

**FIRST AMENDED AND RESTATED BYLAWS**  
**OF**  
**BERKSHIRE VILLAGE TOWNHOUSES, INC.**

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**ARTICLE I. NAME AND LOCATION OF CORPORATION**

Section 1. The name of this Corporation is Berkshire Village Townhouses, Inc. Its principal office is located at 1862 South 31<sup>st</sup> Street, Kansas City KS.

**ARTICLE II. PURPOSE**

Section 1. The purpose of this Corporation is to provide its members with housing and community facilities on a nonprofit basis consonant with the provisions set forth in its Articles of Incorporation.

**ARTICLE III. MEMBERSHIP**

Section 1. Eligibility. Any natural person who is either a legal resident or a citizen of the United States of America approved by the Board of Directors shall be eligible for membership, provided that s/he executes a Subscription Agreement and Occupancy Agreement in the usual form employed by the Corporation covering a specific unit in a particular mortgage area of Berkshire Village Townhouses.

Section 2. Application for Membership. Application for membership shall be presented in person on a form prescribed by the Board of Directors, and all such applications shall be acted upon promptly by the Board of Directors and/or a Board authorized representative.

Section 3. Members, Authorized Memberships, and Occupancy Agreements

(a) The members shall consist of the individuals comprising the first Board of Directors, as identified in the Articles of Incorporation, or their successors and such subscribers as have been approved for membership by the Board of Directors and who have paid for their membership and received membership certificates. The status of the Directors named in the Articles of Incorporation (or their successors elected by them) as members shall terminate at the first annual membership meeting, unless they have executed Subscription Agreements and Occupancy Agreements.

(b) The authorized membership of the Corporation shall consist of 320 memberships, all of one class, with a par value of

\$75.00 each.

- (c) The Corporation will offer Occupancy Agreements on the dwellings in Berkshire Village Townhouses, which Occupancy Agreements shall all be of one class. The down payment under an Occupancy Agreement (which down payment is hereinafter sometimes referred to as "Value of Occupancy Agreement") shall be in the sum as determined by the Board of Directors from time to time.

Section 4. Membership Certificates. Each membership certificate shall state that the Corporation is organized under the laws of the State of Kansas, the name of the registered holder of the membership represented thereby, the corporation lien rights as against such membership as set forth in this Article, and the preferences and restrictions applicable thereto, and shall be in such form as shall be approved by the Board of Directors. Membership certificates shall be consecutively numbered, bound in one or more books, and shall be issued therefrom upon certification as to full payment. Every membership certificate shall be signed by the President or First Vice President, and the Secretary or Second Vice President, and shall be sealed with the corporate seal.

Section 5. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the Corporation and alleged to have been destroyed or lost, upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion, and as a condition precedent to the issuance thereof, require the registered owner of such lost or destroyed certificate or certificates, or his/her legal representative, to advertise the same in such manner as the Board of Directors shall require and to give the corporation a bond in such sum as the Board of Directors may require as indemnity against any claim that may be made against the Corporation.

Section 6. Lien. The Corporation shall have a lien on the outstanding regular memberships in order to secure payment of any sums which shall be due or become due from the holders thereof for any reason whatsoever, including any sums due under any occupancy agreements.

Section 7. Transfer of Membership. Except as provided herein, membership shall not be transferable and, in any event, no transfer of membership shall be made upon the books of the Corporation within ten (10) days next preceding the annual meeting of the members.

- (a) Death of Member. If, upon death of a member, his/her membership in the Corporation passes by will or intestate distribution to a member of his/her immediate family, such legatee or distributee may, by assuming in writing the terms of the Occupancy Agreement, , within sixty (60) days after member's death, and paying all amounts due thereunder, become a member of the Corporation. If member dies and an obligation is not assumed in accordance with the foregoing, then the Corporation shall have an option to purchase the membership from the deceased member's estate in the manner provided in paragraph (b) of this Section, written notice of the death being equivalent to notice of intention to withdraw. If the Corporation does not exercise such option, the provisions of paragraph (c) of this Section shall be applicable, the references to "member" therein to be construed as references to the legal representative of the deceased member.
- (b) Option of Corporation to Purchase. If the member desires to leave the project, he shall notify the Corporation in writing of such intention and the Corporation shall have an option for a period of thirty (30) days thereafter, but not the obligation, to purchase the membership, together with all of the member's rights with respect to the dwelling unit, at an amount to be determined by the corporation as representing the transfer value thereof, less any amounts due by the member to the Corporation under the Occupancy Agreement, and less the cost or estimated cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the Corporation to place the dwelling unit in suitable condition for another occupant. The purchase by the corporation of the membership will immediately terminate the member's rights and the member shall forthwith vacate the premises.
- (c) Procedure Where Corporation Does Not Exercise Option. If the Corporation waives in writing its right to purchase the membership under the foregoing option, or if the Corporation fails to exercise such option within the thirty (30) day period, the member may sell his/her membership to any person who has been duly approved by the Corporation as a member and occupant. If the Corporation agrees, at the request of the member, to assist the member in finding a purchaser, the Corporation shall be entitled to charge the member a fee it deems reasonable for this service. When the transferee has been approved for membership and has executed the prescribed Occupancy Agreement, the retiring member shall be released of his/her obligations under his/her Occupancy Agreement, provided s/he has paid all amounts due the Corporation to date.
- (d) Transfer Value. Whenever the Board of Directors elects to purchase a membership, the term "transfer value" shall mean an amount equal to the average of the sale prices for the last five (5) sales of similar units, whether those sales were between the Corporation and a member, between a member and an incoming member or **between the Corporation and an incoming member**, less the sum of all amounts the member owes to the Corporation; all applicable transfer fees and expenses; all unit rehabilitation costs; and all other costs, expenses and amounts owed to the Corporation pursuant to the Occupancy Agreement, the Articles of Incorporation, the Bylaws, or the Rules and Regulations.

