

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

3 In Re:) **Case No. 22-30659-mvl-11**
4) Jointly Administered Ch. 11
5)
6 NORTHWEST SENIOR HOUSING) Dallas, Texas
7 CORPORATION, et al.,) February 21, 2023
8) 9:30 a.m. Docket
9 Debtors.)
10) - CONFIRMATION HEARING (933)
11) - MOTION TO SELL (755)
12)
13)

14 TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE MICHELLE V. LARSON,
16 UNITED STATES BANKRUPTCY JUDGE.

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1 DALLAS, TEXAS - FEBRUARY 21, 2023 - 9:48 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Michelle Larson presiding.

5 THE COURT: Please. Be seated. Good morning,
6 everyone. We're here on our 9:30 docket. We have one big
7 matter on docket this morning, and that's Case No. 22-30659,
8 Northwest Senior Housing Corporation. I'll go ahead and take
9 appearances for the record. I'll start with those in the
10 courtroom. Whenever you're ready.

11 MS. GREEN: Good morning. Trinitee Green on behalf
12 of the Debtors. Along with me here today is Mr. Johnson,
13 Jeremy Johnson.

14 THE COURT: Good morning to both of you.

15 MS. WALKER: Good morning, Your Honor. Adrienne
16 Walker from Locke Lord. I'm here today with my colleague
17 Matthew Davis for Bay 9 Holdings.

18 THE COURT: Good morning.

19 MR. MURPHY: Your Honor, Frasher Murphy with Haynes
20 and Boone for UMB Bank, the Initial Plan Sponsor. I'm joined
21 by folks from the Mintz firm. We have Dan Bleck, Kaitlin
22 Walsh, Kate Lombardo, and that's it.

23 THE COURT: All right. Left Ms. Musgrave to run the
24 shop, I see. There we go.

25 MR. HENDRICKS: Good morning, Your Honor. Chuck

1 Hendricks and Emily Wall for David Stephen Donosky.

2 THE COURT: Good morning.

3 MR. SCANNELL: Good morning, Your Honor. Tom
4 Scannell and Steve McCartin for the Committee.

5 THE COURT: Thank you.

6 MR. WALKER: Good morning, Your Honor. Eric Walker
7 of Cooley on behalf of Lifespace Communities, Inc.

8 THE COURT: Good morning.

9 MS. VANDESTEEG: Good morning, Your Honor. Elizabeth
10 Vandesteeg, Eileen Sethna, and Harold Israel of Levenfeld
11 Pearlstein; Ivan Gold of Allen Matkins; and Elizabeth Pittman
12 of Jackson Walker, on behalf of Intercity Investment
13 Properties, Inc.

14 THE COURT: Good morning.

15 MR. WILLIAMS: Good morning, Your Honor. Benton
16 Williams on behalf of the Estate of Patricia Adams, Andrew L.
17 Adams, and Pamela Siviglia.

18 THE COURT: Good morning.

19 MS. LAMBERT: May it please the Court, Lisa Lambert
20 for the United States Trustee, William Neary.

21 THE COURT: Good morning.

22 All right. In terms of WebEx appearances, I have one on
23 the electronic roll, which would be Mr. James Adams with Adams
24 Advisors, Limited on behalf of Ann Adams.

25 Is there anyone else on WebEx who would like to make an

1 appearance today?

2 MR. MARTIN: Good morning, Your Honor. Jarrod Martin
3 on behalf of Ide Trotter and the Estate of Luella Trotter,
4 former resident claimants.

5 MR. SIEGEL: Good morning, Your Honor. Bill Siegel
6 on behalf of Joel Brickell, the Executor for the Estates of
7 Theodore Carl Gilles and his wife Bonnie Gilles. They're
8 former residents.

9 THE COURT: Good morning to you both.

10 Is there anyone else who would like to make an appearance
11 this morning?

12 (No response.)

13 THE COURT: Okay. So, we are here on both
14 confirmation of what is now, I believe, the Fourth Amended
15 Chapter 11 Plan of the Plan Sponsors, as well as a Motion to
16 Sell. So this is the sale hearing in connection with the
17 auction that was previously held by the Plan Sponsors in
18 accordance with this Court's prior Bid Procedures Order.

19 Are there any housekeeping or other logistic matters that
20 we need to cover before we get to the main show?

21 MR. JOHNSON: Thank you, Your Honor. Jeremy Johnson
22 of Polsinelli on behalf of the Debtors.

23 So, unrelated to the matters at hand, wanted to give Your
24 Honor an update regarding the property condition ruling. The
25 Debtors have endeavored to make the discrete repairs that you

1 had mentioned in your ruling.

2 There was an agreement reached by the Debtors, UMB, and
3 Bay 9 with respect to the two sort of outlying larger issues.
4 On the garage expansion joint, I would just -- I'm going to
5 read this into the record. And so it's just effectively the
6 agreement that's in place:

7 "As authorized by this Court's February 6th
8 ruling after the property conditions hearing, Bay 9
9 has retained, at its cost, SOCOTEC, S-O-C-O-T-E-C, to
10 do an investigation of the expansion joint to
11 ascertain next steps.

12 "To date, SOCOTEC has conducted a visual
13 observation of the expansion joint on February 13th,
14 interviewed Edgemere's maintenance director, facility
15 maintenance director, and SOCOTEC is in the process of
16 scheduling further investigation, which, at SOCOTEC's
17 determination, may include destructive testing, length
18 area measurements, level measurements, and Ferroskans.

19 "Consistent with the Court's ruling, SOCOTEC will
20 prepare a report to be reviewed by the Court for
21 further determination if a default exists under the
22 lease or if this matter is an adequate assurance
23 issue.

24 "All parties reserve rights with respect to
25 SOCOTEC's findings related to the garage expansion

1 joint."

2 Now, I don't know what a lot of those words mean, Your
3 Honor, and I know you've got a little bit more background in
4 litigation, --

5 THE COURT: Repairing a garage?

6 MR. JOHNSON: -- in construction litigation than I
7 do, so I hope you understood it, but these are obviously the
8 words we're being told by the inspector.

9 With respect to the second issue, Your Honor, the building
10 façade:

11 "By agreement between the Debtors and Bay 9, and
12 without objection by the Bond Trustee, Bay 9 intends
13 to retain, at its cost, SOCOTEC to do an investigation
14 of the stucco façade of each building, investigate the
15 cause of the cracking and staining, consistent with
16 the Court's February 6th ruling.

17 "Bay 9 has identified SOCOTEC as a national
18 engineering firm with particular expertise in building
19 envelopes, including EIFS, E-I-F-S, and stucco. The
20 SOCOTEC team to be engaged is led by Amy Peevey in
21 SOCOTEC's Houston office.

22 "Further, consistent with the ruling, Bay 9
23 intends to review the findings of both the Debtor and
24 the Bond Trustee, with a goal of reaching an agreement
25 as to next steps to be presented to this Court.

1 "If agreement cannot be reached with the Debtors
2 and the Bond Trustee, the Debtors and/or Bond Trustee
3 reserve their right to engage their own building
4 façade expert and, if necessary, reserve the right to
5 seek further review of the matter with the Court."

6 So, --

7 THE COURT: Thank you, Mr. Johnson.

8 MR. JOHNSON: -- hopefully we don't get there, Your
9 Honor. So, but wanted to put that on the record. And also,
10 again, working on the other issues that were laid out in that,
11 and it's hopeful that those will be resolved shortly.

12 In terms of the next three days, Your Honor, wanted to
13 talk a little bit about. I think there may be a disagreement
14 on how we proceed, so we're going to start with this. It is
15 the intention of the Plan Proponents -- and I guess, Your
16 Honor, I think everybody but ICI -- that this is how we'd
17 prefer to start the hearing. We'd prefer to have opening
18 statements with respect to confirmation this morning and then
19 move into the evidence on the adequate assurance.

20 It's my understanding there's several witnesses. The
21 parties have endeavored to agree to put the evidence on, at
22 least the directs on, by declaration as much as possible, to
23 help get through this as quickly as we can. There are several
24 witnesses.

25 But the goal would be to finish this adequate assurance

1 portion, the third part of the trifurcated assumption trial,
2 by sometime tomorrow. It'd be great if it ended sometime
3 early in the day, but probably it's going to go fairly late
4 tomorrow. And then move to confirmation on Thursday, Your
5 Honor.

6 And that was -- that is our intention. We had some
7 conversations over the weekend in an attempt to sort of reach
8 an agreement with ICI. I don't think we got all the way
9 there. There are some witnesses that are present. There are
10 some witnesses that are on WebEx. I know that the declarant
11 for the 1129 declaration for the Debtors, Mr. Harshfield, as
12 we've previously advised the Court, is only available on the
13 Thursday.

14 THE COURT: Okay.

15 MR. JOHNSON: So it's possible, to the extent that
16 he's part of the adequate assurance trial, which we were
17 notified that he might be part of the adequate assurance
18 record that ICI would like to make, this is a new development
19 from our perspective, so he's not available on Tuesday or
20 Wednesday, so it may be that we have to take that part of the
21 testimony with his 1129 declaration on Thursday morning as
22 part of the confirmation process.

23 But I think that's where we are, and that's where -- I
24 believe I can represent that that's where the Debtors, the
25 Bondholders, Lifespace, and Bay 9 are in terms of where the

1 scheduling should be.

2 THE COURT: Okay.

3 MR. JOHNSON: Thank you.

4 THE COURT: Thank you. And in terms of logistics --
5 and I'll hear from you in just one moment, Mr. Gold -- I
6 believe we have a clear schedule, with the exception of a
7 short 1:30 docket today. Correct, Ms. Jeng?

8 THE CLERK: Correct.

9 THE COURT: Thank you. A very short 1:30 docket.
10 And all my lift stays have cleared, so I think that may only
11 take 15 minutes, at the most. So that's one thing. So if
12 everyone's kind of back and ready to go around 1:45, we should
13 be good, because that docket will be virtual.

14 I think that you received an email from Ms. Jeng
15 indicating how late we could go each day, Tuesday through
16 Thursday. No? Maybe not?

17 THE CLERK: No.

18 THE COURT: Correct me if I'm wrong, Ms. Jeng. It's
19 6:30, 6:00, and 6:30?

20 THE CLERK: Correct.

21 THE COURT: Okay. And so that's Tuesday, Wednesday,
22 and Thursday. And those are hard stops. Again, we have some
23 childcare issues. And so we have to be out the doors by that
24 time on those days.

25 Heaven forbid we have to go to Friday. We have the

1 morning available. Again, I know consecutive is usually
2 better than anything disjointed. So we could do that. In
3 fact, Friday I have an afternoon docket that I don't think
4 will probably go more than 30 minutes. But if something
5 happens and we're closing on Friday, for example, we have that
6 time if we should so need it. But otherwise, I agree that we
7 should probably just move on as efficiently as possible,
8 recognizing witness availability.

9 Mr. Gold?

10 MR. GOLD: Thank you and good morning, Your Honor.
11 Again, Ivan Gold of Allen Matkins, co-counsel for Intercity
12 Investment Properties. Your Honor, while I'm no stranger to
13 this courthouse, this is our first time together, so good
14 morning.

15 THE COURT: Good morning.

16 MR. GOLD: I didn't think I would have to rise in my
17 first appearance before you to address a housekeeping issue,
18 but events have necessitated that.

19 I must say, in my career, this is the first time I've come
20 to a confirmation hearing where, even with adequate assurance
21 issues, the Debtor clearly has the burden of proof, burden of
22 going forward on both motions, and the Debtor wants to go on
23 day three.

24 Mr. Harshfield's unavailability, which is not -- this
25 Court is not a stranger to that claim, from prior hearings --

1 is letting the tail wag the dog. We have a lot of witnesses
2 here, but we have a lot of people on the phone, we have a lot
3 of people waiting on confirmation. Mr. Harshfield is the 1129
4 declarant. He was the Debtors' first-day declarant. And he's
5 not here on the first day of the confirmation hearing. And we
6 believe the Debtor is using that to invert the customary order
7 of proof.

8 Your Honor just said consecutive is better than
9 disjointed. Well, that's what we're being asked to do, is
10 give a disjointed presentation. There will be things that
11 will come up later that will provide context for things we
12 want to do now --

13 THE COURT: Uh-huh.

14 MR. GOLD: -- if we listen to the Debtor. Mr.
15 Harshfield, because he is the Debtors' representative in terms
16 of the asset purchase agreement, in terms of the sale, will be
17 a subject of questioning. It's the Debtors' burden of proof.
18 They can delegate as much of that as they want to Bay 9 as the
19 proposed assignee, but it's still the Debtors' burden of
20 proof.

21 We designated Mr. Harshfield as a witness, and we plan to
22 question him on several issues.

23 So what we're left with is the Debtor is proposing Bay 9
24 would start, and all the folks who are waiting for the
25 confirmation hearing and the attorneys in the courtroom for

1 other constituents who are not part of the adequate assurance
2 issues are then told to wait. So is that the most efficient
3 way to proceed? Well, that's what the Debtor is proposing,
4 just because Mr. Harshfield is unavailable.

5 So, our proposal, to avoid prejudice to us, to avoid gaps
6 in our presentation -- we're not the Movant -- would be, since
7 counsel is correct, Mr. Johnson is correct, we have agreed --
8 nice to have agreement on something -- we've agreed that much
9 of the direct testimony, there's a number of declarations in
10 the record, and the parties' agreement is that those will
11 stand as direct testimony. All parties reserve the right to
12 supplement that direct --

13 THE COURT: Okay.

14 MR. GOLD: -- with some additional questions. And
15 then obviously cross is reserved.

16 We believe that will help in this process, but the point
17 is the Debtor has all that stuff ready to go other than the
18 cross of Mr. Harshfield on 1129. So we can put his dec in, we
19 can start putting on the confirmation witnesses. Let's have a
20 confirmation hearing. That's what it says on all the doors
21 around the courtroom: Northwest Senior Housing Corporation
22 Confirmation Hearing. So let's have a confirmation hearing.
23 Let's get that started. Go to the plan. Put forth the Third
24 and Fourth Amended Plan, make it clear.

25 Adequate assurance isn't even a condition to confirmation.

1 It's a condition of the effective date. Entry of an
2 assignment order is not a condition to confirmation since this
3 isn't a nonresidential lease governed by 365(d)(4). The plan
4 is set up this way. We're following the order of the plan.
5 We're following the order of the first agenda we saw, until
6 this issue was raised and the agenda got flipped.

7 So let's try and be normal. Let's do the normal order of
8 proof. The Debtor has their confirmation folks here. We have
9 people on the phone. We have attorneys for various
10 constituencies who are interested in confirmation. The
11 attorneys for residents or the estates of residents do not
12 care about Lapis's experience or the condition of the roof or
13 adequate assurance as it relates to the sale hearing. They
14 may care about the operator in a plan context, but let's talk
15 about the plan first.

16 So our proposal is to follow the normal order of proof.
17 The Debtor has the burden on 1129. Let's get rolling. Yes,
18 the witnesses are combined, but we will not be prejudiced by
19 truncating our presentation and basically providing it out of
20 context and out of order. That's the accommodation for Mr.
21 Harshfield's availability, in which we played no role. We
22 have comment on it. As Your Honor has said at a prior
23 hearing, what really in the big scheme of things could be more
24 important, as the Debtors' responsible officer, than to be
25 here today? But he's not. So why is it that our order of

1 proof, our presentation, is the one that's disrupted by that?
2 Let's do the other way.

3 THE COURT: So that I understand ICI's ask here,
4 you're asking that we go forward with confirmation before the
5 sale hearing? Is that what you're asking?

6 MR. GOLD: Well, at an earlier hearing this month, we
7 looked at your comments on January 6th, and you said they're
8 combined together. So I'm not sure --

9 THE COURT: Right.

10 MR. GOLD: You know, they are combined together is
11 the way -- I'm looking at it the way you looked at it. So if
12 we're combining together, shouldn't the party with the burdens
13 get us rolling? And so we've got everybody here for
14 confirmation. Let's get through 1129, subject to the sale
15 hearing. Let's follow what's in the plan. Confirmation, and
16 these are conditions -- were a condition to the effective
17 date. Were not a condition to confirmation. Let's talk about
18 feasibility. Let's talk about all those things that are out
19 there --

20 THE COURT: Aren't the sale proceeds the means for
21 implementation of the plan? Or am I wrong on that?

22 MR. GOLD: The sales proceeds are. The sales
23 proceeds are.

24 THE COURT: Uh-huh.

25 MR. GOLD: But the sales -- the discussion of the

1 sales proceeds and the -- how that's divvied is the plan.
2 That's the execution of the plan. If we assume the sales
3 proceeds, what's the execution of the plan? Were the
4 conditions that are attached to approval of those sale
5 proceeds?

6 But that's most of this dispute, but not all of it, is
7 between us and Bay 9. We are strangers. We are the new
8 entrants. Ms. Walker and I joked multiple times, we're the
9 new kids who came in well after this case has started. So
10 let's get that out of the way, and then we'll address the
11 adequate assurance issues.

12 Also, as the case goes on, we will learn things through
13 the confirmation process. God forbid the parties should have
14 a discussion in the hall. And it's a privilege not to be -- I
15 mean, with all due respect to everybody on WebEx, and I've
16 made a living out of appearing on WebEx and Zoom and whatever
17 platform the courts are using, but for those of us here, you
18 know, what used to be the virtual hallway is the real hallway.

19 So we just think the ordinary order of proof is the Debtor
20 is the Plan Proponent. The Debtor has the burden. The Debtor
21 is the Movant. The Debtor has the burden. And they can't
22 even call one witness in the form of Mr. Harshfield on that
23 motion. So, instead, oh, we'll have everybody else and we'll
24 be last. Well, that's kind of profiting, in our view, is
25 profiting from Mr. Harshfield's unavailability.

1 I don't want to waste your time having to preview half my
2 case when I get an objection from the Debtors' side about,
3 what does this have to do with anything, because you haven't
4 heard all the testimony in something assembling the real
5 order.

6 So, again, we feel we're the ones who are prejudiced here
7 by a situation of our -- not of our making. And that we can
8 -- the simple way to accommodate it is, just like in a regular
9 trial, if you have an unavailable witness, especially a court
10 trial where the jury is not going to be confused, you take a
11 witness out of order. You don't change everything else. And
12 that's what the Debtors are proposing, in our view.

13 THE COURT: Thank you, Mr. Gold.

14 MR. GOLD: Thank you.

15 THE COURT: Mr. Johnson?

16 MR. JOHNSON: Thank you, Your Honor. Let me start by
17 saying this. The accusations that this is some sort of
18 litigation tactic are, again, nonsense. This has been -- we
19 discussed this with the Court in open court at prior hearings.
20 This is not an attempt to hide Mr. Harshfield. He has -- he
21 has been involved -- he's had board meetings for their
22 billion-dollar corporation right now, and he's carved out
23 Thursday to be available. It wasn't an attempt to sort of
24 impact their ability to put a case on.

25 The first we heard that Mr. Harshfield was going to be

1 needed as part of the adequate assurance trial -- again, he
2 was not deposed as part of adequate assurance. He has not
3 been involved. They said, well -- they told us on Friday
4 afternoon. And we said, wait a minute, he's not available on
5 Tuesday and Wednesday. He'll be available on Thursday. If
6 there's something we can stipulate to regarding his testimony,
7 we're happy to try and make that happen. But that's always
8 been -- that's been the case for -- for over -- well over a
9 month. So this isn't something that was contrived to try and
10 make life difficult on ICI. The Debtors simply haven't been
11 involved in the adequate assurance.

12 Now, Mr. Gold is correct, it is the Debtors' burden to
13 show that the assignee can perform the obligations under the
14 lease. But the dispute regarding the assignee's ability to
15 perform relates to Bay 9, its payment streams under the lease.
16 There have been multiple depositions taken over the course of
17 the past week, most of which the Debtor did not even attend,
18 Your Honor, because, again, the Debtor has very little
19 knowledge or information regarding Bay 9 and their ability.

20 Second, Your Honor, I think that -- I just -- I think
21 there's just a fundamental disagreement as to, you know, the
22 chicken or the egg here. I think at the end of the day, Your
23 Honor, you shouldn't have a confirmation hearing and confirm a
24 plan that is based upon a sale which includes adequate
25 assurance which you haven't ruled on at that point. I think

1 we're flipping it exactly the opposite way. Assuming Your
2 Honor can be convinced as part of the adequate assurance trial
3 that the sale should be approved and that Bay 9 is a proper
4 assignee, then we can get to the plan.

5 If you deny the assumption, the proposed assumption and
6 assignment of the lease to Bay 9, that's going to change our
7 plan in a fairly significant manner, Your Honor. So I don't
8 think that there's -- you know, I'm looking at it just the
9 exact opposite way. I think it's important that we resolve --
10 and this is the third of three trials related to the
11 assumption. So, putting the confirmation -- putting the
12 confirmation openings at the front isn't an intent to do
13 anything. If we want to move the confirmation openings to a
14 later time and just go right into the adequate assurance
15 trial, that's fine, too. It's not an attempt to start and
16 stop a confirmation hearing.

17 But I think it is fair to say, if you look at the
18 objections filed to the plan, Your Honor, and there were only
19 two objections filed to the plan, the bulk of ICI's objection
20 related to the plan is on the feasibility side, which is going
21 to be answered through the evidentiary testimony that's put on
22 through the sale hearing.

23 So our thought was, purely from a practical perspective,
24 Your Honor could finish the trifurcated trial, finish the
25 third trial regarding that, listen to the evidence regarding

1 adequate assurance of future performance. And then if you
2 believe that there's enough evidence to go forward, we'll go
3 forward with confirmation at that point. I think that answers
4 a lot of questions regarding feasibility at that point.

5 Although there are some other issues we have to address, the
6 number of confirmation objections are relatively discrete.

7 THE COURT: Uh-huh.

8 MR. JOHNSON: And Your Honor, Mr. Harshfield just
9 isn't available these two days, and we've always been clear
10 about that. It's not some sort of tactic, Your Honor. That's
11 the case. He is available all day on Thursday. And we told
12 him, when we heard Friday afternoon from Mr. Gold that they
13 anticipated cross-examining Mr. Harshfield with respect to
14 some aspects of the APA, that's the first we heard of it, and
15 we reached out to Mr. Harshfield immediately, tried to find
16 out his availability, and it's remained the same, Your Honor.

17 So, but our view, Your Honor, is that we should finish
18 what we're two-thirds of the way through, and then move to
19 confirmation at that point. But we're happy to do whatever
20 the Court intends to do here.

21 Thank you.

22 THE COURT: Thank you.

23 MR. GOLD: May I respond just briefly?

24 THE COURT: Before you do, I'll hear from the
25 Committee.

1 MR. GOLD: Certainly, Your Honor. Thank you.

2 MR. MCCARTIN: Thank you, Your Honor.

3 THE COURT: Mr. McCartin?

4 MR. MCCARTIN: Good morning, Your Honor. Steve
5 McCartin on behalf of the Creditors' Committee.

6 We have no objection to adequate assurance going forward
7 first, but we would like to take Mr. Johnson up on his
8 suggestion, I think it makes sense, to have the confirmation
9 openings deferred until we get to the confirmation portion.
10 So I would just suggest that if we're going to take adequate
11 assurance first, the Court could certainly take opening
12 arguments with regard to adequate assurance of future
13 performance, but I hate to have opening arguments with regard
14 to all the confirmation issues and then put it on the shelf
15 for two days before we come back and start getting into the
16 evidence.

17 THE COURT: All right. Because I would really be
18 chomping at the bit at that point for the evidence.

19 MR. MCCARTIN: It's riveting.

20 THE COURT: Exactly. Exactly. Been waiting all week
21 for this.

22 Please. Mr. Gold?

23 MR. GOLD: Thank you again, Your Honor.

24 It's fun to hear Mr. McCartin complain about a truncated
25 presentation, because that's what we're stuck with here.

1 I'm looking at the transcript of Your Honor's comments on
2 January 6th, and you say, "And then adequate assurance, I
3 think we would hit that together with confirmation issues" --
4 good verb choice, in retrospect -- "between the 21st and the
5 23rd."

6 Your Honor, I don't anticipate -- and obviously you could,
7 you know, you're the boss, you decide -- but I didn't come
8 here today anticipating you were going to rule from the bench
9 on adequate assurance before we start confirmation. And
10 that's what Mr. Johnson is assuming.

11 We just heard in his initial comments, housekeeping, on
12 the status of the inspections at the property and the
13 evaluation, that there were still reserved issues between
14 what's on the cure side and what's on adequate assurance. So
15 I don't think Your Honor will be ruling on Thursday evening or
16 mid-day on Friday -- mid-day Thursday, after Mr. Harshfield
17 testifies on adequate assurance, when there's all this stuff
18 out there.

19 So, again, that's the tail wagging the dog. This is one
20 witness who's unavailable. We did not make that
21 unavailability.

22 As for learning this Friday afternoon, he's in our witness
23 list that was filed before Friday afternoon. It's not that
24 last-minute. Just, there were declarations filed over the
25 weekend that we saw for the first time last night. But those

1 witnesses are available.

2 So, again, we disclosed timely with the order that this
3 was a witness we needed. We're just following the original
4 agenda. We saw the draft. It wasn't filed with the Court. I
5 get it. Agendas change. But when we raised this issue, it
6 flipped. We think the proper accommodation is to deal with
7 Mr. Harshfield, not deal with everything else.

8 THE COURT: Okay. Thank you, Mr. Gold.

9 MS. WALKER: Your Honor, may I?

10 THE COURT: Of course. Ms. Walker?

11 MS. WALKER: Your Honor, Adrienne Walker for Bay 9.

12 Your Honor. Your Honor, this is a bench trial. It's a
13 bench trial on the sale; it's a bench trial on the plan. And
14 Your Honor, I think we are all sophisticated enough to know
15 that the Court is well capable of taking the evidence in as it
16 comes in by logistics. Bay 9's witnesses are here today. We
17 also have our own logistics. Our folks are here today and
18 tomorrow. It would take a little bit to move to have anything
19 else available.

20 So we will, of course, follow the Court's recommendation
21 and guidance, but there is some logistics, and we think the
22 Court is well capable of taking the evidence as the available
23 witnesses are here today.

24 So our request is just to move forward on adequate
25 assurance. Of course, those issues dovetail with the sale and

1 the plan. But we're all capable lawyers, and of course the
2 Court is well capable to address it in the order it's
3 available. Thank you.

4 THE COURT: Thank you, Ms. Walker. Appreciate that.

5 All righty. I am sympathetic to Mr. Gold's position about
6 the logistics of hearings and those with the burden going
7 first and those that are responsive being able to go second.
8 But I'm also cognizant that this Court has, on many occasions,
9 tried to be, especially in these multi-day trials where we
10 have are so many witnesses, tried to be accommodating to the
11 various witnesses.

12 I do agree with the Committee and I think essentially what
13 the Debtors acceded to at the end, is that we proceed on
14 adequate assurance. To be frank, it's how the Court expected
15 things to go today, was to do adequate assurance first. And
16 one of the reasons is, as we discussed, it is the last piece
17 of the 365(b) issues that we have been hearing piecemeal over
18 time.

19 Moreover, as the Court perceives confirmation,
20 confirmation is contingent on there being sales proceeds. And
21 although I don't know that I'll rule on adequate assurance, I
22 think I will be able, after hearing the greater part of the
23 adequate assurance testimony, to see if there is enough
24 evidence as to feasibility and the other things that adequate
25 assurance goes to with respect to the sale to go forward as to

1 confirmation.

2 And so I agree that I don't believe there's any reason to
3 do openings on the greater part of confirmation and then go
4 heavy into adequate assurance for two days and then pick up
5 confirmation at the end. I think it makes better use of our
6 time, if we want openings today, that we do those on the
7 adequate assurance issues and that we save confirmation until
8 perhaps right after Mr. Harshfield testifies.

9 Now, with that said, to the Debtors and to the Plan
10 Sponsors, realize that if Mr. Harshfield is their witness for
11 adequate assurance, we can't conclude that portion until then.
12 And I do believe that it is certainly fair to ICI that we
13 don't start with confirmation and those witnesses until we can
14 get to Mr. Harshfield so that we can have that chunk.

15 Recognizing that I believe that there's room for parties
16 to both agree and disagree on this point, I do believe that
17 the Court is capable of hearing the evidence, notwithstanding
18 whatever flow that it is put into. We've heard lots of folks
19 here and there in terms of the cure issues and other issues.
20 So it's yet to be seen to the Court how Mr. Harshfield plays
21 into adequate assurance, but I am prepared to be informed in
22 that way.

23 So, given Mr. Harshfield's understandable unavailability
24 with respect to the board meetings, the Court will allow for
25 him to go on Friday, and we'll start with adequate assurance.

1 If I said Friday, I meant Thursday. Thank you.

2 MR. GOLD: Thank you, Your Honor.

3 THE COURT: And with that, we'll start with adequate
4 assurance today. And so the parties will tell me if they
5 prefer to have opening statements today. I assumed parties
6 would, but I'm open.

7 And again, if parties had their opening statements
8 prepared and they're mixes of confirmation and adequate
9 assurance, we can do one of two things. I can take a brief
10 recess so you can adjust, or if you give me your confirmation
11 opening, I take good notes and I'll have them.

12 Mr. Hendricks is running.

13 A VOICE: It's a long way from the back.

14 THE COURT: Exactly.

15 MR. HENDRICKS: Your Honor, Chuck Hendricks for the
16 other objector, David Stephen Donosky.

17 THE COURT: Less pages.

18 MR. HENDRICKS: I think our issue is limited to
19 confirmation. And I just don't want to miss out on something
20 that affects confirmation by not attending, which we'd prefer
21 not to, all of the adequate assurance hearing. So with the
22 Court's permission, we would like to return for the
23 confirmation only. And we can keep in touch with the Court,
24 or Trinitee Green will let us know.

25 THE COURT: Well, that was one of my thoughts, is

1 with respect to your client's objection, it definitely seems
2 to be a narrow portion of the dispute. I was hoping, for sake
3 of your client and just attorneys' fees and what-so, that we
4 schedule a time to just kind of hit that point head on, so
5 that this particular objector didn't have to attend the full
6 three, maybe four days of trial.

7 MR. HENDRICKS: Thank you, Your Honor.

8 THE COURT: So if we could pick a time for that.

9 MR. HENDRICKS: Later on in the week when you get to
10 confirmation is fine.

11 THE COURT: Okay.

12 MR. HENDRICKS: The parties can decide and let me
13 know, I think, with a couple hours' notice. I have two
14 witnesses. One is WebEx and one will be in person.

15 THE COURT: Okay.

16 MR. HENDRICKS: And we're good to go on fairly short
17 notice.

18 THE COURT: So I do want to be accommodating to that,
19 because as I think I read in your papers, it's like an \$80,000
20 issue, right? Which is very big to the claimant but not
21 necessarily to the size of the fight. I'd hate for you to
22 have to be here through all that.

23 Mr. Johnson? Ms. Green?

24 MR. JOHNSON: Your Honor, that's fine with us. We
25 had anticipated handling the issues -- I do think it sort of

1 straddles the sale issue and the plan issue, but we had
2 anticipated handling it on Thursday --

3 THE COURT: Okay.

4 MR. JOHNSON: -- and do that. And I do think the
5 issue is about \$100,000 a year, Your Honor, --

6 THE COURT: Oh, I apologize.

7 MR. JOHNSON: -- for thirty years.

8 THE COURT: I apologize. Okay.

9 MR. JOHNSON: So I think it's a -- it is a bigger
10 number in there for those purposes. But yes, that is our
11 intention, is to --

12 THE COURT: Maybe the \$80,000 was the unpaid portion.
13 I apologize for that.

14 MR. JOHNSON: That's right. That's right.

15 THE COURT: Thank you.

16 MR. JOHNSON: Yeah. And so, but in any event, our
17 intention was to move and handle Mr. Donosky's witnesses on
18 Thursday morning as well. I think he indicated he had about
19 an hour of time with his two folks. I don't think -- we don't
20 have a -- I don't think we have a witness to rebut any of
21 those things. I think we're just going to talk about those
22 issues on Thursday morning, and then we'll probably spend the
23 afternoon doing oral argument --

24 THE COURT: Okay.

25 MR. JOHNSON: -- on confirmation. That'll be my

1 expectation.

2 THE COURT: Okay.

3 MR. JOHNSON: But perhaps not.

4 THE COURT: Just one second.

5 MR. JOHNSON: I guess there are some other --

6 MR. HENDRICKS: Please.

7 MS. GREEN: Just one clarifying point, Chuck. I do
8 intend to address the Donosky objection in my opening, and so
9 I would hate for you to excuse yourself and not hear what I
10 have to say. And if that's okay -- or I can wait and we could
11 do like a separate opening. But I just want to make sure that
12 you don't leave and miss what I have to say about the
13 objection.

14 THE COURT: Okay.

15 MR. HENDRICKS: Are you having two openings, or one?

16 MS. GREEN: No, it's all one.

17 MR. HENDRICKS: So you had a combo opening for the
18 adequate assurance and confirmation?

19 MS. GREEN: Yes.

20 THE COURT: Okay.

21 MR. HENDRICKS: Okay. But that will be after -- when
22 will that be?

23 MS. GREEN: Soon.

24 MR. HENDRICKS: Okay. Today?

25 MS. GREEN: I hope. Okay. Thank you.

1 THE COURT: All righty.

2 THE CLERK: Mr. Siegel.

3 THE COURT: Just one moment, --

4 MR. SIEGEL: Judge?

5 THE COURT: -- Mr. Siegel, and I'll get to you. Mr.
6 Gold was rising. And I'll come right back to you, Mr. Siegel.
7 Thank you, Ms. Jeng.

8 MR. GOLD: Your Honor, again, Ivan Gold for ICI.

9 Now we're being trifurcated. And I understand Mr.
10 Donosky's claim, but if we're going to do this, it should be
11 Thursday afternoon. Because you want to talk about breaking
12 the flow, we're going to be right in the middle of our
13 presentation on Thursday morning. So now the Debtor, who we
14 never heard this proposal before, now they just want to
15 parachute something else into the middle of our presentation.
16 I know the Court can sort it out. The Court is more than
17 capable of doing that. But it's just another chop.

18 I think it makes much more sense, because I have a feeling
19 we may be waiting around for Mr. Harshfield on Thursday
20 afternoon. And that's the better time to do it, rather than
21 Thursday morning. Excuse me. Wednesday afternoon. Rather
22 than -- you're going to go -- basically, Your Honor, it sounds
23 like you're going to Friday -- I hate to say that -- based on
24 what I'm hearing today. It is what it is. The Court has
25 time.

1 THE COURT: Uh-huh.

2 MR. GOLD: But, you know, are we getting Mr.
3 Harshfield on Thursday morning or are we getting Mr. Donosky
4 on Thursday morning? Which one is it?

5 THE COURT: Okay. Mr. Johnson?

6 MR. JOHNSON: Your Honor, there's no litigation
7 tactic here. We'll do Mr. Donosky's witnesses whenever we can
8 do them in the afternoon. We can start with Mr. Harshfield on
9 Thursday morning, the very first thing. My thought was we
10 would do that, and then go to Mr. Donosky, and then go to
11 argument. But it doesn't matter to us.

12 THE COURT: Okay.

13 MR. JOHNSON: This is not an attempt to box anybody
14 in or chop anything up or anything along those lines. We're
15 just trying to be practical.

16 THE COURT: Right. I see the argument that Mr.
17 Donosky essentially straddles both adequate assurance and --
18 when I say adequate assurance, it straddles assumption and
19 assignment and confirmation. So whether Mr. Donosky's claim
20 runs with the lease and is therefore part of assumption and
21 assignment, or whether it's -- tell me this. Under the plan,
22 who pays Mr. Donosky's claim. Does it go with the lease or is
23 it part of the estate's cure?

24 MR. JOHNSON: The cure would come from the estate,
25 Your Honor.

1 THE COURT: For Mr. Donosky?

2 MR. JOHNSON: Yeah. Yeah. That'd be my
3 understanding. The cure would come from the estate --

4 THE COURT: Okay.

5 MR. JOHNSON: -- and the sale proceeds.

6 THE COURT: Okay.

7 MR. JOHNSON: The go forward obligation, to the
8 extent that is assumed, --

9 THE COURT: Okay.

10 MR. JOHNSON: -- I believe it's \$8,000 a month for
11 the duration of the lease. So if that --

12 THE COURT: Right.

13 MR. JOHNSON: If that is -- the Court determines that
14 has to follow the lease, --

15 THE COURT: Right.

16 MR. JOHNSON: -- then that would be a buyer
17 obligation for the next thirty years.

18 THE COURT: Oh, okay. So it'd be a buyer obligation?

19 MR. JOHNSON: Yeah. The -- well, I mean, the ongoing
20 obligations, --

21 THE COURT: Right.

22 MR. JOHNSON: -- not the cure.

23 THE COURT: Right.

24 MR. JOHNSON: The unpaid amount -- Mr. Donosky, my
25 understanding is, has not been paid since the bankruptcy

1 filing. He was paid -- paid and made current when the cure
2 payment was made back in March.

3 THE COURT: So, --

4 MR. JOHNSON: That would be the --

5 THE COURT: Okay. So, in other words, it's more of a
6 traditional estate cure, buyer assumes, if it runs with the
7 lease?

8 Mr. Bleck?

9 MR. JOHNSON: Mr. Bleck may have an opinion on how I
10 just used his sale proceeds.

11 THE COURT: Okay.

12 MR. BLECK: No, no. I always have an opinion on how
13 people use my sale proceeds.

14 Your Honor, I think we're -- the issue is going to be
15 whether there are two separate contracts or not and whether
16 those contracts are assumed both, or one is assumed and one is
17 rejected.

18 THE COURT: Okay.

19 MR. BLECK: If they're one single contract, then they
20 would follow the lease.

21 THE COURT: Okay.

22 MR. BLECK: And then we'd have the cure --

23 THE COURT: Right.

24 MR. BLECK: The prepetition cure would be the estate
25 and the future obligations would be the buyer.

1 If it's found to be two separate contracts, then that
2 contract would be rejected, and any rejection claim would be a
3 part of the estate. But that's what we're looking for.

