

After recording return to:

ELEVATIONS CREDIT UNION
PO BOX 9004
BOULDER, CO 80301-9004

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the “Agreement”), is made and entered into as of the ____ day of February, 2022, by and among VIA MOBILITY SERVICES, a Colorado nonprofit corporation, formerly known as SPECIAL TRANSIT (“Borrower”), COUNTY OF BOULDER, COLORADO, a body corporate and politic (“County”), and ELEVATIONS CREDIT UNION (the “Credit Union”).

RECITALS:

A. Borrower is the owner of the real property located in the County of Boulder, Colorado, which is legally described on Exhibit A, attached hereto and incorporated herein by reference (“Property”) subject to the Subordinate Deed of Trust (described below).

B. Borrower received from the County funds in the amount of \$200,000.00 pursuant to a Promissory Note (“Subordinate Note” and the obligations under the Subordinate Note and all related documents and instruments are hereafter referred to as the “Subordinate Note Documents”). The Subordination Note Documents together with any other loans from the County to Borrower relating to the Property, as each such may be modified, amended, supplemented, substituted, or replaced, are collectively referred to herein as the “Subordinate Debts.”

C. The Subordinate Debts are secured by a Deed of Trust granted by the Borrower for the benefit of the County and recorded on May 11, 2010 at Reception No. 03073932 (as the foregoing has or may be modified, amended, supplemented, substituted or replaced, “Subordinate Deed of Trust”). The Subordinate Note Documents and the Subordinate Deed of Trust together with all other documents or instruments executed and relating thereto and each as modified, amended, supplemented, substituted or replaced from time to time, are hereafter the “Subordinate Loan Documents.”

D. On or about even date herewith, Credit Union is loaning to Borrower the principal amount not to exceed \$4,100,000.00 (“Credit Union Loan”).

E. The Credit Union Loan is evidenced by a Promissory Note granted by Borrower for the benefit of the Credit Union (as modified, amended, supplemented, substituted or replaced, “Credit Union Note”) and is secured by among other things a first lien Deed of Trust encumbering the Property (the “Credit Union Deed of Trust”), among other collateral (collectively, all collateral documents securing the Credit Union Note and all other obligations referenced in any such

instrument as each such instrument is modified, amended, supplemented, substituted or replaced, are collectively referred to herein as the “Credit Union Security Instruments,” and the Credit Union Security Instruments together with all documents evidencing or relating to the Credit Union Loan, each as may be modified, amended, supplemented, substituted or replaced are collectively referred to herein as the “Credit Union Loan Documents”).

F. The Credit Union has agreed to make the Credit Union Loan only upon the execution of this Agreement by County and Borrower.

NOW, THEREFORE, in consideration of the Recitals, which are hereby made a part hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subordination to the Credit Union Deed of Trust. The Borrower and the County, each as applicable, hereby subordinates the Subordinate Loan Documents, along with any and all other of each of their right, title and interest in and to the Property and any rents and proceeds thereof to the Credit Union Loan Documents and any amendments, modifications or extensions thereto.

2. Subordination of Right, Title, and Interest of County in the Property. All right, title and interest of the County in and to the Property, and rents and proceeds thereof, pursuant to the Subordinate Loan Documents shall in all respects be junior, subordinate and subject to the prior right, title and interest of the Credit Union in and to the Property, and rents and proceeds thereof, pursuant to the Credit Union Loan Documents.

3. Limitations on Payment. The County shall not receive, or take action to collect or enforce, payment from Borrower, and Borrower will not make payment to the County, of any amounts outstanding under the Subordinate Debts. Upon the occurrence of an Event of Default as defined in the Credit Union Loan Documents, as a result of which the Credit Union elects to take any action to collect or enforce payment of all or any of the obligations secured by any of the Credit Union Security Instruments, the Credit Union shall give notice to County, and the County shall not, without the prior written consent of the Credit Union, receive or take any action to collect or enforce, payment of the Subordinate Debts or any part thereof from any trustee in bankruptcy, receiver, or other liquidator of any part of Borrower’s property, or from any other person. Until payment in full of the Credit Union Note any payment received by the County in violation of the immediately preceding sentence shall promptly be delivered to the Credit Union for application to the Credit Union Note. The County and Credit Union agree to notify each other, within a reasonable time period, of their knowledge of an event of default under their respective instruments.

4. Release of Subordinate Covenant and Subordinate Loan Documents. Upon an Event of Default and Credit Union’s election to foreclose the Credit Union Deed of Trust or take a deed in lieu thereof, the County shall promptly execute and deliver to Credit Union or any third party successful bidder at foreclosure sale such instruments as may reasonably be necessary to terminate or release any covenants or grant agreements, relating to the Subordinate Loan Documents with respect to the Property foreclosed or transferred by deed-in-lieu thereof. County agrees that if it fails to execute any releases required under this Section within ten (10) days of

satisfaction of the above requirements, such releases will be automatic with no further action necessary on the part of Credit Union.

5. Default. Upon the occurrence of an Event of Default, and prior to the commencement of foreclosure by Credit Union under the any of the Credit Union Loan Documents, Credit Union agrees it shall provide notice of such default to the County and provide to the County the same number of days to cure such default that are provided to Borrower in the Credit Union Loan Documents to cure such defaults; on the condition that (i) Credit Union shall only be required to provide notice of default to the County if Credit Union is required to provide notice of such default to Borrower in the Credit Union Loan Documents; (ii) the County shall be entitled to a cure period for default only to the extent that Borrower is entitled to a cure period for such default in the Credit Union Loan Documents; and (iii) the County's cure period shall be co-terminus with (and not in addition to) the cure period provided to Borrower.

