

**PDM UTILITY CORPORATION  
AMENDED AND RESTATED  
BY-LAWS**

As Amended on April 23, 2022

**ARTICLE I. PURPOSE AND POWERS**

**Section 1.1. Purpose.** The purpose for which PDM Utility Corporation (the "Corporation") is formed is to provide and ensure, on a non-profit basis, water and sewer services to all subscribers requesting such services within the geographical boundaries of the Palmas del Mar Development. Palmas del Mar is a residential tourism resort community with an area of approximately 3000 cuerdas and 8,000 units authorized to be developed within the municipalities of Humacao and Yabucoa, Puerto Rico, pursuant to the master plan approved by the Planning Board in 1968, as amended, modified or supplemented from time to time.

**Section 1.2. Non-Profit.** The Corporation shall be a non-profit entity and shall maintain its non-profit status under Section 1101.01 of the Puerto Rico Internal Revenue Code of 2011, as amended, and Puerto Rico Department of the Treasury applicable regulations, as the same now exists or as they may thereafter be amended from time to time. The Corporation shall take such actions necessary and in furtherance of the tax-exempt purpose of the Corporation and, in doing so, engage in any lawful act or activity consistent with its non-profit status. No activity of the Corporation shall be exercised in any manner that would be inconsistent with its non-profit status. The Corporation shall not be conducted or operated for profit and no part of the net earnings of the Corporation shall inure to the benefit of any individual, nor shall any of the profits or assets of the Corporation be used other than for the purposes of the Corporation.

**Section 1.3. Powers, Restrictions and Limitations.** The Corporation shall have all of the powers, and be subject to the restrictions and limitations set forth in the Articles of Incorporation and amendments thereto.

**ARTICLE II. OFFICE**

**Section 2.1. Principal Office.** The physical and mailing address of the designated office of the Corporation in the Commonwealth of Puerto Rico is located at 10 EXECUTIVE OFFICE DRIVE, HUMACAO, PR, 00971-5235. The Corporation may also have other offices for the conduct of its services at such other places as the Board of Directors of the Corporation (the "Board") may determine from time to time. The name of its resident agent at such address is PDM Utility Corporations Attention: Executive Director and Finance Manager.

**Section 2.2. Resident Agent.** The Corporation shall have and continuously maintain in Puerto Rico a registered office and a resident agent as required by the laws of Puerto Rico.

### ARTICLE III. MEMBERS

**Section 3.1 Membership.** Every subscriber to the utility services of the Corporation shall be a member of the Corporation.

### ARTICLE IV. BOARD OF DIRECTORS

**Section 4.1. Functions.** The Board will manage the business and affairs of the Corporation in accordance with the laws of Puerto Rico, the Articles of Incorporation, and these By-Laws.

**Section 4.2. Compensation.** Unless otherwise determined by the Board, directors shall not be compensated for services rendered to the Corporation either as directors or as members of any committee of directors, except that a director shall be entitled to reimbursement for reasonable expenses incurred on behalf of the Corporation. Nothing herein shall preclude a director from serving the Corporation in any other capacity and receiving compensation for such services.

**Section 4.3. Number and Composition.** The Board shall be comprised of seven directors. Five of the directors shall be elected by a plurality of votes of the members present or by proxy who are not delinquent in payment for services and are on the list of persons eligible to vote prepared by the Secretary of the Corporation as required by Section 9.4 below. Two of the directors (the "PDMPI Directors") shall be appointed by Palmas del Mar Properties, Inc. ("PDMPI") until the water and sewer system is complete and the Palmas del Mar Development is properly serviced by the Corporation or otherwise. This Section 4.3 may not be amended without the consent of the PDMPI Directors.

**Section 4.4. Duties of Directors.** Each director will perform their duties as directors, including the duties as a member of any committee of the Board upon which such director serves, in good faith, in a manner reasonably believed to be in the best interest of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

**Section 4.5. Election, Appointment and Term.** Except for the PDMPI Directors, the directors shall be elected by the members of the Corporation and they shall serve until their respective successors are chosen and have qualified. The directors shall be seated at annual meetings of the members, and each director shall be elected to serve until expiration of his respective term, and/or until his successor is elected. Except for the PDMPI Directors, the directors shall serve for no more than two consecutive three-year terms unless the director is elected or appointed to fill an unexpired term (whether resulting from the death, incapacity, resignation, or removal of any Director, created by an increase in the number of Directors, or otherwise), in which case, the Director will fill only the remainder of such term. A partial term of less than three (3) years does not constitute a full term.

