



## **Annual Meeting of Members**

April 15, 2023

The Annual Meeting of Members of PDM Utility Corp., a nonprofit corporation duly organized under the laws of the Commonwealth of Puerto Rico (herein the "Corporation") was held at the conference room in the Palmas del Mar Homeowner Association Building at Palmas del Mar, Humacao, Puerto Rico, on April 15, 2023 at 2:00 p.m. pursuant to the Notice of the Annual Meeting of the Members of the Corporation dated March 17, 2023.

### **CALL MEETING TO ORDER**

Mr. Félix Morales, President of the Board of Directors, called the meeting to order and welcomed all present.

### **QUORUM**

Mr. Reyes, Secretary of the Board, stated that according to the By-Laws, quorum consists of members present and/or represented by proxies entitled to fifty one percent (51%) of the total votes of the Corporation. Mr. Reyes reported that quorum was 6.4%, therefore there was no quorum to proceed.

Mr. Morales adjourned the meeting and reconvened it for 2:30 p.m. and informed that the procedure being followed was included in the notice of meeting distributed to the subscribers on March 17, 2023.

### **SECOND CALL MEETING TO ORDER**

Mr. Morales proceed to call the meeting to order at 2:30 p.m..

### **ROLL CALL OF DIRECTORS/QUORUM**

Mr. Reyes proceeded with the roll call of Directors as follows: Mr. Félix Morales, Mr. Pedro Ortiz, Mr. Otto Nadal, Mr. Luis Gómez, Mr. David Hurwitz, Mr. Harry Cook, (by phone) and himself, Mr. Erasmo Reyes. Mr. Reyes informed Mr. Morales that the roll call of Directors was completed and that there was quorum to proceed.

Mr. Cook expressed his disagreement in continuing with the meeting arguing that there was no quorum and that the way in which the By-laws were interpreted to establish the quorum is not correct.

Mr. Torrellas informed that in the notice of meeting sent on March 17, 2023, it was informed that if a quorum was not reached at the first call set for 2:00 p.m., a second meeting would be called for the same day at 2:30 p.m. and the quorum would be constituted by the proxies received and those present.

Mr. Reyes clarified that according to Article VIII, Section 8.7 of the By-laws, 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 or present at the meeting. Mr. Reyes stated that therefore, the Board members were acting pursuant to the Section 8.7 of the By-Laws.

Mr. Morales asked Mr. Juan Carlos Gómez Escarce, PDMU Legal Counsel, his opinion on section 8.7 for the establishment of quorum. Attorney Gómez expressed his agreement with the clarification made by Mr. Reyes, and that the notice of meeting expressly contemplated that circumstance. According to Attorney Gómez's interpretation of Section 8.7 of the PDMU By-Laws, the meeting can proceed.

Mr. Hurwitz, on behalf of Mr. Cook, who was on the phone, expressed that Mr. Cook is of the opinion that the Board members are ignoring Sections 8.2 [*sic*] and 8.7 of the PDMU By-Laws.

Mr. Reyes expressed to Mr. Cook that his statement is noticed and on record, but reiterated that the Board is in compliance with Section 8.7; that on March 17, 2023 a notice of meeting was sent to all subscribers notifying the procedure to reach the required quorum at the meeting; that if a quorum was not reached a subsequent meeting would be called at 2:30 p.m. and how a quorum would be established at that subsequent meeting. Mr. Reyes indicated that the Board is in compliance with the By-laws, so he proceeded to certify, as Secretary of the Board, that the required quorum exists to proceed.

Mr. Morales continued with the presentation of the Board of Directors as follows: he introduced himself, Félix Morales, as President; Mr. Pedro Ortiz, Vice-President; Mr. Erasmo Reyes, Secretary; Mr. Otto Nadal, Treasurer; Mr. Luis Gómez, Director; Mr. David Hurwitz, Director, and Mr. Harry Cook, Director (by phone).

Mr. Morales, also introduced Mr. Daniel Torrellas, PDMU Executive Director and Attorney Juan Carlos Gómez Escarce, PDMU Legal Counsel. Mr. Morales noted that the meeting would be recorded to preserve the accuracy of the discussion.

