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Recording Requested by
City of Antioch
When recorded, return to:
City Clerk
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007


CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2007-0288951-00
Wednesday, OCT 17, 2007 10:44:27
FRE \$0.0011
Ttl Pd \$0.00
Nbr-0003885230
lrc/RS/1-13

(Space above for Recorder)

AGREEMENT
Between

VISTA DIABLO MOBILE ESTATES LP

the Owners of

VISTA DIABLO ESTATES,
A mobile home park located in Antioch, California
and
THE CITY OF ANTIOCH,

This Agreement is entered into this day, October 9, 2007, by and between Vista Diablo Mobile Estates LLC, a California limited liability company, the Owners of Vista Diablo Estates ("Owners"), a mobile home park located in Antioch, California ("Vista"), and the CITY OF ANTIOCH ("City").

Recitals

Whereas, the Owners own the property on which the Vista Diablo Estates Mobile Home Park is located, which is generally located at 2901 Somersville Road, Antioch, California and more particularly described in Exhibit A, which is attached and incorporated by reference ("Park");

Whereas, the Park has been operated as a senior-only (age 55 years and older) mobile home park with 150 spaces since 1978 and in accordance with "older persons" residency guidelines and qualifies pursuant to the Fair Housing Act of 1968 ("FHA"), as amended by the Fair Housing Amendments Act of 1988 ("FHAA") and subsequently the Housing for Older Persons Act of 1995 ("HOPA");

1 *Whereas*, in March 2006, Sierra Corporate Management, the management company hired by the
2 Owners to manage the Park ("Management") told the residents of the Park that Vista was considering
3 converting the Park from a senior park to an all-age park; and

4 *Whereas*, Owners, Management and City have engaged in a lengthy dialogue regarding the issues
5 that bear upon the life-style, affordability, fair housing rights, responsibilities and options, general market
6 circumstances of the manufactured home community and the geographical market pertaining to the levels
7 of rents in the surrounding relevant markets;

8 *Whereas*, Owners and Management contend that City is not permitted under federal law to require
9 maintenance of the Park as a senior only park;

10 *Whereas*, Owners and Management expressed a desire to avoid the imposition of mobile home rent
11 control regulations;

12 *Whereas*, the parties desire to avoid the pursuit of formal dispute resolution processing including
13 without limitation, litigation of any kind pertaining to any of these issues which have been raised and
14 discussed, and the cost, expense and liability associated with juridical risk,

15 *Whereas*, the parties have reached agreement as reflected in this Agreement; and in so acting, do not
16 admit any faults, wrongs, liabilities, or bases for any further action or omissions, but both enter into this
17 Agreement for the purposes of putting the issues and concerns to rest between the City and Owners by these
18 mutual covenants.

19 *Whereas*, Owners make the commitments and promises contained herein predicated on the continuing
20 compliance by City with the terms and conditions contained in this Agreement recognizing that the City may
21 not contract away its exercise of constitutional police powers in the future and that this contract shall be
22 construed to be consistent with the City's police powers under Article XI, Section 7 of the California
23 Constitution. City makes the commitments and promises contained herein predicated on the continuing
24 compliance by Owners and Management with the terms and conditions contained in this Agreement.

25
26 **NOW, THEREFORE, IT IS AGREED:**

27 1. **Binding on Future Park Owners.** This Agreement is binding on heirs, successors and
28 assigns of Owners and City, voluntary and involuntary. This Agreement contains covenants running with

1 the land and equitable servitudes that benefit and bind Owners and each subsequent owner of the Park.

2 2. **Term.** This Agreement shall have a term of ten (10) years commencing upon the execution of
3 the Agreement by all parties. If the City by act or initiative imposes rent control or an ordinance that affects
4 the right of Owners to amend rules and regulations to permit residents under the age of 55 years of age to
5 occupy a mobile home in the Park, including but not limited to any form of a senior overlay zone, park
6 conversion and/or park closure or if or any legal or administrative action commenced by any resident, the
7 resulting judgment, award, order or settlement of which mandates a material change in the duties or
8 obligations of the Owners under this Agreement, other than limited to that resident and that resident only,
9 then Owners may, at their sole option, terminate this Agreement.

