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Reply to Morgantown

January 30, 2015

Connie Carr, Clerk
Pocahontas County Courthouse
900 Tenth Avenue
Marlington, WV 24954

RE: **Black Bear Crossing Townhouse Association, LLC v.
Black Bear Crossing, LLC, et al**
Pocahontas County Civil Action No. 14-C-32

Dear Ms. Carr:

Enclosed for filing in the above-referenced case is "*Answer of Defendants Treve Painer, Slopeside Construction, Inc., and Tink's Cottage Care at SnowShoe, LLC to Plaintiff's Amended Complaint and Cross-Claim Against Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction*". Also enclosed is this firm's check for the \$200.00 filing fee for the Cross-Claims asserted in the attached Answer.

Please see that it is appropriately logged and filed in the above-referenced civil action.

Thank you for your assistance in this regard.

Very truly yours,



Beverly Goodwin, Paralegal

/bg
Enclosures

cc w/encl: Kenneth E. Webb, Jr., Esq.
Jane E. Harkins, Esq.
Teresa J. Dumire, Esq.
Jamison Design, LLC

POCAHONTAS COUNTY
CIRCUIT/FAMILY COURT
RECEIVED 2/12/15
by: CYC/CDB

I. STYLE OF CASE

PLAINTIFFS: Black Bear Crossing Townhouse Association, LLC	CASE NUMBER:
DEFENDANT(S): Black Bear Crossing, LLC, et al	14-C-32

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	<input type="checkbox"/>

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR) March, 2016

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE ☐ YES ☒ NO

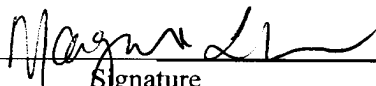
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: Brian J. Warner and Margaret L. Miner
Firm: Shuman, McCuskey & Slicer, PLLC
Address: 1445 Stewartstown Road, Suite 200
Morgantown, West Virginia 26505
Telephone: 304-291-2702

Representing:
☒ Plaintiff ☐ Defendant
☐ Cross-Complainant ☐ Cross-Defendant
Dated: February 9, 2015

☐ Pro Se


Signature

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWNHOUSE
ASSOCIATION, LLC, a West Virginia limited
Liability company and on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

CIVIL ACTION NO. 14-C-32

**BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
SLOPESIDE CONSTRUCTION, INC., a terminated
West Virginia corporation, TINK'S COTTAGE CARE
AT SNOWSHOE, LLC, a West Virginia limited liability
company, and TREVE PAINTER,**

Defendants.

**ANSWER OF DEFENDANTS TREVE PAINTER, SLOPESIDE CONSTRUCTION, INC.,
AND TINK'S COTTAGE CARE AT SNOWSHOE, LLC TO PLAINTIFF'S
AMENDED COMPLAINT**

**AND CROSS-CLAIM AGAINST
BLACK BEAR CROSSING, LLC, GKS DEVELOPMENT, LLC, THOMAS C. SELLS,
III, BRIAN KREIDER, MATTHEW GLOD, JAMISON DESIGN, LLC AND TYGARTS
VALLEY CONSTRUCTION**

NOW COMES Defendants, Treve Painter, Slopeside Construction, LLC, and Tink's Cottage Care at Snowshoe, LLC, by and through their counsel, Brian J. Warner, Margaret L. Miner, and the law firm of Shuman, McCuskey & Slicer, PLLC and pursuant to the West

Virginia Rules of Civil Procedure, tenders their Answer and Cross-Claims to Plaintiff's Amended Complaint.

This responsive pleading has been prepared, served, and filed by said counsel for Treve Painter, Slopeside Construction, Inc., and Tink's Cottage Care at Snowshoe, LLC within the time frames established by the West Virginia Rules of Civil Procedure and pursuant to agreement with counsel for Plaintiff. As permitted by Rule 8(e)(2), some defenses to the claims made in Plaintiff's Amended Complaint may be asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of their consistency and are based both on legal and equitable grounds.