4 And in terms of order, I debated about whether I should
5 venture into this argument on scheduling. But I think it does
6 make sense, just given the flow, because I think we all did
7 anticipate the adequate assurance would go first, because
8 we're in the third part --

9 THE COURT: Uh-huh.

10 MR. BLECK: -- of the assumption. So I think that
11 makes sense.

12 But with respect to the flow, given that apparently Mr.
13 Harshfield is going to be a critical witness relative to the
14 adequate assurance, that he should go next, and then we should
15 deal with Donosky after Mr. Harshfield. Because I think that
16 makes sense for everybody, and I think everybody is in
17 agreement with that. And I would just say, I think we'll
18 probably defer Mr. Donosky until Thursday late morning or
19 early afternoon. I think that's the schedule we're going to
20 land on.

21 THE COURT: All right. And so, Ms. Green, if you can
22 just keep in touch with Mr. Hendricks. And I'll, if I
23 remember, if, --

24 MS. GREEN: Absolutely.

25 THE COURT: Okay. If I remember, I'll try to remind

1 you as well.

2 All right. Mr. Siegel?

3 MR. SIEGEL: Yes, Your Honor. Thank you. I get the
4 impression that perhaps sometime confirmation will occur on
5 Thursday, but it may not occur until Friday. And I'm
6 wondering -- I'm assuming many of us are listening for
7 confirmation purposes, and I'm wondering if either the Debtor
8 or someone can send some kind of advance notice or make --
9 file something as to when they believe -- not holding them to
10 it -- the confirmation hearing will occur. I may stick around
11 for the arguments on adequate assurance, but it would be
12 helpful if we can get some kind of notice as to when
13 confirmation will proceed.

14 MS. GREEN: After the adequate assurance portion is
15 completed, we can take a recess and then give everyone notice.
16 Would that work?

17 THE COURT: Yes. That works. Again, I always want
18 to be cognizant that folks that only are interested in one
19 portion of a hearing only have to attend that portion of the
20 hearing.

21 I also recognize that, in a complex Chapter 11 case, I
22 don't think that what we're doing is that far afield from
23 other sale hearings and confirmations.

24 So I think that probably what you may want to plan for,
25 Mr. Siegel, is perhaps Thursday.

1 MS. GREEN: Uh-huh.

2 THE COURT: And then if there is some other
3 clarification, perhaps -- this is what I don't want to do. I
4 don't want anything on the docket that'll indicate that like a
5 new hearing is starting or anything like that. Asking
6 something to be on the docket just is a little bit unique.
7 And so I would recommend that you log on on Thursday. Maybe
8 on Thursday we can kind of take a lay of the land of where we
9 are and when we anticipate confirmation starting early on
10 logistically, and then we kind of go from there. All righty?

11 MR. SIEGEL: Okay.

12 THE COURT: Okay.

13 MR. SIEGEL: That's fine, Your Honor.

14 THE COURT: Thank you, Mr. Siegel. I appreciate your
15 cooperation there.

16 MS. GREEN: Great idea. Thank you.

17 THE COURT: Okay. So we'll start with, unless folks
18 need a brief minute, the Court is prepared to start with
19 opening statements. I'm ready for anybody.

20 MS. GREEN: This will be the briefest opening
21 statement that you've ever heard. Trinitee Green of
22 Polsinelli on behalf of the Debtors. With respect to adequate
23 assurance arguments and objections, I would defer to Ms.
24 Walker. Thank you.

25 THE COURT: All righty. Time saved. Okay.

1 MS. WALKER: Formally, good morning, Your Honor.

2 Adrienne Walker for Bay 9 Holdings.

3 THE COURT: Good morning.

4 OPENING STATEMENT ON BEHALF OF BAY 9 HOLDINGS, LLC

5 MS. WALKER: And Your Honor, today actually
6 represents a new day for The Edgemere. After being in
7 bankruptcy since April of 2022, and now with four plans before
8 you, we're here today to approve a new day for the residents
9 of The Edgemere. And that new day is through an asset
10 transaction where Bay 9 is going to be acquiring substantially
11 all the assets. It's going to be managing it with an expert
12 team. And moving forward, for the residents, to be out of the
13 stigma of a Chapter 11, to be out of the process of a Chapter
14 11, and at least for the residents, to be able to have a new
15 leadership team in place for their future.

16 THE COURT: Just one moment.

17 MS. WALKER: Of course, Your Honor.

18 (Pause.)

19 THE COURT: I apologize. I had a gremlin under
20 there.

21 MS. WALKER: Sure. So, Your Honor, after a
22 competitive auction process where Bay 9 submitted the stalking
23 horse bid, there was no other competing offers. We were the
24 prevailing and appointed to be the successful bidder and
25 successful winner of that action process. And we're here

1 today in support of the Court's approval of the Debtor moving
2 forward with the asset purchase agreement.

3 And I know you're going to hear about 98 percent of today
4 on adequate assurance. And I can assure Your Honor this is
5 the first time in my experience that adequate assurance is
6 driving the bus. Because, as Your Honor knows, the standard
7 for adequate assurance is that the purchaser is more likely
8 than not to be able to take and satisfy the lease payments.
9 So I want to frame the testimony we're going to have in the
10 next few days with the standard. And the standard, I think
11 all the parties agree, is: Is the lease more likely than not
12 to be performed by the purchaser?

13 Now, here, the purchaser is Bay 9, and it's led by
14 sophisticated investors. And we have the principal here today
15 to give testimony, Ms. Kjerstin Hatch, and you'll hear from
16 her in a few moments. The Bay 9 leadership team has decades
17 of investor experience, and experience in particular with
18 senior living communities, including CCRCs, assisted living,
19 skilled nursing, and all the continuums of care.

20 Bay 9 is also -- we're not insiders. We're not affiliated
21 with the Debtors. You're going to hear testimony that we're
22 not -- we've not controlled the Debtors, we're not directors
23 and officers, and all the typical attributes to know that we
24 are an independent investor and future owner.

25 Now, Bay 9 is a special purpose entity. Your Honor, as

1 Your Honor I think had mentioned in one of the hearings I
2 attended, you're familiar that special purpose entities are a
3 typical vehicle to acquire. But it's a vehicle with real
4 humans that are operating it. Those real humans have decades
5 of experience. And Bay 9 has invested, as you'll hear, in
6 over fifty communities in senior living alone, not -- and let
7 alone all their other investment experiences in other
8 industries. So they have the expertise.

9 And Your Honor will hear that the Bay 9 entity has -- is
10 led by a sponsor, and the sponsor is being -- contributed
11 substantial resources to Bay 9's success in this case.

12 You'll also hear that the sponsor is not new to this
13 bankruptcy case. In fact, they were -- they are a Bondholder
14 in this case. So they had the benefit of months of
15 understanding what The Edgemere is about, its business, its
16 opportunities, and what the residents need in this case. So
17 they come at it with knowledge.

18 They've supplanted that knowledge with additional
19 diligence. And as an investor, what they want to make sure of
20 is that the business is going to be successful going forward.
21 In order to do that, you want to make sure we have a good
22 management company backing that up. So Bay 9, through its
23 expertise and understanding the marketplace, sought out a
24 particular management company that would have the skill set,
25 that understands both senior living as well as turnaround

1 situations. So, being aware of the general good industry
2 reputation of The Long Hill Company, invited The Long Hill
3 Company to be the management company.

4 Now, the management agreement is not yet finalized, as
5 you'll hear about. However, they have been engaged to be Bay
6 9's consultant in this process. And through that process with
7 Bay 9, have gone through the exercise of making sure they have
8 a business model that it proves more likely than not that they
9 can pay the lease payments under this lease.

10 By doing that -- how do you do that? You become smart
11 about as much as you can about the business. Here, throughout
12 that process, they have taken both the publicly-available
13 information. There's also been information that they have
14 received through the data room that RBC had set up. They have
15 received information from the Debtors. And Your Honor, as
16 because the sponsor is a Bondholder, received information as
17 the Bondholder, but also a DIP Lender. And you'll hear about
18 that role as well.

19 So, after all that experience, you develop a business
20 plan. And you're going to hear that the business plan, again,
21 is more likely than not to pay the lease payments. In order
22 to understand the business plan, it has two attributes. One,
23 what is the operating stability for The Edgemere going
24 forward, and what is the physical needs of The Edgemere going
25 forward?

1 Now, Your Honor, for the past two trials, or a trial that
2 I participated in, maybe not the middle one, but the first of
3 our trifurcated process was all about the property conditions.
4 Property conditions informs a business plan, its capital
5 investment in a community going forward. So what do you need
6 to do? You need to take the information you have, the best
7 information you have -- property condition assessments, you go
8 on the campus yourself, you take the tours, you ask the Debtor
9 -- all of those good skills and important investment decisions
10 were done by Bay 9, its sponsor, and with the support of Long
11 Hill, with its consulting services.

12 It listened to other consultants, like ARCH Consultants
13 that we're here about, who gave their own property condition
14 of The Edgemere. There was a whole trial about property
15 condition. So Bay 9 had the benefit of being informed by
16 other people's thoughts about the physical plant. It heard
17 about how the Debtor had an opinion, perhaps, as part of
18 negotiations with the Bondholders before the bankruptcy, of
19 what the property condition needs are. So it had that benefit
20 of listening to what the Debtors' consultants -- I think
21 Plante Moran -- had to say about it. It also had the benefit
22 of ICI's consultant, Terracon.

23 All of that information informs the business plan. And
24 that business plan, again, shows that Bay 9 is more likely
25 than not to make the lease payments.

1 It has -- and so, Your Honor, now that you have a business
2 that has informed people doing the diligence, putting together
3 an informed business plan, you need to have the finances to
4 back that up. We have a sponsor that has the financial
5 wherewithal to adequately perform under the lease. Your
6 Honor, you're going to hear testimony that, today, Bay 9's
7 balance sheet has over \$57 million in cash in the balance
8 sheet. Already two -- approximately \$2.5 million of that was
9 already put forth as an earnest money deposit for the sale.
10 That is hard money that is on the table now for the sale.
11 It's in escrow with the Bond Trustee's escrow agent.

12 Fifty-five million dollars has been put on the balance
13 sheet in cash by the sponsor last week. You'll see the
14 evidence of that in this trial. Today, that \$57.5 million
15 approximate are going to fund a \$48.5 million purchase price,
16 leaving approximately \$9 million in cash, in cash, on the
17 balance sheet, well sufficient to give assurances that Bay 9
18 is more likely than not to make the lease payments.

19 In addition, because we heard from ICI, the Landlord, that
20 it had concerns about the adequacy of the assurances, we said,
21 well, what more do you want? Okay. We'll give you more.
22 We're going to show to you that this sponsor is committed to
23 this project. There's obvious common sense to that. Who
24 would pay \$50 million for a project and not pay the lease?
25 It's just common sense.

1 But put common sense aside, even though it shouldn't be,
2 because that's just business and that's proper business
3 decision-making. The sponsor has said to Bay 9, I will commit
4 \$15 million, if you need it, for capital expense improvements
5 as well as any working capital shortfalls. I'm here for you
6 if you need it. Come, turn around, ask me for it, and we'll
7 advance the funds, in the same way it satisfied the initial
8 commitment of approximately \$57.5 million.

9 In addition, we looked at ICI and said, okay, you want to
10 make sure that your lease is going to be paid. We understand
11 we are cash rich on this. However, we'll give -- we'll have
12 an additional commitment from the sponsor to Bay 9 for a
13 million dollars, of particularly just on the rent shortfalls.
14 In essence, that's \$16 million additional commitments on top
15 of the \$9 million of cash that's going to be sitting on the
16 balance sheet after the sale closes.

17 THE COURT: That's about, what, two and a half
18 months' worth of rent?

19 MS. WALKER: Um, yeah.

20 THE COURT: Oh, no, excuse me.

21 MS. WALKER: One quarter.

22 THE COURT: One quarter? Okay.

23 MS. WALKER: So, those commitments are real. I know
24 the Landlord would like something direct. We understand that.
25 We know that they want more.

1 However, Your Honor, that is not what the case law
2 requires. There is no case that either ICI has found or Bay 9
3 has found that says it is required to have security deposits
4 or other cash reserves.

5 In essence, Your Honor, as you know from the case law and
6 the briefs have advised, there's flexibility to the Court to
7 determine what is needed to establish that Bay 9 is more
8 likely than not to pay the lease.

9 Contrary to ICI, this is a flexible standard, and there's
10 no requirement as to a particular form. We think the adequate
11 assurance package we've put forward, both the experience of
12 the operator, the potential -- the manager, the experience of
13 the investors at the table here, the actual cash and the
14 commitments, are far beyond what is necessary for adequate
15 assurances.

16 Your Honor, I do want to pause and say that I think Your
17 Honor is going to be -- try to be suggested that the standard
18 is anything other than adequate assurance. I think, by
19 reading the briefs from ICI, they're going to suggest this is
20 a feasibility issue under a plan.

21 Your Honor, this is a liquidating debtor. Personally, I
22 think the case law suggests that feasibility isn't an issue
23 with a liquidating debtor. And if feasibility is an issue --
24 some of the case law says, if it's a liquidating Debtor, you
25 look to feasibility -- and the feasibility is, is the sale

1 going to be consummated such that there are sale proceeds to
2 pay the plan and implement the plan? I think, if the sale
3 goes through, of course feasibility is taken care of. I don't
4 think that ICI should be merging the issues of a feasibility
5 with an adequate assurance. This is a sale. It's purely
6 adequate assurance. So I don't want us to be confused by the
7 issue.

8 Another issue you're going to hear about today is whether
9 or not the Bankruptcy Code at the 365(1) requires Bay 9 to
10 post security. Your Honor, this is actually quite
11 interesting. We sourced *Collier's*. We sourced the case law.
12 Not a lot of cases have been up about 365(1). I think it's
13 quite plain, it's because if any contract counterparty could
14 come to the court and say, I need a security deposit, and get
15 it from 363 -- 365(1), it would almost eradicate the typical
16 adequate assurance in 365(b)(1)(C).

17 If you're looking to just read the plain language of
18 365(1), it essentially says, if you had a security deposit
19 before or you had a letter of credit before, we're going to
20 give that to you again. And I think that's what the plain
21 language says. That's certainly what the legislative history
22 says. It's in our brief. And it's certainly not that a
23 landlord could say, well, it's in 365(1) so I should get it.
24 That's not, I think, what the Bankruptcy Code plain language
25 says, and I don't think that that's what *Collier's* and the

1 legislative history say. Unfortunately, there's not a lot of
2 cases on it. If it really were a situation where you could
3 get a security deposit every time by a landlord, I'm sure
4 there'd be much more case law about it.

5 But the plain language says what it says, and we think
6 it's very clear. If there were a security deposit. But here,
7 under our lease that we're hoping to be assigned, there is no
8 security deposit. There is no letter of credit. There is no
9 assurances. There's no requirement.

10 So the Landlord wants something more than they had, and
11 that is not what bankruptcy is about. Bankruptcy is about,
12 can I adequately perform this lease? And what assurances do I
13 have to perform this lease in front of us? It doesn't have
14 it.

15 You're going to hear testimony over this trial about the
16 fact that this community, The Edgemere, has gone through
17 different transitions over the past twenty-something years.
18 It has had expansion projects. It has had a new member
19 substitution when Lifespace came on in 2019. At no time did
20 ICI say, I want a security deposit, I want a letter of credit.
21 And all those times, under their lease, when it has --
22 particularly with a member substitution, Your Honor, it had to
23 consent to the assignment. A member substitution was a change
24 of control, and it could have said, I want something. It
25 didn't. It made its choice. It has a lease that does not

1 require a security deposit or other financial accommodation,
2 and that's the lease we're seeking to have assigned.

3 We think we've provided the assurances. We think we're
4 here today, and frankly, there's no other better alternative
5 for the residents than this sale.

6 We think the sale is going to be excellent for the
7 residents. We think we're going to bring new leadership. We
8 have sophisticated and capable operators. We have the skills,
9 the financial wherewithal, and the information to make the
10 residents first.

11 And instead of all of the argumentation that may go on
12 after the sale is completed, because we understand there's
13 going to be litigation that may continue in other aspects, for
14 the residents and for Bay 9 we want to move forward. We want
15 to move forward for the residents. We think this is a lease
16 that we have full capabilities of more likely than not
17 satisfying it. And we ask that, at the end of the day, that
18 Your Honor approve the sale with the adequate assurances
19 packages that Bay 9 has offered.

20 Thank you.

21 THE COURT: Thank you.

22 MR. GOLD: I guess that means it's me.

23 OPENING STATEMENT ON BEHALF OF INTERCITY INVESTMENT PROPERTIES

24 MR. GOLD: Good morning again, Your Honor. Ivan Gold
25 of Allen Matkins, --

1 THE COURT: Good morning.

2 MR. GOLD: -- co-counsel for the Landlord, ICI.

3 Well, we've already had discussion this morning, Your
4 Honor, so we know what brings us here today. Adequate
5 assurance of future performance. But we're also here this
6 week regarding the plan. And contrary to what you've heard,
7 they do go together. And I'll explain that as I go.

8 So, we start today with the underpinning for a motion to
9 assume and assign. Section 365. And Your Honor has already
10 broken us up into parts that track the subsections of
11 365(b)(1), and that'll be our starting point. So we started
12 with (b)(1)(A), cure or adequate assurance of a prompt cure.
13 That was the property condition hearings --

14 THE COURT: Uh-huh.

15 MR. GOLD: -- that you heard and have evidence and
16 the current studies, and that's under advisement.

17 Your Honor also heard, as a separate proceeding within
18 this proceeding, 365(b)(1)(B), pecuniary loss.

19 THE COURT: Uh-huh.

20 MR. GOLD: So now we're here on 365(b)(1)(C). But
21 we're also here on other portions of 365. And I'll go through
22 those as I go.

23 So, we heard from Bay 9's counsel that adequate assurance
24 is not a guarantee. We heard that adequate assurance just
25 simply means it's more likely than not that the proposed

1 assignee will make lease payments. We think that's an
2 oversimplification of the test.

3 First, as we know from the cure hearing, it's not all
4 about rent. I'm not diminishing the importance of \$4 million
5 a year in rent, but a lease of this term and this magnitude is
6 an organism. It imposes a lot of duties on the parties just
7 than writing a rent check.

8 This Court, in *In re Senior Care Centers*, said the chief
9 determinant -- chief, not sole -- is whether the assignee can
10 meet its rental and other lease obligations. So the ability
11 to perform repairs, restoration, replacements, those things
12 that multiple professionals that we heard the buyer rely on.
13 That is a reasonably anticipated lease obligation. The
14 parties can debate whether it's year two or year four. The
15 consultants can debate whether it's imminent or something that
16 can be pushed back. But they're coming. It's not a question
17 of when. Excuse me. It's only a question of when. It's not
18 a question of if. I think the roof is a really good example
19 for that.

20 We also hear from the case law that adequate assurance is
21 a facts-and-circumstances evaluation, determined on a case-by-
22 case basis. And again, we can look at *Texas Health*
23 *Enterprises*, which is cited in the brief. That's Fifth
24 Circuit.

25 And we heard from Ms. Walker and both parties have cited

1 an old case out of the Eastern District of Virginia, *Hub of*
2 *Military Circle*, for the proposition that adequate assurance
3 can take many forms.

4 So, what are the facts and circumstances here, Your Honor?
5 This is not a 2,500 square foot former Radio Shack. This
6 isn't even the 35,000 square foot commercial space in 2300
7 *Xtra Wholesalers*. And I'll return to that case in a moment.
8 The Edgemere is a 16-plus acre multi-building continuous care
9 retirement community with over 300 residents. We've already
10 heard evidence of deferred maintenance at this property and
11 its potential scale. The lease has over 32 years -- excuse
12 me, almost 32 years remaining. And the annual rent is
13 approximately \$4 million. So when we like to float cases
14 about facts and circumstances, look at the lease in the
15 particular case. Look at this lease. I would submit this one
16 is bigger.

17 So, in our view, adequate assurance -- because it's
18 adequate assurance of future performance. That's the plain
19 language of the Code. It's not adequate assurance of payment
20 of rent. So, what can performance mean in this context? So,
21 we break it into two buckets.

22 The first is what I call the structural adequate assurance
23 issues. And this issue is not novel. It comes up a lot. It
24 usually comes up in the form of triple net leases. Office and
25 retail leases. The most common example, of course, would be

1 operating expenses, CAM, billed on an estimated basis with an
2 annual reconciliation. So, since in my experience nobody's
3 ever done a 363 sale and 365 assignment of lease exactly on
4 the 1st of January, or the 31st, we end up in the middle of
5 the year all the time. So how do we handle that? The buyer
6 doesn't want to be responsible for the CAM when it's billed
7 the following year. And where's the debtor when the CAM bill
8 is due? What does adequate assurance require? The two of
9 them to figure it out. Not the Landlord's problem. We get
10 the benefit of our bargain. When we go to send the bill,
11 somebody pays it, usually the tenant. You can't structure
12 your deal to avoid a reasonably-anticipated obligation under
13 the lease such that both parties don't have to perform it.
14 That's not adequate assurance.

15 So we take from that example to this example. The APA, I
16 would urge you take a close look at Sections 2.3 and 2.4 of
17 the APA because they contain an attempted bifurcation of
18 liability. It's based, of course, on the closing date.
19 Liabilities are limited to those accrued -- accruing or
20 arising on or after the effective date in terms of assumed
21 liabilities.

22 Similarly, there's reference to those liabilities that
23 pertain to the ownership, operation, or conduct of the
24 business, or the ownership of the purchased assets prior to
25 the closing date, whether or not accrued, fixed, contingent,

1 or otherwise, whether known or unknown, and whether or not
2 recorded on the books and records of the seller or any of its
3 affiliates.

4 The buyer doesn't want to touch that with a ten-foot pole,
5 according to the APA.

6 We heard from Ms. Walker that Lapis, the sponsor of the
7 purchaser, had knowledge and understanding prior to the APA.
8 So what did it do? It bargained to avoid it.

9 But the case law also teaches us that bifurcation is not a
10 complete assignment of the lease. There are numerous cases --
11 if you prefer the Latin, assumption and assignment is *cum*
12 *onere*. Other cases refer to it as all or nothing. Others go
13 with benefits and burdens. I prefer bag and baggage.

14 So, what does the APA provide for? It leaves the cure to
15 the Debtor and attempts to exclude pre-closing liabilities
16 that have not risen to the default stage. Because think of
17 all the things, Your Honor, that fit into that language with a
18 property like this. Those items which pertain to the
19 ownership, operation, or conduct of the business, prior to the
20 closing date, whether or not accrued, fixed, contingent, or
21 otherwise. Whether known or unknown.

22 So, for example, if we peel back the roof to go repair it
23 or replace it and we find a surprise relating to the condition
24 of the property, it could be a latent defect, could be
25 something that's been deteriorating over time, but its source

1 is prior to the closing date. Aha. Not the responsibility of
2 the buyer under the APA. That is not assumption and
3 assignment as required by Section 365. That is not a complete
4 assignment of the lease, particularly, and I'll address this
5 some more, when the Debtor wants a 365(k) release.

6 So where do we go? Now, I think you'll hear testimony
7 that indicates, as a matter of business practice, that Bay 9
8 would be inclined to do it, but that's not the standard. Are
9 they required to do it? Is it required performance under the
10 lease, as it would be for any ordinary tenant?

11 They're the ones accusing us of going outside the four
12 corners of the lease. *Contraire*. Now I've gone to French.
13 They're the ones who are going outside the four corners of the
14 lease. They have attempted through the APA to unbundle the
15 lease and avoid liabilities under the lease that any ordinary
16 assignee would have to assume. The APA should not be a shield
17 that can be used later.

18 What about cracks in the sidewalks? There might need to
19 be repairs two years from now. Might be a small crack today,
20 a small crack at closing, a bigger crack two years from now.
21 Does the buyer say, you know, we're not responsible for all of
22 that?

23 So, Bay 9 attempts to divert this issue by asserting that
24 they'll be responsible for post-closing performance under the
25 lease. That's at Docket 1175, one of their two briefs. But

1 that's not what the proposed confirmation order says. Take a
2 look at Docket 1246, Your Honor, Paragraph 30, approving the
3 APA unconditionally.

4 Landlord is entitled to adequate assurance that physical
5 conditions, even if they exist in some sort today but are in a
6 non-default state, when they need to be repaired in the future
7 will be performed. That any currently unknown conditions at
8 the property, when they're discovered, will be performed.
9 That's what adequate assurance requires. That's the benefit
10 of the Landlord's bargain. That's the four corners of the
11 lease.

12 Another structural adequate assurance issue relates to the
13 tenant's duty to indemnify the Landlord for third-party
14 claims. Premises liability, generically, Your Honor. It's
15 the most likely example. And indemnity is governed by several
16 sections of the lease requiring insurance, but primarily
17 Section 5.15 of the ground lease. The Debtor currently
18 appears to have occurrence-based coverage through this year.
19 And sneak preview for everybody: That's one of the things
20 we're going to talk to Mr. Harshfield about. That would
21 appear to handle occurrences prior to the closing date. But
22 the proposed plan can't get out of its own way to impair that
23 coverage and the Landlord's ability to resort to it.

24 Again, the Debtor seeks a 365(k) release. The definition
25 of claim, as under 101(5), as broad as possible, contingent,

1 unasserted. So, in that sense, the underlying claim against
2 the Debtor is released and the Landlord is exposed to that
3 claim and those causes of action. Can't tender to the buyer
4 because they didn't bargain to pick up that liability and they
5 claim they're excluded from it.

6 And I would remind everyone -- although I think Ms. Hatch
7 and I tie for coming farthest to today's hearing, win a bottle
8 of wine -- while I'm from California, I do know that Texas is
9 not a direct action state. So we have to name the Debtor. An
10 injured party has no claim against the Debtor's insurer until
11 the Defendant is determined to be liable. So the Landlord's
12 claim for indemnity is impaired.

13 It's further impaired by Section 8.6, which, without
14 carve-outs, contains a broad injunction that would bar the
15 assertion of the Landlord's indemnity claims. This is
16 effectively a third-party release of the Debtors' insurers
17 without any consideration.

18 And just to pile on a little more, the Fourth Amended Plan
19 adds new Section 4.6, dissolving the Debtor. Now, there was a
20 wind-up procedure under Texas law, but at some point, given
21 the two-year statute of limitations, who's the Debtor's agent
22 for service? Where does the Landlord even tender at this
23 point down the road?

24 This isn't an academic or hypothetical issue, Your Honor.
25 This has happened in other cases, and it's happened here. We

1 heard at the property condition cure hearing from Mr. Hannon
2 that one such lawsuit was recently filed. There could
3 certainly be others.

4 The second adequate assurance issue is the more ordinary
5 financial wherewithal application. The more-likely-than-not
6 standard. And as I said, it's more likely than not perform
7 under the lease, not just make lease payments. Bay 9 is
8 unquestionably a newly-formed special purpose entity. A
9 Newco, in the parlance. And yes, that is a typical structure
10 for the asset purchase entity in bankruptcy.

11 But in the context of adequate assurance of future
12 performance, Bay 9 has no operating history. It has no
13 employees. Its principals are affiliated with Lapis Advisers.
14 And we'll hear from Ms. Hatch, the founder of Lapis and one of
15 the managing principals of the Lapis entities. There is no
16 question that Lapis has a history of investing in distressed
17 debt and special situations. They've invested, according to
18 their website, in over 40 senior living projects.

19 But how does that translate here? Just as investing in
20 bonds doesn't make me eligible to be Secretary of the
21 Treasury, Lapis has very little experience in direct
22 operation. Lapis has never been a tenant under an operating
23 lease other than for its own offices. It's different being a
24 tenant than being an owner.

25 Lapis first became involved in The Edgemere, buying a

1 portion of its bond debt at a discount, the Tarrant County
2 Cultural Education Facility Finance Corporation bonds. I hope
3 that's the last time I have to read that off altogether. And
4 it bought those bonds at a discount because that's what it
5 does. And that buyer was Lapis Municipal Opportunities Fund
6 IV. Call that Fund IV. Fund IV is the parent of another
7 intermediate SPE, Grenelle Holdings, LLC, which is the direct
8 parent of Bay 9. And it's in the exhibits. You'll see the
9 org chart. Like Bay 9, Grenelle is newly formed. Has the
10 same principals, has no employees, and has no business
11 operations other than holding the membership interests in Bay
12 9.

13 Now, Lapis has once been a direct owner and operator of a
14 senior living community. Now, we'll hear evidence that that
15 property is called The Heritage of Green Hills in Shillington,
16 Pennsylvania. To put that on a map, that's near Redding in
17 Eastern PA. They bought that property, it looks like, in
18 2019, and sold it in 2022. And in that time, Lapis switched
19 managers, apparently because the first one was not performing
20 to expectations.

21 So you will hear from Ms. Hatch regarding Lapis's
22 experience in the field of investing, but here we're operating
23 and we're leasing.

24 So, looking for that operating experience, Bay 9 turns to
25 another Newco, Long Hill at Edgemere, LLC. Now, Long Hill at

1 Edgemere is a newly formed operating entity of The Long Hill
2 Company. I'll generically refer to them as Long Hill. And
3 according to their website, Long Hill specializes in managing,
4 stabilizing, enhancing, and rebuilding underperforming,
5 distressed healthcare organizations.

6 But you'll learn, and it was acknowledged in Bay 9's
7 opening, they don't yet have a management contract. It's
8 still being negotiated.

9 So, Long Hill acted as a consultant to assist Bay 9 with
10 its financial projections. And you'll see those projections.
11 They've been designated by multiple parties. They famously
12 have the confusing Bates stamp of Bay 29. Bay 9's Bay 29.
13 Would have been so much easier if it was 30. That's Bay 9's
14 Exhibit 10. And you'll learn that Bay 29 has two sources,
15 Long Hill and the ARCH Consultants' report, and additional
16 analysis in-house at Lapis.

17 But ARCH did their thing. Long Hill did their thing.
18 Long Hill did not factor into their financial analysis
19 projected capital expenditures. The Bay 29 projection relies
20 on ARCH for that.

21 So we also know that, in looking at these numbers, Bay 9
22 had the benefit of the Plante Moran report, because not only,
23 even though Bay 9 was not formed until October 27th, Lapis,
24 through Fund IV and another entity, owned some bonds. They
25 own about 20 percent of the bond debt. So they've been part

1 of the bond group. They've had access to that information.
2 We can debate whether, yes, they're not an insider of the
3 Debtor, but they're an insider of this case.

4 So, Bay 9 synthesizes the Long Hill report, what they get
5 from ARCH, what they already know. They go in this with their
6 eyes open. And what do we see? You will see that Bay 9, if
7 everything goes according to script, projects to lose \$7.9
8 million in the first year. Negative cash flow, year one.
9 They have an operating loss above the line, to use Ms. Hatch's
10 terminology. And below the line, when we factor in CAPEX, we
11 go even more negative.

12 So let's talk about that CAPEX, because that's a phrase
13 that gets thrown around a lot in this case. CAPEX has two
14 components in their analysis. One is the resident turnover.
15 That's the remodeling when a resident leaves. We heard from
16 Mr. Soden, for example, about that at the property condition
17 phase.

18 But then more traditional infrastructure capital
19 expenditures have a separate category, and that comes from
20 ARCH. Not identically, but that was identified and will be
21 identified as the source of that report.

22 So, remember, we burn through \$7.9 million just year one.
23 Year two is better. That's only negative \$4.5 million.

24 Now, what if it doesn't go according to plan? What if
25 there's a speed bump on this path to recovery? Mr. Lawlor

1 will tell you on behalf of Long Hill that they're an
2 experienced CCRC operator and they're well-qualified to
3 transition The Edgemere to Bay 9's operation. You'll hear
4 that these are conservative estimates of future performance,
5 and they're confident they will not only achieve but will
6 exceed those results in their report. But, remember, Long
7 Hill didn't look at property condition.

8 And you will also learn that Long Hill has never
9 transitioned in real-time an entrance-fee economic model to a
10 rental model, the underpinning of their analysis.

11 So, we'll offer Mr. Polsky, and he will tell you that
12 while Long Hill is a reputable operator, they have never made
13 this transition. You will learn that their assumptions are
14 not only conservative, they're fundamentally flawed as part of
15 this conversion. That certain operating expenses, when
16 compared to historical averages, are understated. That the
17 turnover statistics are not reliable because of the two
18 different business models.

19 We'll learn about market conditions. But merging
20 feasibility and adequate assurance, you'll also learn how
21 Lifespace's ability to fund the settlement under the plan
22 which provides certain benefits to existing residents that
23 relate to their rental obligations impacts Long Hill's own
24 operating projections, potentially as does the resolution of
25 the Donosky issue.

1 So, in this reality, the goalposts move a little, where we
2 didn't start there, Your Honor, when we got the original APA,
3 the \$48.5 million purchase price. We started with just simply
4 undefined commitments from a parent entity, Fund IV.

5 Now, as of February 13th, there is a commitment letter.
6 And the commitment letter has two components. First, there is
7 the so-called rent commitment. That lasts for three years
8 after closing. That's it. Thirty-two years, just under 32
9 years left on this lease. The rent commitment lasts for three
10 years. It's a million bucks. That's less than three months'
11 rent.

12 You'll hear that, in addition, there's a \$15 million
13 commitment for working capital and CAPEX. Yet if you run the
14 projections -- and then of course we also have, since we
15 started, the additional \$9 million in initial capitalization.
16 We didn't start there, but we got there today. So we've got
17 the \$15 million commitment. I've got the \$9 million. But
18 remember, Your Honor, we blew through \$7.9 million in year
19 one, if everything goes according to plan. I go four and a
20 half at year two if everything goes according to plan. So
21 we've already exhausted the \$9 million and we're starting to
22 go into the \$15 million.

23 But what of these commitments? Ms. Walker told you that,
24 Landlord, this should be great. Commit if you need it. Ask
25 me for it and we'll advance the funds. Except, Your Honor,

1 the Landlord is not a party to this commitment. It is a
2 Lapis-to-Lapis deal. Ms. Hatch signed a letter to herself.
3 It disclaims third-party beneficiaries. It doesn't even have
4 an attorney's fees clause to enforce it. That's what we're
5 asked to rely on, is a Lapis-to-Lapis promise.

6 Now, you're going to hear from Mr. Hull again that the
7 property conditions that have been identified are not going
8 away and that the likely capital needs for this project are
9 part of our facts and circumstances for adequate assurance.
10 What's happening on the ground, not what's happening in a
11 spreadsheet.

12 You'll hear from Mr. Winnecke of ARCH, who, originally
13 retained by UMB, which is identified as the client in his
14 report, but relied upon by Bay 9, who also looked at Terracon,
15 looked at Plante Moran. And the fact is, Your Honor, that
16 this property is a fixer-upper. It's going to take \$18
17 million projected over the next five years, apart from unit
18 turnover remodeling expenses. So that \$15 million isn't even
19 a rainy-day fund. That \$15 million is part of demands that
20 are likely and already projected. The order those demands may
21 arise may be debatable, or the circumstances of history, but
22 they're out there. And we're not even sure if this commitment
23 is real.

24 What happens if Fund IV refuses to pay itself? This is
25 not skin in the game. This is not a commitment that's

1 enforceable by any other party.

2 So we heard about what I refer to as the four-corners
3 attack. And Ms. Walker mentioned it, that adequate assurance
4 can't go outside the document. I simply say that's wrong.
5 The statute and case law demonstrates otherwise. Multiple
6 places show that's not true.

7 For case law, Your Honor, I'd urge you to start with,
8 cited, *2300 Xtra Wholesalers*, District Court, Southern
9 District of New York, a little over ten years ago, at 445 B.R.
10 113. On appeal from the Bankruptcy Court. Thanks to PACER,
11 we can go back and look at the Bankruptcy Court's order. What
12 did it order? A five-year security deposit with a burn-down
13 after five years if the assignee did not default. There is an
14 example. We cited others.

15 We see cases that say the best form of adequate assurance
16 as it relates to rent is prepaid rent. The lease didn't
17 provide for that. It's in escrow. The lease didn't provide
18 for that. It's a guarantee. The lease didn't provide for
19 that. That's what the cases say.

20 But let's go to the statute, because when we talk about
21 the four-corners argument, the Code giveth and the Code taketh
22 away. So 365(f) is a good starting point. That replaces
23 consent with your approval. So when Ms. Walker tells me, oh,
24 the Landlord did this and that in the past, they weren't in
25 Bankruptcy Court.

1 And then we go to places like 365(b). We talked at the
2 last hearing about *Old Market* and the cases it cites that says
3 no notice of a default is required under the lease to trigger
4 a cure under 365(b). That's not in the lease.

5 We have 365(k). If the Debtor executes a complete
6 assignment, it's off the hook. That's a major off-the-lease
7 provision, because customarily, of course, the assignor
8 remains liable on the lease, and that can influence the
9 Landlord's decision whether to give consent or not. That's
10 not what's happening here today.

11 And right behind 365(k) is 365(l), and it's part of the
12 balance. And maybe the reason -- certainly, in my experience
13 -- 365(l) doesn't get adjudicated a lot is because it's
14 usually the basis for a deal. It says what it says, so you
15 negotiate off of it. But the language is clear. Yes, it's
16 ultimately subject to your approval. You're the boss under
17 365. My client's consent right is not what's governing this.

18 But the plain language of 365(l) is clear, and it is
19 certainly relevant that if this assignee was a hypothetical
20 tenant walking in off the street to lease this property in
21 2023, what would the Landlord require, looking at these
22 financials?

23 So, yes, we have a Newco with no operating performance.
24 We also have, compared to 1999, we don't have a new building.
25 We have 2023 dollars, not 1999 dollars. We don't have years

1 -- it's clearly plural, we can debate how long -- of deferred
2 maintenance.

3 So what would this product today, what lens would the
4 Landlord view it under? That's 365(1). And you'll hear from
5 Mr. Hannon that ICI regularly requires future and potential
6 tenants to provide some level of financial security, depending
7 on the circumstances presented. That can be references. That
8 can be financial statements. That can be security deposits.
9 It can be parent guaranties, third-party guaranties, personal
10 guaranties from principals, letters of credit, rent payment
11 pledges that are enforceable by the Landlord, or prepaid rent,
12 or some combination of all of those.