Upon the occurrence of a default under the Subordinate Debts, the County agrees to provide to Credit Union a copy of any notice of default provided to Borrower.

6. Credit Union Priority. In the event of the bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of Borrower, or in the event Borrower shall become the subject of any proceeding of any character under any federal or state bankruptcy or insolvency act or law, all moneys and other property allocated or allocable to the Subordinate Debts shall be paid and delivered directly to the Credit Union for application by the Credit Union to the Credit Union Note, in such order as the Credit Union shall elect, until full payment of the Credit Union Note with the excess, if any, to be paid to County.

7. Loan Priority. The parties acknowledge and agree that, notwithstanding any other provisions of this Agreement or any loan document to the contrary, the Credit Union Loan Documents shall be first and prior to any of the Subordinate Loan Documents.

8. Condemnation Awards and Insurance Proceeds. Until repayment in full of the Credit Union Loan, the County agrees that any and all rights of either of the County, including without limitation any and all rights to condemnation awards or insurance proceeds, shall be, and are hereby expressly made, subject and subordinate to the lien of the Credit Union Security Instruments and to the rights, interests and remedies of the Credit Union and its successors and assigns (including the purchaser at any foreclosure sale or the transferee of any transfer in lieu of foreclosure) under the Credit Union Security Instruments. If following any such application or disposition of the insurance proceeds or condemnation awards and other compensation in accordance with the terms of the Credit Union Loan Documents any balance remains, then such excess shall be made payable to the County.

9. Pay Over of Monies. In the event that the County receives any payment or property on or under the Subordinate Debts whether condemnation, insurance proceeds or in violation of the terms of this Agreement, such payments shall be held in trust by the County, and it will forthwith pay over or deliver the same to the Credit Union to be held by Credit Union as cash collateral securing the Credit Union Note or applied to the Credit Union Note.

10. Undertakings Unaffected. The County's undertakings herein shall not be affected or impaired by (a) any neglect or omission on the part of the Credit Union to preserve any collateral at any time securing payment of the Credit Union Note, or (b) any act on the part of the Credit Union in releasing, canceling, or surrendering all or part of such collateral, or in extending the time for payment with respect to all or any part of the Credit Union Note or such collateral, or in enforcing or realizing upon such collateral. No notice whatsoever need be given to the County at any time of any payments made under the Credit Union Note or with respect to any collateral securing the Credit Union Note. Notwithstanding anything to the contrary contained herein, Credit Union agrees that it will not (a) extend the maturity of the Credit Union Note, or (b) increase the amount of the Credit Union Loan without the prior written consent of the County.

11. Limitation on Transfer. The County will not assign, pledge or otherwise transfer, or permit or suffer to be assigned, pledged or otherwise transferred, or execute any power of attorney with respect to, the Subordinate Debts, or any part thereof, except upon prior written notice to the Credit Union and unless such assignee, pledgee, or transferee agrees in writing to be bound by the terms and conditions of this Agreement.

12. Acceleration. In the event of any breach of this Agreement, the Credit Union shall have the right, at its option, and in addition to any other rights the Credit Union may have, to declare the Credit Union Note immediately due and payable without notice or demand.

13. Continuing Nature of Subordination. This Agreement shall be irrevocable and shall continue effective until the Credit Union Loan has been paid in full and all financing arrangements between Borrower and the Credit Union relating to the Credit Union Loan have been terminated. The agreement of the County to subordinate to the Credit Union Loans shall be limited to the principal amount of the Credit Union Loans, together with interest, default interest, fees and charges that may be incurred in connection with the Credit Union Loans, and other amounts which may be expended by the Credit Union to protect its collateral, all as described in the LENDER'S EXENDITURES section of the Credit Union Security Instruments including, but not limited to, real estate tax and insurance payments and any and all modifications of the Credit Union Loan.

14. Successors and Assigns. This Agreement is binding not only upon the County and Borrower, but also upon the successors and assigns of each of them and is enforceable not only by the Credit Union but also by its successors and any assignee of or participant in the Credit Union Note.

15. Governing Law. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the State of Colorado.

16. Section Titles; Gender. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the masculine and feminine forms, and vice versa.

17. Notices. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon receipt when personally delivered or sent by facsimile

transmission or overnight courier, or when duly deposited in the United States mails, certified or registered with proper postage prepaid, addressed to the party to be notified as follows:

If to Borrower: Via Mobility Services
2855 N 63rd Street
Boulder, CO 80301

If to Credit Union: Elevations Credit Union
Attention: Commercial Lending
P.O. Box 9004
Boulder, CO 80301-9004

If to County: County of Boulder
Attention: Worthy Cause Program
P.O. Box 471
Boulder, CO 80306

With a copy to: Boulder, County Attorney's Office
Attn: Worthy Cause Attorney
P.O. Box 471
Boulder, CO 80306

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same document.

[The remainder of this page has intentionally been left blank.]

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

BORROWER:

By: Frank Bruno
Its: Chief Executive Officer

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ as _____ of Via Mobility Services, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

CREDIT UNION:

By:

Name: _____

Its: Authorized Representative

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ as authorized representative of Elevations Credit Union.

WITNESS my hand and official seal.

My commission expires: _____

[S E A L]

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot 2, Brickyard Subdivision, City and County of Boulder, State of Colorado
also known by street and number as: 2855 N. 63rd St., Boulder, CO 80301