

SUBSIDY AGREEMENT
(The Orchard at Carneros)

THIS SUBSIDY AGREEMENT (the “**Agreement**”) is made as of the ___ day of _____, 2007, by and between The Orchard at Carneros Association, a California non-profit mutual benefit corporation (the “**Association**”), and The Cottages at Carneros, LLC, a California limited liability company (the “**Developer**”), with reference to the following facts and circumstances:

RECITALS

A. Developer has recorded and is the “Declarant” under that certain Declaration Of Covenants, Conditions And Restrictions for The Orchard at Carneros in the Office of the County Recorder of Napa County, California (the “**Declaration**”). The Declaration provides for the operation and maintenance by the Association of certain real property described in Exhibit A to the Declaration (the “Property”) and the improvements thereto, including, without limitation, the seventeen (17) Cottages and the contents thereof which have been or will be constructed upon the property. The Declaration further provides for the payment by the Association of certain expenses for the maintenance of amenities and improvements which are or will be constructed on real property adjacent to the Property, including, without limitation, ingress and egress easements, certain recreational amenities, and water and sewerage facilities. Except as otherwise defined herein, each defined term used herein shall have the meaning set forth therefore in the Declaration.

B. In accordance with Section 5.1 of the Declaration, Developer and the Association intend to establish by this Agreement a program whereby Developer will provide for the payment of Developer’s appropriate share, as the Owner of Declarant Fractional Interests, of the costs and expenses of the Association, and by so doing, will be excused, for so long as Developer is current in its obligations to the Association under this Agreement, from the obligation to pay Assessments to the Association with respect to the Developer Fractional Interests.

C. It is the intention of Developer and the Association that Developer shall, pursuant to the terms and conditions set forth below, pay all of the “Deficiencies” (defined below) of the Association and by its payments hereunder eliminate any need for a Special Assessment during the term hereof (other than special assessments approved by the Board and, if necessary, by Owners, for capital expenditures, insurance policy deductibles, underinsured losses or uninsured losses, during the term hereof).

TERMS AND CONDITIONS

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

1.1. “**Deficiencies**” means, for each Fiscal Year of the Association, the amount by which (a) the cumulative total amount of the actual expenses attributable to the Fractional Program which are incurred by the Association (including, without limitation, all Reserve Expenses), for such Fiscal Year, exceeds (b) the sum of (A) the cumulative total amount of Basic Assessments for such Fiscal Year paid to the Association by Owners other than Developer for

the same period, (B) the cumulative total amount of Assessments, other than the Basic Assessment, paid to the Association for such Fiscal Year by Owners other than Developer for the same period, and (C) all other amounts paid to the Association by persons other than Developer for the same period.

No provision of this definition, when used hereinafter, shall entitle Developer to pay less than a full pro-rata share of the Reserve Expenses of the Association for each Fractional Interest.

1.2. "Reserve Expenses" means those amounts set forth in the Budget of the Association for any Fiscal Year of the Association under consideration for reserves for replacement, repair or refurbishment of the items for which the Association has or anticipates having a duty to maintain and replace. Notwithstanding the foregoing, Reserve Expenses shall not include any expense set forth in the Budget which is not actually incurred by the Association. For example, if the Project at the beginning of a Fiscal Year of the Association, includes seventeen (17) Cottages, but only eight (8) of such Cottages are actually constructed (in accordance with a two-phase construction program), and furnished with Common Furnishings on the Starting Date (under circumstances in which Developer has posted a completion guarantee for the remainder of the seventeen (17) Cottages), Reserve Expenses would include reserves for replacement of only the eight (8) Cottages and the Common Furnishings therein which accrue between the Starting Date and the end of such Fiscal Year, and not within the remaining uncompleted and unfurnished nine (9) Cottages, notwithstanding the provision in the budget for reserves for all seventeen (17) Cottages and the Common Furnishings therein. In the foregoing example, Reserve Expenses would include reserves for the entire Fiscal Year for all other depreciable assets which are subject to maintenance and replacement by the Association.

1.3. "Starting Date" means the date on which the first Original Deed is recorded after the date hereof.

2. Payment of Deficiencies. From and after the first day of the second calendar month following the Starting Date, Developer agrees to pay, on or before the 10th day of each month during the term hereof, the Deficiencies other than the Reserve Expenses not previously paid by Developer; provided, however, that the first payment to be made by Developer hereunder shall include payment for Deficiencies arising between the Starting Date and the last day of the first calendar month following the Starting Date. Developer shall pay one-fourth (1/4th) of that part of the Deficiencies which are Reserve Expenses on or before the last business day of each quarter of the Fiscal Year of the Association. No provision of this Paragraph 2 nor any provision of this Agreement shall entitle Developer to pay less than a full pro-rata share of the Reserve Expenses of the Association for each Fractional Interest owned by Developer.

3. Assignment. Provided that any such delinquency shall have been paid by Developer hereunder, the Association, upon request by Developer, shall assign to Developer each and every right of the Association to pursue any of its remedies against an Owner who has not paid an Assessment to the Association, and shall execute such further documentation as Developer shall reasonably request from time to time to perfect such assignment.

