

**IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**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

Presiding: Joanna I. Tabit

**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, and
TYGARTS VALLEY CONSTRUCTION, INC.,**

Third-Party Plaintiffs,

v.

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

Third-Party Defendants.

**Agreed Order Dismissing Count I of TVC's Cross-Claim
Against Developer Defendants Without Prejudice**

On a prior day came the remaining parties to this litigation, Cross-Claim Plaintiff, Tygarts Valley Construction, Inc., ("TVC") and Cross-Claim Defendants, Black Bear Crossing, LLC; GKS Development, LLC; Thomas C. Sells, III; Matthew Glod; Brian Kreider, individually and as Members of BBC and GKS ("Developers"), by counsel, and announced to the Court that they have reached a settlement agreement whereby Count I of TVC's Cross-Claim against the Developers will be dismissed **without prejudice**. As more thoroughly set forth in the "Settlement Agreement Between Tygarts Valley Construction, Inc., (Cross-Claim Plaintiff) and Black Bear Crossing, LLC, GKS Development, LLC, Thomas C. Sells, III, Brian Kreider, and Matthew Glod (Cross-Claim Defendants)" ("Settlement Agreement"), which was filed with this Court under seal, the Developers shall make agreed upon payments to TVC on or before January 6, 2017, April 16, 2018, and July 6, 2019. The parties have agreed that TVC shall have the right to reinstate the case (consisting of only Count I of TVC's Cross-Claim Against the Developers for breach of contract) at any time that a default of the terms of the Settlement Agreement occurs. The parties have also agreed to waive the right to object to the timeliness of the re-filing of TVC's breach of contract claim based upon the statute of limitations or any rule or law that requires re-filing of a case within a particular period of time following a dismissal without prejudice. Once full payment of the amount agreed upon in the Settlement Agreement is received by TVC, the parties will present a Final Dismissal Order to this Court for consideration and entry.

WHEREFORE, this Court ORDERS as follows:

1. This case is DISMISSED WITHOUT PREJUDICE.
2. TVC may reinstate this case to pursue any and all damages claimed in Count I of its Cross-Claim against the Developers at any time that a default of the Settlement

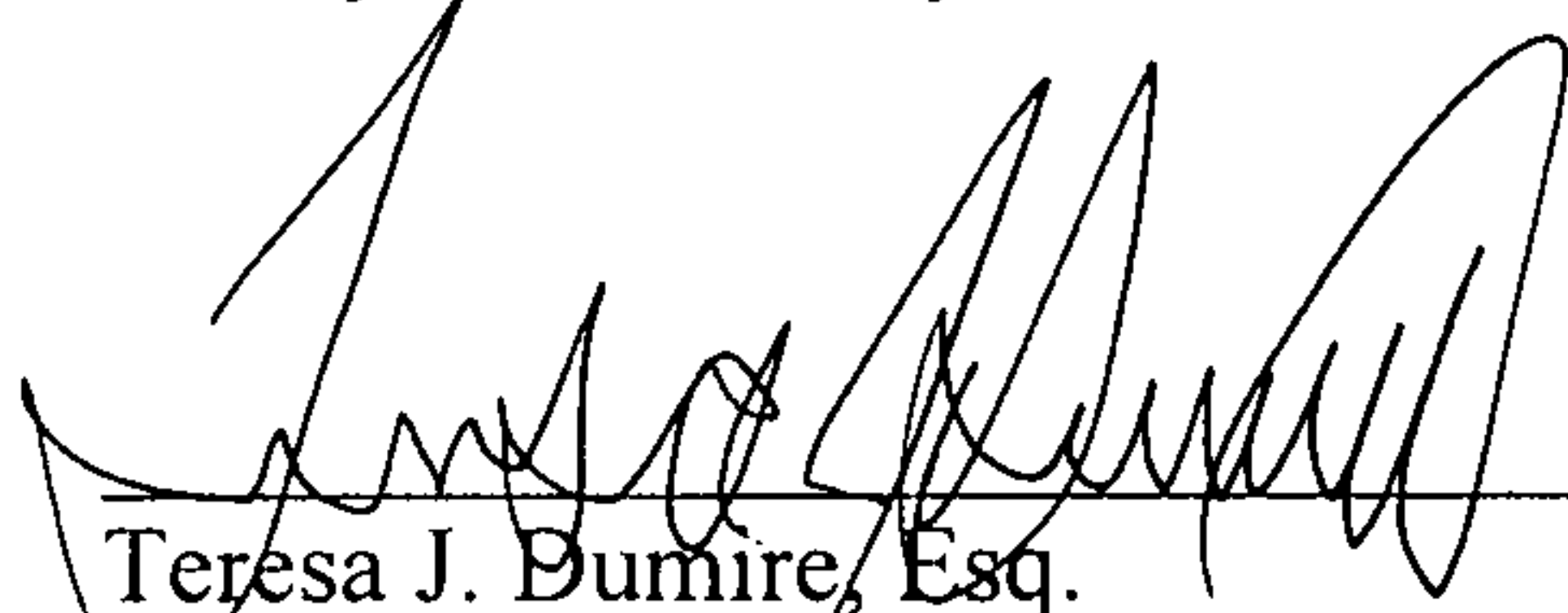
Agreement occurs. The parties have defined "default" to be the failure of the Developers to timely pay any of its agreed upon payments to TVC, which are due on or before January 6, 2017, April 16, 2018, and July 6, 2019.

