

Albany Place Development LLC and Promenade Albany LLC

Combined Financial Statements with Report of Independent Auditors

December 31, 2021

Report of Independent Auditors

To the Members of
Albany Place Development LLC and Promenade Albany LLC:

Opinion

We have audited the accompanying combined financial statements of Albany Place Development LLC and Promenade Albany LLC, two New York limited liability companies, which comprise the combined balance sheet as of December 31, 2021, and the related combined statement of operations, changes in members' deficit, and cash flows for the year then ended, and the related notes to the combined financial statements.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the combined financial position of Albany Place Development LLC and Promenade Albany LLC as of December 31, 2021, and the results of their combined operations and their combined cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Albany Place Development and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Substantial Doubt About the Entity's Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has incurred losses from operations, has an accumulated deficit and defaulted on certain covenants of its bond documents that raise substantial doubt about its ability to continue as a going concern, primarily as a result of the Legionella Matter discussed in Note 8. Management's evaluation of the events and conditions and management's plans regarding those matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to that matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these combined financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the combined financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Albany Place Development LLC and Promenade Albany LLC's ability to continue as going concerns within one year after the date that the combined financial statements are available to be issued.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the combined financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the combined financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the combined financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the combined financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Albany Place Development LLC and Promenade Albany LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the combined financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Albany Place Development LLC and Promenade Albany LLC's ability to continue as going concerns for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Other Matters

In connection with our audit, certain matters came to our attention, which are disclosed, that caused us to believe that Albany Place Development LLC and Promenade Albany LLC failed to comply with the terms, covenants, provisions, or conditions of the Indenture, the Lease Agreement, the Installment Sale Agreement or the Mortgage dated November 1, 2017, with the Town of Guilderland Industrial Development Agency, insofar as they relate to accounting matters. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the Company's noncompliance with the above-referenced terms, covenants, provisions, or conditions of the Indenture, insofar as they relate to accounting matters.

Restricted Use Relating to Other Matters

The communication related to compliance with the aforementioned Indenture, Lease Agreement, Installment Sale Agreement or the Mortgage described in the *Other Matters* paragraph is intended solely for the information and use of the board of directors and management of Albany Place Development LLC and Promenade Albany LLC, the Town of Guilderland Industrial Development Agency and its bondholders and is not intended to be and should not be used by anyone other than these specified parties.

Novogradac & Company LLP

Boston, Massachusetts
April 29, 2022

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC**COMBINED BALANCE SHEET**

December 31, 2021

ASSETS

Cash and cash equivalents	\$ 883,366
Restricted cash	1,636,187
Accounts receivables and other receivables, net	37,759
Prepaid expenses	<u>125,001</u>
Total current assets	2,682,313
Building, property & equipment, net	23,311,185
Other assets	12,495

TOTAL ASSETS**\$ 26,005,993****LIABILITIES AND MEMBERS' DEFICIT**

Accounts payable and accrued expenses	\$ 2,146,032
Deferred revenue and refundable deposits	32,447
Accrued interest	3,877,772
Economic relief loans - current	<u>731</u>
Total current liabilities	6,056,982
Long term debt	31,790,000
Deferred debt issuance costs	(1,036,696)
Developer notes payable	1,500,000
Economic relief loans - noncurrent	<u>299,269</u>
Total non-current liabilities	32,552,573
Members' deficit	2,508,000
Retained earnings	<u>(15,111,562)</u>
Total members' deficit	(12,603,562)

TOTAL LIABILITIES AND MEMBERS' DEFICIT**\$ 26,005,993**

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC**COMBINED STATEMENT OF OPERATIONS**

For the year ended December 31, 2021

REVENUE

Assisted living revenue - ALP	\$ 1,532,731
Assisted living revenue - private pay	423,892
Memory care revenue - ALP	338,132
Memory care revenue - private pay	418,768
Community fees	71,350
Other revenue/ income	135,765
Total Income	<u>2,920,638</u>

EXPENSES

Payroll, homecare & related expenses	1,896,873
Food service expenses	190,185
Advertising & promotions	82,719
Facility & housekeeping costs	124,499
Office & administrative expenses	152,399
Utilities	154,180
Real estate taxes	91,242
Trustee related expenses	48,181
Legionella management	88,803
Management fees	420,000
Other expenses	149,635
Total expenses	<u>3,398,716</u>

