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TRANSCRIPTION OF RECORDING
ALBANY COUNTY LEGISLATORS - INFORMATION SESSION
JANUARY 22, 2013

P R O C E E D I N G S

1
2 MS. QUINN: Does anyone have an objection to
3 this forum being recorded at all? If you could
4 just raise your hand and state what your objection
5 is, we can look at it.

6 I want to make sure that everyone heard
7 Legislator Kinsch and her request that the answers
8 to the questions that were posed be put in writing
9 and the response by Tom. And for this evening,
10 the plan is unless there's an objection or some
11 concern that we will record the discussion
12 tonight. We've got it here in front of us and I
13 think that's the most important, what you're
14 looking for for our response. Hopefully, it will
15 pick up any questions that come. Certainly, we
16 can repeat it and as Tom has indicated, we can
17 have that transcribed and put into minutes.

18 If anyone has an objection to that, if you
19 could please state it now.

20 (No audible response.)

21 MS. QUINN: Okay. If there are no
22 objections, then I'm going to turn it over to Tom
23 to get started.

24 MR. MARCELLE: Do we all have the list of

1 questions that were propounded?

2 Okay. Question number one talks about the
3 ten-year lease with the two-year or two extensions
4 of five years and I referenced the Local Law last
5 time that required that. I also referenced in
6 response to the Majority Leader's question that,
7 certainly, the Legislature was free to go to years
8 beyond the ten years that we negotiate in the
9 lease.

10 So the first question -- and by the way, I'll
11 ask this once. Just help me make sure I'm
12 directing -- if you want to indicate or there's a
13 particular legislator who asks a question or who
14 is -- you know, this was their source, I'd be
15 happy to certainly focus my remarks on you. If
16 not, that's okay.

17 So question number one asks about Local Law 2
18 for 1996. Unfortunately, I think there's kind of
19 not extremely careful reading of the 2 law. Okay?
20 Local Law L for 1995, which I believe became Local
21 Law 2 for 1996, authorizes the County Legislature
22 of Albany County to enter into lease agreements in
23 connection with any real property necessary for
24 county purposes, blah, blah, blah.

1 So the '96 law or '95 law, because it was
2 actually passed in '95, indicates the
3 Legislature's authorized to enter into 25-year
4 leases. The '97 law, which is the law I
5 referenced last time here, a Local Law passed a
6 year after the '96 law, to me, indicating that the
7 Legislature obviously wanted to narrow or be clear
8 of the '96 law; the very next year, the
9 Legislature enacts this law, Local Law 1 for '97,
10 that gives the County Executive as opposed to the
11 County Legislature the authorization to negotiate
12 leases for a term of real property owned by the
13 County for an original term not to exceed 10
14 years.

15 So on the one hand, we have a local law that
16 says the Legislature's authorized to enter into
17 leases up to 25 years notwithstanding the County
18 Law. The Legislature has only authorized the
19 executive branch, which was our negotiating team,
20 to enter into leases of 10 years. So as I
21 originally indicated to the Majority Leader last
22 time, we felt bound we could only negotiate a
23 10-year lease, but the Legislature was free to
24 adopt a longer period.

1 And as I indicated, I believe that it's
2 without question that the operator would prefer
3 the longer period. So when it gets to the floor,
4 you may all feel free if it's in your collective
5 judgment and wisdom to offer a longer term to go
6 ahead and do that.

7 Are there any follow-up questions on that?

8 (No audible response.)

9 MR. MARCELLE: Okay. Number two asks about
10 some questions about the asset purchase agreement.
11 If you all remember, one of the earliest
12 generations of the lease contained an asset
13 purchase agreement that included a bunch of
14 things, including accounts receivables. We've
15 walked through the new contract and I guess it was
16 less than clear, so let's make it clear. There is
17 no longer an asset purchase agreement.

18 The assets at the nursing home itself, the
19 property inside, the accounts receivable and
20 everything else belong to the County. Now, there
21 was a particular question about the accounts
22 receivable and why wasn't the accounts receivable
23 mentioned in the lease?

24 The short answer is this: The lease

1 doesn't -- when you draft a lease generally, you
2 don't say, "Well, we're excluding all these things
3 that belong to the County." So what is the
4 County's property remains the County's property
5 unless given to the operator in the lease. So the
6 accounts receivable are our accounts receivable.
7 There are property interests. They are always our
8 property interests until we relinquish our rights
9 in that property.

10 So the reason the accounts receivable are not
11 mentioned is because we are not granting our
12 interests, our property interests, in those
13 rights, in that money, to the operator. Those
14 accounts receivable at the close that we provided
15 services for are the County's and will be the
16 County's. That's our money.

17 LEGISLATOR O'BRIEN: Shouldn't that be
18 spelled out so we know for questions.

19 MR. MARCELLE: I'm not sure what other
20 questions would arise. Right? So like, for
21 example, we don't say you have the right to enter
22 112 State Street and use the floors. We have a
23 bunch of property interests throughout the County
24 that belong to us. We've negotiated. It's clear

1 among the parties. They cannot assert a property
2 interest in our accounts receivable. But if it
3 makes the body happy, we certainly will put a
4 provision in there that states, although nothing
5 is said about the accounts receivable, accounts
6 receivables are the property of the County and
7 remain the property of the County. I mean, I
8 don't -- you know, it's not a hurdle, but if
9 people feel more comfortable.

10 Yes.

11 LEGISLATOR COMMISSO: I believe there should
12 be a full accounting prior to anybody going in
13 there as to what receivables we have and that
14 should be attached to the lease. It should be an
15 exhibit to the lease that we had six million four
16 hundred forty-two dollars outstanding from the
17 following.

18 There should be some accountability as to
19 what we have outstanding, what equipment we have
20 on premises, how the equipment is going to be
21 accounted for and paid for. We do not want the
22 equipment at the end of the 20-year lease or
23 25-year lease or 15-year lease. It's no good to
24 us.

1 MR. MARCELLE: I believe -- well, first of
2 all, just to answer the latter part of your
3 question first, so during the course of the lease,
4 they're required to maintain and replace
5 equipment. So whatever value the equipment has at
6 the end of the lease, whatever we get at auction
7 or sale for that will be the County's money.

8 I believe one of the exhibits talks about --
9 we went over the first time, which is Exhibit A-1,
10 which we haven't done yet, will be a complete
11 inventory of all the assets of the nursing home.
12 If you would like it to include accounts
13 receivable, we can do that. But that will be done
14 after the lease is approved.

15 Yes.

16 LEGISLATOR COMMISSO: You keep going back to
17 equipment and assets within the building. Okay?
18 Put the accounts receivable aside. The beds, for
19 instance, we own them. Are you saying that we're
20 going to give them the right to utilize those beds
21 for no charge?

22 MR. MARCELLE: Well, the rent right and they
23 must maintain --

24 LEGISLATOR COMMISSO: That wasn't explained

1 at the very beginning that we were giving them the
2 equipment or the building. We were giving them
3 rent for the building. Okay? The assets for the
4 building, and I brought that out at the very first
5 meeting, that there should be a charge for.

6 Now, let's go a step further. You say when
7 we get rid of it, the equipment, I don't know that
8 they can get rid of it, number one, or that we can
9 get rid of it without accountability that's set
10 forth by the State Comptroller's Office,
11 especially if it's over a thousand dollars, which
12 many pieces of equipment out at that nursing home
13 are at a value of more than a thousand dollars.

14 MR. MARCELLE: Sure. I'm not suggesting that
15 we dispose of it. I'm suggesting --

16 LEGISLATOR COMMISSO: Then, when they walk
17 away, what do we do with that equipment, Tom?

18 MR. MARCELLE: Sure. So let's say we have
19 X-ray machines, X number of beds, IV's, a whole
20 host of things that they've maintained or replaced
21 during the course of the lease. When the lease
22 terminates, all that property belongs to the
23 County.

24 LEGISLATOR COMMISSO: For what?

1 MR. MARCELLE: Well, because it has a value,
2 Frank.

3 LEGISLATOR COMMISSO: You're telling me it
4 has a value? It was already depreciated as far as
5 it can go, most of it. What kind of value does it
6 have? A dollar?

7 MR. MARCELLE: I don't know, Frank.

8 LEGISLATOR COMMISSO: I don't know if the
9 membership would want that equipment in 20 years.
10 We're not going to be here to talk about it. How
11 are you going to dispose of it in between?

12 MR. MARCELLE: Well, Frank, what I'm saying
13 is let's say an X-ray machine they buy with two
14 years left in the lease. That has some intrinsic
15 value. We can sell it like we do all our surplus
16 property.

