, filed in the office of the Secretary of State of Tennessee on August __, 2019 and recorded in the Knox County Register of Deeds, is hereby ratified and approved.

Bylaws

RESOLVED, that the Bylaws attached hereto as Exhibit A are hereby approved and adopted; and

RESOLVED, that upon receipt of the FHA Project Number, the Secretary of the Corporation is hereby directed to insert the FHA Project Number in Article XI of the Bylaws.

Officers

RESOLVED, that the following named persons are hereby declared elected to the offices of the Corporation set forth opposite their respective names to serve as such officers pursuant to the Bylaws:

President - Benjamin M. Bentley

Vice President - Joyce Floyd

Secretary and Treasurer - Tracee B. Pross

Assistant Vice President of Legal Services - Brad Peters

Bank Accounts

RESOLVED, that the officers of the Corporation are hereby authorized and directed for and on behalf of the Corporation to designate from time to time one or

more banks, trust companies or other banking institutions to act as depository or depositories for the funds of the Corporation for and during such period as such officer may from time to time deem necessary or desirable in the interests on the Corporation and to open or close out from time to time accounts in any such depository so selected;

FURTHER RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized and directed, in the name of and on behalf of the Corporation, to take any and all actions that such officer may deem necessary or advisable in order to establish bank accounts from time to time for the efficient conduct of the Corporation's business;

FURTHER RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized and empowered to sign checks drawn on such account(s); and

FURTHER RESOLVED, that any resolutions required by said banking institutions shall be attached to these resolutions and are hereby adopted in their entirety as if such resolutions were a part hereof as of the date of adoption of these resolutions.

Payment of Organizational Expenses

RESOLVED, that the officers of the Corporation be, and they hereby are, authorized and directed to pay all fees and expenses incident to or required in the organization of the Corporation.

General Authority and Ratification

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized and directed, on behalf and in the name of the Corporation, to prepare or cause to be prepared and to execute, deliver, verify, acknowledge, file or record any documents, instruments, certificates, statements, papers, or any amendments thereto, as may be deemed necessary or advisable in order to effectuate the actions approved herein, and to take such further steps and do all such further acts or things as are necessary or desirable to carry out the transactions contemplated by the foregoing resolutions; and

FURTHER RESOLVED, that the authority and power given hereunder be deemed retroactive and any and all acts authorized hereunder performed prior to the passage of these resolutions, are hereby ratified and approved.

Adopted this _____ day of August, 2019.

CAGLE TERRACE CORPORATION

By: _____
Secretary

EXHIBIT A
BY-LAWS
OF
CAGLE TERRACE CORPORATION

These Bylaws shall regulate the business and affairs of Cagle Terrace Corporation (the "Corporation"), subject to the provisions of the Charter of the Corporation (as amended or restated from time to time, the "Charter") and any applicable provisions of the Tennessee Nonprofit Corporation Act (as amended, the "Act").

ARTICLE I. OFFICES

Section 1.1 Principal Office. The principal office of the Corporation shall be located at 901 N. Broadway, Knoxville, Knox County, Tennessee 37917. The Corporation may have such other offices, either within or without the State of Tennessee, as its Board of Directors may designate or as the business of the Corporation may require from time to time.

Section 1.2 Registered Office. The registered office of the Corporation required by the Act to be maintained in the State of Tennessee may, but need not, be identical to the principal office in the State of Tennessee; and the address of the registered office may be changed from time to time by its Board of Directors.

ARTICLE II. MEMBERS

The Corporation shall not have members.

ARTICLE III. DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be supervised by its Board of Directors (the "Board"), which shall exercise in the name of and on behalf of the Corporation all of the rights and privileges legally exercisable by the Corporation as a corporate entity, except as may otherwise be provided by law, the Charter, or these Bylaws. In addition, without limiting the foregoing, the Board shall be authorized and empowered:

- (a) To employ such persons as in its opinion are needed for the administration of the Corporation and to pay reasonable compensation for services and expenses thereof;
- (b) To receive, accept, administer, invest and distribute on behalf of the Corporation property contributed, gifted or bequeathed to the Corporation; and
- (c) To make distributions of income and principal in furtherance of the Corporation's purposes in such amounts and proportions as the Board, in its discretion, shall determine from time to time.