10 3. **Operation as Senior Park.**

11 a. Owners will continue to operate the Park as an "older persons" or senior community
12 and accordingly enforce the requirements of HOPA, for at least 10 years. The Park shall be marketed, leased
13 and operated as a senior community. All coaches shall be occupied by at least one person who is 55 years or
14 older except as follows:

15 i. Hardship circumstances.

16 Example: An elderly tenant becomes widowed, and is not herself yet 55 years
17 of age; she is the sole remaining occupant of the mobile home.

18 ii. One space occupied by a caretaker or resident manager.

19 b. If there are complaints that the Owners or Management are not complying with the
20 intent of this provision, then the Owners, Management, City and representatives of the residents shall meet
21 and confer. Failure to resolve the issue would be grounds for the City to terminate this Agreement

22 c. In the event of any legal challenge to the validity or enforceability of the Park's "older
23 persons" housing rules and regulations, Owners may be required to change its "older persons" rules and
24 regulations for the Park if necessary to the settlement, consent decree or judgment or award, or other
25 governmental order. Owners and City have the option, in such case, of reaching an agreement to continue
26 enforcement of "older persons" housing if then agreed that City will defend and indemnify Owners for costs
27 and liabilities which may result from such legal challenge, unless brought by Owners, Management or their
28 agents.

1 4. Rental Adjustments

2 a. New Residents.

3 i. All monthly rents for new residents will be no higher than \$950 for two years
4 from the execution of this Agreement by all parties to begin no later than October 1, 2007 and terminate as of
5 September 30, 2009.

6 ii. For the ten (10) year period of this Agreement, annual rental adjustments in
7 leases offered to new incoming residents shall be based on the percentage increase reflected by the
8 "Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose (1982 - 1984 = 100)"
9 ("CPI"), but with a 5% minimum. If the CPI is changed by the federal government so that the 1982-1984
10 base year used in this Agreement changes, the CPI will be converted per the conversion factor published by
11 the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the
12 term of this Agreement, the other governmental index or computation which replaces it will be used to obtain
13 substantially the same adjustment which would occur if the CPI had not been discontinued or revised.

14 b. Existing Lessee Residents: All monthly starting rents of \$1100 (spaces 19, 50, 116,
15 104, 140) will be reduced to \$950 per month for two years from the execution of this Agreement by all parties
16 to begin no later than October 1, 2007 and terminate as of September 30, 2009. All other provisions of their
17 lease agreements will continue to apply. Upon the expiration of this two-year period, \$950 will be the base
18 rent to which the annual rent adjustment formula in the lease shall apply.

19 c. New Lease Offers to Existing Residents: For the ten (10) year period of this
20 Agreement, offers for new leases of one year or more to existing residents on expiration of an existing long
21 term lease (with a term of one year or more) shall be offered at a monthly rental rate no higher than the rent at
22 the expiration of the prior lease. The annual rental adjustments in such new leases shall be based on the
23 percentage increase reflected by the "Consumer Price Index for All Urban Consumers, San
24 Francisco-Oakland-San Jose (1982 - 1984 = 100)" ("CPI"), but with a 5% minimum.

25 d. Irma Casteen and Freda Hargrove: A new buyer of Ms. Casteen's mobile home shall
26 be offered a lease at the monthly rental rate of \$950 and in accordance with the other terms of subsection 4(a)
27 above. Freda Hargrove shall be offered a new lease at a rate consistent with subsection 4(c) above.
28

1 5. **Miscellaneous Physical Upgrades.**

2 a. **Masonry Wall.** Owners will repair or replace the existing masonry wall along
3 Somersville Boulevard with a wall of at least the equivalent height or greater as allowed by city or state
4 requirements up to 8 feet tall. All attempts will be made to repair the existing masonry wall. If repairs cannot
5 be made to the existing wall, Owners will replace the wall with pressure treated redwood. Description of
6 work will be delivered to the Vista Diablo board before construction. Owners will listen to the resident
7 Board's comments. Residents will not be responsible for maintaining the wall or fence.