NET OPERATING LOSS (478,078)**OTHER INCOME (EXPENSES)**

Interest income	605
Interest expense	(2,045,372)
Depreciation expense	(2,085,682)
Loss on disposal of asset	(21,788)
Government stimulus income	111,565
Total other expenses	<u>(4,040,672)</u>

NET LOSS \$ (4,518,750)

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
COMBINED STATEMENT OF CHANGES IN MEMBERS' DEFICIT
For the year ended December 31, 2021

	Total Members'
	Deficit
	<hr/>
BALANCE, JANUARY 1, 2021	\$ (8,084,812)
Net loss for the year	\$ (4,518,750)
BALANCE, DECEMBER 31, 2021	<u>\$ (12,603,562)</u>

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC

COMBINED STATEMENT OF CASH FLOWS

For the year ended December 31, 2021

Cash flows from operating activities:

Net loss	\$ (4,518,750)
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation expense	2,085,682
Debt issuance costs	118,288
Loss on disposal of assets	21,788
Change in operating assets and liabilities:	
Accounts receivable	57,434
Prepaid expenses and other assets	3,339
Accrued interest	1,927,084
Accounts payable, accrued expenses and other	296,135
Deferred rent & refundable deposits	(9,098)
Net cash used in operating activities	<u>(18,098)</u>

Cash flows from investing activities:

Purchases of fixed assets	<u>(200,332)</u>
Net cash used in investing activities	<u>(200,332)</u>

Net change in cash, cash equivalents and restricted cash (218,430)

Cash, cash equivalents and restricted cash, beginning of year 2,737,983

Cash, cash equivalents and restricted cash, end of year \$ 2,519,553

Cash and cash equivalents \$ 883,366

Restricted cash 1,636,187

Total cash, cash equivalents and restricted cash \$ 2,519,553

Supplemental disclosure of cash flow information:

Cash paid for interest \$ -

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

1. Organization and nature of operations

Albany Place Development LLC (“APD”) was formed as a New York limited liability company on March 14, 2017 for the purpose of the acquisition, construction, renovation and equipping of a senior living facility on land located at 1228 Western Avenue in the Town of Guilderland, New York (the “Facility”). Since the operational commencement of the Facility in December 2018, the Facility is leased by APD as a senior living facility.

APD has two members, Guilderland Managing Member LLC and Guilderland Investor LLC, each formed as New York limited liability companies. Guilderland Managing Member LLC (the “Managing Member”) is the managing member of APD and holds a 0.01% membership interest in APD. Guilderland Investor LLC (the “Limited Member”) is the sole non-managing member of APD and holds a 99.99% membership interest in APD.

The Facility and related funding requirements have been funded through proceeds from the issuance of Assisted Living Revenue Bonds through the Town of Guilderland Industrial Development Agency, in the amounts of \$30,000,000 nontaxable bonds (the “Series 2017A Bonds”) and \$1,790,000 taxable bonds (the “Series 2017B Bonds”) (collectively, the “Series 2017 Bonds”), and an equity contribution of \$2,400,000 to APD from the APD’s equity members.

Promenade Albany LLC (the “Operator”) was formed as a New York limited liability company on July 29, 2016 for the purpose of operating a licensed assisted living facility. The Operator has an equity contribution of \$108,000. The Operator has obtained an operating certificate from the New York State Department of Health (the “DOH”) to operate an assisted living residence and assisted living program (“ALP”) at the Facility pursuant to the Agreement of Lease, dated as of November 1, 2017 (the “Lease Agreement”), between APD and the Operator. Such operating certificate license was obtained on December 11, 2018.

Of the entities described above, only APD is a party to the Installment Sale Agreement and obligated to repay the Series 2017 Bonds. Under the Lease Agreement, the APD has caused the Operator to be bound by certain of the covenants applicable to the APD under a Guaranty agreement.

The Facility began operations on December 12, 2018 following substantial completion of construction and renovation, the receipt of its certificate of occupancy on November 13, 2018 and operating certificate license on December 11, 2018.

2. Summary of significant accounting policies

Basis of accounting

The Company prepares its financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America.

