

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper Jr., Circuit Court Judge
Case No. 2013-CP-40-7729
Appellate Case Tracking Number: 2017-002325

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SC Court of Appeals

The Gates at Williams-Brice Condominium
Association and Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Appellants,

v.

Quality Built, LLC and Coast To Coast
Engineering Services, Inc. D/B/A Criterium
Engineers,

Respondents.

**RECORD ON APPEAL
VOLUME I**

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**RECORD ON APPEAL
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

The Gates at Williams-Brice Condominium
Association and Katherine Swinson,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

Quality Built, LLC, and Coast to Coast
Engineering Services, Inc. d/b/a/ Criterium
Engineers,

Defendants.

C/A No. 3:16-cv-02022-CMC

Opinion and Order
Granting Motion to Remand
(ECF No. 19) And Denying Fees

This matter is before the court on Plaintiffs' motion to remand and for an award of attorneys' fees. ECF No. 19. Plaintiffs argue removal was improper for a variety of procedural reasons including (1) the "consent" to removal filed by Defendant Quality Built, LLC ("Quality Built" or "Quality Built, LLC") is defective because it includes a reservation of a right to move for remand, (2) Quality Built's purported consent is untimely because it was filed more than thirty days after Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers ("Criterium") was served with the Complaint, and (3) removal is time-barred by 18 U.S.C. § 1446's one-year limitation on removal of diversity actions.¹

For the reasons set forth, below, the court grants the motion to remand on the first two grounds (inadequate and untimely consent). The court addresses but reaches no conclusion as to

¹ These grounds are listed in the order addressed below, rather than in the order presented by Plaintiffs. Plaintiffs also include a fourth argument, that doubts about the propriety of removal should be resolved in favor of remand. The court considers this argument as further support for the first three arguments, rather than as a separate ground for removal.

the third ground (application of Section 1446's one-year limitation). Finally, because Criterium did not act unreasonably in removing the action, the court denies Plaintiffs' request for fees.

BACKGROUND

Through this action, Plaintiffs seek recovery for Defendants' alleged failure to ensure quality control in the construction of a 158 unit condominium complex. The matter was originally filed in state court in December 2013. The complaint named a single Defendant, Quality Built, which entity was served in January 2014. ECF No. 9-1. The original complaint did not specifically allege an amount in controversy, though it did allege widespread damage resulting from water penetration and "spalling" in the condominium complex and sought punitive damages under one cause of action. *Id.* ¶¶ 13-15, 41.

Quality Built did not remove the matter from state court. Its counsel, instead, wrote Plaintiffs' counsel in late January 2014 asking Plaintiffs to dismiss the action with prejudice because the party to the contract at issue was "Qualitybuilt.com," not Quality Built, LLC. ECF No. 19-2 (letter dated January 28, 2014). Defense counsel explained that Quality Built, LLC had purchased "substantially all of the assets of Qualitybuilt.com . . . free and clear of all Claims (except for specified Assumed Liabilities)" and described Qualitybuilt.com as a "California corporation and debtor-in-possession[.]" *Id.*

Plaintiffs declined the invitation to dismiss the action but do not appear to have taken more than minimal action to advance the state-court litigation until October 29, 2015. *See* ECF No. 19-1 at 2, 3 (discussing background and indicating no activity other than service of one set of discovery with the complaint between the time of service and October 29, 2015). On that date, twenty-two months after the initial complaint was filed, Plaintiffs' counsel wrote Quality Built's

counsel stating Plaintiffs would move for default judgment if no answer was filed by November 6, 2015. ECF No. 19-4.

The following day, Plaintiffs moved to amend the complaint to add Criterium as a Defendant and assert a successor liability theory against Quality Built. ECF No. 19-5 (motion to amend filed October 30, 2015).² The motion to amend remained open for some time and was ultimately resolved by consent on or about May 16, 2016. The amended complaint was filed shortly thereafter, on May 19, 2016, and served on Criterium on May 24, 2016. Thus, the matter had been pending in the state court for nearly two and a half years at the point Criterium was brought into the action. ECF No. 1 ¶¶ 2, 3. In the interim, on November 24, 2015, Quality Built, LLC filed an answer to the original complaint. ECF No. 9-2 (Answer filed November 24, 2015); ECF No. 19-1 at 3, 4 (discussing background).

Criterium filed a Notice of Removal on June 17, 2016, less than thirty days after it was first served. ECF No. 1. The notice of removal relied on diversity as the basis for subject matter jurisdiction. Criterium filed a motion to dismiss concurrently with the Notice of Removal. ECF No. 4.

Criterium's Notice of Removal addressed citizenship by providing places of "incorporation" and listing principal places of business for both Defendants despite one being a limited liability company ("LLC"). ECF No. 1 ¶¶ 6, 7. The removal papers did not address whether Quality Built consented to the removal.

² The addition of Criterium was apparently prompted by information Plaintiffs learned in August 2014, when they deposed Quality Built, LLC's president in a related action. *See* ECF No. 19-1 at 2. Thus, Plaintiffs became aware of facts necessary to support joinder of Criterium no later than eight months after this action was filed in state court and waited another fourteen months before taking any action to add Criterium as a Defendant.

On June 20, 2016, the court entered a docket text order noting deficiencies in the allegations necessary to support *subject matter jurisdiction*. That order read, in relevant part, as follows:

TEXT ORDER: The *jurisdictional allegations* of the removal papers are deficient in that they fail to provide information necessary to determine the citizenship of Quality Built, LLC. Citizenship of a limited liability company is determined by the citizenship of ALL of its members (and, as necessary, citizenship of each member's upstream members or partners), not the state of formation and principal place of business. The removing party shall be allowed until June 24, 2016, to file a supplemental jurisdictional statement curing this deficiency. Failure to do so will result in remand.

ECF No. 6 (emphasis added). On June 23, 2016, Criterium filed a supplemental jurisdictional statement addressing the identity and citizenship of Quality Built's members. ECF No. 7.³

On June 24, 2016, Quality Built filed a document stating it "joins/concurs in the Notice of Removal" filed by Criterium. ECF No. 9. This document also included the following statements: "Quality Built, LLC . . . consents to removal of the above-entitled cause of action . . . as if [it] had executed the Notice of Removal as a joint removing party. Defendant, Quality Built, LLC, *reserves the right to move to remand* this cause of action if Defendant, [Criterium] is dismissed from this cause of action." ECF No. 9 at 1 (emphasis added).

On June 28, 2016, Plaintiffs filed a Motion to Delay Briefing (ECF No. 11) on Criterium's Motion to Dismiss. The reason for the requested delay was Plaintiffs' stated intent to seek remand.

³ While a substantial improvement, the information provided arguably remained inadequate to determine the citizenship of one of Quality Built's members, which was identified as follows: "REG Trust, Florida is the situs of the trust, and the trustee, Garth Michaelis, is a Florida resident." *See Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015-16 (2016) (holding citizenship of an unincorporated real estate investment trust formed under Maryland law is coextensive with the citizenship of all its members including shareholders but noting traditional trusts may sue and be sued in the name of the trustees). In light of Plaintiffs' stated intent to seek remand, expressed shortly after this supplement was filed, the court did not seek further clarification of the nature of the trust and need not do so now as the matter is remanded on other grounds.

Id. The court granted the Motion to Delay Briefing. ECF No. 12. Plaintiffs, thereafter, filed the present Motion to Remand, which has been fully briefed. ECF No. 19 (motion and memorandum), 22 (response), 23 (reply).

STANDARD

The burden of demonstrating jurisdiction resides with “the party seeking removal.” *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (citing *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994)). The court is obliged to construe removal jurisdiction strictly because of the “significant federalism concerns” implicated. *Id.* Courts “should ‘resolve all doubts about the propriety of removal in favor of retained state jurisdiction.’” *Hartley v. CSX Transp., Inc.*, 187 F.3d 422, 425 (4th Cir. 1999) (holding, in addressing fraudulent joinder argument, district court erred by certifying a doubtful claim to the state’s supreme court because court should “resolve all doubts about the propriety of removal in favor of retained state court jurisdiction.”); *see also Strawn v. AT&T Mobility, LLC*, 530 F.3d 293, 296 (4th Cir. 2008) (holding Class Action Fairness Act did not change long-standing rule that “it is the [removing] defendant who carries the burden of alleging in his notice of removal and, if challenged, demonstrating the court’s jurisdiction over the matter”).

The same rule applies to procedural deficiencies as jurisdictional deficiencies, so long as the procedural challenge is timely raised by a party. *See Russell Corp. v. Am. Home Assur. Co.*, 264 F.3d 1040, 1046-47 (11th Cir. 2001). As explained in *Russell*, “[l]ike all rules governing removal, th[e] unanimity requirement must be strictly interpreted and enforced because of the significant federalism concerns arising in the context of federal removal jurisdiction.” *See also Stasio v. Saxon Mortg. Svcs. Inc.*, C.A. No. 2:12-cv-2797-DCN, 2013 WL 1787041 (D.S.C. April

26, 2013) (applying rule in remanding based on challenge to timing and adequacy of co-defendants' consents to removal).

DISCUSSION

For the reasons set forth below, the court finds removal procedurally defective both because Quality Built's consent was qualified and because the consent was untimely. In reaching these conclusions, the court has considered Plaintiffs' argument that uncertainty should be resolved in favor of remand. Accordingly, the court grants Plaintiffs' motion to remand.

Because it impacts the decision to deny fees, the court also addresses Plaintiffs' argument that Section 1446(c)(1) bars removal of this action. This argument rests on the premise Section 1446(c)(1)'s one-year limitation on removal applies to all actions removed on the basis of diversity. Criterium's arguments for a contrary interpretation are, at the least, reasonable. For this and additional reasons, the court finds Criterium did not act unreasonably in removing the action and, therefore, denies Plaintiffs' request for an award of fees and costs.

I. Adequacy of Consent

The procedure for removal is set out in 28 U.S.C. § 1446, which was substantially modified in late 2011 and now reads, in relevant part, as follows:

(b) Requirements; generally. – (1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading . . . ;

(2)(A) When a civil action is removed solely under section 1441(a), *all defendants who have been properly joined and served must join in or consent to the removal of the action.*

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

28 U.S.C. § 1446(b) (2011).⁴

The 2011 amendments resolve a circuit split as to whether a later-served defendant may remove an action despite expiration of an earlier-served defendant's time for removal. *See id.*; *Barbour v. Int'l Union*, 640 F.3d 599, 609 (4th Cir. 2011) (pre-amendment decision addressing different approaches and reaffirming the Fourth Circuit's "*McKinney* Intermediate Rule").⁵ They also codify the related long-standing, judicially-crafted "rule of unanimity," which requires that all defendants join in or consent to removal. *See* 28 U.S.C. § 1446(b)(2)(A) (quoted above); *Fletcher v. Hamlet*, 116 U.S. 408, 410 (1886) ("There can be no removal by the defendants unless they all join" in removal).

The amended statute does not address the form consent must take. Neither does it expressly address when consent must be filed if separate from the notice of removal.

⁴ The 2011 amendments apply to actions commenced after January 6, 2012. *See* 28 U.S.C. § 1446, Historical and Statutory Notes, Effective and Applicability Provisions for 2011 Acts. Thus, they clearly apply to this action which was commenced in state court in 2013 and removed to this court in 2016.

⁵ As noted in *Wheeling Hosp., Inc. v. Health Plan of the Upper Ohio Valley, Inc.*, 683 F.3d 577 (4th Cir. 2012), the 2011 amendments to Section 1446 supercede *Barbour*'s holding that later-served defendants may not remove if any earlier-served defendant's time to remove has expired. This is one aspect of the *McKinney* Intermediate Rule. The rule also allows later-served defendants thirty days from their receipt of service to file a consent to an earlier removal. This aspect of the rule is not superceded by the 2011 amendments to Section 1446 as the amended statute does not address when consents must be filed.

A. Ambiguity of Consent

Plaintiffs argue Quality Built's consent is ambiguous and ineffective because it reserves the right to move to remand if Criterium is dismissed from the action. ECF No. 19-1 at 12 (relying, *inter alia*, on *Mayo v. Bd of Educ of Prince George's Cnty.*, 713 F.3d 735, 741-42 (4th Cir. 2013)).⁶ Criterium responds that the reservation of a right that exists in any event, the right to make a motion, does not render the consent to removal ambiguous or ineffective.

Each side presents a plausible argument on the effect of Quality Built's proffered consent. Unfortunately, neither party directs the court to any authority addressing whether reservation of a right to move to remand renders a consent to removal ineffective. The court, likewise, has found no authority and therefore considers the issue as one of first impression.

It may be debatable whether Quality Built's consent is better characterized as an ambiguous or an *unambiguously limited* consent. Regardless of the characterization, the added language clearly limits the consent in a way that, at the least, risks future procedural complications and delay in the event Criterium is dismissed from the action.⁷ If that occurs, Quality Built may argue remand is warranted because the consent was limited, or even that consent *was never valid* because of the limitation. The possibility of the latter argument is particularly troubling as it would, if

⁶ Plaintiffs rely on *Mayo* for the proposition that the consent itself must be unambiguous. The actual holding in *Mayo* is that "notice of removal signed and filed by an attorney for one defendant representing *unambiguously* that the other defendants consent to the removal satisfies the requirement of unanimous consent." *Id.* (emphasis added). Although decided in 2013, *Mayo* applied the pre-amendment version of Section 1446 due to the date on which the action was filed. *Mayo*, 713 F.3d at 740-741 n.1. The court, nonetheless, stated its analysis "would be unchanged [under] the current version of the statute." *Id.*

⁷ As Criterium has a pending motion to dismiss, the possibility is more than theoretical.

successful, likely render intervening rulings of this court void.⁸ See generally *Ellenberg v. Spartan Motors Chassis, Inc.* 519 F.3d 192 (4th Cir. 2008) (noting, in discussing limitation on review of remand orders, that the underlying policy “disfavors prolonged interruptions to litigation created by litigating which of two otherwise legitimate courts should resolve the disputes between the parties”).

In sum, regardless of what, if any, rights the added language in Quality Built’s consent actually preserves, it remains limiting language that raises doubts about the adequacy of the consent and, consequently, the propriety of removal. Applying the general rule that doubts should be resolved in favor of remand, the court finds Quality Built’s inclusion of a reservation of a right to move to remand renders its “consent” ineffective.

B. Untimely Consent

As noted above, Criterium’s Notice of Removal, which was filed on June 17, 2016, did not address whether Quality Built joined in or consented to removal. The issue was, instead, first addressed when Quality Built, LLC filed its Consent to Removal on June 24, 2016. This filing occurred thirty-one days after Criterium was served, thus, one day after Criterium’s deadline for filing a notice of removal.

Plaintiffs assert the one-day delay causes Quality Built, LLC’s consent to be untimely. ECF No. 19-1 at 14 (citing *Moore v. Svehlak*, No. ELH-12-2727, 2013 WL 3683838 *14 (D. Md.

⁸ It is of some note that Quality Built has filed nothing in response to the motion to remand. It has, most critically, failed to join Criterium in arguing that the reservation of rights has no effect on removal.

July 11, 2013)).⁹ Plaintiffs also argue untimely consent is not a curable defect, so long as Plaintiffs raise the procedural defect within the thirty days allowed for such challenges under 28 U.S.C. § 1447(c). ECF No. 19 at 15 (citing *Hurt v. D.C.*, 869 F. Supp. 2d 84, 86 (D.D.C. 2012) (“A failure by defendants to obtain timely unanimous consent for removal is not a curable defect if the plaintiff objects to that removal within the thirty days granted under 28 U.S.C. § 1447(c).”).

Criterion responds that (1) the removal statute does not set a deadline for earlier-served co-defendants to consent to removal; (2) any argument *Mayo* implicitly held the thirty-day deadline for filing a notice of removal applies to consents is “unsupported speculation”; and (3) non-compliance with the rule of unanimity is a waivable error rather than a defect in subject matter jurisdiction.. ECF No. 22 at 6-7. Criterion also argues the short delay in filing does not warrant remand. *Id.* at 7. Finally, Criterion suggests the one-day delay should be excused because the court had “given Criterion until the day Quality Built filed its Consent to Removal to fix deficiencies in its removal papers[.]” *Id.* at 7-8.

Reliance on Docket Text Order. The court addresses Criterion’s last argument first. The docket text order on which Criterion purports to rely noted *deficiencies in pleading jurisdictional facts*, and afforded Criterion an opportunity to cure the specifically-noted deficiencies. Thus, it addressed issues relating to subject matter jurisdiction, which the court may raise and resolve sua sponte, not procedural deficiencies, which the court may not resolve absent a timely motion by

⁹ In *Svehlak*, the court accepted plaintiff’s argument that consent was due on the later of (1) when the notice of removal was filed, or (2) thirty days after the consenting defendant was served. Although not directly relying on *Mayo*, the court noted *Mayo* “appears to be in accord with this interpretation.” Plaintiffs’ argument here is somewhat more generous as it would set the first alternative as the last day the notice of removal *could have been timely* filed rather than the earlier date on which it was actually filed.

plaintiff or a co-defendant. *See Ellenberg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 196-97 (4th Cir. 2008) (explaining, in discussing limitations on review of remand orders, that district court may remand for lack of subject matter jurisdiction sua sponte but may remand for procedural defects only when raised by motion made within thirty days of removal). Most critically, the docket text order says nothing about the absence of consent. Under these circumstances, neither Criterium nor Quality Built could have reasonably relied on the docket text order as an extension of the time allowed for filing consent.¹⁰

Timeliness. As noted above, amended Section 1446 now allows each defendant thirty days from its date of service to initiate removal. It also allows earlier-served defendants, even those whose time to remove has expired, to join in or consent to that removal. It does not set a specific deadline for when consent of an earlier-served defendant must be filed.

This raises several possibilities. First, given the reference to joining in or consenting to the notice of removal, the deadline could be the date the notice of removal was actually filed or, if later, the date it was due (thirty days after the removing defendant was served). Here, the notice was filed on June 17, 2016, and the deadline for filing was June 23, 2016. The consent was filed on June 24, 2016, and, consequently, did not meet either of these potential deadlines.

Second, if a co-defendant's own time for removal has not expired, the deadline for that defendant to consent could be thirty days after it was served.¹¹ Such a rule is consistent with the

¹⁰ Quality Built has filed nothing in response to the motion to remand. The record is, in any event, silent as to whether Quality Built, the entity which filed the late consent, even claims it delayed filing based on the docket text order.

¹¹ This circumstance would most often arise when a later-served defendant files a consent, though it could theoretically apply to an earlier-served defendant if the notice of removal is filed prior to the removing defendant's deadline.

portion of the Fourth Circuit's *McKinney* Intermediate Rule that was not superceded by statute. See generally *Barbour*, 640 F.3d at 613 (noting, in reaffirming the *McKinney* Intermediate Rule, that it is "in line with admonitions from the Supreme Court and this court that we should construe removal statutes narrowly and [resolve doubts] in favor of state court jurisdiction"); *McKinney v. Bd. of Trustees of Maryland Commun. Coll.*, 955 F.2d 924, 928 (4th Cir. 1993) (holding defendants served after the notice of removal is filed may file their consent within thirty days of their receipt of the complaint). In the present case, Quality Built was served years prior to removal. Thus, Criterium cannot argue Quality Built's consent was filed within this potential, alternative deadline.

Criterium suggests no other basis for determining a specific deadline for when consent must be filed, leaving only the possibility that the "deadline" is an unspecified "reasonable" time after notice of removal or no deadline at all. Such an uncertain or open-ended deadline is inconsistent with prior practices, such as that expressed in *McKinney* (allowing later-served defendants thirty days to file consents after receipt of complaint).

This court finds the reasoning in *Svehlak* persuasive on this point. There, the court explained that interpreting § 1446 to require consent within an unspecified reasonable time "is divorced from the text of § 1446 and is inconsistent with *Barbour*," which allowed later-served defendants a thirty-day window to consent or join the removal. *Svehlak*, slip op. at * 13. The court also agrees with *Svehlak*'s observation that *Mayo*, while not directly addressing the issue, is consistent with requiring separate consents be filed within the time for removal if the consenting co-defendant's own time to remove has expired.¹² As did *Svehlak*, this court concludes that the

¹² The *Mayo* court was presented with two potential forms of consent, the removing attorney's unambiguous statement in the notice of removal that all co-defendants consented and the co-

deadline for indicating consent of co-defendants is the later of when the notice of removal is due or within thirty days of when the consenting defendant was first served.¹³ This interpretation is in harmony with the Fourth Circuit's prior recognition of a thirty-day consent period for later-served defendants and provides a firm deadline while affording defendants the benefit of the later of the two potential deadlines.

Opportunity to Cure. While *Criterium* points to no authority for an open ended deadline, it cites two district court cases which allowed parties to cure a failure of timely and adequate consent or excused short delays. See ECF No. 22 at 7. The more recent case, *Sea World, LLC v. Seafarers Inc.*, ___ F. Supp. 3d ___, 2016 WL 3258360 (D.P.R. June 10, 2016), held that a two-day delay in filing consent did not require remand.¹⁴ *Id.* at *3 (“[G]ranted Sea World’s motion to remand based on Aza’s two-day delay would not serve the purpose of the unanimity requirement or the interest of justice. Although it would have been preferable that Aza had timely joined the notice of removal, we hold that its subsequent written consent suffices to cure the defect stemming from its belatedness.”) (footnote omitted)). In reaching this conclusion, the district court relied on the First Circuit’s decision in *Esposito v. Home Depot U.S.A., Inc.*, 590 F.3d 72 (1st Cir. 2009),

defendants’ own later-filed statements of consent. See *Mayo*, 713 F.3d at 742, n.2. Plaintiffs argued the latter were untimely. *Id.* Rather than relying on the co-defendants’ consents, the court addressed whether removing counsel’s statement in the notice of removal sufficed, and held that it did. Had the court considered the co-defendants’ consents timely, there would have been no need to address this issue. Thus, while only an inference, the Fourth Circuit appears either to have considered the consents untimely or at least to have presented the closer question.

¹³ *Svehlak* referred to the first limit as when the notice of removal was filed, rather than when it was due. For purposes of this order, the court assumes that an early-filed removal does not shorten the time for consent.

¹⁴ This “holding” is arguably dicta as the consent at issue was filed by a party the court held was fraudulently joined.

which declined to adopt a “wooden rule” where the co-defendant had filed an answer in federal court within the time to consent and had later opposed plaintiff’s motion to remand, removing any doubt that it preferred the federal court forum. The First Circuit also considered the post-judgment stage of the proceedings at the time the issue was raised on appeal as favoring retained jurisdiction. *Id.* at 77 (“In a case such as this one, where the parties have already invested valuable resources in pursuing this litigation in federal court and where a remand to state court would not serve the purposes of the unanimity requirement, reaching an opposite conclusion would place form before substance.”). It, nonetheless, noted that by failing to strictly comply with the consent requirements, defendants “ran the risk that the district court might find a breach of the unanimity requirement and remand this action to the state court, a decision we would have been powerless to review.” *Id.* In sum, while *Sea World* and *Esposito* provide some support for a flexible approach to technical deficiencies under limited circumstances, they do not mandate this court excuse a delay when the issue is raised by timely motion to remand.

The earlier decision on which Criterium relies, *Save-A-Life Foundation, Inc. v. Heimlich*, 601 F. Supp. 2d 1005 (N.D. Ill. 2009), stated in a footnote that the parties could cure a procedurally defective representation of consent after the otherwise applicable deadline by filing appropriate individual consents. *Id.* at 1007 n.8. While plaintiff there challenged removal on procedural grounds, there is no indication that the delay in filing consents was one of those grounds. Thus, this particular procedural error may have been waived. More critically, the cases *Save-A-Life* cites in support of allowing a belated cure interpret 28 U.S.C. § 1653, which provides “[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.” This statute would not appear to apply to consent, which is a procedural requirement, rather than an “allegation of jurisdiction.”

This court does not, in any event, find these cases persuasive. This is, in part, because imposing a strict thirty-day deadline to raise procedural defects as a basis for remand is implicitly inconsistent with allowing the removing parties an open-ended deadline for meeting the procedural requirements. Excusing delay because it is short is also inconsistent with the various thirty-day deadlines included in the statute and the Fourth Circuit's long-standing practice of requiring consent within thirty days of the relevant trigger event. *See, e.g., McKinney*, 955 F.2d at 928.

Other courts have reached the same conclusion. For example, in *Hurt*, the district court held “[a] failure by defendants to obtain timely unanimous consent for removal is not a curable defect if the plaintiff objects to that removal within the thirty days granted under 28 U.S.C. § 1447(c).” *Hurt*, 869 F. Supp. 2d at 86 (relying on general rule that doubts should be resolved in favor of remand). More recently, in *Easter-Greene v. Verizon Maryland, LLC*, 2014 WL 3723228 (D. Md. 2014), the district court held that a removing defendant could not cure the absence of adequate consent by filing an amended notice of removal. In reaching this conclusion, the court distinguished cases that allowed parties to cure “technically defective jurisdictional allegation[s] in timely filed removal petition[s]” based on 28 U.S.C. § 1653 and noted the absence of any appellate authority for allowing parties to cure a defect in the unanimity requirement. *Id.* at *6 (noting Section 1653 provides that “[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.”).

For the reasons set forth above, the court finds that there is no flexibility in the time allowed for consent so long as the party seeking remand raises the deficiency within thirty days of removal.

No Waiver. Criterium argues that timeliness of consent is a waivable procedural defect. While the point is correct, it does not aid Criterium in opposing remand as Plaintiffs filed a timely

motion seeking remand on grounds including the untimeliness of the consent. The facts do not, therefore, support a finding of waiver.

Conclusion as to Consent. For the reasons explained above, the court finds Quality Built's consent to removal insufficient and untimely. To the extent the question might be considered a close one, this outcome is favored by the general rule that doubts should be resolved in favor of remand.

II. Untimeliness of Removal

Plaintiffs also argue removal is barred by 28 U.S.C. § 1446(c)(1), which Plaintiffs characterize as barring removal of any action based on diversity jurisdiction more than a year after the action was filed in state court. Because the court remands on other grounds, it need not ultimately resolve whether Section 1446's one-year limitation applies to the present action. The court, nonetheless, addresses the argument because it is germane to whether Criterium's removal warrants a fee award.

In arguing Section 1446 applies, Plaintiffs rely primarily on the following language found in *Lovern v. General Motors Corp.*, 121 F.3d 160, 161-63 (4th Cir. 1997):

In diversity cases, the statute explicitly safeguards against such a strategic delay by erecting an *absolute bar to removal of cases in which jurisdiction is premised on 28 U.S.C. § 1332 "more than 1 year after commencement of the action."* 28 U.S.C. § 1446(b). This bar creates, we believe, a sufficient incentive for defendants promptly to investigate the factual requisites for diversity jurisdiction, including the citizenship of the plaintiff and the amount in controversy."

Id. at 163 (emphasis added).

Criterium argues Section 1446(c)'s limiting language applies only to cases that were not removable when filed, an issue that was not addressed in *Lovern* despite its broad language. ECF No. 25 at 2-5. Criterium also directs the court to multiple cases interpreting the prior version of

Section 1446 as Criterium argues it should be construed. Finally, Criterium notes that the 2011 revisions to Section 1446 favor its interpretation.

The current version of Section 1446(c)(1) reads, in relevant part, as follows: “A case may not be removed *under subsection (b)(3)* on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” *Id.* (emphasis added). Subsection (b)(3), in turn, provides that, subject to the exception stated in (c), “*if the case stated by the initial pleading is not removable*, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is . . . removable.” 28 U.S.C. § 1446(b)(3). Thus, the plain language of the statute appears to support Criterium’s argument that, read with Section 1446(b)(3), the one-year limit on removal in Section 1446(c) applies only to cases that were not initially removable, and is inapplicable here because this case was always removable.¹⁵

At least six appellate courts interpreted Section 1446(c) to be so limited prior to the 2011 amendments. *See* ECF No. 22 at 3 (citing *King v. Flinn & Dreffein Engr. Co.*, 675 F. Supp. 2d 642 (W.D. Va. 2009) (citing decisions from six circuits holding the one-year limit does not apply to cases that were removable when filed and reaching the same conclusion after characterizing

¹⁵ It appears to be undisputed that complete diversity was apparent from the face of the original complaint, at least to Quality Built, which would be aware of the citizenship of its own members. Plaintiffs, nonetheless, argue all requirements for diversity were not apparent because they did not allege an amount in controversy. Thus, they argue the one-year bar applies even under Criterium’s interpretation. This point is debatable given the nature of the claimed damages and the pursuit of punitive damages. Even if the matter was not initially removable, Criterium may have found some relief under Section 1447(c)’s now-codified bad-faith exception given Plaintiffs’ long delay in joining Criterium despite learning of its alleged involvement well within the first year of the litigation. Because the court remands on other grounds, it need not address these issues.

Lovern's reference to an absolute bar as dicta)). At least one district court within the Fourth Circuit has recently interpreted the limit as *Criterium* argues it should be interpreted. *See Ross v. Lee*, 2016 WL 521529 (E.D. Va. Feb 5, 2016) ("Although the Fourth Circuit has not definitively addressed this issue, district courts in the Fourth Circuit have concluded that the one-year limit only applies to cases that are not initially removable when commenced, e.g., to cases in which a non-diverse defendant is only dismissed after several months of litigation.").

Criterium's argument that the one-year bar does not apply is at least reasonable and well supported by substantial authority. The court does not, ultimately, resolve the issue but does consider the reasonableness of *Criterium*'s arguments in assessing Plaintiffs' request for fees and costs.

4. Attorneys' Fees

"An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). "Absent unusual circumstances, courts may award fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132 (2005); *see also In re Lowe*, 102 F.3d 731, 733 (4th Cir. 1996) (finding an award of attorneys' fees and costs appropriate under Section 1447(c) where "'a cursory examination . . . would have revealed' a lack of federal jurisdiction.") (citation omitted).

In this case, *Criterium* had a reasonable basis for the assertion of federal subject matter jurisdiction, a point that is not challenged in the motion to remand.¹⁶ Plaintiffs' challenges relate

¹⁶ While the court noted deficiencies in the specific factual allegations supporting subject matter jurisdiction through its docket text order, these deficiencies were timely cured (with the possible

solely to alleged procedural defects, which Plaintiffs could have but did not waive. The very possibility of waiver weighs against, though the court assumes it does not preclude, an award of fees.

Even without consideration of the possibility of waiver, the court would deny fees. This is because there is no controlling authority clearly requiring remand on any of the grounds argued. Rather, the two grounds on which remand is granted (inadequacy and untimeliness of consent) present novel issues that are resolved, in part, based on the rule that doubts should be resolved in favor of remand. While ultimately unsuccessful, Criterium's arguments on these issues were not unreasonable.¹⁷

Further, on at least the issue of the one-year limitation on removal of diversity cases, Criterium's argument is supported by substantial authority. The court has not, in any event, remanded on that basis. Under these circumstances, it cannot be said that Criterium lacked an objectively reasonable basis for removal. It follows that an award of attorneys' fees would be inappropriate.

remaining issue as to the Trust). The motion to remand does not, in any event, challenge the existence of subject matter jurisdiction.

¹⁷ The untimeliness and inadequacy of Quality Built's consent were at least partially beyond Criterium's control. While Criterium certainly should have sought consent prior to filing its notice of removal, it did not necessarily control when or in what form an anticipated separate consent would be filed.

CONCLUSION

For the reasons set forth above, this matter is remanded to the state court from which it was removed. The parties should draw the pendency of Criterium's motion to dismiss to the attention of the state court on remand.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2013CP4007729**

Gates At Williams Brice Condominium Assn

Quality Built LLC

Katharine Swinson

Coast to Coast Engineering Services Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. No. Suit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code 2126

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of April, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Justin O'Toole Lucey

Stephanie D. Drawdy

Alan Ross Belcher Jr.
Kent Taylor Stair

Elizabeth Wieters

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Janette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, Individually, and)
on behalf of all others similarly situated,)

Plaintiffs,

vs.

QUALITY BUILT, LLC, and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS,)

Defendants.

ORDER DISMISSING
DEFENDANT QUALITY
BUILT, LLC'S MOTION FOR
SUMMARY JUDGMENT

JEANETTE
2017 APR -7 PM 4:36
RICHLAND COUNTY
FILED

This matter came before this Court on March 13, 2017, on Defendant Quality Built, LLC's Motion for Summary Judgment dated March 3, 2017 and was filed March 6, 2017. In its March 3, 2017, Motion, Defendant Quality Built, LLC sought to join Criterium Engineers' December 20, 2016, Motion for Summary Judgment to move that Plaintiffs' Successor Liability claim against Defendant Quality Built, LLC filed by Plaintiffs' amended pleading on May 18, 2016, was time-barred by the statute of limitations.

At the call of this Motion, counsel for the Defendant, Quality Built, LLC, withdrew its March 3, 2017 Motion for Summary Judgment.

GT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Quality Built, LLC's Motion for Summary Judgment, heretofore referenced as to Plaintiffs' Successor Liability claim being time-barred by the statute of limitations, is dismissed.

AND IT IS SO ORDERED!



The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge
Court of Common Pleas
Fifth Judicial Circuit

This 7 day of April 2017.
Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2013CP4007729**

Gates At Williams Brice Condominium Assn

Coast to Coast Engineering Services Inc

Katharine Swinson

Criterium Engineers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code 2126

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of April, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Justin O'Toole Lucey

Stephanie D. Drawdy

Alan Ross Belcher Jr.
Kent Taylor Stair

Elizabeth Wieters

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

The Gates At Williams-Brice Condominium
Association And Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Quality Built, LLC, and Coast to Coast
Engineering Services, Inc. d/b/a Criterium
Engineers,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2013-CP-40-7729

**ORDER GRANTING COAST TO
COAST ENGINEERING SERVICES,
INC. D/B/A CRITERIUM ENGINEERS'
MOTION FOR SUMMARY
JUDGMENT**

RICHLAND COUNTY
FILED
2017 APR -7 PM 4:38
JENNETT
C.C.

This matter came before the Court on Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers (hereinafter "Criterium")'s Motion for Summary Judgment. The Court has carefully considered the arguments of counsel, as presented through extensive briefing by the parties and during the hearing of this Motion on March 13, 2017. For the following reasons, Criterium's Motion for Summary Judgment is hereby GRANTED.

BACKGROUND

This matter arises out of the design, development and construction of The Gates at Williams-Brice Condominiums ("the Project"). The Project, located in Columbia, SC, consists of 158 condominium units across six buildings and was completed in 2007. Prior to filing this case, Plaintiffs filed *The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated v. DDC Construction, Inc., et al.*, 2012-CP-40-8512 ("Gates I"). Plaintiffs in both actions are the Project's homeowners' association and the individual unit owners, as a purported class, and both lawsuits claim damages to the Project as a result of alleged design and construction deficiencies. Plaintiffs filed Gates I

on December 26, 2012 against the Project's developer/builder and several additional entities. Plaintiffs subsequently filed three amended Complaints in Gates I, each time naming additional defendants, with their Third Amended Complaint filed in August 2014. Plaintiffs filed the instant case ("Gates II") against Defendant Quality Built, LLC ("Quality Built") on December 27, 2013 on the basis of Quality Built's role in providing inspections of the Project during original construction. On May 18, 2016, *three years, four months and twenty-two days* after filing Gates I, Plaintiffs filed an Amended Complaint in this case for the first time adding Criterium, a consultant to Quality Built, as a Defendant.

Plaintiffs served Criterium with the Amended Complaint on May 23, 2016. On June 17, 2016, Criterium filed a Notice of Removal to the United States District Court, Columbia Division. On September 7, 2016, the District Court granted Plaintiffs' Motion to Remand and returned the case to state court. Criterium subsequently filed a timely Answer, and on December 16, 2016 filed its Motion for Summary Judgment on the basis that Plaintiffs' claims against Criterium are barred by the applicable three year statute of limitations.

STANDARD OF REVIEW

Summary judgment is appropriate in matters where "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The purpose of summary judgment is to "expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In ascertaining whether any triable issue of fact exists, the trial court must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004).



DISCUSSION

South Carolina provides for a three year statute of limitations for civil actions arising out of construction defect claims. S.C. Code of Laws §15-3-530. Further, it is well-settled that South Carolina follows the "discovery rule" in determining the triggering date of a plaintiff's claim. S.C. Code of Laws §15-3-535. Per the discovery rule, a plaintiff must file suit against a defendant within three years of when the person "knew or by the exercise of reasonable diligence should have known" that he or she had a cause of action. Id.; see also Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996) ("According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered."); True v. Monteith, 327 S.C. 116, 116, 489 S.E.2d 615, 616 (1997) ("[T]he statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.")

Further, "[t]he important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury." Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (internal citations omitted). "The fact that there may have been another potential defendant whose identity was unknown to [plaintiff] does not prevent the running of the statute of limitations for all claims based upon this injury against all potential defendants." Tollison v. B & J Mach. Co., 812 F. Supp. 618, 620 (D.S.C. 1993). Thus, South Carolina law is clear that, once the statute of limitations has been triggered, *the three year clock begins to run as to all claims and as to all potential defendants.*



Plaintiffs in this case acknowledge that the statute of limitations on their claims began to run, at the latest, as of December 26, 2012, the date they filed Gates I. See Plts' Reply Memo., p.2 ("It can be postulated that the statute of limitations began to run as to *known or reasonably discoverable* defendants by the time suit was filed on Dec. 26, 2012.") (italics as provided by Plaintiffs). Plaintiffs did not file a lawsuit against Criterium until May 18, 2016. Using Plaintiffs' acknowledged December 26, 2012 discovery date, Plaintiffs' statute of limitations as to claims for construction deficiencies and damages at the Project expired on December 26, 2015. Clearly, per the law of South Carolina, Plaintiffs' statute of limitations had expired prior to Plaintiffs suing Criterium on May 18, 2016.

Plaintiffs now seek to avoid this result by asking the Court to extend the statute of limitations. Although Plaintiffs admit that their "statute of limitations began to run as to *known or reasonably discoverable* defendants" as of December 2012, they generally assert that they are entitled to tolling of the statute of limitations because Criterium was either unknown or not reasonably discoverable. However, over the course of the three years following the December 26, 2012 discovery date, Criterium was not only reasonably discoverable, they actually became known to Plaintiffs on August 5, 2014, well within Plaintiffs' three year discovery period. See id. at p.3 ("On August 5, 2014, Plaintiffs deposed Quality Built President Beth Michaelis and first learned of Criterium's involvement at the Gates.")

More specifically, Plaintiffs argue their statute of limitations should be tolled on one of the following grounds: (1) statutory tolling pursuant to S.C. Code of Laws §15-3-30; (2) equitable tolling as a result of filing a Motion to Amend; (3) equitable tolling based on the conduct of the parties. For the reasons set forth below, the Court finds Plaintiffs' arguments inapplicable to the case at bar.



(1) Statutory Tolling pursuant to S.C. Code of Laws §15-3-30

Plaintiffs rely on S.C. Code of Laws 15-3-30 and the case Meyer v. Paschal, 330 S.C. 175, 498 S.E.2d 635 (1998) for the proposition that their statute of limitations should be statutorily tolled. Section 15-3-30, enacted by the South Carolina Legislature in 1870, provides exceptions for the commencement of filing of lawsuits and the application of the statute of limitations for an "out of State" defendant.¹ In interpreting §15-3-30 over 120 years later, the South Carolina Supreme Court explained in its Meyer decision that §15-3-30 was enacted to address a concern prior to modern times and prior to the adoption of South Carolina's long arm statutes, which came into effect in the mid-twentieth century. Thus, Meyer held that §15-3-30 is now interpreted to apply only when a defendant is beyond the "personal jurisdiction" and "process" of the Court. 330 S.C. at 183-84, 498 S.E.2d at 639 ("[W]e find the tolling statute is inapplicable when the nonresident defendant is amenable to personal service of process and the defendant can be brought within the personal jurisdiction of our courts"). The Meyer Court went on to explain that:

"To construe the tolling statute in the manner urged by the plaintiff would allow suits to be postponed indefinitely, for no good purpose, and to be brought in some cases at the virtually unlimited pleasure of the plaintiff. This is highly prejudicial to the out-of-state defendant. It would allow a plaintiff to defer initiation of a suit until after the witnesses have disappeared or documentary evidence has been lost, prejudices which could not logically have been intended by our Legislature."

Id. at 183, 498 S.E.2d at 639 (internal citations omitted).

The Meyer Court goes on to qualify that its holding "is limited to situations similar to the instant case in which the name and location of the defendant is known to the plaintiff." Id. at

¹ **Section 15-3-30. Exceptions where defendant is out of State.** If when a cause of action shall accrue against any person he shall be out of the State, such action may be commenced within the terms in this chapter respectively limited after the return of such person into this State. And if, after such cause of action shall have accrued, such person shall depart from and reside out of this State or remain

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183-84, 498 S.E.2d at 639. The Meyer Court further concluded that "[t]he period of limitations may be tolled when that information is not known to the plaintiff. Whether the plaintiff had such knowledge could conceivably be a question of fact." Id.

These final qualifying sentences to the Meyer holding were further discussed and clarified by the South Carolina Supreme Court in the case Tiralango v. Belfry, 335 S.C. 359, 517 S.E.2d 430 (1999). In Tiralango, the Supreme Court explained that "the only reasonable and logical construction of 'whether the defendant's whereabouts were known' was whether the plaintiff actually knew the defendant's whereabouts or whether the plaintiff could, through the exercise of reasonable diligence, have known the defendant's whereabouts." Id. at 362-63, 517 S.E.2d at 432 (emphasis added). Therefore, §15-3-30 comes into play only when the name and location of a defendant are not known to Plaintiffs or are not knowable through the exercise of reasonable diligence, and when the defendant is beyond the personal jurisdiction and process of the Court. To note, §15-3-30 makes no mention of discovery or concealment.²

Here, as an initial point, Criterium was, at all times, subject to both personal jurisdiction and the process of the Court pursuant to South Carolina's long arm statute. Thus, Criterium was never "out of the State" insofar as jurisdiction and process were concerned. This is evidenced by Plaintiffs' service of the Amended Complaint on Criterium, Criterium's acceptance of the same and the current proceedings.

Further, the undisputed facts in this case show that not only *could* Plaintiffs "through the exercise of reasonable diligence have known of [Criterium's] whereabouts," Plaintiffs did, in fact

continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

² The Supreme Court declined to toll the applicable statute of limitations in both the Meyer and Tiralango cases. This Court is unaware of any modern case law where S.C. Code of Laws §15-3-30 has applied to extend the statute of limitations as to an out-of-state defendant.

6

and through the exercise of reasonable diligence, actually discover those whereabouts. On August 5, 2014 – well within Plaintiffs’ three year statute of limitations time period – Plaintiffs deposed Quality Built, the party in this case which had employed Criterium; and very early in that deposition, they learned the identity and role of Criterium and were told the name and location of the contact person Plaintiffs would later serve. (See Plts’ Reply Memo, Exhibit Q).³ Thus, under the holdings set forth by Meyer and Tiralango, §15-3-30 does not operate to toll the statute of limitations as to Plaintiffs’ claims against Criterium.

Further, the Court notes, as did the Supreme Court in Meyer and Tiralango, that to interpret otherwise would be a violation of an out-of-state defendant’s due process and equal protection rights. As the Meyer Court explained, when it declined to apply §15-3-30 to toll the statute of limitations, an interpretation permitting tolling of the statute of limitations as to an out-of-state defendant simply because the defendant is out of state would allow suits to be brought at “the virtually unlimited pleasure of the plaintiff,” a result “highly prejudicial to the out-of-state defendant.” Id. at 183, 498 S.E.2d at 639.

(2) Equitable Tolling as a Result of Filing a Motion to Amend

Plaintiffs next argue that the filing of a Motion to Amend on November 5, 2015, prior to the expiration of the statute of limitations, entitles them to equitable tolling. However, Plaintiffs cite no authority which supports that conclusion. Rather, the Federal Magistrates’ Court opinion relied on by Plaintiffs involved a situation where the Magistrate had previously issued an Order permitting a two week extension to the statute of limitations during which the plaintiff could file an amended pleading, an Order which the plaintiff timely followed. See Wright v. Sawyer, 2016

³ The Court also finds that Criterium was, at all relevant times, further discoverable to Plaintiffs through its active website at <http://criterium-engineers.com/> which contains the company’s contact information. The Court addresses Plaintiffs’ additional arguments as to whether Criterium was reasonably discoverable, *infra*, at pages 9-10.

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U.S. Dist. Lexis 87446 (D.S.C. June 15, 2016), adopted by the District Court in Wright v. Officer BJ Sawyer, 2016 U.S. Dist. Lexis 87053 (D.S.C., July 6, 2016). Additionally, the New York case relied upon by Plaintiffs supports the conclusion that the filing of a Motion to Amend is not sufficient grounds to toll the statute of limitations. In that case, the New York court explained that “[s]tatutes of limitation are designed to promote justice by preventing prejudice through the revival of stale claims” and that the “goal” of the statute of limitations “would not be served by a rule which would render the timeliness of a claim dependent upon the speed with which a court decides a motion.” Perez v. Paramount Communs., 92 N.Y.2d 749, 754, 709 N.E.2d 83, 86 (1999). The Court specifically found that “the filing of the motion alone” was not determinative of its ruling. Id.⁴

Additionally, the Court notes that Plaintiffs allowed the six weeks following the filing of their Motion to Amend (and prior to the expiration of their statute of limitations) to pass without requesting a hearing or a ruling from the Court. Ultimately, Plaintiffs waited over five months to inquire as to the status of their Motion to Amend, which ultimately was resolved by consent. Even if consent had not earlier been available, or if the Court was timely asked and refused to issue a ruling, Plaintiffs always had the option of filing a separate lawsuit against Criterium prior to the expiration of their statute of limitations. While multiple lawsuits are not procedurally ideal, a separate lawsuit – which Plaintiffs clearly were aware of as an option, as noted by their filing of this suit as opposed to including a new party in one of their amended pleadings in Gates I – would have operated to preserve Plaintiffs’ substantive rights.⁵

⁴ South Carolina law also supports this conclusion. See City of N. Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 599 S.E.2d 462 (Ct. App. 2004) (Trial judge erred in permitting a plaintiff’s late filing of a suit beyond the statute of limitations when the suit had been preceded by a previously granted Motion to Amend.).

⁵ The Court notes that such separate suits could later have been consolidated for discovery and/or trial pursuant to Rule 42, SCRCP.



Plaintiffs offer no justifiable reason for the delay in fifteen months from learning about Criterium's role at the Project prior to filing their Motion to Amend. Nor do they offer any justifiable reasons for failing to seek a resolution from the Court to their Motion to Amend in the six week period between filing the Motion and the expiration of their statute of limitations. Therefore, the Court finds unpersuasive Plaintiffs' unsupported argument that filing a Motion to Amend entitles them to equitable tolling of their statute of limitations.

(3) Equitable Tolling Based on the Conduct of the Parties

Lastly, Plaintiffs make a catch-all argument that they are entitled to equitable tolling for a multitude of reasons based on the conduct of the parties during original construction of the Project and during the pendency of Gates I and Gates II. These reasons include Criterium's registration status with the South Carolina Secretary of State, the alleged concealment of Criterium during original construction of the Project, the chronology of discovery and pleadings in Gates I and Gates II, and a repetition of the arguments addressed above. Plaintiffs bear the burden of showing why equitable tolling should apply. See Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) ("The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use.") (internal citations omitted). As South Carolina makes clear, that is a very high burden – and none of the circumstances here rise to the level such that the Court should disregard the expiration of the statute of limitations for any period of time, let alone for nearly five months.

As to Plaintiffs' argument that tolling is justified based on Criterium's alleged "failure" to register with the Secretary of State, Plaintiffs offer no evidence that Criterium's registration status on the Secretary of State website affected their ability to locate and serve Criterium. Plaintiffs received Criterium's name and location during the deposition of Quality Built's



President in August 2014, and Criterium had an easily accessible on-line presence via a website containing the same contact information. Plaintiffs then served their Amended Complaint, in a matter of days and without issue, using that same contact information. Thus, the Court sees no justification for tolling the statute of limitations based on Criterium's registration status.

As to Plaintiffs' argument based on Criterium's alleged concealment of its presence during original construction of the Project, whether Criterium's presence was "concealed" or easily identifiable during construction is not a factor as to whether Plaintiffs' statute of limitations should be tolled during the three years following the December 26, 2012 discovery date of their claims. (Further, Plaintiffs do not argue that any purported class members were on-site during construction of the Project to identify – or fail to identify – anyone from Criterium, such that it prevented their ability to timely file their suit.)

However, even if the nature of Criterium's presence on-site were a factor, no question of fact exists on that point. Plaintiffs' own evidence confirms that Criterium was not concealed during original construction. The proffered testimony from Quality Built's President, obtained in the same August 2014 deposition, states that consultants working on-site at the Project wore co-branded Quality Built and Criterium shirts. This testimony is consistent with the agreement between Quality Built and Criterium as to co-branding (see Plts' Reply Memo, Exhibit S, Section 9.1), as well as with contemporaneous documents produced by Criterium related to production of co-branded materials. The Court viewed an example of the Quality Built and Criterium co-branded shirt which would have been worn on construction sites, including at the Project, prior to the time Criterium and Quality Built ended their relationship in March 2007.

As to other catch-all equitable arguments raised by Plaintiffs, the matter of Criterium's status as an out-of-state defendant and Plaintiffs' filing of a Motion to Amend have been

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sufficiently addressed by the Court, in the discussions *supra*, as non-persuasive and inapplicable the case at bar. Further, the extent of discovery conducted by Plaintiffs in Gates I and the procedural posturing of Quality Built after the filing of Gates II are likewise irrelevant as to the running of the statute of limitations against Criterium.

Taken individually or all together, the Court finds none of Plaintiffs' arguments persuasive or rising to the level of an "extraordinary event" such that Plaintiffs were "prevented from filing suit." Hooper, 386 S.C. at 115, 687 S.E.2d at 32. Further, the Court points out that no action on the part of Criterium – either during original construction of the Project or during the three years following Plaintiffs' discovery of their claims – induced Plaintiffs to refrain from filing suit against it.

In short, none of Plaintiffs arguments affect the Court's finding that, at all relevant times, Criterium was reasonably discoverable to Plaintiffs within the applicable statute of limitations. Moreover, Criterium and its role at the Project were actually known to Plaintiffs well within that time frame. Plaintiffs simply failed to timely file their lawsuit. Furthermore and most importantly, no extenuating and justifiable circumstances exists such that the Court should, or for that matter could, toll Plaintiffs' statute of limitations and deny Criterium its substantive right to the protection of South Carolina's laws.

Based on the clear and undisputed timeline of Plaintiffs' applicable discovery date and the subsequent pleading filing dates, Criterium has met its burden to show that Plaintiffs failed to timely file their Amended Complaint against Criterium prior to the expiration of their statute of limitations. Further, Plaintiffs have failed to meet their burden to show that equitable tolling is justified, or permissible, in this case.



CONCLUSION

In construction defect litigation (in particular in regard to condominium projects such as this one), plaintiffs typically are not involved in original construction; and therefore they have no first-hand knowledge of what parties may have been involved. Thus, upon discovery of their claim, plaintiffs have three years to use the discovery tools available to them to uncover the identity of potential defendants.

In the three years following the filing of Gates I, Plaintiffs identified and filed suit against at least 35 defendants in five separate complaints. As a practical matter, if a construction defect plaintiff were to use the "new" discovery of an additional defendant involved in original construction as a reason to extend their statute of limitations period or to otherwise "restart" the statute of limitations clock as to that newly discovered entity, then construction defect litigation would never end.

For the reasons set forth above, the Court finds that Plaintiffs' three year statute of limitations expired no later than December 26, 2015, nearly five months prior to Plaintiffs' filing suit against Criterium on May 18, 2016. Further, this Court finds that no grounds exist on which the Court should toll or otherwise set aside the applicable statute of limitations.

Accordingly, Criterium's Motion for Summary Judgment is, hereby, GRANTED.

And it is so ORDERED.


The Hon. G. Thomas Cooper, Jr.

Richland, South Carolina
APR 24
March 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, Individually, and)
on behalf of all others similarly situated,)

Plaintiffs,

vs.

QUALITY BUILT, LLC, and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS,)

Defendants.)

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

ORDER GRANTING QUALITY
BUILT, LLC'S MOTION FOR
DECLARATORY RELIEF, OR IN THE
ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT

2017 APR -7 PM 4:36
JEANETTE L. BROWN
C.C.B. 2017

RICHLAND COUNTY
FILED

THIS MATTER COMES BEFORE THE COURT upon Defendant Quality Built, LLC's ("Defendant") Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment heard on March 13, 2017. Present at the hearing were Alan Belcher, Esq. appearing as counsel for Defendant, Justin Lucey, Esq. appearing as counsel for the Plaintiffs above-named ("Plaintiffs"), and Kent T. Stair, Esq. appearing as counsel for Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers ("Criterium"). After hearing the arguments of counsel, reviewing the contents of the Clerk of Court's file, and reading the memoranda submitting by counsel, this Court finds Defendant's Motion should be granted.

I. Defendant's Motion and Plaintiffs' Opposition.

This lawsuit initiated by the Plaintiffs concerns allegations of construction and design defects in connection with the construction of The Gates at Williams-Brice Condominiums ("The Gates"). Defendant argues it is not the party which performed work at the The Gates project

('the Project'). Further, Defendant submits that pursuant to the Order (I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (III) Granting Related Relief filed on January 29, 2010 (the "Sale Order") and the Amended and Restated Asset Purchase Agreement by and among QualityBuilt.com as Seller and Quality Built, LLC as Buyer (the "Purchase Agreement"), the United States Bankruptcy Court authorized and ordered that the Defendant cannot be held liable for any alleged work performed by the entity called Qualitybuilt.com at The Gates Project.

As detailed in the Sale Order and Purchase Agreement, Defendant purchased assets from Qualitybuilt.com in a bankruptcy sale, free of liabilities with the exception of those explicitly named. The Gates was not an assumed liability under the Sale Order and Purchase Agreement, and therefore Defendant argues it should be dismissed from this action with prejudice. Defendant argues that inherent to this transaction, the United States Bankruptcy Court discharged Defendant of any liabilities of Qualitybuilt.com in its purchase of Qualitybuilt.com's assets. The Bankruptcy Court found "The Purchaser would not have entered into the Purchase Agreement . . . if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Contracts and Assumed Liabilities, or if the purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities [] that expressly are not assumed by the Purchaser." Sale Order, ¶ W (emphasis added).

Plaintiffs submit to the Court that Defendant is liable under South Carolina common law successor liability theory and Defendant is a mere continuation of Qualitybuilt.com. The Plaintiffs rely on Nationwide Mut. Ins. Co. v. Eagle Windows & Doors, Inc. to establish that the

GC 2

Plaintiffs are not claimants under 11 U.S.C.A. § 101(5) and therefore may pursue an action in tort against Defendant, post-sale under successor liability theory. 394 S.C. 54 (2011).

However, the Nationwide case is a product defect case regarding defective windows placed in the stream of commerce by a predecessor company and is distinguishable from one-time quality control services provided by Qualitybuilt.com at The Gates Project. The test to which Plaintiffs cite in the Nationwide case to determine the type of claim reads:

[A]n individual has a §101(5) claim [which is limited by the free and clear sale to *in rem* against the sale proceeds held by the Debtor] against a debtor manufacturer if (i) events occurring before confirmation create a relationship, such as contact, exposure, impact, or privity, between the claimant and the debtor's product; and (ii) the basis for liability is the debtor's prepetition conduct in designing, manufacturing and selling the allegedly defective or dangerous product. ...