Mr. Hurwitz expressed, for record purposes, that he and Mr. Cook are contesting the entire procedures as they consider it is invalid.

Mr. Reyes expressed to Mr. Hurwitz that that is their interpretation and the record will show that they are both contesting, but clarified that the Board will continue with the proceedings.

## **PRESENTATION OF PRIOR ANNUAL MEETING MINUTES**

**Annual Meeting of Members – April 23, 2022**

Mr. Reyes informed that the minutes of the Annual Meeting of April 23, 2022 were published on the internet and copies distributed to those present during the meeting. Therefore, Mr. Reyes indicated that the minutes should be considered as received and read.

Mr. Morales indicated that considering that the minutes were previously published, he made a motion for the minutes to be considered received and read. Mr. Ortiz seconded the motion. Mr. Reyes, for record purposes, informed that Mr. Julio Bagué (CPB-3) and Mr. Carlos García (PD405-B) seconded the motion. Mr. Hurwitz and Mr. Cook expressed their opposition to the motion. Mr. Morales informed that the motion was approved by majority.

## **BOARD OF DIRECTORS ELECTION**

Mr. Reyes informed that according to the amended and restated By-Laws of the Corporation, the Board should be comprised of seven directors. According to Mr. Reyes, 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 eligible to vote. Two directors are appointed by Palmas del Mar Properties, Inc. (PDMPI). They will serve until the water and sewer system is completed and the Palmas del Mar development is properly serviced by the Corporation or otherwise. The two directors appointed by PDMPI are Mr. David Hurwitz and Mr. Harry Cook.

According to Mr. Reyes, 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. Mr. Reyes indicated that the Nominations Committee shall nominate candidates to replace directors whose seats become vacant at the annual meeting or who is serving as replacement director until the next annual meeting.

Mr. Reyes informed the subscribers that this year the Nominations Committee unanimously agreed to nominate Mr. Otto Nadal and Mr. Reyes, for a first three-year term that will expire in 2026. According to Mr. Reyes, Mr. Nadal was nominated in 2022 to fill the vacancy left by Mr. Félix Villamil, whose term expired on April 15, 2023, and Mr. Reyes, was nominated in 2022 to fill the vacancy left by Mr. Juan Santos, whose term also expired on April 15, 2023. Mr. Reyes stated that both expressed to the Nominations Committee their willingness to continue as members of the Board for the next three years and the Committee unanimously agreed to propose them as candidates.

Messrs. Cook and Hurwitz expressed their disagreement with the process and asked for the names of the members of the Nominations Committee, and when said Committee was constituted. Mr. Torrellas informed that the members of the Nominations Committee are Messrs. Morales, Reyes and Nadal; and that the members of the Committee were elected during a Board meeting. Mr. Ortiz recommended that Mr. Cook look for the required information in the PDMPI records where they should have copies of the minutes.

Mr. Cook requests the minutes corresponding to the Nominations Committee, and Mr. Ortiz informs him that the Committee does not prepare minutes of its meetings.

Mr. Bagué (CPB-3) asked the President if the PDMU By-Laws foresee that a member of the Board may participate in this type of meeting by phone. Mr. Morales asked Attorney Gómez Escarce to verify the PDMU By-Laws on this matter, and Attorney Gómez reported that the By-Laws do not prohibit member participation via telephone.

Mr. Morales informed Mr. Cook that his objections were duly noted and called the meeting to order to continue with the meeting.

Mr. Morales informed the subscribers that Mr. Ortiz will not be seeking a second term as a Board member due to personal and professional reasons after having been with the Board for five years. Mr. Morales took the opportunity to recognize Mr. Ortiz as a key member of the Board for the past five years, for being part of the team that worked with the transfer of control in 2019, and after the transfer of control becoming the first President of the Board. Mr. Morales, on behalf of PDMU and the Board, thanked Mr. Ortiz for his dedication, effort and time as part of the Board and mentioned that he is looking forward to having him join the Board once again in the future.