Principles of consolidation

The combined financial statements include the accounts of the APD and the Operator (collectively, the “Company”), which have been combined under FASB ASC 810-10, *Consolidations - Overall*. All significant intercompany accounts and transactions between the APD and the Operator are eliminated.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

2. Summary of significant accounting policies (continued)

Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash and cash equivalents

Cash and cash equivalents include all cash balances on deposit with financial institutions and highly liquid investments with a maturity of three months or less at the date of acquisition.

Restricted cash is not considered cash and cash equivalents, and includes cash held in funds for specific purposes pursuant to the requirements under the provisions of the Series 2017 Bonds. The funds with specific restrictions and related initial funding requirements are as follows:

- a. Debt Service Reserve Fund: representing the remaining debt service reserve fund requirement due on the bonds pursuant to the Trust Indenture. The amount in the Debt Service Reserve Fund as of December 31, 2021 of \$1,265,900 is less than the required amount of \$2,257,494 as \$943,900 was used for the debt service payment due on January 1, 2020 and \$59,914 was used for Trustee related fees during 2021. The Company does not have adequate cash to make up the deficiency in the Debt Service Reserve fund as required by the bond documents; and
- b. Project Fund: representing the remaining moneys to be used for the purpose of costs and expenses incurred in connection with the construction and installation of the project facility and related items. The amount in the Project fund accounts as of December 31, 2021 is \$370,287 and is subject to further requirements for cash related to capital expenditures for the Facility as well as a pending litigation matter described in Note 9.

For the year ended December 31, 2021, the remaining cash and short-term cash equivalent accounts totaled \$883,366. The total cash balance, including restricted cash, totaled \$2,519,553 at the balance sheet date.

Investments and related income recognition

Investments, including those in restricted funds, are carried at fair value. Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded on the accrual basis.

Market value measurements

The Company applies the accounting provisions related to market value measurements. These provisions define market value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, establish a hierarchy that prioritizes the information used in developing market value estimates and require disclosure of market value measurements by level within the market value hierarchy. The hierarchy gives the highest priority to quoted prices in active markets (Level 1 measurements) and the lowest priority to unobservable data (Level 3 measurements), such as the reporting entity's own data. These provisions also provide valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flows) and the cost approach (cost to replace the service capacity of an asset or replacement cost).

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

2. Summary of significant accounting policies (continued)

Market value measurements (continued)

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the market value measurement. The three levels of valuation hierarchy are defined as follows:

Level 1: Observable inputs such as quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2: Inputs other than quoted prices included in Level 1 are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

Level 3: Unobservable inputs that reflect the Company's own assumptions.

The methods described above may produce a market value calculation that may not be indicative of net realizable value or reflective of future market values. Furthermore, although the valuation methods are determined to be appropriate and consistent within the industry, the use of different methodologies or assumptions to determine the market value of certain assets and liabilities could result in a different estimate of market value at the reporting date.

The amount below presents amounts for the year ended December 31, 2021 for significant items measured at market value. The market value of the investment securities is based on notional amounts, interest rates, maturity date and other contract terms. Upon adoption of the market value measurement provisions, the Company determined that no transition adjustments were required. The market value of the investment securities is valued using a third-party and is classified as Level 1 measurement. The fair value amount of the institutional liquidity fund securities at December 31, 2021 is \$2,077,956.

Concentration of credit risk

The Company maintains cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on cash and cash equivalents.

Accounts and other receivables

Accounts receivable are reported net of an allowance for credit losses or third-party payor rate adjustments representing the Company's estimate of expected losses at the balance sheet date. Accordingly, an allowance for doubtful accounts totaling \$8,465 has been provided for accounts deemed uncollectible. Such expected losses are charged to operations in the period in which that determination is made. Accounting principles generally accepted in the United States of America require that the allowance method be used to recognize bad debt, however, the effect of using the direct write-off method is not materially different from the results that would have been obtained under the allowance method.

Interest income is accrued during the period in which it is earned and classified as other receivables on the balance sheet. For the year ended December 31, 2021 other receivables totals \$1,715, which includes interest earned but not collected of \$0 and amounts due from related companies of \$1,715.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

2. Summary of significant accounting policies (continued)

Deferred revenue and refundable deposits

Deferred revenue includes resident fees that are advances received from tenants and residents in respect of future period rent and residence fees (including care charges). As of December 31, 2021, the deferred resident fees amount to \$14,823. In addition, deferred revenue includes advanced rent payments attributed to the rooftop and parking leases, which amounted to \$2,688 as of December 31, 2021.