Nationwide, 394 S.C. at 59 (emphasis added). The United States Bankruptcy Code simply defines a claim under § 101(5) as "[a] right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or [a] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." 11 U.S.C.A. § 101(5). Additionally, the bankruptcy order in Nationwide includes a "free and clear" clause which contemplates claims arising before the closing of the sale of the assets. Nationwide, 394 S.C. at 58. The bankruptcy order in the instant case clearly includes a "free and clear" clause which bars all claims before or after the petition date:

[F]ree and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), liabilities encumbrances, rights, remedies, restrictions, and interests and encumbrances of any kind

GL

of nature whatsoever whether arising before or after the Petition Date, whether at law or in equity

Sale Order, p. 1 (emphasis added).

The Defendant argues the Nationwide tests as to determining the type of claim are inapplicable. Nationwide speaks to product manufacturer liability in the successor context and employs a more limited bankruptcy order, whereas the Sale Order in instant case bars all future claims and regards administration of quality control inspection services.

In following, Plaintiffs argue that once it is established Plaintiffs are not § 101(5) claimants, they may pursue a tort claim against Defendant under state law and South Carolina precedent sets forth exceptions to successor non-liability in Brown¹ and Simmons², one being the "mere continuation" exception. Simmons v. Mark Lift Industries, Inc., 366 S.C. 308 (2005); Brown v. American R. E. Co., 128 S.C. 428, 431 (1924). Defendants argue these cases are distinguishable from the instant case, as Nationwide, Simmons, and Brown overwhelmingly and specifically address products liability actions.

Brown is distinguishable, as it constitutes the continuation of one transaction – the purchase and delivery of goods – the delivery of which was never completed. Brown, 128 S.C.

¹ The Brown case from 1924 involves a railway defendant which was deemed liable by the circuit court for its predecessor's failure to deliver a shipment to the plaintiff. At the time the predecessor company processed and received the shipment on January 14, 1918, the defendant was not yet in existence. Brown, 128 S.C. at 429-30. On July 1, 1918, the defendant was incorporated and assumed by purchase certain property of the predecessor company. Id. at 430. On July 1, 1920, the plaintiff brought its suit against defendant for failure to deliver the shipment. Id. at 429. At the time of the suit, the predecessor company remained viable with assets. Id. at 430.

² The Simmons case cited by the Plaintiffs answers specific, certified questions from the United States District Court for the District of South Carolina by applying the Brown successor liability test. 366 S.C. 308 (2005). The certified questions posed to the Supreme Court regarding successor liability each specifically apply to products liability claims. Id. at 309-10. The facts in Simmons concern a predecessor company which manufactured scissor lifts until it was purchased by the successor company in 1991 which continued to manufacture similar scissor lifts until 1992. Id. at 310-11. The plaintiff's claim was for injuries sustained by a scissor lift occurring in 1999 which was manufactured and sold by the predecessor company. Id. at 310. As part of the purchase agreement, the successor company purchased "the inventory of supplies, raw materials, work in progress, finished goods, trademarks, service marks, trade names, goodwill, all intellectual property, such as drawings, designs, blueprints, patents, licenses, and technology." Id. at 311.

428 (1924). It is alleged that Qualitybuilt.com, as owner of certain intellectual property, provided services for quality control at The Gates Project which was completed in 2007. There is no continuity of the predecessor's work at The Gates by the Defendant after Defendant was incorporated in 2009. Therefore there is no comparable analysis as Defendant is not liable in the instant case for completion of The Gates Project, or in Brown – payment of lost shipment.. Id. at 434.

Likewise, in Simmons the Court considers certified questions arising from the product liability context. Defendant argues the Simmons facts cannot be treated as tantamount to those in the instant case to apply the Brown test to this matter. The certified question posed to the Supreme Court in Simmons contemplates the successor company manufacturing a product placed in the stream of commerce, which is perpetuated by the successor company's purchase of designs, technology, licenses, and so on, to create that product. The injury was sustained by the similar product created by the predecessor company. In the instant case, neither Defendant nor its predecessor placed unreasonably dangerous or defective products into the stream of commerce. Instead, it is alleged Qualitybuilt.com was retained to perform a service at The Gates as one transaction in the form of quality control inspection. Defendant argues this is a one-time service and there is no product being placed in the stream.

II. Law and Analysis.

The Court has two means at its disposal to grant the relief requested in Defendant's Motion: declaratory relief pursuant to S.C. Code § 15-53-10, *et seq.* and Rule 57, SCRPC, as well as summary judgment pursuant to Rule 56, SCRPC. The Court may liberally construe the Uniform Declaratory Judgments Act and afford the parties relief from uncertainty by determining the rights, status, and other legal relations of a party. Id. Likewise, under Rule 56 of

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the South Carolina Rules of Civil Procedure, the Court may determine judgment as a matter of law is appropriate, and has the authority to extend full faith and credit to the United States Bankruptcy Court's Sale Order. Bankruptcy orders and judgments are entitled to full faith and credit by state courts in subsequent proceedings. See McNaughton-McKay Elec. Co. of NC, Inc. v. Andrich, 324 S.C. 275, 280 (S.C. Ct. App. 1996) (quoting 1B J. Moore, MOORE'S FEDERAL PRACTICE ¶ 0.419[3.-2], at 430 (2d ed. 1983)). By enforcing the Sale Order, the Court may find as a matter of law that the Plaintiffs' claim against Defendant is barred in its entirety.

Generally, a precursor to a products liability action in South Carolina is the defendant's placement of an unreasonably dangerous product into the stream of commerce. Thus, there is an inherent public policy demand for responsibility for products present in the stream of commerce into perpetuity, regardless of whether the predecessor manufacturer was the one that placed it in the stream, as opposed to the successor. Thereafter, it is the Nationwide case that contemplates a means for a plaintiff to pursue an action in tort against the product manufacturer, post-bankruptcy sale. Nationwide, 394 S.C. 54.

This Court finds that Defendant is not a successor of ongoing conduct, as is a recurring theme in defective product cases. The company Qualitybuilt.com performed a one-time inspection service at The Gates Project and there was no continuity thereafter by Defendant, post-bankruptcy for which Defendant can be held liable. Moreover, the Defendant purchased assets such as software and intellectual property in the bankruptcy sale. The sale at issue in this case is not one concerning the design or rights to manufacture a product placed in the stream of commerce.

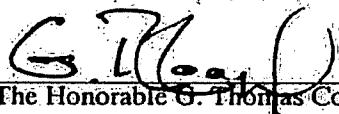
Pursuant to S.C. Code § 15-53-10, *et seq.*, Rule 57, SCRCF, this Court declares that according the to the plain, unambiguous language of the Sale Order and Purchase Agreement,

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there is no question the Defendant is free and clear of any liabilities associated with The Gates Project, and further, that it was the clear intent of the United States Bankruptcy Court to consummate the binding Purchase Agreement with the Sale Order, setting forth that Defendant would not *in the future* be liable for any claims other than those assumed liabilities set forth therein, lest the Defendant would not have entered into the transaction at all. The terms of the United States Bankruptcy Order serve as a complete bar to the Plaintiffs' claims against Defendant in this case. Furthermore, this Court declines to extend the holdings in defective-product actions such as Nationwide to the instant case, as this case merely concerns inspection services performed in a single occurrence. It is therefore,

ORDERED that Defendant's Motion be granted, and it is further,

ORDERED that Defendant be dismissed from this action with prejudice.


The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge
Court of Common Pleas
Fifth Judicial Circuit

This 7 day of April, 2017.
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2013CP4007729**

Gates At Williams Brice Condominium Assn

Katharine Swinson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code **2126**

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Justin O'Toole Lucey

Stephanie D. Drawdy

Alan Ross Belcher Jr.
Kent Taylor Stair

Elizabeth Wieters

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanelle W. McBride

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, individually,)
and on behalf of all others similarly situated)
#296848)

Applicant,)

v.)

QUALITY BUILT, LLC and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS)

Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-40-7729

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

RICHLAND COUNTY
FILED
2017 OCT 17 AM 10:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

After careful consideration of the Plaintiff's Motion and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

In addition, the Court finds that, despite the fact that Respondents were not prepetition claimants in the QualityBuilt.com bankruptcy, which under the *Nationwide*¹ and *Brown* cases might allow successor liability, the Respondents do not meet any of the exceptions listed therein.

The Court in *Brown* states, "[i]n the absence of a statute, a successor or purchasing company is not liable for the debts of the predecessor or selling company unless (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrant a finding of consolidation or merger of the two corporations, (3) the successor company was a mere continuation

¹ *Nationwide Mut. Ins. Co v. Eagle Window & Door, Inc.* 394 S.C. 54, 714 S.E.2d 322 (2011)

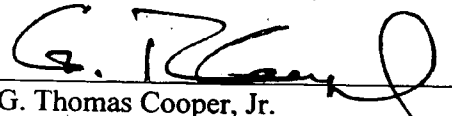


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of the predecessor, or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims." *Brown v. Am Ry. Express Co.*, 128 S.C. 428, 123 S.E.2d 97 (1924).

Accordingly, this Court hereby DENIES Plaintiff's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

October 14, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION, et al

Plaintiff(s)

vs.

Quality Built, LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 40- EEF

Submitted by:

Justin O'Toole Lucey

Justin O'Toole Lucey, P.A.

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Telephone #: 843-849-8400

Fax #: 843-849-8406

Other:

E-mail: jlucey@lucey-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20-CP-	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☒ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstatement Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
-
Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)
	☐ Sexual Predator (510)

Submitting Party Signature: _____

Date: December 23, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

QUALITY BUILT, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-_____

SUMMONS

JEANETTE W. MCBRIDE
C.P. & G.S.

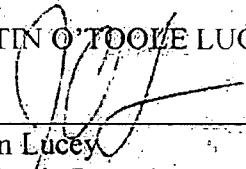
2013 DEC 27 PM 12:39

RICHLAND CO.
FILED

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By:


Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

December 23, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-_____

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

Quality Built, LLC;

Defendant.

COMPLAIN
(Defective Construction)

(Jury Trial Demanded)

JEANETTE M. MORRIS
CLERK, P. J.
C.S.

2013 DEC 27 PM 12:38

FILED

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendant named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, *inter alia*, the management and administration of The Gates, the investigation, maintenance and repair of The Gates's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Gates, the Association, and the respective owners and members.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within the Gates more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in the Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant Quality Built, LLC (hereinafter "Quality Built") is a corporation organized and existing under the laws of the State of Florida. At all times relevant to this action, Quality Built provided and/or performed onsite quality control, including review of construction and repairs of defective conditions, among other work, at The Gates.

11. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

12. This matter arises out of the construction, repair and sale of The Gates.

13. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

14. The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

15. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

16. Defendant had a duty to perform onsite quality control during construction of The Gates to ensure it was performed in a workmanlike manner and free from all defects.

17. The aforementioned deficiencies and consequential damages evidence that Defendant breached their duties to Plaintiffs.

18. The Defendant's acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

19. Remedying the above-wrongs will result in additional consequential damages and loss of use.

20. As a direct and proximate result of Defendant's violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

21. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

22. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendant on behalf of herself and all other similarly situated persons and entities, who own a condominium within the Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendant and any entity in which Defendant have a controlling interest or which have a controlling interest in Defendant and their legal representatives, assigns and successors of Defendant and Defendant's current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

23. *Numerosity:* The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

24. *Commonality:* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- (a) Whether the construction and/or repair of The Gates was defective;
- (b) Whether Defendant knew or should have known of the defects;
- (c) Whether Defendant has acted or refused to act on grounds generally applicable to the Class;
- (d) Whether Defendant is financially responsible to pay the full costs and expenses of repair of said defective conditions;
- (e) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.
- (f) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendant.

25. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's wrongful conduct in constructing The Gates.

26. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

27. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all

members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

28. Defendant has acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendant engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

29. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

30. Each Class Member has an interest of more than \$100.00.

31. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

32. Defendant is estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendant should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

33. Defendant had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendant never disclosed the defects to Plaintiffs.

34. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of The Gates.

35. Given Defendant's failure to disclose this non-public information about the defective nature of The Gates - information over which it had exclusive control - and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendant is estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

36. Defendant is further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

37. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

38. At all times relevant hereto, the Defendant, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the inspection of the construction of The Gates.

39. Defendant breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- (a) In failing to adequately effect quality control for construction of The Gates in accordance with due care and in accordance with standard building practices;

- (b) In failing to adequately effect quality control for construction of The Gates in accordance with due care and in accordance with the plans and specifications.
- (c) In failing to adequately effect quality control for construction of The Gates in accordance with building code;
- (d) In failing to act as a reasonable person would in the circumstances then and there prevailing; and
- (e) Such other failures to be proven at trial.

40. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant.

41. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendant.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)

42. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

43. The inspection of the construction of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

44. The inspection of the construction of The Gates, and the components used therein, came with implied warranties of workmanship and due care.

45. Defendant has breached its warranties by providing quality control oversight and supervision that resulted in construction of The Gates in a defective manner as set forth above.

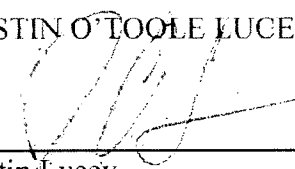
46. As a direct and proximate result of the Defendant's breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:


Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

December 23, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, Individually, and on)
behalf of all others similarly situated,)

Plaintiffs,

vs.

QUALITY BUILT, LLC

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

DEFENDANT'S ANSWER

COMES NOW the Defendant, Quality Built, LLC, by and through its undersigned counsel and in response to the Complaint of the Plaintiffs would allege unto this Honorable Court as follows:

AS A FIRST DEFENSE

1. The Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph Nos. 1 through 9 of the Complaint and, therefore, denies the same.
2. The Defendant admits only so much of the allegations contained in Paragraph No. 10 of the Complaint as could be construed to allege that it is a limited liability corporation organized and existing under the laws of the State of Delaware on July 24, 2009. The Defendant denies all remaining allegations contained in said Paragraph.
3. The allegations contained in Paragraph No. 11 of the Complaint constitute legal conclusions to which no response is required. To the extent the allegations contained in said Paragraph could in any way be construed so as to impose liability upon the Defendant in this lawsuit for any reason whatsoever, those allegations are denied.

4. The Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph Nos. 12 through 15 of the Complaint and, therefore, denies the same.

5. The Defendant denies the allegations contained in Paragraph Nos. 16 through 20 of the Complaint.

6. The Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph Nos. 21 through 27 of the Complaint and, therefore, denies the same.

7. The Defendant denies the allegations contained in Paragraph No. 28 of the Complaint.

8. The allegations contained in Paragraph No. 29 of the Complaint do not require a response from the Defendant. To the extent the allegations contained in said Paragraph could in any way be construed so as to impose liability upon the Defendant in this lawsuit for any reason whatsoever, those allegations are denied.

9. The Defendant denies the allegations contained in Paragraph No. 30 of the Complaint.

10. The Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 31 of the Complaint and, therefore, denies the same.

11. The Defendant denies the allegations contained in Paragraph Nos. 32 through 36 of the Complaint.

12. In response to the allegations contained in Paragraph No. 37 of the Complaint, the Defendant repeats and re-alleges all prior responses above as if fully set forth herein verbatim.

13. The Defendant denies the allegations contained in Paragraph Nos. 38 through 41 of the Complaint, including its subparts.

14. In response to the allegations contained in Paragraph No. 42 of the Complaint, the Defendant repeats and re-alleges all prior responses above as if fully set forth herein verbatim.

15. The Defendant denies the allegations contained in Paragraph Nos. 43 through 46 of the Complaint, including its subparts.

16. The Defendant denies the WHEREFORE clause contained within the Complaint.

17. The Defendant denies each and every allegation of the Complaint not otherwise expressly admitted, modified or explained herein.

**FURTHER ANSWERING THE COMPLAINT AND AS A FIRST
AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action Pursuant to Rule 12(b)(6))

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that the same fails to allege facts sufficient to constitute a cause of action and should, therefore, be dismissed pursuant to Rule 12(b)(6) SCRCP.

**FURTHER ANSWERING THE COMPLAINT AND AS A SECOND
AFFIRMATIVE DEFENSE**

(Discharge in Bankruptcy)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that this Defendant is not the proper party to this action in that it did not perform any work on the project in question. The inspections performed on this project as alleged by the Plaintiffs were performed by QualityBuilt.com, a former California Corporation, which is a wholly unrelated company to this Defendant. Furthermore, QualityBuilt.com entered Chapter 11 bankruptcy proceedings on August 14, 2009. On March 11, 2010, by order of the United States Bankruptcy Court for the Southern District of California, this Defendant purchased certain assets of QualityBuilt.com from the trustee in bankruptcy pursuant to 11 U.S.C. §§ 101,

105, 363, and 365. The Sale Order from the United States Bankruptcy Court for the Southern District of California specifically orders that no liabilities of QualityBuilt.com, including any alleged liability for the Plaintiffs' claim for damages in this lawsuit, were conveyed in the sale. Therefore, the Defendant is not liable to the Plaintiffs for any reason whatsoever in this lawsuit and their claim against the Defendant must be dismissed.

**FURTHER ANSWERING THE COMPLAINT AND AS A THIRD
AFFIRMATIVE DEFENSE**

(Sole Negligence of Plaintiffs)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that the injuries and damages sustained by Plaintiffs, if any, were due to and caused by, and were a direct and proximate result of, the negligence, carelessness, recklessness, willfulness and wantonness of one, more or all Plaintiffs so as to preclude recovery herein.

**FURTHER ANSWERING THE COMPLAINT AND AS A FOURTH
AFFIRMATIVE DEFENSE**

(Sole Negligence, Negligent Acts and Omissions of Third Parties)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that whatever damages were incurred by Plaintiffs, if any, were due to, caused by, and were a direct and proximate result of, the sole negligence, negligent acts and omissions of others over whom this Defendant had no control whatsoever, so as to preclude recovery against it.

**FURTHER ANSWERING THE COMPLAINT AND AS A FIFTH
AFFIRMATIVE DEFENSE**

(Intervening and Superseding Acts of Third Parties)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that if this Defendant was negligent, which it denies, the injuries and damages sustained by Plaintiffs, if any, were due to, caused by, and were the direct and proximate result of the intervening and superseding negligence, carelessness, willfulness and wantonness of others so as to preclude recovery herein.

**FURTHER ANSWERING THE COMPLAINT AND AS A SIXTH
AFFIRMATIVE DEFENSE**

(Comparative Negligence)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that if it was negligent and/or reckless as alleged in the Complaint, which it denies, that one, more or all Plaintiffs were contributorily negligent and reckless in an amount which exceeded that of this Defendant, which it denies, so as to preclude recovery herein; alternatively, this Defendant would allege and show that the negligence and recklessness of one, more or all Plaintiffs was less than or equal to that of this Defendant, which this Defendant denies, so as to require a proportionate reduction of any recovery herein pursuant to the doctrine of comparative negligence.

**FURTHER ANSWERING THE COMPLAINT AND AS A SEVENTH
AFFIRMATIVE DEFENSE**

(Acceptance)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege that Plaintiffs and/or their predecessors, and/or Plaintiffs' agents inspected, reviewed and/or accepted the work performed by this Defendant, if any, which it specifically

denies, thus accepting the work about which they now complain and thus, one, more or all Plaintiffs' claims are barred.

**FURTHER ANSWERING THE COMPLAINT AND AS AN EIGHTH
AFFIRMATIVE DEFENSE**

(Duties Alleged Beyond Scope of Services)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that the duties and obligations alleged are not within the scope of services which were provided by this Defendant, which Defendant denies providing any services, and such duties and obligations lie beyond the scope of services provided, if any, and as such, constitutes a complete defense to all claims for negligence.

**FURTHER ANSWERING THE COMPLAINT AND AS A NINTH
AFFIRMATIVE DEFENSE**

(Election of Remedies)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show Plaintiffs should be required to elect between causes of action for negligence and breach of warranty, because said causes of action are mutually exclusive and consistent with and dependent upon differing alleged sources of any alleged duties owed by this Defendant to Plaintiffs, if any.

**FURTHER ANSWERING THE COMPLAINT AND AS A TENTH
AFFIRMATIVE DEFENSE**

(Estoppel, Release and Waiver)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' claims are barred by the doctrines of estoppel, release and/or waiver.

**FURTHER ANSWERING THE COMPLAINT AND AS AN ELEVENTH
AFFIRMATIVE DEFENSE**

(Laches and Unclean Hands)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' neglect for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to this Defendant who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWELFTH
AFFIRMATIVE DEFENSE**

(Statute of Limitations and/or Statute of Repose)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' claims are barred by the statute of limitations and/or statute of repose.

**FURTHER ANSWERING THE COMPLAINT AND AS A THIRTEENTH
AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs had an obligation to perform routine maintenance and that Plaintiffs also failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage to the structure, such failure to mitigate damages constituting a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of Plaintiffs.

**FURTHER ANSWERING THE COMPLAINT AND AS A FOURTEENTH
AFFIRMATIVE DEFENSE**

**(Failure to Maintain, Perform Routine Maintenance and Otherwise
Additional Failure to Mitigate)**

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs were obligated to maintain the structure and its components against normal wear, tear, and deterioration, that Plaintiffs failed to do so, and such constitutes a complete defense to the claims of Plaintiffs.

**FURTHER ANSWERING THE COMPLAINT AND AS A FIFTEENTH
AFFIRMATIVE DEFENSE**

(Spoliation of Evidence)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that it has not been afforded the opportunity to inspect and examine the alleged defective workmanship and/or alleged defective products and/or components and has Plaintiffs' property been modified and/or repaired and/or destructively tested in any manner, this Defendant alleges such constitutes spoliation of evidence as a complete defense to Plaintiffs' action.

**FURTHER ANSWERING THE COMPLAINT AND AS A SIXTEENTH
AFFIRMATIVE DEFENSE**

(Compliance with Industry Standards)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that, to the extent it performed any work on the project in question, which is specifically denied, it met and complied with all industry customs, practices and standards applicable to Plaintiffs' claims.

**FURTHER ANSWERING THE COMPLAINT AND AS A SEVENTEENTH
AFFIRMATIVE DEFENSE**

(Lack of Privity)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that there is and was no privity between this Defendant and Plaintiffs and as such, this Defendant owed no duty to them and this action should be dismissed in its entirety as to this Defendant.

**FURTHER ANSWERING THE COMPLAINT AND AS A EIGHTEENTH
AFFIRMATIVE DEFENSE**

(Lack of Standing)

Further answering the Complaint and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs lack standing to assert claims for damages they alleged to have incurred as a result of the work performed by this Defendant, which it specifically denies, and/or for any alleged defect or damage of which they had actual or constructive knowledge of prior to the purchase or leasing of the subject building.

**FURTHER ANSWERING THE COMPLAINT AND AS A NINETEENTH
AFFIRMATIVE DEFENSE**

**(Goods Subsequently Incorporated Into Construction Were Neither Selected,
Manufactured or Installed by This Defendant)**

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that that goods subsequently incorporated into construction were neither selected, manufactured or installed by this Defendant.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTIETH
AFFIRMATIVE DEFENSE**

(Expiration of Warranty — Outside Warranty Period)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show any warranty that may have been extended, which is expressly denied, has expired.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-FIRST
AFFIRMATIVE DEFENSE**

(No Reliance on Warranties)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that if it made any warranties, which is expressly denied, Plaintiffs' claims for breach of warranties are barred because Plaintiffs did not rely on any warranties alleged to have been made by this Defendant.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-SECOND
AFFIRMATIVE DEFENSE**

(Disclaimer of Warranties)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that if any warranties were extended, which is expressly denied, they were not extended to Plaintiffs and regardless, it effectively disclaimed and/or limited all express warranties, if any, and all implied warranties, the existence of both which is denied.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-THIRD
AFFIRMATIVE DEFENSE**

(Set-Off)

Further answering the Complaint and as and for a further defense thereto, this Defendant would allege and show that it is entitled to a set-off in the amount of any and all settlement

proceeds obtained from any other party or any party in any civil action or claim concerning this project.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-FOURTH
AFFIRMATIVE DEFENSE**

(Apportionment, Abatement and Reduction of Damages)

Further answering the Complaint and as and for a further defense thereto, this Defendant would allege and show that justice requires that any judgment in favor of Plaintiffs be apportioned, abated and reduced by the amount of damages caused by defects for which they had actual or constructive knowledge of prior to leasing and/or purchase.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-FIFTH
AFFIRMATIVE DEFENSE**

(Causation)

Further answering the Complaint and as and for a further defense thereto, this Defendant would allege and show that no act or omission on the part of this Defendant, which is denied, was the cause of any damage to Plaintiffs.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-SIXTH
AFFIRMATIVE DEFENSE**

(Failure to Join a Necessary Party)

Further answering the Complaint and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' Complaint fails to join parties needed for just adjudication pursuant to Rule 19 of the South Carolina Rules of Civil Procedure, including but not limited to the parties that actually designed, developed and constructed the project.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-SEVENTH
AFFIRMATIVE DEFENSE**

(Unconstitutionality of Punitive Damages — Procedural Due Process)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege and show that to the extent the Plaintiffs seek punitive or exemplary damages, such claims violate the rights of this Defendant to due process under the Fourteenth Amendment of the United States Constitution and the Constitution of South Carolina.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-EIGHTH
AFFIRMATIVE DEFENSE**

(Unconstitutionality of Punitive Damages — Substantive Due Process)

Further answering the Complaint, and as and for a further defense thereto, this Defendant would allege that to the extent Plaintiffs seek punitive or exemplary damages, such claims violate this Defendant's substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER ANSWERING THE COMPLAINT AND AS A TWENTY-NINTH
AFFIRMATIVE DEFENSE**

(Incorporation)

Further answering Plaintiffs' Complaint and as an affirmative defense, this Defendant reserves the right to assert any and all other applicable defenses either in contract or under the law and equity as may be asserted by any other Defendant in this action or that may become evident through its investigation and discovery.

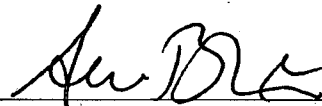
**FURTHER ANSWERING THE COMPLAINT AND AS A THIRTIETH AFFIRMATIVE
DEFENSE**

(Reservation and Non-Waiver)

Further answering Plaintiffs' Complaint and as an affirmative defense, this Defendant reserves the right to later assert any and all cross claims or third-party claims as well as any additional affirmative defenses as may be revealed or become available to them during the course of their investigation and/or discovery in this case and are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendant prays this Court dismiss this lawsuit in its entirety and award this Defendant its costs and fees associated with its defense of this lawsuit.

HALL, BOOTH, SMITH, P.C.



Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com

The 28th day of November, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of ANSWER upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

Justin Lucey, Esq.
Stephanie Drawdy, Esq.
415 Mill Street
Post Office Box 806
Mt. Pleasant, SC 29464-0806

Attorneys for Plaintiffs

This day of November 20th, 2015.

HALL, BOOTH, SMITH, P.C.

By: 
Alan Belcher

Attorneys for Quality Built, LLC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON
) PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

CASE NO. 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

QUALITY BUILT, LLC, and COAST TO
COAST ENGINEERING SERVICES, INC.
D/B/A CRITERIUM ENGINEERS,

Defendants.

AMENDED SUMMONS

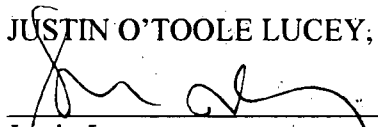
2016 MAY 13 PM 2:33

RICHLAND COUNTY
FILED

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Amended Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By:


Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

May 17, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

QUALITY BUILT, LLC, and COAST TO
COAST ENGINEERING SERVICES, INC.
D/B/A CRITERIUM ENGINEERS,

Defendants.

AMENDED COMPLAINT

2013 MAY 13 PM 2:33
FILED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice

Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, et. seq., the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, inter alia, the management and administration of The Gates, the investigation, maintenance and repair of The Gates's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of The Gates, the Association, and the respective owners and members.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within The Gates, more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in The Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Circa 1994, Qualitybuilt.com was organized as a corporation under the laws of the State of California.

11. Qualitybuilt.com was contracted to provide and/or perform onsite quality control, including review of construction and repairs of defective conditions, among other work, at The Gates, during the original construction of The Gates.

12. Circa 2009, Qualitybuilt.com filed Chapter 11 bankruptcy in the United States Bankruptcy Court, Southern District of California, *In re Qualitybuilt.com*, Bankruptcy No. 09-12113-PB11.

13. Defendant Quality Built, LLC (hereinafter "Quality Built") is a foreign corporation organized and existing under the laws of the State of Delaware.

14. Defendant Quality Built, LLC currently possesses the assets, business, intellectual property and goodwill of Qualitybuilt.com.

15. Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers (hereinafter "Criterium") is a foreign corporation organized and existing under the laws of the State of Maine.

16. Criterium provided and/or performed onsite quality control, including review of construction and repairs of defective conditions, among other work, at The Gates, during the original construction of The Gates.

17. Defendant Criterium acted as consultant for Qualitybuilt.com while providing and/or performing onsite quality control at The Gates.

18. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

19. This matter arises out of the construction, repair and sale of The Gates.

20. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

21. The latent building defects, in combination with fortuitous weather, repeated water intrusion, and/or other events, have resulted in consequential damage to non-defective building components and other property.

22. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components,

and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

23. Defendants had a duty to perform onsite quality control during construction of The Gates to ensure it was performed in a workmanlike manner and free from all defects.

24. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

25. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

26. Remedying the above-wrongs will result in additional consequential damages and loss of use.

27. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

28. Circa 2004, Qualitybuilt.com contracted with Criterium to be an independent consultant for Qualitybuilt.com.

29. From 2006 to 2007, Criterium employees were on site at The Gates and represented themselves as Qualitybuilt.com employees.

30. While on site at The Gates, Criterium performed quality control work on behalf of Qualitybuilt.com.

31. Circa 2010, Quality Built purchased substantially all of Qualitybuilt.com's assets.

32. Although Quality Built was not created until July 2009, it claims on its website that it was founded in 1994 with twenty-one (21) years of experience. See Exhibit A.

33. Quality Built could only have twenty-one years of experience if, in fact, it is a

continuation of Qualitybuilt.com.

34. Quality Built continues to avail itself of the benefits of the Qualitybuilt.com assets, trademark, and business while hiding from the Qualitybuilt.com liabilities.

35. Quality Built possesses the corporate records, trademark, server, and other property of Qualitybuilt.com

36. Quality Built has the same president as Qualitybuilt.com, Beth Michaelis.

37. Qualitybuilt.com was subsumed by Quality Built.

38. Quality Built is the successor to Qualitybuilt.com as it is a mere continuation and under the continuity of enterprise doctrine.

39. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

CLASS ACTION ALLEGATIONS

40. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within The Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a

timely request for exclusion from the Class.

41. *Numerosity*: The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

42. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- a) Whether the construction and/or repair of The Gates was defective;
- b) Whether Defendants knew or should have known of the defects;
- c) Whether Defendants were negligent in this quality control;
- d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class; and
- e) Whether Plaintiffs and the Class are entitled to damages, including, among other things: (i) compensation for all out-of-pocket monies expended for repair of the condominiums, as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.

43. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

44. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

45. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to

other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

46. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

47. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

48. Each Class Member has an interest of more than \$100.00.

49. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND
TOLLING OF APPLICABLE STATUTES OF LIMITATIONS**

50. Defendants are estopped from relying on any statutes of limitation or repose by virtue of their acts. Upon information and belief, Defendants should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

51. Defendants had a duty to inform Plaintiffs of the defects described herein, which they should have known. Notwithstanding their duty, Defendants never disclosed the defects to

Plaintiffs.

52. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective conditions of The Gates.

53. Given Defendants' failure to disclose this non-public information about the defective nature of The Gates - information over which they had exclusive control - and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

54. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

55. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

56. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the inspection of the construction of The Gates.

57. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- a) In failing to adequately effect quality control for construction of The Gates in accordance with due care and in accordance with standard building practices;
- b) In failing to adequately effect quality control for construction of The Gates in accordance with the plans and specifications;
- c) In failing to adequately effect quality control for construction of The Gates in accordance with the building code;
- d) In failing to act as a reasonable person would in the circumstances then and there prevailing; and

e) Such other failures to be proven at trial.

58. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

59. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)

60. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

61. The inspection of the construction of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

62. The inspection of the construction of The Gates, and the components used therein, came with implied warranties of workmanship and due care.

63. Defendants have breached their warranties by providing quality control oversight and supervision that resulted in construction of The Gates in a defective manner as set forth above.

64. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Successor Liability as to Quality Built)

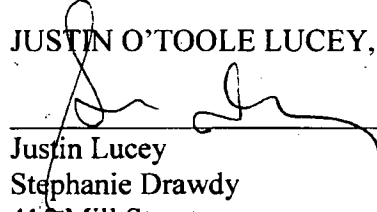
65. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

66. Quality Built is the successor to Qualitybuilt.com as it is a mere continuation of Qualitybuilt.com and/or has continuity of enterprise.

67. As the successor, Quality Built is responsible and liable for the obligations of Qualitybuilt.com, including the cost of repair, loss of use, and any judgments thereon.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

Charleston, South Carolina
May 17, 2016

INTERNET SERVICES
<http://qualitybuilt.com/about.php> Go
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 21
 2013 2015 2016
 Close Help



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 401 SE 12th Street, Suite 200
 Ft. Lauderdale, FL 33316

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A Foundation For Success

The Quality Built® program was founded in 1994 on extensive litigation experience and a long history of conducting inspections for the construction industry. Our experience includes an impressive and varied list of commercial and residential projects as well as a background of more than 2,000 litigation cases that have encompassed investigations of hundreds of diverse building performance and project failures. The lessons learned from analyzing and repairing these projects have formed the basis of the Quality Built® knowledge database, which is used to evaluate builder quality and minimize construction defects.

It is difficult to convey our knowledge and experience on a web site. Simply put, we have more data on construction than any other company in the world. Fifteen years ago, when insurance carriers refused to insure construction in California, Quality Built® went to all the major financial centers in the United States as well as those in London, Dublin and the Bahamas. We met with insurance carriers and provided them with data to demonstrate that construction was not the blind risk they thought it was, provided that construction companies implement proper quality control and inspection systems to assure the quality of construction. We rolled out our risk management program that has since become the standard for underwriting construction for over 30 insurance carriers. In fact, Quality Built® created all of the compliance metrics that are used today by most insurance carriers.

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NAICS and SIC Codes

541330, 541350, 541551, 541611, 541990, 5416, 3742

A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION, et al

Plaintiff(s)

vs.

Quality Built, LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 40- 7729

Submitted by:
Justin O'Toole Lucey
Justin O'Toole Lucey, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806

SC Bar #: 15438
Telephone #: 843-849-8400
Fax #: 843-849-8406
Other:
E-mail: jlucey@lucey-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☒ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: May 18, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

THE GATES AT WILLIAMS-BRICE)
CONDOMINIUM ASSOCIATION and)
KATHARINE SWINSON, Individually, and)
on behalf of all others similarly situated,)

Plaintiffs,

vs.

QUALITY BUILT, LLC, and COAST TO)
COAST ENGINEERING SERVICES, INC.)
d/b/a CRITERIUM ENGINEERS,)

Defendants.)

DEFENDANT
QUALITY BUILT, LLC'S ANSWER
TO PLAINTIFF'S AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)

RICHLAND COUNTY
FILED
JUN 15 PM 12:45
CLERK OF COURT
W. MCNEEL & CO.

COMES NOW the Defendant, Quality Built, LLC (hereinafter "Defendant" or "Quality Built" by and through its undersigned counsel, and in response to the Amended Complaint of the Plaintiffs would allege unto this Honorable Court as follows:

AS A FIRST DEFENSE

1. This Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations asserted in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Amended Complaint and therefore, denies the same.
2. In response to Paragraph 10, this Defendant admits, upon information and belief, that Qualitybuilt.com was organized in California, but denies it was organized circa 1994.
3. In response to Paragraph 11, this Defendant craves reference to the terms of the contract referenced in Paragraph 11 and denies any allegations inconsistent therewith.

4. Paragraph 12 of the Amended Complaint is not directed to Quality Built, LLC and is best directed to Qualitybuilt.com; however, this Defendant admits Paragraph 12 upon information and belief.

5. This Defendant admits only so much of the allegations contained in Paragraph 13 of the Amended Complaint as could be construed to allege that it is a limited liability corporation organized and existing under the laws of the State of Delaware.

6. In response to Paragraph 14, this Defendant craves reference to the Order of the United States Bankruptcy Court in case number 2009-12113-PB11, which speaks to the particularity of assets acquired from Qualitybuilt.com and denies all allegations inconsistent therewith.

7. Paragraphs 15, 16, and 17 are not directed to this Defendant as they are directed to Defendant Coast to Coast Engineering Services Inc. d/b/a Criterium Engineers ("Criterium") and therefore require no response. To the extent the allegations contained in said Paragraph could in any way be construed so as to impose liability upon this Defendant in this lawsuit for any reason whatsoever, those allegations are denied.

8. Paragraph 18 draws a legal conclusion to which no response is required. To the extent a response is required, this Defendant denies Paragraph 18 and demands strict proof thereof.

9. Paragraph 19 requires no response. To the extent a response is required, this Defendant denies Paragraph 19.

10. This Defendant denies the allegations contained in Paragraphs 20, 21, 22, 23, 24, 25, and 26 of the Amended Complaint and demands strict proof thereof.

11. This Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations asserted in Paragraph 27 of the Amended Complaint and therefore, denies the same.

12. Paragraphs 28, 29, and 30 are not directed to this Defendant as they are directed to Criterium, therefore no response is required. To the extent a response is required, this Defendant craves reference to the terms of those contracts between Criterium and Qualitybuilt.com referenced therein and denies any allegations inconsistent therewith. This Defendant denies all remaining allegations in said Paragraphs 28, 29, and 30 not expressly admitted herein.

13. In response to Paragraph 31, this Defendant craves reference to the Bankruptcy Order authorizing sale dated March 12, 2010 in case number 09-12113-PB11 which addresses assets acquired during the bankruptcy proceedings and this Defendant denies all allegations inconsistent with said Order of the United States Bankruptcy Court.

14. This Defendant denies the allegations contained in Paragraph 32, as stated.

15. This Defendant denies Paragraph 33 and again craves reference to the Order of the United States Bankruptcy Court dated March 12, 2010 in case number 09-12113-PB11.

16. This Defendant denies Paragraph 34 as stated.

17. In response to Paragraph 35, this Defendant craves reference to the Bankruptcy Order dated March 12, 2010 in case number 09-12113-PB11 which addresses assets acquired during the bankruptcy proceedings and this Defendant denies all allegations inconsistent with said Order of the United States Bankruptcy Court.

18. This Defendant admits Paragraph 36.

19. This Defendant denies Paragraphs 37, 38, and 39.

20. This Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 40, 41, 42, 43, 44, and 45, including all subparagraphs, of the Amended Complaint and therefore denies the same and demands strict proof thereof.

21. This Defendant denies the allegations contained in Paragraph 46 of the Amended Complaint.
22. The allegations contained in Paragraph 47 of the Amended Complaint do not require a response from the Defendant. To the extent the allegations contained in said Paragraph could in any way be construed so as to impose liability upon the Defendant in this lawsuit for any reason whatsoever, those allegations are denied.
23. This Defendant denies the allegations contained in Paragraph 48 of the Amended Complaint.
24. This Defendant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Amended Complaint and, therefore, denies the same.
25. This Defendant denies the allegations contained in Paragraphs 50, 51, 52, 53, and 54 of the Amended Complaint.
26. In response to the allegations contained in Paragraph 55 of the Amended Complaint, this Defendant repeats and re-alleges all prior responses above as if fully set forth herein verbatim.
27. The Defendant denies the allegations contained in Paragraphs 56, 57, 58, and 59 of the Amended Complaint, including its subparts.
28. In response to the allegations contained in Paragraph 60 of the Amended Complaint, this Defendant repeats and re-alleges all prior responses above as if fully set forth herein verbatim.
29. This Defendant denies the allegations contained in Paragraphs 61, 62, 63, and 64 of the Amended Complaint, including its subparts.
30. In response to the allegations contained in Paragraph 65 of the Amended Complaint, this Defendant repeats and re-alleges all prior responses above as if fully set forth herein verbatim.

31. This Defendant denies Paragraphs 66 and 67.

32. This Defendant denies the WHEREFORE paragraph contained within the Amended Complaint.

33. This Defendant denies each and every allegation of the Amended Complaint not otherwise expressly admitted herein.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FIRST
AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action Pursuant to Rule 12(b)(6))

34. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that the same fails to allege facts sufficient to constitute a cause of action and should, therefore, moves the Court to dismiss the same pursuant to Rule 12(b)(6) SCRPC.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SECOND
AFFIRMATIVE DEFENSE**

(Discharge in Bankruptcy)

35. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that this Defendant is not the proper party to this action in that it did not perform any work on the project in question. The inspections performed on this project as alleged by the Plaintiffs were performed by QualityBuilt.com, a former California Corporation, which is a wholly unrelated company to this Defendant. Furthermore, QualityBuilt.com entered Chapter 11 bankruptcy proceedings on August 14, 2009. On March 11, 2010, by order of the United States Bankruptcy Court for the Southern District of California, this Defendant purchased certain assets of QualityBuilt.com from the trustee in bankruptcy pursuant to 11 U.S.C. §§ 101, 105, 363, and 365. The Sale Order from the United States Bankruptcy Court for the Southern District of California specifically orders that no liabilities of QualityBuilt.com,

including any alleged liability for the Plaintiffs' claim for damages in this lawsuit, were conveyed in the sale. Therefore, the Defendant is not liable to the Plaintiffs for any reason whatsoever in this lawsuit and their claim against the Defendant must be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A THIRD
AFFIRMATIVE DEFENSE
(Sole Negligence of Plaintiffs)

36. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that the injuries and damages sustained by Plaintiffs, if any, were due to and caused by, and were a direct and proximate result of, the negligence, carelessness, recklessness, willfulness and wantonness of one, more or all Plaintiffs so as to preclude recovery herein.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FOURTH
AFFIRMATIVE DEFENSE
(Sole Negligence, Negligent Acts and Omissions of Third Parties)

37. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that whatever damages were incurred by Plaintiffs, if any, were due to, caused by, and were a direct and proximate result of, the sole negligence, negligent acts and omissions of others over whom this Defendant had no control whatsoever, so as to preclude recovery against it.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FIFTH
AFFIRMATIVE DEFENSE
(Intervening and Superseding Acts of Third Parties)

38. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that if this Defendant was negligent, which it denies, the injuries and damages sustained by Plaintiffs, if any, were due to, caused by, and were the direct

and proximate result of the intervening and superseding negligence, carelessness, willfulness and wantonness of others so as to preclude recovery herein.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SIXTH
AFFIRMATIVE DEFENSE
(Comparative Negligence)

39. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that if it was negligent and/or reckless as alleged in the Amended Complaint, which it denies, that one, more or all Plaintiffs were contributorily negligent and reckless in an amount which exceeded that of this Defendant, which it denies, so as to preclude recovery herein; alternatively, this Defendant would allege and show that the negligence and recklessness of one, more or all Plaintiffs was less than or equal to that of this Defendant, which this Defendant denies, so as to require a proportionate reduction of any recovery herein pursuant to the doctrine of comparative negligence.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SEVENTH
AFFIRMATIVE DEFENSE
(Acceptance)

40. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege that Plaintiffs and/or their predecessors, and/or Plaintiffs' agents inspected, reviewed and/or accepted the work performed by this Defendant, if any, which it specifically denies, thus accepting the work about which they now complain and thus, one, more or all Plaintiffs' claims are barred.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN EIGHTH
AFFIRMATIVE DEFENSE
(Duties Alleged Beyond Scope of Services)

41. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that the duties and obligations alleged are not within the scope

of services which were provided by this Defendant, which Defendant denies providing any services, and such duties and obligations lie beyond the scope of services provided, if any, and as such, constitutes a complete defense to all claims for negligence.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A NINTH
AFFIRMATIVE DEFENSE
(Election of Remedies)

42. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show Plaintiffs should be required to elect between causes of action for negligence and breach of warranty, because said causes of action are mutually exclusive and consistent with and dependent upon differing alleged sources of any alleged duties owed by this Defendant to Plaintiffs, if any.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TENTH
AFFIRMATIVE DEFENSE
(Estoppel, Release and Waiver)

43. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' claims are barred by the doctrines of estoppel, release and/or waiver.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN ELEVENTH
AFFIRMATIVE DEFENSE
(Laches and Unclean Hands)

44. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' neglect for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to this Defendant who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWELFTH
AFFIRMATIVE DEFENSE
(Statute of Limitations and/or Statute of Repose)**

45. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' claims are barred by the statute of limitations and/or statute of repose.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A THIRTEENTH
AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

46. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs had an obligation to perform routine maintenance and that Plaintiffs also failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage to the structure, such failure to mitigate damages constituting a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of Plaintiffs.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FOURTEENTH
AFFIRMATIVE DEFENSE
Failure to Maintain, Perform Routine Maintenance and Otherwise
Additional Failure to Mitigate)**

47. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs were obligated to maintain the structure and its components against normal wear, tear, and deterioration, that Plaintiffs failed to do so, and such constitutes a complete defense to the claims of Plaintiffs.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FIFTEENTH
AFFIRMATIVE DEFENSE
(Spoliation of Evidence)**

48. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that it has not been afforded the opportunity to inspect and

examine the alleged defective workmanship and/or alleged defective products and/or components and has Plaintiffs' property been modified and/or repaired and/or destructively tested in any manner, this Defendant alleges such constitutes spoliation of evidence as a complete defense to Plaintiffs' action.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SIXTEENTH
AFFIRMATIVE DEFENSE
(Compliance with Industry Standards)**

49. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that, to the extent it performed any work on the project in question, which is specifically denied, it met and complied with all industry customs, practices and standards applicable to Plaintiffs' claims.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SEVENTEENTH
AFFIRMATIVE DEFENSE
(Lack of Privity)**

50. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that there is and was no privity between this Defendant and Plaintiffs and as such, this Defendant owed no duty to them and this action should be dismissed in its entirety as to this Defendant.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A EIGHTEENTH
AFFIRMATIVE DEFENSE
(Lack of Standing)**

51. Further answering the Amended Complaint and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs lack standing to assert claims for damages they alleged to have incurred as a result of the work performed by this Defendant, which it specifically denies, and/or for any alleged defect or damage of which they had actual or constructive knowledge of prior to the purchase or leasing of the subject building.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A NINETEENTH
AFFIRMATIVE DEFENSE**

**(Goods Subsequently Incorporated Into Construction Were Neither Selected,
Manufactured or Installed by This Defendant)**

52. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that that goods subsequently incorporated into construction were neither selected, manufactured or installed by this Defendant.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTIETH
AFFIRMATIVE DEFENSE**

(Expiration of Warranty — Outside Warranty Period)

53. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show any warranty that may have been extended, which is expressly denied, has expired.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-FIRST
AFFIRMATIVE DEFENSE**

(No Reliance on Warranties)

54. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that if it made any warranties, which is expressly denied, Plaintiffs' claims for breach of warranties are barred because Plaintiffs did not rely on any warranties alleged to have been made by this Defendant.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A
TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Disclaimer of Warranties)

55. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that if any warranties were extended, which is expressly denied, they were not extended to Plaintiffs and regardless, it effectively disclaimed and/or limited all express warranties, if any, and all implied warranties, the existence of both which is denied.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A
TWENTY-THIRD AFFIRMATIVE DEFENSE
(Set-Off)**

56. Further answering the Amended Complaint and as and for a further defense thereto, this Defendant would allege and show that it is entitled to a set-off in the amount of any and all settlement proceeds obtained from any other party or any party in any civil action or claim concerning this project.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-
FOURTH
AFFIRMATIVE DEFENSE
(Apportionment, Abatement and Reduction of Damages)**

57. Further answering the Amended Complaint and as and for a further defense thereto, this Defendant would allege and show that justice requires that any judgment in favor of Plaintiffs be apportioned, abated and reduced by the amount of damages caused by defects for which they had actual or constructive knowledge of prior to leasing and/or purchase.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-FIFTH
AFFIRMATIVE DEFENSE
(Causation)**

58. Further answering the Amended Complaint and as and for a further defense thereto, this Defendant would allege and show that no act or omission on the part of this Defendant, which is denied, was the cause of any damage to Plaintiffs.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-SIXTH
AFFIRMATIVE DEFENSE
(Failure to Join a Necessary Party)**

59. Further answering the Amended Complaint and as and for a further defense thereto, this Defendant would allege and show that Plaintiffs' Amended Complaint fails to join parties needed for just adjudication pursuant to Rule 19 of the South Carolina Rules of Civil Procedure,

including but not limited to the parties that actually designed, developed and constructed the project.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-
SEVENTH
AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages — Procedural Due Process)**

60. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege and show that to the extent the Plaintiffs seek punitive or exemplary damages, such claims violate the rights of this Defendant to due process under the Fourteenth Amendment of the United States Constitution and the Constitution of South Carolina.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-
EIGHTH
AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages — Substantive Due Process)**

61. Further answering the Amended Complaint, and as and for a further defense thereto, this Defendant would allege that to the extent Plaintiffs seek punitive or exemplary damages, such claims violate this Defendant's substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TWENTY-NINTH
AFFIRMATIVE DEFENSE
(Incorporation)**

62. Further answering Plaintiffs' Amended Complaint and as an affirmative defense, this Defendant reserves the right to assert any and all other applicable defenses either in contract or under the law and equity as may be asserted by any other Defendant in this action or that may become evident through its investigation and discovery.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A THIRTIETH
AFFIRMATIVE
DEFENSE
(Reservation and Non-Waiver)

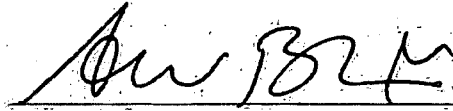
63. Further answering Plaintiffs' Amended Complaint and as an affirmative defense, this Defendant reserves the right to later assert any and all cross claims or third-party claims as well as any additional affirmative defenses as may be revealed or become available to them during the course of their investigation and/or discovery in this case and are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Amended Complaint and asserting these Affirmative Defenses, this Defendant prays:

- a. That Plaintiff's Amended Complaint be dismissed with prejudice and that Defendant be awarded the costs and attorney's fees associated with defending this matter;
- b. That Defendant be awarded judgment on its Answer;
- c. That Defendant has and receives a trial by jury on all issues of fact raised by this action; and
- d. That the Court grant Defendant such other and further relief as it may deem just and proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

HALL, BOOTH, SMITH, P.C.



Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com

The 6th day of June 2016,
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **Defendant's Answer to Plaintiff's Amended Complaint** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

Justin Lucey, Esq.
Stephanie Drawdy, Esq:
415 Mill Street
Post Office Box 806
Mt. Pleasant, SC 29464-0806

Attorneys for Plaintiffs

This 6th day of June, 2016.

HALL, BOOTH, SMITH, P.C.

By: Shellie L. Fischer
Shellie L. Fischer
Legal Assistant

RICHLAND COUNTY
FILED
2016 JUN 15 PM 12:45
JEANETTE W. McBRIDE
CLERK, P. & C.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
Case Number 2013-CP-40-7729

The Gates at Williams-Brice)
Condominium Association and)
Katherine Swinson, individually,)
and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

Quality Built, LLC, and Coast)
to Coast Engineering Services,)
Inc., d/b/a Criterium Engineers,)

Defendants.)

**NOTICE OF FILING OF
NOTICE OF REMOVAL**

RICHLAND COUNTY
FILED
2016 JUN 22 AM 9:40
JEANETTE H. McBRIDE
C.C.P. & G.S.

Defendant, Coast to Coast Engineering Services, Inc., d/b/a Criterium Engineers, by and through its undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, comes and gives notice that it has, this day, removed this action to the United States District Court of South Carolina. A true and accurate copy of the Notice of Removal, without exhibits, its attached hereto as Exhibit A.

Respectfully submitted,

BELSER & BELSER, P.A.



H. Freeman Belser (S.C. Bar No. 72403)
1901 Main Street, Suite 1550 (29201)
Post Office Box 96
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(803) 929-0096
freeman@belserpa.com
Attorneys for Defendants

Columbia, South Carolina

June 17, 2016

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
Civil Action No. _____**

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and
on behalf of all others similarly situated,

Plaintiffs,

v.

QUALITY BUILT, LLC, and COAST TO
COAST ENGINEERING SERVICES, INC.
D/B/A CRITERIUM ENGINEERS,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers ("Criterium") hereby removes the action captioned The Gates at Williams-Brice Condominium Association and Katharine Swinson v. Quality Built, LLC and Coast to Coast Engineering Services, Inc. D/B/A Criterium Engineers, Case No. 2013-CP-40-7729, now pending in the Richland County Court of Common Pleas in the Fifth Judicial Circuit to the United States District Court for the District of South Carolina. In support of removal, Criterium states as follows:

1. On or about May 18, 2016, the plaintiffs filed its Amended Complaint in the Court of Common Pleas in and for the County of Richland, South Carolina (hereinafter referred to as the "State Court Action"). A true and correct copy of the Complaint filed in the State Court Action is attached hereto as **Exhibit A**.
2. The Summons and Complaint were served on Criterium on May 24, 2016. This was Criterium's first notice of the Amended Complaint for purposes of removal of the State Court Action.
3. A copy of the remaining documents from the State Court Action which were served upon Criterium (Amended Summons, Plaintiffs' First Set of Discovery Requests to Defendant, Notice of 30(b)(6) Deposition, Duces Tecum) are attached hereto as **Exhibit B**. No other process, pleadings or orders have been served upon Criterium in the State Court Action.

4. Plaintiff The Gates at Williams-Brice Condominium Association is a non-profit corporation organized and existing under the laws of South Carolina and with its principal place of business in South Carolina. (Am. Compl. ¶¶ 1-4.)
5. Plaintiff Katharine Swinson is a citizen of Richland County, South Carolina. (Am. Compl. ¶ 7.)
6. Defendant Criterium is a corporation organized and existing under the laws of the State of Maine. (Am. Compl. ¶ 15.) Criterium's principal place of business is in Portland, Maine. (**Exhibit C**: Mooney Aff. ¶ 3.
7. Defendant Quality Built, LLC is a corporation organized and existing under the laws of the State of Delaware. (Am. Compl. ¶ 13.) Its principal places of business are in Fort Lauderdale, Florida, and San Diego, California. (Mooney Aff. ¶ 4.)
8. This Court has original jurisdiction over this case under 28 U.S.C. § 1332(a) based upon diversity of citizenship, as the Plaintiffs are citizens of South Carolina and the Defendants are citizens of other states.
9. The amount in controversy exceeds \$75,000.00.
10. Accordingly, this action is a civil action of which the United States District Courts have original jurisdiction pursuant to 28 U.S.C. § 1332(a).
11. For the reasons stated above this action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441.
12. This Notice of Removal to Federal Court is signed pursuant to Fed. R. Civ. P. 11. See 28 U.S.C. § 1446(a).
13. This Notice of Removal is filed within thirty (30) days after the date on which GCNA first received notice of the State Court Action. See 28 U.S.C. § 1446(b).
14. Criterium will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d).
15. A copy of this Notice of Removal will be filed with the Clerk of Court of Common Pleas in and for the County of Richland, South Carolina, as required by 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal, not including the Notice of Filing of Notice of Removal's exhibit, is attached as **Exhibit D**.

WHEREFORE, defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers, hereby removes this case to the United States District Court for the District of South Carolina.

BELSER & BELSER, P.A.

/S H. Freeman Belser

H. Freeman Belser (Fed. ID # 9503)
Michael J. Polk (Fed. ID # 6528)
1901 Main St., Suite 1550 (29201)
P.O. Box 96
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(803) 929-0096
Attorneys for Plaintiff
freeman@belsarpa.com
mike@belsarpa.com

Columbia, South Carolina

June 17, 2016

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

The Gates at Williams-Brice)	C/A NO.: 3:16-cv-02022-CMC
Condominium Association and Katherine)	
Swinson, individually, and on behalf of all)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
Quality Built, LLC, and Coast to Coast)	
Engineering Services, Inc. d/b/a Criterium)	
Engineers,)	
)	
Defendants.)	

