

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT BETWEEN  
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION AND  
BURBANK HOUSING DEVELOPMENT CORPORATION  
(ELDERBERRY COMMONS)

This Exclusive Right to Negotiate Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the Sonoma County Community Development Commission, a public body, corporate and politic (the "Commission"), and Burbank Housing Development Corporation, a California nonprofit public benefit corporation ("Burbank Housing"). The Commission and Burbank Housing (sometimes collectively referred to as the "Parties" or individually as a "Party") have entered into this Agreement on the basis of the following facts:

RECITALS

- A. On November 30, 2020, the Commission received an award from the State of California Housing and Community Development Department's Homekey-2 Program to acquire the property at 6751 Sebastopol Avenue in the City of Sebastopol (the "Property").
- B. On July 25, 2022, the Commission issued a Request for Qualifications soliciting qualifications and conceptual proposals from qualified developers for the renovation, construction, management, and ownership after conversion to permanent supportive housing of the project ("Project").
- C. On September 26, 2022, the Commission received a joint response to the RFQ from West County Community Services and Burbank Housing. The response included a partnership between the two agencies wherein Burbank Housing would develop and own the Project and West County Community Services would provide the supportive services.
- D. The Commission has negotiated a Professional Services Agreement ("PSA") with Burbank Housing to provide development services including management of consultants and other related services necessary to secure permits and entitlements to prepare the Project for occupancy.
- E. An Exclusive Right to Negotiate Agreement is a recommended document to facilitate the negotiation of a Disposition and Development Agreement ("DDA"). Following the execution of an Exclusive Right to Negotiate Agreement, Commission staff will bring back before the Board of Commissioners said DDA for consideration by the Board of Commissioners.
- F. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Commission and Burbank Housing of a DDA pursuant to which the Commission would convey the Property to Burbank Housing and Burbank Housing would develop, own and operate the Project on the Property.

G. As more fully set forth in Section 3.1, the Parties acknowledge and agree that this Agreement in itself does not grant Burbank Housing the right to develop the Project, nor does it obligate either Party to any activities or costs to develop the Project, except for the actions and negotiations contemplated by this Agreement, nor does it obligate the Commission to dispose of any part of the Property.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

### ARTICLE 1.

#### EXCLUSIVE NEGOTIATIONS RIGHT

##### Section 1.1 Good Faith Negotiations.

(a) The Commission and Burbank Housing shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of a DDA for the development of the Project on the Property. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory DDA.

(b) Among the issues to be addressed in the negotiations are the purchase price for the Property, design, parking, and aesthetic considerations of the Project (including appropriate means of access), the development schedule for the Project, funding of the Project, management of the Project, and the provision of improvements related to the Project. The amount, timing, method, source and other terms of any Commission financial assistance toward development of the Project, if any, shall be determined through the negotiating process for the DDA.

##### Section 1.2 Negotiating Period.

(a) Subject to earlier termination pursuant to specific provisions of this Agreement, the negotiating period (the "Negotiating Period") under this Agreement shall be one hundred and eighty (180) days, commencing on the Effective Date (as set forth in the Opening Paragraph of this Agreement), which may be extended on the Commission's behalf for up to an additional one hundred eighty (180) days by the Commission's Executive Director if, in the Executive Director's sole and absolute judgment, sufficient progress toward a mutually acceptable DDA has been made during the initial one hundred and eighty (180) day negotiating period to merit such extension. An initial extension can be granted by the Commission Executive Director through written notice to Burbank Housing and without formal amendment to this Agreement. The Negotiating Period may be further extended or modified in writing by the Commission's Executive Director on behalf of the Commission and by Burbank Housing by formal amendment of this Agreement.

(b) If the Parties are unable to reach agreement and execute and deliver a DDA by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except that the provisions of Sections 2.3 and 3.4 shall survive any termination. If a DDA is executed by the Commission and Burbank Housing then, upon such execution, this Agreement shall automatically terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period, the Commission shall not negotiate with any entity, other than Burbank Housing, regarding development of the Project or acquisition of the Property, or solicit or entertain bids or proposals to do so.

