


COUNTY OF SAN MATEO  
Departmental Correspondence

DATE: DEC 5 2001  
HEARING DATE: DEC 18 2001

TO: Honorable Board of Supervisors

FROM: Gale Bataille, Director, Mental Health Services 

SUBJECT: Subordination of current Mental Health Division Loan to Mateo Lodge, Inc. to Office of Housing HOME Loan.

RECOMMENDATION

Adopt a resolution authorizing subordination of the current Mental Health Division loan to Mateo Lodge, Inc., for the acquisition and rehabilitation of Humboldt House, to the Office of Housing HOME loan.

Background

On June 20, 2000, your Board approved an agreement with Mateo Lodge, Inc., to provide funds to purchase Humboldt House, which was home to 38 seriously mentally ill adult clients. Originally \$400,000 was budgeted for the acquisition of the home, but additional funds were needed because the rehabilitation bids came in almost \$200,000 higher than originally estimated, due to major structural issues caused by the rearrangement of interior walls necessary to meet ADA requirements. Shortly after escrow closed, San Mateo County Office of Housing HOME funds repaid San Mateo Mental Health the \$200,000 bridge loan and subordinated the Mental Health loan.

Discussion

This amendment subordinates the San Mateo County Mental Health Division loan to fifth position, with \$1,725,000 in property loans. The reason for this position requirement is based on the program requirement of the Rehabilitation Loan Program in terms of loan to value ratio.

Current Loans on Humboldt House

- 1) \$825,000 Wells Fargo Bank
- 2) \$500,000 City of San Mateo/San Mateo Redevelopment Agency
- 3) \$100,000 SMC Office of Housing CDBG Rehabilitation Loan
- 4) \$200,000 SMC Office of Housing HOME Loan
- 5) \$400,000 SMC Mental Health Division Loan

New Loan Positions on Humboldt House

- 1) \$825,000 Wells Fargo Bank
- 2) \$500,000 City of San Mateo/San Mateo Redevelopment Agency
- 3) \$200,000 SMC Office of Housing CDBG Rehabilitation Loan
- 4) \$200,000 SMC Office of Housing HOME Loan
- 5) \$400,000 SMC Mental Health Division Loan

This action is recommended to allow Mateo Lodge to receive \$100,000 in loan from the County Office of Housing CDBG Rehabilitation Loan Program. The requirements of the loan necessitate that the Mental Health loan be subordinated.

Conclusion

The Mental Health Division loan should be subordinated to the Office of Housing HOME loan according to the Rehabilitation Loan Program.

RECOMMENDED

  
HEALTH SERVICES DEPARTMENT *am.*

RESOLUTION NO. \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH  
SAN MATEO COUNTY OFFICE OF HOUSING HOME LOAN

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that;

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an agreement, reference to which is hereby made for further particulars, whereby the Mental Health Division Loan to Mateo Lodge is subordinated to the office of Housing HOME Loan according to the requirements of the Rehabilitation Loan Program; and

WHEREAS, this Board has been presented with a form of the Agreement and has examined and approved it as to both form and content and desires to enter into the Agreement:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto.

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

The Low-Income Housing Fund  
1330 Broadway, Suite 600  
Oakland, California 94612  
Attn: Ms. Donna Kelley

*(Space above this line for Recorder's use)*

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2001 by the COUNTY OF SAN MATEO, Mental Health Division ("**Subordinated Creditor**"), and MATEO LODGE, INC., a California nonprofit public benefit corporation ("**Borrower**"), in favor of the COUNTY OF SAN MATEO OFFICE OF HOUSING ("**Lender**").

### RECITALS

A. Lender has agreed to make a loan (the "**Loan**") to Borrower in the original principal amount of Two Hundred Thousand Dollars (\$200,000.00), pursuant to a Rehabilitation Loan Agreement (the "**Loan Agreement**"), by and between Lender and Borrower, dated as of even date herewith. Capitalized terms used but not defined herein shall have the same meanings as in the Loan Agreement.

