

CLOSING ITEM NO.: C-1

GENERAL CERTIFICATE

OF

AHF - COLUMBIA CREST, LLC

This certification is made in connection with the execution of a letter of credit reimbursement agreement dated as of April 18, 2007 (the "Reimbursement Agreement") by and between AHF - Columbia Crest, LLC (the "Company") and Citizens Bank, N.A. (the "LOC Bank"), the issuance by the LOC Bank of the Substitute Letter of Credit (as defined in the Reimbursement Agreement) in favor of The Bank of New York, as trustee (the "Trustee") of the City of Cohoes Industrial Development Agency (the "Issuer") Variable Rate Civic Facility Revenue Bonds (Columbia Crest Senior Housing Project - Letter of Credit Secured), Series 2003 (the "Bonds") and the remarketing of the Bonds by RBC Dain Rauscher, doing business as RBC Capital Markets (collectively the "Transaction"). The Bonds were issued pursuant to the provisions of a trust indenture dated as of September 1, 2003 (the "Indenture") by and between the Issuer and the Trustee for the holders of the Bonds. In connection with the Transaction, the Company will execute and deliver Reimbursement Agreement, the Mortgage, the Subordination and First Mortgage Waiver Agreement, the Assignment of Leases and Rents, the Bond Pledge Agreement, the Environmental Compliance Agreement and the Continuing General Security Agreement (collectively, the "Company Documents").

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Indenture shall have the meanings ascribed to them in the Indenture, except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED OFFICER OF THE COMPANY HEREBY CERTIFIES THAT:

1. I am the Executive Director of American Housing Foundation, Inc., the sole member (the "Member") of the Company and am duly authorized to execute and deliver this certificate in the name and on behalf of the Company.

2. The Company is a limited liability company duly organized, validly existing and subsisting under the laws of the State of New York. Attached hereto as Exhibit A is a true, correct and complete copy of the Articles of Organization of the Company. Attached hereto as Exhibit B is a true, correct and complete copy of the Operating Agreement of the Company.

3. Attached hereto as Exhibit C is a true, correct and complete copy of a certificate of good standing relating to the Company from the New York State Department of State, Corporations Unit.

4. The Company (A) has full legal power and authority to own its Properties, conduct its business and execute, deliver and perform its obligations under each of the Company Documents,

(B) has taken all actions and obtained all approvals required in connection therewith by its organization documents and the laws of the State of New York and (C) has authorized the Member, its sole member, to act as Manager.

5. The undersigned presently is, on and as of the date of this certificate, a duly authorized representative of the Member duly authorized to execute the Company Documents on behalf of the Company and has been duly designated to act as an "Authorized Representative" of the Company pursuant to and in accordance with the provisions of the Sublease Agreement.

6. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Company in order to carry out, give effect to and consummate the transactions contemplated by the Company Documents have been duly authorized by all necessary action of the Company; the Company Documents are in full force and effect on and as of the date hereof; and no authority for the execution, delivery or performance of the Company's Documents has been repealed, revoked or rescinded.

7. The execution, delivery and performance of the Company Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not (A) require consent under (which has not heretofore been received), or result in a breach or default of, any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty, agreement or any other instrument to which the Company is a party or by which it may be bound or affected, or (B) to my knowledge, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Company or any of the Property of the Company.

8. The Company has duly authorized the taking of, and has or will take, any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company's Documents.

9. No Event of Default specified in any of the Company Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

10. Each of the representations and warranties of the Company contained in each of the Company Documents is true, accurate and complete in all material respects on and as of the date of this certificate with the same force and effect as though such representations and warranties were made on and as of the date hereof.

11. The Company Documents have been each duly executed, acknowledged, where appropriate, and delivered on behalf of the Company by an Authorized Representative of the Company; the signature of such Authorized Representative thereon is the genuine signature of such Authorized Representative; and said executed Company Documents are in substantially the same form as the forms thereof presented to and approved by the Member.

12. Attached hereto as Exhibit C is a list of all material pending litigation relating to the Company. Except as set forth in Exhibit C, there is no litigation pending or, to the best of my

knowledge, threatened against or affecting the Company (nor to the best of my knowledge, is there any basis therefor), (A) to restrain or enjoin the execution, issuance or delivery of the Company Documents or other documents related to the Letter of Credit Substitution and the remarketing of the Bonds and to be executed by the Company, (B) in any way contesting or adversely affecting (i) the authority for the execution and delivery of the Company Documents, or any other documents other documents related to the Letter of Credit Substitution and the remarketing of the Bonds which are to be executed by the Company, (ii) the organization, existence or powers of the Company, or the business, prospects, Property or condition of the Company, or (iii) the validity or enforceability of any of AHF Documents or the transactions contemplated therein, or (C) wherein an unfavorable decision, ruling or finding would (i) result in damages in excess of the applicable insurance coverage or self insurance reserves of AHF, (ii) materially adversely affect the business, property or financial condition of AHF, or (iii) cause interest on the Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes.

