

PARTICIPATION AGREEMENT
FOR
PUBLIC INFRASTRUCTURE IMPROVEMENT CONSTRUCTION

THIS AGREEMENT is entered into the ___ day of _____, 2019, by and between Evans North, LLC, a Tennessee limited liability company (“**Evans North**”), Amber Lane Development, LLC, a Tennessee limited liability company, (“**Amber Lane**”), Byrd D. Cain, Jr. (“**Cain**”) and the Town of Thompson Station, a municipal corporation duly formed of the laws of the State of Tennessee (the “**Town**”) with respect to roadway infrastructure improvements to Critz Lane.

WHEREAS, on July 24, 2018, Evans North received conditional preliminary approval from the Town’s Planning Commission for the Preliminary Plat for Phases 14-17 of the Fields of Canterbury Subdivision (the “Fields of Canterbury Phases 14-17”) located on real property on Critz Lane (Tax Map 145, Parcel 6.05) currently owned by Evans North (the “Evans North Property”), and

WHEREAS, Amber Lane has submitted a proposed Preliminary Plat (the “Avenue Downs Preliminary Plat”) to the Town’s Planning Commission for a 69 lot subdivision (the “Avenue Downs Subdivision”) located on real property on Critz Lane (Tax Map 145, Parcels 6.03 and 6.04) currently owned by Cain (the “Cain Property”), and

WHEREAS, in order to obtain approval from the Town’s Planning Commission for the Avenue Downs Preliminary Plat, the Town will have to allocate 69 sewer taps to the Avenue Downs Subdivision; and

WHEREAS, in order to permit the Town to allocate 69 sewer taps to the Avenue Downs Subdivision, Evans North, Station Hill, LLC, Alexander Property, LLC (“Alexander Property”), Amber Lane and the Town will enter into a Sewer Tap Agreement substantially in the form attached hereto as Exhibit 1 (the “Sewer Agreement”); and

WHEREAS, the Town has proposed to construct certain public infrastructure improvements to Critz Lane to address the current traffic utilizing Critz Lane and the additional traffic that will utilize Critz Lane following the development of the Fields of Canterbury subdivision, the Avenue Downs Subdivision, and the future development of other properties along Critz Lane (the “Road Project”); and

WHEREAS, Evans North and Amber Lane have agreed to provide financial and other assistance to the Town in connection with the Road Project in accordance with the terms of this Agreement; and

WHEREAS, the construction of the Road Project will be undertaken in the three (3) phases as shown on Exhibit 2, with the first phase work to be the construction to be undertaken by Evans North at its sole cost in compliance with the Fields of Canterbury Construction Plans and the construction to be undertaken by Amber Lane at its sole cost in compliance with Avenue Downs Construction Plans, and the second and third phases to be constructed by the Town in compliance with Final Plans (as defined below); and

WHEREAS, prior to Town undertaking the construction of the Road Project, (i) Evans North has obtained approval from the Town of the construction plans for all public improvements for the portion of the Fields of Canterbury Phases 14-17 shown on Exhibit 3 (the “Fields of Canterbury Construction Plans”), in order to construct the portion of Lioncrest Lane in the location shown on Exhibit 3 to provide a connection between Section 13 of the Fields of Canterbury Subdivision and Critz Lane for use as an alternative route while Critz Lane is closed during the construction of the Road Project, (ii) Amber Lane must obtain approval from the Town’s Planning Commission for the Avenue Downs Preliminary Plat and approval from the Town of the construction plans for all public improvements for Avenue Downs Subdivision, Section 1 shown on Exhibit 4 (the “Avenue Downs Construction Plans”), in order to construct the portions of Avenue Downs Drive and Otterham Drive in the location shown on Exhibit 4 to provide a connection between Clayton Arnold Road and Critz Lane for use as an alternative route while Critz Lane is closed during the construction of the Road Project, (iii) Evans North must obtain approval from the Town’s Planning Commission of a reduction of the tree replacement requirements for the Fields of Canterbury Phases 14-17 as shown on Exhibit 5 (the “Phases 14-17 Tree Reduction”); (iv) Alexander Property must obtain approval from the Town’s Planning Commission of a reduction of the tree replacement requirements for the future phases of the Fields of Canterbury Subdivision located on the Alexander Property Subdivision as shown on Exhibit 6 (the “Alexander Property Tree Reduction”); (v) Evans North must dedicate or convey to the Town, at no cost to the Town, the portions of the Evans North Property required for the Road Project; and (vi) Cain or Amber Lane must dedicate or convey to the Town, at no cost to the Town, the portions of the Cain Property required for the Road Project