Section 1.4 Good Faith Deposit. In consideration for this Agreement and in lieu of and as an alternate to a cash good faith deposit, Burbank Housing has undertaken to use its own financial resources to retain legal, financial and other consultants to assist Burbank Housing and Commission in the negotiation of the DDA and planning of the Property, and such funds expended by Burbank Housing shall be considered Burbank Housing's good faith deposit (the "Good Faith Deposit"). As consideration for the Commission's execution of this Agreement, Burbank Housing by this Agreement shall provide the Commission with copies of all reports, studies, analyses, correspondence and similar documents prepared or commissioned by Burbank Housing with respect to this Agreement and the Project, all as more fully set forth in Section 2.3. If this Agreement is terminated without execution of a DDA for any reason, then the work product generated by Burbank Housing by expenditure of the Good Faith Deposit shall be provided to Commission at no charge as required under Section 2.3 hereof.

Section 1.5 Identification of Burbank Housing Representatives and Development Team.

(a) Negotiating Representatives. Burbank Housing representatives to negotiate the DDA with the Commission are Rich Wallach and \_\_\_\_\_. Burbank Housing's negotiating representatives may be changed by written notice to the Commission.

(b) Development Team. The Parties' acknowledge that the identity and quality of Burbank Housing's team that will oversee, monitor, and manage the day-to-day construction of the Project is important to the completion of the tasks set forth in Article 3 below, and in seeking to negotiate a mutually acceptable DDA. The following shall constitute initial members of Burbank Housing's team for the Project:

Architect	Praxis Architects
Legal Counsel	Elizabeth Lehrer, General Counsel
General Contractor	TBD

(c) As part of the Proposal submitted pursuant to Commission, Burbank Housing shall identify and seek Commission approval of any additional members to its proposed development team, which approval shall not be unreasonably withheld, conditioned or delayed. The architect, legal counsel, and general contractor identified above and the development team

members shall comprise the "Development Team" for the Project. Burbank Housing may replace one or more members of the Development Team upon receipt of Commission approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 1.6 Identification of Commission Representatives. The Commission's representative to negotiate the DDA with Burbank Housing is the Executive Director. The Commission Executive Director has ultimate staff authority to make decisions related to this Agreement that can be made at the staff level, and to make staff recommendations to the Commission in connection with decisions related to this Agreement to be made at the Commission level. The Commission's negotiating representatives may be changed by written notice to Burbank Housing.

Section 1.7 Overview; Schedule. To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in Article 2 within the specific times set forth in the milestone schedule set forth in the attached Exhibit A (the "Schedule"), and within an overall timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period. The Schedule may be modified from time to time (including modification of dates for completion of specified actions and/or addition of further actions) without formal amendment of this Agreement by written document executed by Burbank Housing and the Commission Executive Director or the Executive Director's designee.

## ARTICLE 2. NEGOTIATION TASKS AND DDA PROVISIONS

Section 2.1 Proposed Term Sheet. Within the time set forth in the Schedule, Burbank Housing shall provide Commission with a proposed non-binding term sheet (the "Proposed Term Sheet") containing proposed business and financial terms as a starting point for negotiation of the DDA. Within the time set forth in the Schedule, Commission shall provide Burbank Housing with any written comments regarding the Proposed Term Sheet. Thereafter, the Parties shall conduct negotiation of the DDA taking into account the Proposed Term Sheet and any Commission comments.

Section 2.2 Purchase Price or other Financial Consideration for the Property; Commission Financial Contribution. The Commission and Burbank Housing shall seek to agree upon the purchase price for the Property, and the nature, timing and amount of any Commission financial contribution to the Project consistent with the requirements of the Homekey Standard Agreement. It is the Parties' intent that any mutually acceptable Commission financial contribution to be included in a DDA shall be in a form or forms authorized for funding by the Commission pursuant to the California Homekey Program Rules and Regulations.

Section 2.3 Reports; Treatment of Documents Upon Termination.

(a) Reports. Unless otherwise waived by the Commission, Burbank Housing shall provide the Commission with copies of all reports, studies, analyses, plans, correspondence and similar documents, but excluding financial or confidential or proprietary information,

prepared or commissioned by Burbank Housing with respect to this Agreement and the Project, promptly upon their completion. Unless otherwise waived by Burbank Housing, the Commission shall provide Burbank Housing with copies of all reports, studies, analyses, plans, correspondence and similar documents, but excluding financial or confidential or proprietary information, prepared or commissioned by the Commission or its designee, with respect to this Agreement and the Project, promptly upon their completion.

