

CIRCUIT COURT OF POCAHONTAS COUNTY

1346

COL 1346

PRIORITY MAIL FEE S.O.S. 14-C-32
Case Number 14-C-32
RECEIPT NUMBER 31969 RECEIPT DATE 02/06/15

BLACK BEAR CROSSING TOWN HOUSE V. LLC GKS DEVELOPMENT
CHECK DATE 02/06/15 AMOUNT OF CHECK*****\$13.40
PAID TO: USPS

PRIORITY MAIL FEE S.O.S 14-C-32

PRODUCT SSM102 USE WITH 91500 ENVELOPE

PRINTED IN U.S.A.

A

465 E40A70 STRRX3 08/14/2014 13:34

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

To the above-named Third-Party Defendant: **Leon G. Mallow Surveying, Inc.**
c/o Leon G. Mallow
Rt. 1, Box 117
2000 Piercy Road
Montrose, WV 26283

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, and Teresa J. Dumire, attorney for Tygarts Valley Construction, Defendant/Third Party Plaintiff whose address is 1085 Van Voorhis Road, Suite 100, Morgantown, West Virginia, 26505, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you.

You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/15

CLERK: CMC/CDB

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

**To the above-named Third-Party Defendant: Douglas Grimes d/b/a
Mills Run Farm
General Delivery
Marlinton, West Virginia 24954**

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, and Teresa J. Dumire, attorney for Tygarts Valley Construction, Defendant/Third Party Plaintiff whose address is 1085 Van Voorhis Road, Suite 100, Morgantown, West Virginia, 26505, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you.

You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/2015

CLERK: CMC/CDB

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

**To the above-named Third-Party Defendant: Peter A. Monico
P.O. Box 81
Snowshoe, WV 26209**

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you. You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/15

CLERK: CMc/COB

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

To the above-named Third-Party Defendant: David Simmons
P.O. Box 159
Snowshoe, WV 26291

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you.

You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/15

CLERK: CMC/CDB

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

**To the above-named Third-Party Defendant: First Tracts Real Estate, LLC
c/o Peter A. Monico
P.O. Box 511
Snowshoe, West Virginia 26209**

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you.

You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/15

CLERK: CMC/CDB

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

To the above-named Third-Party Defendant: **JD & JT GENERAL CONTRACTORS, LLC**
c/o Sharon Moore
Route 1 Box 371J
Marlinton, West Virginia 24954

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, and Teresa J. Dumire, attorney for Tygarts Valley Construction, Defendant/Third Party Plaintiff whose address is 1085 Van Voorhis Road, Suite 100, Morgantown, West Virginia, 26505, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you.

You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/2015

CLERK: Connie M. Carr

By: Cindy D. Beverage, Deputy

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

**To the above-named Third-Party Defendant: Chapman Technical Group, LTD
c/o Ron Gilkerson
200 Sixth Avenue
Huntington, West Virginia 25177**

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, and Teresa J. Dumire, attorney for Tygarts Valley Construction, Defendant/Third Party Plaintiff whose address is 1085 Van Voorhis Road, Suite 100, Morgantown, West Virginia, 26505, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you.

You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/2015

CLERK: CMC/CDP

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

THIRD PARTY SUMMONS

To the above-named Third-Party Defendant: CAS STRUCTURAL ENGINEERING, INC.
c/o Carol A. Stevens
57 Cala Lane
Alum Creek, West Virginia 25003

IN THE NAME OF THE STATE OF WEST VIRGINIA,

You are hereby summoned and required to serve upon Jane E. Harkins, attorney for Black Bear Crossing, LLC, Defendant/Third-Party Plaintiff, whose address is 600 Neville Street, Suite 201, Beckley, West Virginia, 25801, and Sean C. Workowski, attorney for GKS Development, LLC, Defendant/Third-Party Plaintiff whose address is 29 Franklin Road SW, P.O. Box 1240, Roanoke, Virginia 24006, and Teresa J. Dumire, attorney for Tygarts Valley Construction, Defendant/Third Party Plaintiff whose address is 1085 Van Voorhis Road, Suite 100, Morgantown, West Virginia, 26505, an Answer, including any related counterclaim you may have, to the Third-Party Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you.