The directors elected shall be subscribers who are not delinquent in payment for services provided by the Corporation at the time they are nominated by the Nominations Committee and shall be elected by a plurality of votes of the members present or by proxy who are not delinquent in payment for services and are on the list of persons eligible to vote prepared by the Secretary of the Corporation as required by Section 9.4 below.

**Section 4.6. Nominations Committee.** The nomination and election of directors, other than the PDMPI Directors, shall be administered by a nominations committee comprised of three directors, other than the PDMPI Directors (the "Nominations Committee"). The Nominations Committee shall nominate candidates to replace directors whose seat becomes vacant at the annual meeting or who is serving as a replacement director until the next annual meeting. The list of new candidates for director shall be submitted to the Secretary of the Board not less than 60 days prior to the annual meeting and shall be included in the proxy card to be sent to each member for the election of new directors. Election proxy cards would state that they are irrevocable if executed. Election proxy cards will be submitted, tallied and certified by the Secretary at least three (3) days prior to the annual meeting. After the elections at the floor of the annual meeting, results will be announced and newly elected directors will begin their terms at the conclusion of such annual meeting.

**Section 4.7. Vacancies.** Except for the PDMPI Directors, if the office of one or more directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, a majority of the remaining directors, even if the remaining directors do not constitute quorum, shall choose a successor or successors who shall remain in office for the remaining term with respect to which the vacancy occurred. In the event the office of one or more PDMPI Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, PDMPI shall appoint a successor or successors.

**Section 4.8. Limits to Composition.** The composition of the Board shall be subject to the limitations set forth under Section 1101.01(d)(2) of the Puerto Rico Internal Revenue Code of 2011, or the equivalent section of any future Puerto Rico tax code.

**Section 4.9. Removal.** Except for the PDMPI Directors, directors may be removed with or without cause by an affirmative vote of a plurality of the votes cast either in person or by proxy at a duly held meeting of the members of the Corporation, and a successor may then and there be elected by the members to fill the vacancy thus created. The PDMPI Directors may only be removed with or without cause by PDMPI at any time in its sole discretion. Any director whose removal has been proposed to the members shall be given an opportunity to be heard at the meeting.

**Section 4.10. Resignation.** A director may resign at any time by delivering a signed notice in the form of a record to the President, to the Secretary of the Board or to the Executive Director. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

**Section 4.11. Board Committees.** Except for the Nominations Committee, the Board may designate by a majority vote from among its members other committees, provided PDMPI shall have the option to designate at least one PDMPI Director on each such committee. The PDMPI Director may only be removed with or without cause by PDMPI.

## **ARTICLE V. MEETINGS OF THE BOARD OF DIRECTORS**

**Section 5.1 Initial Meeting.** The first meeting of a newly elected Board (including for purposes of this Section 5.1, the PDMPI Directors then in office) shall be held immediately following the meeting of the members of the Corporation at which such Board is elected or within ten (10) days of such election. Written notice of such meeting shall be given to the PDMPI Directors and to all persons running for election at least 20 days prior to the meeting of the members of the Corporation at which such Board is to be elected. No notice shall be necessary for newly elected members of the Board in order to hold such meeting provided that a majority of the directors are present at such meeting.

**Section 5.2. Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors. Written notice of regular meetings shall be given by the Secretary of the Corporation, or other designated person, to each director at least ten (10) days prior to the date of such meeting.

**Section 5.3. Special Meetings.** Special meetings of the Board may be called by the President with five (5) days' written notice to each director, either personally, by mail or by electronic communication which notice shall state the time, place and purpose of the meeting. Special meetings shall be called by the President or Secretary in like manner and on like written notice on the written request of two directors, including the PDMPI Directors. Notice of any and all meetings of the Board may be waived by appropriate written waiver from all directors.

**Section 5.4. Electronic Meeting.** Annual, regular and special meetings of the Board may be held by means of the Internet or other electronic communications technology in a fashion pursuant to which the directors have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matter submitted to the directors, pose questions, and make comments. Participation by such means shall constitute presence in person at a meeting.

**Section 5.5. Presiding Officer and Secretary.** The President will preside at all meetings of the directors. If the President is not present, the directors present shall appoint a presiding officer for such meeting. If the Secretary is not present at that meeting, the directors present shall appoint a Secretary for such meeting.