As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

For their Answer to Plaintiff's Amended Complaint, Treve Painter, Slopeside Construction, Inc., and Tink's Cottage Care at Snowshoe, LLC state the following upon information and belief:

1. Paragraph 1 of Plaintiff's Amended Complaint contains legal conclusions, to which no response is required. To the extent Paragraph 1 of the Complaint alleges these Defendants were negligent, breached a contract, breached the implied warranty, or negligently developed the condominiums, these Defendants deny the same.

2. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

3. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

4. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

5. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

6. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

7. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

8. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiff's Amended

Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

9. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

10. Upon information and belief, these Defendants admit the allegations asserted in Paragraph 10 of Plaintiff's Amended Complaint.

11. These Defendants admit the allegations asserted in Paragraph 11 of Plaintiff's Amended Complaint.

12. These Defendants admit the allegations asserted in Paragraph 12 of Plaintiff's Amended Complaint.

13. These Defendants admit the allegations asserted in Paragraph 13 of Plaintiff's Amended Complaint.

14. These Defendants admit the allegations asserted in Paragraph 14 of Plaintiff's Amended Complaint.

15. The allegations asserted in Paragraph 15 of Plaintiff's Amended Complaint contain legal conclusions to which no response is required. To the extent a response is deemed necessary, these Defendants admit the Circuit Court of Pocahontas County has jurisdiction and venue of this action.

16. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Amended

Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

17. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

18. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

19. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

20. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

21. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

22. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

23. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

24. In response to the allegations asserted in Paragraph 24 of Plaintiff's Amended Complaint, these Defendants admit that Tygarts subcontracted some of the roofing work at Black Bear Crossing to Treve Painter and Slopeside Construction. These Defendants deny the remaining allegations asserted in Paragraph 24 of Plaintiff's Amended Complaint.

25. Upon information and belief, these Defendants admit the allegations asserted in Paragraph 25 of Plaintiffs' Amended Complaint.

26. These Defendants admit the allegations asserted in Paragraph 26 of Plaintiff's Amended Complaint.

27. These Defendants admit the allegations asserted in Paragraph 27 of Plaintiff's Amended Complaint.

28. These Defendants deny the allegations asserted in Paragraph 28 of Plaintiff's Amended Complaint.

29. These Defendants deny the allegations asserted in Paragraph 29 of Plaintiff's Amended Complaint.

30. In response to the allegations asserted in Paragraph 30 of Plaintiff's Amended Complaint, these Defendants admit, upon information and belief that Treve Painter, Slopeside Construction, and Tygarts completed the construction on Black Bear Crossing. These Defendants deny Tink's Cottage Care completed the construction on Black Bear Crossing.

31. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

32. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

33. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

34. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 34 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

35. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiff's Amended

Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

36. The allegations asserted in Paragraph 36 of Plaintiff's Amended Complaint contain legal conclusions to which no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 36 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

37. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 37 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

38. To the extent the allegations asserted in Paragraph 38 of Plaintiff's Amended Complaint are directed to these Defendants and allege these Defendants were negligent, these Defendants deny the same. These Defendants are without sufficient information and information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 38 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

39. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 39 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

40. To the extent the allegations asserted in Paragraph 40 of Plaintiff's Amended Complaint are directed to these Defendants and allege they were negligent, these Defendants deny the same. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 40 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

41. To the extent the allegations asserted in Paragraph 41 of Plaintiff's Amended Complaint are directed to these Defendants and allege these Defendants' poor workmanship led to failure of the building components, these Defendants deny the same. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 41 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied

42. To the extent the allegations asserted in Paragraph 42 of Plaintiff's Amended Complaint are directed to these Defendants and allege these Defendants' poor workmanship led to moisture problems, weakened structural material, penetration of the building envelope and created inhabitable conditions for the condominium units, these Defendants deny the same. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 42 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied

43. To the extent the allegations asserted in Paragraph 43 of Plaintiff's Amended Complaint are directed to these Defendants and allege these Defendants' poor workmanship caused damage to the Homeowner Association and its unit owners, these Defendants deny the

same. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 43 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied

44. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 44 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

45. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 45 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

46. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 45 above as if each one were set forth herein verbatim.