Section 3.2 Number and Tenure. The directors of the Corporation shall be the same persons who are elected to hold the offices of Chairman, Vice Chairman, and Treasurer of Knoxville's Community Development Corporation ("KCDC"). The election of any person to any such office in KCDC shall be deemed to be an election of such person to the Board of Directors of the Corporation. Each director shall hold office until the expiration of the term for which he/she is elected, and thereafter until his successor has been elected and qualified. The Board of Commissioners of KCDC shall have the power to appoint and remove all directors of the corporation.

Section 3.3 Limited Personal Liability. No person who is or was a Director of the Corporation, nor such person's heirs, executors or administrators (hereinafter collectively referred to for purposes of this Section as a "Director"), shall be personally liable to the Company for monetary damages for breach of fiduciary duty as a Director. However, this provision shall not eliminate or limit the liability of a Director:

- (a) for any breach of a Director's duty of loyalty to the Corporation;
- (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
- (c) under § 48-58-304 of the Act.

If the Act hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a Director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the full extent permitted by the amended Act. No repeal or modification of the provisions of this Section, either directly or by the adoption of a provision inconsistent with the provisions of this Section, shall adversely affect any right or protection, as set forth herein, existing in favor of a particular individual at the time of such repeal or modification.

Section 3.4 Annual Meeting. The regular annual meeting of the Board shall be held without other notice than this Section of the Bylaws immediately following the annual meeting of Knoxville's Community Development Corporation in May of each year and at the same place as the annual meeting of Knoxville's Community Development Corporation.

Section 3.5 Special Meetings. Special meetings of the Board may be called by the President or by any Director, and it shall thereupon be the duty of the Secretary-Treasurer to cause notice of such meeting to be given as hereinafter provided. The President or the Director calling the meeting shall fix the time and place (which may or may be anywhere within or without the State of Tennessee) for the holding of the meeting.

Section 3.6 Notices. Notice of the time, place and purpose of any special meeting of the Board shall be delivered to each Director not less than three (3) days previous thereto either personally, by mail or by electronic mail, by or at the direction of the Secretary-Treasurer, the President or the Director calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director at his address as it appears on the records of the Corporation with postage thereon prepaid. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 3.7 Quorum and Participation. A majority of the total number of Directors in office shall constitute a quorum for the transaction of business at any meeting of the Board,

provided that if less than such majority of the Directors is present at said meeting, a majority of the Directors present may adjourn the meeting from time to time; and provided further that the Secretary-Treasurer shall notify any absent Directors of the time and place of such adjourned meeting.

Section 3.8 Manner of Acting. Each Director shall be entitled to one (1) vote upon any matter properly submitted for a vote to the Board. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, except as may otherwise be specifically provided by law, by the Charter, or by these Bylaws. Members of the Board absent from any meeting shall not be permitted to vote at such meeting by written proxies.

Section 3.9 Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board at which action on any Corporation matter is taken shall be presumed to have assented to the action taken, unless such Director's dissent shall be entered in the minutes of the meeting, or unless he or she shall forward such dissent by certified mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 3.10 Compensation. Neither Directors nor officers shall receive any salary for their services. Any director or officer of the Corporation may also perform legal services for the Corporation; otherwise, no director or officer shall receive compensation for service to the Corporation in any other capacity, nor shall any close relative or a Director or officer receive compensation for serving the Corporation. The term "close relative" as used herein shall mean any brother or sister of any Director or officer, the forebears and descendants of a Director or officer or any such brother or sister and any spouse of a Director or officer or any aforesaid person.

ARTICLE IV. OFFICERS

Section 4.1 Number. The officers of the Corporation shall be a President, Vice President, Secretary-Treasurer and such other officers as may be determined by the Board from time to time to perform such duties as may be designated by the Board. In no event shall a member of the Board serve as an officer of the corporation.