Section 8. Termination of Membership for Cause. In the event the Corporation has terminated the rights of a member under the Occupancy Agreement, the member shall be required to deliver promptly to the Corporation his/her membership certificate and his/her Occupancy Agreement, both endorsed in such manner as may be required by the Corporation. The Corporation shall thereupon at its election either (1) repurchase said membership at its transfer value (as hereinabove defined) or the amount the retiring member originally paid for the acquisition of his/her membership certificate, whichever is the lesser, or (2) proceed with reasonable diligence to effect a sale of the membership to a purchaser, and at a sales price acceptable to the Corporation. The retiring member shall be entitled to receive the amount so determined, less

the following amounts (the determination of such amounts by the Corporation to be conclusive):

- (a) any amounts due to the Corporation from the member under the Occupancy Agreement;
- (b) the cost or estimated cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the Corporation to place the dwelling unit in suitable condition for another occupant; and
- (c) legal and other expenses incurred by the Corporation in connection with the default of such member and the resale of his/her membership. In the event the retiring member for any reason should fail for a period of 10 days after demand to deliver to the Corporation his/her endorsed membership certificate, said membership certificate shall forthwith be deemed to be canceled and may be reissued by the corporation to a new purchaser.

Section 9. Sales Price. Memberships may be sold by the Corporation or the member only to a person approved by the Board of Directors in accordance with the requirements of the Corporation's rules and regulations and procedures, and sales price shall not exceed the transfer value as provided in this Article, except that in sales effected by the Corporation a service charge, as determined by the Board of Directors from time to time, may be charged by the Corporation. Where the sale is accomplished by a member, a certificate in form approved by the Board of Directors as to the price paid shall be executed by the seller and purchaser and delivered to the Corporation.

#### ARTICLE IV. MEETINGS OF MEMBERS

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the Corporation or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The annual meeting of the Corporation shall be held on the second Thursday of September of each year. At such meeting there shall be elected by the ballot of the members a Board of Directors in accordance with the requirements of Section 3 of Article V of these Bylaws. The members may also transact such other business of the Corporation as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition signed by twenty (20) percent of the members having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the members present, either in person, by proxy, or by absentee ballot.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each member of record, at his/her address as it appears on the membership book of the Corporation, or if no such address appears, at his/her last known place of address, at least ten (10) but not more than sixty (60) days prior to such meeting. Service may also be accomplished by the delivery of any such notice to the member at his/her dwelling unit or last known address. Notice by either such method shall be considered as notice served.

Section 5. Quorum. The presence, either in person, by proxy, or by absentee ballot of at least fifteen (15) percent of the members of record of the Corporation shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of members. If the number of members at a meeting drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted.

Section 6. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, or a meeting has been ended because the number of members at said meeting has dropped below the quorum, the members who are present, either in person, by proxy, or by absentee ballot may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, at which subsequent meeting the quorum requirement shall be ten (10) percent.

Section 7. Voting. At every meeting of the regular members, each member present, either in person, by proxy or by absentee ballot, shall have the right to cast one vote on each question and never more than one vote. The vote of the majority of those present, in person by proxy, or by absentee ballot shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Articles of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No member shall be eligible to vote or to be elected to the Board of Directors who is shown on the books or management accounts of the Corporation to be more than 30 days delinquent in payments due the Corporation under his/her Occupancy Agreement.