B. In connection with the Loan, Borrower has executed and delivered to Lender that certain Promissory Note dated as of even date herewith in the principal amount of the Loan (as amended, replaced, renewed, extended, supplemented or otherwise modified from time to time, the "**Note**"). The Note is secured, among other security, by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith to be recorded in the Official Records of the County of San Mateo, State of California (the "**Deed of Trust**"), covering certain real property commonly known as 232 So. Humboldt Street, San Mateo, State of California (the "**Property**").

C. Borrower is presently indebted to Subordinated Creditor in the aggregate principal amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00) evidenced by that certain Promissory Note in the original principal amount of Four Hundred Thousand Dollars (\$400,000.00) (as amended, replaced, renewed, extended, supplemented or otherwise modified from time to time, the "**Subordinated Note**"). All such indebtedness and all other obligations, whether monetary or non-monetary, of Borrower to Subordinated Creditor now or hereafter existing, are hereinafter referred to as the "**Subordinated Obligations**." The Subordinated Note, the Subordinated Agreement and the other documents, instruments and agreements evidencing, securing or otherwise relating to the Subordinated Obligations shall be hereinafter referred to collectively as the "**Subordinated Documents**".

D. As a condition precedent to making the Loan, Lender has required that Subordinated Creditor and Borrower execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing and in order to induce Lender to make the Loan to Borrower, and in consideration thereof, Subordinated Creditor and Borrower hereby agree as follows:

**1. AGREEMENT TO SUBORDINATE**

(a) The Subordinated Obligations and the Subordinated Documents and the liens created thereunder, if any, shall be, and the same are hereby made, subject and subordinate to the Loan and the liens created by the San Mateo County Office of Housing Loan Documents, as well as to all of the terms, covenants and conditions contained therein.

(b) Notwithstanding Section 4 in Exhibit A attached to the Subordinated Agreement or any other term of the Subordinated Documents to the contrary, during the term of the Loan and upon foreclosure under the Deed of Trust, or deed in lieu thereof or other similar transfer, the deed restriction and any other use restrictions imposed upon the Property shall not be applicable to, or enforceable against, Lender, any successor in interest to or assigns of Lender and/or any purchaser at foreclosure and any transferee thereof.

(c) The Subordinated Obligations and the Subordinated Documents and the aforesaid liens created thereunder, if any, shall be, and the same are hereby made, expressly subject and subordinate to any and all advances made under or pursuant to the San Mateo County Office of Housing Loan Documents and/or secured by the Deed of Trust, and any and all other advances made by Lender to protect the security granted to Lender in connection therewith, and all other obligations arising under or pursuant to the San Mateo County Office of Housing Loan Documents, in each case together with interest thereon and regardless of whether any such advance is made before or after the occurrence of an Event of Default (as defined in the Deed of Trust).

(d) Subordinated Creditor and Borrower each agrees that the Subordinated Obligations are and shall be subordinate and junior, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all obligations of Borrower now or hereafter existing under the Note and the other San Mateo County Office of Housing Loan Documents, whether for principal, interest, fees, expenses or otherwise (such obligations being the "Senior Obligations"). For the purposes of this Agreement, the Senior Obligations shall not be deemed to have been paid in full until Lender shall have received payment of the Senior Obligations in cash and Lender shall have no further obligation under the San Mateo County Office of Housing Loan Documents.

(e) Subordinated Creditor agrees that, so long as the Subordinated Obligations are outstanding and until the Senior Obligations have been satisfied and paid in full, Subordinated Creditor will not (i) commence any action or proceeding (including, without limitation, any legal proceeding) to collect or enforce any Subordinated Obligation, (ii) invoke its right to foreclose, whether judicially or by power of sale; or (iii) exercise its remedies as lender, under the Subordinated Documents. Subordinated Creditor further agrees that, in the event the Property is sold or refinanced, and in the event the proceeds of such sale or refinancing are anticipated to be (or actually are) insufficient to pay in whole or in part the obligations owed Lender under the San Mateo County Office of Housing Loan Documents but, such proceeds of the sale or refinancing would nonetheless operate to pay the Senior Obligations in full, and if it is a condition of such sale