(b) While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, Burbank Housing acknowledges that the Commission will need sufficient, detailed information about the proposed Project (including, without limitation the financial information to make informed decisions about the content and approval of the DDA. The Commission will work with Burbank Housing to maintain the confidentiality of proprietary information subject to the requirements imposed on the Commission by the Public Records Act (Government Code Section 7920.000 et seq.). Burbank Housing acknowledges that the Commission may share information provided by Burbank Housing of a financial and potential proprietary nature with third party consultants and Commission and Board of Supervisors as part of the negotiation and decision making process, it being understood that such third party consultants and Commission and Board of Supervisors shall be under the same requirements and standards as set forth above in this subsection (a).

(c) Treatment of Documents Upon Termination. If this Agreement is terminated without the execution of a DDA, the Commission's rights with respect to the information submitted by Burbank Housing under this Agreement shall be as set forth in the Assignment of Documents pursuant to this Section 2.3

#### Section 2.4 CEQA Review.

(a) Within the time set forth in the Schedule, the Commission (in consultation with the County) shall determine the type of documentation required pursuant to CEQA for the processing of a DDA, Purchase and Sale Agreement, and the land use entitlements for the Project, and shall specify in writing the type and scope of any such CEQA documentation (the "CEQA Document"), and the identity of the proposed preparer of the CEQA Document (consultant or staff). Burbank Housing shall reasonably assist the Commission in its determination by providing information about the Project, as requested. The Commission shall seek and consider in good faith Burbank Housing or its consultants' input regarding the need for and scope of any CEQA Document, and the proposed preparer of and budget for any such CEQA Document.

At its cost, the Commission (in cooperation with any responsible agency) shall cause preparation of the CEQA Document as promptly as possible consistent with satisfaction of state and local CEQA guidelines for the preparation of the CEQA Document. So long as Burbank Housing and Commission staff have otherwise concurred upon the terms of a proposed Purchase and Sale Agreement and a DDA for presentation to the Board of Commissioners, the Parties shall cooperate in good faith to establish any reasonably necessary modifications to the Schedule and any reasonably necessary extension to the Negotiating Period in accordance with Section 1.2 to accommodate the time necessary to complete the CEQA Document for

consideration by the Board of Commissioners in connection with their consideration of approval of the Purchase and Sale Agreement and the DDA.

(b) If the Board of Commissioners, in its sole discretion, determines that the approval of the DDA requires non-feasible mitigation measures, or fails to yield benefits that outweigh significant unavoidable impacts, or the Board of Commissioners otherwise determines, in its sole discretion, not to make any finding required by CEQA as a prerequisite to approval of the DDA, either Party may terminate the Agreement. Upon such termination, neither party shall have any further rights or obligations under this Agreement, except that any provision of this Agreement that is specified to survive termination shall remain in effect and binding upon the Parties.

(c) The Parties intend this Agreement to reflect the basic understanding between them, but agree that the transaction contemplated herein shall be subject to the execution of a mutually acceptable, definitive, and final DDA to be negotiated, and subject to the approval of the Board of Commissioners. This Agreement does not constitute a legally binding commitment to a specific project or the Development.

Section 2.5 Progress Reports. None required.

Section 2.6 Relocation.

As of the date of this Agreement, it is anticipated that no current occupant of the Property is a "displaced person" under any applicable local, state, and federal statutes and regulations, (including without limitation California Government Code Section 7260 et seq., and accompanying regulations). The Commission, with respect to relocation planning, advisory assistance, and payment of monetary benefits, is not obligated to perform any relocation activities.

Section 2.7 Due Diligence. During the Negotiating Period, Burbank Housing shall conduct due diligence activities, including but not limited to planning, soils report, hazardous materials report, financial feasibility and title adequacy. In addition, Burbank Housing shall coordinate and cooperate with any third party design manager that Commission contracts with to assist with due diligence such that financial resources are not wasted and efforts are not duplicated.

(a) Physical Adequacy Determination. Upon delivery of an Unsuitability Notice by Burbank Housing, this Agreement shall be terminated without further action of any Party, and thereafter no Party shall have any further duties, obligations, rights, or liabilities under this Agreement.

