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Kenneth E. Webb, Jr.  
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January 9, 2015

E-Mail Address:  
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Connie Carr, Circuit Clerk  
Circuit Court of Pocahontas County  
Pocahontas County Courthouse  
900 Tenth Avenue  
Marlinton, WV 24954

Re: Black Bearing Crossing Town House Association, Inc.  
v. Black Bear Crossing, LLC, et al.  
Civil Action No. 14-C-32(RR)

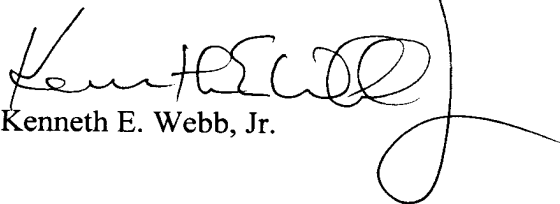
Dear Ms. Carr:

Please find enclosed for filing in the above-referenced matter an ***Amended Complaint*** and the ***Certificate of Service for Black Bear Cross Town House Association, LLC's First Set of Discovery to Each Defendant***.

Also enclosed are ***Summonses*** to be issued to Slopeside Instruction, Inc., and Tink's Cottage Care at Snowshoe, LLC, and an extra copy of the ***Amended Complaint***. Please date-stamp and sign the copies and return to me for service of process in the self-addressed, postage-paid envelope.

Thank you for your assistance in this matter.

Respectfully yours,



Kenneth E. Webb, Jr.

/cls

Enclosures

cc: (w/enclosures)  
Barbara J. Keefer, Esquire  
Jane E. Harkins, Esquire  
Teresa J. Dumire, Esquire  
Margaret L. Miner, Esquire  
Jamison Design, LLC

POCAHONTAS COUNTY  
CIRCUIT/FAMILY COURT  
RECEIVED 1/12/15  
by: CMC/CD3

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE  
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(RR)  
The Honorable Robert E. Richardson

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.

To the above named Defendant: Tink's Cottage Care at Snowshoe, LLC  
c/o Molly A. Painter  
Route 1 Box 167D  
Beverly, WV, 26253

**SUMMONS**

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., and Patrick C. Timony, Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Amended Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Amended Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Amended Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 1/12/15

CME / CDB  
Circuit Clerk

\_\_\_\_\_  
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

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West Virginia corporation, TINK'S COTTAGE CARE  
AT SNOWSHOE, LLC, a West Virginia limited liability  
company, and TREVE PAINTER,

Defendants.

To the above named Defendant: Slopeside Construction, Inc.  
c/o Treve Painter  
Post Office Box 1  
Slatyfork, WV, 26291

**SUMMONS**

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., and Patrick C. Timony, Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Amended Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Amended Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Amended Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 11/2/15

CMC/CDB  
Circuit Clerk

\_\_\_\_\_  
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

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West Virginia corporation, TINK'S COTTAGE CARE  
AT SNOWSHOE, LLC, a West Virginia limited liability  
company, and TREVE PAINTER,

Defendants.

**AMENDED COMPLAINT**

COMES NOW Plaintiff, Black Bear Crossing Town House Association, LLC  
(hereinafter the "Homeowners Association"), by counsel, and for their Amended Complaint unto  
this Honorable Court states as follows:

**Nature of Action**

1. This action arises from the defective design, negligent construction and  
poor workmanship of common elements, limited common elements and/or condominium units  
by one or more of the Defendants for the Homeowner Association and the various condominium  
unit owners who collectively make up the Homeowner Association. Plaintiff, on behalf of itself

and two or more condominium unit owners, seeks damages -- including incidental and consequential damages -- from Defendants based upon Defendants' breach of contract, breach of implied warranty, negligent development, and negligence.

### **The Parties**

2. Plaintiff, Homeowner Association is a West Virginia limited liability company with its principal place of business at Snowshoe Mountain, Pocahontas County, West Virginia.

3. Defendant, Black Bear Crossing, LLC ("BBC, LLC"), was a West Virginia limited liability company, which listed its principal office address at Post Office Box 389, Boones Mill, Virginia 24065. The West Virginia Secretary of State terminated BBC, LLC on April 12, 2012.