Mr. Morales informed that the Nominations Committee, as well as the members of the Board, have been looking for candidates to replace Mr. Ortiz, but they have not found anyone. According to Mr. Morales the candidate should meet the requirements of the By-Laws and should have a background in finance and accounting to ensure a balance of professional skills within the Board. Mr. Morales opened the process to the subscribers and asked them to send their names and profiles to the Nominations Committee if they meet the requirements, or if they know someone with experience in accounting and finance who meets the requirements of the By-Laws, to also refer them to the Committee.

Mr. Morales made a motion to close the nomination, Mr. Ortiz seconded the motion. Mr. Hurwitz and Mr. Cook voted against the motion. Mr. Morales informed that the motion was approved by majority.

Mr. Reyes reported that Mr. Nadal and he, were elected as Directors of the Board for a three-year term. Mr. Reyes indicated that, in accordance with the proxy cards received, the subscribers had appointed the PDMU Board of Directors to vote using their best judgment and discretion as to any other matters properly presented by the members at the Annual Meeting.

Mr. Morales proceeded to congratulate Messrs. Nadal and Reyes.

## **PRESIDENT'S REPORT**

Mr. Reyes stated that the President's Report was published on the internet and copy distributed to those present and as such should be considered as received and read.

Mr. Morales asked for questions or comments on the President's Report.

Mr. García (PD405-B) made a motion to consider the report received and read. Mr. Reyes seconded the motion. Messrs. Cook and Hurwitz objected the adoption of the motion. Mr. Morales informed that the motion was approved by majority.

Before continuing with the next item on the agenda, Mr. Morales proceeded to highlight and summarize some of the most significant issues mentioned in the President's Report. The following is a summary of the most relevant issues presented by Mr. Morales:

**Franchise Extension** – Mr. Morales reported that the Franchise was issued by the Public Service Commission for 50 years that expires in May, 2024. Mr. Morales informed that PDMU

submitted to the Department of Transportation and Public Works (DTOP), the Agency now in charge of the Franchise, an application to renew and extend the Franchise and that it is still under evaluation by the Agency.

**Amendment to the Franchise** – Mr. Morales reported that PDMU filed a petition with the DTOP to modify the Franchise to change the infrastructure financing model for new construction in underdeveloped areas. Mr. Morales stated that PDMU does not have the economic capacity to finance the new infrastructure needed to develop parcels that do not have water and sewer infrastructure.

To a question presented by Mr. Bagué (CPB-3) on how new projects would be financed, Mr. Morales explained that developers will be responsible for financing all new infrastructure construction, meeting PDMU regulatory standards, technical requirements, inspections, etc. Once the project is completed, the developers will be responsible for transferring, at no cost to PDMU, the infrastructure right-of-way. Mr. Reyes indicated that the proposed model is the same that is followed elsewhere throughout Puerto Rico.

Mr. Hurwitz expressed his disagreement with Mr. Reyes' statement and said that normally a developer or entity pays for the infrastructure of a new development and then through a tap-in-fee they get reimbursed for that cost. Mr. Hurwitz stated that what PDMU is proposing is charging developers twice, so they are opposed to the new model.

Mr. Morales expressed to Mr. Hurwitz that his statement is not correct, that he did not think it was the right time to talk about it, and that they have already raised the issue in another forum. Mr. Morales clarified to the subscribers that PDMU is not double charging developers, and that the one who will pay the tap-in fee will be the buyer of the unit at the time of applying for water and sewer services, but the developer will not be charged anything.

Mr. Joseph Tuzinkewizz, (BV71), President of the Delegates, asked how the discrepancies between the parties could postpone the results of the petition and whether the financial model is within the By-Laws.