13. There are no Liens (other than Permitted Encumbrances) against or overdue taxes, assessments, fees or other governmental charges payable by the Company to the United States, the State, or to any other state or municipality in the United States.

14. The Company is not contemplating instituting bankruptcy, insolvency or any similar proceedings against itself.

15. The Company has complied in all material respects with all agreements and satisfied all of the conditions on its part to be performed or satisfied by the terms of the Company Documents at or prior to the date hereof.

16. Since its organization on July 30, 2003, there has been no material adverse change in the business, property or financial condition of the Company and the Company has not, other than in the ordinary course of business, entered into any transaction or incurred any liability materially adverse to the Company.

IN WITNESS WHEREOF, the undersigned has hereunder set his signature this 17<sup>th</sup> day of April, 2007.

AHF - COLUMBIA CREST, LLC

By: American Housing Foundation, Inc.,  
Sole Member and Manager

By: GARRY J. KEARNS  
Name: Garry J. Kearns  
Title: Executive Director

The undersigned, Steven S. Heyman, Esq., counsel to the Company, hereby certifies that the signature of the Authorized Representative of the Company subscribed to and contained in the foregoing certificate is true and genuine.

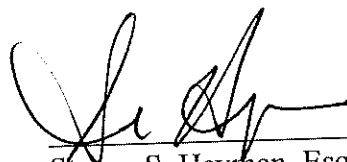
  
\_\_\_\_\_  
Steven S. Heyman, Esq.

EXHIBIT A  
ARTICLES OF ORGANIZATION

ALLIB01\179017\1

A-1

FILING RECEIPT

ENTITY NAME: AHF-COLUMBIA CREST, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ALBA

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00 \*

FILED:07/30/2003 DURATION:\*\*\*\*\* CASH#:030730000606 FILM #:030730000585

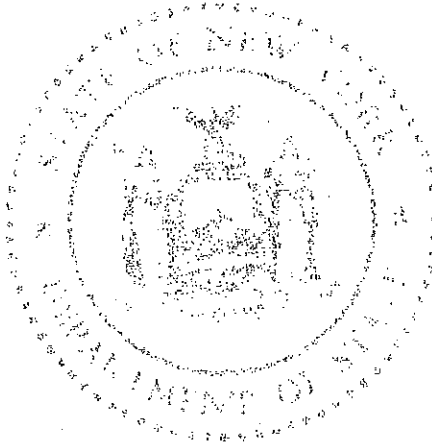
ADDRESS FOR PROCESS

EXIST DATE

07/30/2003

C/O GARRY J. KEARNS  
100 STATE STREET, SUITE 200  
ALBANY, NY 12207

REGISTERED AGENT



FILER	FEES	PAYMENTS
STEVEN S. HEYMAN, ESQ. CANNON HEYMAN & WEISS, LLP 50 BEAVER STREET, 4TH FLOOR ALBANY, NY 12207	200.00 0.00 0.00 10.00 50.00	260.00 CASH 0.00 CHECK 260.00 CHARGE 0.00 DRAWDOWN 0.00 BILLED 0.00 REFUND 0.00

State of New York }  
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **July 30, 2003**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed title.

Secretary of State

F 030730000585

ARTICLES OF ORGANIZATION  
OF  
AHF-COLUMBIA CREST, LLC

Under Section 203 of the Limited Liability Company Law

The undersigned, being authorized to execute and file these Articles, hereby certifies that:

FIRST: The name of the limited liability company is AHF-Columbia Crest, LLC (the "Company").

SECOND: The county within this State in which the office of the Company is to be located is Albany County.

THIRD: The Company does not have a specific date of dissolution in addition to the events of dissolution established by law.

FOURTH: The Secretary of State is designated as agent of the Company upon whom process against it may be served. The post office address within or without this state to which the secretary of state shall mail a copy of any process against the Company served upon him or her is: c/o Garry J. Kearns, 100 State Street, Suite 200, Albany, New York 12207.

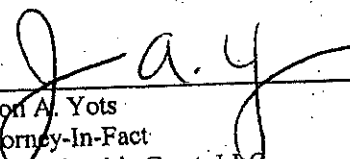
FIFTH: The Company is to be managed by one or more managers.

SIXTH: Pursuant to Section 206(a)(8)(b) of the Limited Liability Company Law, no member of the Company, solely by reason of being a member, is an agent of the Company for the purpose of its business, and no member shall have the authority to act for the Company solely by virtue of being a member.