17 LEGISLATOR COMMISSO: We're talking about the
18 lease now. Let's not jump around and get into
19 mumbo jumbo.

20 MR. MARCELLE: I'm not trying to.

21 LEGISLATOR COMMISSO: Let's talk about
22 something we own outright.

23 MR. MARCELLE: Yes.

24 LEGISLATOR COMMISSO: Let's talk about

1 something we own outright, not something we're
2 leasing from GE, like an X-ray machine.

3 MR. MARCELLE: No, no, no. I'm talking about
4 whatever we own, the beds, the X-ray machine.

5 LEGISLATOR COMMISSO: Not lease.

6 MR. MARCELLE: No, no, no, no. I'm saying
7 they've leased it, right? Suppose we own an X-ray
8 machine. Okay? Let's suppose that right now,
9 that current X-ray machine has five years left on
10 it and at year five, they replace it. And let's
11 say that X-ray machine -- hypothetical, we own it
12 now. They've replaced it and even though they've
13 replaced it, we're the owners of it.

14 Let's suppose now that X-ray machine has 20
15 years of useful life. I'm just making something
16 up. There's only 15 years left on the lease. So
17 when the lease ends, we now own that X-ray machine
18 that has five years of useful life, at which point
19 it's our property and we can auction it at surplus
20 or whatever we want to do with it to reap the
21 value that intrinsically remains at the end of the
22 lease.

23 And that applies to whatever, beds, TV sets.
24 Whatever the property is at the end of the lease,

1 whatever we go into owning, we own at the end
2 subject to what they've done to replace it. Just
3 like the building. We own all the physical
4 assets. And at the end, you know -- yes.

5 LEGISLATOR COMMISSO: If we so choose to sell
6 the nursing home, I don't know that I personally
7 would want any ties to the equipment. This is an
8 opportunity to get out from under or getting out.
9 If we're going to stay in it, let's stay in it.
10 If we have to maintain records and everything
11 else, let's stay right there.

12 MR. MARCELLE: No, we don't have to maintain
13 any of that, Frank.

14 LEGISLATOR COMMISSO: Sell it while we got
15 the chance if we got the chance to sell it.

16 MR. MARCELLE: So what you're saying --

17 LEGISLATOR COMMISSO: What do we need the
18 equipment for? What are we going to do with it?

19 MR. MARCELLE: If what you're saying is --

20 LEGISLATOR COMMISSO: \$2 million. That's
21 about the equipment status, or five or three or
22 one.

23 MR. MARCELLE: Okay. And Frank, if you're
24 saying you prefer to sell the assets to the

1 operator --

2 LEGISLATOR COMMISSO: I believe that's where
3 I would want to see it go. Why would I want to
4 keep it? We're not going back in there. I don't
5 think anybody's intent is to sell tomorrow and go
6 back in there six years from now.

7 MR. MARCELLE: Look, and again, it's a little
8 hard for -- you know, we hear different messages
9 from different members. But if you give us a
10 directive --

11 LEGISLATOR COMMISSO: That's why it would be
12 nice to answer us back so we know what the answers
13 are to the questions that you're hearing from
14 several people.

15 MR. MARCELLE: Well, I think each member --

16 LEGISLATOR COMMISSO: What if 38 other
17 members don't agree with me?

18 MR. MARCELLE: Exactly, is what I'm saying.

19 LEGISLATOR COMMISSO: So that's why we
20 need them.

21 MR. MARCELLE: Well, I'm not sure the answer
22 helps what different peoples vision are. So you
23 have a vision saying, "Hey, we have all this
24 equipment. Let's sell it now." Other people may

1 take the position, you know, "We'll lease it and
2 sell it at the end."

3 Frankly, for us, the Executive's office, it
4 makes no difference. If it's the will of the body
5 and you guys pass a resolution "Sell that
6 equipment," we will sell it to the operator. It
7 is of no, I think, moment of the greater picture.
8 But whatever the body prefers, that's not the
9 point at least where we are hung up with the
10 operator on that.

11 If it's the will of the body to sell the
12 equipment, I don't think that's a hurdle for us,
13 certainly, and I don't think it's a hurdle for the
14 operator.

15 Yes.

16 LEGISLATOR KINSCH: I just want to back up
17 and ask a simple question so I know: We are
18 leasing the building and all the equipment inside
19 to USG?

20 MR. MARCELLE: Yes. To the operator.

21 LEGISLATOR KINSCH: The operator. Let's take
22 the X-ray machine. If the X-ray machine has five
23 more years on it, at year five, who pays to
24 replace it?

1 MR. MARCELLE: The operator.

2 LEGISLATOR KINSCH: But then if the lease
3 ends on the date it's scheduled to end, that
4 property reverts to us?

5 MR. MARCELLE: Absolutely.

6 LEGISLATOR COMMISSO: I didn't hear at the
7 first meeting nor did I hear any -- as a matter of
8 fact, I brought it up at the first meeting that
9 the equipment does not go with the lease. That
10 was very clear on my part at the very first
11 meeting we had. And you said, "Well, the
12 equipment doesn't have to go." So that's where we
13 came up with a dollar amount for the building. It
14 didn't include the equipment at that point.

15 MR. MARCELLE: I think the lease always
16 stated that, Frank, outside of the very first one
17 which had a sale of the assets, which was --

18 LEGISLATOR COMMISSO: That's what I'm talking
19 about.

20 MR. MARCELLE: That was, I mean, well --

21 LEGISLATOR COMMISSO: That's what I heard.

22 MR. MARCELLE: Right. Well, that was way
23 back before we made the lease public.

24 LEGISLATOR COMMISSO: The lease isn't

1 finished yet. We're still negotiating the lease.

2 MR. MARCELLE: Absolutely. But that
3 iteration was, I mean, yeah, I mean, in the fall.
4 I mean, we scrapped the asset sale right away in
5 the fall, because that included concerns about
6 accounts receivable and so that was done away with
7 real early in the history of this, Frank.

8 LEGISLATOR COMMISSO: That equipment today
9 has a fair market value of several million
10 dollars. And if 39 members say they want to sell
11 it today, we do not want to deal with it down the
12 road ever again. We're out of the nursing home
13 business. Several million dollars. That doesn't
14 come to the County. That's their money now.

15 MR. MARCELLE: Frank, look, again, if that's
16 the will of the body --

17 LEGISLATOR COMMISSO: Well, I don't know.

18 MR. MARCELLE: Right. No, no. And, again, I
19 will say this: Having -- you know, that is
20 perfectly amenable to the Executive's office and I
21 would assume outside of name the price --

22 LEGISLATOR COMMISSO: Fair market value.

23 MR. MARCELLE: Right, is agreeable to the
24 operator. So, yeah, I don't think that --

1 MR. FRIEDFEL: What you had said before about
2 how much those assets had depreciated, I just want
3 to set the bar that that would not be a
4 significant sum. That's not a sum that would
5 really get us out of our ongoing deficit. It
6 wouldn't be a very --

7 LEGISLATOR COMMISSO: Fair market value,
8 that's all.

9 MR. MARCELLE: There is a fair market value
10 out there, Frank. We can determine it.
11 Certainly, if that's the will of the body, we'll
12 do that. I don't think that's an obstacle for the
13 executive branch.

14 LEGISLATOR ZILGME: I just want to clarify
15 one thing. I understand that the lease currently
16 says they lease the goods aside, if they replace
17 them, title vests in the County. It doesn't
18 revert back to the County at the end of the lease.
19 Is that correct?

20 MR. MARCELLE: Correct.

21 LEGISLATOR KINSCH: Tom, just to be clear,
22 that is covered by what we would call the rent?

23 MR. MARCELLE: That's included in the rent,
24 yes.

1 LEGISLATOR KINSCH: Thank you.

2 LEGISLATOR MACKEY: Just one thing. I think
3 we're going to find some of the equipment might be
4 computers, fixtures, you know, they're fixed to
5 the building and there would be concern about the
6 real estate and going through to figure out what
7 fixture or what --

8 MR. MARCELLE: That's a very good point, Mr.
9 Mackey. Certainly, again, we will do all that and
10 do an inventory and get what the fair market value
11 is and, you know, enter into that with the
12 operator.

13 I mean, again, if that's what we're directed
14 to do, I think it's perfectly consistent with the
15 Executive's wishes and I think it would be
16 satisfactory to the operator as well.

