

## Supplemental Information

August 18, 2023

Savarino Companies, LLC (“Savarino”) had a contract as a general contractor to the Dormitory Authority of the State of New York (“DASNY”) to perform construction of a student housing project at the SUNY College of Technology at Alfred for a project known as MacKenzie Hall Phase III Renovation and Associated Asbestos Abatement (“Project”). The Project was broken down into three phases - Phase 3A, Phase 3B and Phase 3C. The Phase 3A work was to be performed and essentially completed before the Phase 3B and Phase 3C work commenced. There was some overlap between the three phases.

Savarino undertook performance of the work in March, 2020, but, soon thereafter, the work was suspended by DASNY based on the COVID-19 pandemic and executive orders issued by the Governor of New York. Savarino reserved its rights based on the project shutdown. Eventually, DASNY determined that the work would resume on about May 18, 2020 and reset the schedule and some changes to the work to account for re-sequencing for the Project such that the Phase 3A work was to be completed by July 23, 2021. The Phase 3B and Phase 3C work was to commence on or about May 17, 2021. Savarino objected to the schedule that was being imposed and reserved all of its rights. Savarino undertook to complete phase 3A and also commenced certain work on phases 3B and 3C.

On April 30, 2021, more than 2 1/2 months prior to the required substantial completion of the Phase 3A work, DASNY informed Savarino that the Phase 3B and Phase 3C work was being put on “pause”. This was based on the client, Alfred College, determining that it needed to continue the use of dormitory rooms that would have been renovated as part of Phase 3B and Phase 3C. No other reason was given at that time.

For a variety of reasons, including issues with the COVID-19, supply chain issues, shortage of labor issues, owner delay issues (e.g., late change order work and failure to require design professionals to timely respond to Savarino requests for information and assistance) and other issues that were not attributable to Savarino, the Phase 3A work was not substantially completed by DASNY’s imposed date of July 23, 2021. Savarino was issued a temporary approval of occupancy by DASNY on or about November 3, 2021 with respect to the Phase 3A. Completion of “punch-list” items was still remaining.

Notwithstanding its approval of occupancy, DASNY provided notice to Savarino on November 4, 2021 that it was intending on terminating Savarino with respect to the Phase 3A work and the remainder of the project, being the Phase 3B and Phase 3C work that DASNY had paused back on April 30, 2021. Savarino contested its termination in writing on November 16, 2021 as well as during a conference call that was afforded to Savarino on that day. By letter dated November 19, 2021, DASNY terminated Savarino, purportedly for cause. Savarino has objected to its termination and has claimed that DASNY has breached the contract. Savarino has reserved all rights.

Notwithstanding the November 19, 2021 termination, Savarino and its subcontractors continued to perform in good faith the “punch-list” items on the Project until DASNY terminated Savarino’s right to do that on or about December 7, 2021. This punch-list work could have been completed within a short period of time, But DASNY required that it have in place a take-over agreement with Savarino’s surety, Endurance Assurance Corp. (“Endurance”) before any work could continue. This would prove to delay completion of the work.

On DASNY’s demand, Endurance agreed to complete the work on the Project. Endurance requested that the surety be permitted to hire Savarino as its contractor to complete the work. This was a permitted alternative under the performance bond, but that alternative required the owner’s consent. DASNY flatly refused.

Eventually, Endurance and DASNY entered into a Completion/Takeover Agreement that was executed on April 5, 2022. This allowed completion of the Phase 3A “punch-list” work and is set new dates for completion of the Phase 3B and Phase 3C work. The surety hired Loewke – Brill Consulting Group (“Loewke – Brill”) as its representative and replacement contractor all at great cost to Savarino. While the agreement provided Savarino with the ability to assist Loewke – Brill, Savarino was essentially barred from the site. Savarino did assist in scheduling, continuing subcontracts with subcontractors, payment applications and other matters to progress the work.

DASNY’s own actions delayed the completion of the Project. The “pause” on the Phase 3B and Phase 3C work on April 30, 2021 for the convenience of Alfred State College cannot be attributable to Savarino. And its refusal to allow work on the Project to proceed until the Completion/Takeover Agreement was signed on April 5, 2022 further delayed the Project.

Savarino denies that it was appropriate for DASNY to terminate Savarino’s work on the Project. Savarino believes that the termination resulted from deteriorating relationship between Alfred State College and DASNY and DASNY’s attempt to “save face” by blaming Savarino for delays in the completion of the Project. Savarino further believes that, in any event, other causes contributed to the delay in completion of the Project. Savarino has engaged an expert to study the delays that Savarino incurred that were outside of its control, and preliminary indications from that expert indicate that an extension of time in favor of Savarino for the Phase 3A work beyond DASNY’s imposed date of July 23, 2021 would be appropriate.

Moreover, the contract with DASNY provides for liquidated damages for a delay in project completion. If these are appropriate in amount and not unenforceable as a penalty, that would provide DASNY its remedy for delay in completion. Savarino believes that, in any event, Alfred State College was not materially impacted by the delay in completion of Phase 3A. The students that would have occupied Phase 3A were housed in other facilities on campus.

Savarino has reserved all rights and remedies. On November 15, 2022, Savarino filed a lawsuit against DASNY in the Supreme Court of the State of New York with venue in the County of Albany to seek an adjudication of the respective claims of the parties. That lawsuit is now in the discovery stage.

It should be noted that Phase 3B of the Project achieved a temporary approval for occupancy as of August 11, 2023 and is now being occupied. It is anticipated that Phase 3C will be completed by the anticipated date of November 24, 2023 as set forth in the Completion/Takeover Agreement with Endurance.

Savarino claims that it has been severely impacted by DASNY’s actions on this Project. Savarino will be seeking damages from DASNY in the currently pending action. As set forth in the attachment, Savarino’s damages are currently estimated to be \$3,310,282.82 all based on the increased costs that Savarino incurred that were caused by DASNY’s actions.

| Description  | Amount                 |
|--|------------------------|
| John W. Danforth Company - Upfront CO to comeback          | \$ 300,000.00          |
| Rochester Davis Fetch Corp. - Upfront CO to comeback       | \$ 150,000.00          |
| Matco Electric Corporation - Upfront CO to comeback        | \$ 150,000.00          |
| Tiede Zoeller - Upfront CO to comeback                     | \$ 39,300.00           |
| LB Costs to Date   | \$ 1,433,954.82        |
| Forecast to complete for LB Costs                          | \$ 600,000.00          |
| Active Workforce   | \$ 300,000.00          |
| General Conditions Increases - Temp Heat, Fencing, Rentals | \$ 177,035.00          |
| Legal Fees   | \$ 159,993.00          |
| <b>Total</b>   | <b>\$ 3,310,282.82</b> |