

AMENDED BY-LAWS  
OF  
PEBBLE VALLEY MAINTENANCE CORPORATION

I. MEMBERSHIP

Every person or entity who is a record owner of the fee of a single family lot or multi-family area which is subject by covenants of record to assessment by the Corporation shall be a member of the Corporation provided that no person or entity who holds an interest merely as security for the performance of an obligation shall be a member.

II. PRIVILEGES OF MEMBERSHIP

Each member of the Corporation may use the facilities of the Corporation subject to the payment of such fees and compliance with such regulations as the Directors may establish from time to time. Members shall be eligible to serve on committees established by the Directors for the purpose of advising on or assisting in the carrying out of the purposes of the Corporation. Members shall be eligible for election as directors of the Corporation under the procedure described in Article III. hereof for election of directors generally.

III. VOTING RIGHTS

The Corporation shall have two classes of membership:

- A. Class "A" MEMBERS shall be the owners of the single family lots and duplex lots and shall be entitled to one vote for each lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any lot, i.e., as joint tenant or tenant in common, there shall only be cast one vote amongst them for each lot they so own.
- B. CLASS "B" MEMBERS shall be the owners of the multi-family, apartment or townhouse living units and shall be entitled to one-quarter (1/4) vote for each living unit completed and ready for occupancy. When more than one person holds such interest of interests in multi-family units, i.e., as joint tenant or tenant in common, there shall only be cast one-quarter (1/4) vote amongst them for each multi-family unit completed and ready for occupancy.

#### IV. DIRECTORS

The affairs of the Corporation shall be managed by the directors of the Corporation who shall be five (5) in number, unless temporarily less than that number owing to the death of a director, failure to nominate or to elect directors as provided in the By-Laws.

The directors shall be selected by the members of the Corporation at the annual meeting.

The term of each director shall be for two (2) years and each director shall hold office until his successor shall have been elected or appointed or qualified. Terms of two (2) directors shall end in even-numbered years. the terms of the three (3) directors elected will end in odd-numbered years.

Elections of directors shall be conducted at the annual meeting of the membership of the corporation. The Board of Directors will appoint a nominating committee to prepare a slate of candidates for the positions to be filled each year. The nominating committee will solicit candidates for each position, contact each potential candidate to determine his or her willingness to serve.

The nominating committee will prepare a brief paragraph of information describing the qualifications of each candidate nominated and distribute the information to the membership at least two weeks in advance of the elections. Nominations from the floor will also be accept at the annual meeting.

The Board of Directors shall meet at least once each quarter in Waukesha County, Wisconsin. Other meetings of the Board of Directors may be held at anytime, anywhere in Waukesha or Milwaukee Counties.

Meetings of the Board of Directors may be called by or at the request of the President or any three (3) Directors at such place as the person or persons calling the meeting shall designate.

Notice of any meeting shall be given by oral or written notice delivered personally or mailed to each director at his home address at least four (4) days previous thereto. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with the 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 and objects thereat to the transaction of any business

because the meeting is not lawfully called or convened.

The directors may act by consent as provided in Section 181.72 of the Wisconsin Statutes.

V. OFFICERS

The officers of the Corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer, and such other officers and assistant officers as the Board of Directors may deem necessary. All officers shall be elected or appointed annually by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of president and secretary, and the offices of president and vice president.

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation shall be served thereby, without prejudice to the contract rights of the person so removed as his election or appointment shall not of itself create any contract rights.

All officers, except for assistant officers must be members of the Corporation.

A vacancy in any office because of death, resignation, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

The president shall be the principal executive officer of the Corporation and, subject to the control of the Board of directors, shall in general supervise and control all of the business and affairs of the Corporation. He shall, when present, preside at all meetings of the members.

The officers shall have such duties and functions as are generally held or performed by such officers in business corporations, and such additional duties and functions as may be established by the Board of Directors. Additional officers and assistant officers shall have charge of and shall perform such duties as may be authorized by the Board of Directors and assigned to them by the president.

Section 1. Indemnification for Successful Defense. Within 20 days after receipt of a written request pursuant to Section 3, the corporation shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the corporation.

Section 2. Other Indemnification.

(a) In cases not included under Section 1, the corporation shall indemnify a director or officer against all liabilities and expenses incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the corporation, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the corporation and the breach or failure to perform constitutes any of the following:

(1) A willful failure to deal fairly with the corporation (or its members) in connection with a matter in which the director or officer has a material conflict of interest.

(2) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(3) A transaction from which the director or officer derived an improper personal profit.

(4) Willful misconduct.