PLAINTIFFS' MOTION TO REMAND AND REQUEST FOR FEE AWARD

Plaintiffs, The Gates at Williams-Brice Condominium Association and Katherine Swinson, individually, and on behalf of all others similarly situated (hereinafter "Gates"), by and through their undersigned counsel, hereby respond to the Defendant's, Coast to Coast Engineering Services, Inc. d/b/a/ Criterium Engineers (hereinafter "Criterium"), Notice of Removal (ECF No. 1) with this Motion to Remand and Request for Fee Award pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1447 (hereinafter "Motion to Remand").

Gates' Motion to Remand is based upon the following grounds, each of which independently warrant the remand of this case to State Court, and collectively, justify an award of fees and expenses to Gates given the lack of any reasonable basis supporting Criterium's removal attempt:

- 1.) Criterium's removal attempt is untimely under 28 U.S.C. § 1446(c)(1) because it filed its Notice of Removal more than one year after the commencement of this action in State Court;

- 2.) Criterium's removal attempt fails under 28 U.S.C. § 1446(b)(2) given its failure to obtain unambiguous consent to removal from Co-Defendant Quality Built, LLC;
- 3.) Criterium's removal attempt also fails under 28 U.S.C. § 1446(b)(2) given Quality Built, LLC's failure to provide timely consent to removal; and
- 4.) At minimum, this case involves an uncertain removal scenario, which must be resolved in favor of remand due to Criterium's failure to satisfy its removal burden.

For these reasons, and for the reasons set forth more fully in Gates' Memorandum Opposing Removal and Supporting this Motion to Remand, Gates respectfully requests this Court remand this action to the Circuit Court of Richland County for further proceedings, and further requests this Court order Criterium to pay for Gates' just costs and actual expenses, including attorneys' fees, as a result of Criterium's improper removal pursuant to 28 U.S.C. § 1447; and, in such event, grant Gates leave to file an affidavit as to the time expended on removal and remand.

Respectfully submitted this 15th day of July, 2016.

JUSTIN O'TOOLE LUCEY, P.A.

/s/ Justin O'Toole Lucey

Justin O'Toole Lucey
Stephanie D. Drawdy
415 Mill Street
Mt. Pleasant, SC 29464
(843) 849-8400
jlucey@lucey-law.com
sdrawdy@lucey-law.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2016, I caused the foregoing document to be electronically filed with the Clerk of Court using CM/ECF, which will provide electronic notice of such filing to all counsel of record.

/s/ Justin O'Toole Lucey

Justin O'Toole Lucey

85104

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Jr., Circuit Court Judge

Case No. 2013-CP-40-7729

Quality Built, LLC and Coast
To Coast Engineering
Services, Inc. D/B/A
Criterium Engineers,

Respondents,

v.

The Gates at Williams-Brice
Condominium Association
and Katharine Swinson,
individually, and on behalf of
all others similarly situated,

Appellants.

RECEIVED

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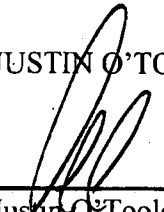
SC Court of Appeals

NOTICE OF APPEAL

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated, (hereinafter "Appellants") timely appeal two (2) Orders of the Honorable G. Thomas Cooper, Jr. in the above matter: (1) April 10, 2017 Order Granting Defendant Quality Built, LLC's Motion for Declaratory Relief, and (2) October 18, 2017 Order Denying Plaintiffs' Motion for Reconsideration. Copies of these Orders are attached hereto. Appellants received written notice of entry of the first Order on April 11, 2017, and received written notice of the entry of the second Order on October 18, 2017.

JUSTIN O'TOOLE LUCEY, PA

By:


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Charleston, South Carolina
November 7, 2017

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*Attorneys for Coast to Coast Engineering
Services, Inc. d/b/a Criterium Engineers*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Jr., Circuit Court Judge

Case No. 2013-CP-40-7729

Quality Built, LLC and Coast
To Coast Engineering
Services, Inc. D/B/A
Criterium Engineers,

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Respondents,

SC Court of Appeals

v.

The Gates At Williams-Brice
Condominium Association
and Katharine Swinson,
individually, and on behalf of
all others similarly situated,

Appellants.

PROOF OF SERVICE

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Attorneys for the Appellants

November 7, 2017
Charleston, South Carolina

I, Justin O'Toole Lucey, Esquire, hereby certify that on November 7, 2017, I served a copy of the *Notice of Appeal* on the following counsel, via the United States Mail, postage pre-paid, and addressed as follows:

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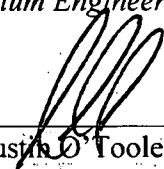
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*Attorneys for Coast To Coast
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Criterium Engineers*

Signed: 
Justin O'Toole Lucey, Esquire

Mount Pleasant, SC
November 7, 2017

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2013-CP-40-7729

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MOTION INFORMATION FORM AND COVERSHEET

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JEANETTE W. MCBRIDE
C.C.P. & G.S.

Kent T. Stair, Esq.
SC Bar No.: 674025
C. Robin Graham, Esq.
SC Bar No.: 78911
Carlock Copeland & Stair, LLP
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Phone: 843-727-0307

SECTION I: Hearing Information

Court Reporter Needed: Yes

☒ Written motion attached
☐ Form Motion

Date submitted

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE _____
CODE: _____ Date: _____

DATE FILED

12/20/16

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

The Gates At Williams-Brice Condominium
Association And Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Quality Built, LLC, and Coast to Coast
Engineering Services, Inc. d/b/a Criterium
Engineers,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2013-CP-40-7729

) **COAST TO COAST ENGINEERING**
) **SERVICES, INC. D/B/A CRITERIUM**
) **ENGINEERS' MOTION FOR**
) **SUMMARY JUDGMENT**

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J. P. & G. S.

COMES NOW Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers (hereinafter "Criterium" or "this Defendant") and moves for an Order dismissing Plaintiffs' Amended Complaint against Criterium with prejudice. This Motion is made pursuant to Rule 56, SCRPC. The basis for this Motion is that Plaintiffs' claims are barred by the three year statute of limitations, as demonstrated by the pleadings filed in this case and the case styled as *The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated v. DDC Construction, Inc., et al.*, 2012-CP-40-8512 ("Gates I").

BACKGROUND

The above-referenced matters – the instant case and Gates I – arise out of the design, development and construction of The Gates at Williams-Brice Condominiums ("the Project"). The Project, located in Columbia, SC, consists of 158 condominium units across six buildings and was completed in 2007. Plaintiffs in both actions are the Project's homeowners' association

and the individual unit owners as a purported class. Plaintiffs filed the Gates I case on December 26, 2012 against the Project's developer/builder and several additional entities, alleging damages to the Project as a result of alleged design and construction deficiencies. (See Gates I Complaint, Exhibit A.) Plaintiffs filed an Amended Complaint in the Gates I case on May 15, 2013. (See Gates I Amended Complaint, Exhibit B.)¹ Plaintiffs filed the instant case ("Gates II") against Defendant Quality Built, LLC ("Quality Built") on December 27, 2013, also alleging damages to the Project as a result of alleged design and construction deficiencies. On May 18, 2016, Plaintiffs filed an Amended Complaint in this case for the first time adding Criterium, a consultant to Quality Built, as a Defendant. May 18, 2016 is *three years, four months and twenty-two days* after the Gates I case was first filed on December 26, 2012.

STANDARD OF REVIEW

Summary judgment is appropriate in matters where "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The purpose of summary judgment is to "expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In ascertaining whether any triable issue of fact exists, the trial court must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a

¹ In Gates I, Plaintiffs filed a Second Amended Complaint on February 15, 2014 and a Third Amended Complaint on August 7, 2014, for a total of four Complaints. Only the Complaint and Amended Complaint from Gates I are included here as exhibits, as these are the two pleadings which pre-date the applicable three-year statute of limitations time limit, and thus indisputably demonstrate "discovery" more than three years prior to the filing of the action against Criterium.

properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” Rawlinson Rd. Homeowners Assoc., Inc. v. Jackson, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011).

LAW AND ARGUMENT

South Carolina provides for a three year statute of limitations for civil actions arising out of construction defect claims. S.C. Code of Laws Sec. 15-3-530. Further, it is well-settled that South Carolina follows the discovery rule in determining the triggering date of a plaintiff’s claim. S.C. Code of Laws Sec. 15-3-535. The discovery rule provides that a plaintiff must file suit against a defendant within three years of when the person “knew or by the exercise of reasonable diligence should have known” that he or she had a cause of action. Id.; see also Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996) (“According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.”); True v. Monteith, 327 S.C. 116, 116, 489 S.E.2d 615, 616 (1997) (“[T]he statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.”)

Further, South Carolina makes clear that, once the statute of limitations has been triggered, *the three year clock begins to run as to all claims and as to all potential defendants*. “The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for **all claims** based on that injury.” Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (emphasis added) (internal citations omitted). “The fact that

there may have been another potential defendant whose identity was unknown to [Plaintiff] does not prevent the running of the statute of limitations for all claims based upon this injury **against all potential defendants.**" Tollison v. B & J Mach. Co., 812 F. Supp. 618, 620 (D.S.C. 1993) (emphasis added).

In Gates II, Plaintiffs are suing for the same damages arising out of the same injury that they claimed in Gates I. In all of Plaintiffs' six Complaints filed to date regarding the alleged damages to the Project, the factual allegations of injury to the Project are described as follows:

- "This matter arises out of the construction, repair and sale of The Gates."
- "At the times the Certificates of Occupancy were issued, The Gates contained latent building defects."
- "The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property."

See Exhibit A at ¶¶ 17-18, 20; Exhibit B at ¶¶ 51-52, 54; Gates II Complaint at ¶¶ 12-14; Gates II Amended Complaint at ¶¶ 19-21.²

The injury Plaintiffs complain of in the May 18, 2016 Amended Complaint against Criterium is the very same injury complained of in their December 26, 2012 Complaint in Gates I. Therefore, Plaintiffs were aware of their injury – the alleged construction defects and resulting property damage at the Project – no later than December 26, 2012 upon the filing of Gates I.³ Under South Carolina law, Plaintiffs then had no more than three years to bring all claims

² Copies of the Second and Third Amended Complaints from Gates I stating the same factual allegations are available to the Court on request and will be available at the hearing on this Motion.

³ Plaintiffs had actual knowledge of their claims for at least one month prior to filing suit. In an opinion filed on August 31, 2016 in Gates I, the South Carolina Court of Appeals stated as factual background: "According to Homeowners, the Gates' Property Owner's Association (POA) was first notified of construction defects in the condominiums in November 2012 when a maintenance company, Watertight Systems, Inc., refused to bid on an exterior caulking/sealant job due to perceived construction issues." (Appellate Case No. 2015-000180; Opinion No. 5438; Filed August 31, 2016).

against all potential defendants related to that injury.⁴ Plaintiffs did not sue Criterium until *three years, four months and twenty-two days* after Gates I was first filed, which marks an indisputable date on which Plaintiffs had actual knowledge of their injury. Therefore, Plaintiffs' claims against Criterium are barred by the statutes of limitations.

CONCLUSION

The pleadings in Gates I and Gates II inarguably demonstrate that the Plaintiffs' three year statute of limitations expired prior to naming Criterium as a defendant in this suit. Therefore, no genuine question of fact exists as to the viability of Plaintiff's claims against Criterium, and Criterium is entitled to summary judgment as a matter of law. Criterium respectfully requests that Plaintiffs' claims against Criterium be dismissed with prejudice.

This motion may be further supported by South Carolina statutory and decisional law, additional memoranda of law and arguments of counsel.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLC

By:


KENNETH STAIR
State Bar No.: 14029

C. ROBIN GRAHAM
State Bar No.: 78911

Attorneys for Defendant Coast to Coast Engineering
Services, Inc. d/b/a Criterium Engineers

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531

⁴ Even without the finding of the Court of Appeals referenced in Footnote 3, it can be fairly presumed that the date of "discovery" preceded the date upon which the initial Complaint in Gates I was actually filed, and the three year clock would start to run from that earlier date.

843-727-0307

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

The Gates At Williams-Brice Condominium
Association And Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Quality Built, LLC, and Coast to Coast
Engineering Services, Inc. d/b/a Criterium
Engineers,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2013-CP-40-7729

CERTIFICATE OF SERVICE

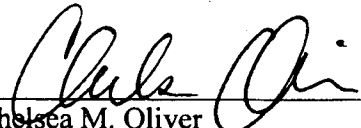
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JENNIFER W. MCBRIDE
C.C.P. & G.S.

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter via U.S. Mail, proper postage prepaid, and/or electronic mail. A list of counsel; served is as follows:

Justin Lucey, Esq.
Stephanie Drawdy, Esq.
Justin O'Toole Lucey, P.A.
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Mt. Pleasant, SC 29465
Attorneys for Plaintiffs

Alan Belcher, Esq.
Elizabeth F. Wieters, Esq.
Hall, Booth, Smith, P.C.
40 Calhoun Street, Suite 550
Charleston, SC 29401
Attorneys for Quality Built, LLC

This 16th day of December, 2016.


Chelsea M. Oliver
Paralegal to C. Robin Graham

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DDC CONSTRUCTION, INC.; KAPASI
GLASS MART, INC.; WINDOW WORLD,
INC.; WINDOW WORLD OF THE
MIDLANDS, INC.; AND JOHN DOE 1-20,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-_____

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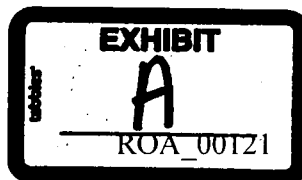
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By: *[Signature]*

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

December 21, 2012
Charleston, South Carolina



12.21.12

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-_____

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DDC CONSTRUCTION, INC.; KAPASI
GLASS MART, INC., WINDOW WORLD,
INC.; WINDOW WORLD OF THE
MIDLANDS, INC.; AND JOHN DOE 1-20,

Defendants.

COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

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The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, *inter alia*, the management and administration of The Gates, the investigation, maintenance and repair of The Gates's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Gates, the Association, and the respective owners and members.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within the Gates more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in the Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant DDC Construction, Inc. (hereinafter "DDC") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, DDC was engaged in the business of constructing, repairing and/or selling condominiums in Richland County, South Carolina.

11. Defendant Kapasi Glass Mart, Inc. (hereinafter "Kapasi") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this

action, Kapasi supplied materials, installed windows and window components and/or performed repairs, among other work, at The Gates.

12. Defendant Window World, Inc. (hereinafter "Window World") is a corporation organized and existing under the laws of the State of North Carolina. Window World manufactured and/or supplied the windows and/or doors and related components at The Gates.

13. Defendant Window World of the Midlands, Inc. (hereinafter "Midlands") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Midlands supplied materials, installed windows and related components and/or performed repairs, among other work, at The Gates.

14. The address and identity of all John Doe Defendants are unknown at this time.

15. Defendants John Doe #1-20 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, construction, product manufacturing and/or supplying, and/or repair of The Gates.

16. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

17. This matter arises out of the construction, repair and sale of The Gates.

18. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

19. Plaintiffs and class members have previously put DDC on notice of some or many of the manifestations of the deficiencies. However, DDC has denied the existence of or responsibility for the deficiencies and/or or their attempts at repair have failed.

20. The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

21. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

22. Defendants had a duty to design, develop, construct, and repair The Gates in a workmanlike manner with suitable materials and free from all defects.

23. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

24. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

25. Remedying the above-wrongs will result in additional consequential damages and loss of use.

26. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

27. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

28. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within the Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

29. *Numerosity*: The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

30. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- (a) Whether the construction and/or repair of The Gates was defective;
- (b) Whether Defendants knew or should have known of the defects;
- (c) Whether Defendants negligently constructed The Gates;
- (d) Whether Defendants have acted or refused to act on grounds generally

applicable to the Class;

- (c) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;
- (f) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.
- (g) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

31. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

32. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

33. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In

contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

34. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

35. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

36. Each Class Member has an interest of more than \$100.00.

37. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

38. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

39. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

40. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of The Gates.

41. Given Defendants' failure to disclose this non-public information about the

defective nature of The Gates - information over which it had exclusive control - and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

42. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

43. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

44. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the construction and repair of The Gates in a good, workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, and in conformance with the prevailing industry standards.

45. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- (a) In failing to construct The Gates in accordance with due care and in accordance with standard building practices;
- (b) In failing to construct The Gates in accordance with building code;
- (c) In failing to properly supervise the work and construction of The Gates;
- (d) In failing to properly coordinate the subcontractors;

- (e) In failing to select proper building materials;
- (f) In failing to construct The Gates with an adequate exterior building envelope;
- (g) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- (h) In covering up their own defective work and/or the defective work of others;
- (i) In failing to make repairs; and
- (j) Such other failures to be proven at trial.

46. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

47. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

48. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

49. The construction, sale, and repair of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

50. The construction, sale and/or repair of The Gates, and the components used therein, came with implied warranties of fitness, merchantability, workmanship, and habitability.

51. Defendants have breached their warranties by constructing The Gates in a defective manner as set forth above.

52. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION

(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 et seq. as to Defendants Kapasi, Window World, Midlands and John Doe Manufacturing and Supplier Defendants)

53. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

54. The Defendants engaged in the business of manufacturing and supplying construction products, e.g. windows, doors, stucco system, and concrete system (s).

55. In manufacturing and supplying products for the construction of The Gates, Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants placed products into the stream of commerce.

56. By introducing their products into the stream of commerce, Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants represented said products were safe and suitable for their foreseeable use.

57. In the manufacture and supply of products to The Gates, Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

58. Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants have manufactured and/or supplied their products in a defective manner that has resulted in repeated water intrusion into and damage to The Gates and other building deficiencies.

59. The Defendants have marketed and sold their products for use as components in structures such as the Gates. The components are in substantially the same condition as at the time the Defendants sold them.

60. These products were unreasonably designed and manufactured and were defective at the time of sale.

61. The Plaintiff could not have discovered the product defects in the Buildings nor perceived their defective and dangerous condition through the exercise of reasonable care.

62. Because of the intended use involved, the likelihood and potential for serious injury to person and/or property is great. The defective nature of the products is dangerous to an extent beyond the ordinary knowledge common to the community and consuming public.

63. The cost of altering the design, construction and/or repair of the products supplied to The Gates to make them safe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiff.

64. The products are defective and unreasonably dangerous, causing Plaintiff to have suffered damage.

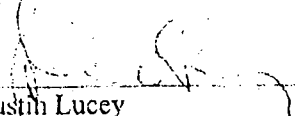
65. The design and manufacture of the products supplied to the Gates were inherently defective as sold and are a direct and proximate cause of the damages suffered by Plaintiffs.

66. Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

December 21, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION, et al

Plaintiff(s)

vs.

DDC CONSTRUCTION, INC, et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 40-

8512

Submitted by:

Justin O'Toole Lucey

Justin O'Toole Lucey, P.A.

415 Mill Street

Post Office Box 806

Mount Pleasant, SC 29465-0806

SC Bar #: 15438

Telephone #: 843-849-8400

Fax #: 843-849-8406

Other:

E-mail: jlucey@lucey-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint.

☐ NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- ☐ Constructions (100)
 - ☐ Debt Collection (110)
 - ☐ Employment (120)
 - ☐ General (130)
 - ☐ Breach of Contract (140)
 - ☐ Other (199)

- Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
 - ☐ Legal Malpractice (210)
 - ☐ Medical Malpractice (220)
 - ☐ Previous Notice of Intent Case # 20 -CP-
 - ☐ Notice/ File Med Mal (230)
 - ☐ Other (299)

- Torts - Personal Injury**
- ☐ Assault/Slander/Libel (300)
 - ☐ Conversion (310)
 - ☐ Motor Vehicle Accident (320)
 - ☐ Premises Liability (330)
 - ☐ Products Liability (340)
 - ☐ Personal Injury (350)
 - ☐ Wrongful Death (360)
 - ☐ Other (399)

- Real Property**
- ☐ Claim & Delivery (400)
 - ☐ Condemnation (410)
 - ☐ Foreclosure (420)
 - ☐ Mechanic's Lien (430)
 - ☐ Partition (440)
 - ☐ Possession (450)
 - ☐ Building Code Violation (460)
 - ☒ Other (499)

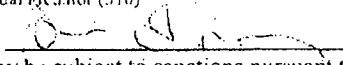
- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Transfer of Structured Settlement Payment Rights Application (760)
 - ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture-Petition (840)
 - ☐ Forfeiture--Consent Order (850)
 - ☐ Other (899)

- Appeals**
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil (910)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOJ (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Comm (991)
 - ☐ Other (999)

- Special/Complex/Other**
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Out-of State Depositions (650)
 - ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
 - ☐ Sexual Predator (510)

Submitting Party Signature: 

Date: December 21, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium
Association And Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart,
Inc.; DMC Consolidated, Inc.; DMC Builders,
Co. Inc., individually and d/b/a The Dinerstein
Companies; DC Developers - Columbia
Condos, Inc.; Columbia Condos, LP; DMC
Developers I, Ltd.; 31-W Insulation Company,
Inc.; Associated Concrete Contractors, Inc.;
Bailey Electric Company, LLC; C&B Utilities,
LP; Carolina Floor Systems, Inc.; Century Fire
Protection, LLC; Cherokee Inc.; Coronado
Stucco, LP; Cross Plains Custom Tile, Inc.;
Lowry Construction & Framing Inc.; LTB
Construction, Inc.; Martin Morales Jr. Painting
& Drywall, LLC; Metal Construction Materials,
Inc.; Southwest Ironworks, Inc.; The
Clerkley/Watkins Group, LP; Tindall
Corporation; Triad Pest Control, Inc.; Wyman
Acoustics LLC; Alenco Inc. d/b/a Ply Gem
Window Group; Crosby Window, Inc., f/k/a/
Action WinDoor Technology, Inc.; Geo-
Systems Design & Testing, Inc.; HGE
Consulting, Inc.; Maintenance Builders Supply,
Ltd.; SCA Engineers, Inc.; Sinclair &
Associates, Inc.; Faultless Hardware,
individually and d/b/a Pamex Inc. and John Doe.
#1-10.

Defendants.

AMENDED SUMMONS

RICHLAND COUNTY
FILED
2013 MAY 15 AM 9:59
JEANETTE W. MCBRIDE
CLERK & C.S.

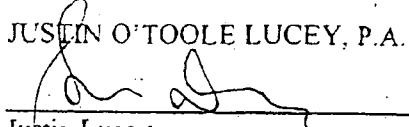
EXHIBIT

B

ROA 00136

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Amended Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Amended Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

May 14, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium
Association And Katharine Swinson,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart,
Inc.; DMC Consolidated, Inc.; DMC Builders,
Co. Inc., individually and d/b/a The Dinerstein
Companies; DC Developers - Columbia
Condos, Inc.; Columbia Condos, LP; DMC
Developers I, Ltd.; 31-W Insulation Company,
Inc.; Associated Concrete Contractors, Inc.;
Bailey Electric Company, LLC; C&B Utilities,
LP; Carolina Floor Systems, Inc.; Century Fire
Protection, LLC; Cherokee Inc.; Coronado
Stucco, LP; Cross Plains Custom Tile, Inc.;
Lowry Construction & Framing Inc.; LTB
Construction, Inc.; Martin Morales Jr. Painting
& Drywall, LLC; Metal Construction Materials,
Inc.; Southwest Ironworks, Inc.; The
Clerkley/Watkins Group, LP; Tindall
Corporation; Triad Pest Control, Inc.; Wyman
Acoustics LLC; Alenco Inc. d/b/a Ply Gem
Window Group; Crosby Window, Inc., f/k/a/
Action WinDoor Technology, Inc.; Geo-
Systems Design & Testing, Inc.; HGE
Consulting, Inc.; Maintenance Builders Supply,
Ltd.; SCA Engineers, Inc.; Sinclair &
Associates, Inc.; Faultless Hardware,
individually and d/b/a Pamex Inc. and John Doe
#1-10.

Defendants.

AMENDED COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2013 MAY 15 AM 9:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, *inter alia*, the management and administration of The Gates, the investigation, maintenance and repair of The Gates' Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Gates, the Association, and the respective owners and members and/or is the assignee of the members' rights being asserted hereunder.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within the Gates more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in the Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant DDC Construction, Inc. is a corporation organized and existing under the laws of the State of Texas.

11. Defendant DMC Consolidated, Inc. is a corporation organized and existing under the laws of the State of Texas.

12. Defendant DMC Builders, Co., Inc., individually and d/b/a the Dinerstein Companies is a corporation organized and existing under the laws of the State of Texas.

13. Defendant DC Developers - Columbia Condos, Inc. is a corporation organized and existing under the laws of the State of Texas and is the manager/general Partner of Columbia Condos, LP.

14. Defendant Columbia Condos, LP is a corporation organized and existing under the laws of the State of Delaware.

15. Defendant DMC Developers, I, Ltd. is a corporation organized and existing under the laws of the State of Texas.

16. The foregoing Defendants, and their divisions and affiliates, operated under the trade name Dinerstein Companies (hereinafter referred to collectively as the "Dinerstein Defendants") and at all times relevant to this action were engaged in the business of designing,

developing, marketing, constructing, repairing and/or selling condominiums in Richland County, South Carolina. The Dinerstein Defendants all use the Dinerstein trade name interchangeably.

17. The Dinerstein Defendants used, commingled, and combined their resources to design, develop, market, construct, repair, sell and/or place the condominiums into the stream of commerce.

18. The Dinerstein Defendants have been formed and operate so their legal distinction is blurred and they are amalgamated with each other and their principals.

19. At all times relevant herein, the Dinerstein Defendants were actual and/or de facto joint venturers in the development, construction, and sale of the condominiums.

20. Defendant Kapasi Glass Mart, Inc. (hereinafter "Kapasi") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Kapasi supplied materials, installed windows and window components and/or performed other work, at The Gates.

21. Defendant 31-W Insulation Company, Inc. (hereinafter "31-W") is a corporation organized and existing under the laws of the State of Tennessee. At all times relevant to this action, 31-W provided and/or installed insulation, among other work, at The Gates.

22. Defendant Associated Concrete Contractors, Inc. (hereinafter "Associated Concrete") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Associated Concrete provided and/or installed concrete, among other work, at The Gates.

23. Defendant Bailey Electric Company, LLC (hereinafter "Bailey Electric") is a corporation organized and existing under the laws of the State of Mississippi. At all times relevant to this action, Bailey Electric provided and/or installed electrical, heating and air conditioning ("HVAC"), among other work, at The Gates.

24. Defendant C&B Utilities, LP (hereinafter "C&B") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, C&B provided and/or installed plumbing, among other work, at The Gates.

25. Defendant Carolina Floor Systems, Inc. (hereinafter "Carolina Floor") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Carolina Floor provided and/or installed cement decks and floor underlayment, among other work, at The Gates.

26. Defendant Century Fire Protection, LLC (hereinafter "Century Fire") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Century Fire provided and/or installed firesafing and firestopping, among other work, at The Gates.

27. Defendant Cherokee Inc. (hereinafter "Cherokee") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Cherokee performed site work, among other work, at The Gates.

28. Defendant Coronado Stucco, LP (hereinafter "Coronado") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Coronado provided and/or installed stucco, among other work, at The Gates.

29. Defendant Cross Plains Custom Tile, Inc. (hereinafter "Cross Plains") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Cross Plains provided and/or installed tile, among other work, at The Gates.

30. Defendant Lowry Construction & Framing Inc. (hereinafter "Lowry") is a corporation organized and existing under the laws of the State of Florida. At all times relevant to this action, Lowry provided and/or installed framing, among other work, at The Gates.

31. Defendant LTB Construction, Inc. (hereinafter "LTB") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, LTB provided and/or installed drywall materials and firestopping, among other work, at The Gates.

32. Defendant Martin Morales Jr. Painting & Drywall, L.L.C (hereinafter "Martin Morales") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Martin Morales provided and/or installed caulking and sealant, among other work, at The Gates.

33. Defendant Metal Construction Materials, Inc. (hereinafter "Metal Construction") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Metal Construction provided and/or installed metal carports, among other work, at The Gates.

34. Defendant Southwest Ironworks, Inc. (hereinafter "Southwest Ironworks") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Southwest Ironworks provided and/or installed metal stairs and rails, among other work, at The Gates.

35. Defendant The Clerkley/Watkins Group, LP, (hereinafter "Clerkley/Watkins") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Clerkley/Watkins provided architectural and/or engineering services, among other work, at The Gates.

36. Defendant Tindall Corporation (hereinafter "Tindall") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Tindall provided and/or installed the precast concrete parking garage, among other work, at The Gates.

37. Defendant Triad Pest Control, Inc. (hereinafter "Triad") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Triad provided termite treatment, among other work, at The Gates.

38. Defendant Wyman Acoustics LLC, (hereinafter "Wyman") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Wyman provided and/or installed drywall, among other work, at The Gates.

39. Defendant Alenco Inc. d/b/a Ply Gem Window Group (hereinafter "Alenco") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Alenco supplied vinyl doors, among other products, at The Gates.

40. Defendant Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc. (hereinafter "AWT") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, AWT supplied vinyl windows, among other products, at The Gates.

41. Defendant Geo-Systems Design & Testing, Inc. (hereinafter "Geo-Systems") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Geo-Systems supplied testing and quality assurance inspections, among other work, at The Gates.

42. Defendant HGE Consulting, Inc. (hereinafter "HGE") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, HGE provided architectural and/or engineering services, among other work, at The Gates.

43. Defendant Maintenance Builders Supply, Ltd. (hereinafter "MBS") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, MBS supplied finish hardware, among other products, at The Gates.

44. Defendant SCA Engineers, Inc. (hereinafter "SCA") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, SCA provided architectural and/or engineering services, among other work, at The Gates.

45. Defendant Sinclair & Associates, Inc., (hereinafter "Sinclair") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Sinclair provided architectural and/or engineering services, among other work, at The Gates.

46. Defendant Faultless Hardware, individually and d/b/a as Pamex Inc., (hereinafter "Pamex") is a corporation organized and existing under the laws of the State of California. At all times relevant to this action, Pamex supplied finish hardware, among other products, at The Gates.

47. The address and identity of John Doe Defendant #1-10 is unknown at this time.

48. Defendants John Doe #1-10 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, construction, product manufacturing and/or supplying, and/or repair of The Gates.

49. Defendants Kapasi Glass Mart, Inc., 31-W Insulation Company, Inc., Associated Concrete Contractors, Inc., Bailey Electric Company, LLC, C&B Utilities, LP, Carolina Floor Systems, Inc., Century Fire Protection, LLC, Cherokee Inc., Coronado Stucco, LP, Cross Plains Custom Tile, Inc., Lowry Construction & Framing Inc., LTB Construction, Inc., Martin Morales Jr. Painting & Drywall, LLC, Metal Construction Materials, Inc., Southwest Ironworks, Inc., The Clerkley/Watkins Group, LP, Tindall Corporation, Triad Pest Control, Inc., Wyman Acoustics LLC, Alenco Inc. d/b/a Ply Gem Window Group, Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc., Geo-Systems Design & Testing, Inc., HGE Consulting, Inc., Maintenance Builders Supply, Ltd., SCA Engineers, Inc., Sinclair &

Associates, Inc., Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1 are hereinafter referred to collectively as the "Manufacturing and/or Supplier Defendants"

50. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

51. This matter arises out of the construction and sale of The Gates.

52. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

53. Plaintiffs and class members have previously put the Dinerstein Defendants on notice of some or many of the manifestations of the deficiencies. However, the Dinerstein Defendants have denied the existence of or responsibility for the deficiencies and/or their attempts at repair have failed.

54. The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

55. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

56. Defendants had a duty to design, develop, construct, and repair The Gates in a workmanlike manner with suitable materials and free from all defects.

57. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

58. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

59. Remedying the above-wrongs will result in additional consequential damages and loss of use.

60. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

61. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been since shortly after the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

62. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within the Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely

request for exclusion from the Class.

63. *Numerosity:* The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

64. *Commonality:* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- (a) Whether the construction and/or repair of The Gates was defective;
- (b) Whether Defendants knew or should have known of the defects;
- (c) Whether Defendants negligently constructed The Gates;
- (d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- (e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;
- (f) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.
- (g) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

65. *Typicality:* Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

66. *Adequate Representation:* Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

67. *Predominance and Superiority:* This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

68. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

69. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

70. Each Class Member has an interest of more than \$100.00.

71. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

72. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants were in a position of superior knowledge and should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

73. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

74. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of The Gates.

75. Given Defendants' failure to disclose this non-public information about the defective nature of The Gates - information over which it had exclusive control - and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

76. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

**FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)**

77. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

78. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the construction and repair of The Gates in a good, workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, and in conformance with the prevailing industry standards.

79. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- (a) In failing to construct The Gates in accordance with due care and in accordance with standard building practices;
- (b) In failing to construct The Gates in accordance with building code;
- (c) In failing to properly supervise the work and construction of The Gates;
- (d) In failing to properly coordinate the subcontractors;
- (e) In failing to select proper building materials;
- (f) In failing to construct The Gates with an adequate exterior building envelope;
- (g) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- (h) In covering up their own defective work and/or the defective work of others;
- (i) In failing to make repairs; and
- (j) Such other failures to be proven at trial.

80. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

81. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

82. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

83. The construction, sale, and repair of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

84. The construction, sale and/or repair of The Gates, and the components used therein, came with implied warranties of fitness, merchantability, workmanship, and habitability.

85. Defendants have breached their warranties by constructing The Gates in a defective manner as set forth above.

86. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 et seq. as to Manufacturing and/or Supplier Defendants)

87. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

88. The Manufacturing and/or Supplier Defendants engaged in the business of manufacturing and/or supplying construction products, e.g. framing system components, stucco,

siding, window and door packages, parking garage system, tile, carport system, stair systems, concrete, etc.

89. In manufacturing and/or supplying products for the construction of The Gates, the Manufacturing and/or Supplier Defendants placed products into the stream of commerce.

90. By introducing their products into the stream of commerce, the Manufacturing and/or Supplier Defendants represented said products were safe and suitable for their foreseeable use.

91. In the manufacture and/or supply of products to The Gates, the Manufacturing and/or Supplier Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

92. The Manufacturing and/or Supplier Defendants have manufactured and/or supplied their products in a defective manner that has resulted in repeated water and/or air intrusion into and damage of the building components at The Gates.

93. The Manufacturing and/or Supplier Defendants have marketed and/or sold their products for use as components in structures such as The Gates. The components are in substantially the same condition as at the time the Manufacturing and/or Supplier Defendants sold them.

94. These products were unreasonably designed and manufactured and were defective at the time of sale.

95. The Plaintiff could not have discovered the product defects in the Buildings nor perceived their defective and/or dangerous condition through the exercise of reasonable care.

96. Because of the intended use involved, the likelihood and potential for serious injury to person and/or property is great. The defective nature of the products is dangerous to an extent beyond the ordinary knowledge common to the community and consuming public.

97. The cost of altering the design, construction and/or repair of the products supplied to The Gates to make them safe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiff.

98. The products are defective and unreasonably dangerous, causing Plaintiff to have suffered damage.

99. The design and manufacture of the products supplied to the Gates were inherently defective as sold and are a direct and proximate cause of the damages suffered by Plaintiffs.

100. The Manufacturing and/or Supplier Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

May 14, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The Gates at Williams Brice Condominium
Association, et al.)

Plaintiff,)

vs.)

Quality Built, LLC and Coast to Coast
Engineering Services, Inc. d/b/a Criterium
Engineers)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-40-7729

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

Justin Lucey, Esq.

Stephanie Drawdy, Esq., Bar No. _____

Address:

415 Mill St

PO Box 806

Mt. Pleasant, SC 29464-0806

Phone: 843.849.8400 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Aian Belcher, Bar No. 71686

Elizabeth Wieters, Bar No. 78066

Address:

40 Calhoun Street, Ste 550

Charleston, SC 29403

Phone: 843.720.3460

Fax 843.720.3458

E-mail: abelcher@hallboothsmith.com

ewieters@hallboothsmith.com

Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Quality Built, LLC's Motion for Declaratory Relief / Motion for Summary Judgment

Estimated Time Needed: 30

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted _____

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25 -**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

ROA-00155

RICHLAND COUNTY
FILED

2017 JAN 17 PM 2:46

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CLERK'S VERIFICATION

Collected by: SM Date Filed: 1-17-17

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, Individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

QUALITY BUILT, LLC and COAST TO
COAST ENGINEERING SERVICES, INC.
d/b/a CRITERIUM ENGINEERS,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

) DEFENDANT'S NOTICE OF MOTION
) AND MOTION FOR DECLARATORY
) RELIEF,

) OR IN THE ALTERNATIVE,
) MOTION FOR SUMMARY
) JUDGMENT

RICHLAND COUNTY
FILED
JAN 17 PM 2:46
KATHARINE W. MCBRIDE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that undersigned counsel for Defendant, Quality Built, LLC ("Defendant"), will move before this Honorable Court ten (10) days from the date of this notice, or as soon thereafter as counsel may be heard, in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, at such time and place as may be set by the Court for an Order granting Defendant the relief requested herein.

NOW COMES the Defendant, Quality Built, LLC, and moves this Honorable Court for declaratory relief, declaring the rights, obligations, or liabilities, if any, of Quality Built, LLC by determining a question of law by construing an order and contract pursuant to S.C. Code Ann. §15-53-10, *et seq.* and Rule 57 of the South Carolina Rules of Civil Procedure. In the alternative, Defendant seeks summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The Defendant moves the Court to declare the rights of Quality Built, LLC and construe a written contract called the Amended and Restated Asset Purchase Agreement ("Purchase Agreement"), in conjunction with an Order of the United States Bankruptcy Court, entitled Order

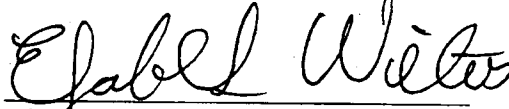
Authorizing the Sale of Substantially all of the Debtor's Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances (March 11, 2010) (hereinafter "Sale Order") (Case No. 2009-12113-PB11), rendering declaratory judgment in order to resolve an uncertainty inherent to this action. Specifically, this Defendant contends it is the purchaser of assets from a company called QualityBuilt.com pursuant to bankruptcy proceedings. Defendant submits to the Court that as shown in the Sale Order and the Purchase Agreement, Quality Built, LLC did not assume the liabilities necessary to be a named Defendant in this lawsuit concerning the Gates at Williams-Brice, a project which predates Quality Built, LLC's existence. Therefore, Defendant seeks a dismissal with prejudice, and further relief by way of costs and attorney's fees in conjunction with defending this action.

Based upon the foregoing grounds, the arguments of counsel at the hearing, statutory and common law in support of its motion, the Clerk of Court's file in this matter, and its forthcoming memorandum of law, documents, or materials submitted in support of its motion, Quality Built, LLC hereby moves this Honorable Court for declaratory relief, or in the alternative, summary judgment that Quality Built, LLC has no liability in this action, and costs and attorney's fees in connection with defending this action.

[Signature Block on Following Page]

Respectfully submitted,

HALL BOOTH SMITH, P.C.



Alan R. Belcher, SC Bar No. 71686

Elizabeth F. Wieters, SC Bar No. 78064

40 Calhoun Street, Suite 550

Charleston, South Carolina 29401

Phone: 843.720.3460

Email: abelcher@hallboothsmith.com

ewieters@hallboothsmith.com

January 13, 2017
Charleston, South Carolina

Attorneys for Quality Built, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **Defendant's Notice of Motion and Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

Justin Lucey, Esquire
Stephanie Drawdy, Esquire
415 Mill Street
Post Office Box 806
Mt. Pleasant, South Carolina 29464-0806
Attorneys for Plaintiffs

Kent T. Stair, Esquire
C. Robin Graham, Esquire
Carlock, Copeland & Stair, LLC
40 Calhoun Street
Suite 400
Charleston, South Carolina 29401
*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*

RICHLAND COUNTY
FILED
2017 JAN 17 PM 2:47
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This 13th day of January 2017.

HALL, BOOTH, SMITH, P.C.

By: Shellie L. Fischer
Shellie L. Fischer
Legal Assistant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, Individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

QUALITY BUILT, LLC and COAST TO
COAST ENGINEERING SERVICES, INC.
d/b/a CRITERIUM ENGINEERS,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

) DEFENDANT QUALITY BUILT, LLC'S
) MEMORANDUM IN SUPPORT OF ITS
) MOTION FOR DECLARATORY

) RELIEF,

) OR IN THE ALTERNATIVE,

) MOTION FOR SUMMARY JUDGMENT.

FILED
FEB 21 AM 11:00
J. L. W. HARRIS
CLERK OF COURT
RICHLAND COUNTY

NOW COMES the Defendant Quality Built, LLC ("Defendant"), and respectfully submits the following Memorandum of Law in support of its Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment, filed on January 17, 2017.

PRELIMINARY STATEMENT

In this lawsuit, the Plaintiffs are suing Defendant and Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers ("Criterium") alleging construction defects in connection with the construction of The Gates at Williams-Brice Condominiums. Defendant contends it is not a proper party to this action, as it is not the entity which provided quality control services at The Gates project. The entity that purportedly undertook this role is no longer a viable corporation and was once called Qualitybuilt.com.

Pursuant to the Order (I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in

Connection Therewith and Related Procedures and (III) Granting Related Relief filed on January 29, 2010 (hereinafter the "Sale Order" attached hereto as Exhibit A and incorporated herein by reference), the United States Bankruptcy Court authorized Defendant's purchase of Qualitybuilt.com's assets, free of liabilities with the exception of those explicitly named. As part of the Sale Order, the Bankruptcy Court authorized the entry of a contract called the Amended and Restated Asset Purchase Agreement by and among QualityBuilt.com as Seller and Quality Built, LLC as Buyer (hereinafter the "Purchase Agreement" attached hereto as Exhibit B and incorporated herein by reference).

The Purchase Agreement sets forth the detailed terms of the asset purchase between the two entities, including which liabilities were assumed by Defendant in the transaction. Pursuant to the Purchase Agreement and Sale Order, The Gates at Williams-Brice was not an Assumed Liability to be retained by Defendant.

Therefore, pursuant to the United States Bankruptcy Court's order and the contract between Defendant and Qualitybuilt.com, the Plaintiffs do not have a right of action against Defendant arising from any alleged services provided by Qualitybuilt.com at The Gates project. Whether the Court looks through the lens of declaratory relief or through summary judgment, either vehicle leads to the same dispositive result: Defendant should be dismissed from this action with prejudice. Holding Defendant in this action as a party would be in direct contravention to the plain meaning of the United States Bankruptcy Court's Order and the plain language of the Purchase Agreement.

PROCEDURAL HISTORY

Over three years after entry of the Sale Order, on December 27, 2013 Plaintiffs filed the subject action, alleging negligence and breach of warranty against Defendant. (Plts.' Compl.) In

the Complaint, Plaintiffs allege that Defendant, its agents, servants, employees and subcontractors were negligent in failing to adequately effect quality control relating to construction of The Gates at Williams-Brice (hereinafter "the Project"). (Plts.' Compl., ¶ 39.) Moreover, Plaintiffs allege that Defendant performed an inspection with express and implied warranties, and that Defendant breached those warranties. (Plts.' Compl. ¶¶ 42-46.) In its original Complaint, Plaintiffs fail to acknowledge that neither Defendant nor any of its agents, servants, employees, or subcontractors ever performed work or consulted on the Project.

On or about January 28, 2014, Defendant, through counsel, sent correspondence to Plaintiffs' counsel advising of the Sale Order and seeking a voluntary dismissal. See Exhibit C. Upon information and belief, Defendant did not receive a response from the Plaintiffs.

Plaintiffs filed an Amended Summons and Complaint in May of 2016, adding the cause of action of Successor Liability against Defendant and adding Criterium as a Defendant to this action. (Plts.' Am. Compl.) In the Amended Complaint, Plaintiffs allege as a Third Cause of Action that Defendant is a successor to Qualitybuilt.com as a mere continuation, and Defendant is therefore liable for the obligations of Qualitybuilt.com in this action. (Plts.' Am. Compl. ¶¶ 65-67.)

Subsequent to Defendant answering the Plaintiffs' Amended Complaint in state court, Criterium removed the case to United States District Court on June 17, 2016. The Plaintiffs filed a Motion for Remand and during the pendency of the District Court's deliberation as to the motion, the discovery and pending motions in the case were stayed until the District Court remanded the case to the Richland County Court of Common Pleas on September 7, 2016. After remand, Criterium served its Answer to Plaintiffs' Complaint on October 31, 2016.

OPERATIVE FACTS

Qualitybuilt.com was a California corporation formed on or around July 12, 1999. See Exhibit D, Qualitybuilt.com Articles of Incorporation. On August 14, 2009, Qualitybuilt.com filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the Southern District of California. See Exhibit E, Notice of Bankruptcy Filing. The Motion for Order Approving Sale¹ was filed on January 29, 2010. During that time and as part of the bankruptcy proceedings, Defendant Quality Built, LLC, a Delaware limited liability company², entered into the Purchase Agreement with Qualitybuilt.com for the purchase of various assets and liabilities, which was attached as an exhibit to the Motion for Order Approving Sale. Purchase Agreement, ¶¶ 1.1–2.2.

As part of the contract, Defendant assumed only those liabilities identified in Schedule 2.1 of the Purchase Agreement. Defendant expressly disclaimed all other liabilities, including "any liabilities or obligations with respect to . . . litigation or threatened litigation, claim, obligation, damages, costs and expenses relating to or arising out of or relating to any actions or omissions of, or services performed by, Seller . . . whether arising under contract, tort, civil or criminal law or otherwise[.]" Purchase Agreement, ¶ 2.2(e). Additionally, at the time the parties consummated the Purchase Agreement, the subject action had not been filed, nor had Qualitybuilt.com even been notified of a pending claim. Purchase Agreement, Schedule 5.10.

On March 11, 2010, by order of the United States Bankruptcy Court for the Southern District of California, Defendant purchased certain assets of Qualitybuilt.com from the trustee in bankruptcy pursuant to 11 U.S.C. §§ 101, 105, 363, and 365. See Sale Order. As a prerequisite

¹ Full title of the motion filed is: "Motion for Order Approving Sale of Property of the Estate Free and Clear of All Liens, Claims, and Encumbrances, Subject to Overbid; and Memorandum of Points and Authorities in Support Thereof."

² Quality Built, LLC was formed as a Delaware limited liability company on July 24, 2009. See Exhibit F.

to the bankruptcy sale, the United States Bankruptcy Court authorized the Purchase Agreement and entered it as part-and-parcel of the Sale Order and transaction.

In the Sale Order, the Bankruptcy Court authorized and approved the sale

[F]ree and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), **liabilities encumbrances, rights, remedies, restrictions, and interests and encumbrances of any kind of nature whatsoever whether arising before or after the Petition Date, whether at law or in equity . . .** (collectively, "Claims") (other than certain liabilities that are expressly assumed or created by the Purchaser, as set forth in the Purchase Agreement) (collectively, the "Assumed Liabilities").

Sale Order, p. 1. In short, Defendant's liabilities were exclusively limited to those contained in the Assumed Liabilities, and the Sale Order, in no uncertain terms, discharged and released Defendant from any past, present, or future liabilities.

The Sale Order also contains numerous provisions regarding Defendant's purchase of Qualitybuilt.com's assets "free and clear" of "all [c]laims." See Sale Order, ¶¶ T-X. The Bankruptcy Court found "The Purchaser would not have entered into the Purchase Agreement . . . if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Contracts and Assumed Liabilities, or if the purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities [] that expressly are not assumed by the Purchaser." Sale Order, ¶ W. In no uncertain terms, the Order states:

Except as otherwise provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holder, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders customers, employees, trade creditors, **litigation claimants** and other creditors, holding Claims (whether legal or equitable, secured or unsecured, known or unknown, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) except for Assumed

Liabilities, arising under or out of, in connection with, or in any way relating to, [Qualitybuilt.com], the Purchased Assets, the operation of the Business prior to Closing or the transfer of the Purchased Assets to [Defendant], **are hereby forever barred, estopped and permanently enjoined from asserting such Claims against [Defendant], its successors or assigns, its property or the Purchased Assets. No such persons or entities shall assert against [Defendant] or their successors in interest any Claim arising from, related to or in connection with the ownership, sale or operation of any Assets prior to Closing, except for Assumed Liabilities.**

Sale Order, ¶ 10 (emphasis added). Defendant only assumed two liabilities: payment of \$69,343.04 to Mid Pacific Testing and Inspections and payment of \$3,128.38 to James Edward Engineers. Purchase Agreement, Schedule 2.1. Moreover, Defendant did not assume any contract between Qualitybuilt.com and Plaintiffs. Purchase Agreement, Schedule 1.1(d). In fact, Defendant did not assume a contract between QualityBuilt.com and any person or entity in South Carolina. Again, in no uncertain terms, the Sale Order states,

The Sale Order [] shall be effective as a determination that, as of Closing [] no Claims, other than Assumed Liabilities and Assumed Contracts relating to the Purchased Assets, will be assertable against the Purchaser, its affiliates, successors or assigns, or any of their respective assets [and that all claims] have been unconditionally released, discharged and terminated . . .

Sale Order, ¶ 11. Furthermore, "[Defendant] shall have no obligations under any liabilities of Seller or the Bankruptcy Estate other than the Assumed Liabilities, the Assumed Contracts, and its obligations under this Agreement." Sale Order, ¶ 35.

LAW AND ARGUMENT

A. Defendant Has No Liabilities As To Plaintiffs' Claims And Should Be Dismissed From This Action With Prejudice.

The Uniform Declaratory Judgments Act is to be liberally construed so as to be remedial, and created with purpose to settle and afford relief from uncertainty – and in certain circumstances an award of further relief based upon a declaratory judgment decree may be just

and proper. S.C. Code §§ 15-53-120 and 130. The Uniform Declaratory Judgments Act gives the Court the liberal authority to determine questions under a written contract and declare the rights, status and other legal relations. S.C. Code § 15-53-10, *et seq.*, Rule 57, SCRPC.

"Where the terms of a contract are clear and unambiguous as a matter of law, its construction is for the court . . ." Holcombe v. Orkin Exterminating Co., Inc., 282 S.C. 104, 105 (S.C. Ct. App. 1984) (citing Black v. Freeman, 274 S.C. 272 (S.C. 1980)). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." Ellie, Inc. v. Miccichi, 358 S.C. 78, 93 (S.C. Ct. App. 2004). Courts "are without authority to alter an unambiguous contract by construction or to make new contracts for the parties." Lee v. Univ. of S.C., 407 S.C. 512, 518 (S.C. 2014) (quoting S.C. Dept. of Transp. v. M & T Enters. of Mt. Pleasant, 379 S.C. 645, 655 (S.C. Ct. App. 2008)).

As demonstrated by the recitation of the plain language of the Purchase Agreement and Sale Order above, Defendant did not assume the liabilities of Qualitybuilt.com so as to be liable to the Plaintiffs in connection with The Gates at Williams-Brice. Not only is this contention clearly defined by the terms of the Purchase Agreement, but those terms were also authorized and entered by the United States Bankruptcy Court, via the Sale Order.

The Court may liberally apply the Uniform Declaratory Judgments Act and grant Defendant further relief by way of a dismissal by merely interpreting and applying the terms of the Purchase Agreement. In that vein, the Court may declare that it is extending full faith and credit to the United States Bankruptcy Court's Sale Order, which expressly adopts the terms of the Purchase Agreement as part of its Order:

"A judgment or order in a bankruptcy litigation is a judgment or order of the district court, whether it is rendered by a district judge or a bankruptcy judge, and as such it is entitled to the same respect that would be afforded to any other judgment or order of the district court. As a general proposition, then, the finality doctrines apply in bankruptcy cases in the same fashion in which they apply elsewhere." McNaughton-McKay Elec. Co. of NC, Inc. v. Andrich, 324 S.C. 275, 280 (S.C. Ct. App. 1996) (quoting 1B J. Moore, MOORE'S FEDERAL PRACTICE ¶ 0.419[3.-2], at 430 (2d ed. 1983)). Similarly, bankruptcy orders and judgments are entitled to full faith and credit by state courts in subsequent proceedings. See id.

On its face, the legal declaration necessary in this matter is abundantly clear. Defendant is free of any liability arising from Qualitybuilt.com's alleged involvement at The Gates at Williams-Brice project. To find otherwise would be contrary to the plain language of the contract at issue and the subsequent confirmation of that contract by order of the United States Bankruptcy Court. Therefore, Defendant seeks declaratory relief as to its lack of liability under the Purchase Agreement and Sale Order and a dismissal with prejudice.

B. In The Alternative, Defendant Moves The Court To Grant Summary Judgment In Its Favor As To Defendant Having No Liability To Plaintiffs In This Case.

In the event the Court declines to render declaratory relief, Defendant moves the Court to grant summary judgment in its favor.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Flemming v. Rose, 350 S.C. 488 (S.C. 2002) (emphasis added). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; see also Smith v. S.C.

Ins. Co., 350 S.C. 82 (S.C. Ct. App. 2002); Tupper v. Dorchester County, 326 S.C. 318 (S.C. 1997).

Defendant submits to the Court that there is no genuine issue as to any material fact that pursuant to the Sale Order and Purchase Agreement, Defendant has no liability in this action as it was not involved in The Gates at Williams-Brice project. The Gates was completed in 2007, prior to Defendant's formation in 2009. Moreover, as recited herein above (and as attached to this Memorandum) the terms of the Sale Order and Purchase Agreement leave no question that Defendant did not assume the liability of a claim arising from The Gates when it purchased the assets of Qualitybuilt.com in 2010.

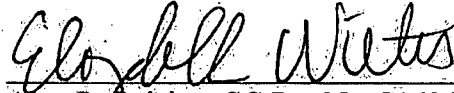
Therefore, Defendant moves the Court for judgment as a matter of law, finding that Defendant has no assumed liability pertaining to this action and should be dismissed with prejudice.

CONCLUSION

Based upon the foregoing grounds, the arguments of counsel at the hearing, statutory and common law in support of its motion, the Clerk of Court's file in this matter, and any additional memorandum of law, documents, or materials submitted in support of its motion, Defendant Quality Built, LLC hereby moves this Honorable Court for declaratory relief and/or summary judgment in its favor, and a dismissal with prejudice from this action.

Respectfully submitted,

HALL BOOTH SMITH, P.C.



Alan R. Belcher, SC Bar No. 71686

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Email: abelcher@hallboothsmith.com

ewieters@hallboothsmith.com

Attorneys for Quality Built, LLC

February 1, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Defendant Quality Built, LLC's Memorandum in Support of Its Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

Justin Lucey, Esq.
Stephanie Drawdy, Esq.
415 Mill Street
Post Office Box 806
Mt. Pleasant, SC 29464-0806

Attorneys for Plaintiffs

Kent T. Stair, Esq.
C. Robin Graham, Esq.
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, SC 29401

*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*

RICHLAND COUNTY
FILED
2017 FEB 21 AM 11:00
JEANETTE M. MCBRIDE
C.C.P. & G.S.

This 17th day of February, 2017.

HALL, BOOTH, SMITH, P.C.

By Shellie L. Fischer
Shellie L. Fischer
Legal Assistant

CSD 1001C (11/15/04)

Name, Address, Telephone No. & I.D. No.

L. Scott Keehn (SBN 61691)

Leslie F. Keehn (SBN 199153)

KEEHN & ASSOCIATES, APC

402 W. Broadway, Suite 1210

San Diego, California 92101

(619) 400-2200

Attorneys for Debtor-in-Possession Qualitybuilt.com



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re,

Qualitybuilt.com, a California corporation,

Debtor-in-Possession

LODGED

BANKRUPTCY NO.: 09-12113-PB11

Date of Hearing: March 1, 2010

Time of Hearing: 10:30 a.m.

Name of Judge: Hon. Peter W. Bowie

ORDER

(I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND RELATED PROCEDURES AND (III) GRANTING RELATED RELIEF.

