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**GREYSTONE VILLAS
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: _____ December 20, 2021 _____, 2021.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation,
100 Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

ADAMO BUILDING COMPANY, LLC, a Delaware Limited
Liability Company, 3194 N. Industrial Way C/O: 4833 Front St.
#B301, Castle Rock, CO 80104 (“Subdivider”).

MORTGAGEE: **PUBLIC TRUSTEE OF DOUGLAS COUNTY FOR THE
USE OF FIRSTIER BANK**, 120 S. Wilcox Street, Castle Rock,
CO 80104 (Per Deed of Trust, reception # 2020078551).

RECITALS:

A. Subdivider desires to plat certain property as the Greystone Villas at Castle Rock subdivision (“Subdivision”), more particularly described in the attached *Exhibit 1* (“Property”).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with Town regulations. By this Agreement the parties address the conditions for construction of such improvements and certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and Town makes no representation to any owner of a lot or tract within the Subdivision that all necessary Subdivision infrastructure will be completed by the Town in the event of a default by Subdivider.

D. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

COVENANTS:

NOW, THEREFORE, in consideration of these mutual promises, the parties agree and covenant as follows:

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Section 1. Definitions. The following words when capitalized in the text shall have the meanings indicated:

Agreement: this Greystone Villas Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Annexation Agreement for Seller's Landing Planned Unit Development dated November 16, 1982, recorded in the Records on December 2, 1982 at Reception No. Book 458, Page 752.

Development Exactions: the fees and charges imposed by Town under the Town Regulations on development, including the Development Impact and System Development Fees.

Development Impact Fees: the fees currently imposed under Chapter 3.16 of the Code.

Director: the Director of Development Services, or designee.

Improvements: the water, wastewater, storm water drainage, transportation, Landscaping or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

Landscaping: the landscaping required on public areas, streetscapes, or tracts as prescribed in the Site Development Plan, including any landscaping guidelines.

Plans: the description of the Improvements on the construction drawings approved concurrently with the Plat and related documents.

Plat: the final subdivision plat for the Subdivision as approved by the Town.

Property: the property described in the attached *Exhibit 1*.

Records: the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

Site Development Plan: a site development plan for any portion of the Subdivision as approved by the Town.

System Development Fees: the charges imposed by Town under Town Regulations as a condition to the right to connect to the municipal water or

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wastewater system, for the purpose of recovering Town's pro rata capital cost of water or wastewater facilities dedicated to allow such connection, including the component charges currently imposed by Town Regulations. A charge or fee imposed under the Town Regulations exclusively for the purpose of the acquisition or development of renewable water resources or a cash payment in lieu of water rights dedication is not considered a System Development Fee under this Agreement.

Subdivision: the Greystone Villas subdivision.

Town Regulations: the Code, inclusive of the Town technical design criteria manuals, as the same may be amended from time to time.

Water Rights: the right and interest to all Denver basin ground water underlying the Property, that the Town previously acquired and reflected in the implied consent portions of the Code.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement. Initially, capitalized terms not defined in this Agreement shall have the meaning ascribed in the Development Agreement.

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town Regulations.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of the Improvements within three years of the date of recordation of this Agreement, the authorization under this Agreement shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Director good cause for the delay and its good faith intention and financial ability to proceed and complete the Improvements for the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision. For the purposes of this Section 2, Subdivider's compliance with Section 5 of this Agreement shall presumptively demonstrate Subdivider's good faith intention and financial ability to proceed and complete development of the Subdivision.

Improvements must be completed not later than one year after the date of issuance of the first construction permit for the Improvements ("Completion Date"), provided that the Completion Date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as reasonably determined by the Director.

Section 3. Restrictions Pending Completion of Improvements. No development may utilize or access the Improvements until the Improvements are substantially completed, except when authorized by the Director. Substantial completion occurs when the

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Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance.

Section 4. Acceptance of Improvements. Upon substantial completion of the Improvements, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests such inspection, and Town shall notify Subdivider of non-conforming work within 15 working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of record drawings and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as *Exhibit 2*. With conveyance of the Improvements and receipt of the warranty surety, the applicable warranty period commences.

Section 5. Improvements Security. In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond. The amount of the Security shall be dependent on the form of Security provided, calculated in accordance with the Town Regulations ("Security"). The form of the Security is subject to approval by the Town Attorney. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. Security which has a term expiring on or before 60 days after the Completion Date shall contain a provision that unless renewed or substitute Security is provided, prior to its expiration date, it may be called by the Town for lack of adequate Security. The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. The warranty portion of the Security shall be released as authorized in the Town Regulations.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or re-grade and re-vegetate the Subdivision and/or complete construction or installation of any of the Improvements, should Subdivider default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations.

Section 6. Landscaping.

A. Landscaping is required in connection with the Improvements and in connection with the private improvements on the Property as follows: (i) Subdivider shall

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make commercially reasonable efforts to complete all Landscaping pertaining to the Improvements prior to initial acceptance of the Improvements as prescribed in the Plans; and (ii) Subdivider shall make commercially reasonable efforts to complete all applicable Landscaping pertaining to private improvements on the Property prior to the issuance of a certificate of occupancy for related private improvements.

B. In the event Subdivider is unable to complete installation of the Landscaping in accordance with Subparagraph A, above, the following provisions shall apply:

1. Subdivider shall make a cash deposit to the Town in the amount of 100% of the estimated complete cost of the applicable Landscaping, to be held by the Town as security for completion of the Landscaping ("Landscape Deposit").

2. The amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;

3. The Landscape Deposit must be made prior to and as a condition to:

a. Initial acceptance of the Improvements under A(i); above; or

b. Prior to the issuance of a certificate of occupancy for the private improvements under A(ii), above.

