



CITY COUNCIL AGENDA ITEM

Date: April 18, 2016

To: Brian Kischnick, City Manager

From: Mark F. Miller, Director of Economic and Community Development
Brent Savidant, Planning Director
Steven J. Vandette, City Engineer

Subject: Private Agreement – Contract for Installation of Municipal Improvements
Stonecrest Planned Unit Development & Dog Park - Project No. 15.925.3

History

NP Troy LLC proposes to develop Stonecrest Planned Unit Development (PUD) located on the east side of Livernois between Big Beaver and Wattles, in Section 22.

City Council at the November 23, 2015 City Council meeting approved the Concept Development Plan and the Preliminary Development Plan for Stonecrest Assisted Living PUD & Dog Park, Resolution #2015-11-148.

Site grading and utility plans for this development were reviewed and recently approved by the Engineering Department. The plans include municipal improvements which will be constructed by NP Troy LLC on behalf of the City of Troy: including water main, sanitary sewer, storm sewer, detention, paving, sidewalks, landscaping and soil erosion. The required fees and refundable escrow deposits in the form of performance bond & 10% cash, that will assure completion of the municipal improvements, have been provided by NP Troy LLC (see attached Private Agreement).

The Engineering Department has worked with NP Troy LLC to extend a 12" water main from Livernois east to Colebrook. The 2015 Water System Reliability Study recommended constructing this water main loop to improve fire flows and increase pressure. It is proposed that the water main extension to Colebrook be constructed by the contractor for NP Troy LLC at the same time that utilities are being constructed for the new assisted living facility and Dog Park. The City would reimburse NP Troy, LLC for the cost of the extensions in accordance with the unit prices they submitted. Engineering has reviewed the pricing and found it to be reasonable and fair market value for this type of work.

Financial

See attached summary of required deposits and fees for this Private Agreement.

Funds for the additional water main work are included in the Water and Sewer Funds.



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Recommendation

Approval of the Contract for Installation of Municipal Improvements (Private Agreement) is recommended.

It is also recommended that the City of Troy reimburse NP Troy LLC \$62,431.64 (upon completion and approval) for the installation of approximately 1,300 feet of 12" water main and related work within the Stonecrest PUD.

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City Of Troy

Contract for Installation of Municipal Improvements (Private Agreement)

Project No.: **15.925.3**

Project Location: **SW 1/4 Section 22**

Resolution No:

Date of Council Approval:

This Contract, made and entered into this **4th** day of **April, 2016** by and between the City of Troy, a Michigan Municipal Corporation of the County of Oakland, Michigan, hereinafter referred to as "City" and **NP Troy LLC** whose address is **5015 NW Canal Street, Suite 200, Riverside, MO 64105** and whose telephone number is **816-888-7391** hereinafter referred to as "Owners", provides as follows:

FIRST: That the City agrees to permit the installation of **Water main, sanitary sewer, storm sewer, detention, paving, sidewalks, landscaping and soil erosion** in accordance with plans prepared by **Professional Engineering Associates** whose address is **2430 Rochester Ct., Suite 100, Troy, MI 48083** and whose telephone number is **248-689-9090** and approved prior to construction by the City in accordance with City of Troy specifications.

SECOND: That the Owners agree to provide the following securities to the City prior to the start of construction, in accordance with the Detailed Summary of Required Deposits & Fees (attached hereto and incorporated herein):

Refundable escrow deposit equal to the estimated construction cost of \$ **201,184.00**. This amount will be deposited with the City in the form of (check one):

Cash/Check

Certificate of Deposit & 10% Cash

Irrevocable Bank Letter of Credit & 10% Cash

Performance Bond & 10% Cash



10% Cash 20,118.00

Refundable cash deposit in the amount of \$ **30,118.00**. This amount will be deposited with the City in the form of (check one):

Cash

Check

Non-refundable cash fees in the amount of \$ **23,274.00**. This amount will be paid to the City in the form of (check one):

Cash

Check

Said refundable escrow deposits shall be disbursed to the Owners after approval by the City. The City reserves the right to retain a minimum of ten (10) percent for each escrowed item until the entire site/development has received final inspection and final approval by all City departments. Refundable cash deposits shall be held until final approval has been issued. Disbursements shall be made by the City within a reasonable time, after request for refund of deposits is made by the Owners.