SEVENTH: The sole purpose of the business of the Company is the direct or indirect ownership and operation of a senior housing project in the City of Cohoes, New York, to be financed, in part, with tax-exempt revenue bonds issued by the City of Cohoes Industrial Development Agency. The formation of the Company does not require the consent of any agency of the State of New York, other than the Department of State.

EIGHTH: The sole member of the Company shall be American Housing Foundation, Inc., a New York not-for-profit corporation. The activities of the Company shall be limited to those which American Housing Foundation, Inc. could do directly without adversely affecting its tax-exempt status. The Company's power to distribute its income and/or assets shall be limited to distributions to (or at the direction of) American Housing Foundation, Inc. for purposes of furthering American Housing Foundation, Inc.'s tax-exempt purposes and in compliance with the Not-For-Profit Corporation Law of the State of New York.

IN WITNESS WHEREOF, this certificate has been subscribed this 29th day of July, 2003, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

  
Jason A. Yots  
Attorney-In-Fact  
AHF-Columbia Crest, LLC



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FILED

2003 JUL 30 PM 12:20

ARTICLES OF ORGANIZATION

OF

AHF-COLUMBIA CREST, LLC

Under Section 203 of the Limited Liability Company Law

RECEIVED

2003 JUL 30 PM 12:07

ICC

STATE OF NEW YORK  
DEPARTMENT OF STATE

JUL 30 2003

FILED  
TAXS  
BY: JCC

JCC

July 30, 2003

CANNON HEYMAN & WEISS, LLP  
50 BEAVER STREET  
4<sup>TH</sup> FLOOR  
ALBANY, NEW YORK 12207

Steven S. Heyman, Esq.

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EXHIBIT B  
OPERATING AGREEMENT

ALLIB01M179017A1

B-1

**AHF-COLUMBIA CREST, LLC**  
**OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT**, dated as of September \_\_, 2003, is entered into by American Housing Foundation, Inc. with a principal address at 100 State Street, Suite 200, Albany, New York 12207.

**WHEREAS**, the individual signing this Operating Agreement desires to form a limited liability company known as AHF-Columbia Crest, LLC pursuant to the New York Limited Liability Company Law;

**WHEREAS**, the individual signing this Agreement desires to establish his respective rights and obligations pursuant to the New York Limited Liability Company Law in connection with forming such a limited liability company;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the individual signing this Agreement below agrees as follows:

**ARTICLE I**  
**Definitions**

1.1 *Definitions.* In this Agreement, the following terms shall have the meanings set forth below:

(a) "*Articles of Organization*" shall mean the Articles of Organization of the Company filed or to be filed with the New York Secretary of State, as they may from time to time be amended.

(b) "*Capital Account*" as of any date shall mean the Capital Contribution to the Company by a Member, adjusted as of such date pursuant to this Agreement.

(c) "*Capital Contribution*" shall mean any contribution by a Member to the capital of the Company in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services.

(d) "*Code*" shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

(e) "*Company*" shall refer to AHF-Columbia Crest, LLC.

(f) "*Distribution*" means any cash and other property paid to a Member by the Company from the operations of the Company.

(g) "*Fiscal Year*" shall mean the fiscal year of the Company, which shall be the year ending December 31.

(h) "*Membership Interests*" shall mean with respect to the Company the value of all Capital Contributions and with respect to any Member the ratio of the value of the Capital Contribution of such Member to the aggregate value of all Capital Contributions.

(i) "*Managers*" shall mean each individual listed in the Articles of Organization or in Schedule B to this Agreement as a manager of the Company or any other individual that succeeds him or her as such a manager pursuant to this Agreement.

(j) "*Member*" shall mean each Person who or which executes a counterpart of this Agreement as a Member and each Person who or which may hereafter become a party to this Agreement.

(k) "*Net Losses*" shall mean the losses of the Company, if any, determined in accordance with generally accepted accounting principles employed under the accrual method of accounting.

(l) "*Net Profits*" shall mean the income of the Company, if any, determined in accordance with generally accepted accounting principles employed under the accrual method of accounting.

(m) "*New York Act*" shall mean the New York Limited Liability Company Act.

(n) "*Person*" shall mean any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

(o) "*Selling Member*" shall mean a Member desiring to sell a Membership Interest.

(p) "*Treasury Regulations*" shall mean all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

## ARTICLE II Organization

2.1 *Formation.* The parties hereto have authorized an organizer to form a limited liability company by preparing, executing and filing with the New York Secretary of State the Articles of Organization pursuant to the New York Act.

2.2 *Name.* The name of the Company is AHF-Columbia Crest, LLC.

2.3 *Principal Place of Business.* The principal place of business of the Company within the State of New York shall be Erie County. The Company may establish any other places of business as the Managers may from time to time deem advisable.

or hereafter provided by the New York Act. A Member who or which receives a Distribution made by the Company in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such Distribution) shall be liable to the Company for the amount of such Distribution.

