

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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YONKERS CONTRACTING COMPANY,

Plaintiff,

-against-

K.J.C. WATERPROOFING INC., and SUPERIOR  
GUNITE, ZURICH AMERICAN INSURANCE  
COMPANY, NICHOLSON CONSTRUCTION CO.,  
NATIONAL WELDING AND FABRICATION,  
KENSEAL CONSTRUCTION, BARKER STEEL LLC,  
STRUCTURE TECH NEW YORK INC., CITI  
STRUCTURE LLC,

-and-

ZURICH AMERICAN INSURANCE COMPANY,  
as additional Defendant on Counterclaims,

Defendants.

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Index No.: 61442/2014

**NICHOLSON  
CONSTRUCTION  
COMPANY'S  
VERIFIED  
REPLY TO AMENDED  
COUNTERCLAIMS  
OF K.J.C  
WATERPROOFING INC.**

Nicholson Construction Company ("Nicholson"), by its attorneys, Goetz Fitzpatrick LLP,  
as and for its Reply to the Verified Counterclaims of K.J.C. Waterproofing, Inc. ("KJC"), states  
and alleges as follows:

**PARTIES**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.
4. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations in paragraph 4 except admits that Nicholson has filed a Mechanic's Lien on the Project in question.

5. Admits the allegations in paragraph 5.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. There are no allegations contained in paragraph 11 to which to respond.

12. There are no allegations contained in paragraph 12 to which to respond.

13. There are no allegations contained in paragraph 13 to which to respond.

14. There are no allegations contained in paragraph 14 to which to respond.

### **GENERAL ALLEGATIONS**

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

17. Neither denies nor admits the truth of the allegations in paragraph 17 of the

Counterclaim, but refers the Court to the terms and conditions of the Contract referred to therein.

18. Neither denies nor admits the truth of the allegations in paragraph 18 of the Counterclaim, but refers the Court to the terms and conditions of the Subcontract referred to therein.

19. Neither denies nor admits the truth of the allegations in paragraph 19 of the Counterclaim, but refers the Court to the terms and conditions of the payment bond referred to therein.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23.

24. Neither denies nor admits the truth of the allegations in paragraph 24 of the Counterclaim, but refers the Court to the terms and conditions of the KJC Lien.

25. Neither denies nor admits the truth of the allegations in paragraph 25 of the Counterclaim, but refers the Court to the terms and conditions of the KJC Lien.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Neither denies nor admits the truth of the allegations in paragraph 27 of the Counterclaim, but refers the Court to the terms and conditions of the undertaking described

therein.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. Neither denies nor admits the truth of the allegations in paragraph 29 of the Counterclaim, but refers the Court to the terms and conditions of the Surety Bond referred to therein.

30. Neither denies nor admits the truth of the allegations in paragraph 29 of the Counterclaim, but refers the Court to the terms and conditions of the Second KJC Lien.

31. Neither denies nor admits the truth of the allegations in paragraph 29 of the Counterclaim, but refers the Court to the terms and conditions of the Undertaking described therein.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

33. Neither denies nor admits the truth of the allegations in paragraph 29 of the Counterclaim, but refers the Court to the terms and conditions of the Undertaking described therein.

34. Neither denies nor admits the truth of the allegations in paragraph 29 of the Counterclaim, but refers the Court to the terms and conditions of the aforesaid surety bond.

35. Neither denies nor admits the truth of the allegations in paragraph 29 of the Counterclaim, but refers the Court to the terms and conditions of the Notice of Extension referred to therein.

**FIRST COUNTERCLAIM FOR BREACH  
OF CONTRACT AGAINST YONKERS**

36. Answering paragraph 36 of the Counterclaim, Nicholson repeats, reiterates and realleges each and every denial in paragraphs “1” through “35” herein as if set forth in full herein.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38.

**SECOND COUNTERCLAIM FOR ACCOUNT  
STATED AGAINST YONKERS**

39. Answering paragraph 39 of the Counterclaim, Nicholson repeats, reiterates and realleges each and every denial in paragraphs “1” through “38” herein as if set forth in full herein.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

**THIRD COUNTERCLAIM AGAINST YONKERS  
FOR QUANTUM MERUIT**

44. Answering paragraph 44 of the Counterclaim, Nicholson repeats, reiterates and realleges each and every denial in paragraphs “1” through “43” herein as if set forth in full herein.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47.