City Of Troy

Contract for Installation of Municipal Improvements (Private Agreement)

THIRD: The owners shall contract for construction of said improvement with a qualified contractor. Owners, or their agents, and contractor(s) agree to arrange for a pre-construction meeting with the City Engineer prior to start of work. All municipal improvements must be completely staked in the field under the direct supervision of a registered civil engineer or registered land surveyor, in accordance with the approved plans. Revisions to approved plans required by unexpected or unknown conflicts in the field shall be made as directed by the City.

FOURTH: Owners agree that if, for any reason, the total cost of completion of such improvements shall exceed the sums detailed in Paragraph SECOND hereof, that Owners will immediately, upon notification by the City, remit such additional amounts in accordance with Paragraph SECOND hereof. In the event the total cost of completion shall be less than the sums as detailed in Paragraph SECOND hereof, City will refund to the Owners the excess funds remaining after disbursement of funds.

FIFTH: Owners agree to indemnify and save harmless City, their agents and employees, from and against all loss or expense (including costs and attorneys' fees) by reason of liability imposed by law upon the City, its agents and employees for damages because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons or on account of damage to property, including work, provided such injury to persons or damage to property is due or claimed to be due to negligence of the Owner, his contractor, or subcontractors, employees or agents, Owner further agrees to obtain and convey to the City all necessary easements and/or right-of-way for such public utilities as required by the City Engineer.

City Of Troy

Contract for Installation of Municipal Improvements (Private Agreement)

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate on this _____ day of _____, 20_____.

OWNERS NP Troy LLC

CITY OF TROY

By:

By:


Please Print or Type Nathaniel Hagedorn,
manager

Dane M. Slater, Mayor

Please Print or Type

M. Aileen Dickson, City Clerk

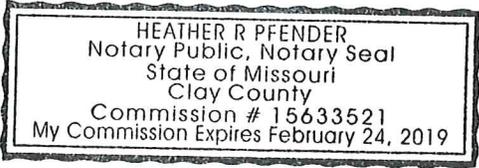
Missouri
STATE OF MICHIGAN, COUNTY OF Platte ~~OAKLAND~~

On this 23rd day of March, A.D. 2014, before me personally appeared Nathaniel Hagedorn known by me to be the same person(s) who executed this instrument and who acknowledged this to be his/her/their free act and deed.



NOTARY PUBLIC, Clay ~~Oakland~~ County, Missouri ~~Michigan~~

My commission expires: February 24, 2019



Detailed Summary of Required Deposits & Fees
Stonecrest PUD
15.925.3

ESCROW DEPOSITS (PUBLIC):

Sanitary Sewers	\$2,000
Water Mains	\$157,582
Paving	\$20,650
Sidewalks	\$20,952
Deceleration and/or Passing Lane - MAJOR ROAD	\$0
Major Road Improvements (other than decel or passing lanes)	\$0
Underground Detention System/Restricted Outlet/Sewer Tap/Oil & Gas Trap	\$0
TOTAL ESCROW DEPOSITS (Refundable): <i>10% CASH 20,118.00</i>	<u>\$201,184</u>

CASH FEES (Non-Refundable):

Engineering Review Fee (Private Improvements)(PA1)	\$16,203
Water Main Testing and Chlorination (PA 2)	\$1,189
Plan Review and Construction Inspection Fee (Public Improvements) (PA1)	\$15,310
Soil Erosion/Sedimentation Control Commercial Permit Fee (SUB 10)	\$400
Soil Erosion/Sedimentation Control Commercial Inspection Fee (SUB 10)	\$1,200
Less Initial Engineering Review Fee (Public & Private)(1.1%)	-\$11,028
TOTAL CASH FEES (Non-Refundable):	<u>\$23,274</u>