(b) Determination of whether indemnification is required under this Section shall be made pursuant to Section 5.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this Section.

Section 3. Written Request. A director or officer who seeks indemnification under Section 1 or 2 shall make a written request to the corporation.

Section 4. Nonduplication. The corporation shall not indemnify a director or officer under Section 1 or 2 if the director or officer has previously received indemnification or allowance of expenses from any person, including the corporation, in connection with the same proceeding. However, the director or officer has no duty to look to any other person for indemnification.

Section 5. Determination of Right to Indemnification.

(a) Unless otherwise provided by the Articles of Incorporation or by written agreement between the director or officer and the corporation, the director or officer seeking indemnification under Section 2 shall select one of the following means for determining his or her right to indemnification:

(1) By a majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed

by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

[(4) By an affirmative vote of a majority of the members present or represented at a meeting at which a quorum is present, if there are members having voting rights. Membership rights held by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.]

[(4)] [(5)] By a court under Section 8.

[(5)] [(6)] By any other method provided for in any additional right to indemnification permitted under Section 7.

(b) In any determination under (a), the burden of proof is on the corporation to prove by clear and convincing evidence that indemnification under Section 2 should not be allowed.

(c) A written determination as to a director's or officer's indemnification under Section 2 shall be submitted to both the corporation and the director or officer within 60 days of the selection made under (a).

(d) If it is determined that indemnification is required under Section 2, the corporation shall pay all liabilities and expenses not prohibited by Section 4 within 10 days after receipt of the written determination under (c). The corporation shall also pay all expenses incurred by the director or officer in the determination process under (a).

Section 6. Advance Expenses. Within 10 days after receipt of a written request by a director or officer who is a party to a proceeding, the corporation shall pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the corporation with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the corporation.



(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance to the extent that is ultimately determined under Section 5 that indemnification under Section 2 is not required and that indemnification is not ordered by a court under Section 8(b)(2). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

#### Section 7. Nonexclusivity.

(a) Except as provided in (b), Sections 1, 2 and 6 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(1) The Articles of Incorporation.

(2) A written agreement between the director or officer and the corporation.

(3) A resolution of the board of directors.

[(4) A resolution, after notice, adopted by an affirmative vote of a majority of the members present or represented at a meeting at which a quorum is present, if there are members having voting rights.]

(b) Regardless of the existence of an additional right under (a), the corporation shall not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the corporation that the director or officer did not breach or fail to perform a duty he or she owes to the corporation which constitutes conduct under Section 2(a)(1), (2), (3) or (4). A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(c) Sections 1 to 12 do not affect the corporation's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances.

(1) As a witness in a proceeding to which he or she is not a party.

(2) As a plaintiff or petitioner in a proceeding because he or she is or was an employee, agent, director or officer of the corporation.

#### Section 8. Court-Ordered Indemnification.

(a) Except as provided otherwise by written agreement between the director or officer and the corporation, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting

the proceeding or to another court of competent jurisdiction. Application may be made for an initial determination by the court under Section 5(a)(5) or for review by the court of an adverse determination under Section 5(a)(1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(b) The court shall order indemnification if it determines any of the following:

(1) That the director or officer is entitled to indemnification under Section 1 or 2.

(2) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under Section 2.

(c) If the court determines under (b) that the director or officer is entitled to indemnification, the corporation shall pay the director's or officer's expenses incurred to obtain the court-ordered indemnification.

Section 9. Indemnification of Employees or Agents. The corporation may indemnify and allow reasonable expenses of an employee or agent who is not a director or officer by general or specific action of the board of directors or by contract.

Section 10. Insurance. The corporation may purchase and maintain insurance on behalf of an individual who is an employee, agent, director or officer of the corporation against liability asserted against or incurred by the individual in his or her capacity as an employee, agent, director or officer, regardless of whether the corporation is required or authorized to indemnify or allow expenses to the individual against the same liability under Sections 1, 2, 6 and 9. reasonable expenses of an employee or

Section 11. Liberal Construction. In order for the corporation to obtain and retain qualified directors and officers, the foregoing provisions shall be liberally administered in order to afford maximum indemnification of directors and officers and, accordingly, the indemnification above provided for shall be granted in all cases unless to do so would clearly contravene applicable law, controlling precedent or public policy.

Section 12. Definitions Applicable to This Article.

(a) "Affiliate" shall include, without limitation, any corporation, partnership, joint venture, employee benefit plan, trust or other enterprise that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the corporation.

(b) "Corporation" means this corporation and any domestic or foreign predecessor of this corporation where the predecessor corporation's

existence ceased upon the consummation of a merger or other transaction.