**Section 5.6. Quorum.** At all meetings of the Board, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority

of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statute, by the Articles of Incorporation or by these By-Laws. If there is no quorum at a meeting of directors, the directors present thereat may adjourn the meeting to a new date agreed to by a majority of the directors present. Five (5) days' written notice of the new meeting date shall be given to all directors.

**Section 5.7. Action by Unanimous Written Consent.** Any action required or permitted to be taken at a Board meeting or a meeting of a committee of the Board may be taken without a meeting, or action by ballot, if: (a) each of the directors, or each of the members of the committee, as the case may be, consents in writing (including by electronic mail) to the action; (b) the consent sets forth the action to be taken; and (c) the consent is filed in the minutes of the proceedings of the Board or of the committee. The consents may consist of one or more writings. All directors need not sign the same document and facsimile signatures shall be deemed originals. Such unanimous written consents will have the same effect as a unanimous meeting vote.

**Section 5.8. Emergency By-Laws.** The Emergency By-Laws provided in this section shall be operative during any emergency in the conduct of the business of the Corporation resulting from an attack on the United States and/or Puerto Rico, any nuclear or atomic disaster, or any earthquake or hurricane disaster, notwithstanding any different provision in the preceding articles of the By-Laws or in the Articles of Incorporation of the Corporation or in the Puerto Rico General Corporation Law. To the extent not inconsistent with the provisions of this article, the By-Laws provided in the preceding articles shall remain in effect during such emergency and upon the emergency termination the Emergency By-Laws shall cease to be operative.

During any such emergency: (a) A meeting of the Board of Directors may be called by any officer or director of the Corporation. Notice of the time and place of the meeting shall be given by the person calling the meeting through such means of communication as may be available under the circumstances. Such notice shall be given at such time in advance of the meeting as circumstances permit in the judgment of the person calling the meeting. (b) At any such meeting of the Board of Directors, a quorum shall consist of the majority of the directors which shall include at least one PDMPI Director. (c) The Board of Directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers of the Corporation shall for any reason be rendered incapable of discharging their duties. (d) The Board of Directors, either before or during any such emergency, may effectively in the emergency, change the head office or designate alternative head offices or authorize any officer so to do. No officer, director or employee acting in accordance with these Emergency By-Laws shall be liable except for willful misconduct.

These Emergency By-Laws shall be subject to repeal or change by further action of the Board of Directors or by action of the members, but no such repeal or change shall invalidate actions taken pursuant to those Emergency By-Laws prior to the time of such repeal or change. These Emergency By-Laws may be amended as necessary to address the circumstances of the

emergency, but no amendment of these Emergency By-Laws may remove PDMPI Directors or change or effect in any manner PDMPI Director rights and obligations under the By-Laws shall be effective without the approval of the PDMPI Directors.

## ARTICLE VI. OFFICERS

**Section 6.1.** The officers of the Corporation shall be chosen by a majority of the Board at its first meeting after an election or at any special meeting called for such purpose. The officers shall be a President, a Vice President, a Secretary and Treasurer. The Board may also choose additional Vice Presidents, and one or more Assistant Secretaries as it shall deem necessary. None of the officers, excepting the President, and the Vice-President, if one is chosen, need be a director.

**Section 6.2.** The officers shall hold their offices for such term, except as otherwise set forth in Section 6.3 and shall exercise such power and perform such duties as shall be determined from time to time by the Board.

**Section 6.3.** The officers of the Corporation shall hold office until their successors are chosen and have qualified or until their earlier resignation, removal from office, or death. One person may simultaneously hold any two or more offices, except that the Treasurer may not serve concurrently as the President. The failure to elect a President, Secretary, or Treasurer shall not affect the existence of the Corporation. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board.

**Section 6.4. Duties.** The following officers of the Corporation will have the following duties:

- (a) **President.** The President shall be the chief executive officer of the Corporation; he shall preside at all meetings of the members and directors, shall be ex-officio member of all standing committees, shall have general and active management of the business of the corporation, and shall see that all duties which are usually vested in the office of president of a corporation, including but not limited to the appointment of committees from among the members as he may decide are appropriate to assist in the conduct of the affairs of the Corporation. The President shall execute all document and contracts requiring a seal, under the seal of the Corporation, except where the same are required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation.
- (b) **Vice-Presidents.** The Vice Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board shall prescribe.

