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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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SC Court of Appeals

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

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

Appellants,

v.

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

Respondents.

**RESPONDENT QUALITY BUILT, LLC'S NOTICE OF DEFICIENCY OF RECORD ON
APPEAL AND MOTION TO CORRECT RECORD ON APPEAL**

NOW COMES Respondent, Quality Built, LLC ("Respondent"), by and through its undersigned counsel, and pursuant to Rule 210 and 240 of the South Carolina Appellate Court Rules ("SCACR"), moves this Honorable Court to order Appellants, The Gates at Williams-Brice Condominium Association and Katharine Swinson, Individually, and on behalf of all others similarly situated #296848 ("Appellants"), to correct the Record on Appeal that was served upon Respondent on July 16, 2018.

Pursuant to Rule 210(c), SCACR, "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of

Rule 267.” See Rule 210(c) (emphasis added). The Record is missing two items designated by Respondent that Appellants have omitted.¹ Those include:

- 22. Bankruptcy Court - 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 (Filed 01/29/2010);
- 28. Bankruptcy Court - Reply Declaration . . . to U.S. Trustee’s Response to Debtor’s [Qualitybuilt.com] Motion for Order Approving Sale Of Property of the Estate Free and Clear of All Liens, Claims and Encumbrances, Subject to Overbid (Filed 02/18/2010).²

Respondent cannot prepare its Final Brief until these items have been added to the Record. Additionally, Respondent has provided these items to Appellants in its preparation of the Record.

A. RESPONDENT COMPLIED WITH RULE 209 SCACR - DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent, pursuant to Rule 209(a) SCACR, filed its Designation of Matter to be Included in the Record on Appeal simultaneously with its Initial Brief of Respondent on June 1, 2018. See Exhibit A (Respondent’s Designation of Matter). Respondent’s Designation “set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he [it] proposes to include in the record on appeal.” Rule 209(a) SCACR.

Respondent’s Designation identified the items it desired to be included in the Record on Appeal, and its Designation sought “to include portions of the transcript, pleadings, orders,

¹ Appellants also omitted Respondent’s Designation No. 2 “Appellants’ Third Amended Complaint – Gates I (Filed 08/07/2014)”; however, Respondent has agreed to the exclusion of this designation.

² Respondent’s Designation No. 27 “Bankruptcy Court – Affidavit of Elizabeth Michaelis (Filed 02/18/2010)” is part and parcel of Respondent’s Designation No. 28 as stated above.

exhibits, or other materials which may be properly included in the Record on Appeal”, and did not include any matter which is not relevant to the appeal. Rule 209(b) SCACR. Pursuant to Rule 209(c) SCACR, counsel for the Respondent certified that its Designation “contains no matter which is irrelevant to this appeal.” On June 1, 2018, Respondent served Appellants with its Designation of Matter to be Included in the Record on Appeal. See Exhibit A – Proof of Service.

B. APPELLANTS FAILURE TO INCLUDE ALL DESIGNATIONS OF RESPONDENT IS PROCEDURALLY DEFECTIVE AND, THEREFORE, THE RECORD ON APPEAL MUST BE CORRECTED

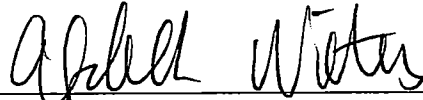
Appellants have failed to include Respondent’s Designations No.’s 22 and 28, as set-forth above. Rule 210 SCACR does not provide either of the parties the latitude to unilaterally alter the Designation of Matter. Instead, Rule 210(c) provides that, “The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267 . . .” Rule 210(c), SCACR. Under Rule 210(a) Appellants are responsible for preparing and serving a copy of the Record on Appeal. As such, it is incumbent upon Appellants to provide a complete Record on Appeal to the Respondent and this Honorable Court in compliance with Rule 210 SCACR.

CONCLUSION

For the reasons stated herein, Respondent moves this Honorable Court to order Appellants to add and include the above-listed items to the Record on Appeal, which the Respondent has designated. In addition, Respondent requests that the due date for its Final Brief be stayed while the Court considers this Motion and until Appellants correct the Record on Appeal. Respondent is filing a Motion for Extension of Time contemporaneously with this Motion.

{Signature page to follow}

Respectfully submitted,



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abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: July 31, 2018

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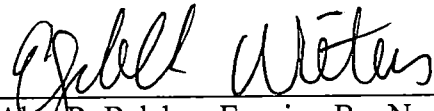
Respondents.

PROOF OF SERVICE

I certify that I have served Respondent Quality Built, LLC's Notice of Deficiency of Record on Appeal and Motion to Correct Record on Appeal upon the attorneys of record by way of U.S. Mail, stamped First Class delivery, on July 31, 2018, addressed as follows:

Justin O'Toole Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29464
Attorneys for Appellants

Kent Stair, Esquire
Robin Graham, Esquire
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*



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abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: July 31, 2018

EXHIBIT A

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Appellants,

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ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

Defendants,

Of Whom, QUALITY BUILT, LLC,

Respondent.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, Quality Built, LLC, proposes the following to be included in the Record
on Appeal:

1. Notice of Appeal (Filed 11/09/2017);
2. Appellants' Third Amended Complaint – Gates I (Filed 08/07/2014);
3. Appellants' Amended Complaint – Gates II (Filed 05/18/2016);
4. Respondent's Answer to Appellants' Amended Complaint (Filed 06/15/2016);
5. Criterium's Notice of Removal to U.S. District Court (Filed 06/17/2016);

