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August 20, 2014

VIA FEDEX

Hon. Alan D. Scheinkman
Supreme Court of the State of New York,
Westchester County
111 Dr. Martin Luther King, Jr. Blvd.
Courtroom 105
White Plains NY 10601

**Re: Superior Gunite, Plaintiff v. Yonkers Contracting Company, Inc. and
Zurich American Insurance Company, Defendants, Index No. 54272/2013**

Dear Justice Scheinkman:

We represent plaintiff Superior Gunite in the above-referenced action (“Action No. 1”). On August 6, 2014, the parties attended a court conference before Your Honor. Defendant Yonkers’ counsel advised the Court that it commenced a new action against Superior Gunite and KJC Waterproofing, Inc. entitled: *Yonkers Contracting Company, Inc. v. KJC Waterproofing, Inc. and Superior Gunite*, Index No. 61442/2014, filed in the Supreme Court of the State of New York in the County of Westchester (“Action No. 2”). As you may recall, Action No. 1 and Action No. 2 involve, among other things, construction defect claims involving work performed by Superior Gunite for Defendants on a Metropolitan Transportation Authority project designated as Contract C-26510, or Site J.

As suggested by Your Honor, the parties to Action No. 1 have agreed to stay Action No. 1, and proceed with discovery concerning the construction defects claims in Action No. 2. Once discovery is completed in Action No. 2, both actions will either be consolidated for trial, or tried jointly.

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Hon. Alan D. Scheinkman

August 20, 2014

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Enclosed herein is a Stipulation and Order which we respectfully request be so ordered by the Court.

Sincerely,

DUANE MORRIS LLP



Mark A. Canizio
Partner

MC
Enclosures

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SUPERIOR GUNITE,

Index No.: 54272/2013

Plaintiff,

STIPULATION AND ORDER

-against-

YONKERS CONTRACTING COMPANY, INC. and
ZURICH AMERICA INSURANCE COMPANY,

Defendants,

-----X

WHEREAS, on March 25, 2013, Superior Gunite filed a Summons and Complaint against Yonkers Contracting Company, Inc. and Zurich America Insurance Company (collectively, the “Defendants”) in the above-captioned matter (“Action No. 1”); and

WHEREAS, on May 20, 2013, Defendants filed a Verified Answer, Separate Defenses, and Counterclaim; and

WHEREAS, on June 10, 2013, Superior Gunite filed a Verified Reply to Defendants’ Counterclaim; and

WHEREAS, on January 28, 2014, the Court issued a Trial Readiness Order in Action No. 1; and

WHEREAS, on February 7, 2014, Superior Gunite filed a Note of Issue pursuant to the Court’s Trial Readiness Order; and

WHEREAS, on February 21, 2014, Defendants filed a Motion to Vacate the Note of Issue and temporarily stay Action No. 1; and

WHEREAS, on June 27, 2014, the Court issued an Order denying Defendants' motion to stay Action No. 1, but granting Defendants' motion to vacate the Note of Issue and permitting Defendants to litigate their construction defect claims against Superior Gunite in Action No. 1; and

WHEREAS, on July 28, 2014, Yonkers Contracting Company, Inc. filed a separate action against Superior Gunite and KJC Waterproofing, Inc. entitled: *Yonkers Contracting Company, Inc. v. KJC Waterproofing, Inc. and Superior Gunite*, Index No. 61442/2014, filed in

the Supreme Court of the State of New York in the County of Westchester ("Action No. 2"); and

WHEREAS, on August 6, 2014, this Court held a conference to discuss how the two actions should proceed; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the undersigned parties, as follows:

1. The parties consent to a stay of all proceedings in Action No. 1 pending the completion of discovery in Action No. 2.
2. After completion of discovery in Action No. 2, both Action No. 1 and Action No. 2 shall be consolidated for trial, or tried jointly as the Court may determine.
3. If for any reason Action No. 2 does not proceed, or is transferred, terminated, or discontinued, any party to Action No. 1 may seek relief from the stay provided for by this Stipulation and Order.
4. Yonkers' Order to Show Cause for Leave of Defendants to Amend the pleadings filed in Action No. 1 on August 12, 2014 is withdrawn.

5. This Stipulation may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and facsimile signatures shall be deemed to be originals.

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By 
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By 
Michael F. McKenna, Esq.

SO ORDERED

J. S. C.