CASH DEPOSITS (Refundable):

Street Cleaning/Road Maintenance	\$5,000
Soil Erosion/Sedimentation Control Repair, Replace, or Maintenance	\$5,000
Punchlist & Restoration	\$20,118
TOTAL CASH DEPOSITS (Refundable):	<u>\$30,118</u>

Total Escrow & Cash Deposits (Refundable):	<u>\$231,302</u>
Total Cash Fees (Non-Refundable):	<u>\$23,274</u>
Total Amount:	<u>\$254,576</u>

PAID

MAR 28 2016

CITY OF TROY
TREASURER'S OFFICE



**LEXON INSURANCE
COMPANY**

12890 Lebanon Road, Mt. Juliet, TN 37122 615-553-9500

Subdivision Bond

KNOW ALL MEN BY THESE PRESENTS:

BOND NO: 1138331

That NP Troy LLC as Principal, and **Lexon Insurance Company** a Texas corporation authorized to do business in Michigan as Surety, are held and firmly bound unto City of Troy as Obligee, in the sum of ***Two Hundred One Thousand One Hundred Eighty Four and no/100*** Dollars (\$201,184.00***) lawful money of the United States of America, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

Whereas, the Principal has entered into an agreement with City of Troy as Obligee, guaranteeing that the Principal will complete improvements for Project # 15.925.3, at SW 1/4 Section 22 - Water main, sanitary sewer, storm sewer, paving, sidewalks landscaping and soil erosion Escrow Deposit all of which improvements shall be completed on or before the date set forth in the agreement.

Now, therefore, the condition of this obligation is such, that if the Principal shall carry out all the terms of said agreement relating to the improvements only and perform all the work as set forth therein all within the time set forth in said agreement, then this obligation shall be null and void, otherwise to remain in full force and effect. This bond is not transferable or assignable.

No party other than the Obligee shall have any rights hereunder as against the Surety.

The aggregate liability of the Surety of the Bond Obligation set forth herein shall not exceed the penal sum hereof for any cause or reason whatsoever, inclusive of attorney's fees or other costs. *Exclusion: This bond and any related bonds do not cover improvements that have been performed by principal prior to the issue date of this bond.*

SIGNED, SEALED AND DATED THIS 29th **day of** March, **20**16.

Attest: Heather R. Pfender

NP Troy LLC
(PRINCIPAL)

By [Signature]
Wathaniel Hagedorn, manager
Name & Title

Attest: [Signature]
Jennifer Winters, Witness

Lexon Insurance Company
(SURETY)
By [Signature]
Cara Hancock, Attorney-in-Fact

POWER OF ATTORNEY

LX-263572

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Jennifer Winters, Cara Hancock, Ron Stroman its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$3,000,000.00, Three Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.



LEXON INSURANCE COMPANY

BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY TAYLOR Notary Public- State of Tennessee Davidson County My Commission Expires 07-08-19