17 LEGISLATOR KINSCH: Can I --

18 MR. MARCELLE: Please. This is what this is
19 for. This is the type of dialogue that we're
20 seeking.

21 LEGISLATOR KINSCH: Let's take the X-ray
22 machine, our hypothetical X-ray machine.

23 MR. MARCELLE: Sure.

24 LEGISLATOR KINSCH: Let's say in five years,

1 it's barely working, it drastically needs to be
2 replaced. Whose decision is it as to whether it's
3 replaced?

4 MR. MARCELLE: Sure. That is the operator's
5 decision. Now, if it becomes a point where -- we
6 have certain rights of inspection and certain
7 rights under the lease, that they maintain certain
8 care to the patients; that if we look and say,
9 "Hey, you don't have an operable X-ray machine
10 here," then they're in breach of the lease.

11 LEGISLATOR KINSCH: Then, we'd have to
12 litigate something.

13 MR. MARCELLE: Look, I assume that, you know,
14 if push came to shove, probably my experience is
15 probably similar to some of the other lawyers
16 here. Letters are exchanged. Demands are made
17 and, you know, people sit down and talk and, you
18 know, grievances are aired. But you know, at the
19 end of the day, we just don't have -- it's not
20 just us and the operator. There's an 800-pound
21 gorilla called the Department of Health right here
22 who works better than the Albany County Supreme
23 Court with respect to acting swiftly in kneading
24 out the penalties and justice.

1 And so we do have, you know, a mother hen, if
2 you will, watching over the patients besides us,
3 that we have that power.

4 LEGISLATOR BULLOCK: Is heat and electricity
5 included as rent also?

6 MR. MARCELLE: I don't think that's included
7 in the rent. My recollection, and I've been
8 through it a thousand times, utilities are
9 separate. Rent, utilities, taxes and insurance,
10 they're all responsible for.

11 LEGISLATOR BULLOCK: What taxes?

12 MR. MARCELLE: Well, there are no taxes but
13 that's --

14 LEGISLATOR BULLOCK: I'm saying --

15 MR. MARCELLE: Look, that's a whole other
16 question later on, but let me just preview this
17 because I've been over this, I think, a couple
18 times.

19 There are no taxes on the nursing home right
20 now, because it's a governmentally-owned property.
21 Now, many of you remember the family court which
22 was privately owned but leased to the government,
23 which was taxable. We take the position that that
24 nursing home is still government-owned and we're

1 leasing it to a private operator to run it in a
2 manner as we outline in the lease that's going to
3 be a safety net facility and, therefore, not
4 subject to taxes.

5 As I said before, the law on this is
6 certainly not as bright line as I would like it to
7 be. But if we are wrong and the nursing home is
8 subject to tax, that liability belongs to the
9 operator.

10 The only thing we have to do, and it's in our
11 interest, is to defend it as its tax-exempt
12 status. That's our responsibility. And that's a
13 responsibility that's important to us, because we
14 have property that's utilized throughout the
15 county, including this building, by private folks.
16 But if I'm wrong, the risk belongs on the
17 operator.

18 Does that answer your question, Mr. Bullock?

19 LEGISLATOR BULLOCK: Thank you.

20 MR. MARCELLE: You're welcome. Okay.

21 Question number three refers to the asset purchase
22 agreement. Again, that's no longer in effect.
23 The only thing I will say to that is, again,
24 without retreading ground, the accounts receivable

1 of ours -- you know, kind of the end of where we
2 hand off and the commencement date where they
3 start the operation of the nursing home, the
4 liabilities accrued and the accounts receivable
5 accrued prior to hand-off belong to the County.
6 Everything from that day forward belongs to the
7 operator.

8 Number 4-A: Are there any bonds outstanding
9 on the nursing home and what is the extent of the
10 obligation? The answer is yes. David has the
11 exact amount.

12 MR. FRIEDFEL: There's about \$685,000 in
13 outstanding bonds. It's not for the building but
14 for improvements related to the nursing home so
15 some projects that kind of cross over to the
16 correctional facility as well. Those will all be
17 paid off in February of 2015. Those are County
18 obligations and they were made as County
19 obligations.

20 MR. MARCELLE: The second prong of the
21 question is: How does the IGT transfer to the
22 operator work? IGT stands for inter-governmental
23 transfer. That transfer of monies is for
24 government operators. So the operator is not

1 entitled to any of that money. So to the extent
2 IGT has accrued and we are the beneficiary of an
3 IGT award, that money comes directly to the
4 County.

5 The federal government and the state
6 government will not transfer IGTs to a private
7 entity. So whatever amount that we are allotted
8 under the IGT formula, which varies dramatically
9 from year to year, it would be the County's money.

10 Yes.

11 LEGISLATOR KINSCH: If we're not running the
12 nursing home, is IGT money still available?

13 MR. MARCELLE: No. The IGT is for government
14 operators. So once we're no longer the operator,
15 we're not entitled to the inter-governmental
16 transfer. But what has accrued -- in other words,
17 the federal government doesn't pay its bills
18 necessarily as they accrue. It can be done up to
19 a year later sometimes.

20 MR. FRIEDFEL: Much longer --

21 MR. MARCELLE: Much longer.

22 MR. FRIEDFEL: -- in other cases. We're
23 scheduled in a relatively short time to receive
24 the 2011-'12. So it would be next March, we would

1 anticipate if there is --

2 LEGISLATOR KINSCH: And we're not putting
3 that money in jeopardy?

4 MR. FRIEDFEL: I don't believe -- no.

5 LEGISLATOR KINSCH: So that's based on --

6 MR. FRIEDFEL: We received money a few years
7 ago for operations at the Ann Lee Home after it
8 had closed. It's based on the year in which the
9 money is allocated to, not the year it's allocated
10 in.

11 MR. MARCELLE: And as many of you know,
12 that's a big source of controversy with the State
13 Department of Health and them giving us certain
14 advice to maximize our IGT money which proved
15 wrong and, now, we owe the Feds a nice chunk of
16 change, but we're proceeding a pace with that.

17 But not to digress, we go to question five,
18 it talks about the recaptured claims for service
19 provider rendered after closing; if any such funds
20 are withheld as a result, the County must pay the
21 operator the withheld funds within three days.

22 Let me stop there.

23 On the side letter agreement, which we
24 provided, it's number 2-B, it doesn't provide that

1 the County will pay the operator. This is an
2 important part to highlight. It only guarantees
3 that we'll notify within three calendar days after
4 any written notice of claim by DOH, CMS or OIG or
5 any other governmental or quasi governmental
6 authority. So it doesn't make us liable for any
7 amounts of money whatsoever.

8 And the next paragraph 2-C clearly explains
9 who is responsible for what dollars for recapture.
10 2-C provides if the violations occurred prior to
11 the commencement date, then the County's liable.
12 If it occurred subsequent to the commencement
13 date, the operator's liable.

14 So in other words, we're liable for the
15 things that we might have done in the past and
16 they're liable for things that they will have done
17 once they're operating. And that's the side
18 letter agreements 2-B and 2-C, I think, answer
19 those questions.

20 Now, question six -- and I'll just pause here
21 for one second. It really helps us cut down kind
22 of on our time horizon as we deal with the
23 questions, if the questions -- if there's a
24 concern about a particular provision that that

1 provision is cited, it keeps us from trying to
2 wander through the agreement and figure out which
3 provision is at issue in the question.

4 And the reason I stop here is because it was
5 kind of unclear to us, but we believe that -- it
6 talks about additional or cash, marketable
7 securities, bank accounts become the property of
8 the operator.

9 Now, if -- and we were unsure. If it talks
10 about the asset purchase agreement, that obviously
11 I explained is no longer applicable and they don't
12 get that. But what I think I believe it refers to
13 is in the side letter, paragraph 1-B, which talks
14 about trust funds and bank accounts and property
15 of the residents. Now, what that is about is we
16 are certainly the possessors of trust and accounts
17 for the residents that we utilize on their behalf.
18 It's not our property. It's the residents'
19 property. We're just a trustee, a guardian, a
20 fiduciary.

21 And what this says is, look, we're no longer
22 the operator. We'll no longer act in that
23 capacity but the operator will. I don't know if
24 that answers the question. So if anyone here has

1 a follow-up on that, I certainly will answer it
2 now. Otherwise, I'm going to at least presume for
3 the time being that that satisfies everyone.

4 LEGISLATOR KINSCH: Tom, have you read part
5 A?

6 MR. MARCELLE: Part A, the answer's no.
7 Okay. So let me just say partway since we're kind
8 of -- Dave, we should have just hired you to come
9 with your steno machine and impinged upon you in
10 that manner. But part A says: Does this include
11 unexpended funds in the nursing home budget? So
12 the answer to that is no.