Section 8. Proxies. Except as provided in Article VIII, a member may appoint as his/her proxy only a member of his/her immediate family (as defined by the Board of Directors) except that an unmarried member may appoint any other member as his/her proxy. In no case may a member cast more than one vote by proxy in addition to his/her own vote. Any proxy must be filed with the Secretary, or his or her designee, at least 5 hours before the appointed time of each meeting or be given to the holder of the proxy under the direct supervision of the Board of Directors or their representative.

Section 9. Absentee Voting. Any member, not in attendance at an annual or special meeting, shall have the right to cast one vote on each question appearing on the meeting notice, and never more than one vote, by absentee ballot. Notwithstanding anything in these Bylaws to the contrary, the member cannot vote via absentee ballot on an issue other than those issues that appear on the meeting notice. Any question brought to the floor during a meeting may not be voted on by absentee ballot. Absentee ballots must be requested from the Secretary, or his or

her designee, at least five (5) days prior to each meeting date and must be filed with the Secretary, or his or her designee, at least five (5) hours before the appointed time of each meeting or be given by the member to the Secretary, or his or her designee, under the direct supervision of the Board of Directors or their representative.

Section 10. Order of Business. The order of business at all regularly scheduled meetings of the regular members shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Report of manager or managing agent.
- (g) Election of inspectors of election.
- (h) Election of directors.
- (i) Unfinished business.
- (j) New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of meeting.

## **ARTICLE V. DIRECTORS**

Section 1. Number and Qualification. The affairs of the Corporation shall be governed by a Board of Directors composed of five (5) persons, all of whom shall be members of the Corporation.

Section 2. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Corporation and may do all such acts and things as are not by law or by these Bylaws directed to exercised and done by the members. The powers of the Board of Directors shall include but not be limited:

- (a) To accept or reject all applications for membership and admission to occupancy of a dwelling unit in the cooperative housing project, either directly or through an authorized representative;
- (b) to establish monthly carrying charges as provided for in the Occupancy Agreement, based on an operating budget formally adopted by such Board, but subject to maintaining not-for-profit operations in accordance with Article VII;
- (c) to engage an agent or employees for the management of the project under such terms as the Board may determine;
- (d) To terminate membership and occupancy rights for cause; and
- (e) To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and which are consistent with these Bylaws and the Articles of Incorporation.

Section 3. Election and Term of Office. The term of the Directors named in the Articles of Incorporation shall expire when their successors have been elected at the first annual meeting or any special meeting called for that purpose; provided that any such special meetings to be held prior to the first annual meeting shall be called only as directed by resolution of the Board of Directors. At the first annual meeting of the members the term of office of two Directors shall be fixed for three (3) years. The term of office of two Directors shall be fixed at two (2) years, and the term of office of one Director shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Director, his/her successor shall be elected to serve a term of three (3) years. The directors shall hold office until their successors have been elected and hold their first meeting.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by the members at the next annual meeting to serve out the unexpired portion of the term.

Section 5. Removal of Directors. At any regular or special meeting duly called, any Director elected by the members may be removed with or without cause by the affirmative vote of 30% of the entire regular membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than 30 days delinquent in payment of his/her carrying charges or membership rights have been terminated pursuant to Article 3, Section 8, shall be automatically terminated and the remaining Directors shall appoint his/her successor as provided in Section 4, above. The procedure for discipline of a Director who has violated the code of ethics and/or has engaged in behavior tending to injure the good name of Berkshire Village Townhomes, disturb its well-being or hampered it in its work is as follows: the first violation shall result in a warning/reprimand and the second offense shall result in removal from the Board of Directors. If the first offense is egregious and remaining on the Board would further harm the Corporation or any member(s) of Berkshire Village Townhomes, as determined by a majority of the remaining Directors, the Director shall be removed from the Board immediately without a warning/reprimand.

Section 6. Compensation. No compensation shall be paid to Directors for their services as Directors. No remuneration shall be paid to a Director for services performed by him/her for the corporation in any other capacity, unless a resolution authorizing such remuneration shall be unanimously adopted by the Board of Directors before the services are undertaken. No remuneration or compensation shall in any case be paid to a Director without the approval of the Administration. A Director may not be an employee of the Corporation.

Section 7. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 8. Regular Meeting. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least four such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or e-mail, at least three (3) days prior to the day named for such meeting.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on three days notice to each Director, given personally or by mail, telephone or e-mail, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three Directors.

Section 10. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him/her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 12. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Corporation handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Corporation.