13 In this case, Bay 9, our Newco, has not offered any of
14 those things other than references and financial statements.
15 Can't take those to the bank.

16 The Landlord, contrary to a lot of people, will tell you
17 and have told you, it doesn't want to be here. We want a
18 healthy tenant. But just as much as we're not crazy about
19 being here today, the one thing we definitely don't want to be
20 is back in this building, in front of you or another judge,
21 two to three years from now.

22 The Code allows us one shot. Ms. Walker talks about a new
23 day. Unfortunately, that's a new day for the residents.
24 Adequate assurance is about whether, for the Landlord, it's a
25 new day or is it same old-same old?

1 We would love to have a healthy tenant, or a Newco with
2 substantial credit enhancement's commitment that the Landlord
3 can look to. But we have a right to be skeptical. This is
4 the place to air our concerns. These are not hypothetical
5 concerns. You have a tenant who went bankrupt. A tenant who,
6 because of capital constraints, did not perform full
7 maintenance. We've had a slip-and-fall, trip-and-fall case.
8 You've seen the pictures.

9 So, what do we want? What have courts done? What tools
10 do you have? We're saying simply that whatever remedies we
11 may have two years from now in state court, with or without
12 the APA as currently written, is not adequate assurance of
13 future performance.

14 And if you look to the case law, Your Honor, you'll see
15 we're entitled to some form of credit enhancement that
16 addresses 31-plus years of a remaining term under a lease that
17 has over \$4 million in annual rent. And we're entitled to
18 provisions of that sale that govern our new tenant that don't
19 impair the benefit of our bargain down the road.

20 Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Gold.

22 Is there anyone else who wants to be heard by way of
23 opening?

24 Okay. It is 11:30 now. Do the Plan Sponsors have a
25 witness that they could perhaps at least get through direct in

1 an hour?

2 MS. WALKER: Your Honor, I think Bay 9 is going to be
3 presenting several witnesses. The first witness, I do expect
4 to go longer than that duration.

5 THE COURT: Okay.

6 MS. WALKER: We can take a break, of course, for
7 lunch, or we can take an early lunch now, but I do expect it
8 to go longer than that.

9 THE COURT: My only issue is that we have to break at
10 1:30 no matter what. So if you don't mind breaking in the
11 middle of a witness, we could. I'm just trying to maximize
12 time. So whenever we take the lunch, we'll need to dovetail
13 back to 1:30. So what do the parties propose?

14 MS. WALKER: Your Honor, I want to leave time for the
15 Court to have a --

16 THE COURT: Sure.

17 MS. WALKER: -- recess as well. We could start for
18 about 45 minutes, give 45 minutes to lunch, to the hearing.
19 We would have an extended lunch. That'd be my recommendation.

20 THE COURT: Mr. Gold?

21 MR. GOLD: Yes, thank you. My first request is if we
22 can take a short recess. Maybe ten minutes. And with Ms.
23 Walker's concurrence, since the only people at lunch this
24 early are in junior high, that we start a witness and that we
25 go as far as we can, but break earlier than your 1:30 -- say,

1 12:30 or 12:45 -- to provide you and your staff with a break.
2 You said about 30 minutes for your hearing, so we'll budget
3 for that and come back at 2:00 and take it until 6:30, if I
4 remember.

5 THE COURT: Okay.

6 MR. GOLD: That would be my proposal.

7 MS. WALKER: I think he said what I said, so I agree.

8 THE COURT: Okay. Fair enough.

9 (Laughter.)

10 THE COURT: So it's almost 11:30. We'll take a break
11 until 11:40 and we'll return.

12 MR. GOLD: Thank you, Your Honor.

13 MS. WALKER: Thank you, Your Honor.

14 THE CLERK: All rise.

15 (A recess ensued from 11:29 a.m. to 11:42 a.m.)

16 THE CLERK: All rise.

17 THE COURT: Please. Be seated. We'll go back on the
18 record in Case No. 22-30659. I'm prepared for folks to call
19 their first witness.

20 MS. WALKER: Thank you, Your Honor. I'd like to call
21 Ms. Kjerstin Hatch to the stand.

22 THE COURT: Please. Ms. Hatch? I'll go ahead and
23 swear you in, and then we'll make sure that you have some of
24 the many exhibit notebooks. If you could raise your right
25 hand for me.

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1 (The witness is sworn.)

2 THE COURT: Thank you very much. Please be seated.

3 And Ms. Walker, if you can make sure she'll spell her name for
4 the record, because it's not a very typical spelling.

5 MS. WALKER: Thank you.

6 KJERSTIN HATCH, BAY 9, LLC'S WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MS. WALKER:

9 Q Good morning. We're still morning. Good morning, Mrs.
10 Hatch. Would you please give me your full name, and please
11 spell it for the record?

12 A Sure. Kjerstin Hatch. First name spelled K-J-E-R-S-T-I-
13 N. Last name H-A-T-C-H.

14 Q And where do you reside?

15 A I reside in Mill Valley, California.

16 Q Thank you. And would you please outline for us your
17 various corporate capacities that relate to The Edgemere
18 bankruptcy and your proposed purchase of The Edgemere
19 community, perhaps starting with the Lapis Advisers that we
20 first have been discussing?

21 A Sure. I am a managing principal and founder of Lapis
22 Advisers.

23 Q Uh-huh.

24 A And also the managing member of Lapis GP, LLC, which
25 serves as general partner to investment funds sponsored by

1 Lapis Advisers.

2 Q And a little bit of background. What is Lapis Advisers'
3 business?

4 A So, Lapis Advisers invests in -- in and around the
5 municipal bond space, with a special emphasis on
6 underperforming, distressed, and special situation municipal
7 bonds. We also invest in performing municipal bonds. We're a
8 liquidity provider to the market when it is in need of it.
9 And we also have the ability to invest outside of the
10 municipal bond arena, in -- we could invest in dirt on the
11 moon if we wanted to. But our sweet spot tends to be in and
12 around the municipal bond industry, real estate industries,
13 and healthcare.

14 Q Thank you. And does Lapis have any experience in
15 investing in senior living investment communities?

16 A We do. Senior living tends to be a fairly high percentage
17 of our book. About forty percent of our investments
18 historically have been in senior living. About \$580 million
19 worth of either par amount or investments within senior living
20 communities. About forty percent of that are in rental
21 communities, about sixty percent of that in continuing care
22 retirement communities, and we really invest throughout the
23 spectrum of care.

24 Q And do you have a sense of the magnitude of how many units
25 that might reflect, of residential units?

1 A Yeah. We added it up. It was 18,000 units.

2 Q And you said that some of that experience is both in the
3 rental and the entrance-fee model CCRCs. Has Lapis ever been
4 involved in deals that transitioned or changed from an
5 entrance fee to a rental community?

6 A We have. We have invested in a situation that is in
7 Michigan that is actually transitioning over time. And we
8 have invested in a situation outside of Chicago that
9 transitioned, somewhat similar to The Edgemere, immediately.
10 So, started as an entrance fee, became a rental-only
11 community.

12 Q And did any of the deals that Lapis has invested in
13 involve a ground lease structure?

14 A Yeah. We added that up also. About ten percent of the
15 deals in which we have invested in senior living alone have
16 ground leases.

17 Q So, in your experience, is it more or less common to have
18 a senior living community that has a ground lease?

19 A So, it is somewhat common in nonprofit municipal bond
20 situations for there to be a ground lease, in part because so
21 many of these situations come out of other owners of property.
22 For example, a university would like to expand their reach
23 into the community. They have excess land. And so they will
24 allow a nonprofit community, continuing care retirement
25 community, to be built on their land, and then there's a

1 ground lease structure. That is one very common outcome to
2 have a ground lease.

3 But there are others. Certainly, similar situations here,
4 where the ground is so valuable and so hard for an interested
5 developer to find that they enter into a ground lease with the
6 owners of the land that don't have an interest in selling the
7 land.

8 Q And have any of the deals where Lapis has advised involved
9 taking equity or direct ownership of a senior living
10 community?

11 A We have. So, and I'll tell you, it is more rare than not,
12 in large part because we like to keep a lot of the income from
13 our investments as tax-exempt. So if we touch the keys, that
14 income stream becomes taxable. So, although we have
15 significant investments in situations, we may put significant
16 additional resources into situations, we may provide
17 management and boards, directions on how to improve the
18 operations of a property, we really try to do all of that
19 activity as debt-holder in order to preserve the tax-exempt
20 nature of the income.

21 But there are situations where it is best that we become
22 an equity owner or where that stream of income staying tax-
23 exempt is simply not available. And so one situation that we
24 were involved in was in Shillington, Pennsylvania. A bank
25 wanted to exit a senior living investment, as did the equity,

1 and so we coordinated with both parties to become the equity
2 owner of that, what is then and still remains a continuing
3 care retirement community that had some a very significant
4 challenges to it.

5 Q And that community, is that The Heritage community that
6 we've been talking -- that we had heard --

7 A The Heritage of Green Hills, yes.

8 Q Thank you. And your experience as an equity owner of
9 that, did that involve any development or any capital
10 planning?

11 A It did. So, the facility had an aged assisted living/
12 memory care onsite. And we needed to really take that 1960s
13 building, which was not -- you know, it was just -- it wasn't
14 practical from just about every sense -- and recreate those
15 services, assisted living and memory care, in a different
16 location on campus, going ground up and building that. In
17 addition, of course, we actively were engaged in all of the
18 other aspects of operations of that senior living facility.
19 But the construction of that new tower was not an
20 insignificant aspect of our ownership.

21 Q And was Lapis directly involved in the management of that
22 community, or did it engage a third party?

23 A So, we engaged -- as we -- as we do in senior living, we
24 engaged a third party to manage the facility on a day-to-day
25 basis.

1 Q And why is that your -- Lapis's preference?

2 A Managing senior living is -- is a very complicated
3 business, we recognize, from a regulatory standpoint, from a
4 delivery-of-care standpoint, from a negotiations with vendors,
5 from staying on the cutting edge of healthcare delivery,
6 making sure that the residents are taken care of, making sure
7 that, from a position in the market, that we are -- that one
8 is constantly adjusting to what is needed for the success of a
9 facility.

10 And while Lapis enjoys working with the operators, that is
11 not the highest and best use of our daily activities. We
12 leave much of those very important details to very capable
13 professionals that are able to do that on a daily basis.

14 Q And you mentioned in The Heritage that it involved
15 significant additional capital investment, capital expense
16 improvements. Have you had any other experience investing
17 with communities that require capital expenditures, and how is
18 -- what's Lapis's approach in those communities?

19 A Yeah. So, almost -- I shouldn't say almost all. A
20 majority, certainly, of the situations that we get involved in
21 need capital expenditure improvements. Because we are working
22 within the nonprofit world most commonly, and most commonly in
23 situations that are underperforming, it is not in the least
24 uncommon for some -- and one of the reasons they are often
25 underperforming is that they have fallen behind on their

1 capital investments. And so one of the more common ways that
2 we invest is to purchase existing debt and then look at
3 investing additional proceeds in a debt capacity into a
4 project -- also we've done it on an equity capacity -- to make
5 sure that the property improves to the point where it can
6 compete within the marketplace. And so understanding what is
7 needed, what is needed to be competitive, what is needed for
8 the life and safety of the residents, both with regards to the
9 plant, both with regards to business plans, with regards to
10 monies that may be needed just to redo a dining. Whatever it
11 is, getting our hands around what's needed to create the
12 success is something that we've had more than a decade of
13 experience in.

14 Q And it sounds like Lapis is a pretty nimble investor, able
15 to respond to the needs of the situation. What is your
16 approach as a team to meeting the needs of the community? How
17 do you understand the needs of the investment?

18 A So, we have dedicated members of the team that do nothing
19 but senior living. And they certainly make sure that they are
20 -- they attend all of the conferences that this incredibly
21 sizable industry provides, understanding what is best of care,
22 what is foremost. We review property condition reports. We
23 speak with a lot of engineers. We model out what we think the
24 needs of any -- any of our projects are going to require.
25 What is the revenue going to look like? What are the expenses

1 going to look like? What are the opportunities within a
2 broader community? What are the challenges within a broader
3 community?

4 And we -- was pass on 9.5 out of 10 opportunities out
5 there that we just don't think we can be helpful in and that
6 we don't think make good investments. But this is a very
7 large industry, and we find -- we find a number that we think
8 are compelling from all those standpoints.

9 You have to combine that with a fund structure that is
10 flexible enough to meet challenges, to respond to bumps in the
11 road, both positive and negative. And we've been doing this
12 long enough that we knew that when we created the investment
13 vehicles that would invest in these situations, that they
14 needed the capability and the flexibility to react to unknowns
15 that will come about, as they have in every investment we've
16 ever made.

17 Q Thank you. Now, turning to the Lapis fund that's
18 investing in The Edgemere, what is the name of that fund?

19 A So, we have -- the largest investment that we have is
20 through Lapis Municipal Opportunities Fund IV. We also have
21 an investment in a smaller fund called Crestone III.

22 Q And just for today's purposes and ease of the Court, if I
23 say Fund IV, we understand we're speaking about the Lapis
24 Municipal Opportunities Fund IV?

25 A Correct.

1 Q Thank you. Thank you. So, what role does Fund IV have in
2 this -- in The Edgemere, the Debtors' business?

3 A So, Lapis Fund IV is a -- has been a Bondholder for some
4 time in this situation, and we have also provided -- been one
5 of the Bondholders that has provided debtor-in-possession
6 financing to the borrower through this Chapter 11 case.

7 Q And do you recall the general percentage of the
8 outstanding par value of the bonds that Lapis Fund IV holds?

9 A I believe we hold -- it's somewhere shy of 25 percent.
10 Above 20 percent. Call it -- I think it's 23-something-or-
11 other percent.

12 Q But not the majority?

13 A We are not -- well, no, we are not the majority.

14 Q Uh-huh. You also said that Fund IV was one of the DIP
15 Lenders to this Chapter 11 bankruptcy case?

16 A Correct.

17 Q And is Lapis Fund IV the only DIP Lender, or one of
18 several?

19 A We are one of several debtor-in-possession lenders in this
20 case.

21 Q And if you could, what has been Fund IV's day-to-day
22 involvement related to this Chapter 11 case, overseeing and
23 underseeing what's going on in this Chapter 11 case?

24 A It's certainly evolved, as all cases do. You know, at the
25 onset of the case, it was certainly understanding what a

1 Debtor-led reorganization would look like. Working as a
2 Bondholder to understand what that -- what the Debtor wanted,
3 how the Debtor wanted to reorganize, what their business plan
4 would look like, understanding those business plans, and
5 determining, along with our fellow Bondholders, how confident
6 we were in those and working with -- and working with the
7 Debtor.

8 As things got closer to the end of the summer, early fall,
9 when I think collectively we were looking to make sure that
10 this case would progress in a way that maximized the recovery
11 and also provided for the health and safety of the residents,
12 we looked to work as a Bondholder to end exclusivity, to
13 enable others to put a plan forth that we thought had a high
14 degree of success, would likely lead to success. At that
15 point, we put on a different hat and proposed putting our hat
16 in the ring as an acquirer of the property directly and
17 started setting up entities and working with counsel to move
18 the case in that direction.

19 Q Now, you've mentioned some bankruptcy buzzwords like
20 exclusivity. Has Lapis been involved in other, as an investor
21 or bondholder or otherwise, in other bankruptcy proceedings in
22 Chapter 11 cases?

23 A Yes. I think I personally am up to about 150
24 bankruptcies. Members of our team come from FTI, Houlihan
25 Lokey, and we are experienced within the bankruptcy arena, as

1 one needs to be if you're going to invest in distressed
2 situations.

3 Q And how have you kept informed about The Edgemere
4 bankruptcy case, the day-to-day what's on the court docket
5 versus in the business?

6 A Certainly, you know, we make sure that we see that court
7 docket on a daily basis. We look at MORs.

8 Q And MOR, you --

9 A We look at monthly operating reports. We look at
10 everything that is filed. We certainly, as a Bondholder,
11 would talk with our trustee, our counsel, our financial
12 advisors.

13 Q And here, did -- is it typical or in this situation of The
14 Edgemere does -- did the Bondholders have counsel and other
15 professionals advising it?

16 A We did, as Bondholders. We had Mintz Levin advising us.
17 We had RBC advising us. And then we also had the benefit of
18 The Long Hill Companies advising us.

19 Q And --

20 A In addition to property condition professionals.

21 Q My apologies. And I'm not going to ask you, and I'm
22 actually going to remind you not to mention any conversation
23 that you might have had with your Bond Trustee counsel or any
24 of those professionals. But just the activity, you were aided
25 -- Lapis Fund IV was aided by those discussions in

1 understanding what was going on in the bankruptcy?

2 A Yes. Yeah. And, you know, even before the bankruptcy, we
3 had the benefit of working and talking with the Debtors as
4 well.

5 Q That's right. You said you were an investor prior to the
6 bankruptcy case?

7 A Uh-huh.

8 Q A little bit about we've got this intermediary entity that
9 we just passed on briefly in talking, Grenelle Holdings.
10 What's Grenelle Holdings and what's your role with Grenelle
11 Holdings?

12 A So, Grenelle Holdings owns the equity of Bay 9, and
13 Grenelle Holdings is itself owned by Lapis Fund IV. I am the
14 president of Grenelle Holdings.

15 Q Now let's get to Bay 9, the entity who we're here
16 primarily to represent. What's your role with the limited
17 liability company named Bay 9 Holdings?

18 A I am the president of Bay 9 Holdings.

19 Q And so when and why was Bay 9 Holdings even formed?

20 A Bay 9 Holdings was formed in October of '22 to become a
21 bidder of The Edgemere, to become an owner of The Edgemere.

22 Q And just a little bit of clarification. Was Bay 9 always
23 called Bay 9?

24 A No. Our first choice was actually Truro. Truro. But it
25 was already taken. And when I say choice, our first choice,

1 there's no special magic to any of these names. I believe Bay
2 9 is my corporate counsel's favorite beach in -- outside of
3 Boston on the Cape. So --

4 Q As I might say Truro is as well.

5 A There you go.

6 Q If I could, there's -- you have a book in front of you.

7 A I do.

8 Q And it has several tabs.

9 MS. WALKER: And these are, for the Court and Your
10 Honor, Bay 9's proposed exhibits. And I believe Your Honor
11 might have that binder as well, but I'd just make sure, pause
12 before we go further. Thank you.

13 MR. GOLD: It's the skinny one, Your Honor, compared
14 to everybody else's.

15 MS. WALKER: And I'm impressed that and I would like
16 to let the record reflect that we are impressed that we are
17 the skinniest of the binders.

18 BY MS. WALKER:

19 Q Mrs. Hatch, will you please turn to Exhibit 2 or Tab 2 in
20 your binder? And Mrs. Hatch, you're not a lawyer, right?

21 A I am not.

22 Q Okay. But you do have experience in the forming of
23 entities, right?

24 A Correct.

25 Q Correct. And is this the certificate of formation of

1 Truro Holdings, LLC?

2 A It is -- it does appear to be that, yes.

3 Q And Mr. Baum, the author, is he -- did you authorize Mr.
4 Baum to form Truro Holdings?

5 A I did.

6 Q And Mr. Baum, is he -- is he your corporate counsel?

7 A Corporate counsel. Correct.

8 Q Thank you.

9 MS. WALKER: Your Honor, I'd ask to admit Tab 2 as
10 Bay 9 Exhibit 1.

11 THE COURT: Any objection to the admission of Exhibit
12 2?

13 MR. GOLD: No objection, Your Honor.

14 THE COURT: Okay. Thank you very much. Exhibit 2 of
15 Bay 9 is hereby admitted. And for sake of the record, the
16 Court will note that Bay 9's exhibits will be located on the
17 docket at Docket 1225.

18 MS. WALKER: Thank you.

19 THE COURT: Just one moment.

20 THE CLERK: Did you say, Tab 2, Exhibit 1?

21 MS. WALKER: Tab 2 is Exhibit 1.

22 THE WITNESS: It says Exhibit 2.

23 THE COURT: Just one second. Go ahead.

24 MS. WALKER: And Your Honor, I don't know if I want
25 to presume that Exhibit 1 will be admitted.

1 THE COURT: Okay.

2 MS. WALKER: But we do -- I'm not anticipating any
3 objections. It may be easier if I mark this for
4 identification and then we just admit it 2 and then go to 1.
5 I just -- I just want to keep it with the binder or however is
6 most efficient for the Court.

7 THE COURT: Sure. I think what we'll do is we'll
8 stick with the exhibit numbers as they were filed. That tends
9 to work out best for the Court. So, and that's why the Court
10 announced it as Exhibit 2, which is the exhibit from the
11 binder, again, found at Docket 1225-2.

12 And to the extent that we get to the org chart, whether
13 you seek to admit it or use it as a demonstrative, we'll
14 reference it as Exhibit 1.

15 MS. WALKER: I greatly appreciate that. Thank you.

16 THE COURT: Okay. Thank you so much.

17 MS. WALKER: Thank you.

18 (Bay 9 Holdings, LLC's Exhibit 2 is received into
19 evidence.)

20 BY MS. WALKER:

21 Q Mrs. Hatch, if we can turn to Tab 3 in that binder, just
22 the next -- the next tab.

23 A Uh-huh.

24 Q And I think you mentioned that there was a name change.
25 Do you see this document, which is the certificate of

1 amendment? Is this the certificate amendment that you
2 directed to change the name from Truro to Bay 9?

3 A It is.

4 Q All right.

5 MS. WALKER: And Your Honor, I seek to admit this as
6 Exhibit 3.

7 MR. GOLD: No objection.

8 THE COURT: Thank you very much. Bay 9's Exhibit 3
9 is hereby admitted.

10 MS. WALKER: Okay.

11 (Bay 9 Holdings, LLC's Exhibit 3 is received into
12 evidence.)

13 BY MS. WALKER:

14 Q Mrs. Hatch, who are the officers of Bay 9?

15 A The officers are -- I am the president of Bay 9. Basia
16 Terrell is the vice president of Bay 9. And Frank Chavez, who
17 is our chief financial officer at Lapis Advisers, is our
18 secretary.

19 Q And does Bay 9 Holdings have any employees?

20 A It does not have any employees.

21 Q If you could turn to Tab 4 in the binder.

22 A Yeah.

23 Q Does Bay 9 have an operating agreement that governs the
24 operations of Bay 9?

25 A It does indeed.

1 Q And I put a document in front of you that is titled,
2 "Operating Agreement of Bay 9 Holdings." Would you please
3 look through this and answer for me if this is Bay 9's
4 operating agreement in its books and records?

5 A (Pause.) It is indeed.

6 Q Thank you.

7 MS. WALKER: And Your Honor, I would ask to admit Tab
8 4 as Exhibit 4 into the record.

9 MR. GOLD: No objection.

10 THE COURT: Okay. Thank you very much. Bay 9's
11 Exhibit 4 is hereby admitted.

12 (Bay 9 Holdings, LLC's Exhibit 4 is received into
13 evidence.)

14 BY MS. WALKER:

15 Q And Mrs. Hatch, you mentioned that there were officers of
16 Bay 9, including yourself as president.

17 A Uh-huh.

18 Q And Ms. Terrell as the vice president. If I could ask you
19 to turn Tab 5 in your binder.

20 A Uh-huh.

21 Q This is titled a "Certificate of Encumbrances."

22 A Correct.

23 Q It's a document. Do you recognize this document?

24 A I do.

25 Q And you signed this document?

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1 A I did indeed.

2 Q And does this document include the signatures and
3 confirmation of the two primary officers of Bay 9?

4 A It does.

5 Q Thank you.

6 MS. WALKER: And Your Honor, I'd ask to admit Tab 5
7 as Exhibit 5.

8 MR. GOLD: No objection.

9 THE COURT: All right. Bay 9's Exhibit 5 is hereby
10 admitted.

11 (Bay 9 Holdings, LLC's Exhibit 5 is received into
12 evidence.)

13 BY MS. WALKER:

14 Q Now, Mrs. Hatch, if I can go back a little bit in your
15 binder, now back to Tab 1.

16 A Okay.

17 Q And this is a chart. Do you recognize this chart?

18 A I do.

19 Q Thank you. Can you tell me what this chart reflects?

20 A So, this is an organizational chart of Bay 9 Holdings and
21 its sponsor and the general partner of that sponsor.

22 Q And this is maintained in Lapis's or Fund IV's books and
23 records?

24 A That's correct.

25 Q As well as Bay 9's?

1 A Correct.

2 Q Thank you.

3 MS. WALKER: And Your Honor, I'd ask to admit Exhibit
4 1 as Exhibit 1. Tab 1 as Exhibit 1.

5 MR. GOLD: Your Honor, I have a concern that proper
6 foundation hasn't been laid. Just, who prepared it?

7 MS. WALKER: Thank you.

8 MR. GOLD: We haven't had the question asked and
9 answered yet.

10 MS. WALKER: Sure, Your Honor. I'm happy to.

11 THE COURT: Please.

12 BY MS. WALKER:

13 Q Mrs. Hatch, are you aware of who prepared this chart of
14 the organizational chart for Bay 9?

15 A I believe this was prepared by our attorney.

16 Q And is that Mr. Baum?

17 A Mr. Baum.

18 Q Thank you. Mr. Baum.

19 MS. WALKER: Your Honor, I'd ask to admit Exhibit 1
20 as -- Tab 1 as Exhibit 1.

21 MR. GOLD: With that foundation, no objection, Your
22 Honor.

23 THE COURT: Thank you very much. Exhibit 1 is hereby
24 admitted.

25 (Bay 9 Holdings, LLC's Exhibit 1 is received into

1 evidence.)

2 BY MS. WALKER:

3 Q And does this organizational chart reflect your
4 understanding as to the corporate structure of Bay 9 and its
5 parent and affiliate entities?

6 A It does.

7 Q And to your knowledge, other than the entities we've
8 discussed today, are there any other Lapis entities that have
9 any investment or any other role with The Edgemere bankruptcy
10 or Edgemere debtor?

11 A No.

12 Q And we briefly identified that there was a smaller Fund
13 III that was an investor, but it's not on this list because
14 it's not an affiliate, right?

15 A That's -- it is -- well, it is --

16 Q I apologize. An affiliate of Bay 9.

17 A It is not an affiliate of Bay 9, and it has not been
18 involved in the bankruptcy *per se*. It is a -- it is a passive
19 investor in the bonds.

20 Q Thank you. Is Lapis or any of the Lapis employees -- and
21 I mean that to include Bay 9 as well -- an officer or director
22 or an employee or otherwise an entity that controls the
23 Debtor?

24 A No.

25 Q And in your knowledge of all of Lapis, it's not an insider

1 of the Debtor?

2 A No.

3 Q Thank you. I'd like to turn a little bit more towards the
4 acquisition of The Edgemere and just pivoting a little bit in
5 our conversation. With respect to the potential acquisition
6 of The Edgemere as an asset sale during the Chapter 11, when
7 did Lapis begin to take concrete steps as part of formulating
8 whether or not it wanted to purchase, acquire the assets of
9 The Edgemere?

10 A I believe it was late summer or early fall of 2022.

11 Q And why does that time frame stand out to you in your
12 memory?

13 A It became evident to us that the reorganization that we
14 were expecting was unlikely to come about, and we felt that it
15 was -- the case needed to go in a different direction, the
16 asset needed to go in a different direction. We were
17 certainly willing to become an owner of the asset and work
18 with an operator to carry the asset forward. And we proposed
19 as much to the -- to the Bondholder Trustee.

20 Q And what's your recollection that was going on in the
21 bankruptcy case that might have made this opportunity come
22 available to either Fund IV or a Lapis entity?

23 A Yeah. It was -- it was the ability that the Bondholder --
24 that the Trustee had to file a plan in the bankruptcy
25 themselves and provide a solution for the situation that The

1 Edgemere found itself in.

2 Q So it was in the context of the exclusivity motion that
3 was last summer that made that opportunity available to you?

4 A Correct.

5 Q Thank you. What steps did Lapis take to learn more about
6 the asset and to put -- and what did it do to put together an
7 offer?

8 A So, Lapis had been involved for quite some time. In fact,
9 I think the first time that we visited The Edgemere was years
10 ago. So, throughout, we have tracked not just The Edgemere
11 but frankly all of the Dallas projects that also had municipal
12 debts associated with them. So we're looking at the
13 marketplace. We're looking at rents that are being earned in
14 the marketplace. We're looking at expenses. We're looking at
15 positions within the marketplace. We are looking at contract
16 differences.

17 And certainly with regards to The Edgemere, once we became
18 a Bondholder and started speaking directly with the Debtor, we
19 were able to augment the analysis that we -- that has been
20 ongoing, and it's ongoing in our firm with regards to all
21 sorts of projects across the country, and we added to that
22 store of information based on discussions with the Debtor. We
23 had the benefit of their estimates as to the going forward
24 operational potential of The Edgemere, the different
25 structures that could be undertaken with regards to entrance

1 fees, the capital needs of the project from a capital
2 improvement standpoint, the needed funds that would be
3 required to carry Edgemere through the next thirty years. And
4 we're able to hear the opinions of their financial advisors,
5 of our financial advisors, and also apply that to -- that
6 knowledge to other investments that we have not only in the
7 Dallas area but in the state of Texas and then across the
8 country, again, and distill all of that into our best -- our
9 best analysis as to potential value, which, again, includes
10 not just operating expenses but includes CAPEX needs, et
11 cetera.

12 We took all of that data, which was extensive by that
13 point, and made a -- made an acquisition proposal based on all
14 of that data being taken in as to where we thought we could
15 purchase the facility, understanding all of the benefits and
16 commitments that it would have on an ongoing basis.

17 Q And so it's fair to say that all of this information -- we
18 hear and talk a lot about models and modeling. Does Lapis do
19 its own modeling internally?

20 A Yes. We absolutely do our own modeling internally. And I
21 would -- I don't know the amount of, you know, variables that
22 have been put together with The Edgemere over time, but it's
23 significant. We have -- we build -- and when I say "we," I
24 don't personally, because the team doesn't let me personally
25 touch the models -- but they are incredibly experienced.

1 Again, they come from FTI, Houlihan. They are -- they grow up
2 within the ability to develop sophisticated models and project
3 out, again, all of the variables that are going to come at a
4 business like this, and then make adjustments as information
5 changes and improves on an ongoing basis, which it will. It
6 will -- it will change and improve in six months, and it'll
7 change and improve in a year. And that's how one continues to
8 analyze and project expectations and needs of all of the
9 various investments in which we're in.

10 Q So it's fair to say that it's a dynamic process that's
11 always evolving as you learn more?

12 A Absolutely. And has been over our -- you know, over my
13 thirty years in the business, owning all sorts of real estate,
14 all sorts of senior living situations, being involved in
15 those. And then just watching all the ones that you don't
16 invest in also and seeing how they evolve and change.

17 Q Okay. At some point, Lapis Fund IV adds a hat and becomes
18 -- and decides to become a potential offeror or buyer of The
19 Edgemere. At what time period did that happen?

20 A Again, this is -- this is the fall of 2022.

21 Q And what actions did Fund IV do, besides forming Bay 9, to
22 put together a proposal?

23 A So, you know, at that point, in addition to putting the
24 proposal together, developing the financial models, we start
25 looking at operator potentials, we start communicating our

1 desires and intentions and hiring counsel to help us negotiate
2 asset purchase agreements. We look at the major, certainly,
3 the major contracts, including the lease, certainly, that the
4 projects have engaged in. And we formulate a basis as to what
5 is going to be needed on a go forward basis for this
6 particular situation, and start that heavy -- that heavy work
7 of negotiating with the Trustee, negotiating with the Debtor,
8 and looking for the various professionals that would aid us
9 with regards to this acquisition.

10 Q And while Fund IV is a bondholder, did it -- was it acting
11 -- how did it act independently from the Bond Trustee?

12 A So, it needed to act independently from the Bondholder
13 Trustee. And so it -- it stopped participating in bondholder-
14 only meetings. For example, it changed its hat and it -- it
15 became an acquirer of the asset, the hopeful stalking horse
16 bidder of the asset, and started negotiating from that
17 position.

18 Q And to your knowledge in this case, did Lapis engage in
19 any discussions with any other potential buyers in a manner
20 that would have limited competition for the asset?

21 A We did not.

22 Q And were there any side deals with any other entity
23 relating to the acquisition of the asset?

24 A No.

25 Q And there was no discussion with the Bond Trustee or the

1 Debtor or anybody else about let us get this asset and sit
2 back, --

3 A No.

4 Q -- anything like that?

5 A They have -- they have very competent counsel. No.

6 Q Thank you. Who did Bay 9 actually make an offer to
7 purchase The Edgemere to?

8 A Bay 9 made a -- Bay 9 made an offer to purchase The
9 Edgemere to the Debtors and to the Trustee.

10 Q And so there was a period of time where the negotiation
11 was not with the Debtor but with the Bond Trustee?

12 A Correct.

13 Q And can you describe that negotiation process?

14 A Yeah. So when we started, when we put on our acquisition
15 hat, we certainly needed to negotiate an asset purchase
16 agreement that would deliver the asset to Bay 9 in a manner
17 that was acceptable to Bay 9. And so there were aspects of
18 that APA that obviously the Bondholders themselves maybe would
19 see in a different way, or said differently, Bay 9 may benefit
20 from certain negotiated points in the asset purchase agreement
21 that the Bondholders may not benefit from and may actually
22 reduce ultimately the Bondholder recovery while protecting the
23 assets of Bay 9.

24 And so our job as Bay 9 investors was to negotiate an
25 asset purchase agreement that comported with what Bay 9 would

1 be willing to enter into.

2 Q So it wasn't a one-sided negotiation, but was it a healthy
3 arm's-length negotiation?

4 A I think it was a very healthy arm's-length negotiation.
5 Yes. Again, the Bondholder Trustee has very competent
6 counsel.

7 Q And can you give some examples of some terms in the APA
8 that were negotiated, that were heavily negotiated for Bay 9
9 --

10 A Yeah.

11 Q -- that perhaps weren't in a template form of the asset
12 purchase agreement?

13 A Yeah. Certainly, the lease -- we understood that we would
14 be stepping into the lease on a go forward basis, and
15 complying with the lease on a go forward basis would be our
16 obligation, but we wanted a lease and a situation delivered to
17 us that was not in default and that any defaults that existed
18 with the lease were cured prior to our ownership. That was,
19 for example, one of the negotiated items.

20 Q Now, again, I know you're not a lawyer, but you have
21 experience in bankruptcy. What do you understand by to be
22 cured?

23 A So, in order, my understanding, with any contract that we
24 assume, is that anything owed at the time the lease is -- that
25 the contract is assumed, that anything owed at that time must

1 be cured. And so this is one of those contracts that we will
2 certainly be stepping into and assuming on a go forward basis,
3 but it needs to be cured as of the time that we -- that we
4 take it on.

5 Q And did Bay 9 participate in the property cure conditions
6 trial we had maybe last month?

7 A You know, we certainly have been tracking the property
8 condition reports, trials, disagreements throughout this
9 bankruptcy case.

10 Q So you -- Bay 9 under -- does Bay 9 understand that cure
11 also includes the property conditions as well as the monetary,
12 the rent?

13 A We do.

14 Q Okay.

15 A Yes.

16 Q Were there any other terms to the asset purchase agreement
17 that were particularly, you know, unique to Bay 9 that might
18 not have been aligned with maybe Fund IV's Bondholder hat?

19 A So, you know, obviously, we are very well aware of the
20 litigation between ICI and the Debtor. And there are -- there
21 are significant disagreements as to fees and obligations that
22 the Debtor has with the Landlord, and so we certainly took
23 those into account.

24 Again, we wanted to step into this situation, have the
25 obligations and the benefit of the lease on a go forward

1 basis, but we did not want to take on the historic
2 disagreements that have gone on between the Debtor and the
3 Landlord.

4 Q At some point, was there a meeting of the minds between
5 Bay 9 and the Bond Trustee in the form of an asset purchase
6 agreement?

7 A There was. We did -- we did come to a meeting of the
8 minds after several back-and-forths, and we were able to
9 settle on an asset purchase agreement.

10 Q And was that agreement signed by the Debtors at that time?

11 A It was not signed by the Debtors at that time.

12 Q And do you know whether or not that asset purchase
13 agreement was filed with the Court?

14 A I believe it was filed with the Court.

15 Q And was that in connection with another plan proposed in
16 this case?

17 A That is my understanding, yes.

18 Q After that first asset purchase agreement, what actions
19 and diligence did Bay 9 do -- and, again, I think we're
20 talking the November-December time period --

21 A Uh-huh.

22 Q -- relating to the asset purchase agreement? You know,
23 just what other diligence items?

24 A So, we started -- we started a lot of activities that I
25 think were more appropriate for an acquirer. And so we took a

1 deeper dive into other contracts involved with the Debtor. We
2 asked for access to the Debtors' data room to be able to
3 review information that may have been posted in the data room.
4 We started looking in earnest at various operator potential.
5 We started the legal work needed in understanding the
6 regulatory regime in which we would find ourselves. We
7 continued to add to the store of our information on the
8 competitors in the marketplace, how full they were, what kind
9 of rates they were getting and seeing what kind of benefits
10 they were offering to residents.

11 Q When did Bay 9 get access to the data room?

12 A I think Bay 9 obtained access to the data room in December
13 of 2022.

14 Q And do you recall if it was before or after Bay 9 was
15 designated the stalking horse?

16 A Oh, goodness. I think it may have been after Bay 9 was
17 designated as the stalking horse.

18 Q When Bay 9 finally did have access to the data room, was
19 there anything in the data room that surprised or helped
20 inform your -- Bay 9's stalking horse status?

21 A No. Not that I recall. We had had the benefit of so much
22 information prior to that. I don't remember discussing with
23 the team anything that was -- either altered our thoughts,
24 feelings, and pro forma significantly, or, frankly, was a
25 surprise with regards to what was put in the data room.