3.9 *Financial Adjustments.* No Members admitted after the effective date of this Agreement shall be entitled to any retroactive allocation of Net Losses, Net Profits or expense deductions incurred by the Company. The Manager may, at the discretion of the Manager, at the time a Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro rata allocations of Net Losses, Net Profits and expense deductions to such Member for that portion of the Fiscal Year in which such Member was admitted in accordance with the Code.

#### ARTICLE IV Management

4.1 *Management.* Management of the Company shall be undertaken by managers identified herein (the "Managers") and shall not be vested in the Members.

4.2 *Number, Tenure and Qualifications of Managers.* Each of the individuals listed on Schedule B to this Agreement shall serve as the Managers. The number of Managers of the Company may be amended from time to time by the vote or written consent of at least two-thirds of all Membership Interests. Each Manager shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified. Managers shall be elected by the vote or written consent of at least a majority of all Membership Interests and need not be residents of the State of New York or Members of the Company.

4.3 *Powers of Managers.* Except as set forth in this Agreement the Managers shall have power and authority, on behalf of the Company, to (a) purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of to, any Person any property, (b) open bank accounts and otherwise invest the funds of the Company, (c) purchase insurance on the business and assets of the Company, (d) commence lawsuits and other proceedings, (e) enter into any agreement, instrument or other writing, (f) retain accountants, attorneys or other agents and (g) take any other lawful action that the Managers consider necessary, convenient or advisable in connection with any business of the Company.

4.4 *Binding Authority.* Unless authorized to do so by this Agreement or the Managers, no Person shall have any power or authority to bind the Company unless such Person has been authorized by the Managers to act on behalf of the Company in accordance with Subsection 4.3 hereof.

4.5 *Liability for Certain Acts.* The Managers shall be obligated to perform their duties in good faith, in a manner he or she reasonably believes to be in the best interests of the Company and with such care as an ordinarily prudent person in a similar position would use under similar circumstances. A Manager who so performs such duties shall not have any liability by reason of

being or having been a Manager. A Manager shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of such Manager. Without limiting the generality of the preceding sentence, a Manager does not in any way guaranty the return of any Capital Contribution to a Member or a profit for the Members from the operations of the Company.

4.6 *No Exclusive Duty to Company.* The Managers shall not be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Manager shall incur no liability to the Company or any Member as a result of engaging in any other business interests or activities.

4.7 *Indemnification.* The Company shall indemnify and hold harmless the Manager from and against all claims and demands to the maximum extent permitted under the New York Act.

4.8 *Resignation.* Any Manager may resign at any time by giving written notice to the Company. The resignation of any Manager shall take effect upon receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of the Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

4.9 *Removal.* Any Manager may be removed or replaced with or without cause by the vote or written consent of at least a majority of Membership Interests. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of such Member.

4.10 *Vacancies.* Any vacancy occurring for any reason in the number of Managers may be filled by the vote or written consent of at least a majority of all the Membership Interests. A Manager elected to fill a vacancy shall be elected for the unexpired term of the Manager's predecessor in office and shall hold office until the expiration of such term and until the Manager's successor has been elected and qualified. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Members and until a successor has been elected and qualified.

4.11 *Salaries.* The salaries and other compensation of the Managers shall be fixed from time to time by the vote or written consent of at least a majority of the Membership Interests. No Manager shall be prevented from receiving such a salary or other compensation because such Manager is also a Member.

4.12 *Officers.* The Members may designate one or more individuals as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Members. Any officer may be removed by the Members

at any time, with or without cause. Each officer shall hold office until his or her successor is elected and qualified. Any number of offices may be held by the same individual. The salaries and other compensation of the officers shall be fixed by a majority vote of the Membership Interests.

## ARTICLE V Meetings of Members

5.1 *Annual Meeting.* The annual meeting of the Members shall be held on each second Friday in September or at such other time as shall be determined by the vote or written consent of the Membership Interests for the purpose of the transaction of any business as may come before such meeting.

5.2 *Special Meetings.* Special meetings of the Members, for any purpose or purposes, may be called by any Manager or any Member holding not less than ten percent of the Membership Interests.

5.3 *Place of Meetings.* Meetings of the Members may be held at any place, within or outside the State of New York, for any meeting of the Members designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be the chief executive office of the Company.

5.4 *Notice of Meetings.* Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten nor more than sixty days before the date of the meeting.

5.5 *Record Date.* For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this Section, the determination shall apply to any adjournment of the meeting.

5.6 *Quorum.* Members holding not less than a majority of all Membership Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, a majority of the Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty days without further notice. However, if the adjournment is for more than sixty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Membership Interests whose absence results in less than a quorum being present.