13 So let's say we put aside certain monies for
14 anything in that budget for replacement of beds,
15 for -- I don't care what it is. We budgeted that
16 money. It's not a promise and nowhere is a
17 promise to the operator that they have a claim on
18 any of the money that we've budgeted but not have
19 expended for the nursing home.

20 So the answer to that is no. And there's
21 nothing remotely that I believe suggests that, so
22 no. I think given that sub-question, I think that
23 goes back to the asset purchase agreement, which
24 was infinitely more complicated, that had to do a

1 lot about how things were transferred, what was
2 accounted for and what was not accounted for. So
3 the answer to that is no.

4 Question seven is as with respect to
5 contracts. Can the operator accept or reject
6 contracts the County currently has with the
7 nursing home and is the County liable for rejected
8 contracts?

9 In particular, does that mean the County has
10 to pay the balance of the contracts obviously
11 where services were no longer provided for? What
12 each and every one of our contracts provides for
13 at the nursing home is an appropriation clause and
14 it certainly provides us with -- and I know this,
15 because we just recently upped some contracts of
16 nursing homes -- provides us with a 60-day out.

17 So all County contracts contain a
18 non-appropriation clause, which releases the
19 County from its obligation with 60 days notice.
20 Now, I will also say we've advised all the
21 contractors that we're currently -- this
22 negotiation, that we obviously cannot say for sure
23 how the body will act, but they're advised that
24 that is a possibility come this summer/fall/winter

1 that that may happen. But obviously, because of
2 the licensure requirement with DOH, we certainly
3 will have 60 days notice from the time if the body
4 passes this agreement to give our contractors
5 notice.

6 Now, many of our contractors and vendors will
7 be continued and the operator will enter into
8 contract with the vendors as they see fit.

9 LEGISLATOR KINSCH: Tom, can the County
10 contracts be assumed by the operator? So if the
11 operator would like to continue them, can they
12 continue them?

13 MR. MARCELLE: Yes. Absolutely, yes.

14 LEGISLATOR KINSCH: Could we legally tell --
15 as part of this deal, could we legally say those
16 have to be continued?

17 MR. MARCELLE: I think that's a more
18 difficult question, only because I'm not -- I'm
19 not sure off the top of my head and, certainly,
20 I'll provide a more in-depth answer, that I can
21 bind a third-party vendor to provide for an
22 operator they haven't contracted with. Something
23 tells me I'd be hesitant about that without their
24 assent. So I don't know --

1 LEGISLATOR KINSCH: I'm just looking for
2 your --

3 MR. MARCELLE: Yes. That's off the top and,
4 usually, when I give advice off the top, I'm
5 invariably wrong.

6 Number eight. This talks about the
7 employees. The initial premise, I think, is not
8 accurate and so it provides: The contract says,
9 "All employees will be terminated." That's
10 accurate. What it means is we're no longer the
11 operator. We no longer will be employing people
12 under this lease.

13 "The operator will determine at its sole
14 discretion which employees to rehire, if any."
15 That is not accurate.

16 Let me go to the lease agreement. No,
17 that's the -- reps and warranties. Page eight.
18 By the way, although we religiously adhere to the
19 double-sided printing, it's causing no problem
20 with thick highlighters that highlight every side
21 of the page, but we abide by it to save trees.

22 So page eight of, I believe, exhibit C, which
23 are the reps and warranties provides this: "At
24 the commencement date, lessee shall hire or extend

1 offers of employment to as many of lessor's former
2 employees at the facility as is practicable in
3 lessee's sound business judgment."

4 I think that's the operative clause to dispel
5 the fear that they don't have to hire anyone.
6 "But in no event less than the number of employees
7 required by DOH of the facility's operating
8 certificate."

9 In other words, they're going to need a
10 certain amount of employees to be maintained to
11 operate according to DOH standards. They have to
12 hire at least that many.

13 Now, as I said last time, that will not mean
14 everybody, right? Because -- and I'll say it
15 again just because it's important. The Executive
16 did a study, the Comptroller did a study and this
17 body did a study. All three bodies reached the
18 same conclusion: We have too many employees at
19 the nursing home, which is one of the reasons we
20 lose money.

21 So I would suspect that given those
22 conclusions by three different branches of
23 government that the operator will reach a similar
24 conclusion that we are overstaffed. On the other

1 hand, that doesn't mean that everyone is subject
2 to termination and a whole new crew is coming in.
3 In fact, I believe USG was here and made the
4 representation to this body that to have an
5 effective continuation of the operation, it wants
6 to keep as many employees as possible.

7 It would be virtually impossible to shut the
8 nursing home down, let's say, June 30th and July
9 1, open up with a whole new crew. They don't view
10 it as practicable. We would certainly have
11 concerns about that. But at least for the sake of
12 continuity of operations, it wouldn't happen. And
13 also an explicit warranty in the lease or in the
14 exhibit C provides that in no event -- that they
15 must hire no less than the number of employees
16 required by DOH and by the facility's operating
17 certificate, which is 250 beds.

18 LEGISLATOR KINSCH: It sounds like that
19 language could be interpreted that they don't have
20 to hire 250 county employees; they have to hire
21 250 people.

22 MR. MARCELLE: Well, that's clearly the
23 intent, but to the extent it's unclear, we'll put
24 county employees in there. That's the agreement

1 we reached with them. I will certainly make sure
2 that is in there. Again, we've agreed upon it.
3 So to the extent that it clarifies an ambiguity,
4 it's most certainly appropriate to go in and it
5 will go in.

6 Mr. Clenahan and then Mr. Mayo.

7 LEGISLATOR CLENAHAN: What is the DOH
8 formula? Can we find it in any way?

9 MR. MARCELLE: DOH will have -- it depends on
10 the patient mix as far as we can tell. So it's
11 not -- it will depend on the patient mix the day
12 of transfer.

13 LEGISLATOR CLENAHAN: Well, it shouldn't be a
14 variable since they are allegedly saying things we
15 have now.

16 MR. MARCELLE: Well, it all depends. So we
17 may discharge -- our patient mix is in flux. It's
18 never the identical patient mix from day to day.
19 People are discharged. New admissions come in.
20 Residents pass away. So there are certain people
21 who need one-on-one care, certain people who are
22 diagnosed to need certain staff levels.

23 So whatever those staff levels are, I
24 believe, is some type of formula, but it will

1 depend on the exact patient mix, depending on how
2 many Alzheimer's patients we have and things of
3 that nature, which what we have today may not be
4 on July 1.

5 LEGISLATOR CLENAHAN: Where is this formula?
6 By your argument there, DOH has a different
7 formula; it changes every day.

8 MR. MARCELLE: Sure.

9 LEGISLATOR CLENAHAN: Where is this formula?

10 MR. MARCELLE: I believe my understanding in
11 talking with DOH is they have certain mandatory
12 minimums depending on the level of patient to
13 patient --

14 LEGISLATOR CLENAHAN: Can we find out what
15 those are? Because that really affects the
16 paragraph.

17 MR. MARCELLE: Sure.

18 LEGISLATOR BUSCH: It's in the PowerPoint
19 that USG provided. They show how --

20 MR. MARCELLE: Thank you, Ms. Busch. I think
21 that would actually be an excellent question for
22 them come next Tuesday. We'll propound it to
23 them. Or Thursday. I'm sorry. They'll provide
24 it, but I assure you the number's not zero.

1 LEGISLATOR CLENAHAN: Secondly, from the
2 language, what's to prevent USG from, say, taking
3 that minimum number of people and offering them
4 minimum wage, absolutely no benefits, jobs that
5 people will not take, what's to prevent them from
6 doing that and then hiring cheap labor outside the
7 county?

8 MR. MARCELLE: I assume if they did that,
9 they'd be acting in bad faith and I would consider
10 that a breach of the lease. It's not their goal
11 to do that.

12 LEGISLATOR CLENAHAN: But the language would
13 allow them to do that.

14 MR. MARCELLE: I don't think the language
15 would allow them to do that.

16 LEGISLATOR CLENAHAN: They only promise to
17 hire or extend offers of employment. They don't
18 promise to extend offers of competitive
19 employment. They don't promise to extend offers
20 of fair wages. They don't promise fair benefits.
21 That's all the language says right there.

22 You know, I appreciate you have some sense of
23 good faith with this organization, but that's not
24 really enough for me. You know, the language to

1 me leaves open the possibility.