1 Q At some point, did Bay 9 negotiate directly with the
2 Debtors on the asset purchase agreement?

3 A We did.

4 Q What were the surroundings that came to be where the
5 Debtor was negotiating with you directly?

6 A So, there were aspects of this acquisition that were
7 important to us that were really Debtor issues. And as we
8 became closer and closer to information on the contracts, for
9 example, we were able to understand if there were non-compete
10 agreements or which Lifespace entity actually, for example,
11 employed the various personnel at the property. And we wanted
12 to change the asset purchase agreement to make sure, for
13 example, that we had the right and that Lifespace couldn't
14 take the employees away, that there was a non-compete aspect
15 in that that would ensure that we could employ the personnel
16 at the facility. That was very important to us.

17 Q So, in the asset purchase agreement, is there a particular
18 term or a condition precedent about the non-solicitation?

19 A Yes. Yes. We negotiated a non-solicitation agreement
20 with regards to the personnel at the facility to make sure
21 that -- Lifespace is a large organization with a lot of
22 properties, and we had heard some very encouraging things
23 about many of the personnel at the property, and had had the
24 benefit of meeting many of the personnel at the property, and
25 that was important to us, that we could keep them.

1 Q Did you negotiate directly with the Debtors' principals on
2 that asset purchase agreement?

3 A My attorney negotiated directly with the -- with the
4 Debtor.

5 Q Did the purchase price change in the asset purchase
6 agreement after negotiations with the Debtor, the purchase
7 price?

8 A It did not.

9 Q And did the cure aspect of the ground lease change at all
10 between the first asset purchase agreement between the Bond
11 Trustee and the Debtors?

12 A Not to my -- not to my recollection.

13 Q I'm going to ask if you could turn to -- I think it's --
14 bear with me -- Tab 17 in your binder.

15 A Okay.

16 THE COURT: Did you say 7 or 17?

17 MS. WALKER: One seven. Seventeen.

18 THE COURT: Thank you very much.

19 BY MS. WALKER:

20 Q Let me know when you're there.

21 A I am here.

22 Q Thank you. (Pause.) I'm almost there. Thank you. If I
23 could ask if you could turn -- and you'll notice that there
24 are Court-stamped numbers at the top. And there's a Page 38
25 of 144 and 39 of 144. About halfway through the stack.

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1 MR. GOLD: Ms. Walker, can you aid me with the page
2 number at the bottom?

3 MS. WALKER: Yes. It's Docket No. 937, and main
4 docket 39 of 144.

5 MR. GOLD: No. The document number at the bottom.
6 Oh, you're talking about the pleading itself?

7 MS. WALKER: 937.

8 MR. GOLD: Yeah. Okay.

9 MS. WALKER: Thank you.

10 MR. GOLD: Thank you.

11 THE COURT: If you could direct me to the page of the
12 APA. Once they're filed, the stamps overlap each other.

13 MS. WALKER: Oh, yes. I think it's --

14 THE COURT: We have got to fix that one day in ECF.

15 MS. WALKER: I know. I agree. I agree. Mine looks
16 like it's 937, Docket No. 937.

17 THE COURT: Right. Are you going to a certain page
18 of the APA, --

19 THE WITNESS: What's the page at the -- what's the
20 page --

21 THE COURT: -- or are you just going to ask her to
22 identify the entire --

23 THE WITNESS: -- at the bottom?

24 MS. WALKER: Yes. 39. Oh, yeah, I apologize. It's
25 the signature page. It's after 32.

1 THE COURT: Okay.

2 MS. WALKER: There's no page number on it, --

3 THE COURT: Okay.

4 MS. WALKER: -- you know.

5 THE COURT: Perfect.

6 MR. GOLD: Okay.

7 MS. WALKER: Would be easier.

8 MR. GOLD: Now we're on the same page.

9 MS. WALKER: Thank you. The experience dictates that
10 sometimes page numbers, you should just have signature stamps
11 on the bottom, so it says signature page to asset purchase
12 agreement.

13 BY MS. WALKER:

14 Q Let me know when you're there.

15 A I am there.

16 Q Thank you. Is this your signature on Page 39 of 144?

17 A It is indeed.

18 Q Thank you. And to your knowledge, did you receive the
19 signature of the Debtor to this document?

20 A Yes, I did.

21 Q Thank you. And as you have now flipped through this
22 document, is this the asset purchase agreement that you
23 negotiated with the Debtors?

24 A This does appear to be the asset purchase agreement
25 negotiated with the Debtors.

1 Q Thank you.

2 MS. WALKER: Your Honor, I'd like to admit Tab 17 as
3 Exhibit 17.

4 MR. GOLD: Your Honor, on a completeness rule, it was
5 also refiled at 1250. So I just want to understand. There is
6 a pleading called "Notice of Filing Executed Version of
7 Stalking Horse Asset Agreement" that was dated December 6th
8 that was -- has made the rounds as a bunch of exhibits and the
9 like. It's also, I believe, an exhibit to one of the plan
10 versions.

11 So, which -- which is the one of these many that have been
12 filed with the Court, some of them as recently as last week,
13 that we are relying on here today?

14 MS. WALKER: So, Your Honor, I appreciate that we
15 have probably filed more versions of an asset purchase
16 agreement, more versions of a lease, more versions of plans in
17 this case. I would like to say that, if we could, Bay 9 filed
18 their proposed exhibits, and that would probably be the best
19 version to use. And --

20 MR. DAVIS: That is 1250-3 is Exhibit 17.

21 MR. GOLD: That's the one I was referring to.

22 MS. WALKER: Thank you.

23 THE COURT: Okay. So I'm going to admit Exhibit 17,
24 which is filed at Docket 1250-3.

25 MS. WALKER: And I appreciate that. I think when I

1 was putting my personal book together, I might have pre-seeded
2 that filing.

3 THE COURT: That's okay.

4 MS. WALKER: Thank you.

5 (Bay 9 Holdings, LLC's Exhibit 17 is received into
6 evidence.)

7 MS. WALKER: Your Honor, I'm mindful of the time. I
8 was hoping to -- this might be an appropriate time to take
9 that break for the Court as well as, of course, your other
10 matter. If I could pause our examination. Of course, this is
11 not the conclusion.

12 THE COURT: Sure. Yes, if we're starting a new
13 topic, it probably does make sense to break now.

14 All right. So, again, it is 12:30. For purposes of the
15 parties, we can break until 1:45. We can break until 2:00.
16 If folks need until 2:00, we can break until 2:00. Is 1:45
17 fine, Mr. Gold?

18 MR. GOLD: I'm agnostic as to 1:45 versus 2:00, Your
19 Honor.

20 THE COURT: Okay. If folks could fill in around
21 1:45, again, all I have is one extend stay, probably, at 1:30.
22 So they tend to go pretty quickly.

23 MS. WALKER: Thank you, Your Honor. That sounds
24 great.

25 THE COURT: All right. So the Court will stand in

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1 recess for me until 1:30; for the parties, until 1:45.

2 MS. WALKER: Thank you, Your Honor.

3 THE CLERK: All rise.

4 (A luncheon recess ensued from 12:34 to 1:51 p.m.)

5 THE CLERK: All rise. The United States Bankruptcy
6 Court for the Northern District of Texas, Dallas Division, is
7 now in session, The Honorable Michelle Larson presiding.

8 THE COURT: Please. Be seated. Good afternoon
9 again. I'll recall Case No. 22-30659. When we last broke,
10 Ms. Hatch was on the stand, so I'll recall Ms. Hatch. Take
11 your time. Get situated. We're good. And I'll just remind
12 you, Ms. Hatch, that you're still under oath.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you so much.

15 MS. WALKER: Your Honor, let me know when you're
16 ready for me to proceed.

17 THE COURT: I am.

18 MS. WALKER: Thank you, Your Honor.

19 THE COURT: Thank you so much.

20 MS. WALKER: Thank you.

21 DIRECT EXAMINATION, RESUMED

22 BY MS. WALKER:

23 Q Ms. Hatch, when we broke for the lunch recess, we had just
24 -- we were discussing the asset purchase agreement. The asset
25 purchase agreement, if I could ask you to turn on your exhibit

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1 binder to Exhibit 6. Let me know when you're there.

2 A Okay.

3 Q Thank you. This document in front of us is titled "Bay
4 9's Consent of Sole Member." This document has a signature at
5 the bottom of Page 2. Is this your signature?

6 A It is.

7 Q And what do you understand this document to be?

8 A This is the consent of the sole member of Bay 9 Holdings.

9 Q And it's to -- to give authority to Bay 9 to enter into
10 and to perform under the asset purchase agreement?

11 A Yes. Sorry. Yes.

12 Q Thank you.

13 MS. WALKER: Your Honor, I'm going to ask to admit
14 Exhibit C as -- Tab C as Exhibit C. 6. 6. I misspoke. 6.

15 THE COURT: Okay.

16 MR. GOLD: No objection, Your Honor.

17 THE COURT: All right. Exhibit 6 is hereby admitted.

18 (Bay 9 Holdings, LLC's Exhibit 6 is received into
19 evidence.)

20 BY MS. WALKER:

21 Q Mrs. Hatch, at any point did the asset purchase agreement
22 get amended or modified?

23 A Yes.

24 Q And do you know when that happened?

25 A Well, it was modified numerous times in negotiations with

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1 the Trustee, and then it was subsequently modified again in --
2 with regards to consultations with the Debtor.

3 Q Okay. Thank you. If I could ask if you could turn to Tab
4 18 in your binder. It's the last one.

5 MS. WALKER: And Your Honor, we're looking at -- I've
6 updated my numbers -- it's Docket 1250-4.

7 THE COURT: Yes. This one, I can read.

8 MS. WALKER: Thank you, Your Honor.

9 BY MS. WALKER:

10 Q Mrs. Hatch, this -- the first page -- it was filed
11 together. The first page is just a notice of cancellation.
12 But if you turn to Exhibit A of this document, which starts on
13 Page 6 of 9, --

14 A Yes.

15 Q -- do you recognize this document?

16 A I do.

17 Q And is this an amendment to the purchase agreement?

18 A This is an amendment to the purchase agreement, yes.

19 Q And what's your understanding as to the terms of what was
20 amended?

21 A We amended the Excluded Liabilities, put a finer point on
22 WARN Act claims and other liabilities that could arise with
23 regards to rejection of contracts and with regards to cure
24 amounts due under the ground lease.

25 Q And if you could turn to the last page, it's 9 of 9 in

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1 this document, this has a signature. Is this your signature
2 for Bay 9 Holdings?

3 A It is indeed.

4 Q And is it your understanding that the Debtor as well
5 signed this document?

6 A Yes.

7 Q And this document was negotiated between your counsel and
8 Debtors' counsel?

9 A Indeed.

10 MS. WALKER: Your Honor, I'm going to ask that Tab 18
11 become Exhibit 18. And Your Honor, we particularly only need
12 to have the asset purchase agreement. I don't know if -- I
13 don't know if there's any objection to just having the whole
14 notice. The APA was just attached.

15 THE COURT: Okay. Thank you very much.

16 MS. WALKER: So, if there's no objection, we'll just
17 have the whole document, rather than pull out pages.

18 THE COURT: Okay.

19 MR. GOLD: The notice is on record. It records an
20 uncontroversial fact that there were no other bidders and the
21 auction was cancelled. So, no objection, Your Honor.

22 THE COURT: Okay.

23 MS. WALKER: Thank you.

24 THE COURT: Exhibit 18 is hereby admitted.

25 MS. WALKER: Thank you.

1 (Bay 9 Holdings, LLC's Exhibit 18 is received into
2 evidence.)

3 BY MS. WALKER:

4 Q Why was it important to Bay 9 to have -- have the APA
5 amended to clarify the cure?

6 A Again, you know, Bay 9 is -- is very clear in that they
7 are stepping into this lease on a go forward basis. But we
8 are also very clear that any -- any liabilities that exist
9 prior to our closing as to the lease must be cured and --
10 before we take -- before we step into those shoes.

11 Q And there was a particular concern regarding the ongoing
12 litigation between the Debtors and --

13 A Absolutely.

14 Q -- the Landlord?

15 A Yes.

16 Q And so the goal was to clarify that those expenses were
17 not going to be Bay 9's?

18 A That's exactly right. I mean, we understand that there is
19 litigation ongoing. We certainly understand that both parties
20 intend to litigate in the future. And we want to successfully
21 run a senior living facility and assume that lease, but we
22 don't want to be dragged into either of those battles.

23 Q So, after the APA with the Debtor was signed, what's your
24 understanding as to Bay 9's role as the stalking horse? What
25 does being stalking horse mean to -- in your understanding in

1 a bankruptcy case?

2 A Yeah. Being a stalking horse meant that we -- we were
3 making an offer to purchase the property, negotiating an asset
4 purchase agreement. That there would be a broader marketing
5 effort conducted for the assets, and we could have certainly
6 been outbid at a subsequent auction, at which time we could
7 have received our costs and expenses, a break-up fee. But
8 that if we were outbid at an auction, we would not -- we would
9 not be able to be the happy owner of the property on a go
10 forward basis.

11 And it provided comfort, certainly, I think, to the estate
12 that this facility would be purchased. We were, you know, we
13 were a stalking horse. In other words, there was a valid path
14 forward and we were certainly willing to be a part of that
15 valid path forward.

16 Q Thank you. And during the bidding, the competitive
17 bidding process from the time you were a stalking horse in
18 middle of December to that notice that we just looked at dated
19 February 6th, I believe, was there any contact from any other
20 bidder directly to you or to anyone else at Lapis about the
21 sale process?

22 A No. Not that I recall, at all. It's happened to us
23 historically in other cases, but it didn't happen in this case
24 at all.

25 Q And did you or, at your direction, anyone at Fund IV or

1 Bay 9 reach out to anybody else and invite them to participate
2 with you in the sale process?

3 A No. We did not.

4 Q And to your knowledge and under your direction, did Bay 9
5 or Lapis take any action to influence or impact the sale?

6 A No.

7 Q So, we've talked a lot about that Bay 9 is going to be the
8 owner but not the manager. What steps or what -- maybe let me
9 take a step back. When did you first learn of or know the
10 company, The Long Hill Company?

11 A You know, I don't know the first time I knew of The Long
12 Hill Company. They've been around for a significant period of
13 time. I do know that, in another situation in which we have a
14 significant investment, they were one of the names that came
15 up as a potential manager. This is going back quite a few --
16 quite a few months. Maybe even a year or so. And we
17 interviewed in that situation, through our capacity as part of
18 a bondholder group, we interviewed a number of different
19 managers. And we spoke with the Long Hill group, were really
20 impressed by their qualifications. I was able to, through
21 that situation, also call upon some other investors that I
22 know that they had done some previous work for, and heard some
23 wonderful things about them, about their capabilities, about
24 their transparency, about their professionalism. And so we
25 ultimately, along with other bondholders, recommended that

1 they become the manager, a new manager, in another situation
2 that we have. Also happens to be in Texas. Also happens to
3 be rental properties.

4 And so we got to view them through that engagement and
5 were really impressed. And so I know, as I said, I know that
6 I have heard of them and we have talked about them, but that
7 was the first time I had gotten that close to their work and
8 their qualifications.

9 Q And is -- has Long Hill been involved in this bankruptcy
10 before consulting to Bay 9?

11 A They were.

12 Q And --

13 A And through that engagement, we actually, because we were
14 so impressed with their analytical capabilities and their
15 transparency, we recommended as a Bondholder to the Trustee
16 that they be brought into this situation to aid everybody
17 involved in the underwriting of The Edgemere.

18 Q So, when Lapis decided to prepare its own offer through
19 Bay 9 to purchase The Edgemere, what general characteristics
20 were you looking for when making a selection for a manager?

21 A Yeah. So, certainly, you know, the qualities that I just
22 described are key. Turnarounds are their own special animal,
23 and so we really needed some -- like, a group that could not
24 only effectively manage a stabilized property, which we had
25 seen Bay 9 -- I'm sorry, Long Hill do, but we also needed an

1 entity that could come into a situation that is
2 underperforming and get on the ground quickly, assess, and hit
3 the ground running.

4 That's a personnel question. Do they have the personnel?
5 Do they have the capability? Do they have the tolerance for
6 that kind of an activity? Do they have the skills to aid
7 residents that are rightfully distressed by the changes and
8 the -- all of the uncertainty involved with a financially
9 distressed situation? That in and of itself is a skill set
10 that is not difficult [sic] to replicate.

11 We're also looking for an entity that has the -- that has
12 the geographical focus. Senior living is -- can be very
13 geographically different.

14 In this particular instance, we also wanted an entity that
15 could manage several levels of care, which is important.
16 There isn't just one level of care at The Edgemere, and there
17 won't be going forward.

18 A group that we enjoy working with. A group they can meet
19 deadlines. A group that has superior communication ability.
20 A group that, you know, quite frankly, folks want to work for.
21 Senior living is a very employee-needy business. And so
22 managing personnel, both at a facility but you can also see
23 how a manager is able to control the personnel or manage the
24 personnel at their own enterprise. And we saw wonderful
25 skills in that through Long Hill.

1 Q Is it safe to say, like the residents of The Edgemere that
2 like a discerning environment, that Lapis, too, wants a very
3 discerned manager?

4 A Absolutely.

5 Q How do these skills or characteristics that you look for
6 match up to your understanding of Long Hill as a potential
7 manager for The Edgemere?

8 A So, again, you know, the situation that we were -- that we
9 are involved in and that we -- that Long Hill was brought in
10 to was one in which the existing manager was literally
11 throwing the keys at what became Long Hill. They were
12 shutting down. They wanted out. They wanted out very
13 quickly.

14 It's a very different situation than exists here, but it
15 is a -- it is a stressful situation that requires -- it
16 requires very quick movement, to do everything from making
17 sure that the website is still housed, that the marketing
18 programs are moving forward, that all of the regulatory issues
19 that are so significant in senior living are being abided by.
20 When the manager is running out the door, parachuting in,
21 having the personnel to do that, stabilizing, and then
22 communicating with residents.

23 You know, ultimately, the success of a senior living
24 facility comes down to the happiness of your residents. That
25 is absolutely the key. And so you can -- you can get the

1 regulatory right and you can get the website right, but if
2 you've got unhappy residents, the whole thing is going to
3 fail.

4 And so being able to see Long Hill, again, parachute into
5 a situation that was quite dire and seeing how they were able
6 to handle that, and then continue to provide us what they
7 promised on a weekly basis -- with regards to occupancy, with
8 regards to NOI, with regards to license transfer, to have at
9 the tip of their fingertips information on how the IT licenses
10 were being transitioned over or what they were -- how many
11 open positions they had, and this is a situation with many
12 facilities -- it was really quite impressive. And so those
13 were all things that we were able to see them succeed at in
14 another situation and felt quite confident that they would be
15 able to succeed here as well.

16 Q And at the time you became the stalking horse, did you
17 move immediately to engage Long Hill to be your manager?

18 A No. We also had some other managers that, quite frankly,
19 are very good. And so we did run somewhat of a process. We
20 talked internally. We talked to some of our other managers.
21 And we needed to make sure that Long Hill was also interested
22 in this engagement. And ultimately we decided that the best
23 fit was The Long Hill Companies.

24 Q Uh-huh. And before -- is there an agreement in place now
25 between Bay 9 and Long Hill?

1 A No. The agreement, the management agreement, is still
2 being negotiated. I think that the major parts of the
3 agreement are done. We've all been very -- very busy. Long
4 Hill especially. They've been -- have had personnel onsite at
5 the facility. We've obviously continued to be -- to move
6 through this process. But I think, I think we're very close.
7 And I do think that the major points have all been decided and
8 we're mutually comfortable that the agreement is in very good
9 shape.

10 Q So it's your expectation that there will be a management
11 agreement in place, but perhaps, given the pace of this
12 bankruptcy case, that that -- those final details just haven't
13 been completed?

14 A Yeah. Exactly. I don't know which -- I know that -- I
15 don't even know whose court it is in right now, but it's just
16 kind of a normal working-through process and we're moving it
17 back and forth and it's getting finalized.

18 Q And currently is there a consulting agreement with Long
19 Hill?

20 A There is currently a consulting agreement with Long Hill,
21 yes.

22 Q I'm going to ask, if you could, in that binder that you
23 have in front of you, if you could turn to Tab 12. And let's
24 just take a moment and look at it and tell me if you recognize
25 this document.

1 A (Pause.) I do recognize this document.

2 Q And what is this agreement?

3 A So, this is -- this is a consulting agreement between The
4 Long Hill -- it's Long Hill at Edgemere -- and Bay 9.

5 Q And if you could turn, the bottom footer has Bay 60 on the
6 bottom. It's the second-to-last page, I believe.

7 A I see it. Uh-huh.

8 Q And do you see a signature here for Bay 9?

9 A I do.

10 Q And is this your signature?

11 A It is.

12 Q Thank you. And this agreement set out consulting
13 services. And why did Bay 9 require consulting services?

14 A So, we wanted to work with a consultant to help us develop
15 the data that would be needed to create the model and to
16 create the budget and to help Bay 9 project out what would be
17 required to become a successful owner-operator of The
18 Edgemere.

19 Q And this agreement sets forth those general terms of the
20 consulting role?

21 A It does indeed.

22 Q Thank you.

23 MS. WALKER: Your Honor, I'd like to introduce Tab 12
24 as Exhibit 12.

25 MR. GOLD: No objection, Your Honor.

1 THE COURT: Thank you very much. Bay 9 Exhibit 12 is
2 hereby admitted.

3 (Bay 9 Holdings, LLC's Exhibit 12 is received into
4 evidence.)

5 BY MS. WALKER:

6 Q So, you mentioned business planning with The Long Hill
7 Company. What do you understand that to be, the business
8 planning or model? We talk about a model a lot. Maybe even
9 for the Court just back up one step. What is a model? Why do
10 you use it?

11 A So, a model, a model is a financial set of assumptions
12 that drive expected financial performance -- in this case, of
13 a senior living facility. So, the model will take in all
14 sorts of variables -- occupancy, rates of rent, expenses,
15 inflation, lease payments -- and take those set of assumptions
16 and then project those forward in time.

17 So, in the case of The Edgemere, which is, for example,
18 underoccupied, it will set forth a future expectation as to
19 occupancy. It'll set forth a future expectation as to
20 expenses that would be associated with that occupancy. Some
21 of those costs are fixed; some of them are variable. It would
22 make assumptions as to the facility's ability to -- speed of
23 leasing up. Expenses that may be able to be cut under new,
24 for example, management contracts, or new fixed-cost
25 arrangements for dining or other vendor services that were

1 being supplied for the facility.

2 And it forms a basis for us all to communicate. In the
3 case of Long Hill, it is what they are telling us is
4 achievable and what they take as their conservative baseline
5 goals. We take that information in, we review that
6 information, we try to diligence the variables underneath that
7 information. And we may add information that we have. We may
8 -- and continuously both move forward to develop this
9 financial projection that works somewhat like a blueprint for
10 a building: This is where we are today, this is where we
11 expect to be, and these are the assumptions that we're going
12 to make on the variables to get from here to there.

13 Q And so a model isn't a budget fixed in time, right?

14 A It is not. No. A model will, at various points in time,
15 create a budget, which is more like a goalpost for a year, but
16 it's not in and of itself a budget.

17 Q And if assumptions or variables change, then the model
18 would be updated accordingly?

19 A Absolutely.

20 Q So if you had new information about, for example,
21 occupancy, you would plug that into the model and it would
22 perhaps have a different output because you have new or
23 additional information?

24 A Absolutely.

25 Q So, what steps -- and I think you mentioned -- I'll back

1 up one moment. I think you mentioned earlier today that Lapis
2 independently does modeling all the time.

3 A Sure.

4 Q And it did some modeling as well with The Edgemere. And
5 then at some point you -- Long Hill provided you with their
6 thoughts as to a model, a model of their preparing, right?

7 A Uh-huh.

8 Q And what involvement did Bay 9 take in working to create
9 the Long Hill model?

10 A You know, I think we have -- there is a -- there is a
11 healthy back and forth, but ultimately Long Hill's model is
12 Long Hill's model. So if we had knowledge of something that
13 they didn't have the benefit of the knowledge of for some
14 reason, we could have provided that to them. But, by and
15 large, Long Hill's model is a work product based on their
16 years of experience.

17 The other benefit to having Long Hill in here, in addition
18 to being very capable operators, the personnel at Long Hill
19 had long-established careers at KPMG where they would opine on
20 the reasonableness of a lot of third-party senior living
21 models. And so, quite frankly, the work product that we
22 received from them was pretty impressive, we thought, with
23 regards to its projections.

24 Q What steps did Bay 9 take in reviewing the Long Hill model
25 when you received it?

1 A We review every variable. We're looking at -- at all of
2 the assumptions.

3 Q And some of the assumptions would be on the revenue
4 projections, the expense projections?

5 A Absolutely. Revenue projections. Expense projections.
6 Inflation. And then look at those across benchmarks also.
7 You know, in general, dining costs a certain percentage of
8 revenue. In general, maintenance moves with regards to square
9 feet and with regards to the quality of a property. So,
10 looking at the reasonableness of the numbers, not only based
11 on historic performance but also based on industry benchmarks,
12 is something that we -- that we looked at.

13 Q So is it fair that the assumptions that Long Hill used
14 would have been vetted or carefully reviewed by Lapis?

15 A Yes.

16 Q And Bay 9?

17 A Yes.

18 Q Ultimately, you said Bay 9 chose Long Hill to be its
19 manager, assuming that the sale moves forward. Right?

20 A Yes.

21 Q As part of that review, did you receive any documentation
22 from Long Hill, any papers that they would have submitted to
23 you for their qualifications?

24 A We do -- yes. I mean, we certainly have received Long
25 Hill's qualifications in the past, and also in connection with

1 their potential engagement as our manager at The Edgemere.

2 Q And as part of their engagement for The Edgemere, did you
3 ask for Long Hill to prepare and present to you their
4 qualifications so that you could submit those to the
5 Bankruptcy Court as part of your diligence?

6 A Yes. We asked for their qualifications so that we could
7 present them to the Bankruptcy Court and the parties involved
8 here. Yes.

9 Q If I could ask you to turn to Tab 11 in your book.

10 A Yes.

11 Q This is titled "Long Hill Companies' Statement of
12 Qualifications in January of 2023." Is that right?

13 A Yes.

14 Q And did you ask -- is this the document that you asked for
15 Long Hill to provide to you so you could understand better
16 their qualifications?

17 A Yes. I think I -- I didn't personally ask for this
18 document, but I knew it was being asked by Basia Terrell from
19 our team, and this does appear to be the document that we
20 received.

21 (Counsel confer.)

22 MR. GOLD: Oh, no, I'll object.

23 MS. WALKER: Okay. Your Honor, I'm just going to
24 mark this for identification for now.

25 THE COURT: Okay.

1 MS. WALKER: Thank you.

2 BY MS. WALKER:

3 Q When you reviewed these qualifications, what aspects of
4 the Long Hill qualifications made you more confident that Long
5 Hill would be the proper and the appropriate manager for this
6 community?

7 A Yeah. So, certainly, you know, with regards to so much of
8 what was required here, capability in multiple levels of care,
9 the ability to come into an underperforming and distressed
10 situation and turn it around, again, all of those skills that
11 were so key. Successful operation of a rental community, but
12 knowledge of an entrance-fee community was also helpful. So,
13 you know, we're not asking them to take this from an entrance-
14 fee community to a rental community. It is becoming a rental
15 community through the bankruptcy process. But nonetheless,
16 understanding an entrance-fee community, we felt, was
17 important. And they had those skills also.

18 Familiarity with Texas. Every state is different. Senior
19 living is a very regional activity. And so familiarity with
20 Texas was also something that was compelling.

21 You know, I think also their familiarity with the
22 nonprofit world is also very helpful. The Edgemere has been
23 nonprofit. It is moving into for-profit. And so having an
24 entity that can straddle both worlds I think was also key.

25 I mentioned the way that they engage with staff, the way

1 that they engage with their own staff, was also very key. And
2 I think that this is more true in 2023 than it was in 2018.
3 But we're in a new day here with regards to labor needs, and
4 The Long Hill Companies really impressed us with, again, how
5 they not only engaged with staff at the operating level of the
6 business but also how they engaged with their own staff.

7 Q Since being identified, since Bay 9 was identified as the
8 successful winner of the auction, what actions and steps have
9 Bay 9 and Long Hill conducted together to start the transition
10 to ownership --

11 A Yeah.

12 Q -- and management?

13 A Yeah. So, you know, we had a meeting onsite a few weeks
14 ago to begin the process of transition with regards to
15 management. And so that -- one of the first and foremost
16 activities there is speaking to the residents and the leaders
17 of the residents at the facility, their representatives.

18 Q So this is a meeting at The Edgemere?

19 A This was a meeting at The Edgemere.

20 Q And do you recall when that meeting took place?

21 A I believe it was three weeks ago.

22 Q Would it be the first business day after being identified
23 as the successful winner?

24 A The sounds right, yes. That's correct.

25 Q And why was it important to go immediately to The Edgemere

1 and have these meetings?

2 A Residents and staff naturally have questions. No one is
3 more important, again, to the success of a senior living
4 facility than the residents, and that's followed fairly
5 closely by staff. And so in order to have a successful
6 launch, in order to be able to hit the ground absolutely
7 running, allowing a forum where those two important
8 constituents can ask us questions, can ask Long Hill
9 questions, is absolutely key. And so it was -- it became very
10 evident. Little things. For example, the residents do not
11 want anyone touching their Bloody Marys on Sundays. They love
12 the Bloody Marys on Sundays. That is -- you know, that needs
13 to be preserved.

14 Q In the business model, does it include the Bloody Marys on
15 Sundays?

16 A Luckily, Bloody Marys are in the business model. Yes.

17 Q Thank you.

18 A But, and it's also important to put faces to the phone
19 calls. So beginning to develop rapport with the staff,
20 everyone from the chefs to the executive director. This is a
21 -- this is a scary process for everybody involved. And so
22 beginning to alleviate some of that stress, which naturally
23 results in a better facility on day one, is absolutely one of
24 the goals of the meeting.

25 So, setting that aside, there are also aspects of this

1 that have not been, you know, we haven't had access to
2 historical, historically. Little things. Like, who owns the
3 website. What is the benefit package? What is the -- how
4 many of the rooms, in a very specific way, have been updated?
5 How many haven't been updated? We have been forced to make
6 some pretty conservative assumptions, and we wanted to refine
7 those assumptions as quickly as possible.

8 So I would say the primary reason for the meeting was a,
9 okay, we are the -- going to be the owner-operator team for
10 this asset on a go forward basis. Let's meet each other under
11 that construct. And please, let's find -- let's share
12 information here.

13 And then I would say the secondary reason was to continue
14 to put refinements around understanding the contracts. You
15 know, certainly, as my very capable counsel told me, we only
16 have so long to reject contracts, so let's get the information
17 on those contracts when you go onsite so that we're able to do
18 that as quickly and as efficiently as possible.

19 Q And who from Bay 9 and Lapis attended that meeting?

20 A So, that meeting was --

21 Q Those meetings?

22 A Yeah. The meeting was attended by Basia Terrell from our
23 offices, who, again, runs our -- our healthcare silo, the
24 largest component of which is senior living. I attended. Mr.
25 David Lawlor attended. And Mr. Thome, whose last name I don't

1 know that I ever quite pronounce correctly, also from The Long
2 Hill Companies, attended.

3 Q And you mentioned there were two meetings. The first
4 meeting was with the executive director?

5 A The first meeting was actually with the residents.

6 Q Uh-huh.

7 A And the second meeting was with the executive director.

8 Q And by the residents, was it a resident committee?

9 A It was a few very active members of the Resident
10 Creditors' Committee.

11 Q And how long did that meeting last?

12 A Oh, goodness. I think the meeting lasted about four or
13 five hours.

14 Q Uh-huh. And after that meeting, what was your
15 understanding as to, you know, your sense of the meeting as to
16 the receptiveness to this new team, the Bay 9-Long Hill team
17 coming in for The Edgemere?

18 MR. GOLD: Objection. Relevance. Calls for
19 speculation. This is a small segment of the population that
20 happens to be the Committee. Not even all the Committee
21 members are residents.

22 MS. WALKER: Your Honor, as --

23 MR. GOLD: Drawing conclusions from meeting four or
24 five people, Your Honor.

25 MS. WALKER: Your Honor, my question was what was Ms.

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1 Hatch's feelings in response to that meeting. How did she
2 perceive the meeting to go?

3 MR. GOLD: I'm not sure that's relevant.

4 THE COURT: I'm going to allow it. Objection
5 overruled.

6 MS. WALKER: Thank you.

7 THE WITNESS: I thought it went great. It was my
8 second meeting with these very sophisticated residents I met
9 once early on as a Bondholder, and so we had some -- we had
10 some rapport. And, you know, I really thought -- I think that
11 we expanded on that in this meeting. We were able to talk
12 about all of the other situations that we were involved in.
13 We offered them up the names of the head of the resident
14 committees at the other facilities that we were involved in.
15 Encouraged them to reach out to those residents as well.
16 Encouraged them to read some of the news articles. We
17 encouraged them to ask questions of Long Hill.

18 And, you know, any time a meeting ends up with Bloody
19 Marys on the discussion list I think is an encouraging
20 meeting, is a good meeting.

21 BY MS. WALKER:

22 Q Thank you. And you said you had another meeting. So, the
23 first meeting at The Edgemere was with the residents, and then
24 you met with the executive director?

25 A Correct.

1 Q And that person's name is--?

2 A That person's name is Jonathan, and I'm blanking on his
3 last name. It starts with an F.

4 Q I apologize. I wasn't trying to quiz you. Mr. Falldine?

5 A No. I'm pretty sure it's in here, actually, so I thought
6 I'd --

7 Q It's maybe Mr. Falldine or Falldine?

8 A Yes. Falldine. Yes.

9 Q Thank you. And you met with Mr. Falldine for a period of
10 time on that same day?

11 A Yes. It was about an hour and a half to -- about an hour
12 and a half, two hours. And then there was also a tour that
13 occurred with regards to that meeting.

14 Q And your goals of that meeting were--?

15 A Goals of that meeting, again, really, to establish
16 rapport. We have heard very encouraging reports on the skills
17 of Mr. Falldine. And so establish a rapport. Understand
18 where he thinks the property is. Understand the challenges,
19 as he sees it, which we may have. And move through those
20 discussions. Get thoughts and opinions.

21 And, again, establish open lines of communication and
22 enable a solid working relationship that does enable Bay 9 and
23 Lapis to meet the fairly -- the fairly, you know, quick time
24 frame that we're going to have here on a go forward basis to
25 get all of the -- everything that needs to be done prior to us

1 officially buying, to get that done. So, information on
2 regulatory filings. Information on service providers.
3 Information on insurance. All of those items that need to be
4 buttoned down. Always good to have an in-person meeting with
5 the ED to make sure that we can do that as efficiently as
6 possible.

7 Q Does the asset purchase agreement, to your knowledge, have
8 a deadline to close?

9 A I do believe that the asset purchase agreement says that
10 the closing must occur no more than 60 days after
11 confirmation.

12 Q So, is that an adequate amount of time, do you believe, to
13 close this transaction?

14 A It is. It should take us 45 days. It will require
15 continued efforts and continuing to move forward with speed,
16 but it should -- it should be achievable.

17 Q So, even though you're not yet approved by the Bankruptcy
18 Court to acquire The Edgemere, you're taking actions currently
19 in expectation of that?

20 A Yes. And coming out of pocket to do that, certainly, too.
21 I mean, this is -- but this is important for both of us. A
22 successful -- a successful launch requires that we make those
23 commitments.

24 Q Have you met with other key constituents in relating to
25 The Edgemere for transition?

1 A We -- have we met with other key constituents?

2 Q I might suggest they're standing over -- they're sitting
3 over here.

4 A Yes. I was going vendor, et cetera.

5 (Laughter.)

6 A We did have a meeting with ICI, the Landlord, as well.

7 Q Thank you. And what brought about that meeting?

8 A You know, we wanted to introduce ourselves, similarly,
9 talk about some of the deals that we've been involved in, and
10 give them the benefit of the time and et cetera to ask us
11 questions, to ask the Long Hill questions, and to establish a
12 rapport of what we expect is going to be a long and successful
13 working relationship with them as landlord.

14 Q And did that meeting happen around the same time you came
15 down to The Edgemere?

16 A It did. That meeting occurred prior to our meeting at The
17 Edgemere.

18 Q Perhaps on the same day you were appointed?

19 A It was -- it was, indeed, on the same day. Correct.

20 Q Thank you. And was it the same team that attended The
21 Edgemere resident meetings, the same team from Long Hill and
22 Bay 9 go to meet with ICI?

23 A It was indeed the same day [sic].

24 Q And do you recall who you met with at the -- at ICI or the
25 Landlord?

1 A We --

2 MR. GOLD: Your Honor, I'm going to object here to
3 this line of questioning. I don't know how we handle the fact
4 that this was an FRE 408 meeting.

5 MS. WALKER: Your Honor, I'm not going to ask any
6 questions -- I'm just asking, you know, who met and that they
7 were there, not any discussions about --

8 MR. GOLD: Not -- again, not relevant in the context
9 of a settlement meeting, Your Honor.

10 MS. WALKER: Your Honor, the intent is to show their
11 diligence to understand the community, so the fact that they
12 had a meeting. Whether or not the discussions at the meeting
13 are going to be discussed are, I agree, outside the scope.

14 MR. GOLD: Your Honor, this was February 6th. They
15 had already made the offer. They had already been accepted as
16 the stalking horse. There was no auction. They were all in.
17 It's not part of the due diligence. It's FRE 408.

18 THE COURT: Let's not interrupt counsel.

19 MR. GOLD: I'm sorry, Your Honor.

20 THE COURT: But I appreciate --

21 MR. GOLD: And I'm sorry, Ms. Walker.

22 THE COURT: Okay.

23 MS. WALKER: Your Honor, very simply, in order to
24 show adequate assurances, we're showing that they did
25 extensive diligence, getting up to speed on the project, and

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1 going and physically traveling to meet with the Landlord.
2 Whether or not those discussions or what happened in that
3 meeting are outside the scope, because we did have an
4 agreement, I'm simply asking that you had a meeting and who
5 did you meet with.

6 MR. GOLD: Not relevant, Your Honor. It's a
7 settlement meeting. They were on their way to Dallas for the
8 other meetings anyway. It's not relevant to adequate
9 assurance. It's not relevant to a single document in this
10 binder.