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 15 with exhibits, if any, for a total of 15 pages, is granted. Notice of Lodgment Docket Entry No. 140

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DATED: March 11, 2010

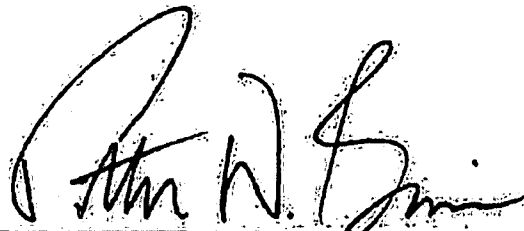
Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

KEEHN & ASSOCIATES, APC

(Firm name)

By: /s/ L. Scott KeehnAttorney for ☒ Movant ☐ Respondent


 Judge, United States Bankruptcy Court



CSD 1001A/119482

Quality Built, LLC, Production of Documents 00251

ROA_00172

This matter is coming before the Court on the motion, dated January 29, 2010 (the "Sale Motion") (Docket No. [110]), in Department 4 of the above entitled court, the Honorable Peter W. Bowie, Judge presiding. Appearances were made by the Firm of Keehn & Associates, APC, by L. Scott Keehn, on behalf of the debtor, by the firm of Winthrop Couchot, by Garrick A. Hollander, Esq. On behalf of Quality Built, LLC, the Acting United States Trustee by Haeji Hong, Esq, one of her Trial Attorneys, the firm of Solomon Ward Seidenwurm & Smith by Michael D. Breslauer, Esq. On behalf of Coast to Coast Engineering, Inc. d/b/a Criterium Engineers. The Sale Motion had been filed by the above-captioned debtor and Debtor in possession (the "Debtor") for entry of an order (the "Sale Order"), pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code", Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1, and 9006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of California (i) authorizing and approving the entry into, performance under and terms and conditions of First Amended and Restated Asset Purchase Agreement, dated as of December 18, 2009 (collectively with all related agreements, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, the "Purchase Agreement"), substantially in the form previously filed as attachment Number 1 (Exhibit Part 1); and Number 2 (Exhibit Part 2) of Docket Item 138 (Notice of Lodgment of Order), and is incorporated herein by this reference, between and among Quality Built, LLC ("Purchaser"), a Delaware limited liability company, and the Debtor, whereby the Debtor has agreed to sell, and the Purchaser has agreed to purchase the "Purchased Assets" (as such term is defined and described in Article 1 of the Purchase Agreement), which Purchased Assets include, without limitation, the Assumed Contracts (as defined in section 1.1 of the Purchase Agreement), all of the Debtor's tangible, intangible and operating assets related to the conduct of the Debtor's (the "Business"), that are defined and described in section 1.1 of the Purchase Agreement; (ii) authorizing and approving the sale by the Debtor of the Purchased Assets, free and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), liabilities encumbrances, rights, remedies, restrictions, and interests and encumbrances of any kind of nature whatsoever whether arising before or after the Petition Date, whether at law or in equity, all environmental claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Purchased Assets to the Purchaser or to be excused from accepting performance by the Purchaser or performing for the benefit of the Purchaser under any Assumed Contract and all rights at law or in equity (collectively, "Claims") (other than certain liabilities that are expressly assumed or created by the Purchaser, as set forth in the Purchase Agreement (collectively, the "Assumed Liabilities")); (iii) authorizing the assumption and assignment to the Purchaser of the Assumed Contracts (collectively, the "Assumed Contracts"); the Court having conducted a hearing on the Sale Motion on March 1, 2010 (the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion and submit over-bids; the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto, (ii) the Purchase

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Quality Built, LLC, Production of Documents 00252
Signed by Judge Peter W. Bowie March 11, 2010

ORDER AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL, ETC.
DEBTOR: Qualitybuilt.com

CASE NO: 09-12113-PB11

Agreement attached hereto as Exhibit A, (iii) all of the pleadings, papers, declarations, and evidence submitted in support of or in opposition to the Sale Order, and (iv) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion [and the auction conducted at the Sale Hearing (the "Auction")] and the relief requested in the Sale Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and upon the record of the Sale Hearing and this case; and after due deliberation thereon; and good and sufficient cause appearing therefore;

IT IS HEREBY FOUND AND DETERMINED THAT:

THE DEBTOR AND ITS CASE

A. As of the Petition Date and for a period of approximately 60 days before the commencement of these chapter 11 cases, the Debtor worked to try to raise capital or implement a viable transaction that would allow the Debtor to continue operations. Those efforts continued through the execution of the Purchase Agreement on December 18, 2009. The Debtor presented credible evidence that, as of the filing of the Sale Motion, it had explored strategic alternatives for the Business over an extended period of time and had communicated with more than 54 parties about possible sales, mergers, combinations, and alternatives regarding debt or equity capital investments or financing and had prepared standalone business plans in the event that strategic alternatives did not materialize or were insufficient. The Sale Transaction is the result of the Debtor's diligent efforts and is reasonable under the circumstances.

JURISDICTION, FINAL ORDER AND STATUTORY PREDICATES

B. This Court has jurisdiction over the Sale Motion, the Sale Transaction and the Purchase Agreements pursuant to 28 U.S.C. §§ 157 (b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is not just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Sale Motion and granted in this Order include, without limitation, sections 105(a), 363(b), (f) and (m) and 365(a), (b) and (f) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006.

JUDICIAL NOTICE

E. Pursuant to the Federal Rule of Evidence 201(c), incorporated into these proceedings pursuant to Bankruptcy Rule 9017, the Court takes judicial notice of: Not Applicable.

SOUND BUSINESS PURPOSE

F. The Debtor seeks to convey the Purchased Assets, all of which are subject to Claims.

G. The Debtor is unable to continue financing its ongoing operations, and in the absence of the relief granted herein, will default on performance of the Assumed Contracts. Those defaults will produce additional claims against the Debtor and its estate. The amount of those claims is credibly projected to be between \$6 – \$7 Million.

The Debtor has not paid post-petition rent for its lease of its principal place of business located at 15330 Avenue of Science, San Diego, California 92120 (the "Real Property"), its landlords are in default on their obligations secured by Real Property. Non-judicial foreclosure proceedings were commenced against the Real Property on or about November 19, 2009. The debt secured by the Real Property is in excess of its appraised value, and the Debtor's landlords (which are two limited liability companies) each of which has a single member. The respective members are Stan Luhr and Elizabeth Michaelis (the Debtor's Shareholders), have no resources with which to cure the defaults on the debt secured by the Real Property, and expect to lose that property to foreclosure in March 2010.

H. The Debtor has demonstrated, and the Purchase Agreement reflects, both (1) good, sufficient and sound business purposes and justifications for immediate approval of the Purchase Agreement and the Sale Transaction, and (2) compelling circumstances for the approval of the Purchase Agreement and the Sale Transaction outside the ordinary course of the Debtor's business pursuant to Section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, the Debtor's estate will suffer immediate and irreparable harm due to its inability to continue operations to preserve the going concern value of the business. In light of the risk of deterioration in, and loss of the going concern value of the Purchased Assets pending the proposed Sale Transaction, time is of the essence in (a) consummating the Sale Transaction, (b) preserving the viability of the Debtor's businesses as going concerns and (c) minimizing the adverse economic consequences for the Debtor estate, and its creditors, that would be threatened by protracting the proceeding in this chapter 11 case.

I. The consummation of the Sale Transaction outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtor's creditor nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale Transaction does not constitute a sub rosa plan of reorganization.

J. Entry of an order approving the Purchase Agreement and all the provisions thereof is a necessary condition precedent to the Purchaser's consummation of the Sale Transaction, as set forth in the Purchase Agreement.

K. The Purchase Agreement was not entered into, and the Debtor, the Purchaser or the Purchasers present at the Sale Hearing or contemplated owners, have not entered into the Purchase Agreement or propose to consummate the Sale Transaction, for the purpose of hindering, delaying or defrauding the Debtor's present or future creditors. Neither the Debtor, CSD 1001A/119482

Quality Built, LLC, Production of Documents 00254
Signed by Judge Peter W. Bowie March 11, 2010

the Purchaser nor the Purchasers present at the Sale Hearing or contemplated owners are entering into the Purchase Agreement, or proposing to consummate the Sale Transaction, fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

L. The Debtor has exercised sound and proper business judgment in determining to sell the Purchased Assets.

HIGHEST AND BEST OFFER

M. The Sale Motion established proposed bidding procedures (the "Bidding Procedures"). The Bidding Procedures provided a full, fair and reasonable opportunity for an entity to make an offer to purchase the Purchased Assets. However, there were no qualified bidders at the Sale Hearing.

N. As demonstrated by the declarations and other evidence proffered or adduced at the Sale Hearing, (1) the Debtor has adequately marketed the Purchased Assets; (2) the consideration provided for in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (3) the Sale Transaction is fair and reasonable in of respects; (4) the Sale Transaction will provide a greater recovery for and benefit to the Debtor's creditors than would be provided by any other practical available alternative; (5) no other party or group of parties has offered to purchase the Purchased Assets for greater economic value to the Debtor or its estate; (6) the consideration to be paid by the Purchaser under the Purchase Agreement exceeds the liquidation value of the Purchased Assets, net of the resulting breach of contract claims that are likely to follow, if the Purchased Assets are not sold to an entity that can perform Assumed Contracts, and the Assumed Liabilities; and (7) the consideration to be paid by the Purchaser under the Purchase Agreement constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing. The Debtor's determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.

BEST INTEREST OF CREDITORS

O. Approval of the Purchase Agreement and the consummation of the Sale Transaction with the Purchaser at this time is in the best interest of the Debtor, its creditors, its estate, and other parties in interest.

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Quality Built, LLC, Production of Documents 00255
Signed by Judge Peter W. Bowie March 11, 2010

DESCRIPTION OF THE PURCHASER AND THE PURCHASER'S GOOD FAITH

P. The Purchaser is a newly formed Delaware limited liability company. Neither the Purchaser nor any of its members are "insiders" of the Debtor, as that term is defined by section 101(31) of the Bankruptcy Code.

Q. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtor and the Purchaser in good faith, without collusion or fraud and from arm's-length bargaining positions. The Purchaser has proceeded in good faith in all respects in connection with this proceeding, is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. None of the Debtor, the Purchaser nor the Purchasers present at the Sale Hearing or contemplated owners have engaged in any conduct that would cause or permit the Purchase Agreement or any of the transactions contemplated thereby to be avoided; that would tend to hinder, delay or defraud creditors; or that impose costs and damages under section 363(n) of the Bankruptcy code.

NOTICE OF THE SALE MOTION, THE AUCTION AND THE CURE AMOUNTS

R. As evidenced by the affidavits and certificates of service filed with the Court, in light of the wasting nature of the Debtor's going concern value and based upon the representations of counsel at the Sale Hearing, the Court finds that: (1) proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures, the Auction, the Sale Hearing has been properly and adequately provided by the Debtor, (2) such notice, and the form and manner thereof, was good, sufficient, reasonable and appropriate under the exigent circumstances prevailing in this chapter 11 case and (3) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding Procedures, the Auction, the Sale Hearing is or shall be required. In light of the need to grant the relief requested in the Sale Motion promptly to avoid any erosion in the going concern value of the Purchased Assets, a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to, the following:

- (i) counsel to any official committees formed in this chapter 11 case;
- (ii) all unsatisfied prepetition secured lenders;
- (iii) the Purchaser;
- (iv) parties who, in the past year, have expressed in writing to the Debtor an interest in acquiring the Purchased Assets;
- (v) nondebtor parties (the "Non-Debtor Counterparties") to the Assumed Contracts, and the Assumed Liabilities;
- (vi) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Purchased Assets or who are reflected as secured parties in lien searches conducted by the

ORDER AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL, ETC.
DEBTOR: Qualitybuilt.com

CASE NO: 09-12113-PB11

Debtor;

- (vii) the Securities and Exchange commission;
- (viii) the Internal Revenue Service;
- (ix) all applicable state and local taxing authorities;
- (x) the Office of the United States Trustee for the Southern District of California;
- (xi) all parties that filed objections to the Sale Motion;
- (xii) all entities that have requested special notice in this chapter 11 case under Bankruptcy Rule 2002, or otherwise;
- (xiii) any other party identified on the creditor matrix in these cases.

S. With respect to executory contracts or unexpired leases that are designated by the Debtor or Purchaser as Assumed Contracts or Assumed Liabilities, all Non-Debtor Counterparties to such Assumed Contracts, and assumed with the opportunity to object to both the Cure Costs identified in any Assignment Notice delivered to any such Non-Debtor Counterparty and the assumption and assignment of the applicable Assumed Contract (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code).

SECTION 363(F) REQUIREMENTS MET FOR FREE AND CLEAR SALE

T. The Debtor may sell the Purchased Assets free and clear of all Claims because, in each case where a Claim is not an Assumed Liability, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. The assumption and assignment of each of the Assumed Contracts is also free and clear of all Claims.

U. The Debtor is the sole and lawful owner of the Purchased Assets and no other person has any ownership right title or interest therein.

V. Those holders of Claims who did object fall within one or more of the other subsections of section 363(f) and 365 of the Bankruptcy Code as either (1) the consideration received in exchange for the Purchased Assets is greater than the aggregate value of all liens on the Purchased Assets, (2) there is a bona fide dispute with respect to certain of the Claims asserted by the Debtor's prepetition secured lenders or (3) such holders could be compelled in a legal or equitable proceeding to accept a money satisfaction of their Claims. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement will be a legal, valid and effective transfer of all the legal, equitable and beneficial right, title and interest in and to the Purchased Assets free and clear of all Claims that are not Assumed Liabilities (including, specifically and without limitation, any professional liability claims, environmental liabilities, employee benefit plans and any successor liability claims). All holders

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Quality Built, LLC, Production of Documents 00257
Signed by Judge Peter W. Bowie March 11, 2010

of Claims are adequately protected - and the Sale Transaction thus satisfies section 363(e) of the Bankruptcy Code - by having their Claims, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against which they have a Claim, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Sale Transaction, subject to any rights, claims and defenses to the Debtor or its estate, as applicable.

W. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtor, its estate, creditors, employees, and other parties in interest if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Contracts and Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities (collectively, the "Excluded Liabilities") that expressly are not assumed by the Purchaser, as set forth in the Purchase Agreement. The Purchaser asserts that it will not consummate the Sale Transaction unless the Purchase Agreement specifically provides and this Court specifically orders that neither the Purchaser, its affiliates, its present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment setoff or otherwise, directly or indirectly, any Claim or Excluded Liability.

X. Without limiting the generality of the foregoing, the Purchase Agreement provides the Debtor with reasonably equivalent value and fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the Bankruptcy Code), and was not entered into for the purpose or, nor does it have the effect of, hindering, delaying or defrauding creditors or any of the Debtor's under any applicable laws. Except for the Assumed Liabilities, the Sale Transaction shall not impose or result in the imposition of any liability or responsibility on Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), and the transfer of the Purchased Assets to the Purchaser does not and will not subject the Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), to any liability for any Claims, including, without limitation for any successor liability or any products liability for the sale of any vehicle by the Debtor or their predecessors or affiliates.

ASSUMPTION AND ASSIGNMENT OF THE ASSUMED CONTRACTS

Y. The assumption and assignment of the Assumed Contracts are integral to the Purchase Agreement, are in the best interests of the Debtor and its estate, and represent the reasonable exercise of the Debtor's sound business judgment.

Z. With respect to each of the Assumed Contracts, the Debtor has met all requirements of section 365(b) of the Bankruptcy Code. Further, the Purchaser has provided all necessary adequate assurance of future performance under the Assumed Contracts in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code. Accordingly, the Assumed Contracts can be assumed by the Debtor and assigned to the Purchaser, as provided for in the Contract Procedures set for in the Bidding

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Quality Built, LLC, Production of Documents 00258
Signed by Judge Peter W. Bowie March 11, 2010

ORDER AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL, ETC.
DEBTOR: Qualitybuilt.com

CASE NO: 09-12113-PB11

Procedures Order, the Sale Motion and the Purchase Agreement. The procedures set forth in the Sale Motion are fair, appropriate and effective and, upon approval of the assumption and assignment for a particular Assumed Contract thereunder, the Debtor shall be forever released from any and all liability under the Assumed Contract.

VALIDITY OF THE TRANSFER

AA. As of the closing of the Sale Transaction (the "Closing"), the transfer of the Purchased Assets to the Purchaser will be a legal, valid and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Claims other than Assumed Liabilities.

BB. With the entry of this Order, the Debtor (1) has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtor; (2) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; (3) has taken all actions necessary to authorize and approve the Purchase Agreement and the consummation by the Debtor of the transactions contemplated thereby; and (4) upon entry of this Order, needs no consents or approvals, other than those expressly provided for in the Purchase Agreement, which may be waived by the Purchaser, to consummate such transactions.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

GENERAL PROVISIONS

1. The Sale Motion is granted in its entirety and entry into and performance under and in respect of the Purchase Agreement and the Sale Transaction is approved, as set forth in this Sale Order.

2. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

3. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or any stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice, except as expressly provided herein.

APPROVAL OF THE PURCHASE AGREEMENT

4. The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved.

5. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtor is authorized and directed to perform its obligations under and comply with the terms of the Purchase Agreement and consummate the Sale Transaction,

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Quality Built, LLC. Production of Documents 00259
Signed by Judge Peter W. Bowie March 11, 2010

pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Sale Order.

6. The Debtor, as well as its officers, employees and agents, are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, in substantially the same form as the Purchase Agreement attached hereto as Exhibit A, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions and execute such other documents as may be (a) reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, the Purchased Assets, (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement, and (c) as may be reasonably requested by Purchaser to implement the Purchase Agreement and consummate the Sale transaction in accordance with the terms thereof, all without further order of the Court.

7. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Purchaser, the Debtor, any trustees appointed in the Debtor's cases (whether under chapter 11 or chapter 7 of the Bankruptcy Code), all creditors (whether known or unknown) of the Debtor, all interested parties and their successors and assigns including, but not limited to, any party asserting a Claim and any Non-Debtor Counterparty to the Assumed Contracts. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order confirming any such chapter plan shall conflict with or derogate from provision of the Purchase Agreement or this Sale Order, and to the extent of any conflict or derogation between this Sale Order or the Purchase Agreement and such further plan or order, the terms of this Sale Order and the Purchase Agreement shall control to the extent of such conflict or derogation.

8. All amounts, if any, to be paid by the Debtor pursuant to the Purchase Agreement shall constitute administrative expenses pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be due and payable if and when any Debtor's obligations arise under the Purchase Agreement without further order of the Court.

TRANSFER OF PURCHASED ASSETS FREE AND CLEAR

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtor are authorized and directed to transfer the Purchased Assets in accordance with the terms of the Purchase Agreement. The Purchased Assets shall be transferred to the Purchaser, and upon consummation of the Purchase Agreement, such transfer (a) shall be a valid, legal, binding and effective transfer; (b) shall vest the Purchaser with full right, title and interest of the Debtor in the Purchased Assets; and (c) shall be free and clear of all Claims except for Assumed Liabilities with all such Claims to attach to the net proceeds of the Sale Transaction ultimately attributable to the Purchased Assets against or in which such Claims are asserted, in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to any rights, claims and defenses the Debtor or their estates, as applicable, may possess with respect thereto.

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Quality Built, LLC Production of Documents 00260
Signed by Judge Peter W. Bowie March 11, 2010

10. Except as otherwise provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holder, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders customers, employees, trade creditors, litigation claimants and other creditors, holding Claims (whether legal or equitable, secured or unsecured, known or unknown, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) except for Assumed Liabilities, arising under or out of, in connection with, or in any relating to, the Debtor, the Purchased Assets, the operation of the Business prior to Closing or the transfer of the Purchased Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against the Purchaser, its successors or assigns, its property or the Purchased Assets. No such persons or entities shall assert against the Purchaser or their successors in interest any Claim arising from, related to or in connection with the ownership, sale or operation of any Assets prior to the Closing, except for Assumed Liabilities.

11. The Sale Order (a) shall be effective as a determination that, as of Closing (i) no Claims, other than Assumed Liabilities and Assumed Contracts relating to the Purchased Assets, will be assertable against the Purchaser, its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), (ii) have been unconditionally released, discharged and terminated, and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

12. All persons or entities in possession of some or all the Purchased Assets that have received notice of the Sale Motion at least 14 days prior to the last session of the Sale Hearing, are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the Sale Transaction.

13. Following the Closing of the Sale Transaction, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim, or based on any actions the Debtor may take in their chapter 11 cases.

14. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtor to transfer the Purchased Assets to the Purchaser in accordance with the Purchase Agreement.

CSD 1001A/119482

Quality Built, LLC, Production of Documents 00261
Signed by Judge Peter W. Bowie March 11, 2010

Agreement and this Sale Order.

15. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction contemplated by the Purchase Agreement.

ASSUMPTION AND ASSIGNMENT OF ASSUMED CONTRACTS

16. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy code, the Debtor's assumption and assignment or other transfer to the Purchaser and all of the Debtor's right, title and interest therein or thereunder of the Assumed Contracts is hereby approved, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied. For the avoidance of doubt, the Debtor shall be deemed to have assumed and assigned each of the Assumed Contracts as of the date of and effective only upon the Closing of the Sale Transaction and, absent such Closing, each of the Assumed Contracts shall neither be deemed assumed nor assigned and shall in all respects be subject to subsequent assumption or rejection by the Debtor under the Bankruptcy Code.

17. The Debtor is hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign, sell and otherwise transfer the Assumed Contracts and all of the Debtor's right, title or interest therein or thereunder to the Purchaser free and clear of all Claims, and to execute and deliver to the Purchaser such documents or other instruments as reasonably may be necessary to assign and transfer the Assumed Contracts to the Purchasers.

18. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the types described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no assignment fees, penalties, increases or any other fees charged to the Purchaser or the Debtor as a result of the assumption or assignment of the Assumed Contracts. No Assumed Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the transactions contemplated by the Purchase Agreement.

19. [RESERVED]

20. [RESERVED]

21. Each Non-Debtor Counterparty to an Assumed Contract hereby is forever barred, estopped and permanently enjoined from asserting against the Debtor or the Purchaser, their successors or assigns of the property of any of them, any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

CSD 1001A/119482

Quality Built, LLC, Production of Documents 00262
Signed by Judge Peter W. Bowie March 11, 2010

ORDER AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL, ETC.

DEBTOR: Qualitybuilt.com

CASE NO: 09-12113-PB11

22. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtor's and Purchaser's rights to enforce every term and condition of the Assumed Contracts.

23. Upon the Closing, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assumed Contracts.

24. The assignments of each of the Assumed Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

ADDITIONAL PROVISIONS

25. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Claims. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of any Claims of any kind whatsoever.

26. While the Debtor's bankruptcy case is pending, this Court shall retain jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith in all respects), to adjudicate disputes related to this Sale Order or the Purchase Agreement and to enter any orders under sections 363 and/or 365 of the Bankruptcy Code with respect to the Assumed Contracts.

27. No bulk sales law, or similar law of any state or other jurisdiction, shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion and this Sale Order.

28. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction (including the assumption and assignment of the Assumed Contracts), unless such authorization is duly stayed pending such appeal.

29. The consideration provided by the Purchaser of the Purchased Assets constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

30. The Sale Transaction may not be avoided under section 365(n) of the Bankruptcy Code.

CSD 1001A/119482

Quality Built, LLC, Production of Documents 00263
Signed by Judge Peter W. Bowie March 11, 2010

31. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, its creditors, the Purchaser, the respective affiliates, successors and assigns of each, and any affected third parties including, but not limited to, all persons asserting claims in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), examiner(s) or receiver(s) under any chapter of the Bankruptcy Code or any other law, and all such provision and terms shall likewise be binding on such trustee(s), examiner(s) or receiver(s) and shall not be subject to rejection or avoidance by the Debtor, its estate, its creditors, their shareholders or any trustee(s), examiner(s), or receiver(s).

32. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement and its exhibits and ancillary documents be authorized and approved in their entirety.

33. The Purchase Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplemental does not materially change the terms of the Purchase Agreement.

34. As provided by Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedures, this Sale order shall not be stayed for 10 days after its entry and shall be effective immediately upon entry, and the Debtor and the Purchaser are authorized to close and the Sale Transaction immediately upon entry of this Sale Order. Any party objecting to this Sale Order must exercise due diligence in filing and appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and Debtor elect to close prior to this Sale Order becoming a Final Order.

35. Buyer shall have no obligations under any liabilities of Seller or the Bankruptcy Estate other than the Assumed Liabilities, the Assumed Contracts, and its obligations under this Agreement.

36. The provisions of this Sale Order and any actions take pursuant hereto shall survive the entry of any order that may be entered confirming any plan of reorganization (or liquidation) for the Debtor, converting the Debtor's case from Chapter 11 to a case under Chapter 7 of the Bankruptcy Code, or dismissing this case.

///

ORDER AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL, ETC.

DEBTOR: Qualitybuilt.com

CASE NO: 09-12113-PB11

37. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Order including to compel delivery of the Purchased Assets, to protect the Purchaser against any Claims and to enter any orders under sections 363 or 365 to transfer the Purchased Assets and Assumed Contracts to the Purchaser.

[Approvals as to Form as Necessary]

WINTHROP COUCHOT
PROFESSIONAL CORPORATION

By: /s/ Garrick A. Hollander
Garrick A. Hollander, Esq.
Attorneys for Interested Party, Quality Built, LLC

KEEHN & ASSOCIATES, APC

By: /s/ L. Scott Keehn
Attorneys for Debtor and Debtor -in-Possession,
Qualitybuilt.com

EXECUTION VERSION

**AMENDED AND RESTATED
ASSET PURCHASE AGREEMENT**

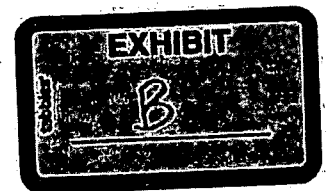
by and among

QUALITYBUILT.COM,
as Seller

and

QUALITY BUILT, LLC
as Buyer

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**AMENDED AND RESTATED
ASSET PURCHASE AGREEMENT**

This Amended and Restated Asset Purchase Agreement (this "Agreement") is made as of January __, 2010 (the "Effective Date"), by and among QualityBuilt.com, a California corporation ("Seller"), Quality Built, LLC, a Delaware limited liability company ("Buyer"), Stan Luhr, an individual residing in California ("Mr. Luhr") and Elizabeth Michaelis, an individual residing in California ("Ms. Michaelis").

RECITALS

Whereas Seller commenced a case under chapter 11 of title 11 of the Bankruptcy Code on August 14, 2009, which is now pending in the Bankruptcy Court as Case No. 09-12113-PB11 (the "Bankruptcy Case");

Whereas, the parties hereto previously entered into that certain Asset Purchase Agreement, dated August 19, 2009 (the "Original Agreement") and the parties were unable to consummate the transactions contemplated under the Original Agreement upon the terms and conditions contained therein.

Whereas, the parties now desire to amend and restate in its entirety the Original Agreement on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter set forth, Buyer and Seller hereby agree as follows:

AGREEMENT

**ARTICLE 1
PURCHASE AND SALE OF ASSETS**

1.1 Agreement to Sell and Purchase Assets. Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties, Buyer's independent due diligence and covenants set forth in this Agreement, Seller agrees to sell, assign, transfer and convey to Buyer, and Buyer agrees to purchase and acquire from Seller at the Closing, free and clear of all mortgages, security interests, liens, leases, covenants, assessments, easements, options, rights of refusal, restrictions, reservations, defects in the title, encroachments, adverse claims and other encumbrances (collectively, and in each case including without limitation all "interests" as such term is used in section 363(f) of the Bankruptcy Code, "Liens"), all of Seller's and all of the Bankruptcy Estate's right, title, and interest in, to and under all of the assets, property, rights and claims of Seller and the Bankruptcy Estate, wherever located, real, personal or mixed, whether tangible or intangible, used in the Business as currently conducted by Seller (the "Business"), other than the Excluded Assets (each a "Purchased Asset" and collectively, the "Purchased Assets"), including, without limitation all of Seller's and all of the Bankruptcy Estate's right, title and interest in, to and under the following:

(a) all Intellectual Property and other intangible assets, including, without limitation, all patents of any nature whether pending or issued and whether authored by the Company or any of the individuals parties hereto, Registered IP, the intellectual property rights and other intangible assets listed on Schedule 1.1(a), wherever held or registered, including all proprietary Software and all assignable licensed Software, and the right to sue and collect damages related thereto for past, present and future infringement of any of the foregoing (collectively, "Business Intellectual Property");

(b) all inventory and supplies at the time of the Closing as set forth on Schedule 1.1(b);

(c) all accounts receivable and rights to payment for services rendered that are current or 90 days or less overdue as of the Closing Date; which shall not be materially different from those summarized on Schedule 1.1(c) (the "Purchased AR")

(d) work in process and executory contracts listed on Schedule 1.1(d) (each an assumed contract, and collectively the "Assumed Contracts"); Buyer reserves the right to delete or add Assumed Contracts to Schedule 1.1(d) at any time on or before the 14th day prior to the 363 Hearing by filing and serving notice thereof to the Seller, United States Trustee, the 20 largest creditors, and any party in interest that requests special notice;

(e) all sales and marketing materials relating to the Purchased Assets;

(f) all billing information and customer lists relating to the Purchased Assets;

(g) all supplier information and supplier lists relating to the Purchased Assets;

(h) all books of account, ledgers, financial, accounting and Tax records and all general and personnel records, files, invoices, customers' and suppliers' lists, marketing lists, other distribution and mailing lists, price lists, reports, plans, advertising materials, sales and marketing materials, catalogues, billing records, sales and promotional literature, manuals, manufacturing, quality and engineering records and customer and supplier correspondence (the "Records") that pertain to the Purchased Assets;

(i) the IT Systems, including without limitation, the equipment listed on Schedule 1.1(e);

(j) Except for those assets described in paragraph 1.2 below, all litigation rights, causes of action, choses in action and rights of action of recovery and counterclaims and setoff and recoupment rights, whether known or unknown and including the proceeds thereof, including without limitation any and all claims, deposits, security deposits and other security, prepayments, prepaid assets, refunds, causes of action, rights of recovery, rights of setoff and rights of recoupment arising from or relating to the Purchased Assets, Intellectual Property, and/or the Purchased AR;

(k) to the extent not included in any of the foregoing, any and all insurance rights relating to the foregoing, but which do not relate to any of the Excluded Assets described in Section 1.2 below, including without limitation the benefit of all pre-paid premiums;

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Purchased Assets shall not include any assets excluded by the terms of this Section 1.2 (the "Excluded Assets"), such Excluded Assets consisting in their entirety of Seller's and the Bankruptcy Estate's right, title and interest in, to and under the following:

(a) all rights in respect of a judgment in favor of Seller against West Coast Property Consultants, Inc.;

(b) any executory contracts or leases other than the Assumed Contracts (the "Rejected Contracts"); and

(c) all rights in respect to a judgment in favor of Seller against Thomas Clark and Alan Thomas; all accounts receivables and rights to payment for services rendered that are more than 90 days overdue as of the Closing Date;

(d) all cash and cash equivalents as of the Closing;

(e) all other assets listed or otherwise described on Schedule 1.2(g), which schedule Buyer shall have the right to update in its discretion at any time within five (5) business days prior to the first date set for the 363 Hearing by written notice to Seller and Seller shall provide such list to all persons and entities that have filed a "Request for Special Notice" in the Bankruptcy Case or have otherwise provided actual notice of their intention to become a qualified bidder at the 363 Hearing; and

(f) any property of the Bankruptcy estate, including, without limitation, litigation rights arising under or related to claims, and choses of action arising under Chapter 5 of the Bankruptcy Code ("Avoidance Action"), which is not specifically included in Section 1.1 above.

ARTICLE 2 LIABILITIES

2.1 Assumed Liabilities. Subject to the terms and conditions of this Agreement, at and as of the Closing, Buyer shall assume and agree to pay, perform, discharge and satisfy when due in accordance with their terms only the following liabilities and obligations of Seller and the Bankruptcy Estate all accounts payable of the Seller that arose from or are related to the Assumed Contracts set forth on Schedule 2.1, if and only to the extent such payable directly resulted in a Purchased AR which has been actually collected by Buyer (the "Assumed Accounts Payable").

2.2 **Excluded Liabilities.** Except to the extent expressly included in the Assumed Liabilities, and to the maximum extent permitted by law, Buyer shall not assume, and shall have no liability or obligation for any other liabilities of Seller or the Bankruptcy Estate, as a successor in interest or otherwise, including, without limitation, any liability arising out of, or related to, any:

(a) employee or consultant of Seller or the Bankruptcy Estate, including any liability with respect to any key employee retention plans, any liability with respect to or arising from any "employee benefit plan" (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended), any liability with respect to the Worker Adjustment and Retraining Notification (WARN) Act and any liability with respect to COBRA coverage for employees or consultants of Seller or the Bankruptcy Estate terminated prior to or as part of the consummation of the transactions set forth in this Agreement;

(b) any severance payable to any employee or consultant of Seller or the Bankruptcy Estate;

(c) any costs or expenses incurred in connection with, or related to, the administration of the Bankruptcy Case, including without limitation, any accrued professional fees and expenses of attorneys, accountants, financial advisors and other professional advisors related to the Bankruptcy Case;

(d) liabilities under any warranty, guaranty or other obligation or liability of Seller or the Bankruptcy Estate arising from or relating to any acts or transactions or services performed prior to the Closing Date;

(e) any liabilities or obligations with respect to any judgments, litigation or threatened litigation, claim, obligation, damages, costs and expenses relating to or arising out of or relating to any actions or omissions of, or services performed by, Seller or the Bankruptcy Estate or any use of any of the Purchased Assets prior to the Closing Date, whether arising under contract, tort, civil or criminal law or otherwise;

(f) liabilities for environmental claims, whether arising under contract or statute, including without limitation any and all laws relating to pollution or the environment, including the Comprehensive Environmental Recovery, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 9601, et seq., the Clean Air Act, 42 U.S.C. § 7401, the Occupational Safety and Health Act, 29 U.S.C. § 600, et seq., and all other laws and regulations relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, pesticides, or industrial, infectious, toxic or hazardous substances or wastes into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the processing, generation, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, infectious, toxic, or hazardous substances or wastes (collectively, "**Environmental Laws**");

- (g) all obligations of Seller or the Bankruptcy Estate relating to taxes;
- (h) all liabilities in respect of all indebtedness of Seller or the Bankruptcy Estate;
- (i) any accounts payable of Seller or the Bankruptcy Estate other than the Assumed Accounts Payable;
- (j) liabilities and obligations under the Assumed Contracts accruing, arising out of, or to be performed prior to the effective date of the assignment to Buyer of the Assumed Contracts;
- (k) liabilities and obligations under any real or personal property leases of Seller; and
- (l) any liabilities arising under any and all Excluded Assets (collectively, the "Excluded Liabilities").

ARTICLE 3 PURCHASE PRICE AND CLOSING.

3.1 Purchase Price. If, at the conclusion of the auction authorized by the Sale Procedures Order, Buyer is declared the winning bidder for the Purchased Assets, then in consideration of the sale, transfer, conveyance and assignment of the Purchased Assets to Buyer, Buyer shall furnish to Seller for and on account of the Purchased Assets the Purchase Price as defined by this Section 3.1. The purchase price (the "Purchase Price") shall be comprised of the following components:

- (a) cash in the amount of \$300,000 (the "Cash Consideration"); and
- (b) the written assumption by Buyer of the Assumed Contracts authorized by the Sales Order.

3.2 Closing. The closing (the "Closing") of the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities shall take place within thirty (30) days after the satisfaction or waiver of the conditions to closing set forth in Article 7 herein, by electronic PDF copies or at such other time as may be agreed upon by the parties hereto (the date on which the Closing occurs, the "Closing Date"). The parties agree to use all commercially reasonable efforts to ensure the satisfaction of the conditions set forth in Article 7 so as to enable the parties to effect the Closing on or prior to the later of March 10, 2010, or the 80th day following the execution of this Agreement.

3.3 Taxes.

- (a) Any sales, transfer, use or other taxes (collectively, "Transfer Taxes") imposed as a result of sale of the Purchased Assets shall be paid by Seller.

(b) Not later than three business days before the first date set for the 363 Hearing, Buyer shall provide Seller an allocation of the Purchase Price between and among the Purchased Assets and the Assumed Liabilities, which allocation shall be made in a manner required by section 1060 of the Internal Revenue Code of 1986, as amended, and the Treasury regulations promulgated thereunder, and Seller shall provide such allocation to all persons and entities that have filed a "Request for Special Notice" in the Bankruptcy Case, or have otherwise provided to Buyer actual notice of their intention to become a qualified bidder pursuant to the Sale Procedures Order. In addition, it is agreed that such allocation will be binding on Buyer, Seller and the Bankruptcy Estate for federal income tax purposes in connection with the transactions contemplated hereby, and will be consistently reflected by each such party on their respective federal income tax returns. Subject to the other provisions of this Section 3.3(b), the parties agree to prepare and timely file all applicable Internal Revenue Service forms, including Form 8594 (Asset Acquisition Statement), and other governmental forms, to cooperate with each other in the preparation of such forms and to furnish each other with a copy of such forms prepared in draft, within a reasonable period prior to the filing due date thereof.

3.4 **Right to Insurance Proceeds.** Without affecting the rights of Buyer under any other provision of this Agreement, in the event that from and after the date hereof any part of the Purchased Assets is damaged, lost or destroyed (whether by fire, theft, or other casualty event) prior to the Closing, and such damage, loss or destruction is covered by insurance policies in effect, then upon the Closing, Seller shall transfer to Buyer the proceeds (or the right to the proceeds) of any applicable insurance for Purchased Assets so damaged, lost or destroyed which shall be deemed to have been immediately assigned to Buyer simultaneously upon the event causing the damage, loss or destruction. Notwithstanding anything to the contrary herein, should any material portion of the Purchased Assets be damaged, lost or destroyed (whether by fire, theft or other casualty event) prior to the Closing, such that it shall, in the reasonable good faith judgment of Buyer, materially and detrimentally affect Buyer's ability to carry on the Business following the Closing, such loss shall be considered a material breach of this Agreement and Buyer shall be under no obligation to accept any such assignment of proceeds or to close the sale contemplated hereby.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller as of the date hereof and as of the Closing that all the following statements are true, accurate and correct:

4.1 **Organization.** Buyer is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware.

4.2 **Power and Authority.** Buyer has all requisite power and authority to enter into and deliver this Agreement and all other documents that Buyer is required to execute and deliver hereunder and to perform its obligations hereunder, including closing the purchase and sale of the Purchased Assets, on or before the deadlines set forth herein. The signing, delivery and performance by Buyer of this Agreement, and the consummation of all the transactions contemplated hereby, have been duly and validly authorized by Buyer and any governing body

whose permission Buyer must obtain prior to entering into this Agreement or consummating the transactions contemplated hereby. Subject to Seller's representations and warranties in Article 5 herein, this Agreement has been duly and validly executed and delivered by Buyer and constitutes its valid and binding obligation, enforceable against Buyer in accordance with its terms, subject only to the laws relating to bankruptcy, insolvency and relief of debtors, and rules and laws governing specific performance, injunctions, relief and other equitable remedies.

4.3 Authorization for this Agreement. Subject only to approval of this Agreement by the Bankruptcy Court, Buyer is not aware of any other authorization, approval, consent of, or filing with any governmental body, department, bureau, agency, public board, authority or other third party, required for the consummation by Buyer of the transactions contemplated by this Agreement, which has not been obtained or made.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the corresponding section of the disclosure schedule delivered by Seller to Buyer at the execution and delivery of this Agreement (the "Seller Disclosure Schedule") Seller represents and warrants to Buyer as of the date hereof and as of the Closing that all of the following statements are true, accurate and correct:

5.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

5.2 Power and Authority. Subject only to approval of this Agreement by the Bankruptcy Court, Seller has full corporate power and authority to enter into and perform its obligations under this Agreement and has obtained all required shareholder approvals without the consent, approval or authorization of, or obligation to notify, any governmental body, department, bureau, agency, public board, authority or Person. Subject to Bankruptcy Court approval, Seller has or will have as of the Closing Date the full right, power, and authority to execute, deliver, and carry out the terms of this Agreement, and has obtained or will obtain prior to the Closing Date all documents and agreements necessary to give effect to the provisions of this Agreement and to consummate the transactions contemplated on the part of Seller hereby. Subject to Buyer's representations and warranties in Article 4 herein, this Agreement and all other agreements and documents executed in connection herewith by Seller, upon entry of the Sale Order which shall constitute a valid and binding obligation of Seller, enforceable in accordance with its terms.

5.3 No Violation of Laws or Agreements; Consents. Neither the execution and delivery by Seller of this Agreement, the consummation of the transactions contemplated hereby, nor the compliance with or fulfillment of the terms, conditions or provisions hereof by Seller, with or without the giving of notice or passage of time or both, directly or indirectly:

- (a) violates any provision of the bylaws, certificate of incorporation and any shareholder or similar agreement of Seller or any other governing agreements of Seller;
- or

(b) conflicts with, breaches, constitutes a default or an event of default under any of the terms of, results in the termination, expiration or cancellation of, creates an obligation or adversely affects a right under, requires a notice under, imposes additional obligations or loss of rights under, accelerates the maturity or expiration date of any lease, license, indenture, mortgage, or any other contract relating to a Purchased Asset to which Seller is a party or by which its assets may be bound or affected, including any mortgages and or guarantees to which any individual(s) party to this Agreement has given or made.

5.4 **Finders.** No broker, finder or investment banker retained by or working on behalf of Seller or the Bankruptcy Estate is entitled to any fee or commission from Buyer for services rendered on behalf of Seller or the Bankruptcy Estate in connection with the transactions contemplated by this Agreement.

5.5 **Title.** Seller is the only record, legal or beneficial owner of and has, and/or at Closing will have and will transfer to Buyer, good, marketable, insurable, absolute and transferable title to all the Purchased Assets, free and clear of all Liens.

5.6 **Subsidiaries.** Seller has no direct or indirect equity interest in any other corporation, partnership, joint venture or other entity.

5.7 **Financial Statements.**

(a) (i) the unaudited consolidated balance sheet and income statement as of and for the years ended December 31, 2007 and 2008 for Seller; and (ii) the unaudited consolidated balance sheet and income statement as of and for the period ended May 30, 2009, for Seller (collectively, the "**Financial Statements**") have been previously provided to Buyer, and are available for review as attachments 15 and 16 to Docket Item 18 of the courts electronic file of this case.

(b) The Financial Statements (i) have been derived from the books and records of Seller, (ii) have been prepared in accordance with GAAP on a consistent basis for the indicated period, and (iii) present fairly in all respects the financial condition and results of operation of the entities specified in the Financial Statements at the dates and for the relevant periods indicated (except that the unaudited Financial Statements described above lack any notes thereto and subject to normal year-end adjustments).

5.8 **No Change.** Since May 30, 2009, through the date of this Agreement, there has not been:

(a) any material and adverse change in the financial condition of Seller except as disclosed herein, and papers filed in the Bankruptcy Case;

(b) any material damage to, or destruction, demolition, physical loss or alteration of, any Purchased Asset, whether or not covered by insurance;

(c) any sale, lease or other disposition of any assets of Seller other than for fair value, or any condemnation or expropriation or other taking of any assets used in the business by any governmental body;

(d) any write-offs, write-downs or write-ups of the value of any of the inventory or other assets of Seller outside the ordinary course of business;

(e) any mortgage or pledge of, or any factoring or similar transaction involving, any Purchased Asset;

(f) any creation or assumption of any material indebtedness, except for indebtedness incurred in the ordinary course of business consistent with past practice;

(g) any change in the accounting methods, principles or practices employed by Seller, except as may be required by GAAP;

(h) the making of or any change to a tax election, any material change to a method of tax accounting, a filing of amended tax returns or the settlement, compromise or consent to the entry of judgment with respect to any audit, litigation or similar proceeding relating to taxes; or

(i) any agreement or commitment to do any of the foregoing.

5.9 **Absence of Undisclosed Liabilities.** Neither Seller nor any of its subsidiaries has any liability (whether known or unknown, whether absolute or contingent, or otherwise), except for (a) liabilities set forth on the face of the Financial Statements or (b) liabilities that have arisen since January 1, 2009 other than in the ordinary course of business.

5.10 **Litigation.** There is no litigation, suit, action, arbitration, inquiry, investigation, tax disputes or proceeding pending or threatened, before any court, agency or other, governmental body against Seller (or any corporation or entity affiliated with Seller) which seeks to enjoin or prohibit or otherwise prevent the transactions contemplated hereby. Other than the items as disclosed on Schedule 5.10, no action, decree, injunction, judgment, order, ruling, assessment, writ, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against Seller or any of the Purchased Assets that has not been settled or resolved, or, has been threatened against or affects Seller or any of the Purchased Assets.

5.11 **Regulatory Compliance.** The use and operation of the Purchased Assets are in compliance in all respects with all applicable laws, there are no known violations of any such laws, and Seller has not received any written notice from any governmental entity alleging any existing non-compliance with any laws.

5.12 **Taxes.** Except as set forth on Schedule 5.12:

(a) Seller has filed all income, franchise, employment, payroll, sales, use and other tax returns required to be filed by Seller and has paid all taxes due and owing (whether or not shown on any filed tax return).

(b) There are no liens for taxes (other than taxes not yet due and payable) upon any of the assets of Seller.

(c) Seller has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party.

(d) The unpaid taxes of Seller (i) did not, as of May 31, 2009, exceed the reserve for tax liability set forth on the face of the Financial Statements and (ii) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of Seller in filing its tax returns.

5.13 Real Property. Seller does not own or lease any real property.

5.14 Environmental Matters.

(a) Seller has all permits required under Environmental Laws for it to conduct its business as presently conducted and to own and operate the Purchased Assets and related facilities as presently owned and operated (collectively, the "Environmental Permits"). All such Environmental Permits are in full force and effect, and Seller has not received any notice that any suspension or cancellation of any such Environmental Permits is pending or threatened. The Purchased Assets have complied with and are in compliance with all such Environmental Permits and with all Environmental Laws.

(b) Neither Seller nor any of its predecessor(s) or affiliate(s) have received any written or oral notice, report or other information regarding any actual or alleged violation of Environmental Laws, or any liabilities or potential liabilities, including any investigatory, remedial or corrective obligations, relating to the Purchased Assets.

(c) No part of the Purchased Assets is currently known to be contaminated by any hazardous substance in a manner that has given or would give rise to liabilities, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney fees, or any investigatory, corrective or remedial obligations, pursuant to the Environmental Laws.

(d) Seller has made available to Buyer all environmental audits, reports and other environmental documents in its possession relating to the Purchased Assets.

5.15 Tangible Personal Property.

(a) Schedule 1.1(b) contains a complete list of all tools and specialized equipment used by Seller for the Business, whether on Seller's premises or held by affiliates or suppliers of Seller, and all such tools and specialized equipment shall be included in the Purchased Assets.

(b) All tangible personal property, including all tools and specialized equipment, included in the Purchased Assets is in good working order (functional wear and tear excepted).

5.16 Assumed Contracts.

(a) True and correct copies of each written Assumed Contract (and the descriptions of material terms of any oral Assumed Contracts) have been provided to Buyer.

(b) Each Assumed Contract (i) is a valid and binding obligation of Seller, (ii) to Seller's Knowledge, is a valid and binding obligation of each other party thereto.

(c) Seller is not in breach of any Assumed Contract or default thereunder.

(d) No other party to any Assumed Contract is in breach thereof or default thereunder.

(e) Other than Seller's insolvency, no event or circumstance has occurred that, with notice or lapse of time or both, would be reasonably likely to constitute a breach of an Assumed Contract or a default thereunder by Seller or any other party to such Assumed Contract.

5.17 Intellectual Property.

(a) Seller is the exclusive owner of all right, title and interest in and to the Business Intellectual Property and has a valid written agreement to use all Licensed IP. As set forth on Schedule 5.17(a), the Business Intellectual Property owned by Seller and the Intellectual Property licensed to Seller pursuant to Assumed Contracts constitutes all the Intellectual Property used in or necessary to the Business. Schedule 5.17(a) sets forth a list of all Registered IP, such list including the title, jurisdiction(s) in which each item of the foregoing was or is filed or registered. No Person has asserted, or threatened to assert to Seller any claims (i) contesting the right of Seller in any Business Intellectual Property or Licensed IP, or (ii) challenging the ownership, validity or enforceability of any Business Intellectual Property or Licensed IP.

(b) Schedule 5.17(b) lists (i) all licenses, sublicenses and other agreements to which Seller is a party and pursuant to which any third party is authorized to use, exercise or receive any benefit from the Business Intellectual Property, (ii) all agreements to which Seller is a party and pursuant to which Seller is authorized to use, exercise, or receive any benefit from any Licensed IP, and (iii) all such agreements that require Seller to license, assign or otherwise grant rights to additions, modifications or improvements to Licensed IP made by or for Seller to any third party.

(c) The operation of the Business does not infringe or misappropriate any Intellectual Property of any third party, violate any right to privacy or publicity of any third party or constitute unfair competition or trade practices under applicable laws. Seller has not received written notice from any third party that the operation of its business as currently conducted by Seller infringes or misappropriates the Intellectual Property of any third party, violates any right to privacy or publicity of any third party, or constitutes unfair competition or trade practices under applicable laws.

(d) Seller has not brought any actions or lawsuits alleging (i) infringement of any of the Business Intellectual Property or (ii) breach of any license, sublicense or other agreement authorizing another party to use any Business Intellectual Property, and, to Seller's Knowledge, there does not exist any fact which could reasonably form the basis of any such action or lawsuit.

(e) Seller has taken reasonable steps to protect and preserve the proprietary nature of the Business Intellectual Property.

5.18 Adequacy of Assets. Except as set forth on Schedule 5.18, Seller is the exclusive owner or has valid rights to all of the Purchased Assets, including without limitation Intellectual Property, that are used in or necessary for the operation of the Business.

5.19 Customers and Sales.

(a) Seller has supplied to Buyer a correct and current list of all its customers. Seller has not received notice from any significant customer that such customer intends to cease doing business with Seller or to substantially reduce its business with Seller.

(b) Seller's standard practice is to sell each product sold and to provide each service provided by Seller in conformity with all applicable contractual commitments, if any, and all express and implied warranties. Except as set forth in Schedule 5.19(b), since January 1, 2006, Seller has not given written notice to any customer of any defect or deficiency with respect to products designed, manufactured, assembled, repaired, maintained, delivered or installed or services rendered by Sellers or others nor has Seller received, during such period, any written notice from any governmental agency of any such defect or deficiency.

(c) Except as set forth on Schedule 5.19(c), from and after September 1, 2006, no third party has advised or threatened Seller that Seller or the Business has any liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any product sold or service provided by Seller or the Business from September 1, 2006, through the Closing Date. Except as set forth on Schedule 5.19(c), the Seller has no records of any such claims having been asserted at any time prior to September 1, 2006.

5.21 Insurance.

(a) Schedule 5.20(a) sets forth a complete and accurate list of the policies of insurance currently maintained by, or for the benefit of, Seller (each an "Insurance Policy" and collectively, the "Insurance Policies") with respect to the products, properties, assets and operations of Seller (including, in either case, any policies of insurance maintained for purposes of providing benefits such as workers' compensation and employers' liability coverage). All such Insurance Policies are in full force and effect. All premiums due on such Insurance Policies have been paid, and no written notice of cancellation or termination or intent to cancel has been received by Seller with respect to any of such Insurance Policies. There is no existing default or event that, with the giving of

notice or lapse of time or both, would constitute a default under any Insurance Policy or entitle any insurer to terminate or cancel any Insurance Policy.

Schedule 5.20(b) sets forth a list of all pending claims and the claims history for Seller under the Insurance Policies for the past five years for which the relevant insurance carrier has, as of the date of this Agreement, reserved or paid \$1,000 or more in respect of such claim. There are no pending claims primarily related to the operation of the business of Seller under any of such insurance policies described in the immediately preceding sentence as to which coverage has been questioned, denied or disputed by the insurer or with respect of which the insurer has reserved its rights.

5.22 Affiliate Transactions. Except as set forth on Schedule 5.21, there are no agreements, commitments or other transactions between Seller, on the one hand, and any officer, director or stockholder (including Mr. Luhr and Ms. Michaelis) of Seller or any family member of any of the foregoing, on the other hand. Except as set forth on Schedule 5.21, there are no assets used in or necessary for the conduct of the Business which are owned or otherwise under the control of any officer, director, stockholder (including Mr. Luhr and Ms. Michaelis) of Seller or any family member of any of the foregoing.

ARTICLE 6 COVENANTS OF BUYER AND SELLER

6.1 Bankruptcy Court Approval

(a) The approval of the Bankruptcy Court is required for the transactions contemplated by this Agreement to be enforceable. That approval shall be in substantially the form and substance set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Sale Order").

(b) The parties agree to use all commercially reasonable efforts to ensure the satisfaction of the conditions set forth in Article 7 so as to enable the parties to effect the Closing on or prior to the later of March 10, 2010, or the 80th day following the execution of this Agreement.

6.2 Cooperation, Due Diligence, Schedules. Between the date of this Agreement and the Closing, to the extent permitted by law, and the Buyer's execution of a confidentiality and non-disclosure agreement, Seller shall afford the authorized representatives and agents of Buyer (which shall be deemed to include its independent auditors and counsel) reasonable access to and the right to inspect the Purchased Assets and the books and records of Seller relating to the Purchased Assets and the Business, and will furnish Buyer with such additional financial and operating data and other information relating to the Purchased Assets and the Business as Buyer may from time to time reasonably request. Buyer, at Buyer's expense, shall have the right to make a reasonable number of copies of such books, records, financial and operating data and other information of Seller and shall have the right to reasonable access, for itself and its authorized representatives and agents, to the Business locations and Seller's directors, officers, employees, accountants, counsel and authorized representatives, as Buyer considers necessary or appropriate to familiarize itself with the business and operations of the Business, the Purchased

Assets or the Assumed Liabilities. Notwithstanding anything in this Agreement to the contrary, nothing in this Section 6.4, or elsewhere in this Agreement shall require any party to disclose any information that would, or reasonably may, compromise the viability of any attorney/client or attorney work product privilege.

6.3 [Reserved]

6.4 Executory Contracts

(a) Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants set forth in this Agreement, Seller shall, pursuant to section 365 of the Bankruptcy Code, with the approval and pursuant to order of the Bankruptcy Court, assume and then sell, assign, transfer and convey to Buyer all Assumed Contracts, to the extent executory. Nothing herein shall constitute an admission that any Assumed Contract is an executory contract.

(b) Seller shall be solely and absolutely responsible for any and all monetary cures or other payments required under Bankruptcy Code section 365 to assume and assign the Assumed Contracts to Buyer and without recourse to Buyer or adjustment to the purchase consideration. If Seller is unable to obtain the consent of any party that is necessary to assign any executory contract that is an Assumed Contract notwithstanding the provisions of sections 363(f) and 365(f) of the Bankruptcy Code, then, subject to any right of Buyer hereunder, Seller shall cooperate with Buyer in any reasonable arrangement designed to provide to Buyer the benefits and obligations under any such executory contract, including enforcement of any and all rights of Seller against the other party or parties thereto arising out of the breach or cancellation by such other party or otherwise.

6.5 Continuing Operations. Between the date of this Agreement and the Closing, Seller shall operate its business in the ordinary course of business and, without limiting the foregoing, shall make prompt and timely payment of all utility bills.

6.6 Transfer of Assets. At or prior to the Closing, Seller shall cause any affiliate (including without limitation Mr. Luhr and Ms. Michaelis) that owns, or has valid rights to use, any of the assets that are used in or necessary for the operation of the Business, to transfer ownership to such assets, or the rights to use such assets, as applicable to Seller, including, without limitation, all Business Intellectual Property (whether issued or pending issue) and Licensed IP.