Section 4.2 Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the regular annual meeting of the Board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until the next regular annual meeting of the Board or until his successor shall have been elected. A vacancy in any office held by an officer, because of death, resignation, removal, disqualification or otherwise, may be filled by the Board. A retiring officer may succeed himself or herself.

Section 4.3 Removal of Officers and Agents by Directors. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Corporation will be served thereby.

Section 4.4 President. The President:

(a) Shall be the principal executive officer of the Corporation, shall in general, supervise and control all of the business and affairs of the Corporation, and unless otherwise determined by the members of the Board, shall preside at all meetings of the members and the Board;

(b) May sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board, or by these Bylaws, to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and

(c) Shall in general perform all duties incident to the office of the present and such other duties as may be prescribed by the Board from time to time.

Section 4.5 Vice President. In the absence of the President or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall also perform such other duties as from time to time may be assigned to him by the Board.

Section 4.6 Secretary-Treasurer. The Secretary-Treasurer shall:

(a) Keep the minutes of the meetings of the members and of the Board in one or more books provided for that purpose;

(b) See that all notices are duly given in accordance with these Bylaws or as required by law;

(c) Be custodian of the corporate records and of the seal of the Corporation and affix the seal of the Corporation to documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws;

(d) Keep a register of the names and post office addresses of all Directors;

(e) Have a general charge of the books of the Corporation;

(f) Keep on file at all times a complete copy of the Charter and Bylaws of the Corporation containing all amendments thereto (which copy shall always be open to the inspection of any Director), and at the expense of the Corporation, forward a copy of the Bylaws and of all amendments thereto to each Director;

(g) In general, perform all duties incident to the office of Secretary, and such other duties as from time to time may be assigned to him/her by the Board; and

(h) Have charge and custody of and be responsible for all funds and securities of the Corporation;

(i) Be responsible for the receipt of and the issuance of receipts for all monies due and payable to the Corporation and for the deposit of all such monies in the name of

the Corporation in such bank or banks, trust companies or other depositories, as shall be selected in accordance with the provisions of these regulations; and

(j) In general, perform all the duties incident to the office of Treasurer, and such other duties as from time to time may be assigned to him/her by the Board.

Section 4.7 Resignation. An officer may resign such officer's position at any time by tendering such resignation in writing to the President or, in the case of the resignation of the President, to the Secretary. A resignation shall become effective upon the date specified in such notice, or, if no date is specified, upon receipt of the resignation by the Corporation at its principal place of business.

Section 4.8 Compensation. The powers, duties and compensation, if any, of officers, agents and employees shall be fixed by the Board, subject to the provisions of these regulations with respect to compensation for Directors and officers and close relatives of Directors and officers.

ARTICLE V. NON-PROFIT OPERATION

The Corporation shall at all times be operated on a non-profit basis, and no interest or dividends shall be paid or payable by the Corporation to any Director as such, and shall be operated for the charitable purposes for which the Corporation was created.

ARTICLE VI. CONTRACTS, LOANS, CHECKS, DEPOSITS, INVESTMENTS

Section 6.1 Contracts and Employment of Agents. The Board may authorize any officer or agent to enter into any contract, or execute and deliver any instrument, in the name of and on behalf of the Corporation. The Board shall be specifically authorized, in its sole discretion, to employ and to pay the compensation of such agents, accountants, custodians, experts, consultants and other counsel, legal, investment or otherwise, as the Board shall deem advisable, and to delegate discretionary powers to, and rely upon information furnished by, such individuals or entities. Such authority may be general or confined to specific instances.

Section 6.2 Loans. No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name, unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.

Section 6.3 Checks. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Secretary-Treasurer and countersigned by the President or Vice President of the Corporation.

Section 6.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation with such banks, trust companies, brokerage accounts, investment managers, or other depositories as the Board may from time to time select.

Section 6.5 Fiscal Year. The fiscal year of the Corporation shall mean a twelve (12) month period commencing the first day of July of each and every year and shall end on the following last day of June.