47. The allegations contained in Paragraph 47 of Plaintiff's Amended Complaint are not directed to these Defendants, and as such no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 47 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

48. The allegations contained in Paragraph 47 of Plaintiff's Amended Complaint are not directed to these Defendants, and as such no response is required. To the extent a response is

deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 48 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

49. The allegations contained in Paragraph 49 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 49 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

50. The allegations contained in Paragraph 50 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

51. The allegations contained in Paragraph 51 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 51 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

52. The allegations contained in Paragraph 52 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendant are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 52 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

53. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 52 above as if each one were set forth herein verbatim.

54. The allegations contained in Paragraph 54 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 54 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

55. The allegations contained in Paragraph 55 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 55 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

56. The allegations contained in Paragraph 56 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is

required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 56 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

57. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 56 above as if each one were set forth herein verbatim.

58. The allegations contained in Paragraph 58 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 58 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

59. The allegations contained in Paragraph 59 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 59 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

60. The allegations contained in Paragraph 60 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in

Paragraph 60 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

61. The allegations contained in Paragraph 61 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 61 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

62. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 61 above as if each one were set forth herein verbatim.

63. The allegations contained in Paragraph 63 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 63 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

64. The allegations contained in Paragraph 64 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 64 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

65. The allegations contained in Paragraph 65 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 65 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

66. The allegations contained in Paragraph 66 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 66 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

67. The allegations contained in Paragraph 67 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 67 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

68. The allegations contained in Paragraph 68 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in

Paragraph 68 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

69. The allegations contained in Paragraph 69 of Plaintiff's Amended Complaint are not directed to these Defendants and contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 69 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

70. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 69 above as if each one were set forth herein verbatim.

71. In response to the allegations asserted in Paragraph 71 of Plaintiff's Amended Complaint, these Defendants admit that Tygarts, Mr. Painter and Slopeside provided work and construction services to Black Bear Crossing. These Defendants deny Tink's Cottage Care provided work or construction services to Black Bear Crossing from 2007 through 2008.

72. The allegations contained in Paragraph 72 of Plaintiff's Amended Complaint contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary and to the extent the allegations in Paragraph 72 of Plaintiff's Amended Complaint are directed to these Defendants, these Defendants state that West Virginia law speaks for itself with regard to the duty he owed to Black Bear Crossing.

73. The allegations contained in Paragraph 73 of Plaintiff's Amended Complaint contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary and to the extent the allegations in Paragraph 73 of Plaintiff's Amended

Complaint are directed to these Defendants, these Defendants deny the same. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 73 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

74. The allegations contained in Paragraph 74 of Plaintiff's Amended Complaint contain legal conclusions, and, as such, no response is required. To the extent a response is deemed necessary and to the extent the allegations in Paragraph 74 of Plaintiff's Amended Complaint are directed to these Defendants, these Defendants deny the same. These Defendants are without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 74 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

75. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 74 above as if each one were set forth herein verbatim.

76. The allegations contained in Paragraph 76 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 76 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

77. The allegations contained in Paragraph 77 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form

a belief as to the truth of the allegations contained in Paragraph 77 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

78. The allegations contained in Paragraph 78 of Plaintiff's Amended Complaint are not directed to these Defendants and, as such, no response is required. To the extent a response is deemed necessary, these Defendants are without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 78 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

79. These Defendants incorporate by reference each and every admission, denial, and response set forth in Paragraphs 1 through 78 above as if each one were set forth herein verbatim.

80. To the extent the allegations asserted in Paragraph 80 of Plaintiff's Amended Complaint are directed to these Defendants, these Defendants deny the same. These Defendants are without sufficient information and information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 80 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

81. To the extent the allegations asserted in Paragraph 81 of Plaintiff's Amended Complaint are directed to these Defendants, these Defendants deny the same. These Defendants are without sufficient information and information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 81 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

82. To the extent the allegations asserted in Paragraph 82 of Plaintiff's Amended Complaint are directed to these Defendants, these Defendants deny the same. These Defendants are without sufficient information and information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 82 of Plaintiff's Amended Complaint, and pursuant to Rule 8(b) of the West Virginia Rules of Civil Procedure, those allegations are denied.