or refinance that the Subordinated Documents be released (in the case of a sale) or subordinated to the satisfaction of a new lender (in the case of a refinance) then, in any such event, and at the request of Lender, Subordinated Creditor agrees to, at the closing of any such transaction and without payment or other condition: (1) release its Subordinated Documents (in the case of a sale) and/or (2) subordinate its Subordinated Documents (in the case of a refinance) all to the end that Lender's opportunity to receive sale or refinancing proceeds in respect to the Senior Obligations shall never be delayed or impaired as a result of Subordinated Creditor's failure or refusal to approve such transaction (if approval rights are accorded Subordinated Creditor) or failure or refusal to release or subordinate (as the case may be) its Subordinated Documents, or Subordinated Creditor's imposition of other requirements as a condition of taking or completing of any such actions.

## **2. EFFECT OF AGREEMENT ON BORROWER.**

In the event that compliance by Borrower with any of the terms of the Subordinated Documents will result in a default or breach by Borrower under the terms of the San Mateo County Office of Housing Loan Documents, or in the event that any of the terms of the San Mateo County Office of Housing Loan Documents contradict or otherwise conflict with the terms of the Subordinated Documents, Subordinated Creditor acknowledges and hereby agrees that, so long as the Subordinated Obligations are outstanding and until the Subordinated Obligations and the Senior Obligations have been satisfied and paid in full, the terms of the San Mateo County Office of Housing Loan Documents shall govern and compliance by Borrower with the terms and conditions of the San Mateo County Office of Housing Loan Documents shall constitute full compliance with any such contradictory or otherwise conflicting terms of the Subordinated Documents and shall not result in, nor otherwise be deemed to be, a default under the Subordinated Documents. This Agreement is for the sole benefit of Lender and the Subordinated Creditor and their successors and assigns, provided, that Borrower shall be deemed to be a third party beneficiary of the foregoing provisions of this Section 2. Nothing herein shall be deemed to modify, limit or in any way affect the rights and obligations of Borrower to Lender under the San Mateo County Office of Housing Loan Documents, or, except as expressly stated in this Section 2, the rights or obligations of Borrower to the Subordinated Creditor under the Subordinated Documents.

## **3. NO PAYMENT ON THE SUBORDINATED OBLIGATIONS**

Subordinated Creditor agrees not to ask, demand, sue for, take or receive from Borrower, directly or indirectly, in cash or other property or by setoff or in any other manner (including, without limitation, from or by way of collateral), payment or performance of all or any of the Subordinated Obligations until payment of the Senior Obligations is current.

## **4. IN FURTHERANCE OF SUBORDINATION**

Subordinated Creditor agrees as follows:

(a) Upon any distribution of all or any of the assets of Borrower to creditors of Borrower upon the dissolution, winding up, liquidation, arrangement, or reorganization of Borrower, whether in any bankruptcy, insolvency, arrangement, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshaling of the assets and liabilities of Borrower or otherwise, any payment or distribution of any kind (whether in cash, property or securities) which otherwise would be payable or deliverable upon or with respect to the Subordinated Obligations shall be paid or delivered directly to Lender for application (in the case of cash) to or as collateral (in the case of noncash property or securities) for the payment or prepayment of the Senior Obligations until the Senior Obligations shall have been paid in full.

(b) If any proceeding referred to in Section 4(a) above is commenced by or against Borrower,

(i) Lender is hereby irrevocably authorized and empowered (in its own name or in the name of Subordinated Creditor or otherwise), but shall have no obligation, to demand, sue for, collect and receive every payment or distribution referred to in Section 4(a) above and give acquittance therefor and to file claims and proofs of claim and take such other action (including, without limitation, voting the Subordinated Obligations, enforcing any security interest or other lien securing payment or performance of the Subordinated Obligations, if any, and/or making any election provided for by the Bankruptcy Code, 11 U.S.C. Section 101 *et seq.*, including, but not limited to, the election provided for in Section 1111(b) thereof) as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of Lender hereunder; and

(ii) Subordinated Creditor shall duly and promptly take such action as Lender may request (A) to collect the amounts due under the Subordination Documents for the account of Lender and to file appropriate claims or proofs of claim in respect of the Subordinated Obligations, (B) to execute and deliver to Lender all evidences of indebtedness and original security documents with respect to the Subordinated Obligations and such powers of attorney, assignments, and other instruments as Lender may request in order to enable Lender to enforce any and all claims with respect to, and any security interests and other liens, if any, securing payment or performance of, the Subordinated Obligations, and (C) to collect and receive any and all payments or distributions which may be payable or deliverable upon or with respect to the Subordinated Obligations.