4. Defendant, GKS Development, LLC ("GKS Development"), is a Virginia limited liability company which listed its principal office address at 1899 Boones Mill, Virginia, 24065 and was authorized to do business in West Virginia,. The West Virginia Secretary of State terminated GKS Development's authorization to do business in West Virginia on June 13, 2012.

5. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that GKS Development was a member of BBC, LLC.

6. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Thomas C. Sells, III ("Mr. Sells"), is a resident of Roanoke County, Virginia.

7. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Brian Kreider ("Mr. Kreider"), is a resident of Roanoke County, Virginia.

8. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Matthew Glod ("Mr. Glod"), is a resident of Roanoke County, Virginia.

9. Defendant, Jamison Design, LLC ("Jamison Design"), is a Virginia limited liability company with its principal place of business located at 52 Jamison Farm Lane, Troutville, Virginia.

10. Defendant, Tygarts Valley Construction, Inc. ("Tygarts"), is a West Virginia corporation with its principal place of business located at 1 Fassifern Fields, Salty Fork, West Virginia.

11. Defendant, Slopeside Construction, Inc. ("Slopeside"), was a West Virginia corporation which listed its principal place of business as Post Office Box 1, Saltyfork, West Virginia 26291. The West Virginia Secretary of State administratively terminated Slopeside on December 1, 2008.

12. Defendant, Tink's Cottage Care at Snowshoe, LLC ("Tink's Cottage Care"), is a West Virginia limited liability company with its principal office located at Route 1 Box 167D, Beverly, West Virginia 26253.

13. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Treve Painter (“Mr. Painter”), is a resident of Pocahontas County, West Virginia.

14. Mr. Painter incorporated Slopeside and is a member manager of Tink’s Cottage Care.

### **Jurisdiction and Venue**

15. Jurisdiction and venue in this action are appropriate in the Circuit Court of Pocahontas County.

### **Operative Facts**

16. On or around June 2, 2004, Mr. Sells, Mr. Kreider and Mr. Glod formed GKS Development, an organization specializing in land development.

17. On or around September 17, 2007, GKS Development, along with Mr. Sells, Mr. Kreider and Mr. Glod, formed BBC, LLC.

18. The members of BBC, LLC declared its purpose as “sale and development of real estate including the construction of commercial buildings.”

19. Sometime prior to January 15, 2008, GKS Development purchased a 4.2 acre parcel situated at the Snowshoe Mountain Resort in Edray Tax District of Pocahontas County.

20. On or around January 15, 2008, GKS Development transferred its deed to the 4.2 acre parcel situated at the Snowshoe Mountain Resort in Edray Tax District of Pocahontas County to BBC, LLC for the development and creation of Black Bear Crossing, a common interest ownership community made up of the common elements, limited common elements and condominium units.

21. Jamison Design served as architect for Black Bear Crossing.

22. As architect, Jamison Design was charged with developing thermal and moisture protections for the common elements, limited common elements and condominium units at Black Bear Crossing.

23. BBC, LLC contracted with Tygarts to construct the units at Black Bear Crossing according to the plans of Jamison Design.

24. Tygarts subcontracted the roofing work at Black Bear Crossing to Mr. Painter, Slopeside and Tink's Cottage.

25. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that Tygarts initially contracted with Slopeside to preform work on the siding, main roofs and porch roofs for Black Bear Crossing.

26. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that during Slopeside's work on Black Bear Crossing, Slopeside went out of business.



27. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that Mr. Painter performed work at Black Bear Crossing following Slopeside going out of business.

28. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that Tink's Cottage Care also performed Slopeside's remaining work at Black Bear Crossing.

29. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that Tink's Cottage Care assumed this obligation as a successor to Slopeside.

30. Sometime between 2007 and 2008, Tygarts, Slopeside, Tink's Cottage and Mr. Painter completed the construction on Black Bear Crossing.

31. Beginning in 2008, First Tracts Real Estate began negotiating purchase agreements between potential condominium owners and BBC, LLC for condominium units at Black Bear Crossing.