83. These Defendants also deny the allegations, if any, contained in the WHEREFORE paragraph immediately following paragraph 82 of Plaintiff's Amended Complaint.

AFFIRMATIVE DEFENSES

1. Any and all allegations contained in Plaintiff's Amended Complaint that were not expressly admitted herein are denied, and strict proof is called for thereon.

2. Plaintiff's Amended Complaint fails to state a claim against these Defendants, in whole or in part, upon which relief can be granted and should therefore be dismissed.

3. At all times relevant hereto, these Defendants acted reasonably under the circumstances.

4. These Defendants deny that they are liable to Plaintiff for any alleged damages or injuries.

5. If, as Plaintiff alleges, Plaintiff sustained damages as a proximate result of negligence, such negligence was that of persons, firms, or corporation over whom these Defendants had no control.

6. These Defendants did not breach any affirmative duty owed to Plaintiff.

7. Plaintiff may have failed to mitigate damages, and therefore, these Defendants pleads the same as an affirmative defense.

8. These Defendants reserve the right to assert that Plaintiff's First Amended Complaint is barred by the applicable statute of limitations.

9. These Defendants reserve the right to assert Plaintiff negligently and/or intentionally spoliated evidence.

10. The alleged damages of which Plaintiff complains were not the proximate result of any alleged acts or omissions on the part of these Defendants, their agent, servants or employees.

11. The negligence of individuals or entities other than these Defendants are the sole proximate cause of Plaintiff's alleged damages.

12. These Defendants deny that they acted in a manner so as to proximately cause or contribute to the injuries allegedly sustained by Plaintiff.

13. These Defendants reserves unto themselves the right to have fault and/or negligence of all persons determined in the manner provided by law.

14. Plaintiff's alleged damages and/or losses, if any, are or may be barred in whole or in part for the reason that said damages were caused, if at all, not by the actions of omissions of these Defendants, but by intervening and/or supervening acts.

15. These Defendants assert, to the extent that the same may be applicable after discovery is completed, the affirmative defenses of estoppel, payment, release, waiver, and any other matter constituting an avoidance or affirmative defense which may also be applicable after discovery is completed.

16. Not being fully advised as to all the facts and circumstances surrounding the allegations contained in Plaintiff's Amended Complaint, these Defendants hereby invoke and assert all other affirmative defenses which may prove applicable herein, including, but not

necessarily limited to, those affirmative defenses specifically set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, collateral estoppel, statute of frauds, statute of limitations, waiver, assent, and any other matter constituting an avoidance or affirmative defense.

17. These Defendants specifically reserve the right to plead any and all other affirmative defenses not specifically raised herein that may arise during discovery or otherwise. Further, these Defendants specifically reserves the right to file an amended answer if additional discovery demonstrates the need to do so.

WHEREFORE, Defendants Treve Painter, Slopeside Construction, Inc., and Tink's Cottage Care at Snowshoe, LLC, demand that Plaintiff's Amended Complaint against them be dismissed and that they recover their costs incurred in connection with defending this action, including reasonable attorneys' fees. Further, these Defendants request that this Court grant them any such other and further relief as the Court may deem appropriate.

**DEFENDANTS TREVE PAINTER, SLOPESIDE CONSTRUCTION, INC., AND TINK'S
COTTAGE CARE AT SNOWSHOE, LLC'S CROSS-CLAIM AGAINST
BLACK BEAR CROSSING, LLC, GKS DEVELOPMENT, LLC, THOMAS C. SELLS,
III, BRIAN KREIDER, MATTHEW GLOD, JAMISON DESIGN, LLC AND TYGARTS
VALLEY CONSTRUCTION**

NOW COMES Defendants, Treve Painter, Slopeside Construction, Inc., and Tink's Cottage Care At Snowshoe, LLC, by counsel and pursuant to the West Virginia Rules of Civil Procedure, hereby tenders their Cross-Claim against Defendants Black Bear Crossing, LLC,

GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction as follows:

1. Without admitting the truth of the matters asserted in Plaintiff's Amended Complaint, these Defendants state that Plaintiff has filed an Amended Complaint against Treve Painter, Slopeside Construction, Inc., Tink's Cottage Care at Snowshoe, LLC, and other individuals and entities wherein Plaintiff alleges and/or attempts to allege various causes of actions against said Defendant for alleged injuries and damages sustained by Plaintiffs.