8 b. **Community Center.** Owners shall replace or repair the electrical and plumbing
9 systems and other health and safety issues with the Community Center, if any, within 60 days of the execution
10 of this Agreement with a report provided to the City. Management shall meet with the residents to discuss
11 and implement upgrades to the Community Center, such as new carpeting, window coverings, etc. These
12 upgrades shall be completed within 180 days of the execution of this Agreement, with a report provided to the
13 City.

14 6. **Subsidy.** Management shall distribute to and collect from the Park residents an annual income
15 verification for any resident to be eligible for any City/Agency rent subsidy as needed for the Mobilehome
16 Rental Subsidy Agreement with the Antioch Development Agency.

17 7. **Additional Mobile Home Spaces**

18 a. Owners desire to add up to five (5) new mobile home spaces within the existing Park,
19 consistent with all current regulations and requirements enforced by the California Department of Housing
20 and Community Development; consistent with all City ordinances, resolutions and policies; and consistent
21 with all other local, state and federal laws and regulations.

22 b. The parties acknowledge that the development of these additional spaces would
23 provide substantial public benefits to qualified "older persons" and could help attain certain public objectives
24 consistent with the provision of affordable housing and/or special needs housing addressed in the Housing
25 Element of the City.

26 c. The City agrees to facilitate, but not guarantee, the processing of an application for up
27 to five additional mobile home spaces. It is anticipated that the application would be for a conditional use
28 permit, with a possible application for a variance depending on placement of the additional spaces. As part of

1 that application, if desired by Owners, Owners may also seek a Development Agreement for the term of this
2 Agreement in order to vest the right to develop those spaces over the remaining term of this Agreement if the
3 Owners do not anticipate developing the additional spaces right away.

4 d. Owners' costs for the addition of up to five (5) spaces shall not be passed on or
5 amortized among the residents of the Park in any manner, fashion, or form.

6 8. Owners and City each have undertaken all necessary actions and have the full right, power and
7 authority to execute, deliver and carry out the terms and provisions of this Agreement.

8 9. The parties hereby mutually agree that neither has made any representations to the other to
9 induce them into this Agreement, other than what has been set forth in writing.

10 10. In the event that suit is brought to enforce any of the provisions of this Agreement, the
11 prevailing party or parties shall be entitled to recover their attorney's fees, expenses, and the costs of suit
12 actually incurred.

13 11. Nothing contained herein shall be construed as an admission by any party hereto of any
14 liability of any kind to any other party. This agreement is not an admission, or evidence, or innuendo,
15 expressly or impliedly, of any fault, wrongdoing, liability or wrongful act or omission of any kind, and is
16 entered into for the purposes stated, in order to secure peace between the parties and to avoid the expense of
17 litigation and shall not be otherwise construed. Each party denies any liability in connection with any claims
18 or entering into this stipulation and intends merely hereby to avoid further litigation. Nothing herein shall be
19 deemed or construed to be an admission or concession of any liability or fault in respect to any of the
20 allegations made or which could have been made by or against any of the parties.

21 12. This Agreement shall be governed by the laws of the State of California.

22 13. This Agreement may be executed in counterparts, all of which shall be considered to be the
23 Agreement.

24 14. The terms of this Agreement are contractual and not mere recitals.

25 15. Each party hereto agrees to execute such further papers or documents as shall be necessary and
26 proper in order to fulfill the terms and conditions of this Agreement.

27 16. Each party has full authority, right, and power to enter into this Agreement, and so warrants
28 and represents. Each party further warrants and represents that no rights, duties, obligations or interests herein

1 have been previously assigned, transferred, or hypothecated in whole or part.