2 MR. MARCELLE: Mr. Clenahan, look, I
3 appreciate your position. I know you're opposed
4 to the lease and the operation --

5 LEGISLATOR CLENAHAN: No, Tom. My opinion --

6 MR. MARCELLE: I think I've heard you
7 publicly state it. But in any event, we believe
8 that this provides adequate protection. We will
9 certainly, as other provisions you know, make them
10 recognize 1199 is a union. If they act in bad
11 faith, we will not tolerate it. It's not the
12 County Executive's position that this is to be
13 done in any other way than on the up and up.

14 So, look, if we -- I guess here's the
15 fundamental difference: Having worked and
16 negotiated with USG, having spoken with them,
17 having understood their commitment, I believe
18 they're going to be operating in good faith.
19 They're going to be a union shop as required by
20 the contract.

21 To the extent that they operate in bad faith,
22 we will be vigorous in going after them for the
23 enforcement of this lease. I believe it covers
24 that. That's all I can say. If you have some

1 better suggested language, Mr. Clenahan, I'd be --
2 again, it's not a point that we were in dispute
3 with them on. This is a point that we are in
4 agreement.

5 And so if you feel -- I will incorporate --
6 because they are more than willing without giving
7 a precise number to do what it takes to hire
8 county employees.

9 In all honesty, if you have language that
10 makes you more comfortable, please e-mail it to me
11 and I will, best I can, incorporate it. I think
12 the "or extend offers" recognizes some county
13 employees will not want necessarily to work with
14 USG because of where they are in the Retirement
15 System or their age or they may not be willing to,
16 you know, if they go away from a 4-2 work
17 schedule, whatever the new contract provides,
18 again, which they are a union company in their
19 other facilities. It may not be one to one.

20 So what may happen is -- what do we have?
21 Let's just use round numbers. Say, for example,
22 we have 300 employees at the nursing home.

23 LEGISLATOR BULLOCK: How many are there?

24 MR. MARCELLE: I do not know.

1 LEGISLATOR BULLOCK: Can we find out?

2 MR. MARCELLE: Yes. Our budget director will
3 have that answer for you presently.

4 MR. FRIEDFEL: We have 346 lines. There are
5 a decent number of agencies. I haven't checked it
6 today, but I would say around 270 employees, 275
7 employees.

8 MR. MARCELLE: So I'm just using round
9 numbers. Let's just use 350 positions we have
10 slotted. They may determine they need 275, which
11 would mean currently, they offer one for one of
12 people who are there. There may be some people
13 who decline. They obviously cannot promise to
14 hire people who refuse the offer of employment.
15 That's what that's intended for.

16 I don't think -- again, it's intended, but I
17 understand your concern and I'm more than
18 willing -- this is not a point where we disagree
19 on with the operator. It's a point of agreement.
20 Not the exact number. That's a point of
21 disagreement. But certainly, the intent is to
22 provide continuity of operations with the current
23 employees.

24 LEGISLATOR CLENAHAN: Just a final point. We

1 all know over the years that taxpayer money has
2 gone to pay off or bail out companies that we
3 assumed had the right intent or thought would do
4 the right thing.

5 I appreciate your comfort level from having
6 negotiated with them, but that is, fortunately,
7 not enough for the taxpayers. We really don't
8 know. It's just one example of language, because
9 there's an entirely reasonable interpretation of
10 this which would allow USG to do exactly the
11 scenario that I'm pointing out.

12 MR. MARCELLE: Sure.

13 LEGISLATOR CLENAHAN: Hopefully, you can come
14 up with some better language than that. You know,
15 when you're trying to talk about a case of bad
16 faith, again, you're a far greater litigator than
17 I'll ever be, but that will be very, very
18 difficult to prove when the language is that
19 ambiguous.

20 MR. MARCELLE: Sure. And, again, we'll try
21 our best to clean it up and I'll provide -- this
22 is not a point of contention, which will be easy
23 to work with them to make the language so people
24 are more comfortable with that.

1 The only other thing I will say is, you know,
2 for every too big to fail bail-out there is, I
3 would say the vast, vast majority of agreements we
4 enter into with our vendors, with our providers,
5 with the number of contracts we have with people
6 who provide services to the people of Albany
7 County, the vast, vast majority do not fail. It's
8 a small percentage that does.

9 We went over this a little bit last week. I
10 do not have a crystal ball. There is nothing I
11 can -- and no one, as far as I know, can
12 absolutely guarantee what the future will hold for
13 any operator or provider of services to the people
14 of Albany County.

15 We've entered into a contract with business
16 interruptions, insurance and a host of other
17 provisions. We've relied upon our due diligence
18 with DOH. We've relied upon our due diligence
19 with other counties.

20 Obviously, the Majority Leader asked a
21 similar question last week. I wish I could tell
22 you certainty of the future without a doubt. I
23 cannot. I can only tell you that we've done our
24 due diligence, we believe in what we've done and,

1 again, Mr. Clenahan, it's going to be a very
2 vigorous debate, I assume, in the body. I think
3 these issues will be aired. I think they should
4 be aired.

5 This isn't a contract to provide service at
6 112 State Street. This is a momentous decision
7 for the County and all these questions are
8 appropriate and each member is going to be
9 familiar -- this is why we're providing these Q
10 and A sessions. This is why we're going to bring
11 the operator in for a second time.

12 I'm, by no means, assuming that my comfort
13 level or the Executive's comfort level substitutes
14 for your judgment. Your judgment, your diligence,
15 your comfort level is the one that counts, because
16 the people of Albany County elected you. And it
17 will be -- I will be in attendance that night, but
18 I assume when this comes to the floor of the
19 Legislature that you will have a vigorous debate.
20 I know members have done their own independent
21 research on this. I encourage you to do that. I
22 encourage you to reach out to the Department of
23 Health. I encourage you to reach out to the other
24 counties who have done business with USG. Those

1 are all important elements.

2 So I can give you my comfort level, but I
3 don't mean that in any way to substitute that for
4 your judgment. It's only one piece of the puzzle.
5 I assume whatever value you put that in the hopper
6 as to zero to significant, that's up to you. I
7 just relay them, that's all. I don't want you to
8 think I'm trying to usurp your judgment with
9 saying that I'm comfortable with that. It's not
10 intended to be.

11 LEGISLATOR CLENAHAN: Will they announce the
12 spectrum of retirement years, like 17, 18, 19
13 years?

14 MR. MARCELLE: Yes. The Deputy County
15 Executive has a chart. I hope if we haven't
16 provided it to you, we will provide it to you
17 immediately. We know that the number of employees
18 who are broken down from 15-plus years going
19 forward.

20 LEGISLATOR CLENAHAN: And those employees
21 elsewhere in the county, too.

22 MR. MARCELLE: I think the County Exec has
23 stated certainly to members individually, if not
24 publicly, that certainly, those county employees

1 were it to be a hardship; in other words, they
2 would lose out for their state retirement what
3 they've invested in so long -- you know,
4 obviously, there's got to be some cut-off point,
5 but yes, the employees who are long-term employees
6 who are -- whatever that cut-off line is, I
7 suppose will be a matter of discussion with the
8 legislators, they will not be left high and dry
9 and we certainly, I think, in light of the
10 savings, would be looking to make sure that
11 employees don't lose their retirement.

12 LEGISLATOR CLENAHAN: And the percentages.

13 MR. MARCELLE: It'll be provided to you.

14 LEGISLATOR CLENAHAN: She indicated the last
15 day that she was going to provide it, so it should
16 be on her to do list.

17 MR. MARCELLE: Yes, I'll follow up with that
18 with her.

19 LEGISLATOR KINSCH: I had a related question.
20 Is there a number of other employees who could
21 trigger retirement and have we looked at what the
22 fiscal impacts would be of them staying employees
23 versus --

24 MR. MARCELLE: I'm going to defer that to our

1 budget director.

2 MR. FRIEDFEL: I'm not sure I understand when
3 you say the fiscal impacts.

4 LEGISLATOR KINSCH: I was wondering if there
5 are some employees who are at retirement age who
6 maybe stay on so the County can operate, or for
7 whatever reason, or if something changes in the
8 Retirement System that they would retire before
9 the lease is transferred and they're still County
10 employees. Is there a way to quantify the cost to
11 the County of, let's say, 10 additional employees,
12 just picking a random number, triggering
13 retirement today versus staying or --

14 MR. FRIEDFEL: Well, it would be a savings.
15 As soon as someone retires, then their pension
16 comes from the State Retirement Fund. The only
17 cost would be if they were eligible for health
18 benefits, which is something that we'd currently
19 be paying. So it would be a savings. We would
20 have to take a guess as to how many people would
21 retire, exactly when they retire. In the end,
22 because of where we are in the year, it would
23 be -- the proposed time of the take-over, I don't
24 see the savings being significant because it would

1 be a pretty small population, but it's something
2 we can look at.