You may also serve upon Kenneth Webb, Esquire, Plaintiff's attorney, an Answer to the Plaintiff's Complaint in the above-styled civil action, a true copy of which is herewith delivered to you. You may assert in your Answer any claim you may have against the Plaintiff which is related to the subject matter of its Complaint.

You are required to serve your answer to the Complaint within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 2/6/2015

CLERK: Connie M. Carr
By: Cindy D. Beverage, Deputy

OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 31969

POCAHONTAS
900 D TENTH AVENUE
MARLINTON

DATE RECEIVED: 02/06/2015

RECEIVED FROM: PULLIN,FOWLER, FLANA

TOTAL: \$220.00

STYLE OF CASE

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

CASE #: 14-C-32

IN PAYMENT OF COUNTER CLAIM/CROSS CLAIM
BY Check 6014

CONNIE M. CARR
CLERK OF THE CIRCUIT COURT

BY CMC/CDB

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

**THIRD-PARTY COMPLAINT AGAINST FIRST TRACTS REAL ESTATE, LLC;
DAVID M. SIMMONS AND PETER A. MONICO, INDIVIDUALLY AND
AS MEMBERS OF FIRST TRACTS REAL ESTATE, LLC;
CAS STRUCTURAL ENGINEERING, INC.; CHAPMAN TECHNICAL GROUP, LTD.;
LEON G. MALLOW SURVEYING, INC.; DOUGLAS J. GRIMES D/B/A MILL
RUN FARM; AND JD & JT GENERAL CONTRACTORS, LLC**

COME NOW, Third-Party Plaintiffs, Black Bear Crossing, LLC (“BBC”), GKS Development, LLC (“GKS”) (together, “the Developer”), and Tygarts Valley Construction (collectively, “Third-Party Plaintiffs”) hereby assert a Third-Party Complaint against First Tracts Real Estate, LLC; David M. Simmons and Peter A. Monico, individually and as Members of First Tracts Real Estate, LLC; CAS Structural Engineering, Inc.; Chapman Technical Group, Ltd.; Leon G. Mallow Surveying, Inc.; Douglas Grimes d/b/a Mill Run Farm; and JD & JT General Contractors, LLC., as follows:

1. Third-Party Plaintiffs have been named as Defendants in this civil action filed by Plaintiff, Black Bear Crossing Town House Association, LLC (hereafter, “Plaintiff” or “HOA”), seeking damages purportedly arising from the alleged negligent design and construction of the development at Snowshoe Mountain Resort in Pocahontas County, West Virginia, known as Black Bear Crossing (sometimes hereafter referred to as “the Development”). The HOA further alleges that the Developer nonetheless sold defective units and common areas to its Members without disclosing the defects it alleges. Third-Party Plaintiffs have denied any and all liability for Plaintiff’s claims. A copy of Plaintiff’s Amended Complaint is attached hereto as Exhibit 1.

2. All claims, causes of action and issues in controversy raised in this Third-Party Complaint occurred or arose in Pocahontas County, West Virginia.

Third-Party Plaintiffs and Third-Party Defendants

3. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 2 of this Third-Party Complaint as if set forth in full hereinafter.

4. Third-Party Plaintiff GKS is a Virginia corporation, authorized to do business in West Virginia, with its principal place of business at 1899 Retreat Road, Boones Mill, VA 24065.

5. Third-Party Plaintiff BBC was a West Virginia corporation which terminated in or about March, 2012, and its principal place of business was located at 1899 Retreat Road, Boones Mill, VA 24065.

6. Third-Party Plaintiff Tygarts Valley Construction, Inc., (“TVC”) is a West Virginia corporation with its principal place of business at 1 Fassifern Fields, Slatyfork, WV 26291, and was the general contractor for the Black Bear Crossing development.

7. David M. Simmons (“Simmons”) is a resident of Pocahontas County, West Virginia, and he is a Member of First Tracts Realty, LLC.

8. Peter A. Monico (“Monico”) is a resident of Pocahontas County, West Virginia, and he is a Member of First Tracts Realty, LLC.

9. First Tracts Real Estate, LLC (“First Tracts”) is a West Virginia Limited Liability Company, with its principal place of business at HC 69, Box 23C, Slatyfork, Pocahontas County, WV 26291.