- (c) **Secretary and Assistants.** The Secretary ensures the safety and accuracy of all Board records and shall attend all sessions of the Board, and standing committees when required, and all meetings of the members and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the members and special meetings of the Board. The Secretary will also have all the responsibilities and duties assigned to him or her by the President of the Board or the Board. The Secretary shall keep in safe custody the seal of the Corporation and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the Treasurer or an Assistant Secretary.

Assistant Secretaries in order of their seniority shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board shall prescribe.

- (d) **Treasurer and Assistants.** The Treasurer shall have the custody of the funds of the Corporation and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, a financial report and account of all of transactions and of the financial condition of the Corporation.

Assistant Treasurers in the order of their seniority shall, in the absence or disability of the Treasurer, perform the duties, exercise the powers and assume the obligations of the Treasurer and shall perform such other duties as the Board shall prescribe.

#### **Section 6.5. Removal, Resignation and Vacancies of the Officers.**

- (a) **Removal.** Any officer elected or appointed by the Board and any assistant officer appointed by another officer may be removed by the Board at any time, with or without cause, by a majority vote of the Board. Removal shall be without prejudice to any contract rights of the person removed. The mere appointment of any person as an officer, agent, or employee of the Corporation does not create any contract rights.
- (b) **Resignation.** An officer may resign at any time by delivering notice to the Corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.
- (c) **Method of Filling Vacancies.** Any vacancy, however occurring, in any office may be filled by the Board for the unexpired term of such office.

## ARTICLE VII. EXECUTIVE DIRECTOR

**Section 7.1. Designation.** An Executive Director of the Corporation may be appointed by the majority of the members of the Board and shall serve at its pleasure. The Executive Director shall be a person with the necessary qualifications to perform the functions required by the position and the purposes of the Corporation.

**Section 7.2. Powers and Duties.** The Executive Director shall have all powers and duties assigned by the Board; shall be responsible for implementing the Corporation's policies and programs; and shall oversee the Corporation's employees and agents; and shall manage the day-to-day operations of the Corporation in accordance with the delegation of authority for this position as adopted by the Board. The Executive Director shall comply with the provisions of the Articles of Incorporation, these By-Laws, the Corporation's policies and any regulations or rules, and, without limitation, policy on conflicts of interest.

**Section 7.3. Delegation of Authority.** The Board shall approve a detailed and clear description regarding the Delegation of Authority by the Board to the Executive Director.

**Section 7.4. Removal.** The Executive Director may be removed by majority vote of the Board, when the best interests of the Corporation so require.

## ARTICLE VIII. MEMBERS MEETINGS

**Section 8.1. Place.** All meetings shall be held at the office of the Corporation or at such other place convenient to the members as is designated by the Board.

**Section 8.2. Annual Meeting.** An annual meeting of members shall be held on the first Saturday after Easter in each year. If that day falls on a legal holiday, then on the next secular day following, at which the members shall elect the directors (other than the PDMPI Directors), by a plurality of the votes cast either in person at the annual meeting or by proxy, and transact such other business as may properly be brought before the meeting. Any such other business requiring a vote must be approved by a plurality of the votes cast either in person or by proxy. In case of exceptional circumstances, the directors may decide to hold the annual meeting at a different date.

**Section 8.3. Notice of Annual Meeting.** Written notice of each annual meeting shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of the Corporation, at least thirty (30) days prior to each meeting. Such notice shall state the time and place of the meeting.

**Section 8.4. List of Members.** At least ten (10) days before every election of directors and/or of a meeting at which a vote of members may occur, a complete list of the members entitled to vote at said election and/or meeting arranged alphabetically with the residence of each, shall



be prepared by the Secretary. Such list shall be accessible at the offices of the Corporation for said ten (10) days and available for examination by any member, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any member who may be present.

**Section 8.5. Special Meetings.** Special meetings of the members, for any purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called by the President, or Secretary at the request in writing of a majority of the Board, the PDMPI Directors or at the request in writing signed by members having 25% of the total number of votes of all members of the Corporation. Such request shall state the purpose of the proposed meeting. All meetings requested under the provisions of this Section shall require at least twenty (20) days prior written notice to each member of the Corporation. Such notice shall state the time and place of the meeting and the subject matter thereof.

**Section 8.6. Notice.** Notice of any meetings shall be given to the members by the Secretary. Notice may be given to the member either personally, electronically, or by sending a copy of the notice through the mail, postage thereon fully prepaid to his address appearing on the books of the Corporation. Each member shall register his address with the Secretary and notices of meetings shall be mailed to such address. Notice of any meeting, regular or special, shall set forth in general the nature of the business to be transacted, provided however, that if the business of any meeting shall involve and be governed by the Articles of Incorporation, or any action for which other provision is made in these By-Laws, notice of such meeting shall be given or sent as therein or herein provided.