3. If the Developers make all of the agreed upon payments to TVC on or before January 6, 2017, April 16, 2018, and July 6, 2019, Count I of TVC's Cross-Claim will be DISMISSED WITH PREJUDICE.
4. Although this case shall be removed from the Court's docket, this Court shall retain jurisdiction over the case in the event that a default of the terms of the Settlement Agreement occur and TVC reinstates the case.

ENTERED: July 22, 2016

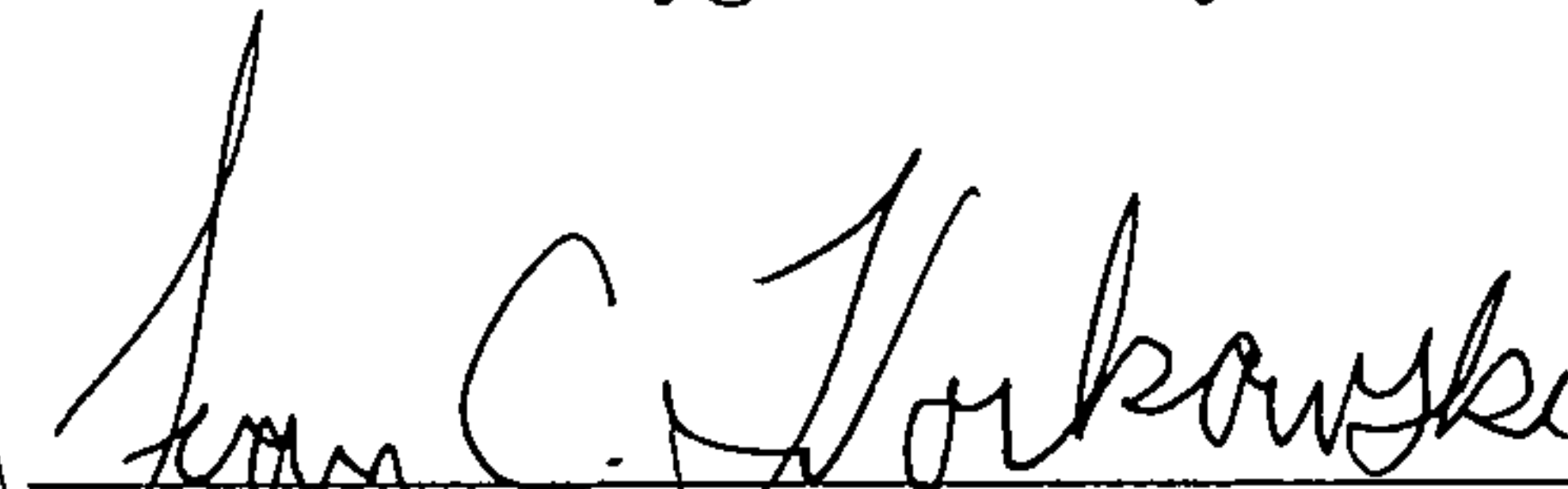
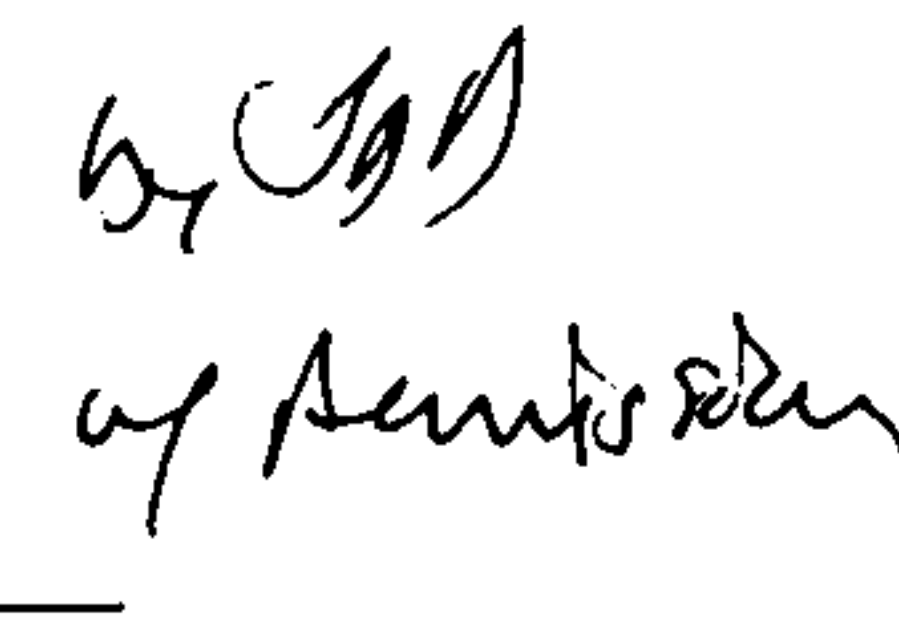
Joanna I. Tabit
HONORABLE JOANNA I. TABIT

Jointly Presented by:


Teresa J. Dumire, Esq.

Kay Casto & Chaney PLLC
1085 Van Voorhis Rd., Suite 100
Morgantown, WV 26505
(304) 225-0970

Counsel for Tygarts Valley Construction, Inc.

 by 
Sean C. Workowski

Frith Anderson & Peake, PC
29 Franklin Road, SW
Roanoke, VA 24011
P.O. Box 1240
Roanoke, VA 24006-1240
540-725-3368

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