Section 6.6 Gifts. The Board of Directors may accept, on behalf of the Corporation, any contribution, gift bequest or devise for the general purposes or any special purpose of the Corporation.

ARTICLE VII. BOOKS, RECORDS AND AUDITS

Section 7.1 Books and Records. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board and committees having any of the authority of the Board, and shall keep at the registered or principal office a record giving the names and addresses of the Directors. So long as the Corporation acts and functions as an instrumentality of KCDC, then all books and records of the Corporation may be inspected by KCDC, its agents or attorneys at any time.

Section 7.2 Audits. The Corporation shall cause audits of all its books and records to be performed by a firm of independent certified public accountants as necessary. Copies of the audits shall be provided to KCDC for its review.

ARTICLE VIII. MISCELLANEOUS

KCDC shall have power to make and adopt such rules and regulations not inconsistent with law, the Charter, or these regulations, as it may deem advisable for the management of the business and affairs of the Corporation.

ARTICLE IX. WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the laws of the State of Tennessee relating to non-profit corporations or under the provisions of the Charter or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE X. AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the affirmative vote of two-thirds of the Directors present at any regular or special meeting, provided a quorum, as provided in these Bylaws, be present and provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal, or such requirement shall have been duly waived by all Directors.

ARTICLE XI. HUD REQUIRED PROVISIONS

Notwithstanding any clause or provision in the Charter or Bylaws to the contrary and so long as the United States Department of Housing and Urban Development ("HUD") or a successor or assign of HUD is the insurer or holder of a loan to the Corporation (the "HUD-Insured Loan") secured by the mortgage on Cagle Terrace, FHA No. [_____] in the City of Knoxville, Knox County, Tennessee (the "Project") the following provisions shall apply:

Section 11.1 If any of the provisions of the organizational documents conflict with the terms of the HUD-insured Note, Security Instrument, or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.

Section 11.2 No provision required by HUD to be inserted into the organizational

documents may be amended without HUD's prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into these Bylaws and any other provision of these Bylaws, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the Charter and any HUD-required provisions of these Bylaws, the HUD-required provisions will govern.

Section 11.3 Unless otherwise approved in writing by HUD, the Corporation's business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the Project and activities incidental thereto. The Corporation shall not engage in any other business or activity. The Project shall be the sole asset of the Corporation, which shall not own any other real estate other than the aforesaid Project.

Section 11.4 None of the following will have any force or effect without the prior written consent of HUD:

- (a) Any amendment that modifies the term of the Corporation's existence;
- (b) Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD-2530, Previous Participation Certification, or 24 CFR § 200.210, et seq.);
- (c) Any amendment that in any way affects the HUD Loan Documents;
- (d) Any amendment that would authorize any member, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Corporation for all matters concerning the Project which require HUD's consent or approval;
- (e) A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1; or
- (f) Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the Regulatory Agreement).

Section 11.5 The Corporation is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.

Section 11.6 Any incoming member/partner/owner of the Corporation must as a condition of receiving an interest in the Corporation agree to be bound by the HUD Loan Documents and all other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the other members/partners/owners.

Section 11.7 Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the Regulatory Agreement in a manner satisfactory to HUD.

Section 11.8 The key principals of the Corporation identified in the Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the Regulatory Agreement.

Section 11.9 The Corporation shall not be voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

Section 11.10 The Corporation has designated Benjamin M. Bentley as its official representative for all matters concerning the Project that require HUD consent or approval. The

signature of this representative will bind the Corporation in all such matters. The Corporation may from time to time appoint a new representative to perform this function, but within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the Project, the Corporation will promptly provide HUD with the name of that person and the nature of that person's management authority.

Section 11.11 Notwithstanding any provision in these Bylaws to the contrary, any obligation of the Corporation to provide indemnification under these Bylaws shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the Corporation and (iii) available "surplus cash" of the Corporation as defined in the Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the Corporation shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.

Section 11.12 Neither Corporation, nor its members, managers, partners, officers or directors, shall, without HUD's prior written approval, grant a security interest in any of the Corporation's or the Project's assets.