

# OPERATING AGREEMENT FOR VILLAS DE PLAYA ENCANTO, L.L.C.

## RECITALS

THE PARTIES TO THIS AGREEMENT (the "Members") are entering into this agreement for the purpose of forming a limited liability company under the Limited Liability Company Act (Arizona Revised Statutes, Title 29, Chapter 4) of the state of Arizona (the "**Act**").

THIS OPERATING AGREEMENT (this "**Agreement**") is made as of the 21st day of April 2003, by and among the signatories identified on the signature pages hereto.

IN CONSIDERATION OF the mutual promises of the parties hereto and other good and valuable consideration, receipt and adequacy of which is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

## DEFINITIONS

As used in this Operating Agreement, the following terms are to have the meaning as stated below:

"Act" means "the Limited Liability Company Act of the State of Arizona" as presented in the Arizona Revised Statutes, Title 29, Chapter 4.

"Agreement" means "this Operating Agreement."

"Article" means "an article of this operating agreement."

"Code" means "the Internal Revenue Code of 1986, as amended," or any rule or regulation thereunder.

"Commission" means "the Corporation Commission of the State of Arizona."

"Company" means "Villas de Playa Encanto, L.L.C."

"L.L.C." or "LLC" means "limited liability company."

"LLC ownership interest" means measures of ownership in the limited liability company, as defined herein.

"Manager" or "managers" means the duly appointed and recognized manager or managers of the limited liability company.

"Member" means a person or other legal entity admitted to membership of the limited liability company.

## ARTICLES OF THE AGREEMENT

### 1. NAME

The name of the limited liability company shall be Villas de Playa Encanto, L.L.C.

### 2. PURPOSE

The purpose for which the limited liability company is formed is to acquire interests in certain parcels of real property located in Puerto Peñasco, Sonora, Mexico, as further identified and defined in **Schedule A**, hereby a part of this Operating Agreement, and to do and engage in any and all other things and activities incident to the acquisition, holding, management, operation, leasing, renting, financing, refinancing, development and sale of such property, and as is determined to be consistent with section 29-610 of the Act, which states the general powers of a limited liability company include the power to “purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real property or personal property, or any interest in real or personal property, wherever located.”

### 3. STATUTORY AGENT AND OFFICE

The statutory agent of the limited liability company shall be xxxxxxxxxxxxxxxx at the registered office of the company. The registered office of the limited liability company shall be located at xxxxxxxxxxxxxxxx, Phoenix, Arizona 12345. The manager(s) of the limited liability company may replace the statutory agent or relocate the registered office by filing the appropriate notifications with the Arizona Corporation Commission (the "**Commission**").

### 4. ARTICLES OF ORGANIZATION

The members of the limited liability company shall:

(a) promptly file a duly executed original copy of the Articles of Organization of the limited liability company, together with one or more additional copies thereof as appropriate, with the Corporation Commission of the State of Arizona and in such other place or places as may be required by law; and

(b) tender and pay all fees, charges and do all other things requisite for the due formation of the limited liability company pursuant to the laws of the State of Arizona.

### 5. DURATION

The limited liability company shall be deemed formed at the time of the filing of the Articles of Organization with the Commission and shall be of perpetual duration, until or unless terminated pursuant to the further provisions of this Agreement.

### 6. INTERESTS AND CONTRIBUTIONS OF MEMBERS

6.1 The name and present mailing address of each initial member and the ownership interest of each is:

Partner One, somewhere in Phoenix AZ 12345 – 50% ownership interest.

Partner Two, somewhere in Phoenix AZ 12345 – 50% ownership interest.

6.2 The initial contribution of each initial member shall be contributed to the limited liability company upon execution of this Agreement by such member. The capital contributions of each initial member are:

Member Name	Cash Capital Contribution	Non-cash Capital Contribution
Partner One	\$5,000	½ interest in real property to be acquired by the LLC, as identified in schedule A
Partner Two	\$5,000	½ interest in real property to be acquired by the LLC, as identified in schedule A

6.3 An individual capital account shall be maintained for each member. The capital account of each member shall consist of such member's initial contribution, increased by:

- (a) additional capital contributions made by such member, and
- (b) such member's share of the limited liability company's net profits, if any,

and decreased by:

- (i) distributions made to such member, and
- (ii) such member's share of the limited liability company's losses,

all in accordance with any applicable provision of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any rule or regulation thereunder.

6.4 No additional contributions have been agreed to as of the date of this Agreement. Additional capital contributions to the Company may be required only with the Members' supermajority approval. If the Members approve additional capital contributions, each Member will then have the obligation to contribute a pro rata share based on the Member's Ownership Interest.