6.7 Additionally Requested Documents; Post Closing Assistance. At the reasonable request of Buyer at Closing and at any time or from time to time thereafter, Seller (or any successor chapter 7 or 11 trustee) shall cooperate with Buyer to put Buyer in actual possession and operating control of the Purchased Assets, execute and deliver such further instruments of sale, conveyance, transfer and assignment, including without limitation endorsement of checks and/or transfer of receipts received by Seller after the Closing, as Buyer may reasonably request in order to effectively sell, convey, transfer and assign the Purchased Assets to Buyer, to execute and deliver such further instruments and to take such other actions as Buyer may reasonably request to release Buyer from all obligation and liability with regard to

any obligation or liability retained by Seller and to execute and deliver such further instruments and to cooperate with Buyer as may be required or reasonably needed to enable Buyer to obtain all necessary regulatory certifications, approvals, consents and licenses, accreditations or permits; provided, however, that Seller shall be reimbursed for its reasonable costs and expenses incurred in assisting Buyer and providing such documents, instruments, endorsements or related information, which additional documents, instruments, endorsements or related information shall be prepared solely by and at the sole expense of Buyer. Should Seller (or any successor chapter 7 or 11 trustee) fail to fulfill or comply with its obligations under this Section 6.9, Buyer shall be permitted to bring a proceeding before the Bankruptcy Court to compel such compliance or to seek an order deeming such instruments duly executed. At the reasonable request of Seller at Closing and at any time, or from time to time thereafter, Buyer shall cooperate with Seller or any successor chapter 7 or 11 trustee to make available for inspection and copying, at Seller's or its trustee's expense, business records of Seller acquired by Buyer which Seller or any successor chapter 7 or 11 trustee may reasonably request. Seller's obligations under this Section 6.9 shall terminate upon the entry of a final decree closing the Bankruptcy Case. After entry of the final decree, Buyer may, at its expense, seek an order of the Bankruptcy Court deeming any documents to be executed and delivered that may be reasonably required to effectively convey, transfer and assign the Purchased Assets to Buyer, or for Buyer to obtain necessary regulatory certifications, approvals, consents and licenses, accreditations or permits, to which order Seller hereby consents.

6.8 **Name Change.** Immediately following the Closing, Seller shall change its name from QualityBuilt.com, Inc. to a name or names which are not confusingly similar thereto, and after the Closing, Seller shall not use, directly or indirectly, the name "Quality Built" or any other name which is confusingly similar thereto. Seller shall execute any documentation necessary for Buyer or any of its Affiliates to use such name or any name similar thereto.

6.9 **Accounts Receivable/Collections.** After the Closing, Seller shall promptly deliver to Buyer any cash, checks or other property that it may receive after the Closing in respect of any accounts receivable. From and after the Closing, Seller shall permit, and hereby authorizes, Buyer to collect, in the name of Seller, all accounts receivable of Seller and to endorse with the name of Seller for deposit in Buyer's account any checks or drafts received in payment thereof. Buyer shall on a monthly basis deliver to Seller any accounts receivable relating to services rendered by Seller prior to the Closing which do not constitute Purchased AR.

ARTICLE 7 CONDITIONS TO CLOSING

7.1 **Conditions to Buyer's Obligation to Close.** The obligations of Buyer to effect the Closing hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Buyer may expressly waive the same in writing:

(a) **Entry of Sale Order.** The Bankruptcy Court shall have approved and entered the Sale Order in substantially the form of Exhibit A with any changes that are reasonably acceptable to Buyer.

(b) Assumed Contracts. For all Assumed Contracts, either (i) the Sale Order shall authorize the assumption and assignment thereof to Buyer to the extent not prohibited by applicable bankruptcy law or (ii) Seller shall have obtained all necessary consents from the non-debtor parties thereto to permit the assumption and assignment thereof to Buyer.

(c) Accuracy of Representations and Warranties on Closing Date. The representations and warranties made by Seller in Article 5 shall be true and correct in all material respects, on and as of the date hereof and on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date.

(d) Compliance. Seller shall have complied in all material respects, and shall have fully performed in all material respects, the terms, conditions, covenants and obligations of this Agreement imposed thereon to be performed or complied with by Seller at, or prior to, the Closing.

(e) No Injunction; Absence of Certain Litigation. No preliminary or permanent injunction issued by any court of competent jurisdiction restraining, prohibiting or staying the Sale Order or the transaction contemplated hereby shall be in effect. No court or any other governmental entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, or non-appealable judgment which prohibits the consummation of the Closing.

(f) No Reduction in Purchased Assets. No order shall have been entered in the Bankruptcy Case providing for the rejection of any contract or the sale of any asset that would be a Purchased Asset as of the date of this Agreement. Seller shall not have abandoned or otherwise relinquished its or the Bankruptcy Estate's interest in any asset that would be a Purchased Asset as of the date of this Agreement, other than assets disposed of or abandoned in the ordinary course of business consistent with past practice.

(g) Delivery of Assets. Seller shall have delivered and made available to Buyer the Purchased Assets hereunder in accordance with the terms of this Agreement.

(h) Material Adverse Effect. Since the date hereof, no events, circumstances or conditions shall have arisen that have had, or would reasonably be expected to have a Material Adverse Effect.

(i) New Lease. Buyer and Seller shall have entered into the Lease substantially in the form attached hereto as Exhibit C.

(j) Employment and Non-Compete Agreements. Buyer and each of Mr. Luhr and Ms. Michaelis shall have entered into employment and non-compete agreements substantially in the form attached hereto as Exhibit D.

7.2 Conditions to Seller's Obligation to Close. The obligations of Seller to effect the Closing hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Seller may expressly waive the same in writing:

(a) Entry of Sale Order. The Bankruptcy Court shall have approved and entered the Sale Order in substantially the form of Exhibit A with any changes that are reasonably acceptable to Buyer.

(b) Accuracy of Representations and Warranties on Closing Date. The representations and warranties made by Buyer in Article 4 herein shall be true and correct in all material respects, on and as of the date hereof and on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date.

(c) Compliance. Buyer shall have complied in all material respects with, and shall have fully performed in all material respects, the terms, conditions, covenants and obligations of this Agreement imposed thereon to be performed or complied with by Buyer at, or prior to, the Closing.

(d) No Injunction; Absence of Certain Litigation. No preliminary or permanent injunction issued by any court of competent jurisdiction restraining, prohibiting or staying the Sale Order or the transaction contemplated hereby shall be in effect. No court or any other governmental entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, or non-appealable judgment which prohibits the consummation of the Closing.

ARTICLE 8 CLOSING DELIVERABLES

8.1 Buyer's Closing Deliverables. At the Closing, Buyer shall deliver to Seller a certificate of an officer of Buyer certifying that the conditions set forth in Sections 7.2(b) and 7.2(d) have been satisfied.

8.2 Seller's Closing Deliverables. At the Closing, Seller shall deliver or cause to be delivered to Buyer, at Seller's expense, the following in a form and substance reasonably satisfactory to Buyer:

(a) Documents Relating to Title. Seller shall execute, acknowledge, deliver and cause to be executed, acknowledged and delivered to Buyer such deeds, bills of sale, assignments and other instruments of conveyance reasonably requested by Buyer to vest in Buyer all of Seller's and the Bankruptcy Estate's right, title and interest in, to and under the Purchased Assets.

(b) Possession. Seller shall deliver full possession and control of the Purchased Assets, free and clear of all Liens of any kind whatsoever, pursuant to the Sale Order.

(c) Third-Party Consents. Any consents, approvals and authorizations of third parties that are necessary, including authorization by the Bankruptcy Court (in form reasonably acceptable to Buyer) for the execution, delivery and consummation of this Agreement.

(d) Closing Certificate. A certificate of an officer of Seller certifying that the conditions set forth in Sections 7.1(i) and 7.1(n) have been satisfied.

ARTICLE 9 INDEMNIFICATION

9.1 Survival. The representations and warranties of the parties in this Agreement and the right to assert a claim under this Article 9 with respect to any such representations and warranties shall expire following the Closing and neither Buyer nor Seller shall have any liability with respect to a breach of any of the representations and warranties of the parties in this Agreement following the Closing.

9.2 Seller's Agreement to Indemnify. If the Closing occurs, subject to the terms of this Article 9, from and after the Closing, Seller shall indemnify and hold harmless Buyer, its affiliates and the officers, directors and employees of any of them (each a "Buyer Indemnified Party") and collectively, the "Buyer Indemnified Parties") from and against all Losses suffered or incurred by the Buyer Indemnified Parties (the "Buyer Damages") as a result of or arising out of any of the following:

- (a) any breach by Seller of, or failure by Seller to perform, any covenant or agreement of Seller contained in this Agreement; or
- (b) the ownership or operation of the Purchased Assets or the Business prior to the Closing Date; or
- (c) the Excluded Assets or the Excluded Liabilities.

Buyer agrees that, from and after the Closing, the indemnification provided by Seller as set forth in this Article 9 is the exclusive remedy of the Buyer Indemnified Parties for a breach by Seller of any representation, warranty, covenant or agreement contained in this, except with respect to Buyer Damages arising from fraud, intentional misstatements or intentional misconduct of Seller.

9.3 Limitations on Sellers' Agreement to Indemnify. The obligations of Seller to indemnify and hold harmless the Buyer Indemnified Parties pursuant to this Article 9 are subject to the following limitations:

- (a) In calculating amounts payable to Buyer, the amount of any indemnified Buyer Damages shall be determined without duplication of any other Buyer Damages for which a claim by any Buyer Indemnified Party has been made.
- (b) Any written notice delivered by a Buyer Indemnified Party to Seller seeking indemnification pursuant to this Agreement with respect to Buyer Damages shall set forth, with as much specificity as is reasonably practicable, the basis of the claim for Buyer Damages; the sections of this Agreement which form the basis for the claim; copies of all material written materials relating to such claim and, to the extent reasonably practicable, a reasonable estimate of the amount of the Buyer Damages that have been or may be sustained by the Buyer Indemnified Party.

9.4 **Buyer's Agreement to Indemnify.** If the Closing occurs, subject to the terms of this Article 9, from and after the Closing, Buyer shall indemnify and hold harmless Seller, its affiliates and the officers, directors and employees of any of them (each a "**Seller Indemnified Party**" and collectively, the "**Seller Indemnified Parties**") from and against all Losses suffered or incurred by the Seller Indemnified Parties (collectively, the "**Seller Damages**") as a result of or arising out of any of the following:

(a) any breach by Buyer of, or failure by Buyer to perform, any covenant or obligation of such Buyer contained in this Agreement; or

(b) the Assumed Liabilities.

Seller agrees that, from and after the Closing, the indemnification provided by Buyer as set forth in this Article 9 is the exclusive remedy of the Seller Indemnified Parties for a breach by any Buyer of any representation, warranty, covenant or agreement contained in this Agreement, except with respect to Seller Damages arising from fraud, intentional misstatements or intentional misconduct of any Buyer or its Affiliates.

9.5 **Limitations on Buyer's Agreement to Indemnify.** The obligations of Buyer to indemnify and hold harmless the Seller Indemnified Parties pursuant to this Article 9 are subject to the following limitations:

(a) In calculating amounts payable to Seller, the amount of any indemnified Seller Damages shall be determined without duplication of any other Seller Damages for which a claim by any Seller Indemnified Party has been made.

(b) Any written notice delivered by a Seller Indemnified Party to Buyer seeking indemnification pursuant to this Agreement with respect to Seller Damages shall set forth, with as much specificity as is reasonably practicable, the basis of the claim for Seller Damages, the sections of this Agreement which form the basis for the claim, copies of all material written materials relating to such claim and, to the extent reasonably practicable, a reasonable estimate of the amount of the Seller Damages that have been or may be sustained by the Seller Indemnified Party.

9.6 [Reserved]

9.7 **Claims Based on Fraud or Intentional Misrepresentation.** Notwithstanding anything to the contrary contained in this Agreement, nothing shall be deemed to limit any party's rights to recover any or all Losses incurred or suffered by it relating to or arising out of or in connection with fraud or intentional misrepresentation.

ARTICLE 10 MISCELLANEOUS.

10.1 **Termination Prior to Closing.** Notwithstanding anything to the contrary herein, this Agreement and the transactions contemplated by this Agreement may be terminated at any time before the Closing as follows and in no other manner:

- (a) by mutual consent in writing by Buyer and Seller;
- (b) by Buyer, if Buyer is not in material breach of its obligations under this Agreement, at any time prior to the conclusion of 363 Hearing if at such time Buyer is dissatisfied with the results of its due diligence;
- (c) by Buyer, if Buyer is not in material breach of its obligations under this Agreement, at any time after eighty (80) days after the Effective Date, if the 363 Hearing shall not have been concluded by such date;
- (d) by Buyer, if Buyer is not in material breach of its obligations under this Agreement, at any time after sixty (60) days after the Effective Date, if the Sale Order shall not have been entered by such date; and
- (e) by Buyer, if Buyer is not in material breach of its obligations under this Agreement, at any time after sixty (60) days following the entry of the Sale Order, if the Closing shall not have occurred by such date.

Any termination of this Agreement pursuant to this Section 10.1 shall be without liability to the terminating party, subject to the right of any non-breaching party to pursue damages for any breach of this Agreement by the other party.

10.2 [Reserved]

10.3 Expenses. Except as set forth in Section 3.3(a) relating to Transfer Taxes, each party shall pay all of its own expenses in connection with the negotiation, execution, and implementation of the transactions contemplated by this Agreement.

10.4 Hiring of Seller Employees: On or after the Closing, Buyer may, but shall not be obligated to, hire, in its sole discretion, certain of Seller's employees, provided that Buyer shall have no liability for termination, severance benefits, disability payments, workman's compensation benefits or any other payments on account of or relating to the employment or the termination thereof of any hired employees with respect to any period before the Closing, all of which liability shall be the responsibility solely of Seller.

10.5 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered United States mail, postage prepaid, or sent by nationally recognized overnight express courier and addressed as follows:

- (a) If to Seller:

QualityBuilt.com, Inc.
Attn: Beth Michaelis
15330 Avenue of Science
San Diego, CA 92120
Tel: 800-547-5125
Fax: 858-451-1022

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With a copy to (which shall not constitute notice):

Keehn & Associates
Attn: Scott Keehn
402 West Broadway, Suite 1210
San Diego, CA 92101
Tel: (619) 400-2200
Fax: (619) 400-2201

If to Buyer:

Quality Built, LLC
Attn: Gary H Elzweig
700 Grayhawk Ave
Plantation, FL 33324
Tel: 954-916-8631
Fax: 954-916-8632

With a copy to (which shall not constitute notice):

Proskauer Rose LLP
Attn: Daniel J. Eisner, Esq.
1585 Broadway
New York, NY 10036-8299
Tel: (212) 969-3000
Fax: (212) 969-2900

(b) If to Mr. Luhr:

1091 Singing Ridge Rd
El Cajon, CA 92019
Tel: (619) 253-4624

(c) If to Ms. Michaelis:

141 Granby Way, Unit A
Aurora, CO 80011
Tel: (619) 253-4619

10.6 Entire Agreement. This Agreement, including all Exhibits and Schedules hereto (which are incorporated herein by reference) and any agreements to be executed and delivered in connection herewith, together constitute the entire agreement and understanding between the parties and there are no agreements or commitments with respect to the transactions contemplated herein except as set forth in this Agreement. This Agreement supersedes any prior offer, agreement or understanding between the parties with respect to the transactions contemplated hereby.

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10.7 Amendment; Waiver. Any term or provision of this Agreement may be amended only by a writing signed by Seller and Buyer. The observance of any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound by such waiver. No waiver by a party of any breach of this Agreement will be deemed to constitute a waiver of any other breach or any succeeding breach.

10.8 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or to give any person, firm or corporation, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

10.9 Execution In Counterparts. For the convenience of the parties, this Agreement may be executed in one or more counterparts and in original or by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.10 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California (excluding application of any choice of law doctrines that would make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law. The Bankruptcy Court shall have exclusive jurisdiction to enforce and interpret the terms of this Agreement and resolve any disputes and claims with respect thereto.

10.11 Severability. If any provision of this Agreement is for any reason and to any extent deemed to be invalid or unenforceable, then such provision shall not be voided but rather shall be enforced to the maximum extent then permissible under then applicable law and so as to reasonably effect the intent of the parties hereto, and the remainder of this Agreement will remain in full force and effect.

10.12 Attorneys' Fees. Should any legal proceeding be brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed in amount by the Bankruptcy Court (including, without limitation, costs, expenses and fees on any appeal).

ARTICLE 11 DEFINITIONS

As used in this Agreement, the following terms have the meanings specified in this Article 11.

"363 Hearing" Means the hearing conducted by the Bankruptcy Court to authorize and approve the transactions contemplated by this Agreement.

"Agreement" has the meaning given that term in the introductory paragraph.

"Assumed Contract" and "Assumed Contracts" have the meanings given those terms in Section 1.1(d).

"Assumed Accounts Payable" has the meaning given that term in Section 2.1(iii).

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ROA_00212

"Bankruptcy Case" has the meaning given that term in the recitals.

"Bankruptcy Code" mean 11 U.S.C. 101 et seq., as amended.

"Bankruptcy Court" mean the United States Bankruptcy Court for the Southern District of California acting in the Bankruptcy Case.

"Bankruptcy Estate" means the estate, and defined by 11 U.S.C 541, created by the filing of the Bankruptcy Case.

"Business" has the meaning given that term in Section 1.1.

"Business Intellectual Property" has the meaning given that term in Section 1.1(a).

"Cash Consideration" has the meaning given that term in Section 3.1(a).

"Chapter 11" has the meaning given that term in Section 6.1.

"Closing Date" has the meaning given that term in Section 3.2.

"Effective Date" has the meaning given that term in the introductory paragraph.

"Environmental Laws" has the meaning given that term in Section 2.2(f).

"Excluded Assets" has the meaning given that term in Section 1.2.

"Excluded Liabilities" has the meaning given that term in Section 2.2(l).

"Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, entered on the docket of the Bankruptcy Case, that has not been reversed, rescinded, stayed, modified or amended, that is in full force in effect, and with respect to which: (a) the time to appeal, seek review or rehearing, or petition for certiorari has expired and not timely filed appeal or petition for review, rehearing, remand or certiorari is pending; (b) any right to appeal, seek review or rehearing, or petition for certiorari has been waived in writing; or (c) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which review, rehearing, or certiorari was sought.

"Financial Statements" has the meaning given that term in Section 5.7(a).

"Indemnification Cap" has the meaning given that term in Section 9.6(b).

"Insurance Policy" and "Insurance Policies" have the meanings given those terms in Section 5.20(a).

"Intellectual Property" means all worldwide intellectual property rights, including, without limitation, the following: (a) all patents and applications therefor, including continuations, divisionals, continuations-in-part, reexaminations or reissues of patent applications and patents issuing thereon; (b) all trademarks, service marks, trade names, service

names, brand names, trade dress rights, logos, Internet domain names and corporate names, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof; (c) copyrights and registrations and applications therefor, works of authorship, content (including website content) and mask work rights; (d) Know-How; (e) technology; (f) registered domain names and applications for domain name registration; (g) any similar, corresponding or equivalent rights to any of the foregoing; and (h) documentation (written, electronic or otherwise) related to any of the foregoing.

"IT Systems" means the information technology equipment and associated Software used by or held for use by Seller in the conduct of its business as currently conducted, including, without limitation, Seller's telephone and computer network, database and data management systems, excluding any data that does not relate to the Purchased Assets.

"Know-How" means all technology, engineering, and other technical data, protocol, processes (including manufacturing processes), trade secrets, algorithms, formulas, schematics, technical drawings, ideas, know-how and any other information, experience or expertise related to the Business, whether or not confidential.

"Licensed IP" means all third-party Intellectual Property used in the operation of the Business.

"Liens" has the meaning given that term in Section 1.1.

"Losses" means all losses, liabilities, costs, claims, damages, penalties and expenses (including all reasonable attorneys' fees and expenses and costs of investigation, enforcement and litigation).

"Material Adverse Effect" means any event, circumstance, change, effect or development (any such item, an "Effect") that, individually or in the aggregate with any other Effect, is materially adverse to the business, financial condition or results of operations of Seller or to the ability of Seller to perform its obligations under this Agreement.

"Open Source" means any open source, public source or freeware Software that is licensed pursuant to any public or open source license, including any license that purports to require the distribution of or access to source code, or purports to require licensing of other Software combined with such Software, or purports to restrict one's ability to charge for distribution of such Software, including, without limitation, any GNU general public license or any GNU limited general public license.

"Person" means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, limited liability company, limited liability partnership, labor union, trust, unincorporated organization, governmental body or other entity.

"Purchase Price" has the meaning given that term in Section 3.1.

"Purchased Asset" and "Purchased Assets" have the meanings given those terms in Section 1.1.

"Buyer" has the meaning given that term in the introductory paragraph.

"Buyer Damages" has the meaning given that term in Section 9.2.

"Buyer Indemnified Party" and "Buyer Indemnified Parties" have the meanings given those terms in Section 9.2.

"Records" has the meaning given that term in Section 1.1(n).

"Registered IP" means those United States and foreign: (a) patents and patent applications (including provisional applications); (b) registered trademarks, registered service marks, registered tradenames, applications to register trademarks, service marks or tradenames, intent-to-use applications, or other registrations or applications related to trademarks or service marks; (c) registered copyrights and applications for copyright registration; and (d) registered domain names and applications for domain name registrations, in each case Business Intellectual Property.

"Rejected Contracts" have the meaning given that term in Section 1.2(b).

"Sale Order" has the meaning given that term in Section 6.2(a).

"Seller" has the meaning given that term in the introductory paragraph.

"Seller Contract" and "Seller Contracts" have the meanings given those terms in Section 5.16(a).

"Seller Damages" has the meaning given that term in Section 9.4.

"Seller Disclosure Schedule" has the meaning given that term in Article 5.

"Seller Indemnified Party" and "Seller Indemnified Parties" have the meaning given those terms in Section 9.4.

"Seller's Knowledge" means the actual knowledge of Mr. Luhr, Ms. Michaelis and Nancy Correa after due inquiry.

"Software" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (b) databases and compilations, including any and all data, collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (d) all documentation including user manuals and other training documentation related to any of the foregoing.

"Transfer Taxes" has the meaning given that term in Section 3.3(a).

[Remainder of page intentionally left blank.]

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Quality Built, LLC, Production of Documents 00146

ROA_00215

IN WITNESS WHEREOF, Buyer and Seller executed and delivered this Amended and Restated Asset Purchase Agreement by their duly authorized representatives as of the Effective Date.

SELLER:

QUALITYBUILT.COM

By: Elizabeth R. Michaelis
Name: Elizabeth R. Michaelis
Its: Secretary/Treasurer

Stan Luhr
STAN LUHR

Elizabeth R. Michaelis
ELIZABETH MICHAELIS

BUYER:

QUALITY BUILT, LLC

By: Gary H. Elzweig
Name: Gary H. Elzweig
Its: Managing Member

EXHIBIT A

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ROA_00217

Name, Address, Telephone No. & I.D. No.
L. Scott Keehn (SBN 61691)
Leslie F. Keehn (SBN 199153)
KEEHN & ASSOCIATES, APC
402 W. Broadway, Suite 1210
San Diego, California 92101
(619) 400-2200
Attorneys for Debtor-in-Possession Qualitybuilt.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

Qualitybuilt.com, a California corporation,

Debtor-in-Possession.

BANKRUPTCY NO. 09-12113-PB11

Date of Hearing:
Time of Hearing:
Name of Judge:

ORDER

**(I) AUTHORIZING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) AUTHORIZING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH
AND RELATED PROCEDURES AND (III) GRANTING RELATED RELIEF.**

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2)

through _____ with exhibits, if any, for a total of _____ pages, is granted. Motion/Application Docket Entry No. _____

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DATED:

Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under
Fed. R. of Bankr. P. 9011 that the relief in the order is the
relief granted by the court.

Submitted by:

KEEHN & ASSOCIATES, APC
(Firm name)

By: /s/ L. Scott Keehn
Attorney for ☒ Movant ☐ Respondent

CSD 1001A/119152

Quality Built, LLC, Production of Documents 00149

ROA_00218

This matter is coming before the Court on the motion, dated January __, 2010 (the "Sale Motion") (Docket No. []), filed by the above-captioned debtor and Debtor in possession (the "Debtor") for entry of an order (the "Sale Order"), pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code", Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1, and 9006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of California (i) authorizing and approving the entry into, performance under and terms and conditions of First Amended and Restated Asset Purchase Agreement, dated as of December 18, 2009 (collectively with all related agreements, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, the "Purchase Agreement"), substantially in the form attached hereto as Exhibit A, between and among Quality Built, LLC ("Purchaser"), a Delaware limited liability company, and the Debtor, whereby the Debtor has agreed to sell, and the Purchaser has agreed to purchase the "Purchased Assets" (as such term is defined and described in Article 1 of the Purchase Agreement), which Purchased Assets include, without limitation, the Assumed Contracts (as defined in section 1.1 of the Purchase Agreement), all of the Debtor's tangible, intangible and operating assets related to the conduct of the Debtor's (the "Business"), that are defined and described in section 1.1 of the Purchase Agreement; (ii) authorizing and approving the sale by the Debtor of the Purchased Assets, free and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), liabilities encumbrances, rights, remedies, restrictions, and interests and encumbrances of any kind of nature whatsoever whether arising before or after the Petition Date, whether at law or in equity, all environmental claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Purchased Assets to the Purchaser or to be excused from accepting performance by the Purchaser or performing for the benefit of the Purchaser under any Assumed Contract and all rights at law or in equity (collectively, "Claims") (other than certain liabilities that are expressly assumed or created by the Purchaser, as set forth in the Purchase Agreement (collectively, the "Assumed Liabilities")); (iii) authorizing the assumption and assignment to the Purchaser of the Assumed Contracts (collectively, the "Assumed Contracts"); the Court having conducted a hearing on the Sale Motion on [], 2010 (the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion and submit over-bids; the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto, (ii) the Purchase Agreement attached hereto as Exhibit A, (iii) all of the pleadings, papers, declarations, and evidence submitted in support of or in opposition to the Sale Order, and (iv) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion [and the auction conducted at the Sale Hearing (the "Auction")] and the relief requested in the Sale Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and upon the record of the Sale Hearing and this case; and after due deliberation thereon; and good and

sufficient cause appearing therefore;

IT IS HEREBY FOUND AND DETERMINED THAT:

THE DEBTOR AND ITS CASES

A. As of the Petition Date and for a period of approximately 60 days before the commencement of these chapter 11 cases, the Debtor worked to try to raise capital or implement a viable transaction that would allow the Debtor to continue operations. Those efforts continued through the execution of the Purchase Agreement on December 18, 2009. The Debtor presented credible evidence that, as of the filing of the Sale Motion, it had explored strategic alternatives for the Business over an extended period of time and had communicated with more than 54 parties about possible sales, mergers, combinations, and alternatives regarding debt or equity capital investments or financing and had prepared standalone business plans in the event that strategic alternatives did not materialize or were insufficient. The Sale Transaction is the result of the Debtor's diligent efforts and is reasonable under the circumstances.

JURISDICTION, FINAL ORDER AND STATUTORY PREDICATES

B. This Court has jurisdiction over the Sale Motion, the Sale Transaction and the Purchase Agreements pursuant to 28 U.S.C. §§ 157 (b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is not just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Sale Motion and granted in this Order include, without limitation, sections 105(a), 363(b), (f) and (m) and 365(a), (b) and (f) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006.

JUDICIAL NOTICE

E. Pursuant to the Federal Rule of Evidence 201(c), incorporated into these proceedings pursuant to Bankruptcy Rule 9017, the Court takes judicial notice of []:

SOUND BUSINESS PURPOSE

F. The Debtor seeks to convey the Purchased Assets, all of which are subject to Claims.

G. The Debtor is unable to continue financing its ongoing operations, and in the absence of the relief granted herein, will default on performance of the Assumed Contracts. Those defaults will produce additional claims against the Debtor and its estate. The amount of those claims is credibly projected to be between \$6 – \$7 Million:

The Debtor has not paid post-petition rent for its lease of its principal place of business located at 15330 Avenue of Science, San Diego, California 92120 (the "Real Property"), its landlords are in default on their obligations secured by Real Property. Non-judicial foreclosure proceedings were commenced against the Real Property on or about November 19, 2009. The debt secured by the Real Property is in excess of its appraised value, and the Debtor's landlords (which are two limited liability companies) each of which has a single member. The respective members are Stan Luhr and Elizabeth Michaelis (the Debtor's Shareholders), have no resources with which to cure the defaults on the debt secured by the Real Property, and expect to loose that property to foreclosure in March 2010.

H. The Debtor has demonstrated, and the Purchase Agreement reflects, both (1) good, sufficient and sound business purposed and justifications for immediate approval of the Purchase Agreement and the Sale Transaction, and (2) compelling circumstances for the approval of the Purchase Agreement and the Sale Transaction outside the ordinary course of the Debtor's business pursuant to Section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, the Debtor's estate will suffer immediate and irreparable harm due to its inability to continue operations to preserve the going concern value of the business. In light of the risk of deterioration in, and loss of the going concern value of the Purchased Assets pending the proposed Sale Transaction, time is of the essence in (a) consummating the Sale Transaction, (b) preserving the viability of the Debtor's businesses as going concerns and (c) minimizing the adverse economic consequences for the Debtor estate, and its creditors, that would be threatened by protracting the proceeding in this chapter 11 case.

I. The consummation of the Sale Transaction outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtor's creditor nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale Transaction does not constitute a sub rosa plan of reorganization.

J. Entry of an order approving the Purchase Agreement and all the provisions thereof is a necessary condition precedent to the Purchaser's consummation of the Sale Transaction, as set forth in the Purchase Agreement.

K. The Purchase Agreement was not entered into, and the Debtor, the Purchaser or the Purchasers present at the Sale Hearing or contemplated owners, have not entered into the Purchase Agreement or propose to consummate the Sale Transaction, for the purpose of hindering, delaying or defrauding the Debtor's present or future creditors. Neither the Debtor, the Purchaser nor the Purchasers present at the Sale Hearing or contemplated owners are entering into the Purchase Agreement, or proposing to consummate the Sale Transaction, fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws

substantially similar to the foregoing.

HIGHEST AND BEST OFFER

L. The Sale Motion established proposed bidding procedures (the "Bidding Procedures"). The Bidding Procedures provided a full, fair and reasonable opportunity for an entity to make an offer to purchase the Purchased Assets. [Additional findings related to Qualified Bids and Actions, if any.]

M. As demonstrated by the declarations [or testimony] and other evidence proffered or adduced at the Sale Hearing, (1) the Debtor has adequately marketed the Purchased Assets; (2) the consideration provided for in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (3) the Sale Transaction is fair and reasonable in of respects; (4) the Sale Transaction will provide a greater recovery for and benefit to the Debtor's creditors than would be provided by any other practical available alternative; (5) no other party or group of parties has offered to purchase the Purchased Assets for greater economic value to the Debtor or its estate; (6) the consideration to be paid by the Purchaser under the Purchase Agreement exceeds the liquidation value of the Purchased Assets, net of the resulting breach of contract claims that are likely to follow, if the Purchased Assets are not sold to an entity that can perform Assumed Contracts, and the Assumed Liabilities; and (7) the consideration to be paid by the Purchaser under the Purchase Agreement constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing. The Debtor's determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.

BEST INTEREST OF CREDITORS

N. Approval of the Purchase Agreement and the consummation of the Sale Transaction with the Purchaser at this time is in the best interest of the Debtor, its creditors, its estate, and other parties in interest.

DESCRIPTION OF THE PURCHASER AND THE PURCHASER'S GOOD FAITH

O. The Purchaser is a newly formed Delaware limited liability company [or identify successful over-bidders]. The Purchaser [or successful over-bidder] is not an "insider" of the Debtor, as that terms is defined by section 101(31) of the Bankruptcy Code.

P. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtor and the Purchaser in good faith, without collusion and from arm's-length bargaining positions. The

Purchaser has proceeded in good faith in all respects in connection with this proceeding, is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. None of the Debtor, the Purchaser nor the Purchasers present at the Sale Hearing or contemplated owners have engaged in any conduct that would cause or permit the Purchase Agreement or any of the transactions contemplated thereby to be avoided; that would tend to hinder, delay or defraud creditors; or that impose costs and damages under section 363(n) of the Bankruptcy code.

NOTICE OF THE SALE MOTION, THE AUCTION AND THE CURE AMOUNTS

Q. As evidenced by the affidavits and certificates of service filed with the Court, in light of the wasting nature of the Debtor's going concern value and based upon the representations of counsel at the Sale Hearing, the Court finds that: (1) proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures, the Auction, the Sale Hearing has been properly and adequately provided by the Debtor, (2) such notice, and the form and manner thereof, was good, sufficient, reasonable and appropriate under the exigent circumstances prevailing in this chapter 11 case and (3) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding Procedures, the Auction, the Sale Hearing is or shall be required. In light of the need to grant the relief requested in the Sale Motion promptly to avoid any erosion in the going concern value of the Purchased Assets, a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to, the following:

- (i) counsel to any official committees formed in this chapter 11 case;
- (ii) all unsatisfied prepetition secured lenders;
- (iii) the Purchaser;
- (iv) parties who, in the past year, have expressed in writing to the Debtor an interest in acquiring the Purchased Assets;
- (v) nondebtor parties (the "Non-Debtor Counterparties") to the Assumed Contracts, and the Assumed Liabilities;
- (vi) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Purchased Assets or who are reflected as secured parties in lien searches conducted by the Debtor;
- (vii) the Securities and Exchange commission;
- (viii) the Internal Revenue Service;
- (ix) all applicable state and local taxing authorities;

- (x) the Office of the United States Trustee for the Southern District of California;
- (xi) all parties that filed objections to the Sale Motion;
- (xii) all entities that have requested special notice in this chapter 11 case under Bankruptcy Rule 2002, or otherwise;
- (xiii) any other party identified on the creditor matrix in these cases.

R. With respect to executory contracts or unexpired leases that are designated by the Debtor or Purchaser as Assumed Contracts or Assumed Liabilities, all Non-Debtor Counterparties to such Assumed Contracts, and assumed with the opportunity to object to both the Cure Costs identified in any Assignment Notice delivered to any such Non-Debtor Counterparty and the assumption and assignment of the applicable Assumed Contract (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code).

SECTION 363(F) REQUIREMENTS MET FOR FREE AND CLEAR SALE

S. The Debtor may sell the Purchased Assets free and clear of all Claims because, in each case where a Claim is not an Assumed Liability, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. [Additional findings to be conformed to evidence adduced at the Sale Hearing.] The assumption and assignment of each of the Assumed Contracts is also free and clear of all Claims.

T. The Debtor is the sole and lawful owner of the Purchased Assets and no other person has any ownership right title or interest therein.

U. Those holders of Claims who did object fall within one or more of the other subsections of section 363(f) and 365 of the Bankruptcy Code as either (1) the consideration received in exchange for the Purchased Assets is greater than the aggregate value of all liens on the Purchased Assets, (2) there is a bona fide dispute with respect to certain of the Claims asserted by the Debtor's prepetition secured lenders or (3) such holders could be compelled in a legal or equitable proceeding to accept a money satisfaction of their Claims. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement will be a legal, valid and effective transfer of all the legal, equitable and beneficial right, title and interest in and to the Purchased Assets free and clear of all Claims that are not Assumed Liabilities (including, specifically and without limitation, any professional liability claims, environmental liabilities, employee benefit plans and any successor liability claims). All holders of Claims are adequately protected - and the Sale Transaction thus satisfies section 363(e) of the Bankruptcy Code - by having their Claims, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against which they

have a Claim, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Sale Transaction, subject to any rights, claims and defenses to the Debtor or its estate, as applicable.

V. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtor, its estate, creditors, employees, and other parties in interest if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Contracts and Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities (collectively, the "Excluded Liabilities") that expressly are not assumed by the Purchaser, as set forth in the Purchase Agreement. The Purchaser asserts that it will not consummate the Sale Transaction unless the Purchase Agreement specifically provides and this Court specifically orders that neither the Purchaser, its affiliates, its present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment setoff or otherwise, directly or indirectly, any Claim or Excluded Liability.

W. Without limiting the generality of the foregoing, the Purchase Agreement provides the Debtor with reasonably equivalent value and fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the Bankruptcy Code), and was not entered into for the purpose or, nor does it have the effect of, hindering, delaying or defrauding creditors or any of the Debtor's under any applicable laws. Except for the Assumed Liabilities, the Sale Transaction shall not impose or result in the imposition of any liability or responsibility on Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), and the transfer of the Purchased Assets to the Purchaser does not and will not subject the Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), to any liability for any Claims, including, without limitation for any successor liability or any products liability for the sale of any vehicle by the Debtor or their predecessors or affiliates.

ASSUMPTION AND ASSIGNMENT OF THE ASSUMED CONTRACTS

X. The assumption and assignment of the Assumed Contracts are integral to the Purchase Agreement, are in the best interests of the Debtor and its estate, and represent the reasonable exercise of the Debtor's sound business judgment.

Y. With respect to each of the Assumed Contracts, the Debtor has met all requirements of section 365(b) of the Bankruptcy Code. Further, the Purchaser has provided all necessary adequate assurance of future performance under the Assumed Contracts in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code. Accordingly, the Assumed Contracts can be assumed by the Debtor and assigned to the Purchaser, as provided for in the Contract Procedures set for in the Bidding Procedures Order, the Sale Motion and the Purchase Agreement. The procedures set forth in the Sale Motion are fair,

appropriate and effective and, upon approval of the assumption and assignment for a particular Assumed Contract thereunder, the Debtor shall be forever released from any and all liability under the Assumed Contract.

VALIDITY OF THE TRANSFER

Z. As of the closing of the Sale Transaction (the "Closing"), the transfer of the Purchased Assets to the Purchaser will be a legal, valid and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Claims other than Assumed Liabilities.

AA. With the entry of this Order, the Debtor (1) has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtor; (2) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; (3) has taken all actions necessary to authorize and approve the Purchase Agreement and the consummation by the Debtor of the transactions contemplated thereby; and (4) upon entry of this Order, needs no consents or approvals, other than those expressly provided for in the Purchase Agreement, which may be waived by the Purchaser, to consummate such transactions.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

GENERAL PROVISIONS

1. The Sale Motion is granted in its entirety and entry into and performance under and in respect of the Purchase Agreement and the Sale Transaction is approved, as set forth in this Sale Order.
2. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.
3. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or any stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice, except as expressly provided herein.

APPROVAL OF THE PURCHASE AGREEMENT

4. The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved.
5. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtor is authorized and directed to perform its obligations under and comply with the terms of the Purchase Agreement and consummate the Sale Transaction,

pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Sale Order.

6. The Debtor, as well as its officers, employees and agents, are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, in substantially the same form as the Purchase Agreement attached hereto as Exhibit A, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions and execute such other documents as may be (a) reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, the Purchased Assets, (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement, and (c) as may be reasonably requested by Purchaser to implement the Purchase Agreement and consummate the Sale transaction in accordance with the terms thereof, all without further order of the Court.

7. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Purchaser, the Debtor, any trustees appointed in the Debtor's cases (whether under chapter 11 or chapter 7 of the Bankruptcy Code), all creditors (whether known or unknown) of the Debtor, all interested parties and their successors and assigns including, but not limited to, any party asserting a Claim and any Non-Debtor Counterparty to the Assumed Contracts. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order confirming any such chapter plan shall conflict with or derogate from provision of the Purchase Agreement or this Sale Order, and to the extent of any conflict or derogation between this Sale Order or the Purchase Agreement and such further plan or order, the terms of this Sale Order and the Purchase Agreement shall control to the extent of such conflict or derogation.

8. All amounts, if any, to be paid by the Debtor pursuant to the Purchase Agreement shall constitute administrative expenses pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be due and payable if and when any Debtor's obligations arise under the Purchase Agreement without further order of the Court.

TRANSFER OF PURCHASED ASSETS FREE AND CLEAR

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtor are authorized and directed to transfer the Purchased Assets in accordance with the terms of the Purchase Agreement. The Purchased Assets shall be transferred to the Purchaser, and upon consummation of the Purchase Agreement, such transfer (a) shall be a valid, legal, binding and effective transfer; (b) shall vest the Purchaser with full right, title and interest of the Debtor in the Purchased Assets; and (c) shall be free and clear of all Claims except for Assumed Liabilities with all such Claims to attach to the net proceeds of the Sale Transaction ultimately attributable to the Purchased Assets against or in which such Claims are asserted, in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to any rights, claims and defenses the Debtor or their estates, as applicable, may possess with respect thereto.

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10. Except as otherwise provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holder, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders customers, employees, trade creditors, litigation claimants and other creditors, holding Claims (whether legal or equitable, secured or unsecured, known or unknown, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) except for Assumed Liabilities, arising under or out of, in connection with, or in any relating to, the Debtor, the Purchased Assets, the operation of the Business prior to Closing or the transfer of the Purchased Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against the Purchaser, its successors or assigns, its property or the Purchased Assets. No such persons or entities shall assert against the Purchaser or their successors in interest any Claim arising from, related to or in connection with the ownership, sale or operation of any Assets prior to the Closing, except for Assumed Liabilities.

11. The Sale Order (a) shall be effective as a determination that, as of Closing (i) no Claims, other than Assumed Liabilities and Assumed Contracts relating to the Purchased Assets, will be assertable against the Purchaser, its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), (ii) have been unconditionally released, discharged and terminated, and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

12. All persons or entities in possession of some or all the Purchased Assets that have received notice of the Sale Motion at least 14 days prior to the last session of the Sale Hearing, are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the Sale Transaction.

13. Following the Closing of the Sale Transaction, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim, or based on any actions the Debtor may take in their chapter 11 cases.

14. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtor to transfer the Purchased Assets to the Purchaser in accordance with the Purchase Agreement.

Agreement and this Sale Order.

15. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction contemplated by the Purchase Agreement.

ASSUMPTION AND ASSIGNMENT OF ASSUMED CONTRACTS

16. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy code, the Debtor's assumption and assignment or other transfer to the Purchaser and all of the Debtor's right, title and interest therein or thereunder of the Assumed Contracts is hereby approved, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied. For the avoidance of doubt, the Debtor shall be deemed to have assumed and assigned each of the Assumed Contracts as of the date of and effective only upon the Closing of the Sale Transaction and, absent such Closing, each of the Assumed Contracts shall neither be deemed assumed nor assigned and shall in all respects be subject to subsequent assumption or rejection by the Debtor under the Bankruptcy Code.

17. The Debtor is hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign, sell and otherwise transfer the Assumed Contracts and all of the Debtor's right, title or interest therein or thereunder to the Purchaser free and clear of all Claims, and to execute and deliver to the Purchaser such documents or other instruments as reasonably may be necessary to assign and transfer the Assumed Contracts to the Purchasers.

18. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the types described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no assignment fees, penalties, increases or any other fees charged to the Purchaser or the Debtor as a result of the assumption or assignment of the Assumed Contracts. No Assumed Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the transactions contemplated by the Purchase Agreement.

19. [RESERVED]

20. [RESERVED]

21. Each Non-Debtor Counterparty to an Assumed Contract hereby is forever barred, estopped and permanently enjoined from asserting against the Debtor or the Purchaser, their successors or assigns of the property of any of them, any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

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22. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtor's and Purchaser's rights to enforce every term and condition of the Assumed Contracts.

23. Upon the Closing, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assumed Contracts.

24. The assignments of each of the Assumed Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

ADDITIONAL PROVISIONS

25. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Claims. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of any Claims of any kind whatsoever.

26. While the Debtor's bankruptcy case is pending, this Court shall retain jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith in all respects), to adjudicate disputes related to this Sale Order or the Purchase Agreement and to enter any orders under sections 363 and/or 365 of the Bankruptcy Code with respect to the Assumed Contracts.

27. No bulk sales law, or similar law of any state or other jurisdiction, shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion and this Sale Order.

28. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction (including the assumption and assignment of the Assumed Contracts), unless such authorization is duly stayed pending such appeal.

29. The consideration provided by the Purchaser of the Purchased Assets constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

30. The Sale Transaction may not be avoided under section 365(n) of the Bankruptcy Code.

31. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, its creditors, the Purchaser, the respective affiliates, successors and assigns of each, and any affected third parties including, but not limited to, all persons asserting claims in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), examiner(s) or receiver(s) under any chapter of the Bankruptcy Code or any other law, and all such provision and terms shall likewise be binding on such trustee(s), examiner(s) or receiver(s) and shall not be subject to rejection or avoidance by the Debtor, its estate, its creditors, their shareholders or any trustee(s), examiner(s), or receiver(s).

32. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement and its exhibits and ancillary documents be authorized and approved in their entirety.

33. The Purchase Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplemental does not materially change the terms of the Purchase Agreement.

34. As provided by Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedures, this Sale order shall not be stayed for 10 days after its entry and shall be effective immediately upon entry, and the Debtor and the Purchaser are authorized to close and the Sale Transaction immediately upon entry of this Sale Order. Any party objecting to this Sale Order must exercise due diligence in filing and appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and Debtor elect to close prior to this Sale Order becoming a Final Order.

35. Buyer shall have no obligations under any liabilities of Seller or the Bankruptcy Estate other than the Assumed Liabilities, the Assumed Contracts, and its obligations under this Agreement.

36. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Order including to compel delivery of the Purchased Assets, to protect the Purchaser against any Claims and to enter any orders under sections 363 or 365 to transfer the Purchased Assets and Assumed Contracts to the Purchaser.

Dated: _____, 20__

UNITED STATES BANKRUPTCY JUDGE

[Approvals as to Form as Necessary]

EXHIBIT B

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OFFICE LEASE AGREEMENT

This lease ("Lease") is entered into this _____ day of _____, by and between Elizabeth Michaelis and Stanley Luhr, as Joint Tenants ("Landlord") and Quality Built, LLC, a Delaware limited liability company ("Tenant").

(1) Authority.

(a) Landlord represents that Elizabeth Michaelis and Stanley Luhr are joint tenants of the Premises identified herein and that Landlord has authority to enter into this Lease.

(b) Tenant represents that it has authority to enter into this Lease and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment pursuant to this Lease.

(2) Premises.

(a) Landlord leases to Tenant and Tenant leases from Landlord upon terms and conditions set forth herein approximately 6,086 square feet of office space located on the first floor of an office building as shown in the diagram attached hereto as Exhibit "A", located at 14406 East Evans Ave., Aurora, CO 80014, commonly known as the East Evans Avenue building ("Building") and legally described as:

(Legal Description)

Lot 17, Block 1, Business Commons at Southeast Commons Subdivision Filing No. 1, Arapahoe County, Colorado.

Together with all easements appurtenant thereto as granted pursuant to the Declaration of Protective Covenants for Business Commons at Southeast Commons, recorded on December 10, 1982 in Book 3759 at Page 645 of the records of Arapahoe County, Colorado (the "Declarant");

And together with an undivided 9.846 interest in and to Tract A, Block 1, Business Commons at Southeast Commons Subdivision Filing No. 1, Arapahoe County, Colorado;

Subject, however, to all of the terms and conditions contained in the Declaration.

County of Arapahoe, State of Colorado

together with any improvements, rights-of-way, easements and any other rights, if any, appurtenant thereto (collectively "Premises"). Premises shall be delivered to Tenant on Lease Date in an "As-Is" condition, and Tenant shall take possession only after fulfilling all inspections and approving the condition of the property.

(3) Term of Lease.

(a) Term. The term of this Lease shall be for one year and shall begin _____ ("Commencement Date") and shall extend through _____ unless terminated sooner as provided herein ("Termination Date").

(b) Acknowledgment of Commencement Date. In the event the Commencement Date of this Lease is other than as set forth above, Landlord and Tenant shall execute a written acknowledgment of the Commencement Date which shall be attached to this Lease as Exhibit "C".

(c) Delay in Possession. Notwithstanding the Commencement Date, if for any reason Landlord cannot deliver possession of the Premises to Tenant on said date, Landlord shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the term hereof, but in such case, Tenant shall not be obligated to pay rent or perform any other obligation of Tenant under the terms of this Lease, except as may be otherwise provided in this Lease, until possession of the Premises is tendered to Tenant provided, however, that if Landlord shall not have delivered possession of the Premises within sixty (60) days from the Commencement Date, Tenant may, at Tenant's option, by notice in writing to Landlord within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Tenant is not received by Landlord within said ten (10) day period, Tenant's right to cancel this Lease hereunder shall terminate and be of no further force or effect.

(d) Early Possession. If Tenant occupies the Premises prior to the Commencement Date, such occupancy shall be subject to all provisions of this Lease; such occupancy shall not advance the Termination Date; and Tenant shall pay rent for such period at the initial monthly rates, prorated, set forth below.

(4) Rental.

(a) Base Rent. Tenant agrees to pay to Landlord as Base Rent monthly the sum of \$8,333.00, payable in advance and without notice in equal installments on the first day of each month during said term at the following address: 14406 East Evans Ave., Aurora, CO 80014 (or at such other address as Landlord may designate in writing from time to time) without any set-off or deduction whatsoever. Said payments shall be in lawful money (except coins) of the United States, which shall be legal tender in payment of all debts and dues, public or private, at the time of payment. If the Commencement Date is on a day other than the first day of a calendar month, Tenant shall pay to Landlord the rental for the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made on the Termination Date if necessary. This lease is intended to be a gross lease and therefore, Tenant will have no expenses under this Lease except base rent.

(b) In addition to the Base Rent, Tenant shall also pay to the Landlord the monthly Owners Association fees payable to the Business Commons at Southeast Commons Owners Association, which as of the Commencement Date are \$1,479.00 per month. In the event the Owners Association Fees are increased during the term of this Lease, such increase shall be paid by Tenant as additional rent in accordance with paragraph 7. Tenant shall not be responsible to pay to the Landlord the monthly Owners Association Fee.

(c) In addition to the Base Rent, Tenant shall also be responsible for cost of commercial property insurance, the cost of which is estimated at \$4,926.00 per year, based on the 2008 premium. In the event insurance premiums are increased for any reason during the term of this Lease, such increase shall be paid by Tenant. Tenant shall not be responsible for the cost of commercial property insurance.

(d) Base Rent shall not include all Tax Costs on the Premises occupied by the Tenant during the term of the Lease and any extensions thereof. "Tax Costs" shall mean any and all general and special real estate taxes and assessments and other similar charges on real property (both land and improvements) or other charges assessed, levied, imposed or being a lien upon the land or improvements and any and all personal property taxes or other similar charges on personal property owned by Landlord and used in connection with the operation of the Building.

(e) The Base Rent after adjustments are made as provided herein shall be subject to an increase of three percent (3%) annually coinciding with the one year anniversary of the Commencement Date provided the term is extended.

(3) Security Deposit. Concurrently with the execution of this Lease, Tenant shall deposit with Landlord and will keep on deposit at all times during the primary term of this Lease (and any extension thereof), the sum of \$50,000 ("Security Deposit") the receipt of which is hereby acknowledged, as security for the faithful performance of all the terms, conditions and covenants of this Lease. If at any time during the primary term of this Lease (or any extension thereof), Tenant shall be in default in the performance of any of the provisions of this Lease, Landlord shall have the right, but not the obligation, to use the Security Deposit, or as much thereof as Landlord may deem necessary, to cure, correct or remedy any such default. Tenant, upon written notification thereof, shall pay to Landlord any and all such expenditure or expenditures so that Landlord will at all times have the full amount of the Security Deposit as security. The Security Deposit and application thereof shall not be considered as liquidated damages in the event of breach but only as an application toward actual damages. Within thirty (30) calendar days from the termination of this Lease in any manner, if Tenant is not in default, the Security Deposit or so much thereof as has not been lawfully expended by Landlord, shall be returned to Tenant, without interest. In the event of a sale of the Premises by Landlord and upon transfer of the Security Deposit to the new owner, Landlord shall be released by Tenant from all liability for the return of the Security Deposit. The provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new owner.

(6) Use of Premises. Tenant shall have the right to use and occupy the Premises for general office purposes. Any other lawful use shall be permitted only with the prior written consent of Landlord, which consent shall not be unreasonably withheld. Throughout the primary term of this Lease (and any extension thereof), Tenant, at Tenant's sole cost and expense, covenants to promptly comply with all laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof. Tenant accepts the Premises subject to all zoning ordinances and regulations pertaining to the Premises, without responsibility or warranty by Landlord, and further Tenant accepts the Premises subject to easements, rights-of-way, restrictive covenants and reservations of record.

(7) Building Operating Costs - Additional Rent

(a) The parties acknowledge and agree that the Base Rent in paragraph 4 is net to Landlord and as such Tenant agrees to pay as additional rent all other Building Operating Costs, which shall include without limitation the following:

(i) Monthly Owners Association fee payable to the Business Commons at Southeast Commons Owners Association as provided in paragraph 4(b);

(ii) Insurance premiums as provided in paragraph 4(c); and
(iii) "Operating Costs", which shall mean any and all expenses incurred by Landlord in connection with the maintenance, operation, upkeep and repair of the Building including the equipment, adjacent walks, malls and landscaped areas, including but not limited to all salaries, wages, health and welfare benefits, payroll taxes, social security and workman's compensation for employees of Landlord engaged in the operation, maintenance and repair of the Building; the costs of all charges for electricity, steam and water or other utilities furnished to the Building, including any taxes thereon; the costs of all charges for insurance of all kinds; the costs of building and cleaning supplies and materials and charges for telephone; the costs of all charges for cleaning, maintenance and service contracts and other services with independent contractors; salaries of building superintendents and assistants; management commissions and reasonable allowance for management services and overhead expenses, bookkeeping, accounting and legal expenses; and all other costs and expenses reasonably necessary in the operation and maintenance of a first class office building. Operating Costs shall specifically include a reasonable reserve for the repair, maintenance, operation and replacement of capital items such as amortization of capital improvements. At the present time, the amount being reserved by Landlord is \$ 0.

(b) The term "Lease Year" shall mean the period of twelve (12) months or more beginning with the Commencement Date and each successive period of twelve (12) months thereafter during the term, and the final period of twelve (12) months or less preceding the Expiration Date.

(c) Calculation of Additional Rent. At the end of each Lease Year, the monthly rental (as set forth in paragraph 4 hereof) being paid by Tenant immediately prior thereto (including all prior adjustments pursuant to this paragraph or pursuant to any other provision of this Lease) shall be adjusted for the subsequent Lease Year. Landlord shall, as soon as practicable after the end of each Lease Year, furnish to Tenant a written statement ("Statement") showing in reasonable detail the Building Operating Costs for the preceding Lease Year. The Statement shall indicate the difference, if any, between the estimated Building Operating Costs and the actual Building Operating Costs for the Lease Year immediately preceding and the estimated proportionate increase or decrease for the current Lease Year. On the monthly rental payment next following Tenant's receipt of the Statement, Tenant shall pay to Landlord the difference, if any, between the estimated Building Operating Costs for the current Lease Year as reflected in the Statement and the amount previously paid by Tenant to Landlord during the current Lease Year. In the event Landlord's actual Building Operating Costs are less than the estimated Building Operating Costs for the Lease Year, Tenant shall be entitled to take as a credit the amount overpaid by Tenant to Landlord against the additional rental payment described above. Any such increase shall be paid as additional rent or any such decrease shall be paid as a credit in monthly installments for the subsequent Lease Year.

(d) Tenant shall also pay to Landlord, within 5 calendar days after the same shall be payable by Landlord and as additional rent for the Lease Year in which the same shall be so payable, an amount equal to 100% of any assessment or installment thereof for public betterments or improvements which is not deductible from any condemnation award. Landlord shall take the benefit of the provisions of any statute or ordinance permitting any such assessment to be paid over a period of time, and Tenant shall be obligated only to pay the said percentage of the installments of any such assessments which may become due and payable during the primary term of this Lease (or any extension thereof).

(e) If the first or final Lease Year contains less than twelve (12) months, Tenant's obligation for the additional rent payable under this provision for such Lease Year shall survive the termination date and shall be adjusted accordingly.