## ARTICLE VI. OFFICERS

Section 1. Designation. The principal officers of the corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer all of whom shall be elected by and from the Board of Directors. The Directors may appoint an assistant treasurer and an assistant secretary, and such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Corporation shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his/her successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Corporation; preside at all meetings of the members and of the Board of Directors; and have all of the general powers and duties which are usually vested in the office of president of a corporation, including but not limited to the power to appoint committees from among the membership from time to time as he or she may in his or her discretion decide its appropriate to assist in the conduct of the affairs of the Corporation.

Section 5. Vice President(s). The Vice President shall take the place of the President and perform his/her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Vice President with the designation of second Vice President shall act in place of the first Vice President and the third Vice President, if any, shall act in place of the second Vice President if the second Vice President is unable to act. If the President or any of the Vice Presidents are not able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice President(s) shall also perform such other duties as shall from time to time be imposed upon him/her/them by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Corporation; have the custody of the seal of the Corporation; have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and s/he perform, in general, all the duties incident to the office of secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation; and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Corporation in such depositories as may from time to

time be designated by the Board of Directors. The treasurer may delegate these functions to a management company pursuant to a management agreement all of which shall be approved by the Board of Directors.

## ARTICLE VII. NON PROFIT OPERATIONS

Section 1. Affordability Restrictions and Income Qualification. The corporation shall put in place, and the Board of Directors shall adopt, affordability restrictions and resident income qualification criteria patterned, in part, after Section 221(d)(3) of the National Housing Act and the restrictions and criteria, in part, shall limit the corporation's ability to allow residents other than those that are income qualified to occupy its units.

Section 2. Non Profit Operations. The corporation shall operate exclusively on a not-for-profit basis as a cooperative housing project for limited or low-income residents, as defined in Section 221(d)(3) of the National Housing Act.

Section 3. Intent of Operations. It is intended that the corporation's operations shall in no way be construed as the corporation opting out of the affordability restrictions, other resident qualification restrictions, or restrictions with respect to operation of the cooperative housing complex contrary to those set forth in Section 221(d)(3) of the National Housing Act, nor shall the corporation's operations be construed as an intent to operate the corporation in any manner inconsistent with the way it has been operated since its incorporation and the development of Berkshire Village Townhomes.

Section 4. Occupancy Charges. In conjunction with Article V(2)(b), the corporation shall set occupancy charges for each member resident based on a budget that reflects average (or weighted or discounted average, as determined by the Board of Directors) actual operating expenses from prior years and reserve requirements approved by the Board without accommodation for or consideration of, a profit motivation and without distribution of net income to any member.

## ARTICLE VIII. AMENDMENTS

These Bylaws may be amended by the affirmative vote of the majority of the entire regular membership of record at any regular or special meeting. For purposes of this Article only, a member may appoint another member as his or her proxy or the member may follow the absentee voting process. A member may cast up to five (5) votes as a proxy holder in addition to his or her own vote. All proxies must be filed with the Secretary, or his or her designee, at least 5 hours before the appointed time of the meeting or be given to the holder of the proxy under the direct supervision of the Board of Directors or their representative. Amendments may be proposed by the Board of Directors or by petition signed by at least twenty (20) percent of the members. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

## ARTICLE IX. CORPORATE SEAL

The Board of Directors shall provide a suitable corporate seal containing the name of the Corporation, which seal shall be in the charge of the Secretary or authorized representative.

## ARTICLE X. FISCAL MANAGEMENT

Section 1. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of May every year, except that the first fiscal year of the Corporation shall begin at the date of incorporation. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts of the Corporation shall be kept under the direction of the Board of Directors and in accordance with reasonable accounting practices consistently applied but, in any event, pursuant to lender and auditor requirements from time to time.

Section 3. Auditing. At the closing of each fiscal year, the books and records of the Corporation shall be audited by a Certified Public Accountant acceptable to the Board of Directors, whose report will be prepared and certified in accordance with the requirements of the lender from time to time. Based on such reports, the Corporation will furnish its members with an annual financial statement including the income and disbursements of the Corporation. The Corporation will also supply the members, as soon as practicable after the end of each calendar year, with a statement showing each member's pro rata share of the real estate taxes and mortgage interest paid by the Corporation during the preceding calendar year.

Section 4. Inspection of Books. Financial reports and the membership records of the Corporation shall be available at the principal office of the Corporation for inspection at reasonable times by any member.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors: all notes and contracts, including Occupancy Agreements, shall be executed on behalf of the Corporation by any officer of the corporation or authorized representative; and all checks shall be executed on behalf of the corporation by any two officers of the Corporation or authorized representative.

Section 6. Association with Other Cooperatives. The Corporation may become a member of an association of cooperatives who join

together for purposes of mutual aid and of advancing the cooperative movement as a means of providing housing for consumers.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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**EVELYN VERNON**  
President

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**VICKY BURGARD**  
Secretary