(c) "Director or Officer" means any of the following:

(1) A natural person who is or was a director or officer of this corporation.

(2) A natural person who, while a director or officer of this corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employee or agent of another corporation or foreign corporation, partnership, joint venture, trust or other enterprise.

(3) A natural person who, while a director or officer of this corporation, is or was serving an employee benefit plan because his or her duties to the corporation also impose duties on, or otherwise involve services by, the person to the plan or to participants in or beneficiaries of the plan.

(4) Unless the context requires otherwise, the estate or personal representative of a director or officer.

For purposes of this Article, it shall be conclusively presumed that any Director or Officer serving as a director, officer, partner, trustee, member of any governing or decision-making committee, employee or agent of an Affiliate shall be so serving at the request of the corporation.

(d) "Expenses" include fees, costs, charges, disbursements, attorney fees and other expenses incurred in connection with a proceeding.

(e) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including an excise tax assessed with respect to an employee benefit plan, and reasonable expenses.

(f) "Party" includes a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(g) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the corporation or by any other person.

Section 13. Private Foundations. Notwithstanding the foregoing, whenever the corporation is a private foundation as defined in I.R.C. Section 509(a), it shall not make any indemnification which would give rise to a penalty excise tax under I.R.C. Chapter 42.

#### VI. ANNUAL ASSESSMENTS

Each single family lot and multi-family area owner shall be subject to a general annual charge or assessment for the purpose of



defraying the costs of maintaining and administering the open space and recreation facilities: Such annual assessment shall be a prorata share, or one share per lot for single family and duplex lots and one-quarter share per multi-family living unit completed and ready for occupancy, of the costs incurred by the Corporation to maintain the open space for the recreation, health, safety, welfare and enjoyment of its members. Said costs shall include, but not be limited to, payment of taxes, insurance, repair, replacement and additions to the improvements made upon said open space and the cost of labor, equipment, materials, management and supervision thereof.

Siepmann Investment Corp. shall pay its prorata share of such costs for each platted single family lot it still owns in said Subdivision with the exception that it shall not be assessed on any single family lot it owns for additions to said improvements for which it has not consented to the construction or installation thereof.

Pebble Valley Associates, or its assigns, shall pay a prorata share of such costs for each multi-family living unit completed and ready for occupancy with the exception that it shall not be assessed for any such unit for additions to said improvements for which it or its assigns have not consented to the construction or installation thereof.

Such annual assessment shall be levied by the Corporation as of January 1 for such year and a statement for such amount shall be mailed to the owner of each lot or multi-family area as of such date and be payable on or before March 1st of each year.

The annual assessment shall be established by review of the financial condition of the Corporation and the proposed budget for the coming year. Such annual assessment will be approved by a majority of the votes of the members of the Corporation in attendance or represented by proxy at the annual meeting.

#### VII. SPECIAL ASSESSMENTS

A special assessment may be levied by the Corporation for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement, upon the open space if consented to by a two-thirds (2/3) majority of the votes of the members of the Corporation in attendance or represented by proxy at a special meeting so called for the purpose.

Such special assessments shall be due and payable forty-five (45) days after the required affirmative vote.

#### VIII. DELINQUENT ASSESSMENTS

If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives, successors and assigns. This delinquent assessment shall also be a personal obligation of the then owner of the lot or lots involved and shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of the delinquency at the rate of twelve per-cent (12%) per annum, and the Corporation may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment, the cost of preparing and filing the complaint in such action, and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Lot owners who are delinquent in payment of assessments shall forfeit their voting privileges. Voting rights will be restored upon payment of delinquent assessments.

#### IX. PROOF OF PAYMENT

The Corporation shall, upon demand at any time, furnish to any single family lot or multi-family area owner a certificate in writing signed by an officer of the Corporation setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of the payment of any and all assessments therein stated to have been paid.

#### X. AMENDMENT

These By-Laws may be amended by the vote of two-thirds (2/3) of the members of the Corporation in attendance or represented by proxy at the annual meeting of the Corporation.

#### IX. CORPORATE SEAL

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the

Corporation and the words, "Wisconsin" and "Corporate Seal."

XII. FINANCIAL MANAGEMENT

The Board of Directors shall present a proposed budget for the coming year, together with a detailed list of expenses for the past year to the membership at the annual meeting of the Corporation.

The Board of Directors shall also cause to have made an independent audit of the books or record of the Corporation. The audit shall be conducted as soon as practical before the Annual Meeting and the Auditor's report presented to the membership at the annual meeting.