11 THE COURT: Well, I'll allow you to cross to make
12 that point if you don't believe that the import was as
13 altruistic as the stalking horse would have you believe.

14 If you consider it a settlement meeting under 408, I'll
15 sustain your objection to who was there. But I'm going to
16 allow the line of questioning of Bay 9 reaching out to meet
17 with ICI. But, again, if the meeting itself is subject to
18 408, I won't allow any questioning based upon that.

19 MR. GOLD: We'll stipulate to the date the meeting
20 occurred.

21 THE COURT: And I am going to allow her to question
22 Ms. Hatch about why it was important to the stalking horse to
23 reach out to the Landlord. So that portion of your objection
24 is overruled.

25 MR. GOLD: Thank you, Your Honor.

1 BY MS. WALKER:

2 Q If you could answer that question: Why was it important
3 for Bay 9 and Long Hill to have a meeting with the Landlord?

4 A The same reason as it was important with regards to the
5 residents. Face-to-face. Just shaking hands. Allowing folks
6 to ask questions. In this case, you know, in a format that we
7 could feel mutually protected with regards to the current
8 case, but also just establish the beginnings of a working
9 relationship.

10 Q Long Hill has provided, in addition to these meetings and
11 your other diligence, what actions have you asked them to take
12 for transitioning vendors or just to, again, transition to
13 ownership now, to your ownership?

14 A Yeah. And I would, you know, for -- I would say that Long
15 Hill is -- they've done this before. And so I don't know that
16 I or Basia needed to give direction to The Long Hill
17 Companies. It's obvious that they are experienced at this.
18 But we have mutually discussed, again, some of the bigger
19 service needs of the facility. Dining is certainly key.
20 Maintenance. Employees. Contracts. Reimbursement
21 agreements. Licenses. Understanding the benefits that the
22 residents have. Understanding perhaps what they're missing.
23 Understanding what the competition looks like. Visiting the
24 competition. Understanding the occupancy of the competition.
25 Understanding which contracts, needed contracts actually sit

1 at the Lifespace companies as opposed to The Edgemere and
2 which therefore need to be established, you know, almost from
3 scratch since they don't even sit at the -- at what is the
4 current debtor entity. And all of that work is ongoing. IT
5 contracts. The residents have a -- almost an alert system.
6 Understanding the contracts under that alert system.
7 Understanding if they should be reestablished as they have
8 been historically or if something new should be brought in
9 that's more cutting edge and more appropriate on a go forward
10 basis. All of these details.

11 They came prepared to the meeting to understand, they've
12 continued to do diligence on, and we've been sharing
13 information throughout.

14 Q So, from the moment, and probably before the moment, but
15 definitely from the moment where you were appointed the
16 successful bidder, has it -- what pace of activity is
17 undertaken now? Is it, you know, just is it day-to-day, or is
18 it week-to-week, or how do you express that?

19 A Oh, it's absolutely day-to-day. Absolutely day-to-day.
20 Yeah.

21 Q I'm going to pivot our discussion next to -- we talked
22 about the business plan. I want to talk a little bit about
23 Bay 9's understanding as to the physical plant --

24 A Uh-huh.

25 Q -- of The Edgemere. As part of Bay 9's development of its

1 -- of its business plan, what steps were taken by Bay 9 to
2 understand the physical plant at The Edgemere?

3 A Yeah. So, capital needs at the property have been fairly
4 significant in this case. It's been fairly -- they're
5 significant in most all real estate situations, especially
6 those that house humans. And housing fragile humans, they
7 become even more central.

8 So, understanding the state of the physical plant, both we
9 had the benefit at the onset from the Debtors and their
10 expectations and needs as to the physical plant. We then, as
11 a Bondholder, had the benefit of professional PCA groups that
12 came in and took a look at the plant. We didn't want to just
13 rely on the Debtors' estimates. We had the benefit of,
14 therefore, then, at that point, both the Debtors' estimates
15 and the Bondholders' estimates.

16 We also had the benefit of what the folks onsite were
17 seeing and understood as to be the needs of the plant.

18 And then we also, finally, had information that was
19 provided by the Landlord as to their estimations and their
20 professionals' estimations as to the capital needs of the
21 facility. And so we -- and we were able to conduct a few
22 tours, tours where they knew it was us, frankly, and tours
23 where they didn't, where we'd ghost-shop, if you will, or we'd
24 pretend that we have an aunt that is in great need of care and
25 we look at the facility and look at open rooms or finished

1 rooms and get a sense.

2 All of this contributed in our understanding of and in our
3 modeling of the needs of the property on a go forward basis.

4 Q So, during this bankruptcy case, because, then, because
5 you were wearing your Bondholder hat before you were a bidder,
6 did you understand that the Landlord had raised concerns about
7 the physical condition of the property?

8 A We did understand that the Landlord had raised fears about
9 the physical condition of the property, yes.

10 Q And were you aware that the Landlord had sought permission
11 of the Bankruptcy Court to do an assessment or tour of the
12 property?

13 A We were aware of that, yes.

14 Q And do you know generally that time period?

15 A No. I don't remember precisely when that -- when that
16 occurred. My only recollection is it was last summer, early
17 fall-ish. But I'm afraid I don't recall the exact time frame.

18 Q And the Bondholders, or the Bond Trustee, perhaps more
19 accurately, made a determination it wanted to understand the
20 physical plant and hired its own professional?

21 A Yes.

22 Q Do you know the name of that professional that the --

23 A ARCH Consultants.

24 Q -- that the Trustee hired? Yes. As part of Bay 9's
25 diligence to understand the property conditions and the

1 capital expense needs, is it typical for a Lapis fund to look
2 at a property condition assessment?

3 A Absolutely. We look at and engage and review a lot of
4 property condition reports. It is central to understanding,
5 getting one's arms around every situation pretty much that we
6 invest in.

7 Q And is the property condition assessment, what's your
8 understanding, is it engineer level or is it surface level?
9 What's your general understanding?

10 A My general understanding is that it goes beyond surface
11 level, that it was done by professionals, including engineers,
12 that had the ability to truly understand and project out the
13 capital needs of the facility. In this situation, we had
14 three, which I don't remember seeing three different competent
15 set of professionals review a property, but yeah.

16 Q After review, after Bay 9 reviewed these PCAs, property
17 condition assessments, did anything surprise you from one to
18 the other, or were they all generally the same, in your view?

19 A I thought the thing -- what I thought was most interesting
20 was how similar they were. They really were quite similar.
21 The Debtors' had quite a bit more fees and assumptions that
22 increased the overall scope and cost, but in general I thought
23 they were much more similar than they were different.

24 Q What was the reason why Bay 9 didn't engage its own direct
25 property condition consultant?

1 A We really felt confident in the work that was done by
2 ARCH. And we also, by the point where I think we would have
3 gotten to that engagement, we had had, again, the benefits of
4 the Debtors' at the very least, which I think was helpful.

5 Q How does a PCA or property condition assessment fit into
6 Bay 9's business model?

7 A So, we took -- we took the conclusions as to property
8 needs, and we factored those in into our expected capital
9 expense budget on a go forward basis. So we're looking at the
10 useful life of everything from a boiler to an air conditioning
11 unit to a roof, and we are making projections as to when those
12 items would need attention, when they would need financial
13 attention.

14 And we took directly from ARCH not only the amount that
15 was needed, but also the timing, their timing estimates as to
16 when that would be needed. We thought they were fair. And we
17 built those into our go forward projections, which also
18 factors into our estimations as to the monetary contribution
19 that will be required to successfully operate the property.

20 Q And was it for planning purposes or for budgeting
21 purposes?

22 A Yes.

23 MR. GOLD: Objection. Lacks foundation. The witness
24 hasn't defined her understanding of those terms. The question
25 is vague and ambiguous as framed.

1 THE COURT: Okay. Please restate.

2 MS. WALKER: Thank you, Your Honor.

3 BY MS. WALKER:

4 Q How did Bay 9 use the information it received from ARCH to
5 build out its business plan?

6 A So, we used that information to build out the capital that
7 would be required from a capital expense standpoint over -- in
8 this case, we looked at the next five years and what would be
9 required to be spent on a -- that's a relatively near-term
10 basis -- within that five-year period. And that factored into
11 our budgeting -- you know, budgeting, it's not the same budget
12 as you would have on an annual basis, but it does form the
13 basis of the financial contribution budget that will --

14 Q Uh-huh.

15 A -- enable us to understand our expectations on a go
16 forward basis, how we communicate with The Long Hill on those
17 expectations, timing.

18 Certainly, if one needs to do a major capital expenditure
19 program, it may affect your marketing for a certain period of
20 time. It may affect what you can accomplish within a certain
21 building that may need more attention. It may -- whatever the
22 consequences of that information obtained by ARCH could be to
23 the financial projections of the business, it was factored in.

24 Q And so I think you've suggested earlier that there's a
25 difference between a business plan, you know, budget and an

1 actual annual budget. What are the differences, in your view?

2 A So, an annual budget will serve as a relatively short-term
3 road map of what we're expecting within the next year in terms
4 of achieved occupancy, in terms of achieved expenses, in terms
5 of money that will be spent on branding, money that would be
6 spent on whatever is happening within that next year. And
7 then that's reviewed on a periodic basis, maybe as soon as
8 each week, or certainly each month, and then quarterly and
9 then semi-annually and annually. And then towards the end of
10 a fiscal or annual year, one would develop the budget for the
11 next year based on where you were at that point in time.

12 As you move further away from the initial projections,
13 you're going to fine-tune and everything is going to change
14 based on the actuals that have occurred. And that's going to
15 form the basis of another annual budget. The further we get
16 away from T-0, Time Zero, the more accurate our budgets are
17 going to be on a go forward basis and the more variance they
18 would have to where we thought we would have started out at
19 the beginning.

20 Q When planning for budgeting versus business planning, what
21 -- how would you go about adding your capital expense item to
22 the budget? Is it the ARCH number that you would use, or do
23 you do something else?

24 A So, in this instance, we -- because we had so much data on
25 the property condition from multiple sources, we were able to

1 use the ARCH numbers directly.

2 Now, this is in addition to what I would call normal
3 capital maintenance expenses. So there are other expenses
4 that one may consider capital improvements that happen on an
5 ongoing basis. But the ARCH report gave us the data on major
6 CAPEX items that are likely to be needed to be conducted over
7 the next five years.

8 Q Thank you. I'm going to ask, if I can (inaudible) tab,
9 have you turn to Tab 13, please. Or, actually, I am
10 misstating. Not 13. I'll get there. I'll get there. 10.
11 My apologies. 10, please.

12 A Uh-huh.

13 Q The confusing Bay 29 to Bay 9 document.

14 MR. GOLD: I told you that.

15 (Laughter.)

16 MS. WALKER: Yes. I'm pre-alerting. Thank you.
17 Exactly.

18 BY MS. WALKER:

19 Q Mrs. Hatch, what are you looking at at Bay 29?

20 A It looks like we are looking at The Edgemere business
21 planning analysis for the next five years, which includes
22 revenue, expenses, and then also capital expenditures.

23 Q And is this a Bay 29 document?

24 A This is a Bay 29 document.

25 Q And this is a document that -- that you -- that you

1 directly had involvement in preparing?

2 A Yes. That is correct. And we -- this document, much of
3 the assumptions in this document come from The Long Hill
4 Company and their projections. And then to it we have added
5 capital expenditures and intelligence from the ARCH report, in
6 addition to some information on unit turnover costs.

7 Q If you look at this document, about three-quarters of the
8 way down there's an item for Capital Expenditures, Unit
9 Turnover, and Project CAPEX.

10 A Yes.

11 Q Do you see that?

12 A Yes.

13 Q And you see that this business plan is built out to five
14 years, five different years. Right?

15 A Yes.

16 Q And if I look at year one, it has Project CAPEX, about
17 \$5.5 million. Is Bay 9 anticipating spending \$5.5 million in
18 the first year?

19 A Yeah, we're certainly preparing to spend \$5.5 million in
20 the first year. There is -- there are capital expenditure
21 needs at the property, some of which I think the ARCH report
22 estimates need to be spent in years one through three, for
23 example.

24 So we have taken and distilled that information, and it
25 has been allocated here. It could occur in year one. It

1 could occur in year two. It could -- some of these that are
2 currently sitting in year three may become year one items,
3 some become -- could become year three items. We could also
4 see that year one turns out to be higher because of things
5 that we decide to do earlier on.

6 But I think this is a very good basis for a -- for the
7 best information that we had at the time as to the most likely
8 time period during which these sizable amounts would need to
9 be paid.

10 Q And do you recall generally the time frame that this
11 business planning analysis was completed? This document
12 itself?

13 A This was completed, I mean, this past winter.

14 Q Do you know if this business planning was given over as
15 part of a document analysis to -- document request, excuse me,
16 to the Landlord?

17 A I do believe, yes, I do believe this was provided -- this
18 was provided to the Landlord, in addition to the Long Hill
19 assumptions, in addition to The Edgemere -- I'm sorry, the
20 ARCH report.

21 Q Thank you. And do you recall if that was produced prior
22 to a trial before -- an evidentiary hearing in this Court on
23 the property conditions?

24 A I'm sorry, I don't recall.

25 Q Uh-huh. Do you have a general understanding that the

1 Court made certain rulings after a property conditions
2 hearing?

3 A I am aware that the Court made rulings after the -- after
4 that, yes.

5 Q And is it your expectation or understanding that the
6 amount of money in the business plan may be different,
7 depending on the final rulings of the Court?

8 A That is my understanding, yes.

9 Q And if those numbers change, will that have an impact --
10 if the numbers change because of rulings from the Court, how
11 would that change your business plan?

12 A So, we assumed that none of the items that we understood
13 to be property needs actually rose to the level of default
14 under the lease and therefore would not need to be cured.
15 That was the assumption made in this document, to be its most
16 conservative.

17 We understood that if any of those needed capital
18 expenditure items were found to be part of a cure, that they
19 would not -- they would not then be -- need to be done by the
20 buyer, they would be done prior to us taking control of them.

21 Q So, as far as business planning, you planned for the
22 worst-case scenario; is that your suggestion?

23 MR. GOLD: Objection. Leading.

24 THE WITNESS: We planned for what we considered to be
25 the most --

1 MS. WALKER: I apologize, Mrs. Hatch. I think the
2 judge has to say something.

3 THE COURT: There's an objection.

4 THE WITNESS: Oh, I'm sorry.

5 MS. WALKER: Your Honor, I can restate.

6 THE COURT: Please restate. Yes. Thank you.

7 MS. WALKER: Thank you.

8 THE WITNESS: Sorry.

9 MS. WALKER: Thank you.

10 BY MS. WALKER:

11 Q When you were modeling, what did you take -- what kind of
12 an approach did you take to the -- to the risk tolerance and
13 the conservativeness or -- or how would you assess this to be,
14 this model?

15 A Yeah. We wanted this to be conservative realistic. It's
16 something that we constantly are saying. We want to be -- we
17 want to be surprised to the upside. We want to go into a
18 situation assuming the most conservative realistic analysis.
19 Because I think that is just the best way, as an investor, to
20 operate with regards to potential investments. There was a
21 famous investor that said the upside will take care of itself.
22 Protect your downside; the upside will take care of itself.
23 And I believe in that.

24 Q And there's a footnote to this document. What was the
25 import of adding to this footnote to this document?

1 A Yeah. So, --

2 MR. GOLD: Objection, Your Honor. We haven't
3 established she drafted the footnote, who drafted this
4 document, whether it was prepared by counsel or client.

5 MS. WALKER: Your Honor, I think Ms. Hatch testified
6 that she had direct involvement in the preparation of this
7 document.

8 THE COURT: I thought she did, too, but let's lay the
9 foundation just to make sure.

10 MS. WALKER: Thank you.

11 BY MS. WALKER:

12 Q Ms. Hatch, did you review this document and help and aid
13 in the preparation of it?

14 A I did indeed, yes.

15 Q And as to the footnote, did you have any direct
16 involvement in preparing that footnote?

17 A I did indeed. Yes. I thought it was important to state
18 that these capital expenditures did not assume that the cure
19 amount, certainly at the point this was produced, and it --
20 that the capital needs assumed here were everything that was
21 needed on a go forward basis, because we knew that that ruling
22 had not been yet made by the Court.

23 Q Thank you.

24 MS. WALKER: Your Honor, I'm going to ask that Tab 10
25 be admitted as Exhibit 10.

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1 THE COURT: Any objection?

2 MR. GOLD: I'm not sure we still have a date on this
3 document yet, but we can admit it and I will explore that
4 through cross, Your Honor.

5 THE COURT: Okay. Thank you very much. Exhibit 10
6 is hereby admitted.

7 MS. WALKER: Thank you.

8 (Bay 9 Holdings, LLC's Exhibit 10 is received into
9 evidence.)

10 BY MS. WALKER:

11 Q Mrs. Hatch, we were just talking about and you referenced
12 a Court ruling. After the -- have you seen a copy of the
13 Court's transcript from its hearing on -- it made a bench
14 ruling February 6th, which --

15 A Yes. I have seen that transcript, yes.

16 Q Thank you. And did you review it and read it as to the
17 property condition ruling?

18 A I did, yes.

19 Q And in particular, did you read the Judge's rulings as to
20 the expansion joint and the façade?

21 A I did, yes.

22 Q And why did you focus on those areas?

23 A So, our understanding, our understanding after reading all
24 of the PCAs and also having visited the property, is that, of
25 the various capital needs at the property, the two that may

1 represent acute needs that rose to the level potentially of a
2 default under the lease were the expansion joint and any
3 damage that may have been caused to the buildings themselves
4 by the cracks in the stucco.

5 Q What steps did Bay 9 take after the Court's ruling to
6 address the concerns about the expansion joint and the façade?
7 Maybe the expansion joint first.

8 MR. GOLD: I'm going to object to relevance, Your
9 Honor. That's the implementation of the cure ruling. I'm not
10 sure we've established a nexus to the projections here yet.

11 MS. WALKER: Your Honor, I don't think I'm -- I have
12 asked any questions about any nexus. I think the question is
13 what actions is a buyer doing to prepare itself to own a piece
14 of property in furtherance of Your Honor's ruling. So I'm
15 trying to establish that they're diligent in pursuing their
16 future ownership, as Your Honor has requested.

17 MR. GOLD: Except they're not accepting
18 responsibility for the things they're studying. They're
19 trying to stick the Debtor with it. So I don't -- again, I'm
20 having a nexus problem here.

21 THE COURT: I'm not sure that I can agree with you
22 there, Mr. Gold, especially as it pertains to the expansion
23 joint, because I think that'd be the opposite of the testimony
24 that we had at that hearing.

25 But in any event, I'm going to allow her to explore what

1 Bay 9 is doing as it pertains to these issues. Because,
2 again, I believe that if it's a new line of questioning, it's
3 a new line of questioning, or if it's with respect to the
4 budget itself, I'm going to allow it.

5 MS. WALKER: Thank you.

6 THE COURT: Thank you.

7 THE WITNESS: So, we engaged a group called SOCOTEC,
8 which we understood had great experience in Texas, through
9 their Texas Office, to explore the expansion joint, to help us
10 understand their estimation as to its state, how -- what was
11 causing the obvious visual damage, and to really help us get
12 our hands around the potential total liability there. And
13 also with regards to the stucco on the outside of the building
14 and penetration issues.

15 BY MS. WALKER:

16 Q And is Bay 9 paying for the cost of this engineer?

17 A We are paying for that engineer. Correct. Yes. We
18 engaged them and we fronted the cost to have them go onsite
19 and get that work done.

20 Q And similar for the façade, for the building envelope, for
21 stucco, EIFS, --

22 A Yes.

23 Q -- whatever you want to call it?

24 A Yes. And we've had, I think -- they were on there. They
25 were very responsive. We've had, I think, three calls with

1 them to understand the work that they've been doing. And they
2 understand that this is a timely -- you know, that we needed
3 attention on this -- on these issues. And they were able to
4 move in force quickly.

5 Q Thank you.

6 A And the property maintenance crew has been very helpful
7 also.

8 Q Mrs. Hatch, we started our conversation today talking
9 about the various different hats that you're wearing today,
10 right?

11 A Yeah.

12 Q And thank you for explaining that to us. One of those is,
13 as today's, is the representative of the sponsor, Fund IV,
14 right?

15 A Correct.

16 Q Thank you. So I'm going to -- that's going to be our
17 focus for our next round, just to keep you clear of --

18 A Great. Thank you.

19 Q -- what hat you're wearing, as a representative of the
20 sponsor. Has the sponsor made any firm financial commitments
21 to Bay 9?

22 A The sponsor has. So, the sponsor transferred \$55 million
23 to the Bay 9 entity. The sponsor also entered into some --
24 some agreements to further support the capital needs of Bay 9,
25 both from a capital expenditure and a working capital

1 standpoint, and also with regards to the lease. The sponsor
2 has also made Bay 9 the beneficiary, if you will, of the
3 escrow deposit that was previously funded by the sponsor.

4 Q Let me break that down, if I could. First, you have an
5 asset purchase agreement to purchase The Edgemere, right?

6 A That is correct.

7 Q And that, did that require a deposit?

8 A That did require a deposit, yes.

9 Q How much of a deposit were --

10 A It was a five percent deposit, I believe, so a little over
11 \$2 million.

12 Q Uh-huh. And did -- and the sponsor funded directly that
13 deposit?

14 A That is correct.

15 Q And do you recall when, when-about that took place?

16 A That took place about the time that we were -- we were
17 named the stalking horse bidder, is my recollection.

18 Q And that was per the agreement?

19 A That's correct. The heavily-negotiated agreement, yes.

20 Q And the next commitment was to the purchase price? You
21 mentioned a cash equity contribution?

22 A That is correct.

23 Q Can you just -- can you -- how much -- what was the amount
24 of that capital?

25 A \$55 million.

1 Q I'm going to ask, if you could, to turn with me to Tab 9,
2 please. As the president of Bay 9 as well as the managing
3 member of the sponsor, are you aware that -- of Bay 9 having a
4 bank account?

5 A I am aware that Bay 9 has a bank account, yes.

6 Q And who does it have its banking relationship with?

7 A It banks with First Republic Bank.

8 Q Uh-huh. And did it establish an account transfer? Did it
9 -- excuse me, did it schedule an account transfer?

10 A Lapis Municipal Opportunities Fund IV organized a transfer
11 with Bay 9 to transfer funds from Fund IV into the account of
12 Bay 9.

13 Q And as the sponsor, did you -- you directed the funds to
14 actually be transferred?

15 A I did indeed.

16 Q And those funds ended up in Bay 9's bank account?

17 A Luckily. Yes.

18 Q Thank you. Tab 9 has a bank statement. Did you pull this
19 bank statement off of the First Republic Bank portal?

20 A My accountant did, yes.

21 Q At your direction?

22 A That is correct.

23 Q I'm sorry.

24 MS. WALKER: Your Honor, I'd like to admit Tab 9 as
25 Exhibit 9.

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1 THE COURT: Any objection?

2 MR. GOLD: I'll handle it on cross, Your Honor.

3 Thank you.

4 THE COURT: Okay. Thank you, Mr. Gold.

5 Exhibit 9 is hereby admitted.

6 (Bay 9 Holdings, LLC's Exhibit 9 is received into
7 evidence.)

8 BY MS. WALKER:

9 Q As we sit here today, if you were to have Bay 9's balance
10 sheet, what would it show?

11 A Bay 9's balance sheet would show \$55 million in cash, \$2.3
12 -- is that right -- \$2.3 million-odd in a deposit, escrow
13 deposit that was made, and it would show zero liabilities.

14 Q And a contingent liability for the purchase price of the
15 --

16 A Yeah. A contingent liability for the purchase price of
17 \$48,500,000.

18 Q Thank you. What other commitments -- you mentioned -- you
19 mentioned a few. You mentioned -- what other firm commitments
20 has the sponsor made to Bay 9 in connection with The Edgemere
21 transaction?

22 A So, the sponsor has made a firm commitment of both capital
23 expenditure and working capital support to the tune of an
24 additional \$15 million, and it has also made a commitment for
25 a million dollars for needed rent payments.

1 Q If I could ask you to turn to Tab 8 in your book.

2 A Okay.

3 Q Do you recognize this letter?

4 A I do indeed recognize this letter.

5 Q What does this letter represent to you, --

6 A So, this --

7 Q -- the way you understood it?

8 A Yeah. This letter represents the commitment, a

9 memorialization of the commitment that Lapis Municipal

10 Opportunities Fund IV has made to Bay 9 on an ongoing basis.

11 The rent commitment, the three years, up to a million dollars,

12 plus the capital expense commitment and working capital

13 commitment of \$15 million.

14 Q And the capital expense commitment, the \$15 million, what

15 are the potential uses, if necessary, for that amount?

16 A Yeah. The uses are -- it's really, you know, what Bay 9

17 needs for the maintenance of the property. Certainly,

18 anything that could impact life and safety. It is for working

19 capital needs. That could be anything, from lower occupancy

20 to higher expenses to higher inflation to whatever -- whatever

21 the property may require, this is a topping up of those

22 capital needs from the sponsor.

23 Q And does -- would that includes making any lease payments?

24 A Yes. Yes. Yes. So, certainly, lease payments are due

25 every year, and they are -- they're required to be made. And

1 if there is, for whatever reason, not enough capital available
2 at Bay 9 to make the lease payment, it would draw on this \$15
3 million commitment from the sponsor.

4 Q And could that money be used to meet other obligations
5 under the lease besides the \$4 million-ish in rent every year?

6 A Absolutely. Could be needed for needed capital
7 expenditures. It could be needed for whatever -- whatever is
8 -- all of the various commitments that the property would
9 have, which certainly include all of the commitments that the
10 lease has.

11 Q And in addition to this general commitment, why did Bay 9
12 want to make the particular rent commitment?

13 A To further give the Landlord comfort.

14 Q And is this for a duration and an amount?

15 A This is for three years. And it's for a million dollars.

16 Q Well, why was three years selected?

17 A You know, this property, I do think under our conservative
18 analysis, could take three years to be fully cash-flow-
19 positive. I do think we're being quite conservative on that,
20 but I -- I think that that's prudent. And that's where the
21 three years comes, comes in. The lease will be due the fourth
22 year and the fifth year as well, of which I think we're all
23 very cognizant.

24 Q Understood. And perhaps even for a longer duration?

25 A And a sixth year. And year 29. And year 30.

1 Q Appreciate that. Thank you. So you are aware it's a very
2 long-term lease, but yet, you know, your business planning
3 model supports -- supports those lease payments outside of the
4 commitment?

5 A That's right.

6 Q If you could do a little bit of math for me, because I
7 know you're better at math than I am. At this point, you had
8 a balance sheet of about \$57.5 million, between the cash --
9 the cash and the deposit, right?

10 A Correct.

11 Q And the purchase price for this community is
12 approximately--?

13 A \$48,500,000.

14 Q Okay. So, after the purchase price is paid, do you know
15 how much cash on the balance sheet Bay 9 is anticipating to
16 have?

17 A Yeah. They should have somewhere between \$9 and \$10
18 million on their balance sheet.

19 Q And then if you would add, then, the commitments, Bay 9
20 would have access to how much in cash?

21 A An additional \$16 million.

22 Q So roughly \$25 million, if I was to do my middle school
23 math?

24 A Yes. Correct.

25 Q Thank you. Do you, in your business planning, do you

1 think that that is sufficient to meet the needs of the
2 community?

3 A I do think it's sufficient. I think it is -- I think
4 it's important to state that, you know, that Fund IV is a
5 very wealthy sponsor and we do always know in all of our
6 investments that things may not go according to plan. This
7 is our best conservative estimate at this point. But knowing
8 -- knowing what I know about Fund IV and knowing what I know
9 about Bay 9, I am confident that if -- if it isn't
10 sufficient, that our wealthy sponsor will continue to invest
11 in this very valuable asset. I don't expect it. I do expect
12 that this -- this asset is going to start cash-flowing in
13 fairly -- fairly soon. But I feel very confident that we
14 will have the resources to successfully operate this business
15 and to successfully take care of the residents and to -- and
16 to keep the lease in compliance, in accordance with its
17 terms.

18 Q In all the years that Fund IV has been in existence, has
19 it ever failed to meet any of its commitments in any of its
20 investments?

21 A No. Fund IV has never failed to meet any of its
22 commitments in any of its investments. And indeed, none of
23 the Lapis funds have failed to meet any of their commitments
24 in any of their investments.

25 Q Transitioning now a little bit to planning for the

1 closing, assuming the Court approves the sale to Bay 9 and
2 the Plan Sponsors' liquidating plan is confirmed, what
3 actions is Bay 9 going to take to prepare for a smooth
4 transition over this very short two-month period of time?

5 A So, you know, we've already talked about the on-the-
6 ground operational, vendor relationships, employee
7 relationships, resident relationships, contract
8 relationships. Licensing is a significant aspect of any
9 transition in a heavily-regulated industry. And so hiring
10 counsel, that work has also already begun, but hiring counsel
11 to navigate this new structure through the licensing process
12 will begin in earnest. Will continue, but it is -- that's
13 another significant step of what needs to occur between now
14 and transition.

15 Q So there's been a fair amount of litigation in this case
16 about the ground lease, and particularly that's the primary
17 issue why we're here today, on adequate assurance for that
18 ground lease. Are you familiar generally with the business
19 terms of the ground lease?

20 A I am.

21 Q And while I know you might rely on counsel to interpret
22 some of those terms, what do you generally understand the
23 business terms to be of the ground lease?

24 A You know, in general, the ground lease needs to be paid
25 annually. It has a -- I think it's \$4.3 million. It

1 increases annually pursuant to inflation. It has a cap with
2 regards to that increase. And there are requirements that
3 the property be maintained in an acceptable -- in an
4 acceptable form. And compliance with other important
5 aspects, like insurance and et cetera, need to be maintained.

6 Q And is the payment of the actual annual rent, the \$4-ish
7 million we've been talking about, is it in the business plan
8 that Bay --

9 A Absolutely.

10 Q Sorry. That Bay 9 has prepared?

11 A Absolutely.

12 Q And you mentioned that the lease has -- the rental
13 increases are based on a CPI index. Does it have a cap of
14 that increase?

15 A My understanding is that it's capped at five percent,
16 yes.

17 Q And you mentioned you understood the general covenants to
18 maintain the property?

19 A Yes.

20 Q And so is it -- if there were, just to be plain to the
21 Court, because I know there's been a lot of confusion, if --
22 with some parties -- if there is a repair that's new and
23 arising after you take control, whose responsibility do you
24 understand that to be?

25 A I understand that to be, if there is a new repair that

1 comes into being after we take control, I understand that
2 that is our responsibility.

3 Q And if the Court determined there was a default that had
4 to be repaired, whose responsibility is that?

5 A My understanding is that's the estates' responsibility or
6 the Debtors' responsibility.

7 MS. WALKER: Your Honor, I have no more questions at
8 this time. I would like to, of course, reserve for redirect.

9 THE COURT: Okay. Thank you very much, Ms. Walker.
10 Would the witness like a brief convenience break before
11 we begin cross-examination, or any of the parties, to be
12 honest?

13 MR. GOLD: Cross-examining counsel would like a
14 brief --

15 THE COURT: There you go.

16 MR. GOLD: -- convenience break, Your Honor.

17 THE COURT: Equally important. Okay. It's about
18 3:15 now. What about until 3:25? Is that sufficient?

19 MR. GOLD: Perfect. Thank you.

20 THE COURT: All right.

21 MS. WALKER: Thank you, Your Honor.

22 THE COURT: You're welcome. We'll be in recess
23 until 3:25.

24 THE CLERK: All rise.

25 (A recess ensued from 3:15 p.m. to 3:35 p.m.)

1 THE CLERK: All rise.

2 THE COURT: Please be seated. All righty. We're
3 going to go back on the record in Case No. 22-30659. I think
4 that when we last finished, Ms. Walker had just finished
5 direct, and we were going to proceed to cross-examination of
6 Ms. Hatch. Please take a seat whenever you can. And I'll
7 just remind you that you're under oath.

8 MR. GOLD: May I proceed, Your Honor?

9 THE COURT: Please.

10 CROSS-EXAMINATION

11 BY MR. GOLD:

12 Q Ms. Hatch, good afternoon. Good to see you again.

13 A Good afternoon.

14 Q I want to start kind of where you left off in your direct
15 testimony. You referred to Fund IV as Bay 9's wealthy
16 sponsor.

17 A I did.

18 Q Tell me what you mean by wealthy.

19 A It has significant financial resources.

20 Q Okay. Let's put a dollar amount to that.

21 A So, Fund IV raised \$445 million on -- in the -- of
22 investor capital. It has invested quite a bit of that in
23 securities and in bonds, and it has cash.

24 Q Fund IV was formed in 2020; is that correct?

25 A Fund IV was formed in 2020. That is correct.

1 Q Okay. And when you say there's cash, how much available
2 cash does it have?

3 A I would have to look. It's somewhere around \$25 to \$30
4 million right now.

5 Q Okay. And if you could please, in the Bay 9 exhibit
6 binder, --

7 A Sure.

8 Q -- take a look at what has been marked as Exhibit 8.

9 A Okay.

10 Q And specifically referring to the second page of the
11 letter. That's a three-page letter.

12 A Uh-huh.

13 Q Do you have that in front of you?

14 A I do indeed.

15 Q Okay. And just to set the stage, this is a letter from
16 yourself to yourself, --

17 A That is correct.

18 Q -- wearing different hats?

19 A That is correct.

20 MS. WALKER: Objection. It's not to a person to a
21 person. I'd just ask for some specificity as opposed to
22 conjecture.

23 THE COURT: Sustained. You can rephrase.

24 BY MR. GOLD:

25 Q You're the president of Bay 9 Holdings, LLC?

1 A I am.

2 Q And you're the president of Lapis Municipal Opportunities
3 Fund IV, LP?

4 A I am not.

5 Q Who is?

6 A There is no president of Lapis Municipal --

7 Q Okay.

8 A -- Opportunities Fund IV.

9 Q Who's the general partner?

10 A The general partner is Lapis GP, LLC.

11 Q Okay. Who's the president of Lapis --

12 A Lapis GP, LLC does not have a president. It has a
13 managing member. I am the managing member of Lapis GP, LLC.

14 Q Okay. So in your capacity as managing member of the GP of
15 Fund IV, --

16 A Yes.

17 Q -- you sent this letter to Bay 9 Holdings, in which you
18 are the principal?

19 A I am the president. Correct.

20 Q Okay. At the first complete sentence at the top of the
21 second page of this letter, it says, "The sponsor currently
22 has cash on hand, marketable securities, excess to existing
23 credit facilities and/or existing capital commitments from its
24 investors sufficient to meet the contributions in full in cash
25 on Bay 9's demand therefor."

1 So what is the aggregate of those categories as of today?

2 A Oh, goodness. I actually don't see where you're reading
3 that. That's -- you said it was the first paragraph?

4 Q It's --

5 THE COURT: It's Page 2, the first full paragraph.

6 THE WITNESS: Oh, Page 2, the first full paragraph?

7 Okay. Cash on hand, as I said, is about \$25 to \$30 million.

8 Marketable securities is about \$320 million.

9 BY MR. GOLD:

10 Q Okay.

11 A Access to credit facilities, we have a \$60 million line.

12 And the -- we still have about 10 percent outstanding of

13 investor commitments, which would be about another

14 \$44,500,000.

15 Q Okay. Let's talk about how this letter works. You
16 identified that this letter has two components, a rent
17 commitment and a capital expense, but more accurately, capital
18 expense and working capital commitment?

19 A Correct.

20 Q Let's focus just on the moment for the rent commitment.

21 The rent commitment is \$1 million and that's it. Is that
22 correct? It's a hard number, hard cap?

23 A The number listed in this paragraph, yes. It says a
24 million dollars over three years.

25 Q Right.

1 A Correct.

2 Q So if you need the million, it's not replenished? That is
3 a finite commitment?

4 A I wouldn't go so far as to say it's not replenished.
5 Pursuant to this paragraph, it is up to a million dollars,
6 correct.

7 Q Okay. Well, this paragraph is the only rent commitment
8 from an outside party that is before the Court, correct?

9 A I would not -- I wouldn't disqualify rent as applying
10 within that second capital --

11 Q Okay.

12 A -- expense commitment. But --

13 Q We'll address that. I appreciate that. That this is
14 exclusively for rent, and rent is among the categories that
15 would fall in the second category?

16 A I would agree with that, yes.

17 Q Okay. So with respect to this, this is a three-year
18 commitment. And it's for a million dollars. Is that correct?

19 A That is correct.

20 Q And that's less than three months' rent; is that correct?

21 A That is less than three months' rent, yes.

22 Q Okay.

23 A Just shy.

24 Q Do you have the other exhibit binders handy?

25 A I have what I believe to be the --

1 MR. GOLD: The witness has the ICI?

2 MS. WALKER: No, she does not.

3 (Discussion.)

4 MR. GOLD: Do you mind? Oh, they're also in the back
5 corner. So, Your Honor, if I may approach, they're in a box.

6 THE COURT: Please.

7 (Pause.)

8 BY MR. GOLD:

9 Q I had to tell everyone we noticed that Ms. Walker had the
10 skinniest binder, and I wasn't kidding.

11 I'd like you to turn to -- I've opened the binder to
12 Exhibit 5-E in ICI's exhibits. It's identified as the ground
13 lease. Do you have that?

14 A I do indeed.

15 Q How often is rent payable under this lease?

16 A Annual rent, is my understanding.

17 Q That's not true, is it? It's payable monthly, isn't it?

18 A No, I thought we were -- I -- my understanding was that we
19 were paying it at the beginning of the year. But if it is
20 monthly, then it is due monthly.

21 Q So, as you sit here, without looking at the lease, you
22 don't know?

23 A I'm sorry. Say that again?

24 Q Sitting here, without looking at the lease, you don't know
25 whether it's annual or monthly? Or you believe it's annual?

1 A I understood it was due at the beginning of the year for
2 the entire year. If it's actually due every month, that is
3 different than my understanding. That must have just been
4 because that was the way we budgeted it. But I believe you if
5 you say it is due every month.

6 Q So are you telling me that the model that you have been
7 describing that your FTI- and Houlihan Lokey-background team
8 put together assumes rent is payable in advance for the whole
9 year?