(c) All payments or distributions upon or with respect to the Subordinated Obligations which are received by Subordinated Creditor contrary to the provisions of this Agreement shall be received in trust for the benefit of Lender, shall be segregated from other funds and property held by Subordinated Creditor and shall be forthwith paid over to Lender in the same form as so received (with any necessary endorsement), together with interest thereon at the rate set forth in the Note from the date received to and including the date so paid over to Lender to be applied (in the case of cash) to or held as collateral (in the case of noncash property or securities) for the payment or prepayment of the Senior Obligations in accordance with the terms of the San Mateo County Office of Housing Loan Documents.

(d) Lender is hereby authorized to demand specific performance of this Agreement, whether or not Borrower shall have complied with any of the provisions hereof applicable to it, at any time when Subordinated Creditor shall have failed to comply with any of the provisions of this Agreement applicable to Subordinated Creditor. Subordinated Creditor hereby irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

## **5. NO COMMENCEMENT OF ANY PROCEEDING**

Subordinated Creditor agrees that, so long as any of the Senior Obligations shall remain unpaid, it will not commence, or join with any creditor other than Lender in commencing, any proceeding referred to in Section 4(a) hereof.

**6. RIGHTS OF SUBROGATION**

Subordinated Creditor agrees that no payment or distribution to Lender pursuant to the provisions of this Agreement shall entitle Subordinated Creditor to exercise any rights of subrogation in respect thereof until the Senior Obligations shall have been paid in full and Lender shall have no further obligations under the San Mateo County Office of Housing Loan Documents.

**7. SUBORDINATION LEGEND; FURTHER ASSURANCES**

(a) Subordinated Creditor and Borrower will cause the Subordinated Note and any other instrument evidencing the Subordinated Obligations to be endorsed with the following legend:

“The indebtedness evidenced by this instrument is subordinated to the prior payment in full of the Senior Obligations pursuant to, and to the extent provided in, the Subordination Agreement dated as of \_\_\_\_\_, 2001 by the maker hereof and payee named herein in favor of San Mateo County office of Housing.”

(b) Subordinated Creditor and Borrower each will further mark its books of account in such a manner as shall be effective to give proper notice of the effect of this Agreement and will, in the case of any Subordinated Obligations which are not evidenced by any instrument, upon Lender’s request cause such Subordinated Obligations to be evidenced by an appropriate instrument or instruments endorsed with the above legend. Subordinated Creditor and Borrower each will, at its expense and at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may request, in order to protect any right or interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder.

**8. AGREEMENT BY BORROWER**

Borrower agrees that it will not take any action in contravention of the provisions of this Agreement and that it will not make any payment of or perform any of the Subordinated Obligations until payment in full of the Senior Obligations (except as otherwise required under the San Mateo County Office of Housing Loan Documents).

**9. OBLIGATIONS HEREUNDER NOT AFFECTED**

(a) All rights and interests of Lender hereunder, and all agreements and obligations of Subordinated Creditor and Borrower under this Agreement, shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any of the San Mateo County Office of Housing Loan Documents, or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Senior Obligations, or any other amendment or waiver of or any consent to departure from any of the San Mateo County Office of Housing Loan Documents, including, without limitation, changes in the terms of disbursement of the Loan proceeds or repayment thereof, modifications, extensions or renewals of payment dates, changes in interest rate or the advancement of additional funds by Lender in its discretion;



(iii) any exchange, release or nonperfection of any collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Senior Obligations; or

(iii) any other circumstance which might otherwise constitute a defense available to, or discharge of, Borrower in respect of the Senior Obligations or Subordinated Creditor in respect of this Agreement.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Obligations is rescinded or must otherwise be returned by Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

#### **10. WAIVER**

Subordinated Creditor and Borrower each hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Senior Obligations and this Agreement and any requirement that Lender protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against Borrower or any other person or entity or any collateral.