5.7 *Manner of Acting.* If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority of Membership Interests shall be the act of the Members, unless the vote of a greater or lesser proportion of number is otherwise required by the New York Act, the Articles of Organization or this Agreement.

5.8 *Proxies.*

(a) A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact.

(b) Every proxy must be signed by the Member or his or her attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided in this Section.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by any Manager.

5.9 *Action by Members Without a Meeting.*

(a) Whenever the Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted and shall be delivered to the office of the Company, its principal place of business or a Manager, employee or agent of the Company. Delivery made to the office of the Company shall be by hand or by certified or registered mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this Section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office the Company, its principal place of business or a Manager, employee or agent of the Company having custody of the records of the Company. Delivery made to such office, principal place of business of Manager, employee or agent shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.



5.10 *Waiver of Notice.* Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

5.11 *Voting Agreements.* An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interest held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

## ARTICLE VI Capital Contributions

6.1 *Capital Contributions.* Each Member shall contribute the amount set forth in Schedule A to this Agreement as the Capital Contribution to be made by him, her or it.

6.2 *Additional Contributions.* Except as set forth in Section 6.1 of this Agreement, no Member shall be required to make any Capital Contribution.

6.3 *Capital Accounts.* A Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of the Net Profits and any other allocations to such Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to such Member of Net Losses and other allocations to such Member pursuant to the Code.

6.4 *Transfers.* Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his, her or its Membership Interests shall become the Capital Account of the Person to which or whom such Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

6.5 *Modifications.* The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(b) of the Code. If in the opinion of the Members the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

6.6 *Deficit Capital Account.* Except as otherwise required in the New York Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in his Capital Account.

6.7 *Withdrawal or Reduction of Capital Contributions.* A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the Managers, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such member, has only the right to demand and receive cash in return for such Capital Contribution.

## ARTICLE VII Allocations and Distributions

7.1 *Allocations of Profits and Losses.* The Net Profits and the Net Losses for each Fiscal Year shall be allocated to each Member in accordance with the ratio of the value of his, her or its Capital Account to the value of all Capital Accounts in the aggregate.

7.2 *Distributions.* The Members may, from time to time, determine to make Distributions to the Members. All Distributions shall be made to the Members pro rata in proportion to their Membership Interests as of the record date set for such Distribution.

It is the intent of the Members that Distributions will be made, to the extent of available funds, in amounts sufficient to cover (a) anticipated personal income taxes on net income allocated to each Member for each taxable year.

7.3.1 *Offset.* The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

7.3.2 In the event that a Capital Contribution required of a Member pursuant to Article VI or Schedule B hereof, has not been paid in full at the time a Distribution is made, that part of the Distribution allocated to the Member(s) who has an unpaid Capital Contribution(s) shall be used first to pay such Capital Contribution, before any balance is distributed to the Member. In the event that a Member has made a promissory note to the Company as part of a required Capital Contribution, the promissory note will be deemed to have matured and become due and payable to the extent of the available cash distribution.

7.4 *Limitation Upon Distributions.* No Distribution shall be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company. The Company's power to distribute its income and/or assets shall be limited to distributions to (or at the direction of) American Housing Foundation, Inc. for purposes of furthering American Housing Foundation, Inc.'s tax-exempt purposes.

7.5 *Interest on and Return of Capital Contributions.* No Member shall be entitled to interest on his, her or its Capital Contribution or to a return of his, her or its Capital Contribution, except as specifically set forth in this Agreement.

7.6 *Accounting Period.* The accounting period of the Company shall be the Fiscal Year.

## ARTICLE VIII Taxes

8.1 *Tax Returns.* The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company. Each Member shall furnish to the Managers all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

8.2 *Tax Elections.* The Company shall make the following elections on the appropriate tax returns:

- (a) To adopt the calendar year as the Fiscal Year;
- (b) To adopt the accrual method of accounting and keep the Company's books and records in accordance therewith;
- (c) If a Distribution as described in Section 734 of the Code occurs or if a transfer of a Membership Interest described in Section 743 of the Code occurs, upon the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code;
- (d) To elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under Section 195 of the Code ratably over a period of sixty months as permitted by Section 709(b) of the Code; and
- (e) Any other election that the Managers may deem appropriate and in the best interests of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

8.3 *Tax Matters Partners.* The Managers shall designate one Manager to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code. Any Manager who is designated "tax matters partner" shall take any action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code.

**ARTICLE IX**  
**Transferability**  
**of Membership**  
**Interests**

9.1 *General.* Except as set forth in this Agreement, no Member shall gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another Person any portion of a Membership Interest.

9.2 *Unilateral Sale to Third Party*

9.2.1 *Offer to Acquire.* If a Member desires to sell all or a portion of a Membership Interest (the "Selling Member") to another Person, such Member shall obtain from such Person a bona fide written offer to purchase such Membership Interest, stating the terms and conditions upon which the purchase is to be made. Such Member shall give written notification to the other Members of his, her or its intention to sell such Membership Interest and a copy of such bona fide written offer.