32. Beginning in 2008, the first unit owners moved in and began residing in the condominiums at Black Bear Crossing.

33. By Declaration effective June 2, 2008, BBC, LLC officially created the common interest ownership condominium called Black Bear Crossing.

34. This Declaration required BBC, LLC to form the Homeowners Association.

35. The Homeowner Association exists to, among other things, (i) manage operate, insure, improve, repair, replace and maintain Common Elements; (ii) to provide certain facilities, service and other benefits of the Owners; and (iii) to take any action that it deems necessary or appropriate to protect the general welfare of Owners.

36. By statute and declaration, the Homeowner Association may, *inter alia*, institute litigation in its own name on behalf of itself and on behalf of two (2) or more unit owners on matters affecting the common interest community.

37. Recently, the Homeowner Association discovered that the common elements, limited elements and condominium units that make up Black Bear Crossing were designed and constructed in a negligent fashion.

38. Recently, the Homeowner Association discovered that the common elements, limited common elements and condominium units that make up Black Bear Crossing were not designed or constructed in compliance with the standards of care owed by the architect, developer, contractor and sub-contractor.

39. Recently, the Homeowner Association discovered that the common elements, limited common elements and condominium units that make up Black Bear Crossing were not designed or constructed in accordance with applicable building codes.

40. The common elements, limited common elements and condominium units that make up Black Bear Crossing uniformly suffer from an inadequate design and poor workmanship during construction.

41. The inadequate design and poor workmanship has led to failure of major building components including, but not limited to, the crawl spaces, basements, roofing, and attics.

42. The inadequate design and poor workmanship has led to moisture problems, weakened structural materials, penetration of the building envelope and created inhabitable conditions for the common elements, limited common elements and condominium units at Black Bear Crossing.

43. The inadequate design and poor workmanship of the common elements, limited common elements, and condominium units has damaged the Homeowner Association and its unit owners.

44. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that there is a unity of interest and ownership between BBC, LLC, GKS Development, Mr. Sells, Mr. Kreider and Mr. Glod so that the separate personalities of BBC, LLC and its members no longer exist.

45. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that BBC, LLC possessed inadequate capitalization when it began development of Black Bear Crossing so that an inequitable result will occur in this matter if BBC, LLC's corporate veil is not pierced.

**COUNT I - Breach of Contract and Implied Covenant of Good Faith and Fair Dealing against BBC, LLC**

46. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 45 of this Complaint as if set out fully herein.

47. The Homeowner Association and its unit owners contracted with BBC, LLC for the purchase of common elements, limited common elements and condominium units suitable for residential and recreational use in and around Snowshoe, West Virginia.

48. The Homeowner Association and its unit owners fully performed all their obligations in these contract relationships.

49. The First Tracts Real Estate Purchase Agreements also contained an implied covenant of good faith and fair dealing. Implicit in this implied covenant is that BBC, LLC would fully disclose any and all defects concerning the common elements, limited common elements and condominium units at Black Bear Crossing.

50. BBC, LLC breached their obligations under the contract and implied covenant of good faith and fair dealing by providing the Homeowner Association and its unit owners with common elements, limited common elements and condominiums with a defective design and poor workmanship.

51. BBC, LLC's failure to satisfy their contractual obligations were so important and central to the contract, their failure defeated the very purpose the Homeowner Association and its unit owners entered into the contracts.

52. As a foreseeable, direct and proximate cause of BBC, LLC's breach of contracts and their breach of the implied covenant of good faith and fair dealing, the Homeowner Association and its unit owners have suffered damages.

**COUNT II - Breach of Implied Warranty of Habitability, Fitness and/or Quality  
against BBC, LLC**

53. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 52 of this Complaint as if set out fully herein.

54. BBC, LLC owed an implied warranty of habitability, fitness and/or quality to the Homeowner Association and its unit owners that the common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

55. BBC, LLC breached its implied warranty of habitability, fitness and/or quality by failing to provide Homeowner Association and its unit owners with common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

56. As a foreseeable, direct and proximate cause of BBC, LLC's breach of the implied warranty of fitness, habitability and/or quality, the Homeowner Association and its unit owners have suffered damages.

### **Count III - Negligent Development against BBC, LLC**

57. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 56 of this Complaint as if set out fully herein.