(8) Insurance. During the primary term of this Lease (and any extension thereof), Tenant shall carry and maintain the following types of insurance in the amounts specified, at Tenant's sole cost and expense, and for the mutual benefit of Landlord and Tenant:

(a) **All-Risk Insurance.** In the name of Landlord, Tenant shall keep all improvements located on or appurtenant to the Premises insured against loss or damage by fire and such other perils as are now or hereinafter included in a standard "All-Risk" policy in common use for commercial structures, including vandalism and malicious mischief. The amount of the All-Risk insurance shall be equal to one hundred percent (100%) of the then actual replacement cost of the existing improvements, including the value of any leasehold improvements or betterments but excluding costs of replacing excavations and foundations but without deductions for depreciation. Landlord may, on each anniversary date of this Lease, request the carrier of the insurance (or the agent for the carrier) to determine the amount of insurance required by the provisions of this paragraph, and the resulting determination shall be conclusive between the parties. Upon Landlord's request, Tenant shall provide the holder of any mortgage encumbering the Premises by virtue of a standard mortgagee's clause to the extent of the mortgage interest. In addition to the insurance set forth above, Tenant shall provide Rental Income Insurance (loss of rents insurance) in the name of Landlord in an amount sufficient to cover the full annual rentals well as all other payments which are the responsibility of Tenant under the terms and conditions of this Lease. Further, Tenant shall provide a separate policy covering boiler explosion, together with Rental Income Insurance resulting from a boiler explosion. In lieu of Tenant acquiring the insurance as set forth above, Landlord shall have the exclusive right to purchase the insurance required by the provisions of this paragraph in Landlord's name and to forward Tenant a bill for the premium of such insurance. Tenant shall pay said bill within ten (10) calendar days after receipt of the same.

(b) **Liability Insurance.** Tenant shall at all times keep in force a comprehensive general combined liability insurance policy providing protection of at least \$1,000,000/500,000 combined single limit (with no deductible) against claim and liability for personal injury, bodily injury, death and property damage arising from the use, ownership, maintenance, disuse or condition of the Premises, any improvements located on or appurtenant to the Premises, improvements or adjoining areas or ways. Landlord shall be named and protected under the terms and conditions of said policy as Landlord of the Premises.

(c) **Workmen's Compensation.** Tenant shall also purchase Workmen's Compensation Insurance in compliance with all state, federal and other governmental laws, rules and regulations.

(d) **Personal Property.** Tenant shall be responsible for insuring any and all personal property that may be owned by Tenant. Any insurance that may be purchased pursuant to this paragraph and any proceeds that may be payable as a result of a loss under any such insurance shall in no way reduce, alter, diminish or modify any provisions of this Lease and specifically the indemnity provisions hereof.

(e) **Waiver of Subrogation.** The parties agree that all insurance policies obtained pursuant to this Lease shall include a clause or endorsement which shall waive the right of subrogation on the part of the insurance carrier against both Landlord and Tenant. Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation.

(f) **Miscellaneous.** All insurance by virtue of this Lease shall be written with an insurance company licensed to do business within the State of Colorado and approved by Landlord (which approval shall not be unreasonably withheld), with such policies to be nonassessable. Tenant shall provide Landlord with a full and complete copy of the original insurance policies and a Certificate of Insurance (with proof of payment thereon), which shall provide that the insuring company shall give notice in writing to Landlord within thirty (30) calendar days prior to cancellation, termination or, in the event of a material change in such insurance, for any reason whatsoever. An endorsement shall provide that any proceeds (except liability insurance proceeds) of any loss shall be payable to Landlord and Tenant as their respective interests may appear, except that in the event Landlord purchases the All-Risk insurance, then any loss shall be payable to Landlord. Such insurance policies shall name Landlord as an additionally insured to the policy.

(9) **Assignment and Subletting.** This Lease or any interest herein may not be assigned by Tenant, voluntarily or involuntarily, by operation of law or otherwise, and all or any part of the Premises shall not be subleased by Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld. A merger, consolidation, sale of substantially all of the assets or sale of a substantial amount of the stock of Tenant or a transfer of a substantial partnership interest of Tenant, shall not constitute an assignment of this Lease for the purposes of this paragraph. Any consent to assignment or subletting given by Landlord shall not constitute a waiver of necessity for such consent to a subsequent assignment or subletting. Notwithstanding any assignment or sublease, Tenant shall remain fully liable under the terms and conditions of this Lease and shall not be released from performing any of the terms, covenants and conditions hereof. Any assignee or subtenant (in addition to Tenant) shall be personally responsible for all payments, conditions, covenants and agreements in this Lease. Any assignment or subletting in violation of this paragraph shall be null and void.

(10) **Building Services**

(a) **Utilities.** Tenant shall be fully responsible for their share of payment of all building utilities, including telephone, internet, water, sewer, electricity and gas. Tenant shall, prior to taking possession of the property, contact all such utilities and be solely responsible for ensuring utilities are operational and billing is transferred to Tenant. Should for any reason such transfer not take place, Landlord shall charge Tenant the full price for all such utility costs until such time as all utilities are transferred.

(b) **Building Components.** Landlord shall only be responsible for maintenance and repairs to the roof, foundation and exterior structural components of the Building, provided that the need for any such repairs is not caused by the Tenant, its agents, employees, contractors or invitees, in which event Tenant shall reimburse Landlord for the cost and expense of making such repairs. Tenant shall be fully responsible for the care, maintenance and replacement of all other building components, including but not limited to HVAC, plumbing, electrical, interior, windows, and communication systems, for the term of the Lease. Prior to the expiration or other termination of this Lease, should any building component be inoperative or non-functional in any manner, Tenant shall cause same to be repaired and/or replaced promptly before the Premises are returned to Landlord at Tenant's sole cost and expense. Tenant shall be responsible for all repairs of the Premises such that the Premises are returned to the same condition as they existed upon execution of this Lease. Tenant is only responsible for damaged caused by Tenant ordinary wear and tear excepted.

(c) **Nonliability.** Landlord shall not be liable for, and Tenant shall not be entitled to any remedy, including but not limited to an abatement or reduction of rental or any self-help remedies, by reason of Landlord's failure to furnish any of the foregoing, nor shall such failure constitute an eviction, when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, riots, civil disturbance or by any other cause, similar or dissimilar, beyond the control of Landlord. Landlord shall not be liable under any circumstances for loss of or injury to property, however occurring, through or in connection with or incidental to failure to furnish any of the foregoing or any loss or damage caused to the Premises or Tenant's equipment caused by power outages, power surges or any other like event.

(11) **Inspection of Premises.** Tenant or any designee, at Tenant's sole cost and expense, shall have the right to inspect the physical conditions of the Premises, including but not limited to an inspection of the roof, walls, structural integrity, electrical, plumbing, HVAC or other mechanical systems of the Premises and a determination of the existence or nonexistence of asbestos, lead-based paint and urea formaldehyde insulation, PCB transformers, radon gas, hazardous or toxic substances, and/or underground storage tanks in or on the Premises. If Tenant is not satisfied with the results of said inspection and written notice thereof is received by Landlord more than five (5) calendar days prior to the Commencement Date then this Lease shall become null and void, the Security Deposit received for herein (if any) returned to Tenant, and all parties hereto relieved from any further obligation hereunder. If said notice is not received by Landlord on or before the date set forth above, this provision shall be waived and the Lease shall remain in full force and effect.

(12) **Indemnity Provisions.** Tenant and Landlord agree to exonerate, hold harmless, protect and indemnify each other from and against any and all losses, damages, claims, suits or actions, judgments and costs which may arise during the primary term of this Lease (or any extension thereof) for personal injury, loss of life or loss or damage to any property sustained in or about the Premises or the Building resulting from, or arising, directly or indirectly, out of the use or occupancy of the Premises, and from and against all costs, counsel fees, expenses and liabilities incurred in any such claims, the investigation thereof or the defense of any action or proceeding brought thereon; and from and against any judgments, orders, decrees or liens resulting from such matters and any fines levied by any authority for violation of any law, regulation or ordinance by virtue of the ownership and/or use of the Building and the Premises. Landlord shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other places resulting from dampness or any other cause whatsoever, except personal injury caused by or due to the gross negligence of Landlord. Landlord shall not be liable for interference with the gas and/or electrical service, heating/air conditioning, or for any defect, latent or otherwise, in the Premises. Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises. Tenant shall not permit any mechanic's or material men's liens to be filed against the Premises and hereby indemnifies and holds Landlord harmless from and against any liability, damage, expense or cost which may be incurred by Landlord in connection with any mechanic's or material men's liens which may be filed against the Premises as a result of the provisions of this Lease. This indemnity shall specifically include attorneys' fees and any costs incurred by Landlord to enforce this indemnity.

(13) **Occupational Safety and Health Act.** Tenant shall fully comply with all federal, state and local codes, statutes, laws and ordinances ("Law"). Tenant shall be responsible to make any and all repairs and alterations to the structural and nonstructural components of the Premises (subject to the terms and provisions of this Lease) to any appurtenances situated upon the Premises that may be required of the Landlord as a result of the Law in effect at the time of mutual execution of this Lease or which hereafter shall be enacted.

(14) **ADA Compliance.**

(a) **Disclosure.** Tenant hereby acknowledges that the Premises and Tenant may be subject to the Americans With Disabilities Act (the "ADA"), a Federal law. Among other requirements of the ADA that could apply to the Premises, Title III of the ADA requires owners and tenants of "public accommodations" to remove barriers to allow access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons by certain dates. All costs incurred by Tenant or Landlord during the primary term of this Lease (and any extension thereof) to ensure Tenant's compliance with the ADA, including necessary alterations in or about the Premises or modifications to the access to the Building and the Premises, shall be at Landlord's sole cost and expense unless Tenant has agreed, in writing, to pay for a portion of said costs.

(b) **Investigation.** Tenant further acknowledges that prior to executing this Lease, Tenant may investigate the ADA and the regulations thereunder to determine if the ADA law and regulations would apply to Tenant and/or to the Premises in which Tenant is interested in occupying. Tenant shall be responsible, at Tenant's expense, for conducting its own independent investigation of all ADA issues prior to the Commencement Date of this Lease and during the primary term of this Lease (and any extension thereof).

(15) **Hazardous Materials.** Tenant shall not (either with or without negligence) cause the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials ("Hazardous Materials"). Tenant shall not allow the storage or use of such Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of Hazardous Materials; nor allow to be brought into the Premises any Hazardous Materials except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity of such Hazardous Materials. Without limitation, Hazardous Materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 USC Section 6901 et seq., and applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials, then the reasonable cost of testing and resulting cleanup thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to the Premises, provided that such testing proves that Tenant released such Hazardous Materials on the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of Hazardous Materials on the Premises occurring while Tenant is in possession or elsewhere if caused by Tenant or persons acting under Tenant.

(16) **Alterations to Premises.**

(a) **Tenant's Obligations.** Tenant shall keep the Premises in good condition and repair and the Premises shall not be altered, repaired or changed without the prior written consent of Landlord. Tenant shall keep the Premises and Building free and clear of any liens and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event any lien is filed, Tenant shall do all acts necessary to discharge any lien within ten (10) calendar days of filing, or if Tenant desires to contest any lien, then Tenant shall deposit with Landlord such security as Landlord shall demand to insure the payment of the lien claim.

(b) **Alterations to Premises.** Unless otherwise provided by written agreement, all alterations, improvements and changes that may be required shall be done either by or under the direction of Landlord but at the cost of Tenant. Landlord may, at Landlord's sole option, impose any reasonable conditions to such alterations consistent with Landlord's management of the Building.

(c) **Workmen's Compensation Insurance.** At all times when any change or alteration is in progress, Tenant shall maintain, at Tenant's sole cost and expense, Workmen's Compensation insurance in accordance with the law or laws now or hereafter enacted governing all persons employed in connection with the change or alteration and general liability insurance for the mutual benefit of Landlord and Tenant, expressly covering the additional hazards due to the change or alteration.

(17) **Condemnation.** In the event the Building, or any part thereof, shall be taken by any exercise of the right of eminent domain or by action of any public or other authority during the primary term of this Lease (or any extension thereof), this Lease shall terminate at the election of Landlord. If Landlord elects not to terminate this Lease, then the rental shall be proportionately adjusted. Landlord reserves all rights to damages thereafter accruing by reason of any exercise of the right of eminent domain, or by reason of anything lawfully done and in pursuance of any public or other authority, and by way of confirmation, Tenant grants to Landlord all of Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request. Nothing in this provision shall give Landlord any interest in or preclude Tenant from seeking, on Tenant's own account, any award attributable to the taking of personal property or trade fixtures belonging to Tenant, or for the interruption of Tenant's business.

(18) Damage/Casualty/Destruction of Premises.

(a) **Partial Damage - Insured.** In the event the Premises or the Building are damaged by any casualty which is covered under any policy of insurance carried by Landlord, Landlord shall restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within sixty (60) calendar days after the commencement of work in the opinion of a registered architect or engineer appointed by Landlord. In such event, this Lease shall continue in full force and effect.

(b) **Partial Damage - Uninsured.** In the event the Premises or the Building are damaged by a risk not covered by Landlord's insurance or the proceeds of available insurance are less than eighty percent (80%) of the cost of restoration, or if the restoration cannot be completed within sixty (60) calendar days after the commencement of work, in the opinion of a registered architect or engineer appointed by Landlord, Landlord shall have the option to either (i) repair or restore such damage, with this Lease continuing in full force and effect; or (ii) give written notice to Tenant at any time within thirty (30) calendar days after such damage terminating this Lease as of a date to be specified in such notice, which date shall be not less than thirty (30) calendar days nor more than sixty (60) calendar days after giving such notice. In the event Landlord gives such notice, this Lease shall terminate and all interest of Tenant in the Premises shall terminate on such date so specified in such notice and the rent, reduced by any proportionate reduction based upon the extent, if any, to which said damage interfered with the use and occupancy of Tenant, shall be paid to the date of such termination. Landlord agrees to refund to Tenant any rent paid in advance for any period of time subsequent to such termination date and the Security Deposit held by Landlord within thirty (30) calendar days of such date of termination.

(c) **Abatement of Rent.** Landlord shall have no obligation to abate the rent reserved hereunder if the Premises or Building shall be partially damaged (as described above) as the result of any act or failure to act of Tenant. Provided, however, in the event of a partial damage not caused by Tenant, the rent reserved hereunder shall be abated in the same proportion that the portion of the Premises rendered untenantable bears to the entire Premises.

(d) **Total Destruction.** In the event the Premises are totally destroyed or the Premises cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, this Lease shall terminate effective as of the date of the destruction.

(e) **Damage Near End of Lease Term.** Notwithstanding anything to the contrary contained in this provision, Landlord and Tenant shall not have any obligation whatsoever to repair, reconstruct or restore the Premises if the damage resulting from casualty as described herein occurs during the last three hundred and sixty-five (365) calendar days of the primary term of this Lease (or any extension thereof).

(f) **Tenant's Obligations.** Tenant shall repair any damage or destruction by fire or other cause, or restore or replace any panelings, decorations, partitions, railings, floor coverings, office fixtures or any other improvements or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Tenant shall restore or replace same with items or improvements of comparable value in the event of damage. Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

(19) Default Provisions. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) **Failure to Pay Rent.** Tenant failing to pay the rental herein reserved or failing to make any other payments required to be made by Tenant when due, where such failure shall continue for a period of five (5) calendar days following written notice from Landlord to Tenant.

(b) **Failure to Keep Covenants.** Tenant failing to perform or keep any of the other terms, covenants and conditions herein contained for which Tenant is responsible, and such failure continuing and not being cured for a period of thirty (30) calendar days after written notice or if such default is a default which cannot be cured within a 30-calendar day period, then Tenant's failing to commence to correct the same within said 30-calendar-day period and thereafter failing to prosecute the same to completion with reasonable diligence.

(c) **Abandonment.** Tenant abandoning the Premises.

(d) **Bankruptcy.** Tenant being adjudicated a bankrupt or insolvent or Tenant filing in any court a petition for bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended) or the filing of an involuntary bankruptcy against Tenant (unless said involuntary bankruptcy is terminated within thirty (30) calendar days from the date of said filing), or Tenant filing in any court for the appointment of a receiver or trustee of all or a portion of Tenant's property or there being appointed a receiver or trustee for all or a portion of Tenant's property, unless said receiver or trustee is terminated within thirty (30) calendar days from the date of said appointment.

(e) **Assignment for Benefit of Creditors.** Tenant making any general assignment or general arrangement of Tenant's property for the benefit of Tenant's creditors.

(20) Remedies. In the event of an occurrence of default as set forth above, Landlord shall have the right to:

(a) **Terminate Lease.** Terminate this Lease and end the term hereof by giving to Tenant written notice of such termination, in which event Landlord shall be entitled to recover from Tenant at the time of such termination the present value of the excess, if any, of the amount of rent reserved in this Lease for the then balance of the term hereof over the then reasonable rental value of the Premises for the same period. The present value shall be determined by discounting all future excess rent amounts at a rate of eight percent (8%) per annum. It is understood and agreed that the "reasonable rental value" shall be the amount of rental which Landlord can obtain as rent for the remaining balance of the initial term or renewal term, whichever is applicable; or

(b) **Sue Monthly for Rents.** Without resuming possession of the Premises or terminating this Lease to sue monthly for and recover all rents, other required payments due under this Lease, and other sums including damages and legal fees at any time and from time to time accruing hereunder; or

(c) **Repossess Premises.** Upon written notice to all interested parties, reenter and take possession of the Premises or any part thereof and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant and remove the effects of either or both (forcibly, if necessary) without being deemed guilty in any manner of trespass and without prejudice to any remedies for rent delinquencies or preceding lease defaults, in which event Landlord may from time to time without terminating this Lease relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises, and such reentry or taking of possession of the Premises by Landlord shall not be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. In the event of Landlord's election to proceed under this provision, then such repossession shall not relieve Tenant of Tenant's obligation and liability under this Lease, all of which shall survive such repossession; and Tenant shall pay to Landlord as current liquidated damages the basic rental and additional rental and other sums hereinabove provided which would be payable hereunder if such repossession had not occurred, less the net proceeds (if any) of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting, including but without limitation all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration costs, and expenses of preparation of such reletting. Tenant shall pay such current damages to Landlord on the days on which the basic rental would have been payable hereunder if possession had not been retaken, and Landlord shall be entitled to receive the same from Tenant on each such day.

(d) **Personal Property.** In the event of a default, the parties agree that Landlord may exercise any rights available to Landlord under Colorado law regarding any and all improvements, equipment and other personal property of Tenant situated in the Premises at the time of the default, including but not limited to the right to sell the personal property for the best price that can be obtained at a public or private sale and, from the proceeds of such sale pay all sums

due Landlord, plus reimburse Landlord for all costs and expenses, including reasonable attorneys' fees, arising out of the execution of the provisions of this paragraph. This remedy shall not limit any other remedy that may be available to Landlord under this Lease or in law or in equity.

(21) Default by Landlord: Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) calendar days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) calendar days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) calendar day period and thereafter diligently prosecutes the same to completion.

(22) Late Charges: Tenant hereby acknowledges that late payment by Tenant to Landlord of rent, of additional rent, or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent, additional rent, or any other sums due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) calendar days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of any of the aforesaid monetary obligations of Tenant, then the rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding paragraph 4 or any other provision of this Lease to the contrary.

(23) Holdover: Notwithstanding any rule or law to the contrary, in the event Tenant remains in possession of the Premises or any part thereof subsequent to the expiration of the term hereof and such holding over shall be with the consent of Landlord, such possession and occupancy shall conclusively be deemed to be a tenancy from month to month only, at a rental of 150% of the existing rate at the end of the term hereof and, further, such possession shall be subject to all of the other terms and conditions (except any option to renew or option to purchase) contained in this Lease.

(24) Subordination and Estoppel Letter: This Lease is subject and subordinate to all Mortgages which now or hereafter may affect the Premises, and Tenant shall execute and deliver upon demand of Landlord any and all instruments desired by Landlord subordinating this Lease in the manner required by Landlord to any new or existing Mortgage. Should Tenant fail to execute and deliver any such documents or instruments within ten (10) calendar days after receipt thereof, Tenant irrevocably constitutes and appoints Landlord as Tenant's special attorney-in-fact for the purpose solely of executing and delivering any such documents or instruments pursuant to this paragraph. Any holder of a Mortgage may rely upon the terms and conditions of this paragraph. Further, Tenant shall at any time and from time to time, upon not less than ten (10) calendar days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which rental and other charges are paid in advance, if any, and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any are claimed. Tenant shall attorn to any buyer at any foreclosure sale or to any grantee or transferee designated in any deed given in lieu of foreclosure. Any subordination agreement to be executed by Tenant shall provide that as long as Tenant is current and not in default, the holder of the Mortgage shall not disturb the tenancy of Tenant.

(25) Relocation of Premises: Intentionally Omitted.

(26) Entry by Landlord: Landlord reserves and shall at any and all times have the right to enter the Premises to inspect the same and perform any other service to be provided by Landlord to Tenant hereunder, to show the Premises to prospective purchasers or tenants, to post notices of nonresponsibility and "for lease" or "for sale" signs, and to alter, improve or repair the Premises and any portion of the Building without abatement of rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing the entrance to the Premises shall not be blocked thereby, and further providing that the business of Tenant shall not be interfered with unreasonably (except for emergencies). Tenant hereby waives any claim for damages, for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For purposes of this provision, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon or about the Premises, excluding Tenant's vaults and safes, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or deemed to be forcible or unlawful entry into or a detainer of the Premises or an eviction of Tenant from the Premises.

(27) Surrender of Premises: Upon the Termination Date of this Lease, Tenant shall peaceably and quietly leave and surrender the Premises in as good condition as existed on the Commencement Date, ordinary wear and tear excepted. Tenant shall surrender and deliver the Premises broom clean and free of Tenant's property. Provided Tenant is not in default, Tenant shall have the right to remove all of Tenant's fixtures, equipment, machinery and other personal property, provided that upon such removal the Premises are delivered in the same condition as existed at the time of the Commencement Date. Further, in the event Tenant does not remove any of Tenant's own fixtures, equipment or personal property or any additions or alterations made to the Premises during the primary term of this Lease (and any extension thereof), Landlord may require Tenant to remove any such improvements, alterations, fixtures and equipment and restore the Premises to the condition as existed on the Commencement Date or retain the same.

(28) Notices: All notices, demands and requests required to be given by either party to the other shall be in writing and shall either be hand delivered, facsimile transmitted, or sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth below or at such other addresses as the parties may designate in writing delivered pursuant to this provision. Any notice when given as provided herein shall be deemed to have been delivered on the date personally served or faxed or two (2) calendar days subsequent to the date that said notice was deposited with the United States Postal Service.

Landlord: Elizabeth Michaelis and Stanley Luhr
14406 East Evans Avenue
Aurora, CO 80014

Tenant: Quality Built, LLC
14406 East Evans Ave
Aurora, CO 80014

Copy to: Gary H Elzweig
700 Grayhawk Ave
Plantation, FL 33324

(29) Time of the Essence. Time is of the essence hereof.

(30) Quiet Enjoyment/Peaceful Possession. Upon Tenant's paying the rental herein reserved and upon performing all of the terms and conditions of this Lease on Tenant's part to be performed, Tenant shall at all times during the primary term of this Lease (and any extension thereof) peacefully and quietly have, hold and enjoy the Premises.

(31) Signs. Tenant shall not place or permit to be placed in or upon the Premises or Building, where visible from outside the Premises or any part of the Building, any signs, notices, drapes, shutters, blinds or displays of any type without the prior written consent of Landlord. Landlord reserves the right, in Landlord's sole discretion, to place and locate on the roof, exterior of the Building, and in any area of the Building not leased to Tenant such signs, notices, displays and similar items as Landlord deems appropriate in the proper operation, lease and/or sale of the Building. Prior to the erection of any sign or display Tenant shall obtain a copy of the Owners' Association current sign ordinances and policies, and shall be in full compliance with all such regulations at all times. Landlord shall provide a copy of the current sign regulations to Tenant on or before the Commencement Date.

(32) Miscellaneous.

(a) Choice of Law. This Lease is entered into in the State of Colorado and shall be construed in accordance with the laws thereof and any dispute arising out of or in connection with this Lease shall be submitted to a court of proper jurisdiction in the County of Denver, State of Colorado.

(b) Headings and Captions. The headings and captions used in this Lease are for the convenience of reference only and shall not be used in the construction or interpretation of this Lease.

(c) Indentment. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, administrators, successors and assigns.

(d) Construction of Terms. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular shall be held to include the plural, as the identity of Landlord or Tenant requires.

(e) Entire Agreement. This Lease together with any exhibits attached hereto constitute the entire agreement between Landlord and Tenant relative to the Premises and may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. The parties agree that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease.

(f) Rules and Regulations. Landlord may adopt rules and regulations from time to time for the Building and may amend such rules and regulations, in Landlord's sole discretion, without prior notice to Tenant.

(33) No Waiver. No waiver by Landlord of any provisions hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rental hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

(34) Attorneys' Fees. In case suit shall be brought to enforce any provisions of this Lease, the prevailing party shall be awarded (in addition to the relief granted) all reasonable attorneys' fees and costs resulting from such litigation.

(35) Interest on Past Due Obligations. Any amount due to Landlord not paid when due shall bear interest at the rate of one percent (1.0%) per month from the date due; provided, however, that any such payment of interest shall not excuse or correct any default by Tenant under this Lease.

(36) Memorandum of Lease. Either party, upon request from the other party, shall execute in recordable form a short form Memorandum of Lease, which Memorandum of Lease shall contain only the names of the parties, the Commencement Date and Termination Date of this Lease (and any options which may be granted hereunder), and the legal description of the Premises.

(37) Legal and/or Other Counsel. Tenant and Landlord acknowledge that they have been advised that this document has important legal consequences and that Tenant and Landlord have consulted or have had adequate opportunity to consult legal, tax or other counsel in connection with the execution of this Lease, zoning of the Premises, tax implications, and all other aspects relative to the transaction contemplated hereby.

(38) Severability. If any sentence, paragraph or section of this Lease is held to be illegal or invalid, this shall not affect in any manner those other portions of the Lease not illegal or invalid and this Lease shall continue in full force and effect as to those provisions.

(39) Facsimile Transmittals. The parties agree that a facsimile transmittal of this Lease shall be considered as an originally executed document and shall be binding upon the parties hereto. The parties further agree that the exact, originally executed Lease which was transmittal by facsimile shall be delivered to the appropriate party via U.S. Mail, messenger, or other acceptable delivery service within seven (7) calendar days from the date of said facsimile transmittal.

(40) Additional Provisions.

(a) Right of First Refusal to Purchase Premises. In the event of any offer acceptable to Landlord, or to Landlord's successor in interest, at any time or times during the original or extended term of this Lease, for the sale of the Premises, the Landlord, prior to acceptance thereof, shall give the Tenant written notice thereof and Tenant shall have the right of first refusal for thirty (30) days after receipt of such notice within which to elect to purchase the Premises on the terms of said offer. If Tenant shall elect to purchase the Premises pursuant to the first refusal herein granted, it shall give notice of such election within such thirty (30) day period. Tenant's failure within that time to exercise its right of first refusal under this paragraph shall not affect this Lease and the continuance of Tenant's rights and obligations under this Lease.

(41) Counterparts. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete Lease between the parties.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement the day and year first written above, and attest they have full legal authority to bind the parties to all terms and conditions herein.

Tenant: Quality Built, LLC

Landlord: Elizabeth Michaelis and Stanley Lühr as Joint Tenants

By: _____
Gary Blazewicz, Member

By: _____
By: _____

Date of Tenant's Signature: _____

Date of Landlord's Signature: _____

END OF LEASE

EXHIBIT C

Quality Built, LLC, Production of Documents 00172

ROA_00241

EXHIBIT C

EMPLOYMENT AGREEMENT

This employment agreement (this "Agreement"), dated _____, is between Quality Built, LLC, a Delaware limited liability company (the "Employer"), and [Stan Luhr] [Elizabeth Michaelis] (the "Employee").

In consideration of the Employee's employment with the Employer and other consideration, as set forth below in the mutual promises and conditions in this Agreement, it is agreed as follows:

1. **Effective Date.** This Agreement will become effective on the date this Agreement is signed by an authorized representative of the Employer. The Employee's start date for employment will be _____, 2010.
2. **At-Will Employment.** The parties agree that the Employee's employment with the Employer under this Agreement is "at will." This means that there is no specified period of employment, and that either the Employee or the Employer may terminate the Employee's employment with the Employer at any time, without notice, and with or without good cause. The at-will nature of this employment relationship may not be modified or altered in any way except by a written agreement that clearly and expressly specifies the intent to do so and is signed by the Employee and an authorized representative of the Employer. The granting of raises, bonuses, or changes to job titles or job descriptions will not in any way affect the characterization of the Employee's employment with the Employer as being "at will."
3. **Employee's Position.** The Employee will initially hold the position of [Stan Luhr: Chief Technical Officer/Principal] [Elizabeth Michaelis: Executive President] of the Employer. The Employer may change the position or job description of the Employee from time to time, in the sole discretion of the Employer.
4. **Compensation.** The Employee's initial annual base salary shall be [Stan Luhr: \$87,500] [Elizabeth Michaelis: \$87,500], payable in accordance with the Employer's customary payroll procedures. The Employee's base salary shall be prorated for any partial period during the term of the Employee's employment with the Employer (the "Employment Term").
5. **Equity Ownership.** As soon as reasonably practicable following the date hereof, the Employee shall be granted restricted common equity of the Employer ("Common Equity") representing 5.00% of the Common Equity outstanding on a fully diluted basis as of the date hereof (the "Common Grant"). The Common Grant shall not be subject to a vesting schedule but shall be subject to customary forfeiture and repurchase provisions and restrictive covenants. The Employee shall be entitled to preemptive rights to purchase his or her pro rata percentage of any future equity issuances of the Employer at the same price and terms as offered to other equityholders of the Employer. Notwithstanding the foregoing, the Common Equity shall be subject to the terms and conditions set forth in the Employer's limited liability company agreement, as it may be amended from time to time, and a common grant agreement to be entered into between the Employee and the Employer.
6. **Employee Benefits.** While the Employee is employed by the Employer, the Employee shall be entitled to participate in all other Employer benefit plans, policies and programs (subject to the terms and conditions thereof) generally made available to the Employer's employees when and as the Employee becomes eligible for them. The Employer reserves the right to modify, suspend or discontinue any and all of such benefit plans.

policies, and programs at any time without notice to or recourse by the Employee, so long as such action is taken generally with respect to other similarly situated employees.

7. **Severance.** Subject to the Employee's continued compliance with Sections 8, 9 and 10 hereof, if the Employee suffers a "Termination Without Cause" (as defined below), the Employee shall be entitled to receive an amount equal to (i) in the event the Termination Without Cause occurs within one (1) year of the date of this Agreement, the Employee's base salary as in effect at the time of the Termination Without Cause through to the first anniversary of the date of this Agreement, or (ii) in the event the Termination Without Cause occurs following one (1) year after the date of this Agreement, sixty (60) days of the Employee's base salary as in effect at the time of the Termination Without Cause (the "Severance Amount"), provided that the Employee delivers to the Employer a fully effective and irrevocable general release of claims (in a form reasonably acceptable to the Employer) within sixty (60) days following such Termination Without Cause (the "Release"). Subject to this Section 7 and Section 18, the Severance Amount shall be payable to the Employee in cash in substantially equal installments over a period of six (6) months (or two (2) months in the case of the Severance Amount being sixty (60) days of the Employee's base salary) commencing on the next regular pay day but in any event no later than the sixtieth (60th) day following such Termination Without Cause in accordance with the Employer's customary payroll procedures (the period commencing on the date of the Termination Without Cause and ending on the date the last Severance Amount installment payment is due hereunder, the "Severance Period"). For purposes of this Agreement, a "Termination Without Cause" shall mean the Employer's voluntary termination of the Employee's employment for any reason other than for "Cause" (as defined below) or as a result of the Employee's death or "Disability" (as defined below). For the avoidance of doubt, (i) a "Termination Without Cause" for purposes of this Agreement shall not include the Employee's voluntary resignation or retirement, or the Employee's termination of employment as a result of the Employee's death or Disability, and (ii) if the Employee's employment with the Employer terminates for any reason other than as a result of a Termination Without Cause, the Employer shall have no obligation to pay the Employee the Severance Amount hereunder. For purposes of this Agreement, "Cause" shall mean: (i) the Employee's refusal to follow lawful directions within the scope of the Employee's duties or the Employee's failure to perform the Employee's duties (other than by reason of physical or mental illness); (ii) the Employee's conviction of (or plea of *nolo contendere* or guilty to) a felony (other than a traffic violation); (iii) the Employee's commission of acts of dishonesty, misappropriation, gross neglect or fraud in connection with the Employee's position, duties or responsibilities hereunder; (iv) any breach by the Employee of any code of conduct, code of ethics or other written policy of the Employer; (v) any breach of fiduciary duty or responsibility by the Employee to the Employer; or (vi) any breach of the Employee's obligations under this Agreement. For purposes of this Agreement, "Disability" shall mean the Employee's physical or mental incapacity which prevents the Employee from performing the Employee's duties and responsibilities as determined by the Employer. If at any time during the Severance Period the Employer determines that the Employee has failed to comply with the Employee's obligations under Section 8, 9 or 10 hereof, the Employer's obligation to pay the Employee any further installments of the Severance Amount shall immediately cease. Except as provided in this Section 7, following termination of the Employee's employment with the Employer for any reason, the Employer shall have no further obligation to make any further payments or to provide any further benefits to the Employee (other than to pay the Employee any accrued but unpaid base salary through the date of termination and any other payments or benefits the Employee may be entitled to receive under the Employer's benefit plans, policies and programs in accordance with and subject to the terms of such benefit plans, policies and programs).

8. **No Conflict of Interest or Competition During Employment.** During the Employment Term, the Employee shall devote his or her full business time, energy, and ability

exclusively to the business and interests of the Employer, and shall not, without the Employer's prior written consent, render to others services of any kind for compensation, or engage in any other business activity that would materially interfere with the performance of the Employee's duties under this Agreement or create a conflict of interest for the Employee. (Stan Luhr Only: Nothing contained herein shall prevent the Employee from continuing to pursue his forensic business in existence as of the date of this Agreement, but only to the extent that such activities do not interfere with his duties to the Employer.) During the Employment Term and thereafter during the Severance Period, if any, plus for a period of one (1) year following the termination of the Employment Term, the Employee shall not, directly or indirectly, whether as partner, employee, creditor, shareholder, independent contractor, consultant, or otherwise, promote, participate, or engage in any activity or other business competitive with the Employer's business. During the Employment Term, the Employee agrees to promptly disclose to the Employer any business opportunity which is presented to the Employee and which is of a similar nature to the type of business the Employer is engaged or is considering engaging in at some point in the future.

9. **Non-Solicitation of Customers and Suppliers.** During the Severance Period, if any, plus for a period of one (1) year following the termination of the Employment Term, Employee agrees not to directly or indirectly, either alone or in concert with others, solicit, entice, or in any way divert any of the Employer's customers or suppliers to do business with any business entity in competition with the Employer.
10. **Non-Solicitation of Employees/Co-Workers.** During the Severance Period, if any, plus for a period of one (1) year following the termination of the Employment Term, the Employee agrees not to directly or indirectly, either alone or in concert with others, solicit or entice any other employee of the Employer to leave the Employer in order to work for anyone or any entity in competition with the Employer.
11. **Protection of Trade Secrets.** The Employee recognizes that the Employer is engaged in a continuous program of business development and operations and that information the Employee gains during the course of his or her employment has significant value to the Employer. The Employee understands that all information is to be held confidentially, and the Employee is responsible for taking steps to ensure information in the Employee's possession is protected from disclosure to those who are not employed by the Employer. The Employee also understands that certain items of confidential information are "trade secrets" as defined under California law (Civil Code section 3426.1 *et seq.*) and have significant economic value to the Employer. These trade secrets include, but are not limited to, the following categories of information: customer lists and specifications, ongoing business development projects and plans, software applications and modifications, forms, business models, marketing and sales strategies, strategies and initiatives regarding other affiliated entities, tracking and monitoring systems, databases containing contractor information, supplier lists, financial information about the Employer's company or affiliated companies, and other designs, processes, and techniques in use by the Employer. During the Employment Term and at all times after the Employment Term, the Employee agrees to keep such trade secrets in the strictest confidence and take all necessary measures to safeguard such trade secrets from disclosure, even after the Employment Term under this Agreement has ended. The Employee agrees not to disclose, use, or induce or assist anyone else to disclose, use, or misappropriate these trade secrets without the Employer's prior approval in writing, except as may be necessary in communications with other employees of the Employer during the Employment Term and within the course and scope of the Employee's employment with the Employer. The Employee agrees to promptly advise the Employer of any knowledge that he or she has of any unauthorized release or use of trade secret information.

12. **Returning Employer's Documents and Property Upon Termination.** Upon termination of the Employment Term, the Employee agrees to immediately deliver to the Employer all originals, copies, and reproductions of documents generated or possessed by the Employee in his or her capacity as an employee of the Employer, as well as all equipment, tools, cell phones, laptop computers, personal digital assistants, pagers, other physical property of the Employer, computer-related hardware, software, data, passwords or other electronically stored information.

13. **Employer's Ownership of Intellectual Property.** All processes, inventions, patents, copyrights, trademarks, and other intangible rights that may be conceived or developed by the Employee, either alone or with others, during the Employment Term, whether or not conceived or developed during the Employee's working hours, and with respect to which the equipment, supplies, facilities, or trade secret information of the Employer was used, or that relate at the time of conception or reduction to practice of the invention to the business of the Employer or to the Employer's actual or demonstrably anticipated research and development, or that result from any work performed by the Employee for the Employer, shall be the sole property of the Employer. [Stan Luhr Only: Notwithstanding the foregoing, Employee shall be permitted to develop inventions, patents and other intellectual property which are not competitive with any of the activities engaged in by the Employer during his normal course of business as a forensic consultant as permitted hereunder, to the extent his duties so require, and such development shall not be part of this Agreement.] The Employee shall disclose to the Employer all inventions conceived during the Employment Term, whether or not the property of the Employer under the terms of the preceding sentence, provided that such disclosure shall be received by the Employer in confidence. The Employee shall execute all documents, including patent applications and assignments, required by the Employer to establish the Employer's rights under this Section 13.

14. **[Stan Luhr Only: Patents.** Concurrent with the execution of this Agreement and for no additional consideration the Employee shall and does hereby assign to the Employer, and the Employee shall execute such further documents as requested by the Employer to evidence such assignment, all rights, title and interest to the following published patents: SYSTEMS AND METHODS FOR SELECTING AND PRIORITIZING CONSTRUCTION CHECKPOINTS (US Patent Application No. 10/900,734; Filed: July 28, 2004); BUILDER RISK ASSESSMENT SYSTEM (US Patent Application No. 10/802,129; Filed: March 16, 2004); and SYSTEMS AND METHODS FOR TRACKING COMPONENT-RELATED INFORMATION ASSOCIATED WITH BUILDINGS (US Patent Application No. 11/198,579; Filed: August 5, 2005) (collectively "Patents").]

15. **Employee's Promise that Employment Does not Breach any Other Agreement.** The Employee represents and warrants that his or her employment with the Employer does not and will not breach any agreement to keep in confidence proprietary information acquired by the Employee in confidence or in trust prior to the date hereof. The Employee has not brought and will not bring to the Employer, or use in employment, any proprietary material or trade secrets of a former employer (which term, for purposes of this Agreement, shall include persons, firms, corporations, and other entities for which the Employee has acted as an independent contractor or consultant) that are not generally available to the public, unless the Employee first obtains express written authorization from any such former employer for their possession and use.

16. **Injunctive Relief.** It is agreed that irreparable injury could occur from violation of terms of this Agreement. The parties to this Agreement shall be entitled, in addition to damages and other remedies provided by law, to an injunction or other equitable remedy in the event this Agreement is breached.

17. **No Waiver Unless in Writing.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver by the Employer of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
18. **Entire Agreement.** This Agreement contains the entire Agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between them, including all prior employment agreements, whether or not fully performed by the Employee before the date of this Agreement. No oral modifications, express or implied, may alter or vary the terms of this Agreement. This Agreement may only be amended by a writing signed by the Employee and an authorized representative of the Employer. Any representations contrary to this Agreement, express or implied, written or oral, are hereby disclaimed.
19. **Section 409A.** All provisions of this Agreement providing for the payment of "nonqualified deferred compensation" subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the rules, guidance and regulations thereunder (collectively, "Section 409A") shall be interpreted to comply with Section 409A. Neither party individually or in combination may accelerate or defer any such deferred payment, except in compliance with this Agreement and Section 409A, and no amount shall be paid prior to the earliest date on which it is permitted to be paid under this Agreement and Section 409A. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment that are subject to Section 409A unless such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." In the event that the Employee is deemed on the date of termination to be a "specified employee" within the meaning of that term under Section 409A, then with regard to any payment or the provision of any benefit that is "nonqualified deferred compensation" as defined under Section 409A payable on account of a "separation from service," payment shall be made no earlier than the earlier of (a) the first day after six (6) months following such termination of employment, or (b) the Employee's death. Any payments delayed by reason of the prior sentence shall be caught up and paid in a single lump sum on the date indicated by the previous sentence. Notwithstanding the foregoing, any installments of the Severance Amount that are exempt from coverage under Section 409A pursuant to the short-term deferral exception in Treas. Reg. §1.409A-1(b)(4) or the separation pay exception in Treas. Reg. §1.409A-1(b)(9)(iii) shall not be subject to such six (6)-month delay and shall be payable in accordance with Section 7. For purposes of Section 409A, the Employee's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. In no event whatsoever shall the Employer be liable for any additional tax, interest or penalty that may be imposed on the Employee as a result of Section 409A or any damages for failing to comply with Section 409A. Whenever a payment under this Agreement may be paid within a specified period, the actual date of payment within the specified period shall be within the Employer's sole discretion. Any amounts payable hereunder that satisfy the short-term deferral exception in Treas. Reg. §1.409A-1(b)(4) or the separation pay exception in Treas. Reg. §1.409A-1(b)(9)(iii) are intended not to be subject to Section 409A.
20. **Withholding.** The Employer may withhold from any and all amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

21. **Choice of Law.** The formation, construction, and performance of this Agreement shall be construed in accordance with the laws of California and the forum for any legal action or proceeding shall be San Diego County.
22. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
23. **Attorney's Fees.** In any action, proceeding or arbitration between the parties hereto arising out of this Agreement, or the performance thereof, the non-prevailing party shall pay all reasonable attorney's fees and costs of the prevailing party in addition to any other relief to which such party may be entitled.
24. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instruments.
25. **Section Headings.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.

EMPLOYEE

[Stan Luhr] [Elizabeth Michaelis]

Dated:

EMPLOYER

By:
Title:

Dated:

EXHIBIT 2

Quality Built, LLC, Production of Documents 00179

ROA_00248

SCHEDULE 1.1 (a)
LIST OF INTELLECTUAL
PROPERTY BEING
PURCHASED AND SOLD

SCHEDULE 1.1(a)
List of Patents/Trademarks

Published/pending Patents:

SYSTEMS AND METHODS FOR SELECTING AND PRIORITIZING
CONSTRUCTION CHECKPOINTS

US Patent Application No. 10/900,734

Filed: July 28, 2004

Inventor: Stanley R. Luhr

BUILDER RISK ASSESSMENT SYSTEM

US Patent Application No. 10/802,129

Filed: March 16, 2004

Inventor: Stanley R. Luhr

SYSTEMS AND METHODS FOR TRACKING COMPONENT-RELATED
INFORMATION ASSOCIATED WITH BUILDINGS

US Patent Application No. 11/198,579

Filed: August 5, 2005

Inventor: Stanley R. Luhr

Registered Trademarks:

FRAMER ID®

PERFECTING THE ART AND SCIENCE OF QUALITY IN HOME
BUILDING®

QUALITY BUILT®

BUILDER ID®

QUALITYBUILT.COM®

Q® (design of a stylized letter Q in a rectangle)

QB BUILDER LINK®

QB CLOSURE LINK®

QB RAPID RESPONSE®

HOME ID®

QB LINK®

QB DAP®

The following are additional trademarks in use by Quality Built

BUILDER RISK ASSESSMENT™

TECHNICAL PLAN REVIEW™

RESIDENT EXPERT PROGRAM™

PRODUCTLINK™

SAFETYLINK™

TRADELINK™

PERFECTING THE ART AND SCIENCE OF QUALITY IN
CONSTRUCTION™ **

** Quality Built must file a statement and sample of these trademark as used in interstate commerce by November/December 2009 for them to be registered. No further extensions of filings are allowed.*

*** This trademark is likely to be registered shortly.*

SCHEDULE 1.1 (b)
LIST OF INVENTORY, TOOLS,
ETC. BEING PURCHASED
AND SOLD

Quality Built, LLC, Production of Documents 00183

ROA_00252



QualityBuilt.com

Schedule 1.1(b) - Inventory and Supplies at time of Closing

	Qty	Current Value	Ext. Amt.
Complete Alnor EBT 721 Blower Door Kits Include Flowhood, duct blaster fan, Blower Door Kit and two digital gauges	6	1,500.00	9,000.00
Alnor EBT 721 Flowhoods	5	250.00	1,250.00
Alnor 6200 LoFlo Balometer	2	250.00	500.00
Duct Blaster Fan	1	100.00	100.00
			<u>10,850.00</u>

**SCHEDULE 1.1 (c)
SUMMARY AGED ACCOUNTS
RECEIVABLE AS OF
JANUARY 11, 2010**

Schedule 1.1 (c)

Accounts Receivable summary¹ through January 11, 2010:

Current (0 to 30)	\$145,132.19
31 to 60 days	\$ 85,511.00
61 to 90 days	\$ 24,706.30

Total 0 to 90 days is \$255,349.49 minus \$72,471.42² which would have to be paid to subcontractors equals \$182,878.07 and that assumes that 100% of receivables will be collected.

The Debtor estimates that if we close at the end of January and 100% of January invoices transfer to the new company the projected aged receivables would be summarized as follows:

Current	\$175,000.
31 to 60	\$ 70,000
61 to 90	\$ 28,000

Projected total: \$273,000 minus subcontractor costs of \$81,900.00 equals \$191,100.00.

Quality Built LLC will be receiving less than \$200,000 worth of receivables in the current transaction.

¹ The voluminous but complete Accounts Receivable ledger is available to qualified bidders upon request and execution of a confidentiality/non-disclosure agreement.

² See summary on following page.

119233/LSK/8888.02

Qualitybuilt.com

Schedule 2.1 (a)

Accounts Payable for Subcontractors that are less than 90 days old

See attached agings for details
as of 01/11/2010

	Current	31 - 60	61 - 90	Total
James Edward Engineering	999.00	1,356.88	772.50	3,128.38
Mid Pacific Testing & Inspections	24,208.92	39,376.61	5,757.51	69,343.04
	25,207.92	40,733.49	6,530.01	72,471.42

System: 1/22/2010
User Date: 1/22/2010

4:03:11 PM

HISTORICAL AGED TRIAL BALANCE

Quality Built

Payables Management

Page: 1
User ID: Murphys

Ranges:

Vendor ID: JAM001 - JAM001
Class ID: First - Last
Payment Priority: First - Last
Vendor Name: First - Last

QAD-02-000003?: First - Last
Posting Date: First - 1/11/2010
Document Number: First - Last

Print Option: DETAIL
Aged By: Document Date
Aging Date: 1/11/2010

Exclude: Zero Balance, No Activity, Fully Paid Documents, Unposted Applied Credit Documents, Multicurrency Info
Sorted By: Vendor ID
Due Date

* - Indicates an unposted credit document that has been applied.

Vendor ID: JAM001		Name: James Edward Engineering		Class ID: IC		QAD-02-000003?						
Voucher/ Payment No.	Doc Number	Type	Doc Date	Due Date	Doc Amount	Disc Date	Disc Avail	Writeoff Amount	Current Period	31 - 60 Days	61 - 90 Days	91 and Over
0000029510 8045	21559-CanyonPinesPh	INV PMT	1/31/2008	2/15/2008	\$580.75							\$580.75
0000029214	21574-RoyalTroon	INV	1/31/2008	2/15/2008	\$73.60							(\$411.36) \$73.60
0000029235	21575-Senders	INV	1/31/2008	2/15/2008	\$92.00							\$92.00
0000030299	21562-CanyonPinesPh	INV	3/3/2008	3/13/2008	\$412.85							\$412.85
0000036563	24827-AutumnTrailsPh	INV	9/30/2008	10/15/2008	\$54.05							\$54.05
0000038528	25678-AutumnTrailsPh	INV	12/31/2008	1/15/2009	\$242.65							\$242.65
0000039311	26399-TOWNHOUSES	INV	2/28/2009	3/15/2009	\$360.00							\$360.00
0000039910	23982	INV	3/31/2009	4/15/2009	\$120.00							\$120.00
0000040199	26761-Mountaingate	INV	3/31/2009	4/15/2009	\$270.40							\$270.40
0000040314	26788-Saddlebrook@P	INV	3/31/2009	4/15/2009	\$372.00							\$372.00
0000040779	24599	INV	4/30/2009	5/15/2009	\$146.40							\$146.40
0000040831	PO28044-4/30/2009 4:	INV	4/30/2009	5/15/2009	\$815.00							\$815.00
0000041139	27299-RitzCarlton-Hlg	INV	5/31/2009	6/15/2009	\$70.56							\$70.56
0000041109	27306-Saddlebrook@P	INV	5/31/2009	6/15/2009	\$390.00							\$390.00
0000041865	27667-Saddlebrook@P	INV	6/30/2009	7/15/2009	\$169.50							\$169.50
0000042447 8203	27970-MeridianatStone	INV PMT	8/31/2009	9/15/2009	\$504.00							\$504.00
0000042473 8249	28014-Woodrush@Rivi	INV PMT	8/31/2009	9/15/2009	\$849.00							(\$85.62) \$849.00
0000042913 8249	28107-Horizons@Stone	INV PMT	9/30/2009	10/15/2009	\$456.00							(\$66.00) \$456.00
0000042821	28122-MeridianatStone	INV	9/30/2009	10/15/2009	\$270.00							\$270.00
0000043315	28270-Horizons@Stone	INV	10/31/2009	11/15/2009	\$127.50						\$127.50	
0000043307	28289-MeridianatStone	INV	10/31/2009	11/15/2009	\$198.00						\$198.00	
0000043382	28334-Woodrush@Rivi	INV	10/31/2009	11/15/2009	\$447.00						\$447.00	
0000043830	28437-Horizons@Stone	INV	11/30/2009	12/15/2009	\$540.00						\$540.00	

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HISTORICAL AGED TRIAL BALANCE

Quality Built

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0000043679	28456-MeridianatStone INV	11/30/2009	12/15/2009	\$361.50		\$361.50
0000043615	28481-TalonPointa INV	11/30/2009	12/15/2009	\$186.88		\$186.88
0000043685	28498-Woodrush@Riv INV	11/30/2009	12/15/2009	\$268.50		\$268.50
0000043870	28559-Horizons@Stork INV	12/31/2009	1/15/2010	\$389.00	\$389.00	
0000043057	28573-MeridianatStone INV	12/31/2009	1/15/2010	\$406.50	\$406.50	
0000043862	28621-Woodrush@Riv INV	12/31/2009	1/15/2010	\$223.50	\$223.50	
Voucher(s): 29				Due		
				Aged Totals:	\$8,536.70	\$999.00 \$1,356.88 \$772.50 \$5,408.32
				Vendors	Due	Current Period 31 - 60 Days 61 - 90 Days 91 and Over
Vendor Totals:				\$	\$8,536.70	\$999.00 \$1,356.88 \$772.50 \$5,408.32

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HISTORICAL AGED TRIAL BALANCE
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Payables Management

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Ranges:
Vendor ID: MID001 - MID001BK
Class ID: First - Last
Payment Priority: First - Last
Vendor Name: First - Last

QAD-02-0000037:
Posting Date: First - Last
Document Number: First - Last

Print Option: DETAIL
Aged By: Document Date
Aging Date: 1/11/2010

Exclude: Zero Balance, No Activity, Fully Paid Documents, Unposted Applied Credit Documents, Multicurrency Info
Sorted By: Vendor ID
Due Date

* - Indicates an unposted credit document that has been applied.