4. Term. The term of this Agreement shall commence on the Starting Date and shall terminate on the earlier to occur of (a) the date upon which Developer shall convey the last of the

Fractional Interests it owns or (b) the date which is the last day of the Fiscal Year of the Association following the date upon which Developer elects, by written notice to the Association, to terminate this Agreement, provided that Developer shall not terminate this Agreement until Developer has obtained any bond required pursuant to Section 11241 of the California Business and Professions Code. This means that the Developer may elect in any Fiscal Year of the Association, including the first year, to terminate this Agreement by giving prior written notice to the Association.

5. Surety Bonds. Developer agrees to furnish a surety bond (a “Bond”) in favor of the Association in an amount sufficient to provide for Developer’s payment of its monetary obligations pursuant to this Agreement. The Bond shall be in a form and in an amount satisfactory to the California Department of Real Estate. Developer and the Association agree that the Bond shall be delivered to First American Title Insurance Company or any alternative entity acceptable to the California Department of Real Estate (“Escrow Holder”), pursuant to the terms and provisions contained in instructions to Escrow Holder approved by the California Department of Real Estate (the “**Instructions**”).

6. Effect of Subsidy Agreement Upon Developer’s Assessment Obligations. Provided Developer shall not be in default in the performance of any of its obligations hereunder, Developer shall not be required to pay to the Association the Assessments attributable to Fractional Interests owned by Developer pursuant to the terms and provisions of the Declaration. In the event Developer shall default in the performance of any of its obligations hereunder and such default shall not have been cured within 30 days after notice of default is given to Developer by the Association, (a) Developer’s obligations to pay to the Association the Basic Assessments attributable to the Fractional Interests owned by Developer shall resume, (b) Developer’s default hereunder shall be deemed a default in the payment of Assessments under the Declaration, which default shall be deemed to have occurred on the date of expiration of the grace period set forth herein and (c) the Association shall have the right to exercise each and all of the rights and remedies set forth herein and in the Declaration with respect to the non-payment of the Basic Assessments by Developer as owner of Fractional Interests, and as provided under the Bonds; provided, however, that notwithstanding Developer’s failure to cure any default hereunder within the time period specified, Developer shall have the right thereafter to cure such default, and upon so doing, Developer may notify the Association of Developer’s intention thereafter to comply with the terms of this Agreement and, if necessary, to reinstate the Bond, in which case all of the rights, duties and obligations of Developer and the Association hereunder shall continue unabated and any Basic Assessments paid by Developer shall be treated as having been paid with respect to Developer’s obligations under this Agreement.

7. Quarterly Report. Developer shall, within thirty (30) days after the end of each quarter of the Fiscal Year, furnish to each member of the Board at his or her residence address an itemized report of the funds furnished by Developer to the Association under this Agreement, including, without limitation, payment of Reserve Expenses hereunder.

8. Miscellaneous.

8.1.Notices. Any notice, request, demand, instruction or other document to be given hereunder to any party shall be in writing and shall either be personally delivered to the

person, or made by overnight or same-day commercial delivery service or by United States mail, certified or registered, postage prepaid. All such notices shall be deemed delivered, given and received: (a) the day of delivery in the event of personal delivery, (b) the day of sending via same-day commercial delivery service; (c) the following business day after sending via overnight commercial delivery service, or (d) three (3) calendar days after deposit in the United States mail. All such notices shall be addressed as follows:

If to the Association:

The Orchard at Carneros Association
c/o The Cottages at Carneros, LLC
4048 Sonoma Highway
Napa, California, 94559
Attn: President

If to Developer:

The Cottages at Carneros, LLC
4048 Sonoma Highway
Napa, California, 94559
Attn: Nick Monroe

The addresses and addressees for the purpose of this paragraph may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addressee stated by notice, or as provided herein if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

8.2. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of such provision or of any other provisions hereof.

8.3. Merger. All understandings and agreements heretofore had between the parties respecting the subsidization contemplated by this Agreement are merged by this Agreement and the exhibits attached hereto, all of which fully and completely express the agreement of the parties. There are no agreements except as specifically set forth in this Agreement or to be set forth in the instruments or other documents delivered or to be delivered hereunder.

8.4. Amendments. Except as provided in subparagraph 8.1, above, no change in or addition to, or waiver or termination of this Agreement or any part thereof shall be valid unless in writing and signed by or on behalf of each of the parties hereto.

8.5. Paragraph Headings. The paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement.

8.6. Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and each of their respective successors and assigns.

8.7. Attorneys' Fees. In the event any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach thereof, results in arbitration or litigation, the prevailing party in such proceedings shall be entitled to recover from the losing party its reasonable expenses, including attorneys' fees, and costs. In addition to the foregoing, the prevailing party shall be entitled to its reasonable fees, costs and expenses incurred in any post-judgment proceedings to collect or enforce the judgment.

8.8. Severability. Every provision of this Agreement is intended to be several. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

8.9. Delivery of Subsidy Agreement and Instructions. Developer shall furnish the Association with an executed copy of this Agreement and the Instructions along with a copy of the Bond no later than ten (10) days after the Starting Date.

8.10. Governing Law. This Agreement shall be construed and governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be commenced in Napa County, State of California.

8.11. Counterparts. This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

“ASSOCIATION”

THE ORCHARD AT CARNEROS,
a California nonprofit mutual benefit
corporation

By: _____
Name: _____
Its: _____

“DEVELOPER”

THE COTTAGES AT CARNEROS, LLC, a
California limited liability company

By: _____
Name: _____
Its: _____