Mr. Reyes indicated that the issue of financing new infrastructure is not in the By-Laws. Mr. Reyes explained that PDMU filed a petition with DTOP to amend the way in which new infrastructure for new developments was financed. Mr. Reyes indicated that originally PDMPI, as the Master Developer, put the money up front to install the infrastructure and PDMU worked as the collector of the money to pay it back with interest. Mr. Reyes explained that the model originally established in the Franchise was eliminated, now PDMU petitioned to include the model used in other parts of Puerto Rico. According to Mr. Reyes, with the proposed model if a developer comes to Palmas, as part of their development costs, they must include the construction of infrastructure for water and sewer. According to Mr. Reyes, when the units are sold and the buyer requests the service, they will have to pay PDMU a tap-in-fee. Mr. Reyes clarified that with the proposed model, PDMU will not be used as a money collector for any person or entity. Mr. Reyes indicated that this model will be effective as of now; that the model was approved by DTOP in March 2023; and that PDMPI filed a motion for reconsideration with the Agency on this matter which is pending evaluation.

Mr. Morales explained that DTOP will be the Agency that decides on this matter, but if after the decision, there is still disagreement, then they could take legal action, and that the process could take time. Mr. Reyes expressed to Mr. Tuzinkewizz (BV-71) that PDMU has to act within

the structure that the law provides; he acknowledged that Palmas has the right to object and do what they consider best for PDMPI; that they filed a motion for reconsideration on the financing model; and that PDMU will present their position on this.

**Rate Increase** - Mr. Morales informed that the PDMU Franchise was approved by the Government as a non-profit organization created to operate and maintain a water and sewer infrastructure and the Master Developer was the responsible for funding all required infrastructure, which would then be reimbursed according to a formula. According to Mr. Morales, since 2004 PDMU has not increased its tariff for the water and sewer services which was established to cover operating expenses, payroll and employee benefits, plus inflation. Mr. Morales clarified that the increases received by the subscribers in their invoices corresponds to the pass-thru each time PRASA increases its rate. Mr. Morales indicated that since 2017, PDMU has been receiving rate increases annually of 2% to 3%, and as far as is known, PRASA has indicated that this will continue until 2027.

Mr. Morales indicated that the inflation and the increases in operating costs for the past 18 years have been subsidized by the cash flow provided by depreciation expense. The cash flow from depreciation was intended to support future major infrastructure replacement and maintenance. In order to cover actual operating expenses, and to ensure PDMU recovers an adequate reserve for major infrastructure replacement and maintenance a tariff increase has been submitted to DTOP. Mr. Morales reported that PDMU is waiting for the Agency to analyze the information, coordinate the public hearing, etc. to see if the proposed rate will be approved by them. Mr. Morales indicated that the community will be informed of the progress of this matter.

**CDBG Mitigation Program** – Mr. Morales reported that PDMU submitted a request to the CDBG-MIT Federal Program for six projects for a total amount of \$4M. According to Mr. Morales, from the claim, there are two projects of great importance to PDMU which are: the Humacao River 16-inch water main line crossing relocation; and the pump station #1 shoreline erosion barrier control, both at a cost of \$1.4M.

## **TREASURER'S REPORT**

Mr. Reyes stated that the Treasurer's Report was published on the internet and copy was distributed to those present during the meeting. Subsequently, Mr. Reyes indicated that the report should be considered as received and read and recommended to proceed with the approval of the Treasurer's Report.

Mr. Morales asked for additional comments on the Treasurer's Report and there were no comments or questions from the subscribers. Mr. García, (PD-405B) made a motion to approve the Treasurer's Report as presented. The motion was seconded by Mr. Bagué (CPB-3). Mr. Hurwitz and Mr. Cook expressed their opposition to the motion. Mr. Morales informed that the motion was approved by majority.

## **NEW BUSINESS**

Mr. Tuzinkewicz, (BV-71) asked for information on the water pressures of the water distribution system. The technical information was provided by Mr. Torrellas.

Mr. Reyes, for the record purposes, stated that the members of the Board have freely and selflessly presented themselves to work in favor of the community by serving the PDMU Board; perfectly attending all the meetings; and that everything the Board has done has always been done with the benefit of the community as a north.

## ADJOURNMENT

Mr. García (PD405-B) made a motion to adjourn the Annual Meeting of Members of 2023. Mr. Reyes seconded the motion. The meeting adjourned at 3:15 p.m..

Submitted by:

  
Erasmo Reyes  
Secretary