3 LEGISLATOR KINSCH: But is there a difference
4 between, say, if they transfer versus retirement?
5 So is there an incremental cost to someone
6 retiring versus transfer?

7 MR. FRIEDFEL: If someone was eligible to
8 retire and they were going to take employment with
9 USG, they could retire from Albany County on June
10 30th and start working for USG July 1st and there
11 would be no impact. Like any other private
12 employment, you retire from public office, you can
13 work in the private sector and make as much money
14 as you want. There would be no impact really.

15 MR. MARCELLE: We haven't got to the question
16 part of question eight yet. But I just want to
17 make sure -- I mean, look, obviously, continued
18 employment for employees is a matter of high
19 concern for the members.

20 MR. FRIEDFEL: There are 295 as of today.

21 MR. MARCELLE: I wasn't far off at 300 then.

22 MR. FRIEDFEL: No, you weren't.

23 MR. MARCELLE: The question is: "Does this
24 mean the County must handle all unfair practice

1 claims, if any, with respect to existing
2 contracts? Please provide clarification on this
3 point."

4 So much like I've said before, continuation
5 of the theme. There are two types of contract
6 issues that could arise: An IP, improper labor
7 practice, and a contract grievance. If those
8 matters occurred before the commencement date,
9 we'd be liable. A contract issue is a ten-day
10 statute of limitation. Improper practice is a
11 four-month limitation.

12 So we would know relatively early on after we
13 close and whatever outstanding liabilities under
14 the existing labor contracts would be raised and
15 resolved relatively quickly after a closing. But
16 any new labor disputes, because it would be a new
17 contract and a new operator, we are not involved
18 with that process. We're not a party, will not be
19 a party to the new contract. That'll be between
20 the operator and the employees and we will have no
21 responsibility going forward.

22 Number nine asks about the employees and is
23 the County responsible for accrued time, and it
24 lists all the different benefits and accruals that

1 people may have. I'm going to defer this, because
2 it deals with money, to our budget director.

3 MR. FRIEDFEL: Essentially, the question is:
4 Is there money in the budget for these costs?
5 Yes, there is. There was in the original proposal
6 built into the 60 percent contractual allocation.
7 As of today, there's approximately \$850,000 in
8 unfilled vacancies at the nursing home right now
9 in addition to the contingency fund that was set
10 up by the Legislature of approximately about one
11 and a half million dollars remaining that could be
12 used for those purposes, so yes.

13 MR. MARCELLE: Okay. Question Number 10 has
14 to do with Section 22-F. And I think the best way
15 to address this, because I think it's kind of a
16 little bit -- it reads, at least in one respect,
17 too broadly and other respect too narrowly. 22-F
18 talks about a county representative.

19 What we used in here was director of
20 Department of Residential Healthcare Facilities
21 who was going to provide reports to the
22 Legislature who can inspect, review records,
23 review the operation, review documents and must
24 issue a report at least annually to the

1 Legislature.

2 Now, we tied it to the longest provision of
3 the lease, which is the loan, which is 15 years.
4 So the question that is propounded, as I
5 understand it, is this: Well, what happens if, in
6 year three or four, the operator says, "Here,
7 boom, we're all paid off, go away." Are we then
8 left without recourse? The answer to that is no.

9 Our recourse under the lease isn't solely in
10 22-F. 22-F deals exclusively with the reports of
11 the Legislature and access to documents and things
12 of that nature. The lease agreement, including
13 the recital provisions in paragraph one which
14 mandate how the facility must be operated, are
15 enforceable conditions of the contract and we're
16 entitled to for same. Moreover, the lease
17 provides that members of this body may enter and
18 inspect the facility.

19 Having said that, certainly -- and again,
20 this, while it was a point of negotiation and
21 debate and contention with the operator, I don't
22 think -- obviously, if we want to set that to a
23 set number of years rather than a term, then
24 that's fine. We can make it run concurrent with

1 the lease. I don't think -- I mean, they
2 anticipate, I would imagine, if I was allowed to
3 amortize a loan over 25 years and make a balloon
4 payment at the end of 15, it would almost, you
5 know -- I would be surprised that someone wouldn't
6 take advantage of that benefit which they bargain
7 for.

8 But having received the question, there's two
9 answers. I want to, A, assure you that 22-F is
10 not the sole provision to enforce the conditions
11 of the lease; and, B, to the extent I understand
12 that there's a concern that that may be
13 prematurely terminated, we will certainly make
14 sure that there is a time certain rather than
15 tying it to an event.

16 So the concerns that 22-F will somehow
17 disappear, that if the loan is paid off early,
18 that we lose our rights under the contract to
19 enforce it, we will change that. Again, it was
20 anticipated by the parties that that be the full
21 fifteen years, the term of the loan, because the
22 lease doesn't go on beyond ten years, but we will
23 certainly purport it to make it maybe consistent
24 with the lease ten years with renewals of five

1 years each.

2 Again, as I stated earlier, the renewals of
3 five years is subject to the approval of this
4 body. I assume that that would also be part and
5 parcel of extending of the lease to extend the
6 right of the director to inspect.

7 So that point is established. We will to the
8 extent that people believe there is a kind of way
9 to circumvent the lease by paying us a large sum
10 of money in year four, we will screw that down a
11 little bit to make sure that that's a term of
12 years rather than tied to a condition or an event.

13 Mr. Clenahan.

14 LEGISLATOR CLENAHAN: Then, there is no
15 obligation made for early repayment of the loan?

16 MR. MARCELLE: No. I would agree with --
17 well, the obligations under 22-F, not the
18 remainder of the contract. In other words, the
19 reporting requirement by the director of
20 Residential Healthcare Facilities would be
21 extinguished upon repayment of the loan. But
22 nothing else in the lease -- obligations under the
23 lease are extinguished.

24 So as you'll see, upon receipt of the terms

1 in full, the requirements and obligations of 22-F,
2 not the entire lease, are extinguished. So 22-F
3 is a self-contained clause. There's a typo. 2.2F
4 should actually read 22-F. That's a typographical
5 error. What it should read is the obligations of
6 this Section 22.2-F, not 2.2-F.

7 So I think what I'm trying to say is the
8 lease, whether or not 22-F ceases, is still
9 enforceable and all the provisions of the lease
10 are enforceable. 22-F is a particular subdivision
11 that talks about a particular individual's right
12 to access and inspect certain documents and
13 operation and mandatory providing a report to the
14 body. This is our way of ensuring you that you're
15 at least annually updated.

16 Again, we will make that a definite term
17 rather than a conditional term. I don't think
18 anybody anticipated the loan be paid off inside of
19 15 years, but given that concern, we'll make it a
20 definite term.

21 Yes, Ms. Kinsch.

22 LEGISLATOR KINSCH: Maybe there were
23 negotiations which can shed a little light on
24 this. With me, I will view them as valid. As

1 long as we have a lease, I would want the County
2 to have this right.

3 MR. MARCELLE: Sure.

4 LEGISLATOR KINSCH: It doesn't matter when
5 you pay it off. So to me, 22.2-F should be in
6 existence for the term of the lease and then the
7 extension thereof.

8 MR. MARCELLE: Yeah, and that's fine. I
9 think we were just trying to get beyond -- make
10 clear it was going beyond the 10 years, which was
11 the longest term. But yes, we can do that.
12 Again, that's a point we negotiated and was
13 conceded. So it's not going to be, I don't
14 believe, an issue and we will strike that last
15 provision.

16 Any more questions on that provision?

17 (No audible response.)

18 MR. MARCELLE: Question eleven with three
19 subparts. Let me just go to 11-C and then we'll
20 come back to A and B, because the director of
21 budget management would be better to provide it.
22 And if he's not back, we'll go to 12.

23 11-C talks about SEIU. That was
24 inadvertently -- not a slight to those members of

1 that union. They represent a small segment of
2 workers at the nursing home. It's just a typo.
3 They're going to be included in the lease.
4 There's a warranty that talks about 1199, but
5 NYSUT's in it, too. So that will be included. It
6 wasn't meant by way of exclusion. It was just an
7 oversight, but they will be provided in the lease.