58. As developer of Black Bear Crossing and declarant, BBC, LLC owed prospective purchasers of condominium units at Black Bear Crossing a duty of care to see that the common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

59. BBC, LLC breached the duty of care owed by failing to provide the Homeowner Association and its unit owners with common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

60. BBC, LLC's failure constitutes negligent development of Black Bear Crossing.

61. As a foreseeable, direct and proximate cause of BBC, LLC's negligent development, the Homeowner Association and its unit owners have suffered damages.

#### **COUNT IV - Piercing the Corporate Veil of BBC, LLC**

62. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 61 of this Complaint as if set out fully herein.

63. West Virginia Code § 31B-3-303 permits the equitable remedy of piercing the corporate veil to be asserted against a West Virginia limited liability company.

64. BBC, LLC is a former West Virginia limited liability company that filed for termination on April 12, 2012.

65. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that there is a unity of interest and ownership between BBC, LLC, GKS Development, Mr. Sells, Mr. Kreider and Mr. Glod so that the separate personalities of BBC, LLC and its members no longer exist.

66. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that BBC, LLC possessed inadequate capitalization when it began development of Black Bear Crossing so that an inequitable result will occur in this matter if BBC, LLC's corporate veil is not pierced.

67. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that BBC, LLC's members, GKS Development, Mr. Sells, Mr. Kreider, and Mr. Glod, knew, or should have known, of BBC, LLC's inadequate capitalization, so that a unity of interest and ownership existed between the members of BBC, LLC and BBC, LLC.

68. As a foreseeable, direct and proximate cause of GKS Development, Mr. Sells, Mr. Kreider, and Mr. Glod's abuse of the corporate form of BBC, LLC, the Homeowner Association and its unit owners have suffered damages.

69. Fraud, injustice or an inequitable result will occur if the corporate veil of BBC, LLC was not pierced.

**COUNT V - Negligence against Tygarts, Mr. Painter, Slopeside and Tink's Cottage Care**

70. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 69 of this Complaint as if set out fully herein.

71. From 2007 through 2008, Tygarts, Mr. Painter, Slopeside and Tink's Cottage Care provided work, construction and renovation services to Black Bear Crossing.

72. Tygarts, Mr. Painter, Slopeside and Tink's Cottage Care had a duty to perform all this work in a reasonably prudent manner.

73. Tygarts, Mr. Painter, Slopeside and Tink's Cottage Care breached this duty by failing to perform this work in this manner.



74. As a foreseeable, direct and proximate cause of Tygarts, Mr. Painter, Slopeside and Tink's Cottage Care's breach of duty and negligent work, the Homeowner Association and its unit owners have suffered damages.

#### **COUNT VI - Professional Negligence against Jamison Design**

75. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 74 of this Complaint as if set out fully herein.

76. As architect of Black Bear Crossing, Jamison Design owed the Homeowner Association and its unit owners a duty of care to render its professional services with the ordinary skill, care and diligence commensurate with that rendered by members of his or her profession in the same or similar circumstances.

77. Jamison Design breached the duty of care owed to the Homeowner Association and its unit owners and was professionally negligent by failing to adequately design and engineer Black Bear Crossing.

78. As a foreseeable direct and proximate cause of Jamison Design's professional negligence, the Homeowner Association and its unit owners have suffered damages.

#### **COUNT VII - Joint Venture**

79. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 78 of this Complaint as if set out fully herein.

80. Defendants have associated for the purpose of developing, constructing and selling residential condominium units at Black Bear Crossing.

81. By associating, Defendants have combined their property, money, profit, skill and knowledge in an attempt to carry out a single business enterprise for profit.

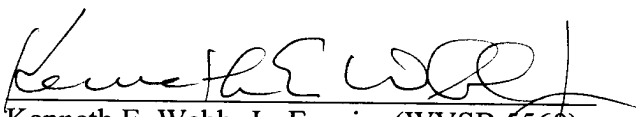
82. As a foreseeable, direct and proximate cause of the joint venture, the Homeowner Association and its unit owners have suffered damages.