Vendor ID: MID001		Name: Mid Pacific Testing and Inspections				Class ID: IC		QAD-02-0000037:				
Voucher/ Payment No.	Doc Number	Type	Doc Date	Due Date	Doc Amount	Disc Date	Disc Avail	Writeoff Amount	Current Period	31 - 60 Days	61 - 90 Days	91 and Over
0000043995	JAN10 EQ LEASE	CRM	12/29/2009		(\$1,560.00)				(\$1,560.00)			
0000013604 MIDP09112009 MIDP10282007	09413-MontaraCondom	INV PMT PMT	1/31/2007	1/31/2007	\$652.74							\$652.74 (\$0.01) (\$318.47)
0000014356	10172-MontaraCondom	INV	2/28/2007	2/28/2007	\$702.42							\$702.42
0000016180 MIDP08312007	12018-MontaraCondom	INV PMT	3/31/2007	3/31/2007	\$895.82							\$895.82 (\$690.25)
0000018143	13077-MontaraCondom	INV	4/30/2007	4/30/2007	\$121.44							\$121.44
0000019366	13783-MontaraCondom	INV	5/31/2007	5/31/2007	\$99.36							\$99.36
0000029692 0000031892	20839-PointsWest	INV CRM	1/31/2008	1/31/2008	\$328.35							\$328.35 (\$54.73)
0000029613	20951-VolareatEagle's	INV	1/31/2008	1/31/2008	\$794.86							\$794.86
0000030527 0000031597	21367-PointsWest	INV CRM	3/3/2008	3/3/2008	\$235.95							\$235.95 (\$36.32)
0000030417	21472-VolareatEagle's	INV	3/3/2008	3/3/2008	\$227.52							\$227.52
0000032860	22719-PointsWest	INV	4/30/2008	4/30/2008	\$690.00							\$690.00
0000035653	24413-NormandyPlace	INV	8/31/2008	8/31/2008	\$139.06							\$139.06
0000036536	24743-ManhattanBeach	INV	9/30/2008	9/30/2008	\$64.86							\$64.86
0000037257 MIDP02272009	25114-Kasleel	INV PMT	10/31/2008	10/31/2008	\$519.84							\$519.84 (\$435.00)
0000038474	25796-CarringtonSquar	INV	12/31/2008	12/31/2008	\$1,108.14							\$1,108.14
0000040470	24389	INV	3/31/2009	3/31/2009	\$1,200.00							\$1,200.00
0000041363 MIDP11062009	25036	INV PMT	6/11/2009	6/11/2009	\$1,656.00							\$1,656.00 (\$337.81)
0000043321	28239-AllureWaikikiCo	INV	10/31/2009	10/31/2009	\$5,757.51						\$5,757.51	
0000043500	25662	INV	11/30/2008	11/30/2008	\$1,080.00					\$1,080.00		
0000043505	25965	INV	11/30/2009	11/30/2009	\$5,600.00					\$5,600.00		
0000043902	28406-Akoiea@Kehala	INV	11/30/2009	11/30/2009	\$864.00					\$864.00		
0000043875	28405-AllureWaikikiCo	INV	11/30/2009	11/30/2009	\$16,293.07					\$16,293.07		
0000043800	28441-Kanchili	INV	11/30/2009	11/30/2009	\$4,651.20					\$4,651.20		

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HISTORICAL AGED TRIAL BALANCE
 Quality Built

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0000043863	28446-Kukui'ula Planta	INV	11/30/2009	11/30/2009	\$571.74		\$571.74			
0000043587	28449-Latitudes	INV	11/30/2009	11/30/2009	\$175.20		\$175.20			
0000043854	28458-NanalaatMehani	INV	11/30/2009	11/30/2009	\$3,880.60		\$3,880.60			
0000043622	28459-NohonaatKapole	INV	11/30/2009	11/30/2009	\$4,260.60		\$4,260.60			
0000043624	26232	INV	12/31/2009	12/31/2009	\$288.75	\$288.75				
0000043915	28530-AllureWaikikiCo	INV	12/31/2009	12/31/2009	\$16,203.81	\$16,203.81				
0000043388	28556-Ho'onanea-Laha	INV	12/31/2009	12/31/2009	\$1,234.80	\$1,234.80				
0000043872	28563-Kanahāi	INV	12/31/2009	12/31/2009	\$1,000.80	\$1,000.80				
0000043868	28565-Kehalanili-Mod1	INV	12/31/2009	12/31/2009	\$2,199.35	\$2,199.36				
0000043928	28603-SunsetRidge-Ph	INV	12/31/2009	12/31/2009	\$1,978.20	\$1,978.20				
0000043952	28605-TheTides	INV	12/31/2009	12/31/2009	\$703.20	\$703.20				
0000043986	2854C-KAUAI LAGODA	INV	12/31/2009	12/31/2009	\$2,160.00	\$2,160.00				
Voucher(s): 35			Aged Totals:		Due					
					\$76,906.65	\$24,208.92	\$39,376.61	\$5,757.51	\$7,563.61	
			Vendors		Due	Current Period	31 - 60 Days	61 - 90 Days	91 and Over	
Vendor Totals:					\$76,906.65	\$24,208.92	\$39,376.61	\$5,757.51	\$7,563.61	

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SCHEDULE 1.1 (d) ASSUMED CONTRACTS

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Project Name	Create On	Builder Account	City	State	Service	Product Name	Quantity	Last Visit Date	% Complete
1095 Canyon Core & Shell	2/12/2008	1095 Canyon Blvd LTD	Boulder	CO	Quality Assurance	Garage	15	1/21/2010	100.00%
1400 N Vista	4/29/2007	1400 N Vista, LLC	Los Angeles	CA	Quality Assurance	Garage	2	12/31/2009	100.00%
1840 Washington	8/7/2008	1840 Washington Associates LLC	San Francisco	CA	Quality Assurance	Garage	2	NULL	0.00%
2395 Lombard Street	12/12/2008	2395 Lombard, LLC	San Francisco	CA	Quality Assurance	Multi-Family Development - Level 4	12	12/11/2009	100.00%
346 Metropole	11/3/2009	346 Metropole, LLC	Huntington Beach	CA	Quality Assurance	Hourly Consulting	8	NULL	0.00%
Raven's Hill	7/23/2009	Adaven Homes	Las Vegas	NV	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
5th Street West	6/13/2008	AJT Development LLC	Scottsdale	AZ	Quality Assurance	Multi-Family Development - Level 4	13	12/31/2009	49.90%
Allen Brigden Classics	12/8/2009	Allen-Brigden, LLC	Pasadena	CA	Quality Assurance	Multi-Family Development - Level 4	6	1/5/2010	0.00%
Landmark Vail	6/13/2008	Alter Vail Ventures LLC	Skokie	IL	Quality Assurance	Garage	1	1/13/2010	100.00%
Elements Townhomes	9/30/2008	Alvarado SG, LLC	Albuquerque	NM	Quality Assurance	Multi-Family Development - Level 4	72	11/20/2009	11.00%
Prospect Row Townhomes	11/12/2008	Amber Ridge, Inc.	Tracy	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
The Chancellor Place	5/18/2009	Americap Construction, Inc.	San Ramon	CA	Quality Assurance	Single-Family Development - Level 4	40	8/13/2009	2.55%
Kauai Lagoons Affordable Housing	4/15/2009	Armstrong Builders	Honolulu	HI	Quality Assurance	Multi-Family Development - Level 4	31	12/11/2009	41.37%
Northgate Unit 12D, 12E & NG20	NULL	Bailey and Dutton	Reno	NV	NULL	Single-Family Development - Level 4	98	12/31/2009	46.66%
The Resort at Tanamera Condominiums	NULL	Barone Capital Fund VII, LLC	San Diego	CA	NULL	Condo Renovations/Conversions - Level 2 Comprehensive	440	11/25/2008	5.48%
Oak Grove	12/12/2008	Barry Swenson Builder-San Jose	San Jose	CA	Quality Assurance	Multi-Family Development - Level 4	17	1/15/2010	50.00%
The Highlands	NULL	Barstow Highlands Group, LLC	Newport Beach	CA	NULL	Single-Family Development - Level 4	56	9/14/2009	80.93%
Cassidy Ridge	12/20/2007	Behringer Harvard	Addicks	TX	Quality Assurance	Garage	1	12/16/2009	65.00%
311 Gramercy Place	10/9/2007	bATEK Corporation	Irvine	CA	Quality Assurance	Garage	6	1/21/2010	100.00%
1029/1021/1019 Lakeshore Drive	10/14/2009	BDC - Nevada, Inc.	Capitola	CA	Quality Assurance	One-Day Site Observation	8	1/15/2010	5.37%
Chantecclair Phase 5A	11/24/2009	Buie Communities LLC	San Diego	CA	Quality Assurance	Single-Family Development - Level 4	9	1/4/2010	26.53%
Chantecclair Phase 5B	11/24/2009	Buie Communities LLC	San Diego	CA	Quality Assurance	Single-Family Development - Level 4	9	1/11/2010	26.44%
Burton Way	5/13/2009	Burton Way Property, LLC	Beverly Hills	CA	Quality Assurance	Garage	2	11/13/2009	23.33%

Encore	NULL	Cachet Homes	Scottsdale	AZ	NULL	Multi Family Development - Level 4	178	1/7/2010	83.75%
Fulton Ranch Town Homes	NULL	Cachet Homes	Scottsdale	AZ	NULL	Multi Family Development - Level 4	90	12/9/2009	62.15%
Verrado Replacements	NULL	Cachet Homes	Scottsdale	AZ	NULL	Single-Family Development - Level 4	63	12/31/2009	58.84%
Camellia	10/19/2009	Camellia NoHo, LP	Diamond Bar	CA	Quality Assurance	Field Consultant Hourly	8	10/21/2009	0.00%
Courtyards at Desert Park	NULL	Camelot Homes	Scottsdale	AZ	NULL	Single / Multi Family Development - Level 5	89	12/30/2009	59.34%
Villas at Desert Camp Ranch	NULL	Camelot Homes	Scottsdale	AZ	NULL	Single / Multi Family Development - Level 5	30	4/28/2009	58.62%
Beeler Street Properties	5/21/2009	Capital Pacific Builder Services, Inc. - Colorado	Lone Tree	CO	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Meadows II @ Briscoe	3/27/2009	Capital Pacific Builder Services, Inc. - Colorado	Lone Tree	CO	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Tallyn's Reach	3/27/2009	Capital Pacific Builder Services, Inc. - Colorado	Lone Tree	CO	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Nohona at Kapolei	12/7/2007	Castle & Cooke Homes Hawaii, Inc.	Mililani	HI	Quality Assurance	Multi Family Development - Level 4	118	12/22/2009	80.84%
Vineyard Green Apartments	5/6/2009	Central Coast Residential Builders	Salinas	CA	Quality Assurance	Multi Family Development - Level 3	40	12/17/2009	100.00%
Roosevelt Collection	2/5/2008	Centrum Properties, Inc.	Chicago	IL	Quality Assurance	Garage	189	1/19/2010	100.00%
Champion Drywall	12/8/2009	Champion Drywall Inc. of Nevada	Norco	CA	Quality Assurance	Single-Family Development - Level 1	60	NULL	0.00%
Chavez Residence	7/27/2009	Charity Chavez	Poway	CA	Quality Assurance	Hourly Consulting	1	NULL	NULL
Chase Homes	5/7/2007	Chase Homes, LLC	Calabasas	CA	Quality Assurance	Single-Family Development - Level 4	12	1/14/2010	92.05%
Vermont	12/16/2009	City B Properties - Vermont, LLC	Lynwood	WA	Quality Assurance	Multi Family Development - Level 4	54	NULL	0.00%
Classics at Miramonte	9/21/2007	Classic Communities	Palo Alto	CA	Quality Assurance	Single-Family Development - Level 4	58	1/15/2010	89.57%
Classics at Sterling Park	11/24/2008	Classic Communities	Palo Alto	CA	Quality Assurance	Multi Family Development - Level 4	68	1/21/2010	99.49%
Trinity Park	10/23/2008	Classic Communities	Palo Alto	CA	Quality Assurance	Single-Family Development - Level 4	42	1/20/2010	91.14%
Rancho Cielo Subdivision	6/3/2009	Coachella Valley Housing Coalition	Indio	CA	Quality Assurance	One Day Site Observation	7	1/8/2010	4.32%
Valencia Subdivision	6/3/2009	Coachella Valley Housing Coalition	Indio	CA	Quality Assurance	One Day Site Observation	7	1/8/2010	13.66%
Laurel - Old Creek Ranch	3/27/2009	Cornerstone Communities - San Diego	San Diego	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Palma - Rolling Hills Ranch	3/4/2009	Cornerstone Communities - San Diego	San Diego	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	0.00%

Tract 17219	9/2/2008	Crestwood Corporation	Glendora	CA	Quality Assurance	Single-Family Development - Level 1	24	12/22/2009	62.71%
CT Glendale	1/13/2010	CT Glendale, LLC	San Marino	CA	Quality Assurance	Garage	1	NULL	0.00%
Stonehaven	6/11/2009	Cypress Stonehaven LLC	Irvine	CA	Quality Assurance	Single-Family Development - Level 4	28	1/15/2010	99.88%
Ho'onanea - Lahaina Lot 3	4/23/2007	D.R. Horton - Honolulu	Honolulu	HI	Quality Assurance	Multi-Family Development - Level 4	100	12/30/2009	9.84%
Nanala at Mehana-Parcel 2	4/23/2007	D.R. Horton - Honolulu	Honolulu	HI	Quality Assurance	Multi-Family Development - Level 4	100	12/22/2009	58.98%
Opukea at Lahaina	5/30/2007	D.R. Horton - Honolulu	Honolulu	HI	Quality Assurance	Multi-Family Development - Level 4	114	12/30/2009	54.36%
Astante Villas	8/7/2008	D.R. Horton - NM Division	Albuquerque	NM	Quality Assurance	Multi-Family Development - Level 4	120	1/22/2010	86.01%
Cave Creek Villas	3/13/2009	D.R. Horton - Tempe	Scottsdale	AZ	Quality Assurance	Hourly Consulting	50	NULL	0.00%
Desert Peak Duplexes	7/26/2007	D.R. Horton - Tempe	Scottsdale	AZ	Quality Assurance	Multi-Family Development - Level 4	84	11/23/2009	66.74%
Tre Bellavia	3/13/2009	D.R. Horton - Tempe	Scottsdale	AZ	Quality Assurance	Hourly Consulting	85	NULL	0.00%
Palm Ranch 3	10/7/2008	Daley Enterprises, Inc.	Tulare	CA	Quality Assurance	QB Builder Link® Set up and Training	1	1/19/2010	10.09%
Salzer Estates 3	NULL	Daley Enterprises, Inc.	Tulare	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	26	1/20/2010	67.60%
Silva Estates 10	NULL	Daley Enterprises, Inc.	Tulare	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	74	1/20/2010	36.87%
Sunrise Estates 7	NULL	Daley Enterprises, Inc.	Tulare	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	63	1/20/2010	1.81%
St. Regis Resort-Deer Crest	NULL	Deer Crest Janna, LLC	San Gabriel	CA	NULL	Garage - Level 4	14	1/7/2010	98.50%
Oak Leaf Ranch	8/21/2006	Delco Builders & Developers	Pleasant Hill	CA	Quality Assurance	Single-Family Development - Level 4	45	12/7/2009	62.04%
Victoria Mews Project	6/26/2008	Dennis Allen Associates	Santa Barbara	CA	Quality Assurance	Single-Family Development - Level 4	4	7/28/2009	25.52%
607 - 609 N. Pacific	7/23/2009	Diversified Construction, Inc.	Carlsbad	CA	Quality Assurance	Single-Family Development - Level 4	4	11/2/2009	15.83%
Alicante Estates - Phase 3B	8/11/2009	Dividend Homes	Morgan Hill	CA	Quality Assurance	One Day Site Observation	2	11/24/2009	100.00%
La Terrasse	5/29/2007	Doheny Partners, LLC	Van Nuys	CA	Quality Assurance	Garage	13	1/7/2010	100.00%
Montage Resort at Deer Valley	10/15/2007	DV Luxury Resort LLC	Park City	UT	Quality Assurance	Mid-Rise, High-Rise Living - Level 4	81	12/30/2009	9.85%
River Oaks	4/12/2007	Edenbridge, Inc.	Los Altos	CA	Quality Assurance	Single-Family Development - Level 4	28	11/23/2009	67.80%
Ventana	NULL	Edenbridge, Inc.	Los Altos	CA	NULL	Single-Family Development - Level 4	47	12/17/2009	79.02%

1049-51 Coast Blvd.	3/25/2009	Enertree, LLC	La Jolla	CA	Quality Assurance	Multi Family Development - Level 4	3	1/5/2010	42.78%
Crescent Heights	8/31/2007	ETCO Homes, Inc.	Beverly Hills	CA	Quality Assurance	Single-Family Development - Level 4	75	1/4/2010	26.71%
Allure Waikiki Condominiums	9/26/2008	Fifield Realty Group-Irvine	Irvine	CA	Quality Assurance	Garage	5	12/18/2009	89.42%
Haleakea	NULL	Gentry Homes, Ltd.	Honolulu	HI	NULL	Single-Family Development - Level 4	171	12/16/2009	74.95%
Kananihili	2/13/2009	Gentry Homes, Ltd.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 1	250	12/22/2009	50.09%
Latitudes	1/24/2008	Gentry Homes, Ltd.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 1	145	12/16/2009	54.85%
The Tides	2/13/2009	Gentry Homes, Ltd.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 1	105	12/21/2009	66.19%
Pineae Village-MFD	7/31/2007	Gold Medallion Homes	Taylorville	UT	Quality Assurance	Multi Family Development - Level 4	178	1/13/2010	41.70%
Verdance	8/10/2007	Grandview Street Partners, Ltd.	Austin	TX	Quality Assurance	Multi Family Development - Level 4	16	12/21/2009	100.00%
Copper River Ranch	3/9/2007	Granville Homes	Fresno	CA	Quality Assurance	Core Quality Training	1	NULL	NULL
GH02 Tract 5205	NULL	Granville Homes	Fresno	CA	NULL	Single-Family Development - Level 1	134	12/29/2009	99.64%
GH03 Tract 5357	NULL	Granville Homes	Fresno	CA	NULL	Single-Family Development - Level 4	198	12/30/2009	17.05%
GH03 Tract 5357 - QBBL	7/24/2008	Granville Homes	Fresno	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
GH04 Tract 5477	5/31/2007	Granville Homes	Fresno	CA	Quality Assurance	Single-Family Development - Level 1	213	12/30/2009	31.84%
GP01 Tract 5268	4/29/2007	Granville Homes	Fresno	CA	Quality Assurance	Single-Family Development - Level 1	230	12/29/2009	40.91%
GP03 Tract 5450	3/15/2007	Granville Homes	Fresno	CA	Quality Assurance	Single-Family Development - Level 1	118	12/30/2009	60.61%
Hacienda Lofts	NULL	Hacienda Lofts, LLC	Los Angeles	CA	NULL	Garage - Level 4	2	12/18/2009	100.00%
Feeney Place	1/19/2010	Hallmark Communities, Inc.	Solana Beach	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	7	1/21/2010	32.14%
Ke Alii Villas	NULL	HBT of HI	Wailuku	HI	NULL	Multi Family Development - Level 4	144	3/9/2009	76.20%
Sunset Ridge - Phase 6	5/30/2007	HBT of HI	Wailuku	HI	Quality Assurance	Single-Family Development - Level 4	32	12/3/2009	70.42%
Ashion Hall	12/8/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	93	NULL	0.00%
Cobblestone Creek	12/8/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	26	1/21/2010	2.92%
Copperleaf	10/14/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	27	11/3/2009	4.56%

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Felty Farms	10/14/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	24	1/7/2010	17.90%
Gates at Johns Creek	12/8/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	31	1/20/2010	0.74%
Lakes at Sugarloaf	12/8/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	46	1/20/2010	1.65%
Mercury Landing II	10/14/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	32	12/9/2009	3.73%
Olde Union Preserve	12/8/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	33	1/19/2010	1.04%
Riverdale	10/14/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	23	1/20/2010	17.63%
Thorngate	12/8/2009	Hearthstone	Solana Beach	CA	Quality Assurance	Half Day Site Observation	11	1/22/2010	5.38%
Kahalani II - Mod 11	11/7/2006	Hearthstone - SD	Solana Beach	CA	Quality Assurance	Multi Family Development - Level 4	114	12/31/2009	90.29%
Daybreak	NULL	Holmes Homes	Sandy	UT	NULL	Multi Family Development - Level 4	64	1/21/2010	78.37%
Daybreak Carriage Homes Plat 7	10/3/2007	Holmes Homes	Sandy	UT	Quality Assurance	Multi Family Development - Level 4	30	7/13/2009	79.78%
Daybreak Lofts and Flats	3/13/2009	Holmes Homes	Sandy	UT	Quality Assurance	Multi Family Development - Level 4	84	1/18/2010	57.43%
Daybreak Mansions	7/17/2008	Holmes Homes	Sandy	UT	Quality Assurance	Multi Family Development - Level 4	33	9/29/2009	16.20%
Daybreak Townhomes - QA	9/11/2006	Holmes Homes	Sandy	UT	Quality Assurance	Multi Family Development - Level 4	45	NULL	NULL
Connerton	3/27/2009	Home Dynamics	Tamarac	FL	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Lakeshore Ranch	3/27/2009	Home Dynamics	Tamarac	FL	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
North Point	3/27/2009	Home Dynamics	Tamarac	FL	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Oviedo Forest	3/27/2009	Home Dynamics	Tamarac	FL	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Sawgrass Bay - Greater Lakes	3/27/2009	Home Dynamics	Tamarac	FL	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Mayberry Villas	9/21/2007	HomeCrafters, Ltd	Reno	NV	Quality Assurance	Multi Family Development - Level 4	24	12/31/2009	25.76%
Woodview Estates	NULL	Homestead Community Builders, Inc.	San Leandro	CA	NULL	Single / Multi Family Development - Level 5	20	9/23/2009	89.13%
Magnolia Courts at La Verne	7/17/2008	Hsientein La Verne Investment LLC	Arcadia	CA	Quality Assurance	Multi Family Development - Level 4	101	12/2/2009	100.00%
Copper River - Lot 36	12/16/2009	Image Homes, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	1	12/30/2009	65.83%

Fig Garden Estates - Lot 12	1/12/2010	Image Homes, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	1	NULL	0.00%
Fig Garden Estates - Lot 54	12/16/2009	Image Homes, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - 4000-5000 sq ft	1	12/17/2009	0.00%
Fig Garden Estates - Lot 55	1/12/2010	Image Homes, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	1	NULL	0.00%
Image at Harlan Ranch - Lot 105	12/16/2009	Image Homes, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - 4000-5000 sq ft	1	12/17/2009	0.00%
Prestwick Place - #4	1/12/2010	Image Homes, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	1	NULL	0.00%
The Cottages	NULL	IRP Nevis Tustin, LLC	Arcadia	CA	NULL	Multi-Family Development - Level 4	93	9/1/2009	100.00%
City Creek Condo Tower 5	1/20/2009	Jacobsen Construction Company, Inc	Salt Lake City	UT	Quality Assurance	Garage	4	1/19/2010	37.27%
La Tour Penthouse	2/16/2009	JD Group Construction Company, Inc	Los Angeles	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
371 San Luis	1/11/2010	Jeff Young Contracting, Inc	Buttonwillow	CA	Quality Assurance	Garage	1	NULL	0.00%
102 University Mixed Use	11/5/2008	Joseph Bellomo Architects, Inc.	Palo Alto	CA	Quality Assurance	Garage	1	1/21/2010	63.00%
Ke Kailani	NULL	Ke Kailani Development LLC	Honolulu	HI	NULL	Single / Multi Family Development - Level 5	20	10/14/2008	74.03%
Cribari Vale Reconstruction Project - The Villages	6/17/2009	Kent Construction	Gilroy	CA	Quality Assurance	Multi-Family Development - Level 4	8	12/14/2009	35.89%
Kenyon Plastering	11/12/2009	Kenyon Plastering, Inc.	Phoenix	AZ	Quality Assurance	Single-Family Development - Level 4	90	11/24/2009	0.31%
KFA Residence	12/31/2007	KFA Ltd. c/o Stephen W. Erickson of Rogers, Sheffield & Campbell, LLP	Santa Barbara	CA	Quality Assurance	Garage	1	1/21/2010	100.00%
Kukui'ula Plantation Core	10/26/2007	Kukui'ula Development Company (Hawaii), LLC	Koloa, Kauai	HI	Quality Assurance	Additional Re-Submittal Level 1 TPR	1	12/11/2009	69.81%
Summit Crest	8/26/2009	Lake Forest Summit Crest LLC	Irvine	CA	Quality Assurance	Single-Family Development - Level 4	29	1/21/2010	2.70%
Canyon Pines - Phase 2 & 3	1/4/2010	Lakemont Homes - Reno	Reno	NV	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	7	1/8/2010	1.40%
Wild Stallion Estates	1/22/2010	Lakemont Homes - Reno	Reno	NV	Quality Assurance	Single-Family Development - Level 4	140	NULL	0.00%
Volare - Eagle Landing	6/10/2009	Landing Development, LLC	Milwaukee	OR	Quality Assurance	Multi-Family Development - Level 4	85	1/20/2010	2.19%

Las Palmas	9/2/2008	Landmark Development	Sunnyvale	CA	Quality Assurance	Garage	1	12/4/2009	95.58%
Benovia Vineyard Residence	11/24/2009	Ledcor Builders, Inc	NULL	NU LL	Quality Assurance	Half Day Site Observation	6	NULL	NULL
Legendary Hollywood	8/18/2009	Legendary, Hollywood, LLC	Pasadena	CA	Quality Assurance	Field Consultant Hourly	20	1/23/2009	0.92%
Horizons @ Stonefield Unit 3	10/30/2006	Lennar - Barker-Coleman - Reno	Reno	NV	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	68	12/22/2009	90.42%
Centre Pointe	3/14/2008	Lennar Bay Area	San Ramon	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	79	1/13/2010	100.00%
Milano @ Monterosso	7/27/2006	Lennar Bay Area	San Ramon	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	32	1/13/2010	100.00%
Palma at Windemere	3/27/2007	Lennar Bay Area	San Ramon	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	61	1/5/2010	100.00%
Stafford Place	3/9/2007	Lennar Bay Area	San Ramon	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	58	1/20/2010	100.00%
Centreplace at Edison	NULL	Lennar Central New Jersey	Freehold	NJ	NULL	Multi Family Development - Level 4	285	10/20/2009	100.00%
4724 Cathedral Outpost	1/13/2010	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	2	NULL	0.00%
5196 Blossom Hill Phase II	NULL	Lennar Fresno	Fresno	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	1	9/25/2007	99.37%
5248 Blossom Hill IV	1/13/2010	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	36	NULL	0.00%
5283 Blossom Hill Phase III	9/14/2007	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	78	12/14/2009	100.00%
5310 - Blossom Hill	NULL	Lennar Fresno	Fresno	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	2	1/9/2007	82.45%
5353 Orchard Estates II	9/14/2007	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	103	12/15/2009	94.50%
5427 Parkview at Carriage House	3/14/2008	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	174	1/12/2010	42.41%
5445 - Mariposa II	1/13/2010	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	52	1/14/2010	5.64%

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5517 Oxford Commons	1/13/2010	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	26	NULL	0.00%
5600 Heritage Park I	3/18/2008	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	82	1/18/2010	79.86%
5741 Chateau at Cathedral	1/31/2007	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	84	1/15/2010	94.73%
Autumnwood Ranch II	NULL	Lennar Fresno	Fresno	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	126	1/13/2010	70.32%
Cedar Grove III	4/30/2008	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	105	1/19/2010	63.54%
Parkview @ Oakwest 7	8/25/2008	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	58	1/19/2010	92.76%
Tract 843 Independence	10/20/2009	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	54	1/20/2010	14.49%
Traditions at Carriage House	11/7/2006	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	120	1/12/2010	100.00%
Traditions at the Vistas	1/14/2010	Lennar Fresno	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	86	NULL	0.00%
Meridian at Stonefield 3	6/6/2008	Lennar-Reno	Reno	NV	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	61	1/14/2010	89.84%
Woodrush @ Riverpark	10/16/2006	Lennar Reno	Reno	NV	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	56	1/12/2010	92.11%
Anatolia@KavalaRanch V22 Cazadero	2/15/2007	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	106	1/14/2010	94.85%
KavalaRanch@Anatolia III V17 Andravida	2/15/2007	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	82	12/10/2009	90.61%
Verano@Anatolia III	2/15/2007	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	90	1/14/2010	81.41%
West Valley Village Unit 2-Shenandoah II at Blackstone	9/8/2008	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	64	1/7/2010	70.38%

Westpark Village 10B	4/30/2008	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	143	1/7/2010	34.97%
WestPark Village 22 (Sentiero)	7/16/2007	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	81	1/5/2010	85.77%
Westpark Village 8A&10A(Walkabout)	7/16/2007	Lennar Sacramento	Roseville	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	75	1/7/2010	98.47%
The Gates on Manhattan	5/30/2007	leTriomphe Property Group, LLC	Baton Rouge	LA	Quality Assurance	Condo Conversion Site Observations - Per Diem	27	1/5/2010	0.01%
Lindberg Homes	9/28/2006	Lindberg Homes, Inc.	Petaluma	CA	Quality Assurance	Single-Family Development - Level 4	40	11/16/2009	67.38%
Argyros Residence	4/23/2009	Mark A. Falcone General Building Contractor	Laguna Beach	CA	Quality Assurance	Single-Family Development - Level 4 - Over 10,000 sq ft	1	1/11/2010	100.00%
Kukui'ula Makai Cottages - Lot 15	12/22/2009	Maryl Construction, Inc.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 4	1	NULL	0.00%
Kukui'ula Makai Cottages - Lot 19	12/22/2009	Maryl Construction, Inc.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 4	1	NULL	0.00%
Kukui'ula Makai Cottages - Lot 50	12/22/2009	Maryl Construction, Inc.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 4	1	NULL	0.00%
Kukui'ula Makai Cottages - Lot 52	12/22/2009	Maryl Construction, Inc.	Honolulu	HI	Quality Assurance	Single-Family Development - Level 4	1	NULL	0.00%
Saybrook - Etcheverry	3/27/2009	McMillin Homes - Bakersfield	Bakersfield	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
2727 Kirby Tower	NULL	MDA Builders	Houston	TX	NULL	Garage - Level 4	25	1/15/2010	100.00%
South of Market Health Center	9/15/2009	Mercy Housing California	San Francisco	CA	Quality Assurance	Garage	2	12/22/2009	29.07%
Reflections on the Canal	5/7/2007	Mesa 256 Corp.	La Mesa	CA	Quality Assurance	Multi Family Development - Level 3	100	12/31/2009	64.37%
Hacienda Hills Del Oro Ph 7	NULL	Midland Pacific Building Corporation	Atascadero	CA	NULL	Single-Family Development - Level 2 - Under 4000 sq ft	39	1/14/2009	82.78%
Mission Meadows III	9/14/2006	Midland Pacific Building Corporation	Atascadero	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	41	12/7/2009	79.25%
Lawrence Street	9/8/2009	MM Group, LLC	San Diego	CA	Quality Assurance	Multi Family Development - Level 4	5	12/4/2009	54.00%
Orchard Park V	9/30/2009	Monterey Homes	Fresno	CA	Quality Assurance	Single-Family Development - Level 4	23	1/18/2010	16.25%
Beltre Residence and Casitas	4/30/2008	Mur-Sol Construction, Inc.	Arcadia	CA	Quality Assurance	Single-Family Development - Level 4 - Casitas	1	1/6/2010	100.00%
Hyde Street Modern	7/24/2009	Nibbi Brothers, Inc.	San Francisco	CA	Quality Assurance	Garage	1	12/11/2009	70.67%

Northwood Place	12/8/2009	Okland Construction, Idaho	Ketchum	ID	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Pacific Station	10/29/2008	Pacific Station Property, LLC	San Diego	CA	Quality Assurance	Garage	1	12/16/2009	77.00%
Stratford Court	3/23/2009	Pacific Stratford II, LLC	San Diego	CA	Quality Assurance	Multi Family Development - Level 4	6	1/5/2010	44.79%
Elkstone 21 Condominiums	6/11/2008	Pine Hill Consulting	Austin	TX	Quality Assurance	Garage	4	12/17/2009	71.10%
Messina Gardens	11/6/2006	Pinn Brothers Construction	San Jose	CA	Quality Assurance	Multi Family Development - Level 4	89	10/6/2008	58.97%
Cabot Avenue MFD	NULL	Platina, L.L.C.	Santa Clara	CA	NULL	Multi Family Development - Level 4	12	12/4/2009	100.00%
Alderwood Ridge	8/25/2009	Portage Homes, LLC	Bothell	WA	Quality Assurance	One Day Site Observation	10	1/15/2010	47.70%
The Grande South	8/31/2009	ProTec Building Services	San Diego	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
EMIA Harbor Housing	10/26/2009	Puffsky, LLC & Slatter Construction, Inc.	Santa Cruz	CA	Quality Assurance	Single-Family Development - Level 4	9	12/17/2009	3.29%
La Reserve Villas	3/9/2007	Rusch Ridge Properties, LLC	Pleasanton	CA	Quality Assurance	Single-Family Development - Level 4	49	1/26/2009	17.83%
1459 MacArthur Blvd.	9/29/2006	Raymond Zhang, Inc.	Daly City	CA	Quality Assurance	Field Consultant Hourly	20	12/3/2009	99.99%
Country Fair	NULL	Raymus Homes, Inc.	Manteca	CA	NULL	Single-Family Development - Level 4	70	1/21/2010	66.24%
Ironworks at the Triangle	NULL	Regis Contractors	Sacramento	CA	NULL	Single-Family Development - Level 4	187	1/12/2010	38.28%
Islands at Rivertake	9/14/2006	Regis Contractors	Sacramento	CA	Quality Assurance	Single-Family Development - Level 4	139	1/21/2010	42.51%
901 Townhomes	6/15/2007	Regis Homes of Northern California	San Mateo	CA	Quality Assurance	Build It Green™ - GreenPoint Rated	103	12/1/2009	78.59%
Cedarbrook	11/18/2008	Regis Homes of Northern California	San Mateo	CA	Quality Assurance	Single-Family Development - Level 4	27	1/22/2010	19.89%
Park Lane West	1/23/2007	Regis Homes of Northern California	San Mateo	CA	Quality Assurance	Garage	1	1/22/2010	84.00%
Woodshire	3/27/2009	Renar Fine Homes	Jensen Beach	FL	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Safari Drive	NULL	Riverwalk Square Development	Scottsdale	AZ	NULL	Garage - Level 4	40	1/7/2010	100.00%
Casa Grande	NULL	Robson Communities	Sun Lakes	AZ	NULL	Single-Family Development - Level 1	321	1/8/2010	67.80%
Pebble Creek	NULL	Robson Communities	Sun Lakes	AZ	NULL	Single-Family Development - Level 1	704	1/8/2010	93.29%
Preserves of Saddle Brooke	NULL	Robson Communities	Sun Lakes	AZ	NULL	Single-Family Development - Level 1	119	12/11/2009	73.33%
Quail Creek	NULL	Robson Communities	Sun Lakes	AZ	NULL	Single-Family Development - Level 1	886	1/6/2010	99.88%

Robson Ranch	NULL	Robson Communities	Sun Lakes	AZ	NULL	Single-Family Development - Level 1	714	12/28/2009	86.62%
Saddle Brooke - SFD	NULL	Robson Communities	Sun Lakes	AZ	NULL	Single-Family Development - Level 1	658	1/6/2010	95.26%
SaddleBrooke Ranch at Falcon Valley	6/11/2008	Robson Communities	Sun Lakes	AZ	Quality Assurance	Single-Family Development - Level 1	46	1/6/2010	100.00%
Mountaingate	NULL	Ryder Homes of CA	Walnut Creek	CA	NULL	Single-Family Development - Level 1	250	5/5/2009	35.68%
Talon Pointe	NULL	Ryder Homes of CA	Walnut Creek	CA	NULL	Single-Family Development - Level 1	64	12/31/2009	79.74%
Montego	5/7/2008	SAM Oceanside 1, LLC	Sherman Oaks	CA	Quality Assurance	Multi Family Development - Level 4	11	1/20/2010	94.20%
Trilogy @ Encanterra	3/3/2009	Shea Homes - Arizona	Scottsdale	AZ	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Trilogy at Vineyards	5/19/2009	Shea Homes - California	Livermore	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Casa de la Playa	5/15/2007	Sienna Residential, LLC	Studio City	CA	Quality Assurance	Single-Family Development - Level 4	9	12/30/2009	66.67%
Blairwood Condominiums	8/31/2009	Sierra Holdings, LLC	Sacramento	CA	Quality Assurance	Hourly Consulting	8	9/2/2009	0.00%
Tamalpais Commons	11/14/2008	Skyline Miller House HP7, LLC	Mill Valley	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Villa Allegra	11/5/2009	South Sepulveda Receivership Estate	Los Angeles	CA	Quality Assurance	Garage	8	1/11/2010	93.67%
Spanish Inn Hotel & Villas	5/7/2008	Spanish Inn, Inc.	Palm Springs	CA	Quality Assurance	Condo Conversion Site Observations - Per Unit	12	11/24/2009	78.82%
Los Corales Condominiums	4/30/2008	SPI Construction II LLC	Harlingen	TX	Quality Assurance	ASTM E1105 Window Assembly Spray Test (Modified)	2	12/18/2009	80.09%
Country Club Villas	NULL	St. Thomas Construction, Inc.	San Ramon	CA	NULL	Single-Family Development - Level 1	133	4/14/2008	100.00%
Kahalani II - Mod 5	11/26/2007	Stanford Carr Development	Honolulu	HI	Quality Assurance	Multi-Family Development - Level 4	103	1/18/2010	23.04%
Stanford Avenue Homes	8/17/2009	Stanford University	Menlo Park	CA	Quality Assurance	Single-Family Development - Level 4	39	1/21/2010	15.01%
Terra Verde Condos	11/17/2008	Sterling Square LLC	Everett	WA	Quality Assurance	Condo Conversion Site Observations - Per Unit	73	1/6/2010	35.48%
Pebble Creek Homes	10/21/2009	Steve C. Hamilton Inc dba Hamilton Homes	Sparks	NV	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	135	12/21/2009	0.00%
Dakota West Townhomes	9/13/2006	Sundog Builders	Durango	CO	Quality Assurance	Multi Family Development - Level 4	35	1/12/2010	92.04%
Ritz Carlton - Highlands	12/14/2007	Swinerton Builders - San Francisco	San Francisco	CA	Quality Assurance	Mid-Rise, High-Rise Living - Level 4	23	10/27/2009	100.00%

T.W. Lewis Communities	12/22/2009	T.W. Lewis	Tempe	AZ	Quality Assurance	One Day Site Observation	2	NULL	0.00%
The Landing	11/12/2009	The Landing at Hamilton, LLC	Novato	CA	Quality Assurance	Half Day Site Observation	3	NULL	0.00%
Almaden Walk - San Jose	3/15/2007	The Olson Company - No Cal.	San Ramon	CA	Quality Assurance	Field Consultant Hourly	12	11/30/2009	100.00%
Garden Walk - Hayward	12/21/2006	The Olson Company - No Cal.	San Ramon	CA	Quality Assurance	Multi Family Development - Level 4	56	1/22/2010	91.97%
Willow Walk - Compton	9/7/2006	The Olson Company - So Cal.	Seal Beach	CA	Quality Assurance	Multi Family Development - Level 4	136	10/16/2009	68.01%
Village at Mountain View	NULL	Toll Brothers - Palm Desert	La Quinta	CA	NULL	Multi Family Development - Level 4	50	1/8/2010	100.00%
Milo Court	3/18/2008	Towne Realty of Hawaii, Inc.	Wailuku	HI	Quality Assurance	Multi Family Development - Level 4	94	12/30/2009	6.42%
Consulting Reserve Fund	8/26/2009	TriPacific Capital Advisors, LLC	San Diego	CA	Quality Assurance	Hourly Consulting	894	NULL	NULL
Four Seasons at Vail	9/8/2009	Vail Development 09 LLC	New York	NY	Quality Assurance	Mid-Rise, High-Rise Living - Level 4	11	11/25/2009	76.71%
Venetian Terrace	10/3/2006	Vitol, Inc.	Glendale	CA	Quality Assurance	Multi Family Development - Level 4	86	1/20/2010	74.24%
Lakeside at Saratoga	8/21/2006	Wardley / WDF-AY, LLC	Newport Beach	CA	Quality Assurance	Single-Family Development - Level 1	300	9/4/2008	26.68%
Day Creek Highlands @ Rancho Etiwanda Estates	3/27/2009	Warmington Homes - California	Costa Mesa	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Northern Terrace - Cliffs Edge	3/27/2009	Warmington Homes - California	Costa Mesa	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Pine Valley	7/23/2009	Warmington Homes - California	Costa Mesa	CA	Quality Assurance	QB Builder Link® Set up and Training	1	NULL	NULL
Waterstone on Lake Travis	8/15/2007	Waterstone Development, LP	Dallas	TX	Quality Assurance	Multi Family Development - Level 4	71	12/23/2009	94.54%
52 at Harlan Ranch	9/24/2009	Wathen Castanos, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	52	1/11/2010	55.38%
Foxton Chase	1/30/2009	Wathen Castanos, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	40	1/11/2010	96.63%
Ivy Gate	1/30/2009	Wathen Castanos, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	46	1/15/2010	97.34%
Ivy Gate @ Harlan Ranch II, LP	12/14/2009	Wathen Castanos, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	25	1/14/2010	28.07%
Viscaya I	11/19/2009	Wathen Castanos, Inc.	Fresno	CA	Quality Assurance	Single-Family Development - Level 2 - Under 4000 sq ft	10	12/15/2009	81.92%

Cobblestone	NULL	Watt Communities, LLC	Santa Monica	CA	NULL	Multi Family Development - Level 4	166	1/6/2010	61.10%
St. John's Wood	7/31/2007	Wellesley Manor Corporation	Los Angeles	CA	Quality Assurance	Garage	11	1/20/2010	100.00%
Willow Creek Condominiums	9/14/2007	Willow Creek LLC	Central Point	OR	Quality Assurance	Multi Family Development - Level 4	35	9/11/2009	11.11%
Adolfson & Peterson Construction	12/17/2008	Zurich Services Corporation	Elk River	MN	Quality Assurance	Hourly Consulting	24	NULL	NULL

SCHEDULE 1.1 (i)

LIST OF I.T. SYSTEMS

QualityBuilt.com
1.1(j) - List of IT Equipment and Systems
As of 11/9/2009
(See backup schedules for details)

<u>Type</u>	<u>Value</u>
Desktop computers	\$ 2,195.66
Toughbooks	\$ 7,837.68
Laptop computers	\$ 4,160.00
Monitors	\$ 6,419.56
Phones	\$ 5,315.31
Printers	\$ 6,572.47
Cameras	\$15,600.00
Furniture/Office supplies	\$ 3,084.00
Server Hardware	\$53,050.00
SAN Hardware	\$43,000.00
Network and Phone Switches	\$46,950.00
UPS Backup Power	<u>\$ 9,640.00</u>
Total	\$203,824.68

SCHEDULE 1.2 (g)
NON-EXCLUSIVE LIST OF
EXCLUDED ASSETS

Schedule 1.2 Excluded Assets

Judgment from Quality Built versus Jesse Olague/West Coast Property Consultants

Judgment from Thomas/Clark versus Quality Built

SCHEDULE 2.1

ASSUMED LIABILITIES

Qualitybuilt.com

Schedule 2.4

Payables to Mid Pacific Testing and Inspections for services provided on projects with
receivables less than 90 days old at the time of closing (purchased receivables),
subject to receipt of payment.

Payables to James Edward Engineers for services provided on projects with receivables
less than 90 days old at the time of closing (purchased receivables) subject to receipt
of payment.

Projected Assumed Indebtedness \$72,471.42

See attached agings for details
as of 01/11/2010

	Current	31 - 60	61 - 90	Total
James Edward Engineering	999.00	1,356.88	772.50	3,128.38
Mid Pacific Testing & Inspections	24,208.92	39,376.61	5,797.51	69,343.04
	25,207.92	40,733.49	6,590.01	72,471.42

To the extent not specifically described above, all accounts payable of the Seller
that arose from or are related to the Assumed Contracts, if and only to the extent such
payable directly resulted in a Purchased AR which has been actually collected by Buyer
(the "Assumed Accounts Payable").

System: 1/22/2010
User Date: 1/22/2010

4:03:11 PM

HISTORICAL AGED TRIAL BALANCE

Quality Buil

Payables Management

Page: 1
User ID: MurphyS

Ranges:
Vendor ID: JAM001 - JAM001
Class ID:
Payment Priority: First - Last
Vendor Name: First - Last

QAD-02-000003?:
Posting Date: First - Last
Document Number: First - Last

Print Option: DETAIL
Aged By: Document Date
Aging Date: 1/11/2010

Exclude: Zero Balance, No Activity, Fully Paid Documents, Unposted Applied Credit Documents, Multicurrency Info
Sorted By: Vendor ID
Due Date

* - Indicates an unposted credit document that has been applied.

Vendor ID: JAM001		Name: James Edward Engineering				Class ID: IC		QAD-02-0000037:				
Voucher/ Payment No.	Doc Number	Type	Doc Date	Due Date	Doc Amount	Disc Date	Disc Avail	Writeoff Amount	Current Period	31 - 60 Days	61 - 90 Days	\$1 and Over
0000020518 5045	21569-CanyonPinesPh	INV PMT	1/31/2008	2/15/2008	\$580.75							\$580.75 (\$411.36)
0000020214	21574-RoyalTroon	INV	1/31/2008	2/15/2008	\$73.60							\$73.60
0000020265	21575-Sendere	INV	1/31/2008	2/15/2008	\$92.00							\$92.00
0000030289	21569-CanyonPinesPh	INV	3/3/2008	3/15/2008	\$412.85							\$412.85
0000036563	24527-AutumnTrailsPh	INV	5/30/2008	10/15/2008	\$54.05							\$54.05
0000033526	25679-AutumnTrailsPh	INV	12/31/2008	1/15/2009	\$242.85							\$242.85
0000039811	26399-TOWNHOUSES	INV	2/28/2009	3/15/2009	\$360.00							\$360.00
0000039610	23682	INV	3/31/2009	4/15/2009	\$120.00							\$120.00
0000040139	28761-MountainGate	INV	3/31/2009	4/15/2009	\$270.49							\$270.49
0000040314	28788-Saddlebrook@F	INV	3/31/2009	4/15/2009	\$372.00							\$372.00
0000040779	24589	INV	4/30/2009	5/15/2009	\$146.40							\$146.40
0000040631	PO26044-4/30/2009 4	INV	4/30/2009	5/15/2009	\$615.00							\$615.00
0000041192	27299-RitzCarlton-Hig	INV	5/31/2009	6/15/2009	\$70.56							\$70.56
0000041109	27398-Saddlebrook@P	INV	5/31/2009	6/15/2009	\$380.00							\$380.00
0000041985	27667-Saddlebrook@P	INV	5/30/2009	7/15/2009	\$189.50							\$189.50
0000042147 8203	27970-Meridian@Stone	INV PMT	5/31/2009	6/15/2009	\$504.00							\$504.00 (\$55.62)
0000042473 8246	28014-Woodrush@Riv	INV PMT	8/31/2009	9/15/2009	\$543.00							\$543.00 (\$88.00)
0000042918 8248	28107-Horizons@Stone	INV PMT	9/30/2009	10/15/2009	\$455.00							\$455.00 (\$77.56)
0000042821	28122-Meridian@Stone	INV	9/30/2009	10/15/2009	\$270.00							\$270.00
0000043015	28270-Horizons@Stone	INV	10/31/2009	11/15/2009	\$127.50						\$127.50	
0000043397	28283-Meridian@Stone	INV	10/31/2009	11/15/2009	\$188.00						\$188.00	
0000043352	28334-Woodrush@Riv	INV	10/31/2009	11/15/2009	\$447.00						\$447.00	
0000043930	28437-Horizons@Stone	INV	11/30/2009	12/15/2009	\$540.00						\$540.00	

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HISTORICAL AGED TRIAL BALANCE
 Quality Built

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0000043679	23456-Mendocino State INV	11/20/2009	12/15/2009	\$361.50		\$361.50
0000043615	23456-Mendocino State INV	11/20/2009	12/15/2009	\$186.88		\$186.88
0000043685	23456-Mendocino State INV	11/20/2009	12/15/2009	\$268.50		\$268.50
0000043670	23456-Mendocino State INV	12/1/2009	1/15/2010	\$389.00	\$389.00	
0000043637	23456-Mendocino State INV	12/1/2009	1/15/2010	\$406.50	\$406.50	
0000043682	23456-Mendocino State INV	12/1/2009	1/15/2010	\$223.50	\$223.50	
Voucher(s): 25				Aged Totals:	Due	
					\$8,536.70	\$599.00
					\$1,356.88	\$772.50
						\$5,408.32
				Vendor Totals:	Due	
					\$8,536.70	\$599.00
					\$1,356.88	\$772.50
						\$5,408.32

System: 1/22/2010 4:03:26 PM
User Date: 1/22/2010

HISTORICAL AGED TRIAL BALANCE

Quality Built
Payables Management

Page: 1
User ID: MurphyS

Ranges:
Vendor ID: MID001 - MID0016K
Class ID: First - Last
Payment Priority: First - Last
Vendor Name: First - Last

QAD-02-0000037: First - Last
Posting Date: 1/11/2010
Document Number: First - Last

Print Option: DETAIL
Aged By: Document Date
Aging Date: 1/11/2010

Exclude: Zero Balance, No Activity, Fully Paid Documents, Unposted Applied Credit Documents, Multicurrency Info
Sorted By: Vendor ID
Due Date

- indicates an unposted credit document that has been applied.

Vendor ID: MID001		Name: Mid Pacific Testing and Inspections				Class ID: IC		QAD-02-0000037:				
Voucher/ Payment No.	Doc Number	Type	Doc Date	Due Date	Doc Amount	Disc Date	Disc Avail	Writeoff Amount	Current Period	31 - 60 Days	61 - 90 Days	91 and Over
0000043695	JAN10 EQ LEASE	CRM	12/23/2009		(\$1,560.00)				(\$1,560.00)			
0000013604 MIDP09112009 MIDP10262007	09413-MontaraCondom	INV PMT PMT	1/31/2007	1/31/2007	\$652.74							\$552.74 (\$6.01) (\$316.47)
0000014358	10172-MontaraCondom	INV	2/28/2007	2/28/2007	\$702.42							\$702.42
0000016180 MIDP08312007	12018-MontaraCondom	INV PMT	3/31/2007	3/31/2007	\$695.62							\$695.62 (\$890.25)
0000013143	13077-MontaraCondom	INV	4/30/2007	4/30/2007	\$121.44							\$121.44
0000019356	13783-MontaraCondom	INV	5/31/2007	5/31/2007	\$99.36							\$99.36
0000029692 0000031862	20839-PointsWest	INV CRM	1/31/2008	1/31/2008	\$328.35							\$328.35 (\$54.73)
0000025815	20891-VolarealEagle's	INV	1/31/2008	1/31/2008	\$794.88							\$794.88
0000030527 0000031897	21387-PointsWest	INV CRM	3/3/2008	3/3/2008	\$235.95							\$235.95 (\$36.32)
0000030417	21472-VolarealEagle's	INV	3/3/2008	3/3/2008	\$227.52							\$227.52
0000032860	22719-PointsWest	INV	4/30/2008	4/30/2008	\$690.00							\$690.00
0000035653	24413-NormandyPlace	INV	5/31/2006	6/31/2006	\$139.06							\$139.06
0000036538	24743-ManhattanBeach	INV	9/30/2006	9/30/2006	\$64.86							\$64.86
0000037257 MIDPC2272009	25114-Kasteel	INV PMT	10/31/2008	10/31/2008	\$516.84							\$516.84 (\$435.00)
0000036474	25796-CarringtonSquare	INV	12/31/2008	12/31/2008	\$1,108.14							\$1,108.14
0000040470	24389	INV	3/31/2009	3/31/2009	\$1,200.00							\$1,200.00
0000041383 MIDP111062009	25035	INV PMT	6/11/2009	6/11/2009	\$1,656.00							\$1,656.00 (\$337.81)
0000043321	28235-AllureWaikikiCo	INV	10/31/2009	10/31/2009	\$5,757.51						\$5,757.51	
0000043570	25662	INV	11/30/2009	11/30/2009	\$1,080.00					\$1,080.00		
0000043505	25566	INV	11/30/2009	11/30/2009	\$5,600.00					\$5,600.00		
0000043602	28406-Akolaa@Kahala	INV	11/30/2009	11/30/2009	\$864.00					\$864.00		
0000043673	25406-AllureWaikikiCo	INV	11/30/2009	11/30/2009	\$18,293.97					\$18,293.97		
0000043660	35441-Kanahali	INV	11/30/2009	11/30/2009	\$4,651.20					\$4,651.20		

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 User Date: 1/22/2010

HISTORICAL AGED TRIAL BALANCE

Quality Built

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0100043603	28445-Kukui'ula Planta INV	11/30/2008	11/30/2009	\$571.74					\$571.74
0000043997	28448-Lalitudes INV	11/30/2009	11/30/2009	\$175.20					\$175.20
0000043654	28458-Nanai'aa Mehane INV	11/30/2008	11/30/2009	\$3,860.80					\$3,860.80
0000043622	28459-Nahonaa Kepole INV	11/30/2008	11/30/2009	\$4,260.60					\$4,260.60
0000043994	28232 INV	12/31/2009	12/31/2009	\$269.75			\$269.75		
0000043915	28530-Allure Waikiki Co INV	12/31/2009	12/31/2009	\$16,203.81			\$16,203.81		
0000043898	28558-Hononaa-Laha INV	12/31/2009	12/31/2009	\$1,234.80			\$1,234.80		
0000043872	28563-Kanetiti INV	12/31/2009	12/31/2009	\$1,000.80			\$1,000.80		
0000043688	28568-Kehala Hill-Moof INV	12/31/2009	12/31/2009	\$2,199.36			\$2,199.36		
0000043928	28603-Sunset Ridge-Pls INV	12/31/2009	12/31/2009	\$1,975.20			\$1,975.20		
0000043952	28605-The Tides INV	12/31/2009	12/31/2009	\$703.20			\$703.20		
0000043986	28640-KAUAI LAGOON INV	12/31/2009	12/31/2009	\$2,180.00			\$2,180.00		
Voucher(s): 35				Aged Totals:	Due	\$76,906.65	\$24,208.92	\$39,376.61	\$5,757.51
				Vendors	Due	Current Period	31 - 60 Days	61 - 90 Days	91 and Over
Vendor Totals:					\$76,906.65	\$24,208.92	\$39,376.61	\$5,757.51	\$7,563.51

SCHEDULE 5.10

LITIGATION

SCHEDULE 5.10

List of Litigation/Causes of Action/Counterclaims

QualityBuilt.com, Inc. v. West Coast Property Consultants, Inc. (Court of Appeal, 4th Appellate District, Division 1, Case No. D055231)

Quality Built sued Defendants for misappropriation of trade secrets, conversion, breach of contract, unfair competition, breach of confidence, and conspiracy. The Superior Court case was tried during the fall 2008 and Quality Built obtained a jury verdict in excess of \$1.7 million. Defendant WCPC filed a notice of appeal and also filed for Chapter 11 bankruptcy. Accordingly, the appeal was automatically stayed.

Thomas Clark & Alun Thomas v. QualityBuilt.com, Inc. (Court of Appeal, 4th Appellate District, Division 1, Case No.s D055311; D054713)

Two former employees filed a lawsuit against Quality Built for Wrongful Employment Termination – Breach of Public Policy, Negligent Infliction of Emotional Distress, Intentional Infliction of Emotional Distress and Unpaid Overtime Compensation. The case was dismissed in November 2008 and Quality Built was awarded attorney's fees in the amount of \$62,000. Plaintiffs have filed notices of appeal. Schor & Freeland represents QB and is being paid by insurance proceeds.

Solutions Consulting Group v. QualityBuilt.com, Inc.; QualityBuilt.com, Inc. v. Solutions Consulting Group (San Diego Superior Court, Case No. GIC871918)

Solutions Consulting Group ("SCG") sued Quality Built for declaratory relief; Quality Built counterclaimed against SCG for breach of contract, breach of the covenant of good faith and fair dealing, professional negligence, negligent misrepresentation and fraud in the inducement/inception. On the eve of trial in May 2008, SCG filed for Chapter 11 bankruptcy, which was recently converted to Chapter 7. The case was automatically stayed.

QualityBuilt.com, Inc. v. Coast to Coast Engineering Services Inc. dba Criterium Engineers (AAA Case No. 73 155 Y 00167 07 DEAR; U.S. District Court, Southern District of California, San Diego Division, Case No. 3:07-cv-00627-WQH-AJB)

Quality Built brought a claim before the American Arbitration Association against Coast to Coast Engineering Services Inc. ("Criterium") for claims related to Criterium's breach of a Master Services & Licensing Agreement between the parties. Criterium countersued Quality Built for breach of the same agreement. Arbitration occurred in January/February 2009. On May 26, 2009, the arbitrator awarded Criterium \$3.6 million in damages, attorney's fees and costs. On July 10, 2009, Criterium filed a petition in District Court to confirm the award. Quality Built had not answered the petition prior to the automatic stay.

Continental Casualty Company v. West Coast Property Consultants Inc.; QualityBuilt.com Inc. (U.S. District Court, Southern District of California, San Diego Division, Case No. 3:09-cv-01031-W-CAB)

Plaintiff insurance company sued its insured, WCPC, for declaratory relief, equitable indemnity and contribution and, Quality Built for declaratory relief only. The plaintiff says that it has no obligation under its policy to indemnify WCPC or satisfy the judgment entered against it and seeks to recover amounts paid in defense of the action against WCPC. QB filed an answer and will be filing a cross-complaint under section 11580(b) of the Insurance Code in an effort to obtain proceeds from the policy to satisfy the WCPC judgment. Greco Trafficante represents QB pursuant to a contingency fee agreement.

Westchester Surplus Lines Insurance v. Roy Anderson Corporation (U.S. District Court, for the Southern District of Mississippi, Southern Division, Case No. 1:08cv1434-HSO-JMR)

Westchester counterclaimed against Quality Built for all sums it may be found to be liable for by judgment or settlement in its case against Roy Anderson Corporation. Quality Built provided quality assurance services to the subject property in Mississippi pursuant to an agreement with Roy Anderson. This case may voluntarily be stayed pending a decision from the Mississippi Supreme Court that may affect the outcome of this case. Coverage counsel has been appointed to represent Quality Built in this action.

State Farm General Ins. v. Tessard Designs et al (San Diego Superior Court, Case No. 37-2008-00050383-CU-IC-NC)

Both QB and its predecessor Luhr Inc. dba Pacific Property Consultants were served with a summons in this matter and sued as cross defendants. The contract for QA services at the Sagewood project in San Marcos, CA was with Luhr Inc. This matter was tendered to and accepted for defense by Luhr Inc's carrier and Attorney Steven Schwartz was appointed as coverage counsel. Mr. Schwartz received an open ended extension to file an answer on behalf of both entities. Counsel expects this matter to be dismissed as against both entities.