WHEREAS, Evans North has retained Ragan Smith to prepare complete plans and specifications for the construction of the Road Project and Ragan Smith has prepared the plans and specifications (the “Initial Road Project Plans”); and

WHEREAS, the Initial Plans provide that the Road Project will be located upon the existing right of way of Critz Lane, on portions of the Evans North Property, on portions of the Cain Property, and on portions of the property on Critz Lane (Tax Map 145, Parcel 6.00) currently owned by Thomas M. Evans, Jr. (the “Evans Property”); and

WHEREAS, prior to commencement of construction of the Road Project, the Town, will complete the final plans and specifications and bid documents for the Road Project (the “Final Road Project Plans”) and the Town will construct the road improvements for the Road Project in accordance with the Final Road Project Plans; and

WHEREAS, the completion of the Road Project and the provision of such public infrastructure improvements will benefit both parties and the general community of the Town; and

WHEREAS, the parties would like to work together to provide such public infrastructure improvements.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Following the execution of this Agreement and the Sewer Agreement by all the

applicable parties, (i) the Town will allocate the 69 sewer taps to Amber Lane in accordance with the Sewer Agreement and (ii) the Town's Planning Commission shall proceed to consider and approve the Avenue Downs Preliminary Plat. Following the approval of the Avenue Downs Preliminary Plat, Amber Lane shall submit to the Town the Avenue Downs Construction Plans for approval by the Town. The Avenue Downs Construction Plans shall provide for the connection of Avenue Downs Drive to the existing alignment of Critz Lane. The Town will be responsible for the costs of any adjustments to the intersection of Avenue Downs Drive and Critz Lane required by the Final Road Project Plans. Within ten (10) days following the approval of the Avenue Downs Construction Plans by the Town, Amber Lane shall pay to the Town the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) (the "Avenue Downs Contribution").

2. Following the execution of this Agreement and the Sewer Agreement by all the applicable parties, Evans North shall provide the most recent version of the Initial Road Project Plans to the Town. The Town shall be responsible for all additional engineering cost to revise the Initial Road Project Plans into the Final Road Project Plans. Evans North shall be entitled to deduct the cost of the Initial Road Project Plan in the amount not to exceed Fifty Five Thousand and No/100 Dollars (\$55,000.00) from the Evans North Contribution described in Section 5.

3. Following the execution of this Agreement and the Sewer Agreement by all the applicable parties, Evans North shall submit to the Planning Commission the revised preliminary plat for Fields of Canterbury Phases 14-17 showing the Phases 14-17 Tree Reduction. Within ten (10) days following the approval of the Phases 14-17 Tree Reduction by the Planning Commission, Evans North shall pay to the Town the sum of One Hundred Sixty Two Thousand Five Hundred and No/100 Dollars (\$162,500.00) (the "Phases 14-17 Tree Contribution"). In the event the Planning Commission fails to approve the Phases 14-17 Tree Reduction, Evans North shall not be obligated to make the Phases 14-17 Tree Contribution, however Evans North shall make all reasonable efforts to obtain approval of the same.

4. Following the execution of this Agreement and the Sewer Agreement by all the applicable parties, Evans North shall submit to the Planning Commission the preliminary plat for Alexander Property Subdivision showing the Alexander Property Tree Reduction. Within ten (10) days following the approval of the Alexander Property Tree Reduction by the Planning Commission, Evans North shall pay to the Town the sum of One Hundred Sixty-Two Thousand Five Hundred and No/100 Dollars (\$162,500.00) (the "Alexander Property Tree Contribution"). In the event the Planning Commission fails to approve the Alexander Property Tree Reduction, Evans North shall not be obligated to make the Alexander Property Tree Contribution.

5. Evans North has obtained approval from the Town of the Fields of Canterbury Construction Plans and a grading permit for improvements shown on the approved Fields of Canterbury Construction Plan. Evans North has commenced construction of the road improvement shown on the Fields of Canterbury Construction Plans. The Fields of Canterbury Construction Plans provide for the connection of Lioncrest Lane to the existing alignment of Critz Lane. Within ten (10) days following the approval of this Agreement by the Board of Mayor and Aldermen of the Town pursuant to Section 18, Evans North shall pay to the Town the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) (the "Evans North Contribution"), minus the amount provided in Section 2.