10. CAS Structural Engineering, Inc., is a West Virginia corporation, with its principal place of business at 57 Cala Lane, Alum Creek, WV 25003.

11. Chapman Technical Group, Ltd., is a West Virginia corporation, with its principal place of business at 600 Sixth Avenue, Charleston, WV 25177.

12. Leon G. Mallow Surveying, Inc.₂ is a West Virginia corporation, with its principal place of business at Rt. 1, Box 117, 2000 Piercy Road, Montrose, WV 26283.

13. Douglas J. Grimes is a resident of Pocahontas County, West Virginia, and he does business as Mill Run Farm, which is located at RR 211, Box M, Marlinton, WV 24954.

14. JD & JT General Contractors, LLC, is a W.Va. Limited Liability corporation, with its principal place of business at 1096 Jerico Road, Marlinton, WV 24954.

**Count 1 – Allegations against David M. Simmons,
Peter A. Monico, and First Tracts Real Estate, LLC**

15. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 14 of this Third-Party Complaint as if set forth in full hereinafter.

16. In or about 2005 or 2006, while they were employed by Playground Destination Properties, Inc. (“PDP”), Simmons and Monico began working with GKS, Thomas C. Sells, III; Brian Kreider and Matthew Glod to develop a residential complex at Snowshoe which came to be called Black Bear Crossing.

17. In or about May, 2007, Simmons and Monico left their employment with PDP to form First Tracts. They, along with GKS, comprised the initial membership in First Tracts.

18. In or about November, 2007, First Tracts, Simmons, and Monico were directly involved with GKS, Thomas C. Sells, III; Brian Kreider, and Matthew Glod in the creation of BBC, and they specifically assisted BBC in the creation of the Black Bear Crossing Town House Association, LLC (“Plaintiff”), including facilitating the preparation of the “Bylaws of Black Bear Crossing, a Limited Liability Company”, as well as the “Declaration Establishing Black Bear Crossing at Snowshoe Mountain Resort, Pocahontas County, West Virginia”, and the amendment to the Declarations document in or about June, 2008.

19. In January, 2008, First Tracts, Simmons, and Monico also were directly involved in the transfer of the real property between GKS and BBC on which Black Bear Crossing is situated.

20. After the formation of First Tracts, or contemporaneous therewith, it entered into an agreement with GKS to market the Black Bear Crossing Development to prospective purchasers, to work with purchasers taken under contract on matters such as Change Orders and punch lists, to act as liaison between the Developer and purchasers before and after each property conveyance, and to implement the terms of Real Estate Purchase Agreements for the Developer, such as the one-year turn-over inspections.

21. After the conveyance of the Black Bear Crossing real estate between GKS and BBC, First Tracts, Simmons, and Monico continued under the same agreement and in the same roles for BBC as they had with GKS.

22. This agreement between the Developer and First Tracts, Simmons, and Monico meant that First Tracts, Simmons, and Monico owed their client, the Developer, a duty to carry out their professional services with the ordinary skill, care and diligence commensurate with that rendered by members of their profession in the same or similar circumstances and to be in compliance with West Virginia law.

23. Performing these services for the Developer required First Tracts, Simmons, Monico, and their agents and employees to communicate regularly with the Developer.

24. Performing these services for the Developer also required First Tracts, Simmons, Monico, and their agents and employees to interact with Tygarts Valley to manage and implement construction services on the Development project.

25. Prospective and actual buyers were never informed that GKS was a Member of First Tracts and that Simmons and Monico, the agents of First Tracts, had been intimately involved as individuals and through First Tracts in the creation of BBC and the Development itself.

26. On information and belief, in 2008 or 2009, the Developer and TVC began receiving complaints from Plaintiff and individual unit owners about various problems in the common areas and/or in individual units in Black Bear Crossing. First Tracts, Simmons, Monico, and their agents and employees were involved in the communication of these issues to the Developer and TVC, in the subsequent discussion and investigation thereof with the Developer and TVC, and in the efforts to address those complaints.