Refundable deposits represent deposits received from residents either prior to admission or from refunds due back to discharged residents. Upon admission deposit amounts are applied to receivables in the appropriate period. If a family member is not admitted the deposit is generally refunded. As of December 31, 2021, refundable deposits amount to \$14,936.

Fixed assets and depreciation

The Facility was placed into service in December 2018 following the substantial completion of construction and approval of the assisted living licensure. Fixed assets are recorded at cost. Buildings and building improvements are depreciated over their estimated useful lives of 30 years under the straight-line method. Site improvements are depreciated over 15 years under the straight-line method. Personal property is depreciated over 5-7 years under the straight-line method. Depreciation expense for the year ended December 31, 2021 was \$2,085,682.

Impairment of long-lived assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Recoverability is measured by a comparison of the carrying amount of the asset to the future net undiscounted cash flow expected to be generated and any estimated proceeds from the eventual disposition. If the long-lived assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the asset exceeds the fair value as determined from an appraisal, discounted cash flows analysis, or other valuation technique. There was no impairment loss recognized for the year ended December 31, 2021.

Revenue recognition

Resident fees and resident care revenue are recorded when services are rendered and consist of fees for basic residence fees and fees associated with additional services such as assisted living care, ancillary services and personal care services. Billings under the New York State Medicaid program (also known as the Assisted Living Program or “ALP”) are subject to audit and possible retroactive adjustment, and related revenue is recorded at the amount the Operator will ultimately expect to receive. Rate adjustments from Medicaid services are recorded when known, without regard to when the assessment is paid or withheld. Additionally, nonrefundable community fees are generally billed and collected in advance of a resident move-in and are initially recorded as deferred revenue. Community fees are recognized in revenue upon the resident’s move-in. Other revenue/income consists of rooftop leases, parking income, facility income and cable fees and was recognized for the year ended December 31, 2021 in the amount of \$135,765.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

2. Summary of significant accounting policies (continued)

Economic concentrations

The Company operates one property in Albany County, New York. Future operations could be affected by changes in economic or other conditions in that geographical area or by changes in the demand for assisted living housing, including but not limited to, the potential future effects of the novel coronavirus and related variants (collectively “COVID”). In addition, the Company operates in a heavily regulated environment. The operations of the Company are subject to the administrative directives, rules and regulations of federal, state and local regulatory agencies, including, but not limited to, DOH mandates and state Medicaid reimbursement rates. Such changes may occur with little notice or inadequate funding to pay for the related cost, including the additional administrative burden, to comply with a change.

General economic conditions, such as inflation, utility and energy costs, competition in the market, costs of personnel and related benefits, and insurance coverage, affect the Company’s operations where the Company cannot control such factors. The Company is facing workforce shortages in its region. The Company’s ability to attract and retain qualified staff at appropriate cost levels to meet operational and regulatory requirements impacts operational capability and performance. Current global economic conditions and uncertainties, including the COVID pandemic, may affect the Company and surrounding economic conditions including residents or prospective residents in an adverse manner including, but not limited to, the inability to fulfill their obligations to the Company, and other impacts which we are unable to fully anticipate. In addition, the continued COVID pandemic, severe cold and flu season, or an outbreak of other contagious disease in the region in which the Company operates could result in a regulatory ban on admissions, decreased occupancy, and otherwise adversely affect the Company’s business.

Government stimulus relief

In response to the COVID pandemic, the CARES Act was enacted on March 27, 2020 and the Paycheck Protection Program (PPP) and Health Care Enhancement Act, signed into law on April 24, 2020. These stimulus government relief packages, among other things, provide billions of dollars of liquidity and financial relief to certain businesses suffering from the impact of the pandemic. The combined impact to APD and Operator of the CARES Act provisions related to the year ended December 31, 2021 is summarized below.