2. These Defendants deny that Plaintiff is entitled to compensation from them. However, to the extent a legal determination is made that these Defendants are liable to Plaintiff for alleged damages, these Defendants are entitled to contribution and/or indemnification from Defendants Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction.

3. These Defendants assert that Defendants Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction had exclusive control over the matters for which Plaintiff is demanding compensation herein.

4. To the extent that Plaintiff seeks damages and to the extent that liability in law or equity exists for such damages, these Defendants state that Defendants Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction are responsible/liable for such damages.


5. If it is determined that Plaintiff's injuries and damages were caused or contributed to by the actions of Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction, then

Defendants Treve Painter, Slopeside Construction, Inc., and Tink's Cottage Care at Snowshoe, LLC are entitled to contribution and indemnification from Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction.

WHEREFORE, Treve Painter, Slopeside Construction, Inc. and Tink's Cottage Care at Snowshoe, LLC demand that Defendants Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction be ordered to pay to them any and all sums they are entitled to by right of contribution and/or indemnification should it be determined that the injuries and damages of the Plaintiff were caused or contributed to by the actions or omissions of Defendants Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction

These Defendants also demand any and all other relief that the Court deems appropriate. Finally, this Defendant demands a trial by jury on its Cross-Claim.

**TREVE PAINTER, SLOPESIDE
CONSTRUCTION, INC., AND TINK'S
COTTAGE CARE AT SNOWSHOE, LLC**
By Counsel,


Brian J. Warner, Esq. (WVSB#9372)
Margaret L. Miner, Esq. (WVSB#10329)
Shuman, McCuskey & Slicer, PLLC
1445 Stewartstown Road, Suite 200
Morgantown, WV 26525
304-291-2702 304-291-2840

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWNHOUSE
ASSOCIATION, LLC, a West Virginia limited
Liability company and on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

CIVIL ACTION NO. 14-C-32

**BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
SLOPESIDE CONSTRUCTION, INC., a terminated
West Virginia corporation, TINK'S COTTAGE CARE
AT SNOWSHOE, LLC, a West Virginia limited liability
company, and TREVE PAINTER,**

Defendants.

Certificate of Service

I hereby certify that on the 9th day of February 2015, I served the foregoing "*Answer of Defendants Treve Painter, Slopeside Construction, Inc., and Tink's Cottage Care at Snowshoe, LLC to Plaintiff's Amended Complaint and Cross-Claim against Defendants Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, Matthew Glod, Jamison Design, LLC and Tygarts Valley Construction*", upon the parties hereto by depositing a true and accurate copy thereof in the United States mail, postage prepaid, addressed to the following counsel of record:

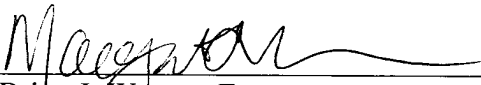
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Margaret L. Miner, Esq.
Shuman, McCuskey & Slicer, PLLC

CIRCUIT/FAMILY COURT
POCAHONTAS COUNTY, W.VA.

Filed in this office this the 12th day
of February, 2015
Connie M. Carr, Clerk

By: Cindy D. Beverage, Deputy

OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 31985

POCAHONTAS
900 D TENTH AVENUE
MARLINTON

DATE RECEIVED: 02/12/2015

RECEIVED FROM: SHUMAN MCCUSKEY & SL

TOTAL: \$200.00

STYLE OF CASE

BLACK BEAR CROSSING TOWN HOUSE ASSOCIATI
VS.
BLACK BEAR CROSSING, LLC

CASE #: 14-C-32

IN PAYMENT OF CROSS CLAIM FILING FEE
BY Check 2969

CONNIE M. CARR
CLERK OF THE CIRCUIT COURT

BY CMC/CDB