27. Despite their ongoing knowledge and activities regarding the complaints of Plaintiff and/or individual owners about problems at Black Bear Crossing, despite their roles in the formation of BBC and in the development of Black Bear Crossing, despite the membership of GKS in First Tracts, and despite their obligations to the Developer with prospective, committed, and actual buyers, First Tracts, Simmons, Monico, and their agents and employees continued to market Black Bear Crossing itself and its individual units and to represent the Developer with prospective buyers and owners, never disclosing to prospective and actual buyers the alleged problems of which they had direct knowledge and involvement.

28. Plaintiff's Amended Complaint asserts that those same problems are the result of defective design and construction and are manifest as defects and poor workmanship in the common elements, limited common elements and individual units of Black Bear Crossing, which have caused it damage.

29. As listing agent, First Tracts, Simmons, Monico, and their agents and employees were responsible for presenting and obtaining a “Real Estate Purchase Agreement” from every prospective purchaser of a unit at Black Bear Crossing. The forms of the “Real Estate Purchase Agreement” were procured and provided for each proposed sales transaction by First Tracts.

30. The Developer relied on First Tracts, Simmons, Monico, and their agents and employees to secure Real Estate Purchase Agreements which complied with West Virginia law, including the Uniform Common Ownership Interest Act (2005, *as amended*), and otherwise reflected the ordinary skill, care, and diligence commensurate with that rendered by members of its profession in the same or similar circumstances.

31. First Tracts, Simmons, Monico, and their agents and employees, in the course of marketing units and securing sales, employed a variety of Real Estate Purchase Agreement forms, which often did not comply with the Uniform Common Ownership Interest Act, with the marketing materials it created for the Development, or with the intentions of the Developer. In particular, the warranty provisions between forms were either non-existent or varied inconsistently between purchasers.

32. In light of the filing of Plaintiff’s lawsuit, the Developer had obviously relied to its detriment on First Tracts, Simmons, and Monico, as they may be deprived of specific defenses which may have been available if the Real Estate Purchase Agreements had complied with the Uniform Common Ownership Act and the intentions of the Developer.

33. First Tracts, Simmons, and Monico are believed to be currently serving as Property Manager for Plaintiff and/or individual unit owners. If the Plaintiff proves the existence of the problems which are the subject of Plaintiff’s Amended Complaint, those alleged

problems were proximately caused by or contributed to by a persistent lack of maintenance, which is within the purview and responsibilities of the Development's Property Manager.

34. First Tracts, Simmons, and Monico breached their agreement with their customer, the Developer, in the marketing of Black Bear Crossing and the sales of its individual units to prospective and actual purchasers.

35. As to the actions of their agents and employees, First Tracts, Simmons, and Monico are liable to the Third-Party Plaintiffs pursuant to the doctrine of *respondeat superior*.

36. First Tracts, Simmons, and Monico have negligently conducted their duties to Plaintiff as Property Manager, allowing conditions which Plaintiff asserts in its Amended Complaint to arise, persist, and/or worsen.

37. These Defendants are advised that, within 2013 and 2014, before and after the initial Complaint was filed in this matter in Aug. 2014, repair work was undertaken on the allegedly damaged common areas of the Development, as well as to individual units, before these Defendants were able to investigate the nature and extent of Plaintiff's complaints about them.

38. As Property Manager or otherwise, First Tracts, Simmons, Monico, and/or their agents and employees were involving in determining what repairs were to be performed and facilitating these repairs, including but not limited to selecting the repair contractors and observing the repair construction.

39. The areas of the Development on which repair work was secured was within the control of First Tracts, Simmons, Monico, and/or their agents and employees, in their capacity as Property Manager or otherwise,

40. As Property Manager, First Tracts, Simmons, Monico, and/or their agents and employees acted as the agent of Plaintiff regarding the nature and extent of work done.

41. First Tracts, Simmons, Monico, and/or their agents and employees knew that the areas on which work was done would be the subject of and needed for litigation, because they had worked with the Developer, TVC, and the HOA to address the complaints of the HOA and individual unit owners.

42. With that knowledge, First Tracts, Simmons, Monico, and/or their agents and employees had a duty to preserve evidence which has been made the subject of claims against these Defendants.

43. As the result of the repair work, the Third-Party Plaintiffs have been substantially prejudiced, as they have been deprived of the opportunity to inspect, investigate, and ascertain the nature and extent, and the legitimacy, of Plaintiff's purported damages, and to mount appropriate defenses thereto.