8 LEGISLATOR CLENAHAN: Where is NYSUT in their
9 agreement?

10 MR. MARCELLE: I wish the Deputy County Exec
11 was here. I don't really know, Brian. But we
12 will -- can we make sure -- Chandra, can we make
13 sure that's noted and provided? Done.

14 Okay. Let's go under 13. Well, I will go to
15 11, because I have my cheat sheet here, although
16 if there's follow-up questions, you'll have to ask
17 the director when he comes back.

18 Eleven: "Are we confident in the warranty
19 the County's making? For example, are there no
20 overpayment claims?"

21 We are aware of one overpayment claim.
22 That's \$135,000 -- oh, \$35,000. See, I just saved
23 the county a hundred thousand dollars. \$35,000.
24 And, again, to the extent, by the way, we make

1 these warranties and there's other claims that
2 we're not aware about, the contract speaks that if
3 the claim arose prior to commencement date, we're
4 responsible. We're aware of just one claim right
5 now of \$35,000. We believe there's one existing
6 DOH deficit that we are correcting currently.

7 But here is the director. Can you answer
8 question 11? A and B. I've answered C. 11-A and
9 B.

10 MR. FRIEDFEL: We understand that there's, as
11 the county attorney just said, one pending reclaim
12 of about \$35,000, which sounds like a lot, but in
13 the context of the nursing home's overall budget
14 and in the way that they're constantly going back
15 and forth with claims, reclaims -- you have a
16 resident who passes away in the middle of a month.
17 The roll doesn't get redone til the end of the
18 month. There's kind of an ebb and flow and that's
19 not really a major concern.

20 As far as existing deficient conditions at
21 the facility, DOH was in recently. They had a
22 list of things to remedy. They need to have them
23 done by February 14th. So we've been assured that
24 there's no reason to believe that all those

1 conditions won't be remedied.

2 LEGISLATOR BULLOCK: What about the roof?

3 MR. FRIEDFEL: The roof is in need of repair,
4 but it was not a deficiency cited by the
5 Department of Health as far as I'm aware.

6 LEGISLATOR BULLOCK: I saw it.

7 MR. FRIEDFEL: I've seen it as well. It's
8 definitely in need of repair. I don't think
9 there's any disagreement there.

10 MR. MARCELLE: Okay. Number 12. The short
11 answer is no. They're not allowed to keep any --
12 I think we've discussed and I think it's obviously
13 a concern to this body about accrued accounts
14 receivable and money receivable. No. We keep it.

15 Thirteen, I believe, the director has already
16 provided to you. Is that correct?

17 MR. FRIEDFEL: Yes.

18 MR. MARCELLE: And again, for the benefit of
19 people who weren't here last week, I just want to
20 explain that USG has several -- we're talking 11.
21 Operates and receives management fees for 11
22 nursing homes.

23 So as guarantor, they have a stream of income
24 from 11 different companies that they're

1 guaranteeing. And so I think the director has
2 given that. I'm sure to the extent that there's
3 other questions or other documentation that you're
4 inquiring about, he'd be happy to provide you
5 those answers.

6 Number 14: What is the actual description of
7 the lease premise? We provided a picture of the
8 lease premises last time. Ms. Lockart has it.
9 Show the class. Mr. Tunny, A-plus for bringing in
10 last week's homework.

11 Look, some of the lawyers in this room have
12 seen meets and bounds description, you know, a
13 30-degree angle from the oak tree that extends 30
14 feet northwest, 120 feet. We will reduce,
15 obviously, that diagram to meets and bounds.

16 We are right now talking about whose cost
17 that will be done at, but that's what the party --
18 that visual absent the legal description is what
19 the parties have agreed upon. It will be reduced
20 to boundary-strict stakes nailed in the ground to
21 set that up and the surveyor's done and all that.
22 But before we engage, obviously, in that expense,
23 either party is going to want to know, in essence,
24 that the lease is approved by the Legislature.

1 But the diagram accurately and truly reflects
2 what the parties' understanding is of the area
3 and, certainly, it will be provided to you before
4 the lease is executed for your review of the meets
5 and bounds. But that is -- I mean, unless someone
6 deems -- and look, I will -- if the members of
7 this body deem it sufficiently important to get a
8 legal description of the lot as described, we will
9 invest in that expense and have it done. I guess
10 you just let us know.

11 Look, if somehow that point is critical to
12 your vote on the lease, obviously, we will engage
13 in -- you know, take from the public fisc and do
14 that. That's certainly our obligation and our
15 requirement to do that for you and we'll be happy
16 to do that for you. It's our understanding, as we
17 already looked into it, it's about 15K.

18 But again, we are talking about a very
19 important vote and if that is what you require, we
20 will expend the \$15,000 to do that.

21 Yes, Ms. Kinsch.

22 LEGISLATOR KINSCH: Can we assume the lease
23 is a much fuller property?

24 MR. FRIEDFEL: Yes.

1 LEGISLATOR KINSCH: Does the lessee, the
2 operator, have the right to build something, and
3 maybe there's no room, to build something on the
4 land that's within that meets and bounds?

5 MR. MARCELLE: I don't think so. You know
6 what? I'll tell you what. Let me follow up. I
7 don't believe so, but let me -- again, for
8 accuracy, let me give you a definitive answer,
9 although there's not a lot of room to be building.

10 MR. FRIEDFEL: To clarify, do you mean an
11 extension of the existing facility?

12 LEGISLATOR KINSCH: I mean, if they decide
13 they want to run an extra building off that same
14 property.

15 MR. MARCELLE: Right. And, certainly, I'll
16 double check that answer. Given the kind of
17 limited curtilage that they have, I don't think
18 anyone viewed it as a realistic possibility, but I
19 don't know. I can't tell you off the top of my
20 head without reviewing the lease, but I will.

21 LEGISLATOR KINSCH: So any sidewalk, any
22 access way, any delivery ramp, all that is
23 included?

24 MR. MARCELLE: Yes. Maybe Ms. Lockart will

1 share. Could you show Ms. -- thank you, Patrice.

2 LEGISLATOR ZILGME: There's a detailed
3 description of Heritage Park, which is right next
4 door, meets and bounds. There's definitely a
5 meets and bounds description of the right-of-way
6 off Watervliet-Shaker Road and relocated off of
7 Shaker Road here. I can't believe there's not
8 somebody on staff at the County that can't plot
9 this. Now, if you want to go out and literally
10 stake it, it's \$50,000. If you're talking about
11 somebody doing it in-house, then you're --

12 MR. MARCELLE: Yeah, we had our folks in the
13 Tax Department -- we already had folks, at least
14 for tax map purposes, stake it out based on that,
15 what we view would be the subdivision, but you
16 know, at the end of the day, you know, the
17 question is -- right, you know, to enter into the
18 agreement, we need a meets and bounds. You know,
19 obviously, we're going to have to stake it out at
20 some point and who bears that cost is going to be
21 subject to negotiation, but we have kind of a
22 subdivision written or at least set up based on
23 tax maps and everything.

24 LEGISLATOR KINSCH: Can the operator do

1 whatever they want in terms of put office space in
2 there or move patients around? Do they get
3 basically free reign to do whatever they want in
4 the building?

5 MR. MARCELLE: I do not believe so, but let
6 me check. I just don't know. I'm going to have
7 to reread certain provisions of the lease to tell
8 you that. I will provide -- in fact, I'll provide
9 that answer to you in an e-mail, because it's not
10 a 30-question -- but yeah, I don't know. I'll
11 have to check.

12 LEGISLATOR BUSCH: Can I ask why you want to
13 limit it?

14 MR. MARCELLE: I don't know if we have or
15 haven't. I'm thinking it's subject to our
16 approval, but I will check and that's, you know, a
17 larger project.

18 LEGISLATOR BUSCH: Later on, you know, it's a
19 15-year lease, the needs of the community may
20 change, so you may have changing requirements and
21 they may need the upper building for a different
22 type of patient per se. Would we as a county want
23 to limit them from expanding their scope?

24 MR. MARCELLE: No, not necessarily, but we

1 would certainly want to make sure -- it's our
2 building, it's the people's building and we want
3 to make sure anything done to that building is
4 consistent with not de-valuing our property. We
5 can't turn it into a bar just because some of the
6 seniors would like to disco back like they did in
7 their youth.

