



VENABLE

From the Back of the Napkin to Ribbon-Cutting: How Schools Get it Built On-Time and On-Budget

June 8, 2016 – New York State Association of
Independent Schools

Michael C. Phillipou
Real Estate Development and Construction
mcphillipou@Venable.com
212.370.6237



Introduction to Venable

- **One of The American Lawyer's top 100 law firms.** 650 lawyers in nine offices, 65 real estate lawyers.
- **Full-service NYC real estate department.** 18 lawyers and paralegals. Practice areas include:
 - ✓ Zoning and Land Use
 - ✓ Construction and Development
 - ✓ Leasing
 - ✓ Acquisitions and Dispositions
 - ✓ Financing
 - ✓ Tax and Government Incentives
 - ✓ Partnerships and Joint Ventures
 - ✓ Commercial Condominium Formation
- **More than 600 nonprofit clients nationwide.**
- **We have extensive experience with academic institutions.** Clients include private secondary schools, colleges, universities and other institutions.



Roadmap for Today's Discussion

- From the Back of the Envelope to the Board
 - Defining the project
 - Preliminary considerations
- From the Green Light to Breaking Ground
 - Assembling the team
 - Fundraising
 - Pre-construction
 - Bidding the project
- From Project Launch to Ribbon Cutting
 - Importance of contracts
 - AIA Form agreements
 - Key contract provisions for architect and contractor
- About Venable



From the Back of the Envelope to the Board

➤ Defining the Project

- Program / Master Plan - Understanding scope creep; ensuring key programmatic concerns survive. Accountability for changes/assumptions
- Timing / Schedule - Operating schedule of your entity may govern. May have a “drop dead” deadline.
- Budget (design to budget) – Test early and often
- Funding Sources – Private vs public and related project constraints (Vendex, Wicks Law, Prevailing Wage, LL86, etc.)

➤ Preliminary Considerations

- Discretionary Zoning Approvals?
- Co-Development opportunities
- Pre-construction - when to engage various team members



From the Green Light to Breaking Ground

- Assembling the Team and making it meld
 - Internal Team
 - Right Sizing Project Committee - Gravitas, experience, decision making authority and proxy for various constituencies
 - External Team
 - Project Management – Professional Owner’s Representative vs. Internal Staff
 - Opportunity Costs of filling plate of internal staff vs payback of OR Fees in connection with overall project savings and saved man hours



From the Green Light to Breaking Ground *continued*

- External Team (continued)
 - Architect
 - Who holds consultants (umbrella vs direct structure) – coordination concerns
 - Single Architect vs. Design Architect + Executive Architect
 - Generally not “eyes and ears” during construction
 - Construction Manager
 - Union vs. non-union
 - Experience with similar projects
 - Attorney
 - Experience with major construction and schools
 - Role in pre-construction and experience with construction and architecture firms



From the Green Light to Breaking Ground continued

➤ Fundraising

- Capital Campaign/“Bankable Pledges”
- Getting what you need from the Project Team (mock-ups, renderings, presentations)

➤ Pre-Con

- Cost Estimating, Value Engineering, Constructability Analysis, Diligence, Early Scopes. Finding the budget busts, design flaws and scheduling snags before the shovel is in the ground and costs are running.



From the Green Light to Breaking Ground *continued*

➤ Bidding the Project

- Contract Style (Lump Sum, GMP, CM as Agent, Cost Plus Fee, Design / Build)
- Bid Contract with RFP and own all submissions
- Bid as Complete Design as possible
- Who holds the key sub-consultants?



From Project Launch to Ribbon Cutting

- Avoid awarding the contract or commencing work without a fully negotiated contract
 - Leverage changes dramatically after award; more so when work commences
- The AIA Form Agreements are generally not owner favorable



From Project Launch to Ribbon Cutting continued

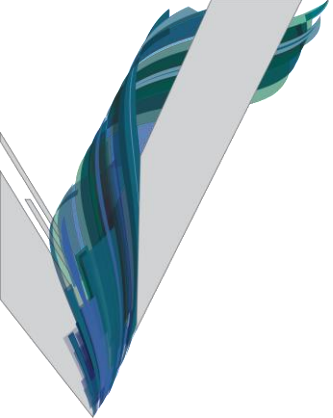
- Key Contract Provisions for Architect
 - Ownership of Drawings
 - Design to Budget
 - Insurance/Indemnity (appropriate cap?)
 - No stopping of work during disputes



From Project Launch to Ribbon Cutting *continued*

➤ Key Contract Provisions for Contractor

- Liquidated Damages vs No-Damage-for-Delay
- Managing the use of contingency funds
- Compliance with funding requirements
- Agency grant for tax exemption
- No stopping of work during disputes
- Shared Savings?
- LEED
- Special campus considerations (schedule in off season, temporary construction to avoid disturbance to operations, security concerns, etc.)



Questions?



Michael C. Phillipou

Partner

New York Office

T 212.370.6237 F 212.307.5598 mcpPhillipou@Venable.com

AREAS OF PRACTICE

Real Estate
Tax-Exempt Organizations
Zoning and Land Use
Public-Private Partnerships

INDUSTRIES

Education
Nonprofit Organizations and
Associations
Construction
Transportation and Transportation
Infrastructure

EDUCATION

J.D., Boston College Law School, 2004
B.A., *cum laude*, University of
Richmond, 2001 (Dean's List and Phi
Beta Kappa)

BAR ADMISSIONS

New York
New Jersey

Michael Phillipou is a partner in the firm's Real Estate Practice Group. He regularly represents sophisticated clients in a wide variety of real estate transactions including the acquisition, sale, design, construction, financing, management, leasing and zoning/land use planning of real property.

Mr. Phillipou represents private developers, investment funds and property owners in complex commercial transactions. Mr. Phillipou has also developed a specialty representing world class cultural, educational and governmental clients and is conversant in the unique issues that face them.

Mr. Phillipou's experience includes representing:

- Archdiocese of New York in all aspects of its construction and development of several of its properties throughout the state of New York;
- New York Law School in construction related matters;
- National Railroad Passenger Corporation (Amtrak) in connection with the construction of a concrete casing preserving the alignment of a new Hudson River crossing tunnel beneath the Hudson Yards Development including extensive negotiation with the developer of Hudson Yards, the MTA and LIRR;
- New York City Economic Development Corporation in the sale of the Willets Point Development Site to a joint venture including negotiating agreements for the remediation and development of the site;
- Lower Manhattan Development Corporation in all aspects of the redevelopment of the World Trade Center site including drafting and negotiating construction and deconstruction agreements, architect agreements, easement and conveyance documents as well as participating in its successful defense of a construction dispute litigation with its primary contractor;
- Commercial and residential condominiums and cooperative corporations, including updates to organizational documents;
- New York Public Library in a variety of transactions including the negotiation of a ground lease for a new library branch and the negotiation and drafting of construction agreements in connection with the renovation and construction of several branches and facilities.