6. Amber Lane shall commence construction of the road improvement shown on the Avenue Downs Construction Plans as approved by the Town within thirty (30) days of the issuance by the Town of a grading permit for such road improvements. Amber Lane shall complete construction of the road improvement shown on the Avenue Downs Construction Plans as approved by the Town within 300 days of the commencement of construction, (the "Avenue Downs Completion Deadline"). The Town may grant reasonable extensions on the Avenue Downs Completion Deadline due to weather and time of year, said extension shall not be unreasonably withheld.

7. Evans North shall complete construction of the road improvement shown on the Fields of Canterbury Construction Plans as approved by the Town within 300 days of the commencement of construction, (the "Fields of Canterbury Completion Deadline"). The Town may grant reasonable extensions on the Fields of Canterbury Completion Deadline due to weather and time of year, said extension shall not be unreasonably withheld.

8. Within thirty (30) days following the approval of this Agreement by the Board of Mayor and Aldermen of the Town pursuant to Section 18, Evans North shall execute and deliver to the Town the right-of-way easement in the form attached hereto as Exhibit 7 in order for the Town to engage in Phase II and III of the Road Project as defined herein..

9. Within thirty (30) days following the approval of this Agreement by the Board of Mayor and Aldermen of the Town pursuant to Section 18, Amber Lane shall execute and deliver to the Town the right-of-way easement in the form attached hereto as Exhibit 8 in order for the Town to engage in Phase II and III of the Road Project as defined herein.

10. Evans North agrees that the Town shall be permitted to utilize the portions of Lioncrest Lane in the location shown on Exhibit 3 to provide an alternative route between Section 13 of the Fields of Canterbury Subdivision and Critz Lane during the construction of the Road Project. Said utilization shall not be an explicit or implicit act or acquiescence by the Town that the Town is accepting dedication of said portion of Lioncrest Lane. Evans North shall be responsible for maintaining Lioncrest Lane to applicable standards and later dedicating the same to the Town once the Road Project is complete.

11. Amber Lane agrees that the Town shall be permitted to utilize the portions of Avenue Downs Drive and Otterham Drive in the location shown on Exhibit 4 to provide an alternative route between Clayton Arnold Road and Critz Lane during the construction of the Road Project. Said utilization shall not be an explicit or implicit act or acquiescence by the Town that the Town is accepting dedication of said portion of Avenue Downs Drive and Otterham Drive. Amber lane shall be responsible for maintaining Avenue Downs Drive and Otterham Drive to applicable standards and later dedicating the same to the Town once the Road Project is complete.

12. After Amber Lane and Evans North complete their respective road improvements as outlined in section 6 and 7 above ("Phase I"), the Town shall commence the Final Road Project Plans ("Phase II and III").The proposed right of way for Critz Lane as shown on the Final Road Project Plans shall be consistent with the proposed right of way for Critz Lane as shown on the Initial Road Project Plans. Any revisions to the proposed right of way for Critz Lane as

shown on the Final Road Project Plans must be approved by Evans North and Amber Lane, with said approval not unreasonably withheld. The Town shall advertise the Road Projects for bids within sixty (60) days of completion of Phase I. Unless the bids are more than fifteen percent (15%) over the estimated project cost as determined by the Town's engineers (the "Estimated Project Cost"), the Town agrees to award and approve the construction contract for the Road Project within thirty (30) days after bid opening, provided that the bids meet all requirements under applicable law and project specifications and the Town concludes that it is in the best interests of the Town to award a bid. In the event all bids submitted are more than fifteen percent (15%) over the Estimated Project Cost as determined by the Town's engineers, or no bids meet the requirements, specifications, and is not in the Town best interests, the Town may elect, in its sole discretion, to reject all bids, amend the Final Road Project Plans and rebid, provided that Road Project shall be rebid within sixty (60) days after all bids are rejected and the Town shall award the contract within thirty (30) days after the second bid opening, provided that the second round of bids is not more than fifteen percent (15%) over the Estimated Project Cost as determined by the Town's engineers and that the bids meet all requirements under applicable law and project specifications and the Town concludes that it is in the best interests of the Town to award a bid. Except for the amounts payable by Evans North and Amber Lane pursuant to this agreement, the Town shall be responsible for all the costs of the Road Project and Evans North and Amber Lane shall have no further responsibility for the Road Project.

13. The Town shall (i) commence construction of the second phase of the Road Project (Phase II) after Amber Lane and Evans North complete Phase I, (ii) commence construction of the third phase of the Road Project (Phase III) after completion of Phase II and (iii) substantially complete construction of the Road Project on or before May 30, 2021 (the "Completion Deadline") or at such earlier time as is practicable.