In May 2020, the Operator received a loan in the amount of \$111,700 pursuant to the PPP. Under the terms of the PPP, the loan amount will be forgiven if it is used for qualifying expenses as described in the CARES Act. In May 2021, the Operator received approval for the loan forgiveness prior to issuance of the 2020 audited financial statements and as a result the \$111,700 was fully recognized as income in the combined statement of operations for the year ended December 31, 2020.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

2. Summary of significant accounting policies (continued)

Government stimulus relief (continued)

In 2020, APD and the Operator executed the standard loan documents required for securing loans from the SBA under its EIDL assistance program in light of the impact from the COVID pandemic on the Company's business. Pursuant to this EIDL assistance program, APD and Operator each obtained an EIDL Loan of \$150,000, with proceeds to be used for working capital purposes. Interest on the EIDL Loan accrues at the rate of 3.75% per annum and installment payments, including principal and interest, are due monthly beginning thirty months from the date of the EIDL Loan in the amount of \$731. The balance of principal and interest is payable over thirty years from the date of the promissory note.

The Operator claimed an employee retention credit (ERC) under the CARES Act for the first and second quarters of 2021. The ERC for 2021 was available to employers that fully or partially suspended operations during a calendar quarter due to orders from an appropriate governmental authority as a result of the COVID pandemic. During the year ended December 31, 2021, the Company recognized \$111,565 as other income of employee retention credits on wages paid from the second quarter of 2021. The ERC for the first quarter of 2021 was received in April 2022 in the amount of \$117,321 and will be recognized in the same manner for the year ended December 31, 2022.

There can be no assurance that the monies received by the Company for any government stimulus relief funds will not have to be repaid in a future period as a result of ineligibility or use of funds audit.

Marketing and advertising

Advertising costs are expensed as incurred. For the year ended December 31, 2021, the Company incurred \$82,719 in advertising costs which is included in advertising and promotions in the combined statement of operations.

Income taxes

Income taxes on company income are levied on the members at the member level. Accordingly, all profits and losses of APD and the Operator are recognized by each member on its respective tax return. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires the Company to report information regarding its exposure to various tax positions taken by the Company. Management has determined whether any tax positions have met the recognition threshold and has measured the Company's exposure to those tax positions. Management believes that the Company has adequately addressed all relevant tax positions and that there are no unrecorded tax liabilities. Federal and state tax authorities generally have the right to examine and audit the previous three years of tax returns filed. Any interest or penalties assessed to the Company are recorded in operating expenses. No interest or penalties from federal or state tax authorities were recorded in the accompanying financial statements.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

2. Summary of significant accounting policies (continued)

Going concern

These financial statements have been prepared on a going concern basis, which contemplates the realization of assets and settlement of liabilities and commitments in the normal course of business for the foreseeable future. As reflected in the accompanying financial statements the Company had a net loss and net cash used in operations of \$4,518,750 and \$18,098, respectively. The Company's current liquidity position and projected cash flows are insufficient to continue to operate while meeting operational, regulatory, and debt service obligations and raise substantial doubt about the Company's ability to continue as a going concern. The combined financial statements do not include any adjustments that might result from the outcome of this uncertainty. As a result of the Company's fiscal and operational challenges, there are various events of default with respect to the required terms of the Series 2017 Bonds in addition to not being able to make debt service payments.

The Company has presented and disclosed these fiscal challenges, including the disclosure of its inability to meet its covenants, to bondholder representatives. Discussions regarding the fiscal status of the Company are ongoing with bondholder representatives and management is working on measures to help get the Company back on sound financial footing. However, the Company cannot predict whether it will be able to continue to operate through the fiscal challenges and insufficient cash flows. Nor can there be assurance that the bondholders would not seek remedies available to them under the provisions of the terms of the bond documents, which may cause significant disruption and increased financial cost to the Company.

In addition, the Company continues to face significant risks due to the COVID pandemic and the significant adverse impact on its economic and operational activities. The pandemic, including the related restrictions at the Facility, have significantly disrupted demand for assisted living residents and the sales process, which typically includes in-person prospective resident visits. The continued prevalence of the coronavirus negatively impacts the Operator as potential residents are reluctant to relocate to an assisted living setting, thereby making the sales process slower.

The extent to which COVID continues to impact the Company will depend on future developments, which are highly uncertain and cannot be accurately predicted, including new information which may emerge concerning the severity of the coronavirus and the actions to contain the coronavirus or treat its impact, among others. The business continuity plans the Company has in place currently may be unlikely to prove adequate in the event of a serious and continued long-term outbreak or sustained reduction of interest in assisted living services within the Company's geographic area.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

3. Fixed assets

Fixed assets consist of the following for the year ended December 31, 2021:

Land	\$ 1,903,772
Building	19,853,496
Site improvements	1,084,117
Personal property	<u>6,803,364</u>
	29,644,749
Accumulated depreciation	<u>(6,333,564)</u>
Building, property & equipment, net	<u><u>\$ 23,311,185</u></u>

4. Long Term Debt - bonds

On November 21, 2017, APD issued \$31,790,000 in Assisted Senior Living Revenue Bonds (the "Series 2017 Bonds") through the Town of Guilderland Industrial Development Agency to provide funding for the Facility. The bonds are comprised of \$30,000,000 in nontaxable Series A bonds and \$1,790,000 in taxable Series B bonds and are secured by the property.