BY [Signature] Amy Taylor Notary Public

CERTIFICATE

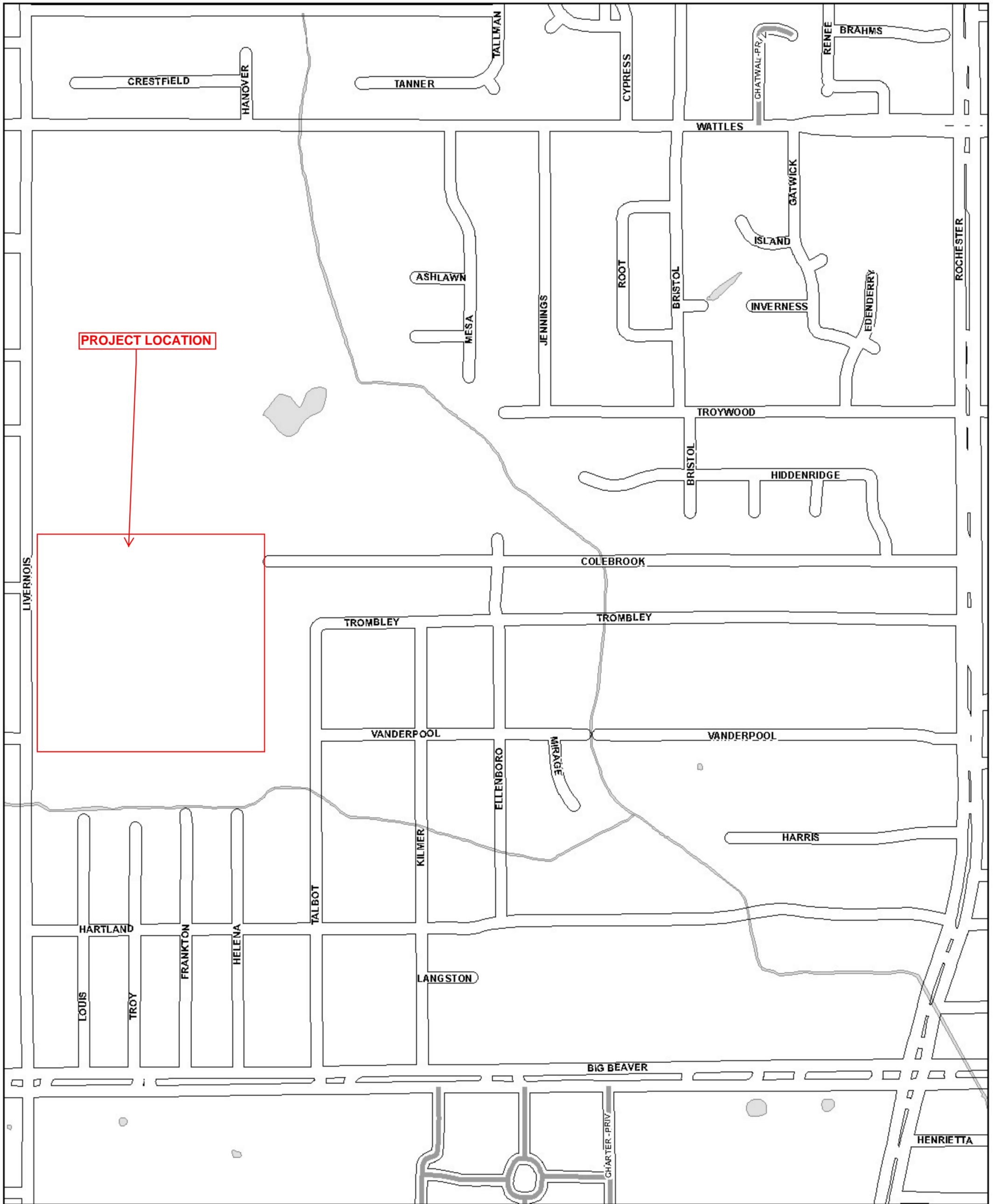
I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 29th Day of March, 2016.

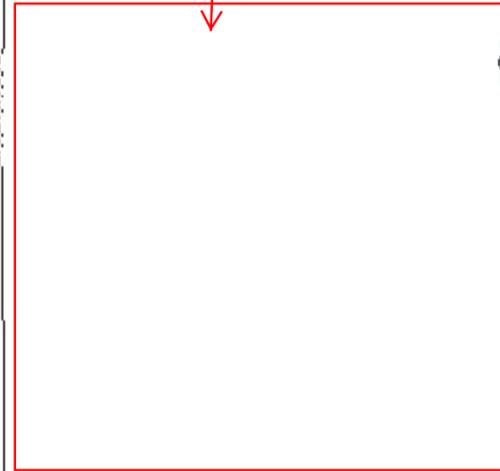


BY [Signature] Andrew Smith Assistant Secretary

“WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”



PROJECT LOCATION



Legend

-  Private
-  Do Not Salt

Street Map
Section 22



Date: 10/28/2015