2 17. Each of the parties to this Agreement warrants that they have carefully read and understood the
3 conditions of this Agreement and that they have not relied upon the representations of or advice of any other
4 party or any other attorney not their own. This Agreement and the terms and conditions thereof were
5 determined in arms-length negotiation by, between, and among the parties to this Agreement and their
6 respective counsel. Each of the parties to this Agreement represents and affirms that at all relevant times to
7 this Agreement, counsel has represented them.

8 18. Time is of the essence of this Agreement.

9 19. This Agreement constitutes the entire agreement between the parties with respect to the subject
10 matter hereof, and supersedes all prior agreements, understandings, commitments, representations, beliefs,
11 impressions and opinions, with the exception of the Mobilehome Rental Subsidy Agreement with the Antioch
12 Development Agency. Any and all prior understandings, agreements, commitments, representations, written
13 or oral, are hereby merged herein. This Agreement represents the exclusive statement of the agreement of the
14 parties, and no party relies upon any understanding, agreements, commitments, terms, provisions,
15 conversations or other communications having no express and specific textual support or existence in this
16 Agreement. This Agreement contains no implied terms or provisions except the implied contractual covenant
17 of good faith and fair dealing.

18 20. Nothing in this Agreement shall preclude any party hereunder from seeking declaratory
19 judgment as to the interpretation, meaning, or application of the terms and conditions provided herein should
20 a dispute or controversy emerge at any future time. The parties reserve all rights to seek all available legal
21 remedies in the event of breach of this Agreement.

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4 **WHEREFORE**, the parties executing this Agreement hereby express their consent, and approval of
5 this Agreement. The foregoing Agreement has been read, understood, and is agreed to by the parties signing
6 below.

7 **CITY OF ANTIOCH**

8 Dated: 10/09/, 2007

9 By: 

10 Title or Capacity: Mayor

11 **OWNERS: VISTA DIABLO MOBILE ESTATES LP**

12 By: Vista Diablo GP, LLC General Partner

13 Dated: 9/18/07, 2007

14 By: 

15 Title or Capacity: Lee Kort, Member

16 Dated: 9/24/07, 2007

17 By: 

18 Title or Capacity: Michael Scott, Member

19
20
21 *Approved as to Form:*

22 Dated: 10/9/07, 2007

23 **OFFICE OF THE CITY ATTORNEY OF ANTIOCH**

24 By: 

25 Lynn Tracy Nerland
City Attorney

26 *Signatures shall be notarized*

27 Attachment: Exhibit A (property description)

EXHIBIT "A"
LEGAL DESCRIPTION
VISTA DIABLO

REAL PROPERTY in the City of Antioch, County of Contra Costa, State of California, described as follows:

PARCEL ONE:

Portion of the northeast $\frac{1}{4}$ of Section 27, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the point of intersection of the southeastern line of the Antioch and Somersville County Road, 60 feet wide, within the southern line of the parcel of land described in the Deed to Lawrence J. Dee [sic], Contra Costa County Records; thence along the last mentioned line easterly (record: North $89^{\circ} 59'$ East), 751.40 feet, to the southeasterly corner of said Lawrence J. Dee [sic] Parcel (3046 OR 526), said point being a point on the western line of the parcel of land described as Parcel One in the Deed to Bette Stapleton, et al. recorded July 30, 1976, Book 7958, Official Records, Page 710; thence along the last mentioned western line southerly (record: South $0^{\circ} 01'$ East) to the northeastern line of the strip of land 25 feet wide, excepted by Standard Oil Company in the Deed to Tom Gentry, recorded May 9, 1966, Book 5116, Official Records, Page 752, Contra Costa County Records; thence along the last mentioned line southeasterly 200 feet, more or less, to the eastern line of said Section 27; thence along the last mentioned line southerly 225 feet, more or less, to the northwestern line of the parcel of land described in the Deed of Trust; executed by Ditz-Crane, recorded February 8, 1972, Book 6581, Official Records, Page 305, Contra Costa County Records; thence along the last mentioned line South $61^{\circ} 59' 34''$ West, 900 feet, more or less, to an angle point therein; thence continuing along said northwestern line, South $33^{\circ} 55' 06''$ West, 680 feet, more or less, to the eastern line of the Contra Costa Canal, described as Parcel Two in the Deed to the United States of America, recorded May 21, 1939, Book 516, Official Records, Page 1, Contra Costa County Records; thence along the last mentioned line North $20^{\circ} 34' 54''$ West, 130 feet, more or less, to an angle point thereon; thence continuing along the boundary of the last mentioned Parcel Two, northerly (record: North $5^{\circ} 13'$ East), 711.5 feet and northwesterly (record: North $45^{\circ} 31'$ West), 250 feet, more or less, to the southeastern line of said Antioch and Somersville Road, 60 feet wide; thence along the last mentioned line northeasterly, 600 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM:

