

Form 4

***THIS IS A SAMPLE FORM FOR INFORMATIONAL PURPOSES ONLY.
NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR
ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION.***

NON DISTURBANCE AGREEMENT

DATED: _____

BETWEEN: _____

_____ HOLDER

AND _____ DEVELOPER

Developer owns the real property located in _____ county, _____ and described in the attached Exhibit _____. Holder is the holder of a blanket encumbrance on the real property described in attached Exhibit _____.

Developer (has utilized) (intends to utilize) the real property described in Exhibit _____ in the development of a timeshare plan. The parties to this agreement desire that the rights and obligations of the timeshare owners (excluding the developer) under their purchase agreements shall not be disturbed or interfered with by reason of a foreclosure sale under the encumbrance or a conveyance of the subject property in lieu of foreclosure or by reason of any subsequent sale, conveyance or transfer by any purchaser at such a foreclosure sale or grantee under such conveyance in lieu of foreclosure.

NOW THEREFORE, for valuable consideration receipt of which is acknowledged, the parties therefore agree as follows:

SECTION 1. DEFINITIONS

As used herein, the following terms shall have the following described meanings:

COMMENT: Here you should provide specific meanings to the timeshare terms which you employ in the non-disturbance agreement such as timeshare, timeshare owner, timeshare unit, or any other specific terminology which you believe to be in need of definition as it may be used in this agreement.

SECTION 2. COVENANT AND WARRANTY OF NON-DISTURBANCE TO VENDEES

The parties hereby covenant and warrant to each other and to each and every vendee that each vendee shall have the continuous and uninterrupted use and enjoyment of the vendees in accordance with the rights and obligations under the purchase agreement and the timeshare plan, notwithstanding any foreclosure sale under the blanket encumbrance or conveyance in lieu of any such foreclosure sale; provided, however, that this warranty of non-disturbance and uninterrupted

enjoyment shall continue only so long as the purchase agreement for acquisition of the timeshare has not been terminated by reason of the vendees default thereunder. A foreclosure sale purchaser or in lieu deed grantee shall be deemed to have taken title to the parcel or parcels sold or conveyed to him subject to the rights of the vendees under all purchase agreements which have not been terminated; shall be deemed to be the assignee of all rights of the holder and developer under all such purchase agreements; and shall be deemed to have assumed the obligations of seller thereunder.

SECTION 3. SUBORDINATION TO ORIGINAL DEEDS

By its execution of this non disturbance agreement, the holder shall be deemed to have subordinated the encumbrance to each and every original deed which is recorded in the official records of _____ County, _____. No further document or instrument should be required to accomplish such subordination. Any foreclosure sale purchaser shall be deemed to have taken title to the parcel or parcels sold at foreclosure sale under the encumbrance, subject to the conveyances by original deed of undivided interest in such parcel or parcels and all easements, rights and privileges contained in such original deed.

COMMENT: Deeds can be used in a timeshare situation and normally provision would be made for partial releases from the blanket encumbrance. However, this section can be included in the non-disturbance agreement to assure holders acknowledgment of the priority of the purchasers deeds. In lieu of this section, it may be desirable to repeat or refer to the existing partial release agreement which is either contained in the encumbrance or in separate documentation.

SECTION 4. COVENANTS RUN WITH THE LAND

The covenants, warranties, conditions, restrictions, terms and provisions contained herein are made for the mutual benefit of the developer and the holder and for the benefit of the respective interests held by each in the subject property; the benefits hereof shall inure to and the burdens hereof shall bind the parties hereto and their respective successors and assigns; and the covenants, warranties, conditions, restrictions, terms and provisions contained herein shall be deemed to be covenants running with the subject property.

SECTION 5. INTERPRETATION

This non-disturbance agreement shall be liberally construed in favor of all timeshare owners in a manner that will accomplish the preservation of the rights of such timeshare owners as if no foreclosure sale or conveyance in lieu of foreclosure under the encumbrance had occurred.