44. As they had a duty to preserve evidence of the subject of the potential claims against the Third-Party Plaintiffs of which they were aware, the spoliation of First Tracts, Simmons, Monico, and/or its agents and employees was intentional.

45. Alternatively, the spoliation of evidence by First Tracts, Simmons, Monico, and/or their agents and employees was at the very least negligent, as they knew or should have known that the areas being repaired would be the subject of impending litigation or was the subject of recently-filed civil action against the Third-Party Plaintiffs by the HOA.

46. To the extent First Tracts, and Simmons and Monico, individually or as Members of First Tracts, participated in the development, designing and constructing of Black Bear Crossing with Third-Party Plaintiffs, which activities are now the subject of Plaintiff's Amended

Complaint, First Tracts, Simmons and Monico are likewise liable if Plaintiff proves its allegations against Third-Party Plaintiffs.

47. The acts and omissions of First Tracts, Simmons, Monico, and their agents and employees, both negligent and intentional and have proximately caused or contributed to Plaintiff's claims against Third-Party Plaintiffs.

48. Individually, Simmons and Monico have approved, sanctioned, ratified, and carried out the wrongful acts and omissions of First Tracts and its agents and employees with respect to Black Bear Crossing and in their dealings with the Developer and TVC.

49. First Tracts, Simmons, and Monico are liable to Third-Party Plaintiffs for contribution and indemnification against Plaintiff's claims.

Count 2 – Allegations against CAS Structural Engineering, Inc.

50. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 49 of this Third-Party Complaint as if set forth in full hereinafter.

51. CAS Structural Engineering, Inc. was retained by Tygarts Valley Construction, the General Contractor of the Developer, to perform structural engineering on Building 6 of Black Bear Crossing, particularly as to the sub-basement and walk-out basement and for the intended Superior Wall system, including the use of insulating concrete forms (ICF) and foundations.

52. From June through August, 2008, CAS Structural Engineering, Inc., performed these engineering services.

53. Plaintiff's Amended Complaint asserts that the common elements, limited common elements, and individual units of Black Bear Crossing reflect defects and poor

workmanship resulting from defective design and construction, which have caused it to suffer damages.

54. On information and belief, Plaintiff's allegations specifically include purported defects and poor workmanship resulting from defective design and construction of Building 6, including particularly structures engineered by CAS Structural Engineering, Inc. and its relationship to drainage and water intrusion.

55. CAS Structural Engineering, Inc., had a duty to perform its work at Black Bear Crossing to be in compliance with all applicable West Virginia laws, codes, and regulations, and pursuant to standard engineering practices.

56. If Plaintiff presents evidence in this case to support its allegations regarding structural insufficiency in Building 6, CAS Structural Engineering, Inc., breached its duty to provide structural engineering services that complied with all applicable West Virginia laws, codes, and regulations, and pursuant to standard engineering practices.

57. If Plaintiff proves that there are structural defects in Building 6, a proximate cause of those structural defects is the negligence of CAS Structural Engineering, Inc., in designing the sub-basement and walk-out basement for the units in Building 6.

58. If Plaintiff proves that it suffered damages as a result of structural defects in Building 6, those damages were caused by CAS Structural Engineering, Inc., rather than by the Third-Party Plaintiffs.

59. For the aforementioned reasons, Third-Party Plaintiffs demand contribution and indemnification from CAS Structural Engineering, Inc.

Count 3 – Allegations against Chapman Technical Group, Ltd.

60. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 59 of this Third-Party Complaint as if set forth in full hereinafter.

61. Chapman Technical Group, Ltd. was retained by Tygarts Valley Construction, the General Contractor of the Developer, to create a foundation design and subsurface drainage plan and/or system for Building 6 of Black Bear Crossing.

62. In or about September, 2008, Chapman Technical Group, Ltd. performed this work.

63. Plaintiff's Amended Complaint now asserts that the common elements, limited common elements, and individual units of Black Bear Crossing reflect defects and poor workmanship resulting from defective design and construction, which have caused it to suffer damages.

64. On information and belief, Plaintiff's allegations specifically include purported defects and poor workmanship resulting from defective design and construction of Building 6, including problems with drainage and water intrusion.