The Series 2017 Bonds are subject to certain covenants which have not been met as a result of the Facility's *Legionella* matter (described in Note 8) coupled with the COVID pandemic restrictions and economic slowdown. APD will look to re-establish covenant requirements with bondholder representatives once operations can be normalized. A summary of certain covenant requirements are as follows:

- A. Debt Service Coverage Ratio – this covenant requirement is not applicable until after Stabilization of the Facility or no later than December 31, 2022. As such, this covenant is not applicable for 2021 although the Company does not anticipate meeting this covenant requirement by December 31, 2022.
- B. Liquidity – this covenant requirement is not applicable until after Stabilization of the Facility. As such, this covenant is not applicable for 2021 although the Company does not anticipate meeting this covenant requirement by December 31, 2022.
- C. Occupancy – the Operator ended the year with an occupancy rate of 38.0% and has been unable to meet the 85% occupancy rate as required by the covenant.

As of December 31, 2021, accrued interest was \$3,775,617 for the Series 2017 Bonds. Interest expense during 2021 for the Series 2017 Bonds was \$1,887,804. The Company has not made timely debt service payments nor does it anticipate to be able to over the foreseeable future as a result of insufficient cash flows.

The \$30,000,000 in Series 2017 A Bonds bear interest at 5.875%, which is payable semiannually on each January 1 and July 1, and will mature on January 1, 2052. The Company is not required to make principal payments on the Series 2017 A Bonds until January 1, 2026.

The \$1,790,000 in Series 2017 B Bonds bear interest at 7.0%, which is payable semiannually on each January 1 and July 1 and will mature on January 1, 2026.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

4. Long Term Debt – bonds (continued)

As of December 31, the principal payments associated with Series 2017 A Bonds are as follows:

<u>Year</u>	<u>Principal payments</u>
2026	\$ 320,000

As of December 31, the principal payments associated with Series 2017 B Bonds are as follows:

<u>Year</u>	<u>Principal payments</u>
2022	\$ 365,000
2023	395,000
2024	420,000
2025	450,000
2026	160,000

As a result of the Company's fiscal difficulties, the principal payment for the Series 2017B Bonds of \$365,000 due on January 1, 2022 was not made. At this time, it is unknown when the Company will be able to meet this principal payment obligation.

5. Deferred debt issuance costs

Deferred debt issuance costs represent costs associated with obtaining financing related to the issuance of the Series 2017 Bonds and are stated at cost. Such costs will be amortized on a straight-line basis over the life of the Series 2017 Bonds. As of December 31, 2021, deferred debt issuance costs totaled \$1,036,696. For 2021, the effective interest rate was 5.94%. During 2021, amortization of deferred debt issuance included in interest expense was \$118,288.

6. Economic relief loans

EIDL Loans

APD and the Operator each executed the standard loan documents required for securing an EIDL loan on July 6, 2020 and May 25, 2020, respectively, from the SBA in light of the impact of the COVID pandemic on the Company's business. The principal amount of each EIDL loan is \$150,000 to APD and the Operator, respectively, with proceeds used for working capital purposes. Interest on the EIDL Loans accrues at the rate of 3.75% per annum and installment payments, including principal and interest, are due monthly beginning thirty months from the date of the EIDL Loan in the amount of \$731 dollars. The balance of principal and interest is payable thirty years from the date of the promissory note.