4. The Landscape Deposit shall not accrue interest;

5. Subdivider shall have 180 days from the date the Landscape Deposit is deposited with Town to complete the applicable Landscaping;

6. Within 10 days of completion of the Landscaping and acceptance by the Town, Town shall return the Landscape Deposit to Subdivider;

7. If at the end of the 180 day period the applicable Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Landscaping, provided Town will not be obligated to spend any Town funds to complete the applicable Landscaping in the event the Landscape Deposit is insufficient to fund completion; and

8. Town shall return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Landscaping within 10 days after completion of such Landscaping.

Section 7. Water Rights. Town acquired control of the Water Rights through the adoption of Ordinance No. 97-17 and pursuant to the implied consent provision of §37-90-137(8), C.R.S. Owner has conveyed all Water Rights underlying the Property in the deed

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attached as *Exhibit 3*. Owner shall have no obligation to provide additional water rights or to satisfy any other groundwater dedication requirement that may be imposed through the Town Regulations. However, Owner shall be obligated to pay Development Exactions and other applicable fees imposed under the Town Regulations, including the renewable water resource fee, in the amount and manner prescribed under the Town Regulations.

Section 8. Gilbert Street Sewer. Subdivider shall pay the apportioned amount for 5 SFE at \$247 per SFE to provide contribution for the upsizing of the Gilbert Street Sewer System in the amount of \$1,235.

Section 9. Floodplain Dedication. Density on the Property was calculated based on the Floodplain boundaries at the time of execution of this Agreement. Subdivider shall dedicate to the Town any portions of the Property located in the Floodplain pursuant to Title 18 of the Code. Such dedication shall be made concurrently with and as a condition to recordation of the Plat and this Agreement. Town has sole discretion to calculate the Floodplain dedication area using Town Regulations and any other federal, state, and local laws.

Section 10. Cash-in-lieu for Seller Bike Path. Pursuant to Section 3 of the Development Agreement, Subdivider shall paying cash-in-lieu in the amount of twenty-five thousand dollars (\$25,000) upon execution of this Agreement to satisfy a required bike path as shown on *Exhibit 4*.

Section 11. Water Conservation Regulations. The landscaping of the Property shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application.

Section 12. Application of Development Agreement. The Development Agreement may contain certain other conditions and requirements which apply to the development of the Property. The enumeration in this Agreement of certain of obligations triggered under the phasing plan of the Development Agreement is not inclusive of all such obligations. In the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control.

Section 13. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in Section 3, above;
- (b) failure to cure the defective construction of any Improvements within the applicable cure period;
- (c) Subdivider has breached, or caused a breach of any other provision of this Agreement.

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As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have thirty (30) calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 14. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Subdivision after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the Improvements have not been completed or accepted;
- (c) record a notice of non-compliance with this Agreement in the Records to provide record notice of Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against Subdivider for money damages and/or equitable relief for breach of this Agreement.

Section 15. Indemnification. Subdivider indemnifies and holds Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of construction or repair of the Improvements by Subdivider.

Section 16. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

Section 17. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

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Section 18. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

If to Town: Town of Castle Rock
 Attn: Town Attorney
 100 Wilcox Street
 Castle Rock, CO 80104

If to Subdivider: Adamo Building Company, LLC
 3194 N. Industrial Way
 C/O: 4833 Front St. #B301
 Castle Rock, CO 80104

If to Mortgagee: Public Trustee of Douglas County
 For The Use of Firstier Bank
 120 S. Wilcox Street
 Castle Rock, CO 80104

Section 19. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

Section 20. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

(Signature pages to follow)

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**EXHIBIT 1
PROPERTY DESCRIPTION**

LOTS 1-5, TRACTS A AND B, GREYSTONE VILLAS, ACCORDING TO THE
RECORDED PLAT THEREOF, RECORDED 12/20/21 UNDER
RECEPTION NO. 2021139103, COUNTY OF DOUGLAS, STATE OF
COLORADO.

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(Exemplar – Not for Execution)

**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
100 Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve the Greystone Villas at Castle Rock subdivision. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

THEREFORE, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the Improvements subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed in Title 15 of the Town's Municipal Code commencing with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water _____

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Wastewater	_____
Stormwater	_____
Streets	_____
Parks and recreation	_____
TOTAL	_____

- Transferor concurrently submits to Town the surety attached as **Exhibit B** in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 20_.

TOWN OF CASTLE ROCK

Engineering Division

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EXHIBIT A
TO QUIT CLAIM DEED

THE PART OF LOT 1, SELLER'S LANDING, AS PLATTED IN THE RECORDS OF DOUGLAS COUNTY, COLORADO AT RECEPTION NUMBER 295391, BEING LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN IN THE TOWN OF CASTLE ROCK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1, SELLER'S LANDING;
THENCE N37°38'03"W ALONG SAID WEST RIGHT-OF-WAY LINE OF GILBERT STREET, 927.94 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING N37°38'03"W ALONG SAID WEST RIGHT-OF-WAY LINE, 84.89 FEET TO THE NORTHEAST CORNER OF SAID LOT 1;
THENCE S65°42'05"W, 311.70, FEET TO THE NORTHWEST CORNER OF SAID LOT 1;
THENCE S46°32'26"E, 201.39 FEET;
THENCE N42°52'05"E, 255.62 FEET
THENCE N52°21'50"E, 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.92 ACRES OR 40,179 SQUARE FEET, MORE OF LESS.

ALSO KNOWN AS LOTS 1 THROUGH 5 INCLUSIVE AND TRACTS A AND B, GREYSTONE VILLAS, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO.

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EXHIBIT 4 (Bike Path Cash-In-Lieu)