(b) Right of Entry. The Commission hereby grants Burbank Housing a right of entry to enter the Property to perform the physical adequacy determination described above which shall terminate with the termination of this Agreement. Burbank Housing shall indemnify, defend (with counsel reasonably acceptable to Commission and the County) and hold harmless the Commission, the County of Sonoma, and their directors, board members, officers, contractors, agents and employees against any claims made against them which arise out of the

activities of Burbank Housing or its, contractors, subcontractors, agents, employees, licensees, invitees or guests on or concerning the Property during the term of this Agreement. The foregoing indemnity shall survive termination of this Agreement, but shall not extend to any claim arising solely from the Commission's or County's gross negligence or intentional acts.

(c) Title Adequacy Determination. Within thirty (30) days following the Effective Date, the Commission shall cause a reputable title company to issue a Preliminary Title Report (the "Report") on the Property to Burbank Housing. If Burbank Housing objects to any exception appearing on the Report or should any title exception arise after the date of the Report, Burbank Housing may object to such exception, provided such objection is made to the Commission in writing on or before 5 o'clock P.M. on the thirtieth (30th) day following the date Burbank Housing receives the Report. If Burbank Housing objects to any exception to title, the Commission, within thirty (30) days of receipt of Developer's objection shall notify Developer in writing whether the Commission elects to: (1) cause the exception to be removed of record; (2) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to Burbank Housing, insuring against the objectionable exception; or (3) terminate this Agreement unless Burbank Housing elects to take title subject to such exception. If any party elects to terminate this Agreement pursuant to this Section, no party shall thereafter have any obligations to or rights against the others hereunder, except as set forth in Section 3.7. If Burbank Housing fails to provide any notification to the Commission regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this Section shall be deemed satisfied, this Agreement shall continue in effect, and the condition of title at closing under any executed DDA shall be as set forth in the Report. The parties hereby acknowledge and agree to cooperate to address cross easements and other reciprocal easement rights that may be necessary to accommodate development of the Property and address the use of the adjacent property, without need for any additional noticing requirements under this Section.

### ARTICLE 3. GENERAL PROVISIONS

#### Section 3.1 Limitation on Effect of Agreement.

(a) This Agreement shall not obligate either the Commission or Burbank Housing to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the Commission is not committing itself to or agreeing to undertake any conveyance, disposition, or use of the Property. Execution of this Agreement by the Commission is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Commission and Board of Supervisors action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the Commission and, if required by law, the Board of Supervisors, following conduct of all legally required procedures, and executed by duly authorized representatives of the Commission and Burbank Housing. Until and unless a DDA has been approved by the Commission, and executed by the Commission and Burbank Housing, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to

enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the Commission and Burbank Housing shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

Commission: Sonoma County Community  
Development Commission  
1440 Guerneville Road  
Santa Rosa, CA 95403  
Phone: (707) 565-7505  
Attention: Executive Director

Burbank Housing: 1425 Corporate Center Parkway  
Santa Rosa, CA 95407  
Phone: (707) 526-9782  
Attention: CEO & President

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Insurance. With respect to performance of work under this Agreement, at all times during the term of this Agreement Burbank Housing shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described in Exhibit B, attached hereto and incorporated herein by this reference.

Section 3.5 Costs and Expenses. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

Section 3.6 No Commissions. The Commission shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The Commission represents that it has engaged no broker, agent or finder in connection with this transaction. Burbank Housing shall defend and hold the Commission harmless from any claims by any broker, agent or finder retained by Burbank Housing.

Section 3.7 Defaults and Remedies.



(a) Default. Failure by a Party to negotiate in good faith as provided in this Agreement or failure by a Party to observe any other material provision of this Agreement shall constitute an event of default hereunder.

The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by either Party, the non-defaulting Party may as its exclusive remedies: (1) terminate this Agreement, and (2) seek specific performance, including payment of attorney's fees pursuant to Section 3.8 below. In no event shall either party be entitled to monetary damages (other than attorney's fees associated with enforcement of a specific performance action), as a result of an uncured default by either Party. Following such termination, neither Party shall have any further right, remedy or obligation under this Agreement; provided, however, that the provisions of Sections 2.3 and 3.4 shall survive such termination.

Section 3.8 Attorneys' Fees. The prevailing Party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other Party.

Section 3.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of Sonoma County.

Section 3.10 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matters of this Agreement. This Agreement may be modified only in writing and only if approved and signed all Parties.