6. Appellants' Motion to Remand (Filed 07/15/2016);
7. Order Granting Motion to Remand (Entered 09/07/2016);
8. Criterium's Motion for Summary Judgment (Filed 12/20/2016);
9. Respondent's Notice of Motion and Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment (Filed 01/17/2017);
10. Respondent's Memorandum in Support of Its Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment (Filed 02/21/2017);
11. Respondent's Motion for Summary Judgment (Filed 03/06/2017);
12. Order Dismissing Respondent's Motion for Summary Judgment (Filed 04/07/ 2017);
13. Order Granting Respondent's Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment (Entered 04/07/2017);
14. Order Granting Criterium's Motion for Summary Judgment (Entered 04/07/2017);
15. Appellants' Motion for Reconsideration (Filed 04/20/2017);
16. Respondent's Memorandum in Opposition to Appellants' Motion for Reconsideration (Filed 06/08/2017);
17. Order Denying Appellants' Motion for Reconsideration (Entered 10/17/2017);
18. U.S. Bankruptcy Court for the Southern District of California ("Bankruptcy Court"), Case No.: 09-12113-CL7, 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 (Entered 03/11/2010);
19. Bankruptcy Court - Amended and Restated Asset Purchase Agreement by and among Qualitybuilt.com and Quality Built, LLC (Filed 01/29/2010);
20. State of California Secretary of State Seal and Qualitybuilt.com Articles of Incorporation (Dated 07/12/1999);
21. State of Delaware Secretary of State seal and Quality Built, LLC's Certificate of Formation (Dated 07/24/2009);

22. Bankruptcy Court - 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 (Filed 01/29/2010);
23. Bankruptcy Court – Qualitybuilt.com Chapter 11 Bankruptcy Petition (Filed 08/14/2009);
24. Correspondence from Nigel S. Austin, Esq., of Austin Law, New York, New York dated January 28, 2014;
25. Bankruptcy Court – Compendium of Exhibits in Support of Motion for Order Approving Sale of Property of the Estate Free and Clear of All Liens, Claims and Encumbrances, Subject to Overbid inclusive of Asset Purchase Agreement and Schedules to Asset Purchase Agreement (Filed 01/29/2010);
26. Bankruptcy Court - Affidavit of Gary Elzweig (Filed 02/19/ 2010);
27. Bankruptcy Court - Affidavit of Elizabeth Michaelis (Filed 02/18/2010);
28. Bankruptcy Court - Reply Declaration . . . to U.S. Trustee's Response to Debtor's [Qualitybuilt.com] Motion for Order Approving Sale Of Property of the Estate Free and Clear of All Liens, Claims and Encumbrances, Subject to Overbid (Filed 02/18/2010);
29. The Respondent designates all pleadings and motions of record in this matter filed with the Richland County Court of Common Pleas and Court of Appeals.

I certify that this Designation contains no matter which is irrelevant to this appeal.

(Signature appears on succeeding page)



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ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: June 1, 2018

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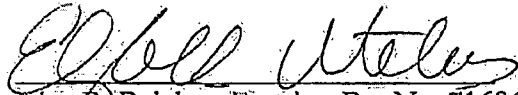
Respondent.

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Attorney for Respondent Quality Built, LLC

Dated: June 1, 2018

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July 31, 2018

VIA FEDERAL EXPRESS PRIORITY OVERNIGHT

South Carolina Court of Appeals
Clerk of Court Office
ATTN: JESSICA SALEN
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals


RE: *The Gates at Williams-Brice Condominium Association, et al. v. Quality Built, LLC*
Lower Court Case No.: 2013-CP-40-7729
Court of Appeals Case No.: 2017-002325
HBS File No.: 7484.0001

Dear Ms. Salen:

As it pertains to the above-captioned appeal, enclosed please find the original and six copies of *Respondent Quality Built, LLC's Notice of Deficiency of Record on Appeal and Motion to Correct Record on Appeal* and *Respondent Quality Built, LLC's Motion For Extension to File Final Brief of Respondent*. Also enclosed are two checks in the amount of \$25.00, representing the motion filing fee for each motion.

I have included an extra copy of each motion, and would appreciate your returning the filed copy to our office in the enclosed self-addressed stamped envelope. Thank you for your assistance in this matter. If you have any questions and/or concerns, please do not hesitate to contact our office.

Very truly yours,


Elizabeth F. Wieters

EFW/sb

cc: Justin O'Toole Lucey, Esquire
Stephanie D. Drawdy, Esquire
Kent Stair, Esquire
Robin Graham, Esquire

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TO **JESSICA SALEN**

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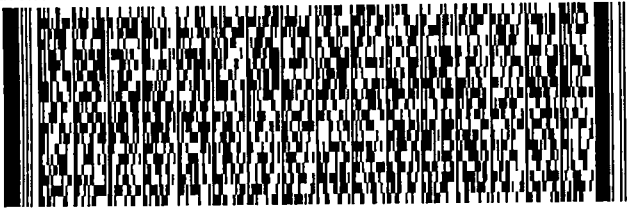
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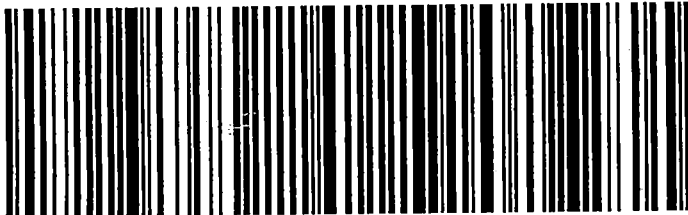
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