WHEREFORE, Plaintiff, Black Bear Crossing Town House Association, LLC, demands judgment against the Defendants, jointly and severally, in an amount to be determined, for - compensatory damages -- including incidental and consequential damages -- together with interest (both pre and post judgment), costs, reasonable attorneys' fees, and such other relief as the Court deems just and appropriate.

**BLACK BEAR CROSSING TOWN HOUSE ASSOCIATION, LLC  
DEMANDS A JURY TRIAL.**

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

By Counsel,

  
Kenneth E. Webb, Jr. Esquire (WVSB 5560)  
Patrick C. Timony, Esquire (WVSB 11717)  
BOWLES RICE LLP  
600 Quarrier Street  
Post Office Box 1386  
Charleston, West Virginia, 25325  
Telephone: (304) 347-1100  
Facsimile: (304) 347-1756

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**Certificate of Service**

I, Kenneth E. Webb, Jr., counsel for Plaintiff, hereby certify that on **January 9, 2015**, I served a true and exact copy of the foregoing ***Amended Complaint*** via U.S. Mail upon counsel of record, postage prepaid and addressed as indicated:

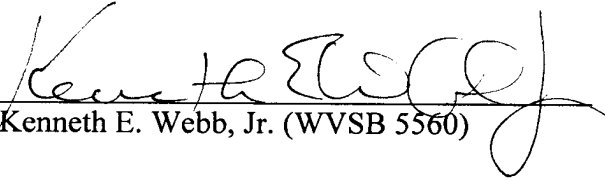
Barbara J. Keefer, Esquire  
Jenkins Fenstermaker, PLLC  
325 Eighth Street  
Huntington, West Virginia, 25701  
*Counsel for Farmers and Mechanics  
Insurance Companies*

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

Jane E. Harkins, Esquire  
Pullin, Fowler, Flanagan,  
Brown & Poe, PLLC  
600 Neville Street, Suite 201  
Beckley, West Virginia 25801  
*Counsel for Black Bear Crossing, LLC, GKS  
Development, LLC, Thomas C. Sells, III, Brian  
Kreider and Matthew Glod*

Jamison Design, LLC  
1599 Roanoke Road  
Daleville, Virginia 24083

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

  
Kenneth E. Webb, Jr. (WVSB 5560)

**CIRCUIT/FAMILY COURT**  
**POCAHONTAS COUNTY, W.VA.**  
Filed in this office this the 12 day  
of January, 2015  
Carrie McCann, Clerk  
By: Cindy D. Beverage, Deputy

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**Certificate of Service**

I, Kenneth E. Webb, Jr., counsel for Plaintiff, hereby certify that on **January 9th, 2015**, I served a true and exact copy of the foregoing ***Black Bear Crossing Town House Association, LLC's First Set of Discovery to Each Defendant*** via U.S. Mail upon counsel of record, postage prepaid and addressed as indicated:

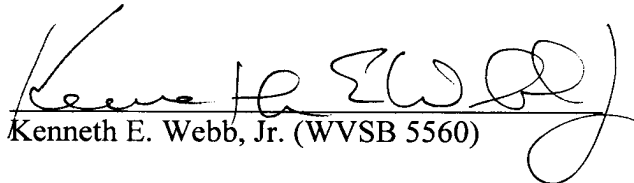
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*Counsel for Farmers and Mechanics  
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Beckley, West Virginia 25801  
*Counsel for Black Bear Crossing, LLC, GKS  
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Kreider and Matthew Glod*

Teresa J. Dumire, Esquire  
Kay Csto & Chaney PLLC  
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Morgantown, West Virginia 26505  
*Counsel for Tygarts Valley*

Jamison Design, LLC  
1599 Roanoke Road  
Daleville, Virginia 24083

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Shuman McCuskey & Slicer, PLLC  
1445 Stewartstown Road, Suite 200  
Morgantown, West Virginia 26505  
*Counsel for Treve Painter*

  
Kenneth E. Webb, Jr. (WVSB 5560)

**CIRCUIT/FAMILY COURT**  
POCAHONTAS COUNTY, W.VA.

Filed in this office this the 12th day  
of January, 2015  
Connie M. Cann, Clerk

By: Candy D. Beverage, Deputy