The total principal amounts of \$300,000 were recognized as economic relief loans in the combined balance sheet at December 31, 2021 of which \$299,269 is noncurrent and \$731 is current. Interest expense on the loans for the year ended December 31, 2021 amounted to \$11,680 and is included in interest expense on the combined statement of operations.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

6. Economic relief loans (continued)

EIDL Loans (continued)

As of December 31, the payments associated with the EIDL Loans are as follows:

Year	APD payments	Operator payments
2022	\$ -	\$ 731
2023	8,041	8,772
2024	8,772	8,772
2025	8,772	8,772
2026	8,772	8,772

7. Related party transactions

a) Development Services

APD entered into a development agreement dated November 21, 2017 with Hudson York Development LLC (the “Developer”), a related party, to perform development services with respect to the Facility, including, but not limited to, entitlement, licensure and design and construction oversight. The Developer earned a developer fee of \$1,500,000 for providing the development services. The developer fee is evidenced by an unsecured subordinate note which is subordinate to the payment of debt service on the Series 2017 Bonds.

The developer fee has been fully earned by the Developer upon completion of the construction of the Facility. Based on this arrangement, APD has reflected a Developer Notes Payable of \$1,500,000 on its combined balance sheet as of December 31, 2021. Interest accrues at a rate of 1.85% per year. Interest expense and accrued interest for the year ended December 31, 2021 was \$27,600 and \$84,344, respectively.

b) Lease agreement

The Facility is leased by the APD to the Operator pursuant to the Lease Agreement. The Lease Agreement requires that the Operator use and occupy the Facility solely as a licensed adult care facility in accordance with DOH regulations.

Commencing upon operations at the Facility, the Operator will pay on a monthly basis annual net basic rent on or by the last business day of each month during the term of the Lease Agreement without any set-off, abatement or deduction. During the first 36 months commencing on the first month of operations at the Facility, the annual net basic rent shall be \$3,400,000, which will be paid in equal monthly 1/12 installments and thereafter the net basic rent will increase by one percent (1%) annually through the term of the Lease Agreement.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

7. Related party transactions (continued)

b) Lease agreement (continued)

Notwithstanding the above, the net basic rent will not exceed one hundred percent (100%) of the Operator's gross revenues, including, but not limited to, cash, funds, revenues and proceeds, less the Operator's retained operating expenses (collectively "net proceeds"), which shall not exceed \$350,000 per month. The term of the Lease Agreement commenced on November 1, 2017 and will continue for 35 years following the completion of construction of the Facility and DOH approval, with an option to renew such lease term for an additional 10 years. Pursuant to this lease agreement, and based on net proceeds, APD recorded \$350,000 in rental income for the year ended December 31, 2021 and the Operator recorded the same amount as rent expense. Such amounts are eliminated in the combined financial statements for the Company.

c) Staffing services agreement

The Operator entered into a health care provider agreement on September 28, 2016 with Balanced Home Care LLC (the "Agency"), a related party. Pursuant to this agreement, the Agency will provide staffing support services for the Operator's facility and program including the ALP and Enhanced Assisted Living Residents in accordance with all DOH regulations. Services performed under the Agency's agreement for the year ended December 31, 2021 totaled \$953,665 and are included in payroll, homecare & related expenses in the combined financial statements. As of December 31, 2021, \$98,876 remains payable and has been included in accounts payable.

The Agency leases office space from the Company in order to conduct its activities at the Facility at a monthly rent amount of \$1,000. Rent from this lease totaled \$12,000 for the year ended December 31, 2021 and has been recognized as other revenue/ income in the combined statement of operations.

d) Management agreement

The Companies entered into a management agreement, which is subject to pending DOH review, in November, 2017 with Promenade Agency LLC (the "Manager"), a related party. Pursuant to the management agreement, the Manager will provide management services. Notwithstanding the foregoing, as required by applicable law, the Operator retains sole authority with respect to operations at the Facility to ensure that care management services are appropriately followed. For the year ended December 31, 2021, the management fee totaled \$420,000. As a result of the Company's operating cash flow deficiencies described in Note 2 – Going Concern, the management fee payment has been deferred since July 2019 where the amount due of \$930,000 has been included in accounts payable as of December 31, 2021. Pursuant to the management agreement, any deferred management fee currently accrues interest at the annual rate of 12%, which has not been reflected in the financial statements.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

8. Legionella Matter

In February 2019, the Facility was notified by the Albany County Health Department that two residents of the Facility were diagnosed with legionellosis. Legionellosis is caused by bacteria that are naturally found in water. For most individuals the risk of developing legionellosis is very low and the disease responds well to antibiotic treatment. However, certain individuals such as the elderly, people who are smokers, and those who have chronic lung disease or compromised immune systems may be more susceptible to this illness.