#### **11. REPRESENTATIONS AND WARRANTIES**

Subordinated Creditor and Borrower each hereby represents and warrants as follows:

(a) The Subordinated Obligations now outstanding, true and complete copies of instruments evidencing which have been furnished to Lender, has been duly authorized by Borrower, have not been amended or otherwise modified, and constitutes the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms. There exists no default in respect of any such Subordinated Obligations.

(b) Subordinated Creditor owns the Subordinated Obligations now outstanding free and clear of any lien, security interest, charge or encumbrance.

#### **12. AMENDMENTS, ETC.**

No amendment or waiver of any provision of this Agreement nor consent to any departure by Subordinated Creditor or Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

#### **13. EXPENSES**

Subordinated Creditor and Borrower jointly and severally agree to pay, upon demand, to Lender the amount of any and all expenses, including the fees and expenses of its counsel, which Lender may incur in connection with the exercise or enforcement of any of its rights or interests hereunder.

#### **14. ADDRESSES FOR NOTICES**

All demands, notices and other communications provided for hereunder shall be in writing and shall be delivered in the manner described in the Loan Agreement, and if to Subordinated Creditor delivered to it at 225 37<sup>th</sup> Avenue, San Mateo, CA 94403, Attn: Director, Mental Health Division, if to Borrower or Lender delivered to it at the address of Borrower or Lender (as the case may be) specified in the Loan Agreement, or as to each party at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section 14. Receipt of all such demands, notices and other communications shall be determined pursuant to the Loan Agreement.

#### **15. NO WAIVER; REMEDIES**

No failure on the part of Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

#### **16. CONTINUING AGREEMENT; TRANSFER OF NOTE**

This Agreement is a continuing agreement and shall (i) remain in full force and effect until the Senior Obligations and all other amounts payable under this Agreement shall have been paid in full, (ii) be binding upon Subordinated Creditor, Borrower and their respective successors and assigns, and (iii) inure to the benefit of and be enforceable by Lender and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), Lender may assign or otherwise transfer the Note to any other person or entity, and such other person or entity shall thereupon become vested with all the rights in respect thereof granted to Lender herein or otherwise.

#### **17. GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

#### **18. SEVERABILITY**

If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

#### **19. JURY TRIAL WAIVER**

Subordinated Creditor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Subordinated Creditor, Borrower, Lender or any other person relating to (i) the Subordinated Obligations, (ii) the Loan and/or any understandings or prior dealings between the parties hereto or (iii) the San Mateo County Office of Housing Loan Documents, or (b) to which Lender is a party. Subordinated Creditor hereby agrees that this Agreement constitutes a written consent to waiver of trial by jury pursuant to the provisions of California Code of Civil Procedure Section 631 and the Subordinated Creditor does hereby constitute and

appoint Lender its true and lawful attorney-in-fact, which appointment is coupled with an interest, and Subordinated Creditor does hereby authorize and empower Lender, in the name, place and stead of Subordinated Creditor, to file this Agreement with the clerk or judge of any court of competent jurisdiction as a statutory written consent to waiver of trial by jury.

INITIALS: \_\_\_\_\_

IN WITNESS WHEREOF, Subordinated Creditor and Borrower each has caused this Agreement to be duly executed and delivered by its officer hereunto duly authorized as of the date first above written.

*SUBORDINATED CREDITOR:* COUNTY OF SAN MATEO,  
Mental Health Division

By: \_\_\_\_\_  
Name: Michael D. Nevin, President  
Title: Board of Supervisors

*BORROWER:* MATEO LODGE, INC.  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

All of that certain real property, situated in the City of San Mateo, County of San Mateo, State of California, and described as follows:

Lot 3 in Block 55, as show on that certain map entitled "MAP OF THE BOWIE ESTATE, EASTERN ADDITION TO THE CITY OF SAN MATEO", filed in the office of the Recorder of San Mateo County, State of California, on May 13, 1903 in Book 3 of Maps AT PAGE 15.

APN: 033-154-070