10 A I cannot tell you that every model that I've seen has the
11 rent due at the beginning of the year. I can tell you what my
12 understanding was. I think the result, if I were correct,
13 would have been better for the Landlord. But if it's due
14 every month, my guess is many of those models assume that it's
15 paid monthly.

16 Q Do you know what this model assumes?

17 A I'm sorry. Which model are we talking about?

18 Q The model you're relying on today before this Court in
19 this hearing.

20 A Knowing how diligent my team is, I would believe that it
21 is assuming monthly payments and that my recollection and my
22 answer to you was based on the annuals that I've seen and a
23 mistake in my head as to when it's paid.

24 Q Okay. Take a look at -- on Page 7 of the lease, the
25 ground lease, Section 4.3.

1 A I see that.

2 Q Okay. So it is, in fact, monthly?

3 A It does -- it does appear to be one-twelfth due every
4 month, correct.

5 Q What is the term of Fund IV?

6 A Fund IV has a 99-year term.

7 Q What is the term of Grenelle Holdings, LLC, the Debtor's
8 sole member?

9 A I --

10 Q Excuse me. Bay 9's sole member.

11 A I don't believe that Grenelle Holdings has a finite term.

12 Q What is the term of Bay 9?

13 A I don't believe that Bay 9 has a finite term.

14 Q In your skinny exhibit binder, please, Exhibit 4, do you
15 have the Bay 9 operating agreement?

16 A I think so.

17 Q Does this have -- there's a provision entitled, "Term."

18 A Ah, yes, it does. It has a 50-year term. I'm sorry.

19 THE COURT: The exhibit number, please. I apologize.

20 MR. GOLD: Oh, I'm sorry, Your Honor. We're looking
21 at Exhibit 4 --

22 THE COURT: Okay. Thank you.

23 MR. GOLD: -- in the binder.

24 BY MR. GOLD:

25 Q So it's a 50-year term, not a --

1 A You're right. It is a 50-year term.

2 Q Okay.

3 A That is correct.

4 Q And if looked at -- since Mr. Baum prepared these
5 documents at about the same time for both Grenelle and for Bay
6 9, would you expect the term of Grenelle to be concurrent with
7 that of Bay 9?

8 A Knowing Mr. Baum's work, I would, yes, that would be my
9 expectation, now seeing that there is indeed a term here.

10 Q Okay. And let me look at 7.1 of this document as well.
11 The member can dissolve Bay 9 at any time. Is that correct?

12 A That is correct.

13 Q Okay. It can liquidate Bay 9 at any time. Is that
14 correct?

15 A That is correct.

16 Q So, again, returning to Exhibit 8, the commitment letter
17 dated February 13th, with respect to the sponsor -- and
18 sponsor for this purpose is not the Plan Sponsor over here;
19 the sponsor is Fund IV?

20 A Understood.

21 Q What are the remedies that Bay 9 has, to your
22 understanding, if Fund IV chooses not to fund?

23 A Well, I think it could utilize this commitment letter to
24 -- to force the sponsor to fund as it has outlined here it is
25 committed to do.

1 Q And to your understanding and experience, what does
2 "force" mean in this context?

3 A I think that they would need to utilize legal remedies in
4 order to enforce the obligations under this commitment.

5 Q Okay. And do you understand that this document, the legal
6 remedies would involve suing in Delaware? Is that correct?

7 A I think that would be the appropriate venue.

8 Q Okay. And --

9 A On my limited legal --

10 Q Okay.

11 A -- expertise.

12 Q I think it's fair to say I never made it through a
13 bankruptcy court hearing ever anywhere without mentioning
14 Delaware at least once. And I'm not sure that's a good thing,
15 but it is what it is.

16 Is there a prevailing party attorneys' fees clause in
17 here? If Bay 9 had to enforce this document, could it recover
18 its attorneys' fees?

19 A I don't believe that this document has a prevailing
20 party's clause in it that I see.

21 Q Okay. Your counsel, in opening, described this document,
22 as respects the Landlord: Ask me for it and we'll advance the
23 funds. Is that a true statement?

24 A I'm sorry. I don't understand the question.

25 Q Did your counsel, in opening statement, in describing this

1 document, said that this was evidence to the Landlord that if
2 you need funds, ask me for it and we'll advance funds?

3 A The "me" in that sentence is Bay 9 asking for the funds to
4 be provided from its sponsor.

5 Q So, under this commitment letter, the Landlord has no
6 direct right to demand or enforce this document?

7 A That is my understanding, yes.

8 Q And in fact, on the third page of this document, at
9 Paragraph 6, there is a disclaimer of third-party
10 beneficiaries, that any other party other than Bay 9 and the
11 sponsor does not have a right to rely on it. Is that correct?

12 A Correct. That is my understanding, yes.

13 Q Okay. So when you said in all the years Fund IV has been
14 in existence it has never failed to meet their commitments in
15 investments, we were talking about a period of two and a half,
16 three years. Is that correct?

17 A That is correct.

18 Q And you said commitments in investments. What's the -- in
19 your understanding, what are the general commitments of a
20 bondholder?

21 A So, we aren't what I would consider to be a normal
22 bondholder. We do invest in situations that are actively
23 turning around or actively going through significant
24 transitions or capital improvement projects. And so we will,
25 for example, make a purchase of the debt -- could be bonds,

1 could be bank debt -- and we could make further commitments to
2 the situation to fund those needs on an ongoing basis.

3 Q But those are discretionary, voluntary commitments you
4 make. You're talking about you putting money in. I'm talking
5 about demands made on you as a bondholder.

6 A Well, certainly, the board of a nonprofit senior living
7 facility would make demands of me, their bondholder, to
8 further fund, as we would have agreed to, certain monies for
9 capital improvement projects or draws that may be required to
10 complete a project or a business plan or a turnaround or what
11 have you. It doesn't all necessarily happen day one.

12 Q So what you're talking about is, outside of bond debt,
13 where you clip a coupon, we're talking about bank debt where
14 you're obligated or new agreements where you're obligating
15 yourself to fund?

16 A Sure. Or debtor-in-possession loans where we've made an
17 agreement to support a bankruptcy case and provide funds.

18 Q Do you consider those investments when you use the broad,
19 generic term "investment"?

20 A I do consider those investments, yes.

21 Q Okay. So, you were asked some questions by Ms. Walker
22 about what your balance sheet would show. Is it fair to say,
23 as we sit here today, there is no balance sheet of Bay 9
24 before the Court?

25 A Other than that which I described, I would say we haven't

1 put anything else forth, correct.

2 Q Okay. So there's no writing? There is no opening balance
3 sheet with that testimony, correct?

4 A That is correct.

5 Q Okay. And we also talked about the money at First
6 Republic. I thought I heard you mention earlier in your
7 testimony you refer to an escrow. I want to be clear.
8 There's \$2.4 million approximately as a deposit in escrow.
9 Correct?

10 A Correct.

11 Q Those are the only funds in escrow?

12 A That is correct.

13 Q So the \$55,000 -- \$55 million that is at First Republic
14 --

15 A Uh-huh.

16 Q -- and you have the printout of the statement or
17 transaction record, that is in the name -- currently being
18 held in the name of Bay 9?

19 A That is correct.

20 Q Okay. To your understanding, can any portion of that fund
21 be withdrawn by Fund IV?

22 A I don't know what you mean by could it be withdrawn by
23 Fund IV.

24 Q Do you have an -- does Bay 9 have an unconditional right
25 to that money?

1 A Well, I mean, Bay 9 is owned by Grenelle, which is owned
2 by Fund IV. And so I don't believe that -- Fund IV doesn't
3 have a direct ability to recapture that money, but there is
4 nothing preventing Bay 9 from dividending money back up to its
5 parent, if that's helpful.

6 Q Okay. That's, I think, where my next question or two was
7 going. There is no agreement in place that would prevent, a
8 week after closing and \$48.5 million going out the door to the
9 Debtor to complete the closing, there is nothing that would
10 prevent a dividend being paid to Grenelle or ultimately
11 upstream to Fund IV; is that correct?

12 A There is no objective -- anything to prevent. I would
13 tell you it would be a very poor decision from a tax
14 standpoint, but it doesn't -- there is not -- no agreement
15 that would prevent it.

16 Q Okay. And we spent quite a bit of time talking about, as
17 we mentioned, the ill-named Bay 29, which is Exhibit 10 in the
18 skinny binder. If you could take a look at that, please.

19 A Okay.

20 Q And while this document was ultimately filed with the
21 Court last week, I believe you said your recollection was it
22 was created this past winter.

23 A Yes.

24 Q Is that correct?

25 A Yes.

1 Q Okay. Do you know when the Landlord received it?

2 A I don't know the precise timing that the Landlord received
3 it, no. I'm sorry.

4 Q So we heard -- well, I'll represent to you, maybe to try
5 and refresh your recollection, that this was produced -- it's
6 got the Bates stamp on it -- at the same time as some
7 neighboring documents which have the same Bates stamp
8 sequence, and those documents were produced January 6th.

9 A Okay.

10 Q Happens to be the same date as the Long Hill business
11 planning analysis. Does that refresh --

12 A Yes.

13 Q -- your recollection?

14 A Yes. That sounds right. The group of documents that was
15 provided --

16 Q Okay.

17 A -- at the same time to the Landlord. Yes.

18 Q Okay. Has this document been updated?

19 A This document has not been updated, no.

20 Q So when Ms. Walker was asking you about all these pre-
21 transition things you were doing and constantly making
22 midcourse adjustments with new information that was being
23 gathered through multiple means, this document, Exhibit 10,
24 doesn't reflect any of those new facts, good or bad?

25 A I think that is -- that is -- yes, that is true. Yes.

1 Q Okay. Is this the model?

2 A This is -- you know, the model is a term that is
3 constantly -- constantly evolving. I -- this is a snapshot of
4 a five-year summary of what was at the time our best estimate
5 on a conservative realistic projection of the business plan.

6 Q But that was January 6th, --

7 A Yes.

8 Q -- and today is February 21st. So, seven weeks later,
9 this isn't your snapshot anymore, is it?

10 A I think that it is fair to say that we have learned things
11 since that would change these numbers.

12 Q Okay. But those haven't been shared in Ms. Walker's
13 skinny exhibit binder?

14 A No. I don't -- I do not believe, I will tell you, based
15 on everything I've seen, that they would change these numbers
16 in a way that would require more capital. If anything, what
17 we have been discovering has led us to the conclusion that our
18 assumptions are even more conservative than we thought they
19 were.

20 But nonetheless, you are right, I haven't provided another
21 one. And -- but I'm absolutely prepared to stand by this one
22 also. This is still very good projection analysis. Things
23 will change around the margin, but I think this is a fine
24 projection and I would stand behind it.

25 Q Okay. You used the phrase conservative and realistic.

1 A Yes.

2 Q We've all heard of rosy projections. That's a generic
3 term as a synonym for overly optimistic. But is conservative
4 worst-case?

5 A No. Worst-case is Legionnaires' disease moving through a
6 facility. It is not worst-case.

7 Q Okay. And in looking at Exhibit 10, you testified, if I
8 understand the structure of the document, the upper portion,
9 maybe about two-thirds of the way down, stopping with Cash
10 Flow After Ground Lease, do you see that entry?

11 A Uh.

12 Q Is that a yes?

13 A I do see that entry, yes.

14 Q Okay. So, everything above that is Long Hill? They're
15 the source for this data?

16 A That is -- that is correct.

17 Q Do you know as you sit here whether these numbers would
18 track the January 6 Long Hill report, or have they been
19 tweaked or adjusted by members of your staff?

20 A My understanding is that these numbers, if adjusted, were
21 very slightly adjusted on the margins. We could have some
22 rounding differences. But we -- we thought that the Long Hill
23 projections were along with what we would produce conservative
24 realistic.

25 Q Okay. And where -- you had referred in your testimony --

1 is a list of -- or, list is the wrong word, but there were a
2 series of assumptions that were built into this analysis. You
3 mentioned inflation, which is probably the easiest one. Or
4 changes in food costs, which is a cousin of inflation. Are
5 those assumptions written down anywhere?

6 A Yes.

7 Q Where are they written down?

8 A Well, my understanding is that they are -- they are found
9 in the Long Hill -- pretty substantial analysis that Long Hill
10 produced.

11 Q So it's your understanding that the Long Hill assumptions
12 that are in here are incorporated into Exhibit 10?

13 A That is my -- that is my understanding, yes.

14 Q Okay. So you accepted, for purposes of this document,
15 Long Hill's assumptions?

16 A Yes.

17 Q But did Long Hill's assumptions come from Long Hill, or
18 are they your assumptions communicated to Long Hill?

19 A Yeah. So as I -- as I testified earlier, we may have some
20 data or knowledge about the management fee construct or the --
21 or the property that Long Hill didn't have the benefit of.
22 And so this is a collaborative working relationship, but
23 ultimately we relied on Long Hill. So, were we able to give
24 them some information that they didn't already have? It is, I
25 think, certain that we did. But I would -- I would stand

1 behind this as Long Hill's expertise, by and large.

2 Q So, using our cash flow as the northern border, we move
3 below the southern border to capital expenditures. Do you see
4 that?

5 A I do. I moved to the Long Hill model. Was that 8 that we
6 were looking --

7 Q I'm looking at Exhibit 10.

8 A 10? Thank you.

9 Q Is Bay 29.

10 A Yes. I'm back.

11 Q Okay. What was the source of the unit turnover
12 statistics? Or estimates, a better word?

13 A Yeah. So it's going to be a combination of attrition,
14 natural attrition, and folks coming in to the facility that
15 haven't lived there before. And then it's also going to be
16 based on assumptions as to the state of the units, if they
17 need to have capital put into them prior to being reoccupied
18 by a new resident.

19 Q Make-ready expenses, to --

20 A Make-ready expenses. Sure.

21 Q Okay. But Long Hill didn't provide you with that data,
22 did they?

23 A I don't know that I would say Long Hill didn't provide us
24 with that data. Long Hill and we worked together. It was not
25 in Long Hill's analysis, but we certainly both talked about

1 unit turn based on the market, based on what we knew at the
2 time of the plans, what we knew of how much money had been put
3 in historically, what was going to be expected from a new
4 resident. We -- we both made decisions as to how much it
5 would cost to turn a unit.

6 Q But I won't find those numbers in the Long Hill report,
7 will I?

8 A You will not find those in the Long Hill report. No. We
9 added those to that analysis. But I can't tell you that Long
10 Hill had no input because I don't believe that to be true.

11 Q And in terms of analyzing, and I want to focus
12 specifically on year one, because unit turnover in year one,
13 those expenses are less than half what they are in year two.
14 So what data did you rely upon to have such a low number in
15 year one?

16 A Yeah. So, year one, we have the benefit of the property
17 starting off at a pretty low occupancy, with a number of units
18 that are ready for a new occupant. That benefit will be
19 erased over time as the occupancy increases and as a resident
20 that has been there for, let's say, four years, five years,
21 ten years, moves out, then the needed CAPEX for the unit turn
22 will increase over time.

23 Q In making that determination, did you get any data from
24 the Debtor or Lifespace?

25 A Yes. We were able to talk with Lifespace, understand,

1 based -- you know, where they thought the amount of units that
2 were ready, if you will.

3 It's also factored into the -- you can see in year --
4 between year one and year two, we're only going from 207 to
5 211 occupied independent living units. So that increase,
6 that's not a huge increase, so you wouldn't expect to find a
7 big unit turnover number out of the gate.

8 Q Do you know, however, whether the Debtor, as part of their
9 conservative expenditures once they entered Chapter 11, for
10 lack of a better term, didn't perform unit turnover on units
11 that were vacant? They were basically, in some cases, waiting
12 to do them when occupancy improved? You understand that to be
13 a fact, correct?

14 A I understand. I understand that there is a combination of
15 units at the facility, some of which they hadn't touched, some
16 of which they absolutely had, and some of them are models.
17 There's a whole wide variety going on --

18 Q Okay.

19 A -- there right now.

20 Q And is it your understanding that those, since there are
21 vacant units that aren't ready, --

22 A Yes.

23 Q -- that to achieve the increase in occupancy statistics
24 that you project, that those units will have to be made ready?

25 A That's exactly right.

1 Q But do you project them in year one, year two? I mean, --

2 A The answer is yes. So, you can see here in unit turnover,
3 we have some fairly significant unit turnover numbers. We get
4 to about 90 percent occupied by year five. And so you've got
5 a relationship going on with the increase in occupancy to
6 those unit CAPEX numbers.

7 Q But in a senior living, particularly a continuous care,
8 the population in year five, reducing it to actual
9 individuals, those aren't the same people who are in year one.
10 Correct?

11 A There are -- certainly, there's going --

12 Q There are going to be some?

13 A Sure.

14 Q But there's also going to be people who either move or
15 move on to other aspects of the facility. Is that correct?

16 A That is correct.

17 Q So turnover is embedded in occupancy rate but it's a
18 different statistic. Is that correct?

19 A That is correct.

20 Q Okay. You -- so then let's go to the next line, Project
21 CAPEX. And I believe you testified that your sourcing for
22 that figure was the ARCH report.

23 A That is correct.

24 Q Now, you also testified, though, in -- depending on which
25 that you were wearing, --

1 A Uh-huh.

2 Q -- that you've seen other property condition assessments?

3 A Yes.

4 Q Or property condition reports? Now, again, if we focus on
5 -- I'll call it just New Year's, the first week of January,
6 for example, any report, like the -- you're familiar with the
7 Terracon report from the Landlord, correct?

8 A I am.

9 Q Okay. That -- you got that after Bay 29 was created?

10 A I did.

11 Q Okay. So let's go on the other side of the line. What
12 had you seen, regardless of hat, --

13 A Sure. So, --

14 Q -- prior to the generation of Bay 29?

15 A So, we certainly had the benefit of the ARCH report. We
16 also had the benefit of information from the Debtor themselves
17 as to their estimates of the capital needs of the project. We
18 actually had it prior to the bankruptcy filing, in meetings
19 that we had with the Debtor.

20 Q Did you have the Plante Moran report?

21 A You know, I don't know that we did. I can't remember when
22 I saw the actual report, or if I was just seeing kind of a
23 summary of the report from FTI. It was enough for us to get
24 our arms around the needs of the property. Certainly, from
25 the Debtors' standpoint. And then that was improved and some

1 of it validated by the ARCH report.

2 Q Did you see The Building Consultant's report that the
3 Debtor had previously commissioned?

4 A Not that I recall.

5 Q Do you know whether Plante Moran was in the data room?

6 A You know, I don't -- I don't know that they were in the
7 data room, no. I just don't know.

8 Q Okay. What did you have, moving this continuum a little,
9 what did you have when you made the offer?

10 A I certainly think at the time we made the offer we had a
11 -- what we were comfortable was a solid understanding of the
12 capital needs of the property, from a combination of
13 discussions that we had had as Bondholders and information
14 that we had obtained from the Debtor.

15 Q Well, in terms of -- because you mentioned -- made
16 emphasis of third-party reports. So, the first iteration of
17 the asset purchase agreement that brings us here today
18 appeared on the docket on November 2nd. So when you were
19 working on that, did you have any of the third-party property
20 condition reports?

21 A We, again, we at least had summaries of them. I don't
22 know if I had the full report, but I had a lot of data on the
23 condition of the property from the information that we had
24 gotten both through Bondholder work and Debtor work.

25 Q So, are you aware that the ARCH report refers to the

1 inspections by the ARCH team being on August 16th through 18th
2 of 2022?

3 A I am aware of that because you said it to me last week.

4 Q Oh, in a deposition? Okay. And -- but the ARCH report is
5 dated much later than that?

6 A I think the full report is dated later than that, yes.

7 Q Okay. So -- and just so we're literally on the same page,
8 if you could look, please, at Exhibit 14 in the same binder
9 you're utilizing. This would be Bay 9 14. The ARCH property
10 condition assessment is in fact dated January 4, 2023.

11 A I see that.

12 Q Okay. So it's --

13 A Yes.

14 Q It's your testimony that somewhere between the August and
15 January 4th, you got something that had the salient points, or
16 a summary, or what would you describe?

17 A Yes. That I would say had an awful lot of information,
18 especially on the larger items that was -- that were also
19 mentioned by the Debtor. Yes. I mean, I think we've all been
20 discussing them. So getting our arms around those numbers and
21 the bigger-ticket items was in constant discussion.

22 Q And when you say the bigger-ticket items, again, returning
23 to your testimony a little while ago, were the bigger-ticket
24 items identified as the façade building envelope and the
25 expansion joints?

1 A No, a bigger-ticket --

2 Q Or was it something else?

3 A Yeah. A bigger-ticket item is going to be anything at a
4 property like this that is reasonably -- that is expensive.
5 So it could be everything from carpet in the hallways to state
6 of the boilers to roof to air conditioning to the stoves in
7 the kitchen. It's going to be everything.

8 Obviously, some things are going to be very loud by their
9 absence in these reports. They're going to be in such good
10 shape that they barely mention that they need to be taken care
11 of. And some of them are going to put a time frame: I think
12 the roof has another x amount of years; I believe that the
13 building envelope is in need of attention because of cracks.

14 So the bigger-ticket items are going to be the same kinds
15 of big-ticket items in any real estate project, with specific
16 needs to a senior living facility that is taking care of
17 residents in higher levels of care.

18 Q So then when you use the category big-ticket items, you're
19 referring to them in the abstract in the context of a senior
20 living community, not big-ticket items specific to this
21 property? Is that your testimony?

22 A I think the testimony is that it's both.

23 Q Okay. So, one of the -- we've spent a lot of time talking
24 about the building envelope. I want to talk briefly about the
25 roof. ARCH discusses the roof but doesn't identify it as an

1 immediacy. Is that correct?

2 A That is my understanding as well.

3 Q And in fact, Bay 9 has filed pleadings in this Court
4 suggesting the same; is that correct?

5 A That's my understanding, yes.

6 Q Okay. So where does the roof fit in on the Project CAPEX
7 on Exhibit 10?

8 A So, the roof, if you -- if you look at the ARCH report,
9 what you'll see is we took their estimates on an annual basis
10 and we factored those into our own annuals. So the ARCH
11 report, which is #14 there, what you would do is add up the
12 aggregate of their suggested needs, and those include
13 exteriors, interiors, parking garage, Health Center needs that
14 include both roof needs, they include building envelope needs.
15 And they then come to a -- what I would consider to be this is
16 when we think these items should be addressed and this is how
17 much we expect those items to cost. And we chose to run with
18 their assumptions, if you will, and to take their
19 recommendations, and place those recommendations in the model.

20 Now, could the roof last another year beyond what they
21 project here? I think that it's very possible. Could the
22 HVAC system need to be partially done a year earlier? I think
23 that's also possible. I think ARCH would say that also. And
24 that's our experience as building owners and operators. But
25 we nonetheless thought that this was the most objective that

1 we could take, the sum total of their expectation of capital
2 need and utilize it on an annualized basis.

3 Q In budgeting, is it fair to say that the 2023 through 2027
4 horizon, which for purposes of this document is the five
5 years, that that generally tracks the \$18.8 million plus
6 identified in the ARCH report?

7 A That is -- that is correct.

8 Q Okay.

9 A Yes.

10 Q But there are certain exclusions in the ARCH report; isn't
11 that correct?

12 A That is correct.

13 Q And isn't one of the bigger one that ARCH disclaimed an
14 evaluation of a comprehensive engineering study?

15 A Yes. I think that is correct.

16 Q And didn't ARCH conclude that this report is not intended
17 to represent a complete review of all systems or systems
18 components?

19 A I've never seen a property condition report that doesn't
20 have that in it.

21 Q All right.

22 A And yes, I think this one does as well.

23 Q Okay. Well, did you see, again, either at the time you
24 published the APA in the public record, for lack of a better
25 word, because you said it went through multiple drafts, so I'm

1 saying when you got to the point of November 2nd and you're
2 filing it with the Court and calling it the Stalking Horse
3 APA, at that time did you have a structural engineering report
4 that you were relying on, since ARCH isn't doing that work?

5 A No. No, we did not.

6 Q Okay. And anytime between November 2nd and January 6th,
7 when the ARCH report comes out and Bay 9 is produced, did you
8 have the benefit of a structural engineering report?

9 A We did not.

10 Q Okay. Does this \$18.8 million over the five years have
11 any contingencies built into it? Is there a ten percent or
12 fifteen percent contingency for both unexpected things and
13 things that were not studied?

14 A So, there is some escalation factors in these numbers.
15 There are some aspects of this that I think they have tried to
16 be conservative in the absence of perfect information. But I
17 don't see a contingency other than the emergency fund
18 contingency on an annualized basis, which is about the same
19 amount per year.

20 Q Where is that you're identifying?

21 A It's on Bay 98.

22 Q And that's \$344,000 annually?

23 A That is correct. About \$1.7 million in the aggregate.

24 Q So, less than ten percent over the five years?

25 A Pretty close to ten percent, but yes.

1 Q Okay. Now, in terms of your evaluation of these reports,
2 is there anyone in your team, the Lapis team, who has a
3 construction background?

4 A Well, I mean, I guess I would need you to define
5 construction background.

6 Q Any general contractors?

7 A No. We do not have any general contractors as part of the
8 team.

9 Q Okay. Any building or structural engineers?

10 A We do not have any engineers as part of the team.

11 Q Okay. No construction estimators?

12 A No, sir.

13 Q Okay. In terms of you mentioned in the construction of
14 the ARCH projections that you adopted or used as your source,
15 because you said you made some adjustments, so your source for
16 the below-the-line portion of Bay 29, the CAPEX figures, the
17 escalation factor, which is something you mentioned, do you
18 know what it is?

19 A I think it is 2.1 percent.

20 Q Who made that selection?

21 A ARCH.

22 Q Okay. Was Bay 9 involved or Lapis involved in that
23 selection?

24 A No.

25 Q Now, when you looked at the information that you had on

1 property condition in building what ultimately becomes Exhibit
2 10, did you have information to understand the difference in
3 scope or purpose of the various property condition reports
4 that you were looking at?

5 A To the extent that that was known in the documents that we
6 saw, then yes. I can't tell you that the Debtor was fully
7 forthcoming in their engagement, but we were able to see the
8 conclusions of those. I think that we had more information as
9 to scope from the Bondholder efforts.

10 Q Well, what I'm -- when you compare the reports, because we
11 heard testimony about this at the cure phase, various people
12 would say, Well, my report was for this reason; and, My report
13 was for this reason; and, My report was for this reason. This
14 was to see what needed to be done; or for budgeting purposes;
15 or for negotiating purposes. We heard a panoply of purposes
16 for the multiple reports.

17 So my question is, when you had what you've described as
18 incomplete information, you have a lot more now than you had
19 prior to November 2nd, correct?

20 A I do have more information now than I had on November 2nd,
21 yes.

22 Q Right. Did you understand, as you put the APA together,
23 the difference in the reports, the difference that -- you
24 could -- the money conclusion is one thing, but the purposes
25 or the scope of the work or the scope of the investigation

1 that accompanied it, did you have a good understanding of the
2 differences in your various data sources?

3 A I certainly had a broad understanding -- again, not having
4 seen the engagement letters specifically with regards to the
5 Debtor, I have a hard time being able to narrow that -- at the
6 time that I was able to review the information.

7 Q Okay. So, as you incorporate this data into Exhibit 10,
8 and you on several occasions described it as conservative, is
9 there a limit? You know, I've got that commitment letter with
10 the CAPEX and working capital commitment.

11 A Uh-huh.

12 Q We have what shows negative numbers here on Exhibit 10.
13 Is there a limit to how far this can go if the projections are
14 worse? Or, the actual results are worse than the projections?

15 A I think there is -- there is -- is there a limit? Even
16 the sky has a limit. We are making a significant investment
17 in this project, and we, being experienced real estate
18 investors, know that nothing ever necessarily goes the way you
19 expect it to.

20 So what I can tell you for certain is that the commitment
21 letter that is produced should not be viewed as the limit.
22 This is a significant investment in the Fund, of the Fund, and
23 it will be defended just as we defend our investments and have
24 over the past thirteen years. We have confidence in this
25 investment. We have confidence in this asset.

1 Q Did you have confidence in the Pennsylvania project you
2 sold after only three years?

3 A The Pennsylvania project, we bought for \$15 million, we
4 made investments into it, and we sold it for \$54 million.
5 Yes, I had confidence at the beginning, I had confidence
6 during, and I have confidence that our buyer will continue to
7 own and operate a successful investment.

8 Q Did you have confidence when you terminated the manager?
9 I believe it was -- LSC?

10 A LCS.

11 Q LCS. I'm sorry.

12 A Yeah. When we bought the facility -- or I shouldn't say
13 bought -- when we took the facility deed in lieu from the
14 equity owners, we always intended to replace management, which
15 we did fairly shortly after coming into it.

16 Q So, in that case, it was inherited management?

17 A That's correct.

18 Q What was your, going in, was your intended holding period?
19 Because you said you bought it for \$15 million, you sold it
20 for -- \$55 million, did you say?

21 A \$54 million.

22 Q \$54 million? Okay. And you built a new building and you
23 invested other capital in that. Did you always intend to only
24 hold it for three years?

25 A No. That had a specific interesting opportunity to

1 finance the assisted living/memory care facility with tax-
2 exempt dollars. In order for that to be the case, we as a
3 for-profit owner couldn't hold it at the time that the
4 assisted living/memory care unit obtained its certificate of
5 occupancy.

6 And so the decision to sell it in three years was based in
7 part on the belief that maintaining, certainly, for that asset
8 the nonprofit status would benefit the overall value of the
9 investment and that it should therefore be done at that point.
10 If we even held it for a week later, that door would have been
11 closed.

12 Q So then, because of that conversion, and you did say it
13 was unique facts, then is it fair to say that you have never
14 owned and operated a for-profit CCRC beyond the three-year
15 mark?

16 A That would be a fair statement, yes.

17 Q And in fact, the Pennsylvania property is the only for-
18 profit where you've had a direct interest in. Is that
19 correct?

20 A That's correct.

21 Q As opposed to buying bank debt or -- or investing through
22 bonds?

23 A Yes. That is, investing as a debt-holder of some --

24 Q Form?

25 A -- kind. Some form.

1 Q Right. And most of your -- is it, firstly, is it most or
2 all of your bond investing is in not-for-profit, the space, or
3 where you're just doing muni bonds, or do you invest in for-
4 profit facilities through a debt instrument of some sort?

5 A Yes, we do. Yes.

6 Q Okay. And what percentage between nonprofit and for-
7 profit do you say based on recent history?

8 A Yeah. So, right now, Fund IV has about 54 percent
9 nonprofit and the balance is in the taxable arena. Look,
10 there's going to be some mixture between the two. There are
11 some for-profit businesses that can still qualify for tax-
12 exempt debt, and there are some nonprofit borrowers that can't
13 borrow in the municipal marketplace tax-exempt. But right
14 now, it's about fifty-fifty.

15 Q Post-closing, --

16 A Yes.

17 Q -- and when I say closing, I'll take it a little further,
18 the implementation of the plan --

19 A Okay.

20 Q -- that is before the Court, what percentage of Fund IV
21 will be this investment?

22 A I mean, it's a complicated question.

23 Q Let me add a clarification.

24 A Sure.

25 Q Because I'm assuming the DIP got paid off.

1 A Okay. Yeah. So, we have an existing investment, as we
2 discussed, in bonds. Those we expect will receive proceeds
3 from the sale. And the debtor-in-possession money will be
4 paid off. In general, I think we're looking at about a ten to
5 twelve percent investment of the Fund.

6 Q Okay. And speaking of your investments, you had said that
7 you were twenty to twenty-five percent, Fund IV was twenty to
8 twenty-five percent of The Edgemere bonds; is that correct?

9 A Yes.

10 Q Was that based on your purchase price or par?

11 A That's par.

12 Q How about based on your purchase price?

13 A I don't know the answer to that. I don't know the basis
14 of the other bonds.

15 Q And what was, in percentage terms, your share of the DIP?

16 A You know, I'm sorry, I don't actually know the number. We
17 are one of, I think, three or four Bondholders participating.
18 And we bought -- the calculus developed by the Trustee and
19 their counsel was that if we were twenty percent of the
20 original debt, twenty-five percent of the original debt, that
21 the percentages would carry forth.

22 So those Bondholders that were -- that didn't participate,
23 we would rerun the percentages based on those that did, and we
24 would invest in proportion to our interest, if that makes
25 sense. But I don't have at my fingertips what that resulted

1 in.

2 Q Did you have any -- was the magnitude of your investment
3 such that, even though you didn't own a majority, that the
4 percentage you did own or control triggered different
5 governance structure, different voting mechanisms within the
6 bond group?

7 A No. No. Not that I can -- not that I can think of, no.

8 Q So, to your understanding, somebody who held twenty
9 percent and someone who held thirty percent had the exact same
10 rights?

11 A You know, in my experience, that's just not the way that
12 the Trustee acts. The Trustee is a fiduciary for all
13 Bondholders. So they don't allow a thirty-percent holder to
14 drive the bus just because that thirty-percent holder is the
15 biggest holder. They have a duty to all Bondholders,
16 including retail investors that aren't present. And so, in
17 practice, we Bondholders are all trying to maximize the
18 recovery and lessen the risk. But the Trustee is an
19 independent body that is represented by capable counsel, and
20 they make decisions based on what is best for the Bondholders
21 as a group.

22 Q When you testified, when we were going through the
23 timeline with Ms. Walker, that there came a point, wearing
24 your Bondholder hat, that this asset needed to go into -- in a
25 different direction. And you placed that sometime in the

1 summer. Is that correct?

2 A Late summer, --

3 Q Late summer?

4 A -- yes.

5 Q Okay. And was -- did you, in going in that new direction,
6 was that because you were afraid of losing your underlying
7 investment?

8 A No, I don't think that that is how I would characterize
9 it. You know, last summer, certainly, was a time of great
10 dislocation in the bond market, and frankly, also, in the --
11 in senior living. And so we saw an opportunity to be a
12 solution, because we had the capital, to buy the facility. It
13 was one of those situations -- and in my thirty-year
14 investment career, these don't come up all the time -- where
15 we could all row in the same direction, for the benefit of the
16 residents, for the benefit of the Bondholders, and frankly,
17 for the benefit of Bay 9, Lapis Muni Investment Fund IV, on a
18 go forward basis. That we could be a solution that improved
19 Bondholder recovery, improved the speed at which this got out
20 of bankruptcy, and represented an attractive investment
21 possibility for our fund.

22 Q But in making the offer that became the APA, you were
23 maximizing the value of Fund IV's interest? That was your
24 objective? You weren't doing it for benevolence? You were
25 doing it for your fund investors?

1 A That's -- I think that that's fair, although I -- I also
2 opened it up quite directly to other bond investors if they
3 wanted to participate. We were all in this together, if you
4 will.

5 Q So you offered -- you're saying you offered to partner
6 with other bond investors in making the purchase? In other
7 words, Bay -- had that happened, Bay 9 would have a different
8 ownership structure than it does today?

9 A That was a potential. Yes.

10 Q Okay. But that did not materialize?

11 A That did not, no.

12 Q Okay. And what also didn't materialize when you made the
13 stalking -- you were the stalking horse bid. That was the
14 intention.

15 A Uh-huh.

16 Q Was the intention to drive value such that maybe we could
17 find somebody in the marketplace and, whew, I didn't have to
18 buy it? Or did you always intend to own it?

19 A Well, I have not been in a bankruptcy case that didn't
20 test value, and so I certainly went into this assuming that
21 there would be an auction, without a doubt, if that's your
22 question.

23 Q Yes.

24 A Yes. I assumed that there would be an auction. I assumed
25 that a banker would be hired to canvas the marketplace. It

1 was absolutely my assumption that that would happen. I --
2 again, very capable counsel on the part of the Trustee and the
3 Debtor, and I knew that they would -- that they would put that
4 forth.

5 Q In making that decision, when you were talking about the
6 data you were assessing at the time, you said that you were in
7 the process, you had some of that through being part of the
8 Bondholder group, but you, in going in this new direction, you
9 were gathering additional information. You said that you
10 tracked nonprofits in the Dallas market. Did you track for-
11 profits in the Dallas market?

12 A Yes. Any entity that would be competition to The Edgemere
13 on a go forward basis would have been something that we looked
14 at.

15 Q Do you know, as you sit here today, any of the specific
16 for-profit competition you look at?

17 A I would have to --

18 MS. WALKER: Objection, Your Honor. Your Honor, I'm
19 hard-pressed to understand the relevance of this line of
20 questioning. I've let it go on a little bit, but it does seem
21 to be going far, far afield of adequate assurance of a lease.

22 MR. GOLD: I thought the same about all the diligence
23 testimony myself, Your Honor. I'm trying to understand, since
24 Ms. Walker tendered all of this and how well it was studied, I
25 believe I'm entitled to go into was it really studied. I'm

1 just responding to the direct testimony that I objected to.

2 THE COURT: I'm going to give Mr. Gold a little bit
3 of leeway here. I think you did cover in direct a few times
4 that they looked at the competition in the market, they looked
5 at Texas, et cetera. So I'm going to give a little bit of
6 leeway here.

7 MS. WALKER: And Your Honor, that wasn't our concern.
8 Our concern is looking at competition, it's looking at other
9 opportunities and the purchase price. So that's why I rose to
10 that part of the relevance, as opposed to, you know, comps of
11 rental models. So that is my concern.

12 MR. GOLD: I didn't think my question touched on that
13 subject at all, Your Honor.

14 THE COURT: I didn't hear it that way, so I'll allow
15 you to restate the question so that I know what it is and
16 we'll go forward from there.

17 MR. GOLD: Thank you, Your Honor.

18 BY MR. GOLD:

19 Q So, focusing, then, in terms of to gather market data --

20 A Uh-huh.

21 Q -- for purposes of deciding whether to go into another
22 direction and to ultimately formulate what we now see as the
23 APA, --

24 A Uh-huh.

25 Q -- what for-profit competition in the Dallas market do you

1 recall looking at?

2 A So, I recall looking at a long list of competition in the
3 Dallas market. I can't tell you the for-profit/nonprofit
4 status of the various parties that were listed as competition.
5 So we reviewed the competition put forth by the Debtor. We
6 reviewed the competition put forth by Long Hill. We also had
7 been tracking it, both rental and CCRC. And it's a pretty
8 long list.