San Diego Revitalization Corp. v. Martinez & Cutri Corp. (San Diego Superior Court, Case No. GIC845232)

QB's predecessor Luhr Inc. dba Pacific Property Consultants was brought into this case by the architect, Martinez & Cutri, and the general contractor, Sundt Construction. The contract for quality assurance services performed at this downtown San Diego project was with Luhr, Inc. This matter was tendered to and accepted for defense by Luhr Inc's carrier and Attorney Steven Schwartz was appointed as coverage counsel. Mr. Schwartz filed a demurrer but Luhr Inc. remains in this case, which is expected to settle this fall.

Southshore Golf Villas Homeowners Assn v. Lake at Las Vegas Joint Venture (District Court, Clark County, Nevada, Case No. A550021)

QB's predecessor Luhr Inc. dba Pacific Property Consultants was named in this matter by its client, Lake at Las Vegas Joint Venture. The contract for quality assurance services performed at this Las Vegas area project was with Luhr Inc. This matter was tendered to and accepted for defense by Luhr Inc's carrier and Attorney Thomas Dillard was appointed as coverage counsel.

The Defendant filed for bankruptcy protection but the stay was recently lifted to allow the parties to pursue insurance proceeds. Luhr Inc. has filed a Motion for Summary Judgment which is expected to be heard this fall.

In re San Jose Brickyard Homeowners Assn (Calderon Notice)

QB was served with a Calderon Notice pertaining to this project for which QB provided services for FF Development, LP dba Fairmark Development. The HOA is claiming various construction defects. QB has participated in telephone calls and put its carrier on notice of this potential claim.

In re Molino Street Lofts Homeowners Assn (Calderon Notice)

QB was served with a Calderon Notice pertaining to this project for which QB provided services for Molino Street Lofts, LLC. The HOA is claiming various construction defects. QB has put its carrier on notice of this potential claim.

Fieropan v. QualityBuilt.com (Workers Compensation Appeal Board, WCAB Case No.: VNO 0558668)

Employee filed a workers compensation claim for an injury alleged to be caused from carrying a Toughbook computer.

Centerra High Plains Village a/k/a Centerra Residential Community v. McStain Enterprises, Inc. (Notice of Claim pursuant to C.R.S. § 13-20-803.5)

QB's predecessor Luhr Inc. dba Pacific Property Consultants was served with a Notice of Claim and Tender of Defense & Indemnity relating to this project. The HOA is claiming various construction defects. There is some question as to the timeline and type of construction related to this claim and whether any action is barred by the statute of limitations.

SCHEDULE 5.17 REGISTERED I.P.

SCHEDULE 5.17(a)
List of Registered IP

Registered Domain Names:

QUALITYBUILT.COM
HOMEID.COM

Registered Trademarks:

FRAMER ID®
PERFECTING THE ART AND SCIENCE OF QUALITY IN HOME
BUILDING®
QUALITY BUILT®
BUILDER I.D.®
QUALITYBUILT.COM®
Q® (design of a stylized letter Q in a rectangle)
QB BUILDER LINK®
QB CLOSURE LINK®
QB RAPID RESPONSE®
HOME ID®
QB LINK®
QB DAP®
PERFECTING THE ART AND SCIENCE OF QUALITY IN
CONSTRUCTION®

The following are additional trademarks in use by Quality Built:

BUILDER RISK ASSESSMENT™
TECHNICAL PLAN REVIEW™
RESIDENT EXPERT PROGRAM™
PRODUCTLINK™
SAFETYLINK™
TRADELINK™

Notes:

** Quality Built must file a statement and sample of these trademark as used in interstate commerce by November/December 2009 for them to be registered. No further extensions of filings are allowed.*

SCHEDULE 5.18
CO-OWNERS OF IP / HOSTILE
CLAIMS TO IP

Quality Built, LLC, Production of Documents 00222

ROA_00291

NONE

SCHEDULE 5.19 (b) NOTICE OF PRODUCT DEFECTS

NONE

SCHEDULE 5.19 (c)
PRODUCT LIABILITY
CLAIMS

Quality Built, LLC, Production of Documents 00226

ROA_00295

SCHEDULE 5.19(c)
List of Third Party claims/notices regarding potential liability¹

Name of Builder	Name of Project	City/State	Notes
Lake Las Vegas Resort	Southshore Villas	Las Vegas, NV	QB's predecessor named (Luhr Inc.); MSJ filed and to be heard shortly; panel counsel appointed.
ETCO Homes, Inc.	Lakeview Terrace	Westminister, CA	
Trans West Housing	Talante	La Quinta, CA	
Centex Homes - Henderson	Fairway Lane Townhomes	Henderson, NV	
Oakwood Development	Rocking Horse	Chula Vista, CA	
Trans West Housing	City Heights Urban Village	San Diego, CA	
Westmark Homes	Amber Ridge	Las Vegas, NV	Luhr Inc. records subpoenaed.
Pacer Communities	Lakeside Bear Creek	Murrieta, CA	QB's predecessor named; Luhr Inc. dismissed
New West Properties	New West At Sunnymead Ranch	Morena Valley, CA	
The Olson Company - Seal Beach	Fountain Walk	Fountain Valley, CA	
Engle Homes-Colorado	Old Farm Estates	Thornton, CO	Notice per CO right to repair legislation.
Engle Homes-Colorado	McKay Landing - Lake Isle	Broomfield, CO	Notice per CO right to repair legislation.
Roy Anderson Corp.	Lost Key Golf & Beach Club -16	Pensacola, FL	Notice per FL right to repair legislation.
Residential Constructors, LLC	Metropolis Lofts & Flats	Las Vegas, NV	Notice per NV right to repair legislation.
Wespac Communities, Inc.	Residences on Main	Scottsdale, AZ	Arbitration re faulty windows; QB records subpoenaed.
CLB Partners	Park Laurel	San Diego, CA	

¹ This list is in addition to the list provided in Schedule 5.17(a). This list contains pre-litigation notices, subpoenas for business records related to construction defect claims, homeowner complaints, insurance claims for Quality Built and its predecessor, Luhr Inc. dba Pacific Property Consultants when the services at issue were performed pursuant to the Quality Built program.

Kirkland Central, L.P.	Kirkland Central Condominiums	Kirkland, WA	Insurance claim.
McStain Neighborhoods	High Plains Village Condos	Loveland, CO	Prelitigation Notice
Picerno	Regatta Point	Tempe, AZ	
CLB Partners	Seahaus	La Jolla, CA	Records subpoenaed.
Centennial, LLC	Blackhawk	Las Vegas, NV	Notice per NV right to repair legislation.
Roy Anderson Corp.	Ocean Club	Biloxi, MS	
Westmark Homes	Villagio	Las Vegas, NV	Records subpoenaed.
FF Development dba Fairmark	San Jose Brickyard	San Jose, CA	Calderon Notice
Opus West	Scottsdale Waterfront	Scottsdale, AZ	
McStain	High Plains Villages	Boulder, CO	
Picerno Communities	Regatta Point	Tempe, AZ	
3150 Geary Associates	3148 Geary Blvd		
558 Hillgreen	558 Hillgreen	Los Angeles, CA	
Adam Pasori	624 E. Orange Grove Condos	Burbank, CA	
Armstrong Builders	Kai Makani	Maui, HI	
Beazer Homes	The Point @ Moore's Inlet	Trenton, NJ	
Bison Builders	Post Falls Landing	Post Falls, ID	
Black Rock Development	Courtyard Home	Coeur d'Alene, ID	
Blacksinith Homes/Castle Co.	Esperanza Estates		
Bristol Development	Velocity on the Gulch	Nashville, TN	
Cityview Turtle Creek 95, LP	Newton North/South Townhomes	Dallas, TX	
Colonial Properties	Southgate on Fairview	Charlotte, NC	
Frontier Homes/VRC Development	Blue Sky Condos	Eric, CO	
Ironbridge Homes	Ironbridge	Glenwood Springs, CO	
Jonathan Homes	Creekside Meadows	Livermore, CA	

MidAtlantic Builders	Meadow Creek	Upper Marlboro, MD	
Ministrelli Companies	Artisan Lot 31	Rancho Mirage, CA	
Okland Construction	Elkhorn Springs	Sun Valley, ID	
The Olson Company	Artisan Walk	Emeryville, CA	
The Olson Company	City Walk	Oakland, CA	
Pageantry Homes	Black Hawk	Las Vegas, NV	Notice per NV right to repair legislation.
Promontory Properties	Bella Vista at Promontory Pointe	Ventura, CA	
Rutter Development Company	High Ridge @ Burbank Hills	Burbank, CA	
Paulson, LLC	Wilmar Condominiums	Walnut Creek, CA	
1126 N. Euclid, LLC	Villa de Euclid	Anaheim, CA	
Commercial Lofts, LLC	Commercial Lofts	Las Vegas, NV	Subpoena for Business Records

SCHEDULE 5.19 (c) PRODUCT LIABILITY CLAIMS

Quality Built, LLC, Production of Documents 00230

ROA_00299

SCHEDULE 5.19(c)
List of Third Party claims/notices regarding potential liability¹

Name of Builder	Name of Project	City/State	Notice Received
Lake Las Vegas Resort	Southshore Villas	Las Vegas, NV	QB's predecessor named (Luhr Inc.); MSJ filed and to be heard shortly; panel counsel appointed.
ETCO Homes, Inc.	Lakeview Terrace	Westminister, CA	
Trans West Housing	Talante	La Quinta, CA	
Centex Homes - Henderson	Fairway Lane Townhomes	Henderson, NV	
Oakwood Development	Rocking Horse	Chula Vista, CA	
Trans West Housing	City Heights Urban Village	San Diego, CA	
Westmark Homes	Amber Ridge	Las Vegas, NV	Luhr Inc. records subpoenaed.
Pacer Communities	Lakeside Bear Creek	Murrieta, CA	QB's predecessor named; Luhr Inc. dismissed.
New West Properties	New West At Sunnymead Ranch	Morena Valley, CA	
The Olson Company - Seal Beach	Fountain Walk	Fountain Valley, CA	
Engle Homes-Colorado	Old Farm Estates	Thornton, CO	Notice per CO right to repair legislation.
Engle Homes-Colorado	McKay Landing - Lake Isle	Broomfield, CO	Notice per CO right to repair legislation.
Roy Anderson Corp.	Lost Key Golf & Beach Club -16	Pensacola, FL	Notice per FL right to repair legislation.
Residential Constructors, LLC	Metropolis Lofts & Flats	Las Vegas, NV	Notice per NV right to repair legislation.
Wespac Communities, Inc.	Residences on Main	Scottsdale, AZ	Arbitration re faulty windows; QB records subpoenaed.
CLB Partners	Park Laurel	San Diego, CA	

¹ This list is in addition to the list provided in Schedule 5.17(a). This list contains pre-litigation notices, subpoenas for business records related to construction defect claims, homeowner complaints, insurance claims for Quality Built and its predecessor, Luhr Inc. dba Pacific Property Consultants when the services at issue were performed pursuant to the Quality Built program.

Kirkland Central, L.P.	Kirkland Central Condominiums	Kirkland, WA	Insurance claim.
McStain Neighborhoods	High Plains Village Condos	Loveland, CO	Prelitigation Notice
Piceme	Regatta Point	Tempe, AZ	
CLB Partners	Seahaus	La Jolla, CA	Records subpoenaed.
Centennial, LLC	Blackhawk	Las Vegas, NV	Notice per NV right to repair legislation.
Roy Anderson Corp.	Ocean Club	Biloxi, MS	
Westmark Homes	Villagio	Las Vegas, NV	Records subpoenaed.
FF Development dba Fairmark	San Jose Brickyard	San Jose, CA	Calderon Notice
Opus West	Scottsdale Waterfront	Scottsdale, AZ	
McStain	High Plains Villages	Boulder, CO	
Piceme Communities	Regatta Point	Tempe, AZ	
3150 Geary Associates	3148 Geary Blvd		
558 Hillgreen	558 Hillgreen	Los Angeles, CA	
Adam Pasori	624 E. Orange Grove Condos	Burbank, CA	
Armstrong Builders	Kai Makani	Maui, HI	
Beazer Homes	The Point @ Moore's Inlet	Trenton, NJ	
Bison Builders	Post Falls Landing	Post Falls, ID	
Black Rock Development	Courtyard Home	Coeur d'Alene, ID	
Blacksmith Homes/Castle Co.	Esperanza Estates		
Bristol Development	Velocity on the Gulch	Nashville, TN	
Cityview Turtle Creek 95, LP	Newton North/South Townhomes	Dallas, TX	
Colonial Properties	Southgate on Fairview	Charlotte, NC	
Frontier Homes/VRC Development	Blue Sky Condos	Erie, CO	
Ironbridge Homes	Ironbridge	Glenwood Springs, CO	
Jonathan Homes	Creekside Meadows	Livermore, CA	

MidAtlantic Builders	Meadow Creek	Upper Marlboro, MD	
Ministrelli Companies	Artisan Lot 31	Rancho Mirage, CA	
Okland Construction	Elkhorn Springs	Sun Valley, ID	
The Olson Company	Artisan Walk	Emeryville, CA	
The Olson Company	City Walk	Oakland, CA	
Pageantry Homes	Black Hawk	Las Vegas, NV	Notice per NV right to repair legislation.
Promontory Properties	Bella Vista at Promontory Pointe	Ventura, CA	
Rutter Development Company	High Ridge @ Burbank Hills	Burbank, CA	
Paulson, LLC	Wilmar Condominiums	Walnut Creek, CA	
1126 N. Euclid, LLC	Villa de Euclid	Anaheim, CA	
Commercial Lofts, LLC	Commercial Lofts	Las Vegas, NV	Subpoena for Business Records

SCHEDULE 5.20 (a)

INSURANCE



- ☒ ACE American Insurance Company
☐ Illinois Union Insurance Company
☐ Westchester Fire Insurance Company
☐ Westchester Surplus Lines Insurance Company

ACE Advantage®
Miscellaneous Professional
Liability Policy
Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No. EON.G23635628.001	
Item 1. Named Insured:	QualityBuilt.com
Principal Address:	15330 Avenue of Science San Diego, CA 92128
Item 2. Policy Period:	From 12:01 a.m. 12/01/2008 To 12:01 a.m. 12/01/2009 (Local time at the address shown in Item 1)
Item 3. Limit of Liability (including Claims Expenses):	\$2,000,000 Each Claim \$2,000,000 Aggregate Limit \$ 5,000.00 Disciplinary Proceeding Claims Expenses Aggregate Limit (in addition to the Each Claim and Aggregate Limits set forth above)
Item 4. Retention	\$25,000 Each Claim
Item 5. Premium	\$88,111
Item 6. Retroactive Date (if applicable):	11/01/2002
Item 7. Professional Services:	Solely in the performance of providing home inspection, quality assurance and risk management.

Item 8. Notice to Company:

A. Notice of Claim or Wrongful Act:

ACE USA Claims
P.O. Box 25159
Lehigh Valley, PA 18002-5159
Fax Number: 877-201-8787

B. All other notices:

Chief Underwriting Officer
ACE USA – Professional Risk
140 Broadway, 40th Floor
New York, New York 10005

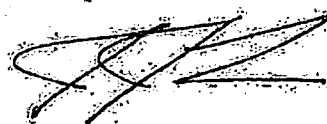
Item 9. Optional Extended Reporting Period:

Additional Premium: 100% of last annual policy premium
Additional Period: 12 Months

Item 10. Endorsements attached upon Policy effective date:

- ALL-20887 (10/06) – ACE Producer Compensation Notice
- PF-17914 (02/05) – U.S. Treasury Department's Office of Foreign Assets
- 1. LD-5S23g (04/02) – Signature Endorsement
- 2. ALL-21101 (11/06) – Trade or Economic Sanctions Endorsement
- 3. PF-19681 (01/06) – CA Amendatory Endorsement
- 4. PF-19832a (11/06) – Home Inspector Endorsement

IN WITNESS WHEREOF, the Company has caused this Policy to be countersigned by a duly authorized representative of the Company.



Authorized Agent

DATE: 12/19/2008

FIRST MERCURY INSURANCE COMPANY
(A STOCK COMPANY)

02/10/2009 08:36 AM

STATUTORY HOME OFFICE: ONE SOUTH WACKER DRIVE, SUITE 2740, CHICAGO, IL 60608
ADMINISTRATIVE OFFICE: 29621 NORTHWESTERN HWY., SOUTHFIELD, MI 48034

**GENERAL LIABILITY POLICY
DECLARATIONS**

Underwritten by First Mercury Emerald Insurance Services
California License No. 0G00727

POLICY NUMBER EPCA000190
RENEWAL OF: NEW

NAMED INSURED AND MAILING ADDRESS

Quality Built, (DBA) Quality Built.com, Inc.
15330 Avenue of Science
San Diego, CA 92128

BROKER NAME AND ADDRESS

Swell & Crawford, Los Angeles
515 S Figueroa St
Los Angeles, CA 90071

POLICY PERIOD From: 02/01/2009 To: 12/01/2009
AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE:

Each Occurrence Limit: \$1,000,000
Personal & Advertising Injury Limit: \$1,000,000
General Aggregate Limit: \$2,000,000
Products-Completed Operations Aggregate Limit: \$2,000,000
Damage To Premises Rented To You: \$50,000
Medical Payment Limit: \$5,000

Defense Costs are outside the limits of Liability

Liquor Liability Limit: Excluded
Liquor Liability Aggregate: Excluded

RETAINED LIMIT:

5,000 deductible

Employee Benefits Liability: Excluded

PREMIUM COMPUTATION:

Premium: \$16,607

Inspection Fee: \$250

Coverage for certified acts of terrorism has been rejected; exclusion attached,
(Per TRIA Disclosure Notice.)

TOTAL POLICY PREMIUM: \$16,607

Retrospective Date (CG 00 02 Only): THIS INSURANCE DOES NOT APPLY TO BODILY INJURY, PROPERTY DAMAGE, OR PERSONAL AND ADVERTISING INJURY WHICH OCCURS BEFORE THE RETROACTIVE, IF ANY SHOWN BELOW RETROACTIVE DATE:

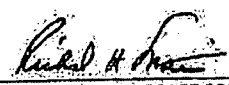
ENDORSEMENTS ATTACHED TO THIS POLICY: See Schedule FME-END - Schedule of Forms and Endorsements

"This insurance is issued pursuant to the CA INS s 1780 through CA INS s 1780, and is placed in an Insurer or Insurers not holding Certificate of Authority from or regulated by the California Insurance Commissioner."

IMPORTANT: Please carefully examine your policy as it may contain significant coverage modifications or exclusions. If this policy is a renewal, it may not contain the same precise terms and conditions as the prior policy.

NOTICE: IN ORDER TO PRESERVE YOUR RIGHTS UNDER THIS POLICY ALL CLAIMS MUST BE REPORTED IMMEDIATELY TO:
First Mercury Emerald Insurance Services P.O. Box 5096 Southfield, MI 48086 Phone: 248-358-4010 Fax: 248-357-5036
THE INSURANCE COMPANY IN WHICH THIS COVERAGE IS PLACED IS AUTHORIZED TO TRANSACT BUSINESS IN THE STATE WHERE THE PROPERTY AND/OR ASSURED IS LOCATED BUT THE COMPANY IS NOT A LICENSED CARRIER IN THAT STATE. THIS POLICY AND THE PREMIUM THEREON MUST BE PROPERLY DECLARED AS A SURPLUS LINES RISK TO THE INSURANCE DEPARTMENT OF THE STATE. PROPER FILINGS MUST BE MADE AND SURPLUS LINES TAXES PAID BY A SURPLUS LINES BROKER IN THE STATES.

Countersigned/Date: 01/27/2009

By: 

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

FME-GL-US-0001 (10/07)

02/10/2009 08:36 AM

EXTENSION OF DECLARATIONS

Policy Number: EPCA000190

LOCATION OF PREMESIS

1 15330 Avenue of Science SAN DIEGO California 92128

PREMIUM
CLASSIFICATION

92663-Engineers or
Architects consulting-not engaged in
actual construction

EXPOSURE AMOUNT
PREMIUM BASIS

4,203,540.00

RATE

3.95

ADVANCE PREMIUM

\$16,607

Subject to a minimum premium of \$16,607.00

FME-GL-DS-EXT (10/07)

Page 1 of 1

Quality Built, LLC, Production of Documents 00238

ROA_00307

02/10/2009 08:36 AM

Insured: Quality Built; (DBA) Quality Built.com, Inc.
Policy Number: EPCA000190

SCHEDULE OF FORMS AND ENDORSEMENTS

(other than applicable forms shown elsewhere in the policy)

Forms and Endorsements applying to and made part of this policy at the time of issuance:

CG 00 01 (12/07) - COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCURRENCE)
CG 20 33 (07/04) - ADDITIONAL INSRD-AUTO: STATUS WHEN REQ IN CONST AGREE
CG 20 37 (07/04) - AI - OWNERS, LESSEES OR CONTRACTORS COMPLETED OPERATIONS
CG 21 47 (12/07) - EMPLOYMENT RELATED PRACTICES EXCLUSION
CG 21 49 (09/99) - TOTAL POLLUTION EXCLUSION ENDORSEMENT
CG 21 54 (01/98) - EXCL DESG OP COVERED BY CONSOLIDATED WRAP UPS
CG 21 75 (12/02) - EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS
CG 21 96 (03/05) - SILICA OR SILICA RELATED DUST EXCLUSION
CG 22 43 (07/98) - EXCL - ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL
CG 24 04 (10/93) - WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS
CG 31 67 (12/04) - EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS
CG 32 34 (01/05) - CALIFORNIA CHANGES
D 2 (01/99) - NOTICE TO CALIFORNIA INSUREDS
FME GL 0201 (10/07) - EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGES
FME GL 0208 (07/98) - EXC ASBESTOS
FME GL 1001A (09/02) - EXC MOLD, FUNGI & BACTERIA
FME GL 3035 (04/08) - COMPOSITE RATE ENDORSEMENT
FME GL 3047 (05/08) - EXCL - ANY RESIDENTIAL CONSTRUCTION WORK
FME GL 3048 (05/08) - MINIMUM EARNED PREMIUM
FME GL 3049 (05/08) - POLICY DEDUCTIBLE ENDORSEMENT
FME GL 3058 (09/08) - CROSS SUITS ENDST
FME GL 3064 (10/08) - DESIGNATED CONST PROJECTS GEN AGG LIMIT
FME GL 3091 (09/08) - AMENDATORY ENDORSEMENT PRE-EXISTING DAMAGE EXCL
FME GL 5007 (11/02) - SUBSIDENCE EXCLUSION
FME GL 5018 (07/00) - LEAD EXC
FMIC CLAIM NOTIFICATION (12/2006)
FMIC LEGAL (10/2007) - SERVICE OF SUIT
IL 00 17 (11/98) - COMMON POLICY CONDITIONS
IL 00 21 (05/04) - NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
IL 02 70 (09/07) - CALIFORNIA CHANGES-CANCELLATION AND NONRENEWAL
TRIA DISCLOSURE 2008

Schedule FME-END (10/07)

Page 1 of 1

Quality Built, LLC, Production of Documents 00239

ROA_00308

FORMS SCHEDULE

Named Insured: QUALITY BUILT

Policy Number: BE 021353390

Effective 12:01 AM: February 1, 2009

<u>End't. No.</u>	<u>Form Name</u>	<u>Form Number/</u>	<u>Edtion Date</u>
	PRIME EXPRESS DEC	90288	(01/06)
	PRIME EXPRESS POLICY	90289	(02/06)
	POLICYHOLDER DISC - NOTICE OF TERRORISM INS COVG	98556	(01/08)
1	ACT OF TERRORISM SIR ENDORSEMENT	90270	(01/06)
2	ASSAULT AND OR BATTERY EXCLUSION ENDORSEMENT	90278	(01/06)
3	CALIFORNIA AMENDATORY ENDT	52133	(03/94)
4	COVERAGE TERRITORY ENDT.	89644	(07/06)
5	CRISISRESPONSE COVERAGE ENHANCEMENT ENDORSEMENT	95418	(08/07)
6	DUTIES IN THE EVENT OF AN OCCURRENCE, CLAIM OR SUI	90293	(01/06)
7	ECONOMIC OR TRADE SANCTIONS CONDITION AMEND. ENDT.	89496	(06/06)
8	EMPLOYERS LIABILITY STOP GAP EXCLUSION	91530	(08/06)
9	RESIDENTIAL CONSTRUCTION OPERATIONS EXCLUSION ENDT	90331	(01/06)
10	TOTAL POLLUTION EXCLUSION ENDORSEMENT	90349	(01/06)

CIFMSC
CI0226

Quality Built, LLC, Production of Documents 00240

ROA_00309



Prime ExpressSM
Commercial Excess Liability Policy With CrisisResponse[®]

DECLARATIONS

The company issuing this policy is indicated by an "X" in the box to the left of the company's name.

☐ AIU Insurance Company	☐ Granite State Insurance Company
☐ American Home Assurance Company	☐ Illinois National Insurance Company
☐ American International Pacific Insurance Company	☐ National Union Fire Insurance Company of Louisiana
☐ American International South Insurance Company	☒ National Union Fire Insurance Company of Pittsburgh, Pa.
☐ AIG Casualty Company	☐ New Hampshire Insurance Company
☐ Commerce & Industry Insurance Company	☐ The Insurance Company of the State of Pennsylvania

(each of the above being a capital stock company)

Executive Offices: 70 Pine Street, New York, NY 10270
Telephone No. 212-770-7000

POLICY NUMBER: BE 021353390

RENEWAL OF: NEW

ITEM 1. NAMED INSURED: QUALITY BUILT

MAILING ADDRESS: 15330 AVENUE OF SCIENCE
SAN DIEGO, CA 92128

ITEM 2. POLICY PERIOD: FROM: February 1, 2009 TO: December 1, 2009
(At 12:01 A.M. standard time, at the address of the Named Insured stated above.)

ITEM 3. LIMITS OF INSURANCE

The Limits of Insurance, subject to the terms of this policy, are:

A. \$4,000,000	Each Occurrence
B. \$4,000,000	General Aggregate (in accordance with Section IV, Limits of Insurance)
C. \$4,000,000	Products-Completed Operations Aggregate (in accordance with Section IV, Limits of Insurance)
D. \$250,000	CrisisResponse Sublimit of Insurance
E. \$50,000	Excess Casualty CrisisFund Limit of Insurance

ITEM 4. SCHEDULED UNDERLYING INSURANCE - See Schedule of Underlying Insurance

ITEM 5. PREMIUM AND PREMIUM COMPUTATION

ESTIMATED TOTAL ANNUAL EXPOSURE	
RATES PER	FLAT
MINIMUM PREMIUM	\$6,600.00
ADVANCE PREMIUM	\$6,600.00

ITEM 6. THIS POLICY INCLUDES THESE ENDORSEMENTS AT INCEPTION DATE: SEE ATTACHED SCHEDULE

PRODUCER NAME: SWETT & CRAWFORD
ADDRESS: 515 S FIGUEROA ST
STE 600
LOS ANGELES, CA 90071-4177

Authorized Representative of
Countersignature (Where Applicable)

Date

Issue Date: 01/28/09

90268 (1/06)
AH1722

SCHEDULE OF UNDERLYING INSURANCE



Issued to: QUALITY BUILT

Policy Number: BE 021353390

By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

TYPE OF POLICY
OR COVERAGE

GENERAL LIABILITY
(PPA CAPPED AT 5MM)

INSURER, POLICY NO.
AND POLICY PERIOD

First Mercury Insurance Compan
01/01/09
01/01/10

LIMITS

\$1,000,000
EACH OCCURRENCE
\$2,000,000
GENERAL AGGREGATE
\$2,000,000
PROD / COMP OPS AGGREGATE
\$2,000,000
PER PROJECT

Defense Expenses are in addition to the limit

AUTO LIABILITY

Peerless Insurance Company

01/01/09
01/01/10

\$1,000,000
COMBINED SINGLE LIMIT

Defense Expenses are in addition to the limit

AUTHORIZED REPRESENTATIVE



UNDSCH (5/99)
AH0006

**CALIFORNIA COMMERCIAL/FLEET
INSURANCE IDENTIFICATION CARD**



Company National Fire & Marine Insurance Company
Company Address: 3024 Harney St. Omaha, NE 68131
NAIC No. 20079

Name of Policyholder: **QUALITY BUILT**
15330 AVENUE OF SCIENCE
SAN DIEGO, CA 92128
Address of Policyholder:
Policy No. Effective Date Expiration Date
72APS018810 02/03/2009 4:11 PM 12/01/2009 12:01 AM
Vehicle Year Make/Model Vehicle Identification No.
2008 FORD F350 SD 1FTWW31P56EB45861

The policy meets the requirements of the California Vehicle Code Sections 16056 or 16500.5 and is a commercial or fleet policy.

M-4566a (11/1999)

VERY IMPORTANT - Please Read

In the event of accident, be sure to secure license number of the other vehicle, also full names and addresses of all other persons in the accident.

Also, write down full names and addresses of all witnesses. Report at once full details of accidents to your insurance company's Claims Department, 4016 Farnam Street, Omaha, Nebraska 68131.

Toll Free 1-800-356-5750

(This identification card should be kept in your vehicle.)

**CALIFORNIA COMMERCIAL/FLEET
INSURANCE IDENTIFICATION CARD**

Company National Fire & Marine Insurance Company
Company Address: 3024 Harney St. Omaha, NE 68131
NAIC No. 20079

Name of Policyholder: **QUALITY BUILT**
15330 AVENUE OF SCIENCE
SAN DIEGO, CA 92128
Address of Policyholder:
Policy No. Effective Date Expiration Date
72APS018810 02/03/2009 4:11 PM 12/01/2009 12:01 AM
Vehicle Year Make/Model Vehicle Identification No.
2008 FORD F350 SD 1FTWW31P56EB45861

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Also, write down full names and addresses of all witnesses. Report at once full details of accidents to your insurance company's Claims Department, 4016 Farnam Street, Omaha, Nebraska 68131.

Toll Free 1-800-356-5750

(This identification card should be kept in your vehicle.)

Insured/Producer Copy - CA 12.23 02/12/2009 CIIH

Quality Built, LLC, Production of Documents 00243

ROA_00312

03/10/2009 01:31 PM



This Declaration Page is attached to and forms part of Certificate provisions
(Form SLC-3 COR)

Previous No.:
New

Authority Ref. No.:
B0702-BB009550X

Certificate No.:
NMB100-0324

1. Name and address of the Assured:

Quality Built

15330 Avenue of Science
San Diego, California 92128

2. Effective from 2/1/2009 to 12/1/2009
both days at 12:01 a.m. standard time.

3. Insurance is effective with certain
UNDERWRITERS AT LLOYD'S, LONDON.

Percentage:
100%

Commercial Property Coverage	\$ 11,423.00
Commercial Inland Marine	\$ 1,101.00
Terrorism Risk Insurance Act 2002 - Certified Acts Coverage	\$.00
Surplus Lines Tax-CA	\$ 165.96
Surplus Lines Tax-CO	\$ 222.48
Stamping Fee-CA	\$ 12.45
Policy Fee-CO	\$ 125.00
Inspection Fee-CA	\$ 200.00
Inspection Fee-CO	\$ 100.00
Other	\$
Total	13,349.89

5. Forms attached hereto and special conditions:
Per Schedule of Forms and Endorsements CP2002

6. Service of Suit may be made upon:

Mendes and Mount
Citicorp Plaza
725 South Figueroa Street, Suite 1900
Los Angeles, California 90017 USA

7. In the event of a claim, please notify the following:

Engle Martin & Associates, Inc.
Phone: 888-239-7872
Fax: 866-607-1901
Electronic mail: claims@emcas.com

Dated March 9, 2009 / Dedcaux

SWET & CRAWFORD GROUP

By: *Patricia Weddle*

Correspondent

CP2000 12-3-2008

03/10/2009 01:31 PM

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Certificate No. NMB100-0324

Effective Date: 2/1/2009 12:01 A.M. Standard Time

DESCRIPTION OF PREMISES

PREM. NO.	BLDG. NO.	LOCATION (ISLAND)	CONSTRUCTION AND OCCUPANCY
1	1	15330 Avenue of Science, San Diego, California,	Jalstad Masonry, Office
2	1	9605 Aero Drive, Suite 1900, San Diego, California,	Frame, Office
3	1	14406 E. Evans Ave., Aurora, Colorado,	Masonry Non-Combustible, Office

CP2001 09/01/03

Quality Built, LLC, Production of Documents 00245

ROA_00314

03/10/2009 01:31 PM

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Certificate No. NMB100-0324

COVERAGES PROVIDED-Insurance of the described premises applies only for Coverages for which a limit of insurance is shown								
PREM. NO.	BLDG. NO.	COVERAGE	DEDUCTIBLE	LIMIT OF INSURANCE	COINSURANCE	REPLACEMENT COST	COVERED CAUSES OF LOSS	RATES
1	1	Business Income w/ Extra Expense		1,000,000	100%		Special	.214
1	1	Business Personal Property	1,000	1,030,000	90%	X	Special	.214
2	1	Business Personal Property	1,000	50,000	90%	X	Special	.248
3	1	Building	1,000	4,013,750	90%	X	Special	.161
3	1	Business Income w/ Extra Expense		100,000	100%		Special	.161
3	1	Business Personal Property	1,000	206,000	90%	X	Special	.161

OPTIONAL COVERAGES-Applicable only when entries are made in the schedule below					APPLIES TO BUSINESS INCOME ONLY	
PREM. NO.	BLDG. NO.	MONTHLY LIMIT OF INDEMNITY (Fraction)	MAXIMUM PERIOD OF INDEMNITY (X)	EXTENDED PERIOD OF INDEMNITY (Days)		

FORMS AND ENDORSEMENTS PER SCHEDULE OF FORMS AND ENDORSEMENTS CP2002

*Entry optional if shown in Common Policy Declarations** Forms and Endorsements applicable to this Coverage Part, unless indicated otherwise in this policy

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

CP2001 09/01/03

ISSUED BY THE STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY
GRANITE STATE INSURANCE COMPANY
13102

AGENT NUMBER
0053782-00

POLICY NUMBER
WC 004-33-2285
013-52-0309-00

INCORPORATED UNDER THE LAWS OF PENNSYLVANIA
ITEM 1: (NAME OF INSURED) MAILING ADDRESS (SEE IDENTIFICATION NO.)
QUALITY BUILT.COM, INC. (A CORP.) QUALITY BUILT
(SEE WC990013 FOR COMPLETE NAME)
15330 AVE OF SCIENCE
SAN DIEGO, CA 92128-0000

 Member Companies of
American International Group
EXECUTIVE OFFICES:
70 PINE STREET, NEW YORK, N.Y. 10270

SEE EXTENSION OF ITEM 1. OF THE INFORMATION PAGE - WC990610
ID# 76831 CA VII

**WORKERS COMPENSATION AND EMPLOYERS
LIABILITY POLICY INFORMATION PAGE**

SWETT & CRAWFORD INC
109 S 7TH ST
STE 600
MINNEAPOLIS, MN 55402-7273

INSURED IS
CORPORATION

PREVIOUS POLICY NUMBER:
NEW

OTHER WORKPLACES NOT SHOWN ABOVE: SEE EXTENSION OF ITEM 1. OF THE INFORMATION PAGE - WC990610

ITEM 2: POLICY PERIOD 12:01 A.M. Standard time at the insured's
mailing address

FROM 03/01/09 TO 03/01/10

ITEM 3: A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed
here:
CA

B. Employers Liability Insurance: Part Two of the policy applies to the work in each state listed in Item 3A.
The limits of our liability under Part Two are:

Bodily Injury by Accident \$ 1,000,000 each accident
Bodily Injury by Disease \$ 1,000,000 policy limit
Bodily Injury by Disease \$ 1,000,000 each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:
NONE

D. This policy includes these
SEE EXTENSION OF ITEM 3.D. OF THE INFORMATION PAGE - WC990612

ITEM 4: The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans.
All information required below is subject to verification and change by audit.

All information required below is subject to verification and change.				
Classifications	Code Number	Estimated Total Remuneration ☒ Annual ☐ 3 Year	Rate Per \$100 of Re- muneration	Estimated Premium ☒ Annual ☐ 3 Year
SEE EXTENSION OF ITEM 4. OF THE INFORMATION PAGE - WC7754 TAXES/ASSESSMENTS/SURCHARGES				\$2,456
EXPENSE CONSTANT (EXCEPT WHERE APPLICABLE BY STATE)		\$230 CA		
MINIMUM PREMIUM		\$750 CA		TOTAL ESTIMATED PREMIUM: \$50,765
If indicated below, interim adjustments of premium shall be made:				
☐ Semi-Annually		☐ Quarterly		☐ Monthly
DEPOSIT PREMIUM.				

03/31/09 PHOENIX

52

Issue Date
39967 (Rev'd 04/08)

Issuing Office


Authorized Representative

WC 00 00 01

EXTENSION OF ITEM 3.D. OF THE INFORMATION PAGE

Policy Number: WC 004-33-2285

Effective Date: 03/01/2009

TRSMPLNOT
WC000406
WC000421C
WC000422A
WCOFAC
78052D
55154WC
PN049906
WC040002A
WC040303
WC040317
WC040360A
WC040361
WC040402
WC040407
WC040421
WC990017
WC990407
WC990408B
WC990409
WC990410
WC990413A
WC990013
WC990610

FOREIGN TERRORISM POLHOLDR NOT-PREM DTMN
PREMIUM DISCOUNT ENDORSEMENT
CATASTROPHE PREMIUM ENDORSEMENT
TRIPRA DISCLOSURE ENDORSEMENT
NOTICE REG OFFICE OF FOREIGN ASSET CTRL
PRIVACY POLICY
CALIFORNIA FRAUD ASSESSMENT
CA - DUAL WAGE POLICYHOLDER NOTICE
CA-ADMINISTRATION REVOLVING FUND ASMNT
CA OFFICERS&DIRECTORS COV/EXCLUSION ENDT
CA EMPLOYEE INSURED BY GEN EMPLOYER EXCL
CA EMPLOYERS LIAB COV AMENDATORY ENDT
CA BLANKET WAIVER
CA MANDATORY RATE CHANGE ENDT
CA PREMIUM ADJUSTMENT ENDT
CA - OPTIONAL PREMIUM INCREASE ENDT
CALIFORNIA CANCELLATION ENDORSEMENT
CA POLICY AMENDATORY ENDT
CA NOTIF OF LOSS CONTROL SERVICES
CA POLICYHOLDER NOTICE - CIGA SURCHARGE
POLICYHOLDER NOTICE
POLICYHOLDER NOTICE
FIRST NAMED INSURED ENDORSEMENT
NAMED INSUREDS/ADDRESSES

WC 99 06 12
(Ed. 1/97) (Rev'd 04/08)

ISSUED BY THE STOCK INSURANCE COMPANY HEREIN CALLED THE COMPANY
NEW HAMPSHIRE INSURANCE COMPANY
13080

AGENT NUMBER
0053782-00

POLICY NUMBER
WC 004-33-2284
013-52-0309-00

INCORPORATED UNDER THE LAWS OF PENNSYLVANIA
ITEM 1.1. NAMED INSURED: MAILING ADDRESS: IDENTIFICATION NO.:

QUALITY BUILT.COM, INC.; QUALITY BUILT
15330 AVE OF SCIENCE
SAN DIEGO, CA 92128-0000

Member Companies of
American International Group

EXECUTIVE OFFICES:
70 PINE STREET, NEW YORK, N.Y. 10270

SEE EXTENSION OF ITEM 1. OF THE INFORMATION PAGE - WC990610

LD#:

PRODUCER'S NAME AND NUMBER

WORKERS COMPENSATION AND EMPLOYERS
LIABILITY POLICY INFORMATION PAGE

SWETT & CRAWFORD INC
109 S 7TH ST
STE 600
MINNEAPOLIS, MN 55402-7273

PREVIOUS POLICY NUMBER
NEW

INSURED IS
CORPORATION

OTHER WORKPLACES NOT SHOWN ABOVE: SEE EXTENSION OF ITEM 1. OF THE INFORMATION PAGE - WC990610

ITEM 2:	POLICY PERIOD 12:01 A.M. standard time at the insured's mailing address: FROM 03/01/09 TO 03/01/10																															
ITEM 3:	A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: AZ CO FL GA ID IL MD NV TX UT VA B. Employers Liability Insurance: Part Two of the policy applies to the work in each state listed in item 3A. The limits of our liability under Part Two are: <table border="0"> <tr> <td>Bodily Injury by Accident \$</td> <td>1,000,000</td> <td>each accident</td> </tr> <tr> <td>Bodily Injury by Disease \$</td> <td>1,000,000</td> <td>policy limit</td> </tr> <tr> <td>Bodily Injury by Disease \$</td> <td>1,000,000</td> <td>each employee</td> </tr> </table> C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here: AK AL AR CT DC DE HI IA IN KS KY LA MA ME MI MN MO MS MT NC NE NH NJ NM NY OK OR PA RI SC SD TN VT WI WV D. This policy includes these SEE EXTENSION OF ITEM 3.D. OF THE INFORMATION PAGE - WC990612		Bodily Injury by Accident \$	1,000,000	each accident	Bodily Injury by Disease \$	1,000,000	policy limit	Bodily Injury by Disease \$	1,000,000	each employee																					
Bodily Injury by Accident \$	1,000,000	each accident																														
Bodily Injury by Disease \$	1,000,000	policy limit																														
Bodily Injury by Disease \$	1,000,000	each employee																														
ITEM 4:	The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit. <table border="1"> <thead> <tr> <th>Classifications</th> <th>Code Number</th> <th>Estimated Total Remuneration ☒ Annual ☐ 3 Year</th> <th>Rate Per \$100 OF Remuneration</th> <th>Estimated Premium ☒ Annual ☐ 3 Year</th> </tr> </thead> <tbody> <tr> <td colspan="5">SEE EXTENSION OF ITEM 4. OF THE INFORMATION PAGE - WC7754</td> </tr> <tr> <td colspan="5">TAXES/ASSESSMENTS/SURCHARGES \$15</td> </tr> <tr> <td colspan="5">EXPENSE CONSTANT (EXCEPT WHERE APPLICABLE BY STATE) \$280 IL</td> </tr> <tr> <td colspan="5">MINIMUM PREMIUM \$1,000 IL</td> </tr> <tr> <td colspan="5">TOTAL ESTIMATED PREMIUM \$9,572</td> </tr> </tbody> </table> If indicated below, interim adjustments of premium shall be made: ☐ Semi-Annually ☐ Quarterly ☐ Monthly DEPOSIT PREMIUM		Classifications	Code Number	Estimated Total Remuneration ☒ Annual ☐ 3 Year	Rate Per \$100 OF Remuneration	Estimated Premium ☒ Annual ☐ 3 Year	SEE EXTENSION OF ITEM 4. OF THE INFORMATION PAGE - WC7754					TAXES/ASSESSMENTS/SURCHARGES \$15					EXPENSE CONSTANT (EXCEPT WHERE APPLICABLE BY STATE) \$280 IL					MINIMUM PREMIUM \$1,000 IL					TOTAL ESTIMATED PREMIUM \$9,572				
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SEE EXTENSION OF ITEM 4. OF THE INFORMATION PAGE - WC7754																																
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TOTAL ESTIMATED PREMIUM \$9,572																																

03/31/09 PHOENIX

52

Issue Date
39967 (Rev'd 04/10)

Issuing Office:

Authorized Representative

WC 03 00 01

EXTENSION OF ITEM 3.D. OF THE INFORMATION PAGE

Policy Number: WC 004-33-2284

Effective Date: 03/01/2009

94396	TX NOTICE
WC994203	TX LOSS PREVENTION SERVICE LETTER
WC7738	TX NOTICE OF ACCIDENT PREVENTION SERVICE
TRSMPLNOT	FOREIGN TERRORISM POLHOLDR NOT-PREM DTHN
WC000308	PARTNERS, OFFICERS, AND OTHERS EXCLUSION
WC000313	WAIVER OF OUR RIGHT TO RECOVER
WC000402	ANNIVERSARY RATING DATE ENDORSEMENT
WC000406	PREMIUM DISCOUNT ENDORSEMENT
WC000414	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC000421C	CATASTROPHE PREMIUM ENDORSEMENT
WC000422A	TRIPRA DISCLOSURE ENDORSEMENT
WC0FAC	NOTICE REG OFFICE OF FOREIGN ASSET CTRL
WC990006	CERTIFICATION OF DRUG FREE WORKPLACE
WC090606	FL EMPLOYMENT AND WAGE INFO RELEASE ENDT
78052D	PRIVACY POLICY
WC000419	PREMIUM DUE DATE ENDORSEMENT
WC020601	AZ CANCELLATION ENDORSEMENT
52134WC	CO AMENDATORY ENDORSEMENT
WC050402	CO CLASSIFICATION ENDT
WC050403	CO PREM CREDIT FOR CERT RISK MGMT PGMS
WC58510	CO NOTICE TO THE INSURED
WC990501A	CO PREM CREDIT FOR CERTIFIED RISK MANAGE
WC990502B	CO DISCL FRM -IMP NOTICE TO POLYHOLDERS
WC090303	FLORIDA EMPLOYERS LIABILITY COVERAGE END
WC090403A	FLORIDA - TRIPRA ENDORSEMENT
WC990903	FL CANCELLATION AND NONRENEWAL ENDT
WC990911	FLORIDA ADDENDUM TO THE DECLARATIONS
WC100601A	GA CANCELLATION NON RENEWAL AND CHANGE
WC991001	GA NOTICE OF ELECTION OR REJEC OF WC COV
WC991003D	GA OFFER OPTIONAL DED FOR CLAIMS BENEFIT
WC110402	ID ALCOHOL & DRUG FREE WORKPLACE
WC120601C	ILLINOIS AMENDATORY ENDORSEMENT
WC991202A	IL NOTICE TO POLICYHOLDER
WC991203	IL AMD. ENDT. FOR CONTRIBUTION LIABILITY
WC991206	IL POLHLDR DISCLS IND COMM OPER FUND SUR
WC190601E	MD CANCELLATION AND NONRENEWAL ENDT
WC270601C	NV CANCELLATION AND NON RENEWAL ENDT
WC420301F	TEXAS AMENDATORY ENDT
WC420304A	TEXAS WAIVER OF OUR RIGHT TO RECOVER END
WC420403A	TX EXPERIENCE RATING ENDORSEMENT
WC420407	TX AUDIT PREMIUM AND RETRO PREMIUM ENDT
WC430305	UTAH WAIVER OF SUBROGATION ENDORSEMENT
WC430602	UTAH CANCELLATION ENDORSEMENT
WC58977	UT FRAUD NOTICE
LWNINPH	VA NOTICE TO POLICYHOLDERS
WC450602	VA AMENDATORY ENDORSEMENT
WC990610	NAMED INSUREDS/ADDRESSES

WC 99 06 12
(Ed. 1/97) (Rev'd 04/08)

Quality Built, LLC, Production of Documents 00250

ROA_00319

AUSTIN LAW

1 Little West 12th Street
New York, New York 10014
Telephone: (212) 252-2012

nigel@austinlawpllc.com

January 28, 2014

Via Email: office@lucey-law.com

Justin O'Toole Lucey, PA
415 Mill Street
Mount Pleasant, SC 29464
Attn: Justin O'Toole Lucey, Esq.

Re: The Gates at Williams-Brice Condominium Association, et al v. Quality Built, LLC
Case No. 2013-CP-40- 7729

Dear Mr. Lucey:

We are writing as counsel for Quality Built, LLC in reference to the Summons and Complaint in respect of the above matter.

The above referenced matter relates to a contract entered into by Qualitybuilt.com, a California corporation and debtor-in-possession. Pursuant to the attached Sales Order entered into on March 12, 2010 by the U.S. Bankruptcy Court for the Southern District of California, substantially all of the assets of Qualitybuilt.com were transferred to Quality Built, LLC free and clear of all Claims (except for specified Assumed Liabilities). All rights and claims under the above referenced contract with Qualitybuilt.com did not constitute an Assumed Liability under the above referenced Sales Order and, accordingly, Quality Built, LLC has no liability or obligation thereunder without any successor liability whatsoever to Qualitybuilt.com. For your convenience, service of complaints against Qualitybuilt.com should be made to Mr. Stan Luhr, 1939 Friendship Drive, Suite E, El Cajon, CA 92020.

We request that you promptly voluntarily dismiss with prejudice this matter against Quality Built, LLC. Please confirm to me at your earliest convenience that you will dismiss this Summons and Complaint and contact me with any questions.

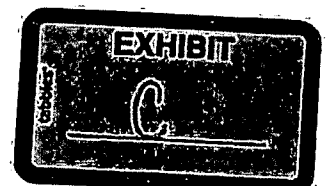
Very truly yours,

Austin Law PLLC

By: Nigel S. Austin
Nigel S. Austin, Esq.

cc. Elizabeth Michaelis - Quality Built, LLC

ROA_00320



2045531



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 12 1977

Bill Jones

Secretary of State

Sec/State Form CE-107 (rev 9-98)



Quality Built, LLC, Production of Documents 00001 99 19825

ROA_00321

ARTICLES OF INCORPORATION

2045531

OF

QualityBuilt.com

**ENDORSED
FILED**

In the office of the Secretary of State
of the State of California

I

JUL 12 1999

The name of this corporation is QualityBuilt.com

BILL JONES, Secretary of State

II

The purpose of this corporation is to engage in any lawful act or activity of which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process:

Carl M. Longley, Jr.
Attorney at Law
7848 Ivanhoe Avenue
La Jolla, California 92037-4501

IV

This corporation is authorized to issue only one class of shares of stock, and the total number of shares which this corporation is authorized to issue is one million.

V

The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

VI

This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

DATED: July 12, 1999

Carl M. Longley, Jr.

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

DATED: July 12, 1999

Carl M. Longley, Jr.



Quality Built, LLC, Production of Documents 00002

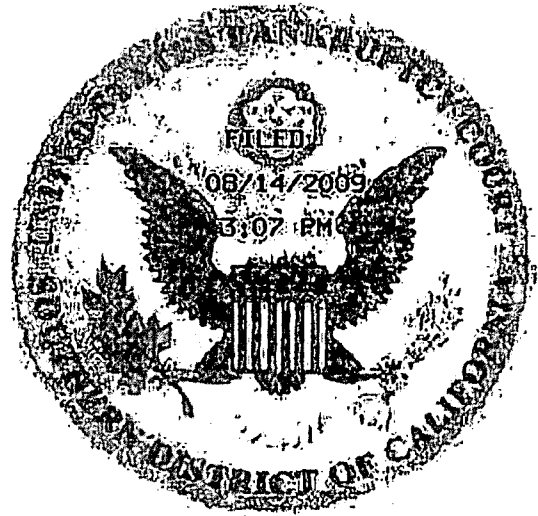
ROA_00322

United States Bankruptcy Court
Southern District of California

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 08/14/2009 at 3:07 PM and filed on 08/14/2009.

Qualitybuilt.com, a California corporation
15330 Ave of Science
San Diego, CA 92128



The case was filed by the debtor's attorney:

L. Scott Keehn
Keehn & Associates, APC
402 West Broadway, Suite 1210
San Diego, CA 92101
(619) 400-2200

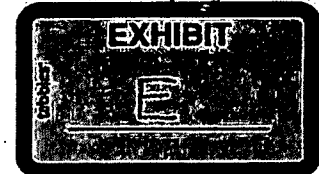
The case was assigned case number 09-12113-PB11 to Judge Peter W. Bowie.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.casb.uscourts.gov> or at the Clerk's Office, Jacob Weinberger U.S. Courthouse, 325 West F Street, San Diego, CA 92101-6991.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Barry K. Lander
Clerk, U.S. Bankruptcy Court



Quality Built, LLC, Production of Documents 00005

8/17/2009 10:45 AM

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "QUALITY BUILT, LLC", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JULY, A.D. 2009, AT 6:06 O'CLOCK P.M.

4711555 8100

090727297

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7439379

DATE: 07-27-09



Quality Built, LLC, Production of Documents 00003

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:08 PM 07/24/2009
FILED 06:06 PM 07/24/2009
SRV 090727297 - 4711555 FILE

CERTIFICATE OF FORMATION

OF

QUALITY BUILT, LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is Quality Built, LLC.

SECOND: The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are the Corporation Service Company, 2711 Centerville Road Suite 400, Wilmington, Delaware 19808.

Dated: July 24, 2009

By: /s/ Vito Piacente
Vito Piacente
Authorized Person

0809/25902-003 Current/15296281v1

Quality Built, LLC, Production of Documents 00004

ROA_00325

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE GATES AT WILLIAMS-BRICE
CONDOMINIUM ASSOCIATION and
KATHARINE SWINSON, Individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

QUALITY BUILT, LLC and COAST TO
COAST ENGINEERING SERVICES, INC.
d/b/a CRITERIUM ENGINEERS,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-40-7729

) DEFENDANT'S NOTICE OF MOTION
) AND
) MOTION FOR SUMMARY
) JUDGMENT

2017 MAR -6 PM 12:09
JENNIFER W. MCBRIDE
C.C.P. & G.S.
RICHLAND CO. FILED

YOU WILL PLEASE TAKE NOTICE that undersigned counsel for Defendant Quality Built, LLC ("Defendant"), will move before this Honorable Court ten (10) days from the date of this notice, or as soon thereafter as counsel may be heard, in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, at such time and place as may be set by the Court for an Order granting Defendant the relief requested herein.

Defendant moves to join with Defendant Coast to Coast Engineering Services, Inc. d/b/a Criterium Engineers ("Criterium") in its Motion for Summary Judgment filed on December 20, 2016 and scheduled to be heard on March 13, 2017. Defendant seeks the same relief as Criterium, but moves this Honorable Court for an order dismissing Plaintiffs' Successor Liability claim against Quality Built, LLC, with prejudice. The Plaintiffs' filed a Successor Liability claim against Defendant on the same day Plaintiffs filed claims against Criterium: May 18, 2016. Defendant seeks a dismissal on the same grounds asserted in Criterium's Motion for Summary Judgment (incorporated herein by reference) that Plaintiffs' Successor Liability claim is barred

by the three-year statute of limitations, and should be dismissed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Based upon the foregoing, the arguments of counsel at the hearing, statutory and common law in support of its motion, the Clerk of Court's file in this matter, and any forthcoming memorandum of law, documents, or materials submitted in support of its motion, Quality Built, LLC hereby moves this Honorable Court for a dismissal with prejudice of the Successor Liability claim filed against it on May 18, 2016, as it is barred by the three-year statute of limitations.

Respectfully submitted,

HALL BOOTH SMITH, P.C.



Alan R. Belcher, SC Bar No. 71686

Elizabeth F. Wieters, SC Bar No. 78064

40 Calhoun Street, Suite 550

Charleston, South Carolina 29401

Phone: 843.720.3460

Email: abelcher@hallboothsmith.com

ewieters@hallboothsmith.com

Attorneys for Quality Built, LLC

March 3, 2017

Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **Defendant's Notice of Motion and Motion for Summary Judgment** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

Justin Lucey, Esquire
Stephanie Drawdy, Esquire
415 Mill Street
Post Office Box 806
Mt. Pleasant, South Carolina 29464-0806
Attorneys for Plaintiffs

Kent T. Stair, Esquire
C. Robin Graham, Esquire
Carlock, Copeland & Stair, LLC
40 Calhoun Street
Suite 400
Charleston, South Carolina 29401
*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*

RICHLAND CO
FILED
2017 MAR -6 PM 12:09
JEANETTE W. McBRIDE
C.C.P. & G.S.

This 3rd day of March 2017.

HALL, BOOTH, SMITH, P.C.

By: Shellie L. Fischer
Shellie L. Fischer
Legal Assistant