**FOURTH COUNTERCLAIM AGAINST YONKERS  
FOR UNJUST ENRICHMENT**

48. Answering paragraph 48 of the Counterclaim, Nicholson repeats, reiterates and realleges each and every denial in paragraphs “1” through “47” herein as if set forth in full herein.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

**FIFTH COUNTERCLAIM AGAINST ALL COUNTER-DEFENDANTS FOR  
FORECLOSURE OF THE MECHANIC'S LIEN**

55. Answering paragraph 55 of the Counterclaim, Nicholson repeats, reiterates and realleges each and every denial in paragraphs "1" through "54" herein as if set forth in full herein.

56. Neither denies nor admits the truth of the allegations contained in paragraph 56 of the Counterclaim but refers the Court to the terms and conditions of the Notice of Lien referred to therein. Furthermore, Paragraph 56 contains conclusions of law to which no response is required.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57.

58. Neither denies nor admits the truth of the allegations contained in paragraph 58 of the Counterclaim but refers the Court to the terms and conditions of the Undertaking referred to therein. Nicholson denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 58.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59.

60. Neither denies nor admits the truth of the allegations contained in paragraph 60 of the Counterclaim but refers the Court to the terms and conditions of the Order and Undertaking referred to therein. Furthermore, Paragraph 60 contains conclusions of law to which no response

is required.

61. Paragraph 61 contains conclusions of law to which no response is required.
62. Paragraph 62 contains conclusions of law to which no response is required.
63. Denies the allegations in Paragraph 63 of the Counterclaim.
64. Paragraph 64 contains conclusions of law to which no response is required.

**SIXTH COUNTERCLAIM AGAINST ALL COUNTER-DEFENDANTS  
FOR PAYMENT OF THE PERFORMANCE BOND**

65. Answering paragraph 65 of the Counterclaim, Nicholson repeats, reiterates and realleges each and every denial in paragraphs “1” through “64” herein as if set forth in full herein.

66. Paragraph 66 contains conclusions of law to which no response is required.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST  
DEFENDANT SUPERIOR GUNITE  
FOR INDEMNIFICATION**

67. Paragraph 67 contains conclusions of law to which no response is required.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST  
DEFENDANT SUPERIOR GUNITE FOR CONTRIBUTION**

68. Paragraph 68 contains conclusions of law to which no response is required.

**FIRST AFFIRMATIVE DEFENSE**

The Verified Counterclaim fails to state a cause of action against Nicholson upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Verified Counterclaim is barred by the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

The Verified Counterclaim should be dismissed for K.J.C.'s failure to follow, upon information and belief, any and all conditions precedent to pursuing a claim and/or filing suit as may be required under the terms and conditions of the written agreement(s) between the parties.

**FOURTH AFFIRMATIVE DEFENSE**

The Verified Counterclaim should be dismissed because Nicholson has a superior interest in the funds due from Yonkers.

**WHEREFORE**, Counterclaim Defendant Nicholson Construction Company, respectfully demands judgment as follows:

- i. Dismissal of the K.J.C. Waterproofing Inc.'s Complaint with Prejudice as against Nicholson and award to Nicholson its costs and attorney's fees incurred in defending these claims; and
- ii. For such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
November 3, 2014

GOETZ FITZPATRICK LLP

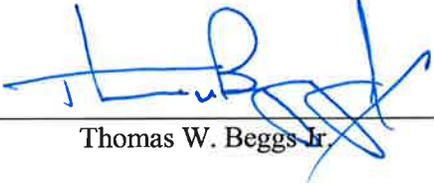
By:  \_\_\_\_\_  
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**CORPORATE VERIFICATION**

STATE OF PENNSYLVANIA    )  
  ) ss.:  
COUNTY OF ALLEGHENY    )

Thomas W. Beggs Jr., being duly sworn, says that deponent is the Secretary of Nicholson Construction Company, that deponent has read the foregoing VERIFIED REPLY, knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. The reason why this verification is made by deponent is that deponent is the Secretary of Nicholson Construction Company, which is a domestic corporation and deponent is familiar with the facts and circumstances herein. The sources of deponent's information and the grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: review of books, records and conversations with employees of Nicholson Construction Company familiar with this matter.

  
\_\_\_\_\_  
Thomas W. Beggs Jr.

Sworn to before me this  
31<sup>st</sup> day of October, 2014

  
\_\_\_\_\_  
Notary Public