9 But although I know some off the top of my head are for-
10 profit -- or, I'm sorry, are not-for-profit, I couldn't give
11 you a comprehensive breakdown of, again, the sponsor behind
12 all the deals. What was more important were prevailing
13 occupancy levels and market rates and et cetera.

14 Q And in your experience, do you expect the occupancy rates
15 you observed in this analysis to be the same for rental
16 properties versus an entrance-fee model?

17 A No.

18 Q What do you anticipate the spread or difference to be, in
19 your experience?

20 A It's -- I mean, I think that it's going to vary greatly on
21 the product, on the property, on the financial health of the
22 property. There is no one, well, this is a CCRC in this
23 market and it's going to hit 85, and this one's a rental and
24 it's going to hit 95. You've got to look at the properties
25 themselves.

1 And so, obviously, if there are occupancy issues at rental
2 facilities or CCRC facilities broadly in a marketplace, then
3 you would have to take that into account when making your own
4 assumptions as to how quickly you could lease.

5 On balance, our experience is that it is easier to lease
6 and to lease up a rental facility than it is to lease up an
7 entrance-fee community.

8 Q But it's your testimony the magnitude or delta between the
9 two involves many, many factors?

10 A Absolutely.

11 Q Now, do you have a recollection, as you put together your
12 model for the acquisition proposal, specific assumptions
13 beyond rentals are easier to lease up than CCRCs? Do you
14 recall any other specific factors, either specific to The
15 Edgemere or the Dallas market, that played into the
16 acquisition model?

17 A Sure. So, you know, we took a look at: What is the
18 offering? The Edgemere is gorgeous. In my thirty years, I
19 don't know that I've seen a nicer senior living facility.
20 It's beautiful. And it's on a fairly sizable plot of land.
21 Many of the other offerings in Dallas were -- some of them
22 were more modern, but they were very different in that they
23 were high-rises.

24 So one of the things that we took into account was is
25 there a population that would rather move into a non-high-

1 rise, for example, and a place where they can walk their dog
2 easily, if that's important? Or visit a pond. What are the
3 amenities like? What are the dining rooms like versus other
4 facilities? What is the culture of the community? What are
5 the activities offered? Is there a religious affiliation? Is
6 there not a religious affiliation? Is there a -- what is
7 included in the monthly price? Do you get three meals a day
8 or do you get two meals a day? These are all things that we
9 factored into our analysis when we're developing the
10 projections.

11 Q And is the physical condition? If I drive around a
12 property, its curb appeal, and I see patched stucco, I see
13 freshly painted walls, does that factor into your analysis,
14 rather than just looking from the inside as to the quality of
15 the food or how frequently it's served or how it's decorated?

16 A Absolutely. So the stucco, trees, ponds, all of this
17 would be factored in to how a property would be viewed by a
18 potential resident.

19 Q Well, and those are, in many cases, rather than a
20 potential resident, a potential buyer is looking at the same
21 thing. Isn't that correct?

22 A I think that would also be correct.

23 Q And you said you've been to The Edgemere multiple times.
24 Have you personally witnessed many of the conditions that have
25 been identified in proceedings in front of this Court? Like,

1 I'll start with cracked stucco, because most people do. Have
2 you personally witnessed it?

3 A I have seen it, yes.

4 Q Yes. And have you seen cracked sidewalks?

5 A I actually haven't seen the cracked sidewalks, but I
6 believe you that they're there.

7 Q Okay. Have you seen any of the conditions in the garage?

8 A I have.

9 Q Okay. So you've personally seen the things that the
10 experts have been talking about --

11 A I have.

12 Q -- all this time? Okay. And had you seen all of those
13 things at the time you made this offer?

14 A I don't know that we had seen the expansion joint in
15 particular, but I do believe that we had seen most of the
16 others that you and I just talked about. I do -- I think
17 Basia may have seen the expansion joint, but I'd have to check
18 with her.

19 Q Okay. Now, when you put the APA together, --

20 A Uh-huh.

21 Q -- you -- or let's put the -- take away from you. The APA
22 reflects an attempt at drawing a line in terms of you didn't
23 want to be responsible for the cures. Is that correct?
24 That's your understanding?

25 A We -- that is correct, yes.

1 Q Okay. And when you presented your proposal and when you
2 negotiated, started negotiating the APA, was that -- what did
3 you have in mind that would be under a cure?

4 A Well, first of all, I would say that not being responsible
5 for cures is a fairly standard item in all of our APAs,
6 because every bankruptcy case has cures, and we would -- we
7 would like those to be handled by the estate.

8 We knew that there were disagreements going on between the
9 Landlord and the Debtor, and we knew that we didn't want to,
10 you know, frankly, step into that fight. We wanted to be
11 buying something, whether it was rent or whether it were taxes
12 or whether it were defaults under the lease, that those were
13 taken care of before we became the owner.

14 Q Well, apart from your perceptions regarding potential
15 disputes between the Landlord and the tenant, were you
16 motivated simply by the fact of "I want this fixed before I
17 buy it"?

18 A I think that there is a certain amount of "I want this
19 fixed before I can buy it." And I think there's a certain
20 amount of we understand that at some point the HVAC system,
21 like every HVAC system in Texas over the next thirty years, is
22 likely to need to be replaced. And we wouldn't expect you,
23 Debtor -- we may have tried, but we would certainly understand
24 that the Debtor wouldn't be willing to rebuild the property in
25 order for us to take it over.

1 Q But there are things that are in between, aren't there?
2 Your view regarding the HVAC system, I think all the property
3 condition reports agree you need to get to it, but it's not
4 generally, unless something breaks, a sooner-rather-than-later
5 item. Is that your understanding?

6 A I would characterize it as it will need to be replaced,
7 and -- it will need to be replaced, if it breaks, immediately,
8 because we're in Texas.

9 Q Okay. And you say that on a day it's 83° outside, so --

10 THE COURT: Welcome to winter.

11 BY MR. GOLD:

12 Q But under your understanding of the APA, if it breaks, if
13 something breaks six months after closing, that's on you. Is
14 that correct?

15 A That --

16 Q That's on Bay 9, the buyer?

17 A That we are the new owner-operator of the building?
18 Absolutely. We have health, safety, residents. They need to
19 be taken care of. These things need to be maintained.

20 Q Well, I'm not talking about you fixing it as an
21 operational necessity. I am focusing on would you be legally
22 obligated under the ground lease, to your understanding, to
23 fix or replace the HVAC unit if it failed six months from now?

24 MS. WALKER: Objection. I'd ask that it be as a
25 businessperson. He asked as a legal conclusion. I don't

1 think this witness is qualified to answer legal questions.

2 THE COURT: Sustained.

3 MR. GOLD: I can rephrase.

4 THE COURT: Thank you.

5 MR. GOLD: Okay.

6 THE COURT: Perfect.

7 BY MR. GOLD:

8 Q Is -- under your understanding of the APA, would you be
9 required to repair or replace an HVAC unit that failed six
10 months after closing?

11 A As a businessperson understanding, yes.

12 Q And if you failed to do so as a businessperson, would you
13 understand that that could subject you to it being a default
14 under the lease?

15 A Yes. Although I will admit that my first concern would be
16 for the residents, --

17 Q Right. HVAC's a --

18 A -- I understand that the lease also has obligations under
19 it.

20 Q Okay. The immediacy of HVAC in Texas in the summer makes
21 that a poor example, because I just did the math in my head as
22 what's six months from now. So let's pick another condition.
23 Cracks in the sidewalks. There was testimony that they exist
24 but they have not yet reached a default state. So if the
25 crack in the sidewalk is a one on a one-to-five scale today,

1 and six months from now it becomes a four, is that all on you
2 under your understanding of the obligations under the lease?

3 A I -- it is always difficult to hypothetically talk about a
4 crack in a sidewalk. But certainly, a crack in a sidewalk
5 that is a default under the lease or affecting the health and
6 safety of residents that need to move on the sidewalk would be
7 our responsibility, as I understand it, to fix.

8 Q So let's turn to the roof, which perhaps other than the
9 building envelope is one of the biggest systems that's been
10 identified in the various testimony. And Bay 9 took the
11 position in its filed pleading that, yes, the roof is getting
12 there, but it's not there yet. Is that a fair summary of your
13 position?

14 A Yeah. The roof is -- yes. That the roof is providing --
15 doing what it should do today, yes.

16 Q And in fairness for the record, there are elements of the
17 roof that were in Judge Larson's property condition ruling
18 that needed more immediate repair. But the roof as a -- or
19 roofs, because there's multiple buildings, --

20 A Roofs. Uh-huh.

21 Q The roofs as a system --

22 A Uh-huh.

23 Q -- are not presently in a default state. That's your
24 understanding?

25 A That is my understanding, yes.

1 Q Okay. So, hypothetically, if three years from now it's
2 time to replace the roof on two or three buildings, they
3 reached the end of their useful life, and in peeling back the
4 roof membrane there's significant water damage, even
5 approaching structural damage, a big-ticket item, --

6 A Sounds big-ticket.

7 Q -- is that on you?

8 A Yes.

9 Q Even though the APA says that that's a contingent not-
10 known condition that arose prior to your purchasing the
11 property? Isn't that what the APA says?

12 A So, as a businessperson, my expectation is that if we have
13 a problem with the roof that becomes very expensive, we need
14 to fix it.

15 Q Well, here -- but we're here not as businesspeople today
16 necessarily. You're asking the Court, the Debtor through
17 their motion is asking the Court, to have Judge Larson approve
18 this APA in its entirety, with no modification. Is that what
19 you understand is happening?

20 MS. WALKER: Objection, Your Honor. Argumentative.
21 I think he can ask just a question of a businessperson, but
22 he's just outlining an argument about the legal conclusion of
23 a lease.

24 MR. GOLD: I'm asking her understanding of what's
25 being asked of the Court and do you understand you're -- this

1 side of the table is asking you, Judge, to approve the APA
2 unconditionally.

3 THE COURT: Perhaps ask the witness if it is her
4 position, in her capacity as Bay 9, --

5 MR. GOLD: Yes.

6 THE COURT: -- that they're asking the Court to
7 approve the APA --

8 MR. GOLD: Happy to --

9 THE COURT: -- as is, or unconditionally, whatever
10 you want to put to it.

11 MR. GOLD: Okay.

12 BY MR. GOLD:

13 Q Is it your understanding as the president of Bay 9, acting
14 on behalf of Bay 9, wearing the Bay 9 hat, that the Court is
15 being asked through this proceeding to approve the APA
16 unconditionally, without modification?

17 A That is my understanding, yes.

18 Q Okay. I'd like you to look at the APA, please.

19 A Could I --

20 Q I believe it's Exhibit 17.

21 MS. WALKER: Would you like a break?

22 THE COURT: Do you need a break, or water?

23 THE WITNESS: I think I've had -- no, I think I need
24 no more water.

25 THE COURT: Too much water?

1 (Laughter.)

2 MR. GOLD: Oh, we can -- Your Honor, it's a great --
3 a great time for break. We're changing gears a little bit, so
4 --

5 THE COURT: Excellent.

6 MR. GOLD: -- it's a perfect time.

7 THE COURT: It's 4:55. Is 5:05 good enough?

8 THE WITNESS: Oh, absolutely.

9 MR. GOLD: Yes. Thank you, Your Honor.

10 THE COURT: Okay. We'll be in recess until 5:05.

11 THE CLERK: All rise.

12 (A recess ensued from 4:53 p.m. until 5:07 p.m.)

13 THE CLERK: All rise.

14 THE COURT: Please. Be seated. All right, ladies
15 and gentlemen. We're going to go back on the record in Case
16 No. 22-30659. I think when we last broke -- Ms. Hatch. Thank
17 you so much. Mr. Gold, whenever you're ready.

18 MR. GOLD: Thank you, Your Honor.

19 CROSS-EXAMINATION, RESUMED

20 BY MR. GOLD:

21 Q Ms. Hatch, before we broke, if you could please refer --
22 we'll start with Exhibit 17 in the binder.

23 THE COURT: In the Bay 9 binder?

24 MR. GOLD: Yes, ma'am.

25 THE COURT: All right.

1 MR. GOLD: Bay 9, which is the executed version of
2 the stalking horse agreement.

3 BY MR. GOLD:

4 Q Do you have that in front of you?

5 A I do.

6 Q Okay. Thank you. Can you please flip to -- let's go to
7 2.4. And just for the record and for your benefit, I will
8 refer to the amendment as well. So I recognize it's out
9 there. Let's just start with this.

10 So, there is, in this section, in this version of the
11 document, there is a preface and then there are Subparts A
12 through F. Do you see that?

13 A I do.

14 Q Okay. And when we look at the amendment, there's a G. So
15 let's start with the beginning. And this document -- and you
16 said this was heavily negotiated. Is that correct?

17 A Yes.

18 Q Okay. During your negotiations, did you ever have a
19 telephonic, video, or face-to-face negotiation of any portion
20 of the APA with a representative of the Debtor that wasn't an
21 attorney?

22 A No.

23 Q Okay. So you did not negotiate this with any of
24 Lifespace's folks?

25 A No. I haven't spoken with a Lifespace professional that I

1 can remember.

2 Q Okay. And did you negotiate with any members of the
3 board?

4 A No.

5 Q Okay. We see in the signed copy Mr. Stewart, for example,
6 is a board member who signed it on behalf of the Debtor. Have
7 you -- did you negotiate any part of this agreement with him?

8 A I did not personally negotiate with any board member, no.

9 Q Okay. And is it fair to say that when you described this
10 as heavily-negotiated, that was attorneys; is that correct?

11 A That is correct.

12 Q Okay. So, one -- again, working our way back to 2.4. 2.4
13 says, Except for the assumed liabilities -- which are defined
14 in 2.3 -- Purchaser -- that's Bay 9 -- shall not assume or be
15 liable to pay, perform, or discharge any liability,
16 obligation, debt, Claim with a capital C, against or contract
17 of the Seller or any of its affiliates which in any case
18 pertain to the ownership, operation, or conduct of the
19 business or the ownership of the purchased assets prior to the
20 closing date at any time existing or asserted, whether or not
21 accrued, fixed, contingent or otherwise, whether known or
22 unknown, and whether or not recorded on the books and records
23 of Seller or any of its affiliates.

24 Have I read that correctly from what you're looking at?

25 A That was -- that seemed to be correct.

1 Q Okay.

2 A In its entirety.

3 Q Thank you. At least I can still read.

4 So, with respect to the roof and my hypothetical, if you
5 were called upon to replace a roof membrane on two or three
6 buildings in two years, sometime in 2025, so it's within your
7 five-year budget, Bay 29, Exhibit 10, it's within the scope of
8 what ARCH looked at, and it was within the contemplation of
9 pleadings filed with the Court that the roof would need to be
10 addressed, --

11 A Uh-huh.

12 Q -- and when we peel back the roof and the existing roof
13 membrane, damage is discovered, damage that was not known as
14 of the closing date that was -- hadn't been asserted yet but
15 obviously accrued, in that that kind of damage doesn't happen
16 overnight. And that kind of damage pertains to the ownership,
17 operation of the business prior to the closing date.
18 Notwithstanding this language, is it your understanding that
19 you'd be required to fix it all?

20 A It -- it is my businessperson's understanding and it is my
21 assumption that if we have a roof problem that exceeds what I
22 have currently estimated for, which I think is what you're
23 describing, that it would need to be fixed. Yes. Again, life
24 safety of the residents, in addition to the four corners of
25 the lease.

1 Q We have the four corners of the lease, but I've got the
2 four corners of the APA. So is it your understanding that,
3 notwithstanding that under the terms of this that would appear
4 to be an excluded liability?

5 A And I -- I can -- I've already answered to the best of my
6 knowledge in the way that I can answer it. It is -- it is for
7 the health/safety of the residents and under the lease. If
8 the roof needs to be replaced, if there is a health/safety
9 issue at the property broadly, it needs to be addressed. But
10 that's normal going into property ownership.

11 Q I'm not suggesting the roof doesn't need to be replaced.
12 It's all the other things that are involved in replacing other
13 components that you discover that no one knew existed prior to
14 -- prior to replacing the roof that you discover in the course
15 of replacing the roof that appear to fall directly in this
16 language.

17 A I'm sorry. Is there -- I just didn't -- I didn't know if
18 --

19 Q I'm asking --

20 A Is there a question there?

21 Q I'm asking is, not just replacing the roof. I understand
22 the -- the Court has already ruled. The roof, while nudging
23 up the end of its useful at various locations, is not in a
24 default state. So therefore, under the definitions elsewhere,
25 it's not a cure and you're not requiring the Debtor to fix it

1 now. Is that correct?

2 A Yes. Correct.

3 Q Okay. So, in the course of, consistent with the ARCH
4 report, year two or three of their five-year projections,
5 several of the roofs start to reach a condition where they
6 simply can't be repaired anymore and the roof membrane needs
7 to be replaced. Are you following me so far?

8 A I was following you, I thought, a minute ago, too, yes.

9 Q Okay. So now when you go to replace the roof, you find
10 out other conditions that go beyond the mere roof membrane
11 itself. You discover structural damage. You discover that
12 there are other things. You discover mold.

13 A Yes.

14 Q Okay. That was an unknown condition that existed as of
15 the closing date.

16 A Okay.

17 Q Are you going to fix it, even though this says it's an
18 excluded liability?

19 A Yes. If we have a mold problem at the property, we will
20 need to fix it. Absolutely.

21 Q And what assurance does the Landlord have -- as a
22 businessperson; I'm not asking you this legally -- but what
23 assurance do we have that when we go and we don't think you're
24 moving quickly enough or you're not addressing part of the
25 problem, that this provision won't be used to excuse the

1 timely performance of the obligation?

2 A You're asking me about a hypothetical situation that you
3 and -- that the Landlord and I find ourselves in in the
4 future.

5 Q It's only hypothetical as to time. We all agree it's
6 going to happen sooner rather than later, don't we? The
7 roofs, some of the roof membranes are going to need to be
8 replaced sometime during the term of this lease?

9 MS. WALKER: Objection.

10 THE WITNESS: That's my assumption as well.

11 MS. WALKER: I'm sorry. This is be getting quite
12 argumentative. If we could ask just the witness her questions
13 in business terms --

14 MR. GOLD: That's --

15 MS. WALKER: -- rather than the tone, I think that
16 would be helpful.

17 MR. GOLD: That's what I'm doing, Your Honor. I'm
18 asking it in business terms.

19 MS. WALKER: Your Honor, she has tried to answer the
20 same line of questions three or four times. I think we've
21 gone past this topic at this point.

22 MR. GOLD: I'm responding to the witness's last
23 answer in which she's characterizing my question as a
24 hypothetical. And I'm trying to say it's not that
25 hypothetical. Please answer my question.

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1 THE COURT: Well, --

2 MS. WALKER: And Your Honor, just --

3 THE COURT: -- here's --

4 MS. WALKER: I apologize. Please.

5 THE COURT: I think I'm prepared here. I think the
6 one issue that I have, Mr. Gold, is I want to make sure that
7 you're on your current hypothetical for the witness to answer.
8 Because in your last hypothetical, you said they pull the roof
9 membrane up and they find mold. But then I think you circled
10 back to: But we know that that's going to happen. So, --

11 MR. GOLD: No, not the mold. What I was --

12 THE COURT: So if you'll just clarify your question,
13 --

14 MR. GOLD: Yes.

15 THE COURT: -- I'm going to overrule the objection,
16 because I think that he's asking questions in a different
17 construct. I think now he's asking questions between the
18 Landlord and the new tenant, and I think that's a fair line of
19 questioning. Because before he was just asking what she
20 thought her responsibilities were.

21 MS. WALKER: Understood, Your Honor.

22 THE COURT: And by "she," I mean Bay 9.

23 MS. WALKER: Your Honor, I appreciate that. I just
24 think in hypotheticals like, "And you know the membrane is
25 going to fail," I don't think that that's a foundation he has

1 laid. Thank you.

2 THE COURT: Okay. Fair enough. So let's lay the
3 hypothetical that you want to ask, and then we'll --

4 MR. GOLD: Well, let me --

5 THE COURT: -- ask the question, so that we're all on
6 the same page.

7 MR. GOLD: If I may, let me lay a little of the
8 foundation.

9 BY MR. GOLD:

10 Q Are you aware of testimony, in this court or in any of the
11 property condition assessments, that refer to the condition of
12 the roof?

13 A Yes.

14 Q And are you aware of pleadings filed on behalf of Bay 9
15 that refer to the roof as serviceable but not yet in a default
16 state?

17 A Yes.

18 Q And you're aware of descriptions in the property condition
19 assessments and property condition reports that refer to the
20 need in the future to replace some of the roofs?

21 A Yes.

22 Q And are you familiar with the normal life of a commercial
23 flat roof?

24 A I would tell you I'm less familiar with the normal life of
25 a flat roof. I'm relying on the ARCH estimates in their

1 report.

2 Q Well, have you heard -- and obviously, The Edgemere is not
3 an Amazon warehouse, so we'll take that one off the list. But
4 you've heard the expression twenty-year roof, thirty-year
5 roof, forty-year roof?

6 A I have.

7 Q Okay. And are you familiar with whether The Edgemere has
8 a guaranty from the roofer in 1999 that it can call on?

9 A I do not believe it does.

10 Q Okay. So if The Edgemere was built in 1999 and it's a
11 twenty-year roof, we're getting close to needing to do
12 something; is that correct?

13 A I think that's correct.

14 Q And even if it was a thirty-year roof, given the remaining
15 term of the lease, it's not unreasonable to think that at some
16 point between the closing date and the term of the lease
17 you're going to have to replace the roof at least once, if not
18 twice?

19 A Yes.

20 Q Okay. So my question then is, if you go to peel the roof
21 back --

22 A Yes.

23 Q -- because you're replacing it on a particular building
24 and you discover previously-unknown conditions -- I'll take
25 mold off the board because of the health and safety aspect.

1 A Okay.

2 Q You discover an underlying structural condition. Somehow
3 the building has been compromised by the condition of the roof
4 over time.

5 A Okay.

6 Q You would agree that when that happens, whether it's in
7 2025 or 2029 or 2033, that that's something you don't know as
8 of the closing date?

9 A I would agree with that, yes.

10 Q Okay. So what assurance does the Landlord have that this
11 language, which says -- that excludes conditions that exist as
12 of the closing day, even if they're unknown, from the scope of
13 your assumed liabilities under the lease, what assurance does
14 the Landlord have that it can enforce the terms of the lease
15 against Bay 9 in that scenario?

16 A My businessperson's understanding of the lease is that a
17 structural problem at the building would need to be remedied.
18 Would also need to be remedied for the health and safety of
19 the residents. As would mold. As would I'm sure many other
20 potential things we could discover.

21 Q Aren't you limiting your liability under the lease through
22 this provision?

23 A In my mind, sir, that is a legal question. I am telling
24 you as a businessperson my expectation and why I've put it in
25 my projections, based on the PCA, I've put them in there,

1 because I'm expecting we're going to have to spend that money.

2 Q Well, --

3 A And as you're describing it, if it were a structural
4 issue, we would have to spend more.

5 Q But your budget does not include unknown conditions.
6 Correct?

7 A It does have contingencies in it for \$1.7 million. There
8 could be other unknowns. We have also capitalized this with
9 money that is in excess by about \$10 million of what is
10 required in this budget.

11 Q Ms. Hatch, I'm not asking you if you have the money.

12 A It's Mrs. Hatch.

13 Q Mrs. Hatch. I'm sorry.

14 A That's okay.

15 Q I'm not asking you if you have the money. I'm asking you,
16 are you amending the lease here so that you don't have to
17 spend it?

18 MS. WALKER: Objection, Your Honor. I really do
19 think we have exhausted this, to the point of waving a pen. I
20 think at this point we really do need to take it down a little
21 bit and just ask the question and not berate the witness any
22 longer.

23 MR. GOLD: I'm not getting a response, so that's why
24 -- I'm sorry, Your Honor, but the fact is I'm not asking about
25 money.

1 THE COURT: It was a bit argumentative.

2 MS. WALKER: And --

3 THE COURT: Yes.

4 MS. WALKER: And if he's not getting a response he
5 wants, it's -- he can't still ask the same questions of the
6 witness. I just think that this topic has been exhausted as
7 to 2.4.

8 THE COURT: Mr. Gold, do you have anything further on
9 whether Mrs. Hatch, as a businessperson on behalf of Bay 9,
10 believes that the APA limits her obligations under the lease?

11 MR. GOLD: Yes. I have one -- a couple -- but a
12 different pod.

13 THE COURT: Okay. Different topic? Okay. Well,
14 let's move on with those.

15 MR. GOLD: Okay. We'll leave the roof.

16 THE COURT: Okay.

17 MR. GOLD: We'll climb back down onto the ground.

18 BY MR. GOLD:

19 Q Mrs. Hatch, you're aware -- are you aware from prior
20 testimony in the earlier phases that there's a pending
21 personal injury action against The Edgemere?

22 A Yes.

23 Q And you're aware that the Landlord was named as a
24 Defendant in that lawsuit?

25 A I actually was not aware that the Landlord was named as a

1 Defendant.

2 Q Okay. Well, let's assume the same thing happens again,
3 that sometime -- it doesn't even have to be -- already
4 happened. That unfortunately between this afternoon and your
5 closing date, 45 to 60 days from now, there is a -- someone
6 trips on the sidewalk.

7 A Uh-huh.

8 Q The easy scenario. There is a slip-and-fall.

9 A Uh-huh.

10 Q And under Section 5.15 of the ground lease, and you're
11 free to refer to it, you have the document in front of you, --

12 A Uh-huh.

13 Q -- there is a duty by the tenant to indemnify the Landlord
14 for third-party claims arising out of the operation of the
15 business. Your understanding of this document that you
16 negotiated and signed, where does the Landlord tender the
17 defense of that lawsuit to fulfill the indemnification
18 obligation under 5.15?

19 MS. WALKER: Objection, Your Honor. I think this is
20 asking for a legal conclusion or a legal opinion of a
21 businessperson.

22 MR. GOLD: Your Honor, my question could not be
23 further afield. It's: Where do you tender? It's literally:
24 Who do you email it to, or where do you -- this is the
25 ultimate businessperson's question. Where do you tender the

1 defense of the lawsuit if that happens?

2 MS. WALKER: And Your Honor, I don't think this
3 witness can answer where you tender a lawsuit. It seems to me
4 quite to be a legal decision. But Your Honor, I'm --

5 MR. GOLD: She answered the question in her
6 deposition, Your Honor.

7 THE COURT: Okay. I'm going to overrule the
8 objection, again, based upon the witness's knowledge.

9 BY MR. GOLD:

10 Q What's your understanding?

11 A If we get sued by someone that trips and falls?

12 Q No. If my client gets sued.

13 A If your client gets sued? By someone --

14 Q For someone who tripped-and-falled prior to closing.

15 A Prior to closing?

16 Q It's not on your ticket, is it? Under your understanding
17 of the APA? That's not among the -- that's among the excluded
18 liabilities, isn't it?

19 A It's hard for me to be responsible for something that
20 happened prior to closing, so I would assume that we would
21 write a document that says that, until closing and we have
22 control over the asset and its management, that we wouldn't be
23 responsible. So, yeah, that would be my understanding.

24 Q And you don't contemplate, as you sit here today on behalf
25 of Bay 9, purchasing an insurance product that would provide

1 protection for the period prior to closing? That's not in
2 your contemplation, is it?

3 A That's correct. That is not.

4 Q Okay. So then in your view it would be on the Debtor,
5 among -- among the parties, among the Landlord, Bay 9, and the
6 Debtor -- it would be on the Debtor. Is that your
7 understanding?

8 A That would be my assumption. I would obviously consult
9 with my attorney.

10 Q Yes. Under the -- are you aware that the plan that's
11 before the Court, either now or in the next couple days,
12 contemplates the dissolution of the Debtor?

13 A Yes.

14 Q And are you aware -- well, strike that. If you could take
15 a look at Exhibit 18, please. That's the amendment.
16 Thankfully, this is short, so we can keep our discussion of it
17 short. You amended 2.4, the Excluded Liabilities section we
18 were just looking at. It has the same preface. It has the
19 same A through F. All you did here is add G. Is that
20 correct?

21 A Yes.

22 Q Okay. So let's just talk about G for a minute. So, cure
23 amounts associated with the assumption and assignment of the
24 ground lease. And we've talked about that. That's what Judge
25 Larson ultimately adjudicates is a default that needs to be

1 cured prior to closing.

2 A Understood.

3 Q And that was that -- it was your understanding, in adding
4 that to the amendment, was to distance yourself from that
5 liability?

6 A I'm sorry. From which liability in particular?

7 Q That would be the cure cost liabilities as determined by
8 the judge as part of the property condition phase.

9 A Yeah. I think there's a few items here, but yes.

10 Q Okay. That's the first one.

11 A Yes.

12 Q We'll check them off. And, but this document is dated in
13 January, correct?

14 A Okay.

15 Q It's dated January 13th, correct?

16 A Yes. Yes.

17 Q So what was your concern that caused you to seek this
18 amendment between the December 16th date of the asset purchase
19 agreement -- that's the as of date on Exhibit 17 -- and
20 getting to Exhibit 18 approximately four weeks later? What
21 happened that you felt it was a necessity to amend the lease?
22 Excuse me, amend the APA?

23 A We became quite concerned with the obvious litigious
24 position being taken by the Landlord, and out of an abundance
25 of caution wanted to make sure that the Landlord wouldn't try

1 to put their costs and expenses on us as the new lessee.

2 Q On January 13th, what position was the Debtor taking with
3 respect to cure?

4 A Cure of what?

5 Q Existing defaults under the lease. What was the
6 position? You just described the Landlord's position. Were
7 you concerned about the Debtors' position?

8 A No, I don't know that I was concerned about the Debtors'
9 position.

10 Q What was your understanding of the Debtors' position at
11 that time, prior to the cure hearing? What was the Debtors'
12 position on cure as you understood it?

13 A I understood that the Debtors' position was that the --
14 that the capital expenditure at the project didn't rise to a
15 level of default under the lease.

16 Q So the Debtors' position was zero, wasn't it?

17 A That was my understanding, yes.

18 Q Okay. You weren't concerned about that either, that it
19 was zero and you'd get stuck with it? That wasn't a concern?

20 A No. I mean, I can tell you that, based on -- and I would
21 -- based on everything that we've seen, the property is in
22 good shape. It will require money, they all require money,
23 all real estate requires money, but we felt that there was
24 the potential for the envelope and the expansion joint to be
25 what I would call a lack of maintenance to the extent of --

1 of a default, falling, you know, really falling down, but
2 that, by and large, it would not have been prudent to fix the
3 roof until it was required to be fixed. And that taking
4 money from the nonprofit to fix other aspects of the property
5 that had been brought up in the PCAs didn't rise to the level
6 of bad management, extremely poor management. That's not
7 what we viewed. And I still don't view the property as being
8 in that condition.

9 So, no, I understood the Debtors' position. The
10 maintenance staff, what they had done to maintain the
11 property, the health and safety of the residents, it's a
12 highly regulated property, but all of those -- all of those
13 facts are true.

14 Q You just left the building envelope out of your answer,
15 didn't you?

16 A My belief on the building envelope, after reading all the
17 PCAs and after having some benefit of speaking to our
18 existing engineering team, is that the building envelope is
19 not an area of extreme concern, that there are areas of the
20 building that didn't have proper flashing, they need to be
21 fixed, but it happens. It's normal. It should be expected.
22 And it was not -- the Debtor wasn't overly-remiss in not
23 addressing it heretofore.

24 Q Didn't your counsel to file a pleading with this Court
25 suggesting the amount necessary to cure was \$3 to \$5 million?

1 A That was taken directly from the ARCH report, yes.

2 Q Okay. So when you amended this in January, --

3 A Yes.

4 Q -- you're worried about the Landlord, but you're not
5 worried about the \$3 to \$5 million that the Debtor says is
6 zero?

7 A I've already assumed I'm spending the \$3 to \$5 million in
8 my projections, so I've already taken that into account.

9 Q So you assumed that it's all on the Debtor, or that it's
10 all on you? Which is it?

11 A Well, it seems to me that on the building envelope and on
12 the expansion joint, the entity that is responsible is being
13 further studied right now, and I fully expect that we, Bay 9,
14 and the Debtor are going to get to the bottom of the answer
15 to that question.

16 The other items that were in the PCA that the Debtor
17 attributed zero in a cure, and that we were in agreement with
18 -- not saying they didn't need to be addressed, but that they
19 didn't rise to the level of cure -- that those are being
20 handled over time.

21 Q Well, the property condition ruling in its current state
22 isn't limited to the building envelope and studying that. It
23 also involved replacing the cooling tower, didn't it?

24 MS. WALKER: Objection. Your Honor, I do think your
25 ruling stands for itself. I don't understand this question.

1 MR. GOLD: Well, --

2 THE COURT: I'm not sure where you're going with the
3 cooling tower --

4 MR. GOLD: I'm trying to --

5 THE COURT: I've given you a whole lot of leeway, --

6 MR. GOLD: No.

7 THE COURT: -- everybody, with the reports.

8 Because, as we know, I think I'm the only one who hasn't seen
9 them. But --

10 MR. GOLD: Oh, no. I'm not talking about the
11 reports. I'm talking about you, Your Honor. I mean, please,
12 be clear.

13 THE COURT: But with respect to the cooling tower, I
14 did not order the cooling tower replaced. I think I ordered
15 the repair of the structural support beams.

16 MR. GOLD: And further investigation in connection
17 therewith, yes.

18 THE COURT: Yes. Exactly.

19 MR. GOLD: But you ordered it -- you said it was a
20 default.

21 THE COURT: I said that the status of the structural
22 support beams with respect to the cooling tower was a
23 default, and that they should investigate essentially the
24 extent to which they needed to be repaired or replaced, --

25 MR. GOLD: Right.

1 THE COURT: -- without presupposing that they had to
2 be replaced.

3 MR. GOLD: Right. How to fix it.

4 THE COURT: Yes.

5 Ms. Walker?

6 MS. WALKER: So, the objection is that, Your Honor,
7 you have a ruling. It is an order of the Court. I don't
8 understand asking this witness about your ruling has any
9 impact of relevance to adequate assurance of future
10 performance, when you've already made a ruling. And is the
11 question, Are you going to comply with the ruling? Maybe
12 that's a question. But as to, Do you understand the ruling
13 and what the ruling means, I do think that that is a legal
14 determination of Your Honor beyond the scope of this
15 examination.

16 THE COURT: So, Mr. Gold, again, with respect to
17 expansion joint, with respect to the building envelope,
18 obviously, I think she's testified of what her expectations
19 are for next steps. What is the line of questioning with
20 respect to cooling tower?

21 MR. GOLD: I'm responding to the fact the witness
22 was trying to limit the scope of the defaults that have been
23 identified. And she went to the trouble of amending, prior
24 to Your Honor's ruling, --

25 THE COURT: Uh-huh.

1 MR. GOLD: -- because she said she was concerned.
2 If she was concerned, that's where she's drawing the border
3 between cure and adequate assurance. That's where the
4 witness is. Because if it's not cure, it's future. If it
5 doesn't need to be cured now, it's future. So I'm asking
6 this so I understand what the future is, because I'm looking
7 at this APA and I see a dark future. I see a tenant that
8 will use the unconditional approval of this APA as a shield.
9 And whether it is with respect to the cooling tower, the
10 roof, anything else, this is a shield, and it was intended to
11 be a shield, and that is the point of this testimony. It is
12 an attempt to limit liability by Bay 9.

13 MS. WALKER: Your Honor, I do believe the witness
14 was asked the question of why they intended to have this
15 amendment, and I do think it was answered. And I do think
16 the point was the litigiousness of the Landlord in connection
17 with the defined term "Landlord Litigation" in the APA.

18 MR. GOLD: Right. And that's --

19 MS. WALKER: That scope -- excuse me. I think that
20 scope of the question has been asked and answered. If there
21 are different questions that go to the ruling -- you've
22 already made determinations of default. That is a legal --
23 you know, the law of the case has already been settled on
24 that.

25 As to the ability to use this APA for a legal

1 determination, again, I think that is a legal conclusion --
2 determination. Again, I think the witness only knows what a
3 business and what the witness intends to the document. And
4 I'd ask that the scope of this examination be just framed
5 what the witness can do and not what a legal argument that a
6 lawyer would do.

7 THE COURT: Thank you, Ms. Walker. Mr. Gold?

8 MR. GOLD: Three points, in reverse order.

9 THE COURT: Okay.

10 MR. GOLD: Number one, I didn't ask a single
11 question about liabilities in connection with the Landlord
12 litigation. Not a single question.

13 THE COURT: I think she's saying that --

14 MR. GOLD: That was part of the objection.

15 THE COURT: That was what her answer was when you
16 asked her what was --

17 MR. GOLD: Well, no, she talked --

18 THE COURT: -- 2.4-G. That was what her initial
19 answer was, and then you bore down on that issue.

20 MR. GOLD: I bore down on I am focusing simply on
21 the assignment of the ground lease and the scope of that and
22 her concerns about cure.

23 First, I don't believe -- and I want this to come out
24 exactly right with Your Honor -- you're not done ruling on
25 cure. It's not law of the case. You're not done. You've

1 told us you're not done. I respect that you're not done.
2 I'm not trying to influence where you draw the line. I'm
3 talking about, when you do, then what?

4 And as for the last issue, whether it's -- the simple
5 fact is, if we're going to go forward and the answer to every
6 question about the APA is that's a legal question, that's
7 what I'm worried about. I'm worried it being a legal
8 question by a lawyer in a state court when the Landlord goes
9 to enforce a default.

10 THE COURT: I do --

11 MR. GOLD: That's adequate assurance of future
12 performance.

13 THE COURT: I do understand, in spades, the
14 Landlord's objection and the Landlord's reading of the APA
15 and what that means for assumption and assignment. I do
16 understand.

17 My question at this juncture is what more can you get out
18 of this witness, who is not a lawyer and didn't draft this
19 herself and is going to -- she's going to answer from her
20 position as the president of Bay 9 and what her intention or
21 her assumption is. And she's answered those.