9.2.2 *Right of First Refusal.* Each Member other than the Selling Member, on a basis pro rata to the Membership Interests of each Member exercising his, he or its right of first refusal, shall have the right to exercise a right of first refusal to purchase the Membership Interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the bona fide written offer by giving written notification to the Selling Member of his, her or its intention to do so within thirty days after receiving written notice from the Selling Member. The failure of any such Member to so notify the Selling Member of a desire to exercise such right of first refusal within such time shall terminate the right of first refusal and the Selling Member shall be entitled to consummate the sale of his, her or its Membership Interest to the Person offering to do so pursuant to the bona fide written offer. If the selling Member fails to sell his, her or its Membership Interest within thirty days after receiving the right to do so, his, her or its right to do so terminates and the terms and conditions of this Section shall again be in effect.

9.2.3 *Closing.* If any Member gives written notice to the Selling Member of his, her or its desire to exercise such right of first refusal and to purchase all of the Selling Member's Interest offered for sale upon the same terms and conditions as are stated in the written offer, such Member shall have the right to designate the time, date and place of closing within ninety days after receipt of written notification from the Selling Member of the bona fide offer.

9.2.4 *Transferee Not a Member.* No Person acquiring a Membership Interest pursuant to this Section 9.2 shall become a Member unless such Person is approved by the unanimous vote or written consent of all Membership Interests; such approval to be in the sole discretion of each voting Member. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the distributions and allocations of profits and losses to which the Member from whom or which such Person received such Membership Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Members.

9.2.5 *Effective Date.* Any sale of a Membership Interest or admission of a Member pursuant to this Article shall be deemed effective as of the last day of the calendar month in which such sale or admission occurs.

9.3 *Sale Or Transfer By All Members To A Third Party*

9.3.1 Upon the unanimous written consent of all Membership Interests, a third party may acquire a Membership Interest by sale or transfer from the owners of the existing Membership Interests. Unless otherwise agreed by the owners of the existing Membership Interests, the sale or transfer to such third party shall be on a basis pro rata to the existing Membership Interests of each Member.

9.3.2 The unanimous written consent of the existing Membership Interests shall include agreement as to consideration and terms of sale.

9.3.3 *Transferee Not a Member.* No Person acquiring a Membership Interest pursuant to this Section 9.3 shall become a Member unless such Person is approved by the unanimous vote or written consent of all Membership Interests. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the distributions and allocations of profits and losses to which the Member from whom or which such Person received such Membership Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Members.

9.4 *Sale Or Transfer Of Controlling Interest In A Member Entity*

9.4.1 The parties to this Operating Agreement as of the date hereof ("the Member Entities") hereby acknowledge that the ownership interest of the Member Entities is vested in the Persons, and in the percentages, set forth in the attached Schedule C.

9.4.2 The parties hereto agree that:

- (a) for purposes of this Agreement, the term "Member Entity Control Interest" shall refer to any form of membership interest, partnership interest, stock ownership, etc. which includes voting interest and control over the management and affairs of the Member Entity as designated in Schedule C, and shall not include non-voting or limited voting interests such as membership interests with restricted voting rights or limited partners; and
- (b) in the event that the owner(s) of a Member Entity Control Interest propose to sell or transfer more than 49 percent of the original Member Entity Control Interest in a Member Entity as set forth on Schedule C, the provisions of Paragraph 9.2 hereof with respect to the right of first refusal shall apply to any such proposed sale or transfer for consideration. This right of first refusal shall apply to any proposed sale or transfer of Member Entity Control Interest which will result in a cumulative change in greater than 49 percent of the total original Member Entity Control Interest

in a Member Entity as set forth on Schedule C, taking into account all prior sales or transfers of such interests. The right of first refusal, as set forth in paragraph 9.2 may be exercised only by the remaining, non-selling Member Entity.

9.4.3 The Member Entities agree to place and leave on file with the Company the written agreement of the Persons holding ownership interests in the Member Entities, as identified in Schedule C, restricting the sale or transfer of more than 49 percent of the total Member Entity Control Interest set forth on Schedule C.

9.4.4 The parties hereto acknowledge that each Member Entity and each Person identified in Schedule C is the intended beneficiary of the above-described restriction on the other's right to transfer Member Entity Control Interest in said Member Entities, and that said rights shall be specifically enforceable in a court of competent jurisdiction.

9.4.5 In the event that the owner of any Member Entity Control Interest proposes to gift or transfer said interest without consideration, the result of which would be the change in more than 49 percent of the total original Member Entity Control Interest in a Member Entity as set forth on Schedule C, the Member Entity proposing said transfer shall give thirty (30) days notice to all other Members prior to the proposed gift or transfer without consideration. In the event of written objection by another Member prior to the expiration of thirty (30) days, the proposed transferor Member shall not gift or transfer without consideration that portion of his Member Entity Control Interest to said third party.