The Operator, coordinating with various local and state agencies including the Albany County Health Department and the DOH, began immediate steps at remediation including the installation of point-of-use shower filters, implementation of flushing protocols and the use of bottled water for drinking and oral care.

Based on recommendations from its *Legionella* consultant, in January 2020 the Company installed a continuous supplemental disinfection system to its potable water system. Based on the testing sampling results, the continuous disinfection system along with the other measures implemented at the Facility appear to be managing *Legionella* bacteria levels to meet DOH requirements. Furthermore, the Facility implemented modifications to its plumbing system during 2021 to help manage the *Legionella* issue as follows:

- Switched its water source to the City of Albany from the Town of Guilderland through an easement from a private property owner, which was completed in June 2021;
- Upgrade/replace plumbing fixtures including the circulator pump and mixing valve, which was completed in September 2021; and
- Upgrade/replace plumbing fixtures in the facility's hot water return system with the installation of improved balancing valves and piping, which was completed by October 2021.

The *Legionella* matter has created operational and financial burdens in the form of water restrictions, costly control measures, legal and consultation fees and public relations crisis management efforts. As such, the Company was unable to fulfill its occupancy covenants for any quarters since commencement of operations or in the foreseeable future. However, since the implementation of the modifications outlined above, the facility has been able to manage the *Legionella* bacteria levels in accordance with DOH requirements.

Given the circumstances of the *Legionella* matter, the Company will continue to experience challenges in meeting the Series 2017 Bonds covenant obligations and cash flow requirements if the *Legionella* bacteria in the Facility is not effectively managed in accordance with DOH requirements.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

9. Legal Matters

The general contractor that was engaged to perform the construction management and oversight services for the renovation of the Facility has filed a lawsuit against the Company to be paid for the remaining balance of the amounts owed under the construction contract. The Company has answered and filed a counterclaim against the general contractor for failing to install a properly functioning plumbing system in accordance with contract documents. This legal matter is still pending and the Company is unable to predict the ultimate outcome of such action.

Regrettably, one of the residents that contracted legionellosis at the facility in February 2019, as a result of the *Legionella* matter described in Note 8, has died. While a settlement has been reached with this resident's known heirs, the Company may be subject to further action from family members from this resident or other residents and families.

10. Vulnerability – Impact of COVID

The COVID global pandemic has caused significant disruptions to the U.S. and global economies. The outbreak, which became widespread in the U.S. in early 2020, led federal, state and local governments and public health authorities to impose measures intended to control its spread, including restrictions on business operations such as travel bans, border closings, business closures, quarantines and shelter-in-place orders. Many of these measures have persisted into 2021 and 2022, including in the area where the Facility operates.

As an Operator of an assisted living facility, COVID has impacted, and continues to impact, business operations in various ways including implementation various protocols to address the COVID pandemic at the Facility. Some of the measures taken at the onset of the pandemic included restrictions on all non-essential visitors (including family), closure of group dining facilities and other common areas, restrictions on resident movements and group activities, as well as enhanced protocols which have required increased labor, property cleaning expenses and costs related to procuring necessary supplies such as meal containers and personal protective equipment. Recently, restrictions on senior living facilities have been lifted, based on vaccination trends, geographic infection rates and any COVID case positivity at the Facility.

The severity of the impact of COVID and any variants on the Company's operations will depend on a number of factors, including, but not limited to, the duration and severity of the pandemic and the extent and severity of the impact on the Company's residents, vendors and employees, all of which are uncertain and cannot be predicted. The Company's future results could be adversely impacted by reluctance for potential residents to move into an assisted living setting or delays in resident fee collections. Management is unable to predict with absolute certainty the impact of COVID on its financial condition, results of operations or cash flows.

ALBANY PLACE DEVELOPMENT LLC AND PROMENADE ALBANY LLC
NOTES TO COMBINED FINANCIAL STATEMENTS
December 31, 2021

11. Subsequent events

Subsequent events have been evaluated through April 29, 2022, which is the date the financial statements were available to be issued, and there are no subsequent events requiring disclosure, except for the matters outlined below.

The Company has not been able to meet its debt service payment requirements pursuant to the Series 2017 Bonds documents. As such, the Company did not meet its obligation for interest and principal amounts due on the Series 2017 Bonds on January 1, 2022.