8 Usually, for most leases, we won't withhold,
9 you know, unreasonably our approval on things of
10 that nature.

11 LEGISLATOR KINSCH: I'm not making a judgment
12 one way or the other as to they should or
13 shouldn't have the right to do it. I just want to
14 have a sense of what their --

15 MR. MARCELLE: What their rights are.

16 LEGISLATOR KINSCH: What their rights are.

17 MR. MARCELLE: Absolutely. Fair enough. And
18 you will forgive me if I don't have an answer at
19 my tip, but I will scour the lease and provide it.

20 LEGISLATOR CLENAHAN: I can certainly view
21 that they would find some way to turn several
22 floors or all this space for their own benefit if
23 we negotiate the lease on the terms based as it is
24 right now. I don't know if we can give them the

1 right to make changes to our building without
2 changing the terms of the lease.

3 MR. MARCELLE: I believe if you're talking
4 about adding more beds -- is that what you're
5 thinking, Mr. Clenahan?

6 LEGISLATOR CLENAHAN: It sounds like there's
7 a lot of things that could be done.

8 MR. MARCELLE: Sure. Again, I'll check the
9 provisions, but some of those provisions because
10 it's tied to what DOH will set at the rent, they
11 simply make those capital improvements, it ups the
12 rent. So in some ways, we're tied. More patients
13 up the rent. Capital improvements up the rent.

14 So the form that we've understood as we
15 talked with DOH, those types of things, because it
16 makes the facility more valuable or creates more
17 patient beds will give us more money.

18 MR. FRIEDFEL: Question 15, which was the
19 rent, the actual dollar amount. We know what the
20 official dollar amount was for 2012 as a
21 County-run facility, \$465,000; however, upon
22 directly inquiring of DOH, the formula's actually
23 different from public versus private facilities.
24 Upon asking them to give us what that number would

1 be, they were not able to provide us that
2 information. We believe that, and we were told
3 that, in the net, it adds up to be around the same
4 number, but it is a different formula.

5 MR. MARCELLE: You've answered 15.

6 MR. FRIEDFEL: That was 15 kind of generally.
7 15-A says, "The remaining amount -- be reduced to
8 Medicaid reimbursable rate. Why are we not
9 insisting on a floor?" That was subject to
10 negotiations with USG throughout the negotiations.
11 Can we have an escalator? Again, the formula was
12 arrived at through a negotiated process. So
13 that's pretty much --

14 LEGISLATOR MACKEY: Just one question on the
15 rent. This sheet that shows where savings would
16 be, I didn't see where that figure is factored in
17 here.

18 MR. FRIEDFEL: It's actually not. In an
19 attempt to ensure -- I didn't want to overinflate.
20 I didn't have a solid number for exactly what the
21 rent would be when that was put together. So
22 instead, we left it. We didn't include it. We
23 could have included it. It would have increased
24 the net savings obviously, we believe, by about

1 \$400,000 on a full calendar year or more. We
2 chose not to.

3 LEGISLATOR MACKEY: Okay. I just wondered
4 if --

5 MR. FRIEDFEL: No, it was not.

6 LEGISLATOR MENDICK: I have a similar issue
7 on that sheet. We have put in the \$8 million in
8 2014 and \$4 million in 2013, but what we did not
9 put on there is any repayments of those loans.

10 MR. FRIEDFEL: Correct.

11 LEGISLATOR MENDICK: Are you going to put the
12 expenses on there to show the repayments as
13 additional savings?

14 MR. FRIEDFEL: Again, it was the same effort.
15 I didn't want to kind of cloud this agreement over
16 those exact numbers when, in the aggregate, the
17 overall savings comes from the things that were
18 listed, I think that are easier to grasp.

19 MR. MARCELLE: David, are you done?

20 MR. FRIEDFEL: I believe so.

21 MR. MARCELLE: Okay. Sixteen talks about
22 repayment of the loan agreement. The general
23 terms of the loan are set forth, that it's a
24 15-year loan, the interest rate of 2.3 percent,

1 that it's a balloon payment at the end of the 15
2 years on a loan repayment schedule that's on a
3 25-year amortization.

4 Now, the lease says, "Repayment terms shall
5 be for typical HUD financing." Just so you know,
6 I believe that's an error. The lease doesn't
7 refer anywhere to HUD. What we were talking about
8 is we, as we're negotiating, got the interest
9 rates from HUD, got some of the ideas for the
10 lease from HUD. This isn't a -- the document
11 itself doesn't reference HUD financing.

12 So some of these questions, sub-questions,
13 don't provide, including "Will there be any
14 typical HUD forgiveness provisions?" I can answer
15 that emphatically no.

16 The 2.38 percent is what the current HUD rate
17 is. The term for a 30-year mortgage, I know David
18 calculated that.

19 MR. FRIEDFEL: The average in New York right
20 now is 3.27 percent, which is obviously higher,
21 but I mean, mortgage rates are at historic lows.

22 MR. MARCELLE: All right. And what about the
23 15-year?

24 MR. FRIEDFEL: The 15-year is 2.56. That's

1 as of today.

2 MR. MARCELLE: So a 15-year mortgage is 2.56.
3 So our numbers aren't widely off base from even
4 private sector mortgages. The actual terms of the
5 loan agreement, as you will see, will depend. The
6 body will, should it approve the lease, have a
7 choice, a very important choice, whether the
8 county itself will be the loaning agency or
9 whether it will choose to arrange the loan through
10 an LDC.

11 The loan agreement itself, if done by the
12 county, we will negotiate the terms of the loan
13 agreement in much finer detail than provided here,
14 but that will be incumbent upon us to do that.
15 Should, in this body's judgment and wisdom, the
16 loan should be arranged through an LDC, the LDC
17 will be responsible for the loan agreement and not
18 the County.

19 So the finer details, to the extent that 16
20 is a question with respect to the finer details,
21 they're nonexistent as of yet and they will not
22 exist until the body chooses which fork of the
23 road they wish to travel.

24 The next question is about the \$4 million

1 elderly aid grant.

2 LEGISLATOR CLENAHAN: Before you go on to
3 that --

4 MR. MARCELLE: Oh, please, Mr. Clenahan.

5 LEGISLATOR CLENAHAN: Do we know if this loan
6 will be secured or not yet?

7 MR. MARCELLE: Yes, we do.

8 LEGISLATOR CLENAHAN: What is the security?

9 MR. MARCELLE: The guarantee of USG, the
10 guarantor.

11 LEGISLATOR CLENAHAN: That's not really
12 security.

13 MR. MARCELLE: I'm not sure what that means.

14 LEGISLATOR CLENAHAN: Well, I mean, you said
15 it's like a mortgage transaction. In a mortgage
16 transaction, the property is the security.
17 There's no security on this in that sense, is
18 there?

19 MR. MARCELLE: No. But I reference it just
20 for rates.

21 LEGISLATOR CLENAHAN: You're kind of
22 comparing this to a secured loan compared to rates
23 of a secured loan even though this is actually a
24 point less than a secured loan rate. It's

1 extraordinarily low for an unsecured loan.

2 MR. MARCELLE: Sure. What we compared it to
3 and where we got the 2.3 exactly from was from HUD
4 and the federal government.

5 LEGISLATOR CLENAHAN: But you're comparing it
6 to a mortgage. There's no security.

7 MR. MARCELLE: Okay.

8 LEGISLATOR CLENAHAN: Okay. Further, what
9 kind of HUD products are you talking about?
10 There's a lot of different HUD products.

11 MR. FRIEDFEL: It was the healthcare --
12 Section 232. They're FHA insured products for
13 residential healthcare facilities. The 232 is the
14 name I gave it. That might be a little off, but
15 that's what it is.

16 LEGISLATOR CLENAHAN: So that's the section
17 on lending, the lending provision for HUD?

18 MR. FRIEDFEL: Correct, or purchasing a
19 facility.

20 MR. MARCELLE: Ms. Kinsch.

21 LEGISLATOR KINSCH: I think I had asked this
22 before. It may have been answered the last time.

23 MR. MARCELLE: That's okay.

24 LEGISLATOR KINSCH: So Upstate Service Group

1 is the guarantor. So there's a legal document
2 that's signed where they basically say, "We are
3 responsible for any liability of the operator."

4 MR. MARCELLE: Yes.

5 LEGISLATOR KINSCH: Is there anything else?
6 Like as a guarantor, is there any type of letter
7 of credit? Is there a financial
8 instrument attached to it? As I read the lease,
9 we have to look at the financials of USG and be
10 comfortable --

11 (End of tape.)

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C E R T I F I C A T I O N

I, **THERESA L. KLOS**, Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing transcription taken by me of a recording at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Theresa L. Klos

THERESA L. KLOS

Dated: February 4, 2013.

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