65. Chapman Technical Group, Ltd. had a duty to perform its work at Black Bear Crossing to be in compliance with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

66. If Plaintiff presents evidence in this case to support its allegations that the foundation and subsurface drainage system for Building 6 is defective, Chapman Technical Group, Ltd., breached its duty to provide a foundation design and subsurface drainage plan that complied with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

67. If Plaintiff proves that there are defects in the foundation and/or with the subsurface drainage system for Building 6, a proximate cause of those defects is the negligence of Chapman Technical Group, Ltd., in designing the foundation and the subsurface drainage system for the units in Building 6.

68. If Plaintiff proves that it suffered damages as a result of defects in the foundation and/or with the subsurface drainage system in Building 6, those damages were caused by Chapman Technical Group, Ltd., rather than by the Third-Party Plaintiffs.

69. For the aforementioned reasons, Third-Party Plaintiffs demand contribution and indemnification from Chapman Technical Group, Ltd.

Count 4 – Allegations against Leon G. Mallow Surveying, Inc.

70. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 69 of this Third-Party Complaint as if set forth in full hereinafter.

71. Leon G. Mallow Surveying, Inc. was retained by the Developer to survey and create the site plan for Black Bear Crossing, including the positioning of each building.

72. In or about 2007 and 2008, Leon G. Mallow Surveying, Inc., performed this work.

73. Plaintiff's Amended Complaint now asserts that the common elements, limited common elements and individual units of Black Bear Crossing reflect defects and poor workmanship resulting from defective design and construction, which have caused it to suffer damages.

74. On information and belief, Plaintiff's allegations specifically include purported defects and poor workmanship resulting from defective design and construction evolving from the site plan, including, but not limited to, problems with drainage and water intrusion.

75. Leon G. Mallow Surveying, Inc. had a duty to perform its work at Black Bear Crossing to be in compliance with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

76. If Plaintiff presents evidence in this case to support its allegations that the site plan for Black Bear Crossing is defective, Leon G. Mallow Surveying, Inc., breached its duty to provide a site plan that complied with all applicable West Virginia laws, codes, and regulations, and pursuant to standard practices.

77. If Plaintiff proves that the site plan for Black Bear Crossing is defective, a proximate cause of those defects is the negligence of Leon G. Mallow Surveying, Inc., in designing the site plan.

78. If Plaintiff proves that it suffered damages as a result of the allegedly defective site plan, those damages were caused by Leon G. Mallow Surveying, Inc., rather than by the Third-Party Plaintiffs.

79. For the aforementioned reasons, Third-Party Plaintiffs demand contribution and indemnification from Leon G. Mallow Surveying, Inc.

Count 5 – Allegations against Douglas J. Grimes d/b/a Mill Run Farm

80. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 79 of this Third-Party Complaint as if set forth in full hereinafter.

81. Douglas J. Grimes d/b/a Mill Run Farm was retained by the Developer to landscape Black Bear Crossing, designing and/or implementing systems to facilitate drainage around and away from the Buildings within the Development.

82. In or about 2007 and 2008, Douglas J. Grimes d/b/a Mill Run Farm performed this work.

83. Plaintiff's Amended Complaint now asserts that the common elements, limited common elements, and individual units of Black Bear Crossing reflect defects and poor workmanship resulting from defective design and construction, which have caused it to suffer damages.

84. On information and belief, Plaintiff's allegations specifically include purported defects and poor workmanship resulting from defective design and construction evolving from the landscaping, including, but not limited to, problems with drainage, water intrusion and ponding.

85. Douglas J. Grimes d/b/a Mill Run Farm had a duty to perform his work at Black Bear Crossing to be in compliance with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

86. If Plaintiff presents evidence in this case to support its allegations that the landscaping design or system at Black Bear Crossing is defective, Douglas J. Grimes d/b/a Mill Run Farm breached his duty to provide a landscaping design or system that complied with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

87. If Plaintiff proves that the landscaping for Black Bear Crossing is defective, a proximate cause of those defects is the negligence of Douglas J. Grimes d/b/a Mill Run Farm, having negligently designed and/or implemented systems that did not properly facilitate drainage around and away from the buildings within the Development.