14. Evans North's commitments contained in this Agreement shall satisfy any and all requirements for improvements to Critz Lane that were recommended in the traffic study for Fields of Canterbury Phases 14-17 and the Alexander Property Subdivision. Amber Lane's commitments contained in this Agreement shall satisfy any and all requirements for improvements to Critz Lane that were recommended in the traffic study for Avenue Downs.

15. Prior to the Completion Deadline, Evans North shall be permitted, if all rules and regulations of the Town are met, to obtain (i) preliminary and/ or final subdivision plat approval, (ii) any building permits and (iii) certificate of occupancies for homes located within the Fields of Canterbury Phases 14-17 and the Alexander Property Subdivision. Prior to the Completion Deadline, Amber Lane shall be permitted, if all rules and regulations of the Town are met, to obtain (i) preliminary and/ or final subdivision plat approval, (ii) any building permits and (iii) certificate of occupancies for homes located within Avenue Downs Subdivision.

16. Any deadlines specified in this Agreement shall in all cases be subject to extensions for a period of time equal to the delay in completion caused as a result of Excusable Delay. As used herein, the term "Excusable Delay" shall mean any delay in performance under this Agreement due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather, moratorium or other unusual delay in

obtaining necessary governmental permits or approvals (with the party subject to the deadline using commercially reasonable efforts to obtain the same) or any other cause whatsoever beyond the reasonable control of the party subject to the deadline (excluding financial inability to perform) to the extent that in each case of Excusable Delay, the party subject to the deadline has notified the other parties to this Agreement in writing within thirty (30) days after the occurrence of each Excusable Delay event and has specified in detail the circumstances constituting Excusable Delay and the anticipated number of days by which performance is delayed as a result thereof. The parties agree to work towards the Completion Deadline with all due haste but understand that delays are generally inevitable.

17. This Agreement shall not be effective until the Board of Mayor and Aldermen of the Town have adopted a Resolution authorizing this Agreement.

18. This Agreement may be modified, altered, amended, canceled or terminated only by the express, written agreement of all the parties hereto.

19. The terms, conditions, covenants, agreements and easements contained herein shall be binding on and inure to the benefit of Evans North, Amber Lane, Cain, and the Town, and their respective heirs, successors and assigns. Any references to the Evans North, Amber Lane, Cain, and the Town shall be deemed to mean and include their respective heirs, successors and assigns as though they had been original parties to this Agreement.

20. The invalidation of any one or more of the provisions of this Agreement or any part thereof by judgment of any court of competent jurisdiction shall not in any way affect the validity of any other such provisions of the Agreement but the same shall remain in full force and effect.

21. This Agreement and the Sewer Agreement constitutes the complete and entire agreement among the parties related to the transactions contemplated herein constitute the final, complete, and entire understanding of such parties and supersede all prior agreements and negotiations with respect to the matters herein or therein contained.

22. All captions, headings, paragraph and subparagraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular paragraphs and subparagraphs by number refer to the paragraph or subparagraph so numbered in this Agreement.

23. Nothing contained herein or in any other document shall be deemed to render the Town, Evans North, Amber Lane and Cain partners or venturers for any purpose

24. All schedules and exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

25. If any date specified in this Agreement for the performance of an obligation, the giving of a notice or the expiration of a time period falls on a day other than a business day, then this Agreement shall be automatically revised so that such date falls on the next occurring business day.

26. The invalidation of any one or more of the provisions of this Agreement or any part thereof by judgment of any court of competent jurisdiction shall not in any way affect the validity of any other such provisions of the Agreement but the same shall remain in full force and effect.

27. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. Venue for all matters arising under this Agreement shall be in the courts of Williamson County, Tennessee, and the parties hereto hereby consent to the jurisdiction of such courts for any such legal proceeding.

[Signature Page Attached Hereto]

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

TOWN:

The Town of Thompson Station

By: _____
Name: _____
Title: _____

EVANS NORTH:

Evans North, LLC, a Tennessee limited liability company

By: _____
Name: _____
Title: _____

AMBER LANE:

Amber Lane Development, LLC, a Tennessee limited liability company

By: _____
Name: _____
Title: _____

CAIN:

Byrd D. Cain, Jr.

Exhibit 1

Copy of Sewer Agreement

Exhibit 2

Road Project Phasing Plans

Exhibit 3

Drawing of Fields of Canterbury Phases 14-17

Exhibit 4

Drawing of Avenue Downs Phase 1

Exhibit 5

Drawing of Phases 14-17 Tree Reduction

Exhibit 6

Drawing of Alexander Property Tree Reduction

Exhibit 7

Form of Evans North Right of Way Dedication

Exhibit 8

Form of Amber Lane Right of Way Dedication