9.4.6 This restriction on the gift or transfer without consideration of Member Entity Control Interests shall apply to any such gift or transfer which will result in a cumulative change of greater than 49 percent of the total original Member Entity Control Interest in a Member Entity as set forth on Schedule C, taking into account all prior sales or transfers of such ownership interest.

## ARTICLE X Dissolution

10.1 *Dissolution.* The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) The latest date on which the Company is to dissolve, if any, as set forth in the Articles of Organization;

(b) The vote or written consent of at least two-thirds in interest of all Members;

or

(c) The bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of (i) any Member, or (ii) owner(s) of Member Entity Control Interests when such event results in a cumulative change of more than 49 percent of the total original Member Entity Control Interest as set forth on Schedule C, or the occurrence of any other event that terminates the continued membership of any Member, unless within one hundred eighty days after such event the Company

is continued by the vote or written consent of a majority of all of the remaining owners of Member Entity Control Interests.

10.2 *Winding up.* Upon the dissolution of the Company the Managers may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall be distributed as follows:

(a) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under Section 507 or Section 509 of the New York Act;

(b) To Members and former Members in satisfaction of liabilities for Distributions under Section 507 or Section 509 of the New York Act; and

(c) To Members first for the return of their Capital Contributions, to the extent not previously returned, and second respecting their Membership Interests, in the proportions in which the Members share in Distributions in accordance with this Agreement.

10.3 *Articles of Dissolution.* Within ninety days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, articles of dissolution shall be filed with the New York Secretary of State pursuant to the New York Act.

10.4 *Deficit Capital Account.* Upon a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such litigation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

10.5 *Nonrecourse to Other Members.* Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his, her or its Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, such member shall have no recourse against any other member.

10.6 *Termination.* Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

## ARTICLE XI General Provisions

11.1 *Notices.* Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) the party to whom such notice, demand or other communication is directed or (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his, her or its address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

11.2 *Amendments.* This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Members with respect thereto, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement. No amendment to this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each provision of this Agreement being amended.

11.3 *Construction.* Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

11.4 *Headings.* The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

11.5 *Waiver.* No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

11.6 *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

11.7 *Binding.* This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assignees or the Members, except that right or obligation of a Member under this Agreement may be assigned by such Member to another Person without first obtaining the written consent of all other members.



11.8 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

11.9 *Governing Law.* This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

11.10 *HTFC Provisions.*

(a) The Company is authorized to execute a note and mortgage in order to secure a loan to be made by New York State Housing Trust Fund Corporation (the "Corporation"), and to execute a regulatory agreement and other documents required by the Corporation in connection with such loan.

(b) Any incoming member shall, as a condition of receiving an interest in the Company property agree to be bound by the note, mortgage and regulatory agreement and other documents required in connection with the loan to the same extent and on the same terms as the other members, as the case may be.

(c) For so long as the Corporation is the holder of the mortgage on the project, no amendment to this agreement which results in any of the following shall be of force or effect without the prior written consent of the Corporation: 1) any amendment which modifies the duration of this Agreement; 2) any agreement which results in a new member; and 3) any amendment which in any way affects the Corporation's mortgage or regulatory agreement.

(d) Notwithstanding any other provisions of this Agreement, upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the regulatory agreement in a manner satisfactory to the Corporation.

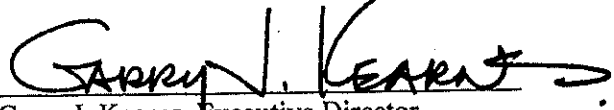
(e) Notwithstanding any other provisions of this Agreement, in the event that any provision of this Agreement conflicts with any provisions of the regulatory agreement, the provision of the regulatory agreement shall control.

(f) For so long as the Corporation, its successors or assigns, is the holder of a mortgage encumbering the project property, the Company shall not be voluntarily dissolved without the prior written approval of the Corporation.

(g) For so long as the Corporation, its successors or assigns, is the holder of a mortgage encumbering the project property, the project is and shall remain the sole asset and business purpose of the Company.

IN WITNESS WHEREOF, the individuals and entities signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

AMERICAN HOUSING FOUNDATION, INC.

By:   
Garry J. Kearns, Executive Director

**SCHEDULE A**

**AHF-COLUMBIA CREST, LLC  
MEMBERSHIP INTEREST**

<u>MEMBER</u>	<u>MEMBERSHIP INTEREST</u>	<u>CAPITAL CONTRIBUTION</u>
American Housing Foundation, Inc.	100%	\$100

**SCHEDULE B**

**AHF-COLUMBIA CREST, LLC  
BOARD OF MANAGERS**

MANAGER

American Housing Foundation, Inc.