88. If Plaintiff proves that it suffered damages as a result of defects in the landscaping design or system, those damages were caused by Douglas J. Grimes d/b/a Mill Run Farm, rather than by the Third-Party Plaintiffs.

89. For the aforementioned reasons, Third-Party Plaintiffs demand contribution and indemnification from Douglas J. Grimes d/b/a Mill Run Farm.

Count 6 – Allegations against JD & JT General Contractors, LLC

90. Third-Party Plaintiffs re-allege each and every allegation set forth in Paragraph Nos. 1 through 89 of this Third-Party Complaint as if set forth in full hereinafter.

91. JD & JT General Contractors, LLC, was retained by Tygarts Valley Construction, the General Contractor of the Developer, to undertake excavation and site preparation throughout the Black Bear Crossing complex, and to install foundation drains on the buildings within the Development.

92. JD & JT General Contractors, LLC performed this work in or about 2007 and 2008.

93. Plaintiff's Amended Complaint now asserts that the common elements, limited common elements, and individual units of Black Bear Crossing reflect defects and poor workmanship resulting from defective design and construction, which have caused it to suffer damages.

94. On information and belief, Plaintiff's allegations specifically include purported defects and poor workmanship resulting from defective design and construction evolving from the excavation and site preparation, including, but not limited to, problems with drainage, water intrusion and ponding. Plaintiff further alleges that foundations drains were not installed or were improperly installed.

95. JD & JT General Contractors, LLC, had a duty to perform its work at Black Bear Crossing to be in compliance with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

96. If Plaintiff presents evidence in this case to support its allegations that the excavation and site preparation work at Black Bear Crossing is defective, JD & JT General Contractors, LLC, breached its duty to provide excavation and site preparation work that complied with all applicable West Virginia laws, codes, and regulations, and pursuant to standard industry practices.

97. If Plaintiff proves that the excavation and site preparation work at Black Bear Crossing is defective, a proximate cause of those defects is the negligence of JD & JT General Contractors, LLC, having negligently performed its work at the Development.

98. If Plaintiff proves that it suffered damages as a result of defects in the landscaping design or system, those damages were caused by JD & JT General Contractors, LLC, rather than by the Third-Party Plaintiffs.

99. For the aforementioned reasons, Third-Party Plaintiffs demand contribution and indemnification from JD & JT General Contractors, LLC.

WHEREFORE, these Third-Party Plaintiffs demand judgment against each of the Third-Party Defendants for contribution and indemnification against Plaintiff's claims, together with all relief to which the Third-Party Plaintiffs may be entitled.

**BLACK BEAR DEVELOPMENT, LLC; GKS
DEVELOPMENT, LLC; THOMAS C. SELLS,
III; BRIAN KRIEDER AND MATTHEW
GLOD**

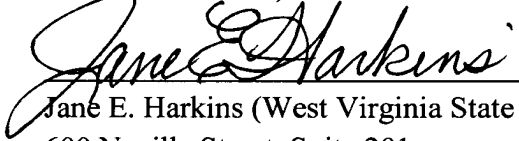
By Counsel

AND

TYGARTS VALLEY CONSTRUCTION, INC.

By Counsel

**PULLIN, FOWLER, FLANAGAN,
BROWN & POE, PLLC**



Jane E. Harkins (West Virginia State Bar No. 5951)

600 Neville Street, Suite 201

Beckley, WV 25801

Telephone: (304) 254-9300

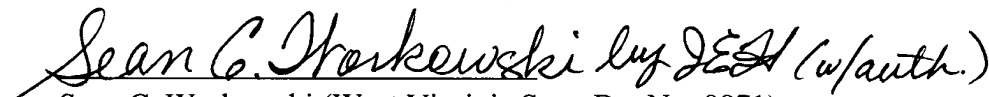
Facsimile: (304) 255-5519

jharkins@pffwv.com

*Counsel for Black Bear Crossing, LLC; GKS Development, LLC;
Thomas C. Sells, III; Brian Kreider, and Matthew Glod*

And

FRITH, ANDERSON & PEAKE, PC



Sean C. Workowski (West Virginia State Bar No. 8871)

29 Franklin Road SW

P.O. Box 1240

Roanoke, VA 24006-1240

Telephone: (540) 772-4600

Facsimile: (540) 772-9167

Sworkowski@faplawfirm.com

*Co-Counsel for GKS Development, LLC;
Thomas C. Sells, III; Brian Kreider, and Matthew Glod*

And

KAY, CASTO & CHANEY, PLLC

Teresa J. Dumire by JEA (w/auth.)