1. All that portion thereof lying within the strip of land 25 feet wide excepted by Standard Oil Company in the Deed to Tom Gentry, recorded May 9, 1966, Book 5116, Official Records, Page 752, Contra Costa County Records.

2. The mineral rights reserved in the Deed from Standard Oil Company of California to Tom Gentry, recorded May 9, 1966, Book 5116, Official Records, Page 752.
3. All right, title and interest in and to that portion of said property lying below a depth of 500 feet from the surface thereof.
4. The parcels of land described as Parcels One and Two in the Deed to the City of Antioch, recorded March 19, 1980, Book 9777, Official Records, Page 665.

PARCEL TWO:

Parcel B, according to Parcel Map M.S. 2-76 filed March 31, 1976, Book 44, Parcel Maps, Page 9, Contra Costa County Records.

EXCEPTING THEREFROM:

1. All that portion lying northeasterly of the southwestern line of the strip of land 25 feet wide excepted by Standard Oil Company in the Deed to Tom Gentry, recorded May 9, 1966, Book 5116, Official Records, Page 752, Contra Costa County Records.
2. The mineral rights reserved in the Deed from Standard Oil Company of California to Tom Gentry, recorded May 9, 1966, Book 5116, Official Records, Page 752.
3. All right, title and interest in and to that portion of said property lying below a depth of 500 feet from the surface thereof.

A.P. No.: 076-010-029

ACKNOWLEDGMENT

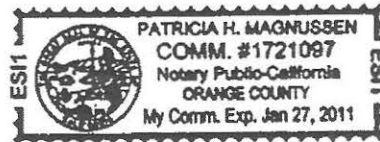
State of California
County of ORANGE

On 9/18/07 before me, PATRICIA H. MAGNUSSEN
(here insert name and title of the officer) NOTARY PUBLIC

personally appeared LEE KORT

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~) and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Patricia H. Magnusson

(Seal)

ACKNOWLEDGMENT

State of California

County of ORANGE

On 9/24/07 before me, PATRICIA H. MAGNUSSEN,
(here insert name and title of the officer) NOTARY PUBLIC

personally appeared MICHAEL SCOTT

~~personally known to me (or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Patricia H. Magnusson

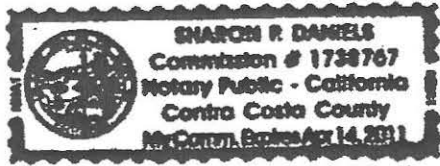
(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Contra Costa } ss.

On October 9, 2007 before me, Sharon P. Daniels, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Donald P. Freitas
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/het/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sharon P. Daniels
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement - Vista Diablo Mobile Estates,
VISTA DIABLO ESTATES & CITY OF ANTIOCH
Document Date: _____ Number of Pages: _____

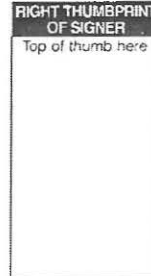
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



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