**SCHEDULE C**

**OWNERSHIP INTEREST OF THE MEMBER ENTITIES**

N/A

EXHIBIT C  
CERTIFICATE OF GOOD STANDING

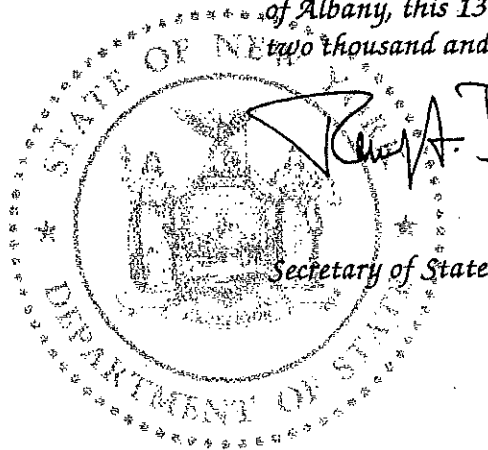
**State of New York** } **ss:**  
**Department of State**

I hereby certify, that AHF-COLUMBIA CREST, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 07/30/2003, and that the Limited Liability Company is subsisting so far as shown by the records of the Department.

I further certify, that no other documents have been filed by such Limited Liability Company.

\*\*\*

Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 13th day of August  
two thousand and three.



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EXHIBIT D

CONSENT AND RESOLUTIONS  
OF THE SOLE MEMBER AND MANAGER



**UNANIMOUS WRITTEN CONSENT AND RESOLUTIONS  
OF THE  
SOLE MEMBER AND MANAGER  
OF  
AHF-COLUMBIA CREST, LLC**

The undersigned, being the sole member and manager ("Manager") of AHF-Columbia Crest, LLC, a New York limited liability company (the "Company"), hereby consents to the adoption of the following resolutions, such action to have the same force and effect as if taken at a meeting duly called and held for such purpose:

RESOLVED, that the Manager of the Company does hereby adopt, ratify, authorize and approve the substitution of a letter of credit from Citizens Bank, N.A. ("Citizens") in the principal amount of Five Million Five Hundred Forty-Eight Thousand One Hundred Fifteen and 00/100 Dollars (\$5,548,115.00) (the "Substitute LOC") for the existing letter of credit issued by KeyBank, N.A. ("Key") in the principal amount of Five Million Six Hundred Twenty-Three Thousand Nine Hundred Seventy-Nine and 00/100 Dollars (\$5,623,979.00) (the "Original LOC") securing those certain Variable Rate Civic Facility Revenue Bonds (Columbia Crest Senior Housing Project – Letter of Credit Secured) Series 2003, in the aggregate principal amount of Five Million Five Hundred Sixty Thousand and 00/100 Dollars (\$5,560,000.00), issued by the City of Cohoes Industrial Development Agency (the "Issuer") for the benefit of that certain senior independent rental apartment project operated by the Company, located at 427 Columbia Street, Cohoes, New York, and commonly known as Columbia Crest Senior Apartments (the "Project"), and it is

FURTHER RESOLVED, that the Manager of the Company does hereby adopt, ratify, authorize and approve any and all documents and instruments in connection with the issuance of the Substitute LOC, pursuant to the commitment letter issued by Citizens to the Company dated September 27, 2006, including, without limitation, any reimbursement agreement, mortgage, security agreement, limited guaranty agreement, environmental compliance and indemnification agreement, deposit account pledge agreement, bond pledge agreement, assignment of leases and rents, interest rate agreement, subordination agreement or other agreement required by Citizens and/or the Issuer in connection with the substitution of the Substitute LOC for the Original LOC (collectively, the "Credit Documents"), which LOC Documents may contain such dates and other terms, provisions, conditions, stipulations and agreements as Garry J. Kearns, the executive director of the Manager (the "Executive Director"), may deem proper and advisable, and that the Executive Director is authorized to act on behalf of the Manager in its capacity as the manager of the Company and to execute and deliver such LOC Documents and to take any and all other actions and execute and deliver any and all such other documents as such Executive Director may deem proper and advisable in order to carry out the intent of the foregoing resolutions and the consummation of the transactions described therein; and it is

FURTHER RESOLVED, that all action taken and all instruments executed by authorized persons on behalf of the Company prior to the adoption of these resolutions in furtherance of the financing of the Project and all matters related thereto, are hereby ratified, confirmed and approved in all respects.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the 13<sup>th</sup> day of April, 2007.

AMERICAN HOUSING FOUNDATION, INC.

By: GARRY J. KEARNS  
Garry J. Kearns, Executive Director

EXHIBIT E  
PENDING LITIGATION

- NONE -