Section 3.11 Assignment. Burbank Housing may not transfer or assign any or all of its rights or obligations under this Agreement without the Commission's prior written approval. Any such attempted transfer or assignment in violation of the preceding sentence shall be void.

Section 3.12 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Commission and Burbank Housing and no other person shall have any right of action under or by reason of this Agreement.

Section 3.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.14 Actions By The Commission. Except with respect to the ultimate approval of a DDA and the making of any statutorily required findings in connection with a DDA approval (which ultimate approval and statutory findings may be made exclusively by the Commission and the Board of Supervisors), whenever this Agreement calls for permits or the approval, consent, extension of time, authorization or waiver of the Commission, the approval,

consent, extension of time, authorization, or waiver of the Commission Executive Director or the Executive Director's designee shall constitute the approval, consent, extension of time, authorization or waiver of the Commission without further action of the Commission; provided however, that nothing in this Section shall prohibit the Commission Executive Director from seeking Commission approval for any such approval, consent, extension of time, authorization or waiver.

Section 3.15 Authority. Each Party represents and warrants to the other that the signatory below has full authority to execute this Agreement on behalf of such Party, and that this Agreement constitutes the valid and binding obligation of such Party.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the Parties on the date first above written.

**BURBANK HOUSING:**

BURBANK HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Lawrance Florin, Executive Director

**COMMISSION:**

SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION, a public body corporate and politic

By: \_\_\_\_\_  
Michelle Whitman, Executive Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Aldo Mercado,  
Deputy County Counsel

**Exhibit A**

**Schedule**

<b>Agreement Section Reference</b>	<b>Action</b>	<b>Deadline</b>
2.1	Burbank provides draft Term Sheet to Commission for comment	July 14, 2023
2.1	Commission provides Burbank with comments regarding the Term Sheet	July 31, 2023
2.4(a)	Commission makes CEQA determination and identifies preparer for proposed environmental document	August 30, 2023
2.4(a)	Resolve Schedule adjustments and closing date as necessary to accommodate CEQA process	September 15, 2023
2.7(c)	Commission causes Title Company to issue updated preliminary report to parties	No later than thirty (30) days following the Effective Date of this Agreement
2.7(c)	Last day for Burbank to object to title exceptions	No later than thirty (30) days following the date that Burbank receives the updated preliminary report (referred to in the above row)

## Exhibit B

### CONTRACT INSURANCE REQUIREMENTS

With respect to performance of work under this Agreement, Burbank shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Commission reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Burbank from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### 1. Workers Compensation and Employers Liability Insurance

- a. Required if Burbank has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Burbank currently has no employees as defined by the Labor Code of the State of California, Burbank agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

#### 2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Burbank maintains higher limits than the specified minimum limits, Commission requires and shall be entitled to coverage for the higher limits maintained by Burbank.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Commission. Burbank is responsible for any deductible or self-insured retention and shall fund it upon Commission's written request, regardless of whether Burbank has a claim against the insurance or is named as a party in any action involving the Commission.

- d. Sonoma County Community Development Commission and the County of Sonoma shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Burbank in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Burbank and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Burbank currently owns no autos, Burbank agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limits: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Commission.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. Required Evidence of Insurance: Certificate of Insurance.

### 5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A: VII.

### 6. Documentation

- a. The Certificate of Insurance must include the following reference: George's Hideaway .
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Burbank agrees to maintain current Evidence of Insurance on file with Commission for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is:

Commission:           Sonoma County Community  
                                   Development Commission  
                                   1440 Guerneville Road  
                                   Santa Rosa, CA 95403  
                                   Phone: (707) 565-7505  
                                   Attention: Executive Director

County:                 Sonoma County  
                                   575 Administration Drive, Suite 104A  
                                   Santa Rosa, CA 95403  
                                   Phone: (707) 565-2431  
                                   Attention: County Administrator

- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Burbank shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

**7. Policy Obligations**

Burbank's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**8. Material Breach**

If Burbank fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Commission, at its sole option, may terminate this Agreement and obtain damages from Burbank resulting from said breach. Alternatively, Commission may purchase the required insurance, and without further notice to Burbank, Commission may deduct from sums due to Burbank any premium costs advanced by Commission for such insurance. These remedies shall be in addition to any other remedies available to Commission.