**Section 8.7. Quorum.** The quorum required for any action governed by these By-Laws shall be as follows, unless otherwise provided:

- (a) The presence of members or of proxies, entitled to cast fifty-one per cent (51%) of the total vote of the Corporation shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the giving of proper notice, and the required quorum at such subsequent meeting shall be the presence of those members and/or proxies in attendance or present at the meeting.
- (b) When a quorum is present at any meeting, the vote of a plurality of the members present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes, or of the Articles of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

**Section 8.8. Vote and Proxy.** At any meeting of the members, every member having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such member. Members are required to choose as proxies their legal authorized attorney, spouse, the current tenant of the unit, other subscriber entitled to vote or the Board of Directors. A proxy may not represent more than 1 member; this limitation does not apply to proxies choosing the Board of Directors. All proxies must be filed with the Secretary in

accordance with Article 4.6 herein. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon ceasing to be a subscriber to the utility services of the Corporation.

#### **ARTICLE IX. TRANSFER OF MEMBERSHIP**

**Section 9.1.** Membership in the Corporation may be transferred only as an incident to the transfer of real property located within the Palmas del Mar Development.

#### **ARTICLE X. AMENDMENTS OF BY-LAWS OR ARTICLES OF INCORPORATION**

**Section 10.1.** These By-Laws may be amended, by a majority vote of the Board at a regular or special meeting thereof, except that no amendment of these By-Laws and/or Articles of Incorporation removing the PDMPI Directors or changing or affecting in any manner their rights and obligations under the By-Laws and/or Articles of Incorporation or at law shall be effective without the approval of the PDMPI Directors.

**Section 10.2.** In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control.

#### **ARTICLE XI. NOTICES**

**Section 11.1. Notices.** Whenever under the provisions of the statutes or of the Articles of Incorporation or of these By-Laws, notice is required to be given to any director or member, it shall not be construed to mean personal notice, but such notice may be given electronically or in writing, by mail, depositing the same in a post office or letter box, in a post-paid sealed wrapper, addressed to such director or member at such address as appears on the books of the corporation, and such notice shall be deemed to be given at the time when the same shall be thus mailed. Notice to directors may also be given by facsimile, electronic mail, or by leaving the notice at the residence or usual place of business of the director.

**Section 11.2. Waiver.** Whenever any notice is required to be given under the provisions of the statutes or of the Articles of Incorporation, or of these By-Laws, 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 thereto.

**Section 11.3. Director waiver.** Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time, place and purpose thereof. If all directors are present at a meeting of the Board no notice shall be required and any business may be transacted at such meeting. Except as expressly set forth herein or as required by the laws of Puerto Rico, neither

the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any written waiver of notice.

## ARTICLE XII. MISCELLANEOUS

**Section 12.1. Books and Records.** The Corporation will keep correct and complete books and records of accounts and minutes of the proceedings of the Board and committees of directors, as well as accurate accounting records. The Corporation's books, records, and minutes may be written or kept in any other form capable of being converted into writing within a reasonable time. The Corporation shall keep its books and records at such place or places as may be designated from time to time by the Board within Puerto Rico.

**Section 12.2. Reserves.** The Board may cause to be set aside, out of any funds or other property or assets of the Corporation, such sum or sums as the Board, in its absolute discretion, may consider to be proper as reserves to meet contingencies, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board may deem conducive to the interest of the Corporation, and the Board may modify or abolish any such reserve in the manner in which it was created.

**Section 12.3. Checks, Notes and Others.** All checks or other orders for the payment of money and all notes or other instruments evidencing indebtedness of the Corporation shall be signed on its behalf by any two officers or any other two persons as the Board may from time to time designate.

**Section 12.4. Fiscal Year.** The Corporation shall operate upon the calendar year beginning on the 1st day of January and ending on the 31st day of December of each year. The Board expressly authorized to change from a calendar year basis to that of a fiscal year whenever deemed expedient for the best interests of the Corporation.

**Section 12.5. Seal.** The Corporation seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words: "Corporate Seal, Commonwealth of Puerto Rico." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise; provided, however, that in any event, the affixation of such seal shall not be required to authorize or validate any document entered into or adopted by the Corporation.