22 Now, if you want to go through each of the remaining
23 issues -- because we've touched stucco, we've touched
24 roofing, and we've touched expansion joint -- if you want to
25 go through the last I guess six things that were part of the

1 cure ruling and ask her what her position is on that post-
2 closing, then we can do it.

3 MR. GOLD: No.

4 THE COURT: I'm not going to stop you from doing
5 that, and I think that's a legitimate cross-examination. But
6 --

7 MR. GOLD: We've hit enough examples on that --

8 THE COURT: Okay.

9 MR. GOLD: -- as to that point. I will move on to a
10 similar but different topic.

11 THE COURT: Okay.

12 BY MR. GOLD:

13 Q Mrs. Hatch, I'd like you to look at something that wasn't
14 amended, and that's 2.3.

15 THE COURT: So we're going back to Exhibit 17, Mr.
16 Gold?

17 MR. GOLD: Yes. The APA.

18 THE COURT: Thank you.

19 MR. GOLD: 2.3, for the record, is not changed in
20 the first amendment, Exhibit 18.

21 BY MR. GOLD:

22 Q Do you have 2.3 in front of you?

23 A I do indeed.

24 Q Okay. As the post-closing tenant on behalf of Bay 9,
25 what is your understanding of the scope of liabilities

1 assumed under 2.3(b)?

2 A We are assuming all liabilities and obligations under the
3 purchased assets, accrued or accruing after the effective
4 time, except for taxes, relating to the premises, cure
5 amounts associated with our assumed contracts, other than the
6 ground lease, which the cure amounts are going to be paid by
7 the seller, and -- and then other liabilities required to be
8 paid by us as purchaser pursuant to the agreement.

9 Q Okay, that's (a). Can you take a quick look at (b),
10 because it continues the thought?

11 A All liabilities and obligations arising under or related
12 to the assumed contracts from and after closing.

13 Q From your understanding and your experience, what do you
14 understand, in terms of that border, a liability arising
15 prior to closing? Can you give me an example based on your
16 knowledge of this property in these proceedings?

17 A I'm sorry. Liability arising --

18 Q Prior to closing that you're not assuming.

19 A A liability arising prior to closing that I am not
20 assuming?

21 Q Right.

22 A So, if we don't assume a copy or lease, and that --

23 Q No, specific to the ground lease, please.

24 A I'm sorry. Specific to the ground lease?

25 Q Yes. That's -- ground lease is one of the assumed

1 contracts.

2 A Any -- well, I mean, we're -- anything that was due prior
3 to us taking over, I guess, is what I -- we're not assuming.

4 Q Okay. So the simplest example would be if the Debtor
5 didn't pay March rent --

6 A Yes.

7 Q -- pre-closing, --

8 A Yes.

9 Q -- that's not on you?

10 A That's correct.

11 Q Okay. And picking up our prior example, if there was a
12 slip-and-fall, because that related to a liability arising
13 prior to closing, that's not on you either. Is that correct?

14 A I think that's, yes, my assumption.

15 Q Okay.

16 A My understanding.

17 Q What is your understanding as to the scope of liabilities
18 being assumed here under the contract that you signed with
19 respect to the physical condition of the property?

20 A That we are -- we are -- we are obligated on a go forward
21 basis to maintain the property in, you know, with regards to,
22 again, health and safety of the residents, with regards to
23 the obligations under the lease.

24 Q We've used the term "go forward" quite a bit this
25 afternoon. What does "go forward" mean in this context?

1 Does go forward mean post-closing?

2 A Yes.

3 Q So if it was a liability that arose pre-closing, it's not
4 go forward?

5 A If it was a liability on the day before closing, if it
6 were a liability, then yes, it would -- it would need to be
7 taken care of or otherwise provided for prior to our closing.

8 Q Do you believe, given the scope of the investigation
9 that's going on, I think you said at SOCOTEC?

10 A SOCOTEC, yes.

11 Q Do you believe it is realistic to believe that SOCOTEC
12 can complete its evaluation, issue a report, you and the
13 Debtor agree, you go out and get two guaranteed max contracts
14 to bring back to Judge Larson, as she ruled, and that -- the
15 remedial work that is revealed by that process can all be
16 accomplished in 45 to 60 days?

17 A Yes. That's what SOCOTEC has -- has certainly -- our
18 discussions have certainly led to that conclusion, yes.

19 Q Is SOCOTEC, is their work reflected in the budget?

20 A Is the engagement for them reflected in the budget?

21 Q Yes.

22 A No.

23 Q Is Bay 9 responsible for it?

24 A We have agreed -- yeah, we -- we did engage them. Fund
25 IV engaged them, yes.

1 Q Fund IV engaged them, but will Fund IV seek
2 reimbursement?

3 A I -- the amounts are fairly insignificant, and -- in the
4 context of what we're talking about here. So, to be honest,
5 I haven't mentally determined if Fund IV will stay with that
6 or if Bay 9 will reimburse them. But it is not a
7 substantial-enough amount of money for me to have made that
8 determination heretofore.

9 Q The commitment letter that we referred to, the \$16
10 million, million for rent for three years, exclusively rent,
11 and then the \$15 million for CAPEX and working capital,
12 which, as you clarified, could include rent, it is your
13 understanding that is not a guarantee, correct?

14 A It is a -- it is a firm commitment. That is my
15 understanding. I don't know what you mean by guarantee.

16 Q Well, it's not a guarantee to any third party. It's not
17 a guarantee to anyone else. It's a contract just between
18 Fund IV and Bay 9?

19 A That is my understanding, yes.

20 Q Okay. Totally shifting gears, has Long Hill prepared a
21 marketing plan for the post-closing existence of the Edgemere
22 and the conversion to a rental model?

23 A I don't think that we have yet done enough for it to --
24 or Long Hill has done enough for it to be officially called a
25 marketing plan. So I think the answer to that is no.

1 There's been a lot of work done to understand how the rental
2 product will be sold to the market. The competitive set.
3 Spoken with the head marketing individual at the property on
4 their opinions and thoughts.

5 Q You said the head marketing person?

6 A The head and the only marketing person, probably.

7 Q I was going to say, it's the only marketing person,
8 because the Debtor is not fully staffed on the marketing
9 side. Is that correct?

10 A That is my understanding.

11 Q And the marketing of an entrance-fee CCRC is different
12 from a rental property, to your understanding?

13 A It depends on what you would consider to be different,
14 what aspect of it you would consider to be different. There
15 is an awful lot of it that is exactly the same, and then
16 there is a contract difference that is, without a doubt,
17 different.

18 Q You're marketing to different target clients, customers,
19 future residents --

20 A Not necessarily.

21 Q -- under one model?

22 A No.

23 Q Has that decision been made here?

24 A Yes.

25 Q Okay. So what's the decision?

1 A The decision is that I don't think that the residents
2 that would be interested in moving into The Edgemere would be
3 any different necessarily under an entrance fee construct or
4 under a rental construct. There are certainly residents that
5 are more comfortable with a life care community and a CCRC,
6 and there are certainly residents that are more comfortable
7 with a rental construct. But I don't expect that that is
8 going to change, necessarily, the target demographic for this
9 property materially.

10 Q To your knowledge, since you -- I believe you testified
11 that you were unaware of whether or not Long Hill had managed
12 the immediate conversion of a CCRC to a rental property --
13 did I get your testimony wrong? I'm distinct from you said
14 you've done a conversion, but it was a slow transition. Were
15 you aware of Long Hill's experience in that field?

16 A So, what we're asking Long Hill to do is run a rental
17 property.

18 Q Okay.

19 A And I do -- I know of their experience in running rental
20 properties. I also know that they have run CCRC -- and
21 currently run CCRCs. So I'm -- what I don't know that they
22 have done, which is something that we have done historically,
23 is slowly transition a property over time from being an
24 entrance fee to being a rental, which I do think, frankly, if
25 that's what we were doing here, I think I would still look to

1 Long Hill. But it's not what we're doing here. And so I
2 didn't specifically ask them if they had done that over time
3 in another instance.

4 Q Okay. You said you did that. I think it was the
5 Michigan property?

6 A In the process. Yes.

7 Q It's in the process?

8 A Uh-huh.

9 Q But you're a bondholder in that capacity, aren't you?

10 A We are a -- we are the only lender --

11 Q Okay.

12 A -- in that situation.

13 Q But your role is as lender, not as operator?

14 A Our role is lender, yes.

15 Q Okay. Okay. In terms of Long Hill's exposure to this
16 property, do you have an understanding of when Long Hill was
17 first retained by the Bond Trustee?

18 A I would have to look back. It was certainly, you know,
19 2022. But I just don't recall the exact date.

20 Q Well, there appear to be references to Long Hill being
21 retained in September by UMB. If that's the case, do you
22 recall whether they were retained by UMB after you had made
23 the decision to, as you say it, throw your hat into the ring
24 and become a potential acquirer?

25 A I'm afraid I would have to look back. I -- my

1 recollection -- well, I know that we went to a meeting with
2 Long Hill at the facility and met with residents, at which
3 time we were not an acquirer. We were Bondholders and we
4 wanted to talk with the residents about our vision and
5 presented Long Hill. But Lapis, Bay 9, was not an acquirer
6 at that time. And so Long Hill was certainly involved in the
7 situation prior to Lapis throwing its hat in the ring as an
8 acquirer.

9 Q So that helps establish or narrow that window. If UMB
10 retained Long Hill the third week of September, it pretty
11 much excludes most of September from your hat going into the
12 ring. Is that correct?

13 A I'm sorry. I just can't be helpful with the timeline. I
14 -- I --

15 Q Okay.

16 A I can look over and try to piece it together, but --

17 Q Okay. Well, Long Hill was engaged. What communications
18 do you have with Long Hill in, say, October or November? Are
19 you continuing to engage with them as you prepare the APA?

20 A I'm sure we were talking with Long Hill in some capacity.
21 I can't tell you that I recall calling Long Hill with regards
22 to the APA negotiations in particular.

23 Q Well, my concern is you testified that when you switched
24 hats, you stopped joining the discussion groups on the bond
25 side. So if you switched hats and you stopped joining the

1 discussion groups on the bond side, how is it that you have
2 access to an expert retained by the Bond Trustee for purposes
3 of acquisition?

4 A Yeah. And I would say that there are certainly -- look,
5 we -- there are -- any discussions with the other Bondholders
6 that require -- that were -- that would put us in a bad
7 position as being the acquirer versus the Bondholders, we
8 were not -- we were not party to, we didn't participate in.
9 There are other discussions that we Bondholders, Lapis
10 included, had like on additional debtor-in-possession
11 lending, for example, where we were included.

12 And so I do think it was conceivable and very possible
13 that we could have spoken with Long Hill in a capacity that
14 didn't violate some kind of a bondholder/acquirer duty, but
15 that we each -- the Bondholders, the Trustee, Trustee's
16 counsel, Lapis, Lapis's counsel -- were very cognizant of
17 trying to avoid conflicts if they were germane to our
18 acquisition.

19 Q So it wasn't a hard break?

20 A It felt like a hard break, but no, I don't think it was
21 an absolute we weren't talking to them anymore.

22 Q But you continued to have -- do you recall, did you
23 continue to have access to a consultant retained by UMB?

24 A We wouldn't have in their capacity as consultant for UMB
25 as to specific issues related to the APA, as to specific

1 issues as to our purchase price, for example. That would not
2 have been appropriate.

3 Q And you, in fact, did not -- at least the engagement, you
4 didn't directly engage Long Hill until December; is that
5 correct?

6 A That's correct.

7 Q Late December, in fact. December 22nd?

8 A I think that's right.

9 Q And why don't we, while we're talking about it, check it
10 off the list. Please take a look at Exhibit 12. This is
11 that engagement letter we just referred to; is that correct?

12 A That is correct.

13 Q Okay. And you identified this previously as a document
14 you signed, so we'll skip all that good stuff.

15 We've talked about the date. I'd like you to turn to
16 Page 8 of this letter that's, at the top, Page 9 of the ECF,
17 and on the Bates stamp it's Bay 57.

18 A Yes.

19 Q So I'm focusing here on Paragraph or Section E, Future
20 Possible Management.

21 A Yes.

22 Q So it starts with, "Over the next few weeks, we will
23 negotiate with you a mutually-agreeable management services
24 agreement, to be effective" -- just summarizing at this point
25 -- upon closing or 60 days after the effective date of a

1 transition services agreement with Lifespace. Do you see
2 that?

3 A I do.

4 Q Is there a TSA contemplated with Lifespace?

5 A Not that I see.

6 Q Okay. I mean, from your business perspective. I mean,
7 you're not negotiating that with them now? You told me you
8 haven't spoken to them.

9 A That's correct. I mean, I think that we -- I do think
10 that there is going to need to be some sort of transition
11 agreement between Lifespace and Long Hill and Bay 9. That's
12 normal. We haven't started that negotiation yet.

13 Q Okay. Now, and so also the opening line of this is,
14 "Over the next few weeks." So we're now eight, nine weeks
15 since then.

16 A Yes.

17 Q You still don't have a deal, right?

18 A I would say, wearing my businessperson's hat, we have a
19 deal. I would say, wearing my attorney's hat, there is still
20 a lot of T-crossing and I-dotting going on.

21 Q Okay.

22 A I don't really have an attorney's hat, but that would be
23 my legal answer.

24 (Laughter.)

25 Q All the hats you have, you don't have one of those?

1 A Uh-huh.

2 Q Okay. Is the fee structure identified in this letter
3 effectively where you are, or has it changed?

4 A I think that it is effectively where we are. I --

5 Q And the agreement contemplated is a one-year term?

6 A I would need to -- I would honestly need to review it.
7 We generally set these with longer terms, the ability to
8 exit. I'm just -- I'm not in the weeds on that. I trust my
9 vice president very much to negotiate those documents. She's
10 negotiated quite a few of them.

11 Q Take a look at Subparagraph A, please.

12 THE COURT: A as in apple?

13 MR. GOLD: Yes, ma'am.

14 THE COURT: Thank you.

15 THE WITNESS: I see it.

16 BY MR. GOLD:

17 Q This indicates this consultancy is retroactive to
18 November 1st. Is that your understanding?

19 A Yes.

20 Q And do you understand that as of November 1st that Long
21 Hill was working just for you, or were they working for UMB
22 too at the time? How do we interrelate the two
23 relationships?

24 A I would say the extent to which we're all rolling in the
25 same direction, which is 90 percent of what we're doing, they

1 are working for both. The extent to which they have -- that
2 the Bondholders have concerns that they want to bring up to
3 their very capable operations consultant absent the buyer,
4 that they had the ability to do so.

5 MR. GOLD: Your Honor, I think we've rounded the
6 clubhouse turn, as they would say. May I indulge the Court
7 for perhaps three to five minutes to consult with my
8 colleagues, --

9 THE COURT: Please.

10 MR. GOLD: -- and we'll put a pin in this?

11 THE COURT: Please.

12 MR. GOLD: Thank you, Your Honor. Do you mind if we
13 go off the record for that interval, Your Honor?

14 THE COURT: Of course.

15 MR. GOLD: Okay. Thank you.

16 THE COURT: To be clear, do you need us to go off
17 the record, or do you want us to mute the courtroom?

18 MR. GOLD: I don't need you to leave the courtroom,
19 Your Honor, you're welcome to stay, --

20 MS. VANDESTEEG: Mute.

21 MR. GOLD: -- but we're probably going to step
22 outside. I think it just makes a little bit easier.

23 THE COURT: Oh. And --

24 MS. VANDESTEEG: A five-minute recess, Your Honor,
25 would be great.

1 MR. GOLD: Yeah. Just a five-minute recess.

2 THE COURT: Okay. It's 6:06. We'll take a five-
3 minute recess.

4 MR. GOLD: Thank you, Your Honor.

5 THE CLERK: All rise.

6 (A recess ensued from 6:06 p.m. until 6:14 p.m.)

7 THE CLERK: All rise.

8 THE COURT: Please be seated. We're going to go
9 back on the record in Case No. 22-30659. Mr. Gold?

10 Oh, I'm sorry, Mrs. Hatch. You escaped.

11 MR. GOLD: We'll let Mrs. Hatch get settled. I
12 think at this point we could do it on the fly, but --

13 THE COURT: Sure.

14 CROSS-EXAMINATION, RESUMED

15 BY MR. GOLD:

16 Q Mrs. Hatch, if you'd go back to the skinny binder, we'll
17 close out with a couple things here.

18 MR. GOLD: Your Honor, this is why I asked for the
19 recess, so my skilled colleagues could go. I'd like to move
20 Exhibit 8 into evidence. That is the February 13, 2023
21 commitment letter that was the subject of both direct and
22 cross.

23 MS. WALKER: No objection, and that saves us a
24 minute on redirect. Thank you.

25 THE COURT: Excellent. Exhibit Bay 9 8 is hereby

1 admitted.

2 MR. GOLD: Thank you, Your Honor.

3 (Bay 9 Holdings, LLC's Exhibit 8 is received into
4 evidence.)

5 BY MR. GOLD:

6 Q I'd like you to turn back to an oldie but a goodie in the
7 form of Exhibit 10. And Mrs. Hatch, again, Exhibit 10, for
8 the record, is the document entitled Edgemere Product
9 Business Planning Analysis. This is Bates-stamped Bay 29.

10 In looking at the occupancy percentages and the, as you
11 said, built in to those occupancy percentages are turnover
12 statistics that Long Hill looked at, are you aware of whether
13 Long Hill used any specific industry metrics to formulate
14 this?

15 A Oh. Um. I think we had the benefit of actuarial
16 estimates and industry metrics with regards to the -- with
17 regards to turnover estimates.

18 Q And do you know whether they looked at -- since it's, as
19 you testified on closing, it's a rental property.

20 A Correct.

21 Q It's a rental model.

22 A Uh-huh.

23 Q Were they, in terms of industry metrics, were they
24 looking at rental model industry metrics, if you know?

25 A Well, attrition is an actuarial metric. Regardless of

1 whether it's a CCRC or a rental property, you tend to lose
2 folks in the same way. This tends to be the last place folks
3 live. That doesn't change materially between a CCRC or a
4 rental. So I don't know that I understand the question in
5 that context.

6 Q Well, so are you aware of any industry metrics that Long
7 Hill looked at or that you relied upon? You refer to
8 actuarial statistics. You know, that's the assumption that a
9 current resident at Edgemere progresses through the CCRC
10 community to escalated levels of care. I'm talking about
11 people coming and going, or filling up vacancies, that type
12 of turnover. Market turnover.

13 A Oh, okay. Yeah. I think absolutely Long Hill applied
14 rental-like attrition assumptions, that would include folks
15 moving to higher levels of care, or dying and not moving on
16 to higher levels of care.

17 Q Do you know what they looked at, just other than saying
18 general industry data?

19 A No. You'd have to ask them. My -- our knowledge, our
20 experience, because even though we're often a lender we also
21 need to take a look at volatility of resident population, as
22 you say, those coming and going and et cetera, in rental
23 versus CCRC. And they really -- they aren't materially
24 different from everything that we've seen and our own
25 experience at properties.

1 Q You don't believe they're materially different?

2 A I do not.

3 Q Are the materially different compared to an entrance-fee
4 model?

5 A No.

6 Q Okay. Now, in generating what we see as Exhibit 10, Bay
7 29, did you factor in any -- I'll use a term from your world
8 -- execution risk with respect to the Lifespace settlement
9 that's incorporated into the plan?

10 A What specifically are you --

11 Q Are you aware that one of the features of the proposed
12 settlement is what effectively is a subsidy for existing
13 residents when they move from independent living to a higher
14 level of care elsewhere in the facility? Are you aware of
15 that?

16 A We are aware of that, yes.

17 Q Okay. And did you -- does it play any role in your
18 analysis as to the timing of those payments or the magnitude
19 of funds that will be available?

20 A No. You know, we have the benefit here that this
21 facility has been and is quite expensive, and its residents
22 are well off and they have passed numerous income tests in
23 the past. So, do I anticipate that if Lifespace can't pay
24 the difference that that would materially alter a resident in
25 assisted living paying their rent? No. I don't think that

1 that would have been a prudent assumption to make. I think
2 that, in addition, the bulk of -- this is a large health care
3 facility -- the bulk of the residents at the health care,
4 whether it be assisted living or memory care, are going to
5 come from the community. There will be residents that come
6 from independent living, but in order to really fill this
7 significant health care, that's going to need to come from
8 afield to the property, and those are not going to have the
9 benefit of the Lifespace delta, as you describe.

10 Q So you're saying the business model assumes new residents
11 at the higher level of care rather than graduates of the
12 existing population?

13 A It assumes -- it assumes both, certainly, yes.

14 Q Okay. Is there a proportion that you're aware of as
15 between the two?

16 A It would be based on, you know, that the independent
17 living is, as you know, not fully occupied at this point. So
18 what is done is you look at assumptions based on how many of
19 your independent living residents are going to require higher
20 levels of care -- again, actuarial-like assumptions -- and
21 then you also make assumptions as to therefore how many of
22 those units you would need to fill from the broader
23 community. And I think it will be a combination of both, and
24 I think those assumptions have been made.

25 Q In terms of the occupancy assumptions, if I'm looking at

1 this document, the five years, does your five represent a
2 stable state?

3 A Yeah. I think we could eventually exceed year five, but
4 I think year five could be fairly described as stability,
5 yes.

6 Q And you ran these numbers out all the way through the
7 life of the lease, didn't you?

8 A We did.

9 Q Did you do that with the assistance of Long Hill, or was
10 that in-house?

11 A Certainly, Long Hill's experience, Long Hill's knowledge,
12 we have taken advantage of that fountain of knowledge. Long
13 Hill has not been asked to opine specifically on our model
14 from years six through thirty, but I can't tell you that we
15 didn't access their significant knowledge in order to develop
16 it.

17 Q Well, let me draw a quick a distinction. You may have
18 accessed their knowledge and experience as part of your
19 relationship, but you didn't ask them for any year six
20 through thirty work product in written form. Is that fair?

21 A I would answer it the same way I just answered it, which
22 is we can talk to Long Hill about dining costs, labor rates
23 on an annualized basis, and I cannot tell you that those
24 discussions didn't factor into what we have built in for
25 years six through thirty.

1 Q But you haven't produced in this proceeding years six
2 through thirty; is that correct?

3 A We have not. That's right.

4 Q Okay. Has it been shared with any outside party?

5 A I don't know the answer to that. I'd have to talk with
6 Basia about that.

7 Q Okay. So, just a quick sum-up question. We've seen
8 Exhibit 10. We've seen -- with the projections. We've seen
9 Exhibit 8 and the capital commitment letter. Is there any
10 other adequate assurance of future performance to your
11 understanding that Bay 9 is offering to the Landlord?

12 And let me amend that, in fairness, because you've spoken
13 about your experience in the industry and that. I don't want
14 to discount your testimony there. You gave us that
15 testimony. We have Exhibit 8. We have Exhibit 10. What
16 else do we have?

17 A You know, the only other thing that I can -- that I can
18 give you is we have a very successful track record developed
19 over 13 years in investing in real estate assets, in senior
20 living assets, in complicated situations, in distressed
21 situations, in situations that require a lot of time and
22 attention. We put it right on our website. What is
23 important to us are longstanding relationships, and that
24 includes fulfilling what we say we will do. That includes
25 happy -- we like everyone being successful in our

1 investments. That includes the residents. That includes the
2 managers. That includes the vendors. That includes our
3 relationship with regulatory bodies. And I really hope that
4 that includes the Landlord on an ongoing basis. They are a
5 significant stakeholder in this situation, and we look
6 forward to a longstanding, fruitful business relationship
7 there.

8 Q But you have not offered the Landlord in this proceeding
9 a security deposit, correct?

10 A We have absolutely offered to step into this lease as it
11 is written and continue on. I think that we are -- we are
12 also providing the Landlord, given that this whole process
13 will produce a rental property, I firmly believe the Landlord
14 is in a very good position on a go forward basis with regards
15 to this asset. It is -- it is -- it is a new day for this
16 beautiful facility, and I think they are going to be very
17 happy.

18 Q You haven't offered the Landlord any form of guarantee,
19 even with a sunset, to deal with any transition period?

20 MS. WALKER: Objection, Your Honor, to the extent
21 this goes into anything that would be under 408.

22 MR. GOLD: Oh, no, not at all. I'm talking in this
23 proceeding. In this forum.

24 THE COURT: Exactly. Just in this forum.

25 MR. GOLD: In this forum. Or perhaps have we

1 offered to the judge?

2 BY MR. GOLD:

3 Q Have we offered, in this forum, a guarantee?

4 A I am willing to comply with the release as written,
5 without a doubt.

6 Q Okay. You haven't offered a letter of credit, correct?

7 A Again, negotiating against myself doesn't seem to be a
8 terribly smart business operation. I am absolutely prepared
9 and willing to step into this lease as it is written.

10 Q Well, as Your Honor and your counsel know, you and I
11 could argue all day about what you just said, but I'm simply
12 asking a series of potentially yes/no questions. So, you
13 haven't offered a rent commitment or a rent pledge that's
14 directly enforceable by ICI, the Landlord. Is that correct?

15 A That is correct.

16 Q And you haven't offered to pay any prepaid rent post-
17 closing coming out of the box to the Landlord?

18 A No.

19 MR. GOLD: That's all I have, Your Honor. Thank
20 you.

21 THE COURT: Okay. Thank you.

22 All right. Ms. Walker?

23 MS. WALKER: Your Honor, I am mindful of your time.
24 I think we're under five minutes.

25 THE COURT: Okay. If you have redirect, please.

1 MS. WALKER: Thank you.

2 MR. GOLD: Well, let me clear the podium as quick as
3 possible, and I'm glad we got Exhibit 8 admitted.

4 MS. WALKER: Yes. That saved a tremendous amount of
5 time.

6 Your Honor, if I may proceed?

7 THE COURT: I had my finger on it as well.

8 MR. WALKER: Thank you. I know. I know. I know.
9 I was too quick.

10 (Laughter.)

11 MS. WALKER: Ms. Hatch, --

12 THE COURT: There's nothing that makes an opinion
13 more difficult than when everyone talks about an exhibit
14 that's not been admitted.

15 So, please, I interrupted you. Please, Ms. Walker.

16 MS. WALKER: No. Of course. Of course.

17 REDIRECT EXAMINATION

18 BY MS. WALKER:

19 Q Mrs. Hatch, would you please turn to Exhibit 4 in the
20 small binder? This is Bay 9's operating agreement.

21 A Yes.

22 Q Thank you. And can you turn to Item 2 -- sorry, Section
23 2.4?

24 A Yes.

25 Q The term? And are you aware of the term of the lease,

1 when the lease term expires?

2 A Yes. I believe it's a little over thirty years.

3 Q And the term of Bay 9 exceeds that by a couple of
4 decades?

5 A It does.

6 Q Thank you. There was -- we had talked about the balance
7 sheet for Bay 9. And while there is no printed balance sheet
8 out, is it fair to say that, on the balance sheet, if you
9 were to have it or you just summarize it, there's
10 approximately \$57.5 million of assets, and right now, no
11 liabi... no debt?

12 A That's correct.

13 Q And the only liability is a contingent liability of a
14 purchase agreement, but on the balance sheet it's still zero?

15 A That's correct.

16 Q Thank you. There was a discussion about whether or not
17 it would be prudent for Bay 9 to dividend up or the sponsor
18 to take out dividend for the cash that may be on the balance
19 sheet. You had referenced the fact that it might not be the
20 smartest tax decision to make. I know you're not a tax
21 person, but as a business matter, what did you mean by that?

22 A So, we -- we established the Bay 9 entity, and along with
23 -- anytime you do an -- we call them AIVs, alternate
24 investment vehicles. The reason, of course, is in part to
25 provide for all the good reasons to have an SPEV or an AIV to

1 -- if there is Legionnaires', for example, that runs through
2 the facility, it could arise for significant liabilities to
3 the owner, and it is prudent to establish that from a legal
4 standpoint.

5 In addition, some of our investors are tax-exempt --
6 endowments, pensions, the like -- and so we have to be very
7 careful to shield for them ECI, which is Effectively-
8 Connected Income, and the structures that we put together
9 help to do that. Dividends, if not done very carefully,
10 could cause a negative tax effect to those investors that are
11 sensitive to ECI.

12 Q So, as a matter of business, it wouldn't -- your position
13 is it wouldn't be prudent to do that just to take back cash?

14 A Yes. It would -- it's not -- again, as you pointed out,
15 I would need to talk to all the accountants and make me even
16 more exhausted than cross-examination, and so I would need to
17 -- I would need to understand it. But it's not -- it is not
18 as simple as put money down and then take it right back.

19 That is, unfortunately -- my understanding is we can't do it
20 that way. And not that we would or have any intention of
21 doing so, but there are consequences to it.

22 Q There was some conversation with Mr. Gold about the
23 Lifespace settlement and how that may impact. Do you recall
24 in this plan process requesting an addition to the plan that
25 made it expressly clear that the Lifespace settlement was

1 independent of the go forward?

2 A Absolutely. Yes.

3 Q And that's in the plan, right?

4 A Yes.

5 Q So whatever happens with the Lifespace settlement has
6 nothing to do with your relationships with the future
7 residents?

8 A That's right.

9 Q Quickly, there was a discussion about the SOCOTEC
10 investigation and whether or not all of the actual work could
11 be -- would be done before closing. Is it your understanding
12 that perhaps given, you know, schedules for contractors and
13 the like, that that work, while you may have the scope of it
14 done, you may know what's going to be done, but actually it
15 may or may not be done in 60 days?

16 A Yes. I mean, it's my anticipation, based on the limited
17 information we have thus far, that it would be, but it is
18 possible that it will not be.

19 Q But it's your goal, of course, to --

20 A Oh, absolutely. Yeah.

21 Q Thank you. And finally, does Bay 9 -- or for that
22 matter, the sponsor -- have any business reason to let the
23 property fall into disrepair?

24 A No. No. Again, this is -- this is a facility where
25 folks will live, and it's -- it's maintenance, it's safety,

1 it's ability to provide for residents. All of our
2 projections continue it as a premier rental community. It
3 needs to stay incredibly well-maintained for that business
4 program to work, in addition to regulatory concerns that we
5 would be under. So hopefully that answers it.

6 Q Yes. Thank you.

7 MS. WALKER: Your Honor, I have no further questions
8 of this witness.

9 THE COURT: Thank you very much, Ms. Walker.

10 Any recross, Mr. Gold?

11 MR. GOLD: I know that's usually, a judge asks how
12 many more questions and the attorney says one, it's suspect.

13 (Laughter.)

14 MR. GOLD: Just so you know, I know that going in.

15 RE CROSS-EXAMINATION

16 BY MR. GOLD:

17 Q When you said that it would be not a good business
18 decision to not maintain the property just a moment ago, do
19 you know whether or not that was Lifespace's intention, too?

20 MS. WALKER: Objection. Calls for speculation, Your
21 Honor.

22 MR. GOLD: Part of the due diligence, Your Honor.
23 I'm asking the question: Does she know whether that was
24 their intention, too, to keep it as a market property?

25 THE WITNESS: To keep it as a market property?

1 BY MR. GOLD:

2 Q As you said, the high -- you know, it's a high-end
3 property. You've described it as a beautiful property. When
4 -- do you know whether or not that was Lifespace's intention,
5 too, and they failed?

6 THE COURT: I'll let the witness answer to the
7 extent of her knowledge.

8 THE WITNESS: I think you and I have a fundamentally
9 different understanding of the property failing in that
10 capacity right now. I think the property is absolutely
11 gorgeous, and I do -- like many properties, it has aspects to
12 it, the entire campus, that need improvement, but I both
13 believe it was Lifespace's intention and I believe it was
14 something that Lifespace succeeded in in maintaining this
15 property as a premier offering to the marketplace.

16 BY MR. GOLD:

17 Q Notwithstanding the deferred maintenance?

18 A Yes. Notwithstanding the deferred maintenance.

19 Q Okay.

20 MR. GOLD: Close to my promise, Your Honor. Thank
21 you.

22 THE COURT: Thank you very much, Mr. Gold.

23 Anything further, Ms. Walker?

24 MS. WALKER: No, no, I have nothing further, Your
25 Honor.

1 THE COURT: All right. The witness is excused.

2 Thank you very much, --

3 THE WITNESS: Thank you.

4 THE COURT: -- Mrs. Hatch, for testifying today.

5 THE WITNESS: Thank you.

6 MS. WALKER: And thank you.

7 (The witness steps down.)

8 MS. WALKER: And Your Honor, just for clarification,
9 our -- as you have done in prior hearings, a witness has been
10 examined, crossed, redirect, and then that witness is closed.
11 So I just want to confirm that that's our understanding for
12 the proceedings for the entire trial, and I do think that
13 while Mrs. Hatch may decide to stay here, but I think her
14 role in this case and the examination is concluded.

15 THE COURT: Mr. Gold?

16 MR. GOLD: It was my expectation that, unless she
17 wanted to stay, that Mrs. Hatch would journey back to
18 Northern California and go see our crummy weather and its
19 rolling power outages because of high winds, but it was not
20 my expectation anything other than that, Your Honor.

21 THE COURT: Okay. So no intent to recall?

22 MR. GOLD: No intent to recall.

23 THE COURT: All right.

24 MS. WALKER: Thank you for that clarification.

25 THE COURT: Thank you very much.

1 Texas has some things to offer. You know, there's
2 probably folks in Buffalo right now really cold.

3 MR. GOLD: We're having a rough week, Your Honor.
4 We've having a rough week.

5 THE COURT: Sorry about that, Mr. Bleck.

6 (Laughter.)

7 THE COURT: Ms. Walker?

8 MS. WALKER: Your Honor, just I thank you for
9 staying longer. We're trying to keep it to the timeline. We
10 still have several witnesses. We're going to -- we do
11 believe this was the most expansive of the witnesses, given
12 all the different roles and hats. We do intend -- we have
13 two more witnesses tomorrow. As we've had discussions, we do
14 think one of our witnesses is going to be presented on a
15 declaration. Hopefully that reduces the scope of the time,
16 but we'll do our best tomorrow.

17 THE COURT: Okay. Fair enough.

18 MR. GOLD: That is completely consistent with our
19 understanding, Your Honor, that, at least for a little while,
20 the pace will pick up, as we've put in a good portion of
21 direct through declaration, and that, just in general scope,
22 some of these examinations will be shorter than today.

23 THE COURT: Okay. Excellent.

24 MR. GOLD: 9:30 for tomorrow?

25 THE COURT: Yes, sir.

1 MS. WALKER: Thank you, Your Honor.

2 THE COURT: Ms. Green? Are you going to wish me a
3 Happy Mardi Gras?

4 MS. GREEN: Well, I am now.

5 MR. GOLD: I missed that one.

6 (Laughter.)

7 MS. GREEN: No, it's much less exciting. I'm sorry.
8 We have an actual housekeeping matter.

9 THE COURT: Okay.

10 MS. GREEN: The omnibus is on the 23rd.

11 THE COURT: Yes.

12 MS. GREEN: I had filed CNOs late last week.

13 THE COURT: Okay.

14 MS. GREEN: If the Court is going to grant the --
15 or, yeah, grant the motions and enter the orders, I don't
16 need to do a witness and exhibit list and a notice of agenda.

17 THE COURT: Right.

18 MS. GREEN: But I just want to make sure I comply
19 with the Local Rules.

20 THE COURT: I think I saw one of those orders, --

21 MS. GREEN: Oh.

22 THE COURT: -- signed it --

23 MS. GREEN: Today?

24 THE COURT: -- last week. And I'm not -- ooh, one
25 moment.

1 MS. GREEN: The motion to extend the deadline for
2 assuming executory contracts and the motion to extend the
3 deadline for the civil action removal.

4 THE COURT: Right. So I signed one. So let me --
5 just give me one moment. So I think, if I'm not mistaken,
6 each of those were entered today at -- excuse me, were
7 entered on the 17th.

8 MS. GREEN: Okay.

9 THE COURT: Let's just look. Docket 1237, Order
10 Granting Motion to Further Extend Deadline to Assume or
11 Reject Executory Contracts?

12 MS. GREEN: On the 17th?

13 THE COURT: Yep.

14 MS. GREEN: Okay. Thank you.

15 THE COURT: You might have been busy.

16 MS. GREEN: Yeah.

17 THE COURT: And also on the 17th, Docket 1238, Order
18 Granting Motion of Debtors for Entry of an Order Further
19 Extending Time to File Notices of Removal of Civil Actions.

20 MS. GREEN: Okay. Perfect. Thank you.

21 THE COURT: Just those two?

22 MS. GREEN: I apologize for wasting your time.

23 THE COURT: No worries. No worries.

24 MS. GREEN: Thank you.

25 THE COURT: Thank you. Glad we could fix it.

1 MS. WALKER: No, no, I was presuming we were -- I
2 was standing for you.

3 THE COURT: Well, again, Happy Mardi Gras. All of
4 the krewes have rolled. Rex and Zulu are finished in New
5 Orleans. And more importantly, in my hometown, the Krewes
6 Choupic and Bon Terre, so --

7 MR. GOLD: Which perhaps makes me repeat my
8 question. Do you want to start at 10:00, Your Honor? Is
9 there something you need to tell us?

10 THE COURT: No. But one thing there is, that I do
11 want to be cognizant of, is tomorrow is Ash Wednesday. And
12 for those of you who are out-of-towners, there is a church
13 downtown, to the extent that anybody wants to attend Mass.
14 I'm not sure what time it is or anything like that. So there
15 is at least one Catholic church downtown. So if folks want
16 to, you know, do their research tonight and if we need to
17 break at any point so that folks can make it to that Mass,
18 maybe we can adjust during the day.

19 Tomorrow will be a hard stop at 6:30 to accommodate the
20 Court and its staff. Excuse me. I said 6:00.

21 MR. GOLD: 6:00. 6:00.

22 THE COURT: Yes. So tomorrow is a hard stop at
23 6:00. But, again, if folks want to accommodate around
24 services or anything like that, we might be able to break for
25 that. All righty? All right. Court will stand adjourned

1 for the day.

2 THE CLERK: All rise.

3 (Proceedings concluded at 6:41 p.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

23

/s/ Kathy Rehling

02/24/2023

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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