6.5 Except as set forth in Article 16.3, a member shall not receive from the limited liability company any part or all of his or her contribution to capital until:

- (a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the limited liability company sufficient to pay them;
- (b) the consent of all members is had, unless the return of the contribution to capital may be rightfully demanded as provided herein; and
- (c) the Articles of Organization or this Agreement are cancelled or so amended as to set out the withdrawal or reduction of the contributions of capital.

6.6 Subject to the provisions of Article 6.5, a member may rightfully demand the return of his or her contribution only upon the dissolution of the limited liability company.

## **7. OPERATING UNITS AND OWNERSHIP INTERESTS**

7.1 The limited liability company will initially consist of three operating units, to be identified as Villas de Playa Encanto Building A, Villas de Playa Encanto Building B-1, and Villas de Playa Encanto Building B-2. Membership (ownership) interests will be specific to one of the operating units. No operating unit may have more than eight members, but may have fewer than eight members.

7.2 Membership Certificates will have the operating unit and the percentage of ownership of such operating unit identified on the face of such certificate. No member may purchase, own or convey less than a 12 ½% interest in any operating unit of the company.

7.3 LLC ownership interests are personal property and represent a right of use of the real property owned by the limited liability company and associated with the operating unit of the company specific to the membership interest owned. They do not convey title to or ownership of the realty or any other assets of the limited liability company.

## **8. VOTING**

8.1 Each member shall be entitled to vote upon all matters for which members have the right to vote. Each member shall be entitled to one vote.

8.2 Each operating unit of the LLC will meet and vote as a unit on matters relative to that operating unit. No member may vote at any meeting of other operating units than the one his/her membership is specific to.

8.2 A majority vote is **more than** 50% of the membership voting in favor of a resolution. In an operating unit having, e.g., eight members, a majority would consist of five or more voting in favor of a resolution. Four members voting in favor would constitute a tie vote and no resolution would be reached.

8.3 A supermajority is **at least** 75% of the membership voting of favor of a resolution. In an operating unit having, e.g., eight members, a supermajority would consist of six or more voting in favor of a resolution.

8.4 Notice of a meeting called for hereunder may be made by standard U. S. mail ("**mail**"), electronic mail ("**email**"), or facsimile transmission ("**fax**"), and shall contain the time, place, and purpose of such meeting. Such notice shall be given ten calendar days prior to the date of the meeting. A quorum for any action to be taken at a meeting of members shall be LLC members represented either in person, or via telephone, or by proxy, totaling at least 50% of the members eligible to vote at the meeting.

8.5 Proxies, if used, must be written, and include the original signatures of the member granting the proxy and the member holding the proxy.

**9. CAPITAL STRUCTURE**

The capital structure of the limited liability company shall consist of membership interests, all having equal rights under all provisions of this Operating Agreement. Membership interests shall be expressed in terms of percentages of ownership of the three operating units of the limited liability company.

**10. ALLOCATION OF PROFITS AND LOSSES**

10.1 For purposes of this Agreement and until determined otherwise by the manager(s) of the limited liability company, in such manager(s) sole discretion, the term "fiscal year" shall mean the calendar year.

10.2 The profits and losses of the limited liability company shall be determined for each fiscal year of the limited liability company in accordance with the accounting methods followed for federal income tax purposes and otherwise in accordance with generally accepted accounting principles and procedures applied in a consistent manner and shall be deemed to have been earned ratably during the fiscal year. For purposes of Sections 702 and 704 of the Code or the corresponding sections of any future internal revenue law or any similar tax law of any state or jurisdiction, and for such purposes only, the determination of each member's distributive share of all items of income, gain, deduction, loss, credit or allowance for any period or year shall be made in proportion to the amounts of the members' respective percentage interests in the limited liability company during such period or year.

10.3 The profits of the limited liability company shall be shared among the members, and the losses of the limited liability company shall be borne by the members in proportion to each member's respective percentage interest in the limited liability company.

**11. DISTRIBUTIONS**

11.1 The Net Cash Flow, if any, of the limited liability company shall be distributed at least annually among the members in proportion to each member's respective percentage interest in the limited liability company. For such purpose, "Net Cash Flow" shall mean:

(a) For each calendar year, all cash income and receipts of whatsoever nature or kind received by the limited liability company less all costs and expenses incurred or paid by, and all net additions to reserves of, the limited liability company (whether operating or capital costs, and including without limitation, all costs to acquire its interest in the real property described in Article 2, payments upon the principal of any indebtedness, secured or unsecured, of the limited liability company, expenditures for capital improvement, additions or replacements and any other expenditures which are not deductible in arriving at the limited liability company's federal taxable income, such as expenses for repairs and reserves to meet anticipated expenses as the manager(s) shall deem to be reasonably necessary); plus

(b) Any other funds deemed by the manager(s) to be available for distribution.

11.2 The net proceeds from the sale of all or any portion of any real property of the limited liability company shall be distributed to the members in proportion to each member's respective percentage in the limited liability company.