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**BY ELECTRONIC TRANSMISSION ([WVenoit@suffolk.com](mailto:WVenoit@suffolk.com); [JDiaz@suffolk.com](mailto:JDiaz@suffolk.com))**

October 19, 2015

Ms. Wendy Venoit, Vice President/General Counsel  
Suffolk Construction Company, Inc.  
65 Allerton Street  
Boston, Massachusetts 02119

Mr. Juan Diaz, SE General Counsel  
Suffolk Construction Company, Inc.  
One Harvard Circle  
West Palm Beach, Florida 33409

**Re: The Related Group's Modified AIA A312 Performance Bond**

Dear Ms. Venoit and Mr. Diaz:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of firms employing surety bond producers, including licensed resident and nonresident producers placing bid, performance, and payment bonds on public and private projects in the State of Florida and all other jurisdictions. A NASBP member recently forwarded us a copy of the modified A312 Performance Bond (Bond) that the Related Group (Related) uses for its projects, asking our opinion if the terms of the Bond were usual and customary in the industry. We have reviewed the myriad significant revisions to the Bond, which are not usual and customary in the industry and, in addition, give NASBP great concern.

To be frank, the Bond is among the most onerous that we have ever encountered. These revisions do not comport with customary practice in the industry and pose dramatic and unacceptable risks to sureties and their contractor/principals. And, while Related may have some sureties that will write this Bond, most assuredly one of two things has occurred: (1) either the surety and the principal are unaware of the onerous modifications and thus the much higher risks; or (2) the surety and the principal are aware of the onerous modifications and the contractor has accounted for those higher risks with significantly increased bid amounts. Ultimately, onerous terms and conditions in bond forms are counter to the best interests of the obligee, such as Related, as fewer sureties will write such bonds, suppressing competition and enhancing project price.

A number of the specific modifications in the Bond substantially increase the risks to both the contractor and the surety. These increased risks certainly affect the number of contractors that are able to submit bids for Related's projects, as they act as a significant deterrent to sureties wishing to

write bonds for such projects. We provide below general commentary on some specific modifications to the Bond and some of the underwriting ramifications of those modifications:

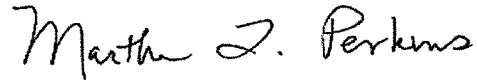
- In section 3, the requirement that the owner not be in breach of the contract as a condition for the surety to act under the Bond has been eliminated. This is not customary in the surety industry nor does it comport with any sense of fair play. Such revised language allows the owner to breach the contract and still obtain the benefit of the Bond.
- The section 3.1 meeting requirement has been deleted, which is fair to neither the principal, the surety, nor, ironically, Related. Often these pre-default meetings, by bringing the relevant parties together, can by-pass protracted disputes and put the train back on the track.
- By deletion of the requirement that the owner terminate the contract, the parties are put in no-person's land, with unclear legal positions.
- It is patently unfair for the surety to lose its protection of "actual prejudice" if the notice provision is defective.
- Having eliminated the pre-default meeting, Related in addition requires the surety to conduct its independent investigation and respond within 15 days after receipt of owner's notice. This is a highly unreasonable period of time for the surety to be put on notice, investigate, and respond.
- In section 5 the surety must set forth its liability and promptly tender the sum to the owner after the 15-day "Surety Determination." In addition, if the surety does not complete its independent investigation within 15 days and deliver its Surety Determination, it will be deemed in breach of its obligations under the Bond, after an additional 7-day notice. These foreshortened time frames substantially increase the financial risk to the surety and its principal.
- Section 7 expressly provides for additional damages to be covered by the Bond, increasing the surety's and its principal's risk.
- Section 10 expressly provides for additional notices that the surety is waiving, again increasing the surety's and contractor's risk.
- The Bond eliminates setoffs to which the surety could be a beneficiary under the contract. Both the above waiver of notice and the elimination of the right to setoff are just two more of the many standard surety protections deleted from the Bond.
- Under the Bond the contractor's ability to cure under the contract before the surety's obligation is triggered has been eliminated.
- Last, but certainly not least, among the onerous conditions of the Bond is the elimination of the requirement that the owner must pay the contractor as required under the contract or comply with the other material terms of the contract as a precondition to trigger the surety's obligation.

In short, the modifications to the Bond place undue risk on contractors and sureties. When contractors seek surety credit for bonds with onerous terms and conditions, sureties are much less likely to extend that surety credit. By including such onerous terms, Related is restricting competition and ensuring that it pays considerably more for its projects.

Please understand that, by writing this letter, NASBP is not providing legal advice but is giving our perspective on the prevailing customs and practices in the industry. NASBP hopes that Related will reconsider its modifications to the AIA A312 Performance bond, which places so much unbalanced

risk on the surety and on the bonded contractor as well through its indemnification obligation to the surety and would recommend that Related revise the Bond to accord more with industry practices and standards.

Yours sincerely,

A handwritten signature in black ink that reads "Martha L. Perkins". The signature is written in a cursive, flowing style.

Martha L. Perkins  
General Counsel

cc: Mark H. McCallum, CEO