Teresa J. Dumire (West Virginia State Bar Id. 8032)

1085 Van Voorhis Road, Suite 100

Morgantown, WV 26505

Telephone: (304) 255-0970

Facsimile: (304) 255-0974

tdumire@kaycasto.com

Counsel for Tygarts Valley Construction

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

**BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company an on behalf of two (2)
or more unit owners,**

Plaintiff,

v.

**CIVIL ACTION NO. 14-C-32(RR)
(Judge Robert E. Richardson)**

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

Defendants,

and

**BLACK BEAR CROSSING, LLC,
GKS DEVELOPMENT, LLC,
THOMAS C. SELLS, III;
BRIAN KRIEDER, MATTHEW GLOD and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Defendants,

v.

**FIRST TRACTS REAL ESTATE, LLC,
DAVID M. SIMMONS and PETER A. MONICO,
individually and as members of
FIRST TRACTS REAL ESTATE, LLC,
CAS STRUCTURAL ENGINEERING, INC.,
CHAPMAN TECHNICAL GROUP, LTD,
LEON G. MALLOW SURVEYING, INC.,
DOUGLAS J. GRIMES d/b/a MILL RUN FARM,
and JD & JT GENERAL CONTRACTORS, LLC,**

Third-Party Defendants

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 3rd day of February, 2015, that a true copy of the foregoing "**THIRD-PARTY COMPLAINT AGAINST FIRST TRACTS REAL ESTATE, LLC; DAVID M. SIMMONS AND PETER A. MONICO, INDIVIDUALLY AND AS MEMBERS OF FIRST TRACTS REAL ESTATE, LLC; CAS STRUCTURAL ENGINEERING, INC.; CHAPMAN TECHNICAL GROUP, LTD.; LEON G. MALLOW SURVEYING, INC.; DOUGLAS J. GRIMES D/B/A MILL RUN FARM; AND JD & JT GENERAL CONTRACTORS, LLC**" was served upon all counsel of record by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Kenneth E. Webb, Jr., Esquire
Bowles, Rice, McDavid, Graf & Love, PLLC
P.O. Box 1386
Charleston, WV 25325-1386
Counsel for Plaintiff

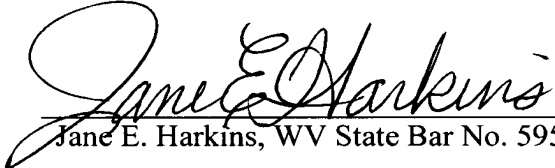
Teresa J. Dumire, Esquire
Kay, Casto & Chaney, PLLC
1085 Van Voorhis Road, Suite 100
Morgantown, West Virginia 26505
Counsel for Tygarts Valley

Margaret L. Miner, Esquire
Shuman McCuskey & Slicer, PLLC
1445 Stewartstown Road, Suite 200
Morgantown, West Virginia 26505
Counsel for Treve Painter

Jamison Design LLC
c/o Steve Jamison
1591 Roanoke Rd Ste B
P.O. Box 524
Daleville, Virginia 24083

Tink's Cottage Care at Snowshote, LLC
c/o Treve Painter
P.O. Box 1
Slatyfork, WV 26291

Slopeside Construction, Inc.
c/o Treve Painter
P.O. Box 1
Slatyfork, WV 26291


Jane E. Harkins, WV State Bar No. 5951

**PULLIN, FOWLER, FLANAGAN,
BROWN & POE, PLLC**
600 Neville Street, Suite 201
Beckley, WV 25801
Telephone: (304) 254-9300
Facsimile: (304) 255-5519
jharkins@pffwv.com

CIRCUIT/FAMILY COURT
POCAHONTAS COUNTY, W.VA.

Filed in this office this the 5th day
of February, 2015
Connie M. Cann, Clerk

By: Cindy D. Beverage, Deputy