

# Cannon Heyman & Weiss, LLP Attorneys At Law

April 18, 2007

Citizens Bank, N.A.  
833 Broadway  
Albany, New York 12207

RBC Dain Rauscher  
solely in its capacity as remarking agent,  
688 Broadway  
Albany, New York 12207

City of Cohoes Industrial Development  
Agency  
97 Mohawk Street  
Cohoes, New York 12047

The Bank of New York, as Trustee,  
solely in its capacity as trustee,  
101 Barclay Street, 21 W  
New York, New York 10286

Re: Citizens Bank Letter of Credit in the principal amount of Five Million Five Hundred  
Forty-Eight Thousand One Hundred Fifteen and 00/100 Dollars (\$5,548,115.00)

We acted as counsel to AHF-Columbia Crest, LLC, a New York limited liability company (the "Company"), and American Housing Foundation, Inc., a New York not-for-profit corporation ("AHF"), in connection with the sale to First Albany Corporation by the City of Cohoes Industrial Development Agency (the "Issuer") of certain Variable Rate Civic Facility Revenue Bonds (Columbia Crest Senior Housing Project - Letter of Credit Secured) Series 2003 in the aggregate principal amount of \$5,560,000 (the "Bonds"), for the purpose of assisting in the financing of a senior independent rental apartment project operated by the Company and located at 427 Columbia Street, Cohoes, New York, commonly known as Columbia Crest Senior Apartments (the "Project"). We are acting as counsel to the Company and AHF in connection with the substitution of a letter of credit from Citizens Bank, N.A. ("Citizens") in the principal amount of \$5,548,115.00 (the "Citizens LOC") for the original letter of credit issued by KeyBank, N.A. ("Key") in the principal amount of \$5,623,979.00 (the "Key LOC") securing the Bonds.

In connection with rendering this opinion, we have examined such records, certificates and other documents and instruments and such questions of law as we have considered necessary or appropriate for the purposes of this opinion, including, without limitation, the following documents and instruments:

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- (a) Project Lease by and between AHF and the Company dated September 1, 2003;
- (b) Ground Lease by and between the Company and the Issuer dated September 1, 2003;
- (c) Sublease Agreement by and between the Company and the Issuer dated September 1, 2003;
- (d) Trust Indenture by and between the Issuer and the Trustee dated September 1, 2003;
- (e) Tax Regulatory Agreement by and among the Company, AHF and the Issuer dated October 15, 2003;
- (f) Official Statement of the Issuer relating to the issuance of the Bonds dated October 14, 2003;
- (g) Reimbursement Agreement by and between the Company and Citizens dated of even date herewith;
- (h) Mortgage, Security Agreement and Financing Statement by the Company, AHF and the Issuer in favor of Citizens dated of even date herewith;
- (i) Assignment of Leases and Rents from the Company and the Issuer to Citizens dated of even date herewith;
- (j) Limited Guaranty Agreement by AHF in favor of Citizens dated of even date herewith;
- (k) Environmental Compliance and Indemnification Agreement from the Company and AHF to Citizens, the Issuer and the Trustee dated of even date herewith;
- (l) Deposit Account Pledge Agreement by and between the Company and Citizens dated of even date herewith;
- (m) Conditional Assignment of Management Agreement from the Company and American Housing Management Company, Inc. to Citizens dated of even date herewith;

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- (n) Bond Pledge Agreement by and among the Company, the Trustee and Citizens dated of even date herewith;
- (o) Continuing General Security Agreement by and between the Company and Citizens dated of even date herewith;
- (p) Subordination and First Mortgagee Waiver Agreement by and among the Company, Citizens and the New York Housing Trust Fund Corporation dated of even date herewith;
- (q) General Certificate of AHF dated of even date herewith;
- (r) General Certificate of the Company dated of even date herewith;
- (s) Authorizing resolutions of the Company and AHF dated of even date herewith;
- (t) A certificate of subsistence of the Company dated April 5, 2007 from the New York Department of State; and
- (u) A certificate of subsistence of AHF dated April 5, 2007 from the New York Department of State.

The documents set forth in (g) through (r) above are hereinafter collectively referred to as the "Transaction Documents".

In connection with the issuance of this opinion, we have made inquiry of the Company and AHF with respect to certain factual matters set forth in the certificate of the Company and AHF delivered as of the date of closing and addressed to us (the "Closing Certificate"), a copy of which is attached hereto as Exhibit A, and are relying on such inquiry and the Closing Certificate as to the factual matters stated therein. We have no actual knowledge of any matters that are inconsistent with the statements contained in the Closing Certificate and believe that we are justified in relying thereon.

In rendering this opinion we have assumed:

- a) All the certificates (of public officials, governmental agencies and departments and corporate officers) and statements of fact, on which we are relying, and have made only limited investigations thereof, are authentic and accurate;

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- b) The due authorization, execution and delivery of all Transaction Documents by all parties other than the Company and AHF (the "Financing Parties"), the due authorization of each person executing the Transaction Documents on behalf of the Financing Parties and the genuineness of each of such persons' signatures;
- c) Each of the Financing Parties will be in compliance with all applicable laws and shall have obtained any licenses or registrations required by applicable law;
- d) All parties to the Transaction Documents will appropriately comply with any and all filings required by any such party's state of incorporation, domestication or formation;
- e) Each of the Financing Parties is duly organized, validly in existence and in good standing; and
- f) The legal descriptions of the real and personal property appearing in the Transaction Documents are accurate and correctly identify the real or personal property with respect to which the Transaction Documents are intended to apply.

Except as specifically set forth above, we have neither reviewed nor requested an examination of the indices or records of any court or governmental agency, authority, instrumentality or entity.

The opinions expressed herein are qualified in their entirety as follows:

A. When reference is made in this opinion "to our knowledge" or words to similar effect, such reference means that knowledge attributable to our representation by only those members and associates of the firm who have given substantive attention to our representation. We have not, except as specifically identified herein, been retained or engaged to perform, nor have we performed, any independent review or investigation of any agreements, instruments, contracts, documents, deeds, commitments, bonds, records of the Company and/or AHF, orders or decrees to which the Company and/or AHF may be a party or to which the Company and/or AHF or their assets or property may be subject, or by which the Company and/or AHF or their assets or property may be bound, nor have we been retained or engaged to perform, or performed, any independent review or investigation as to the existence of any claims, litigation, actions, suits, proceedings, investigations or inquiries, administrative or judicial, pending or threatened against or relating to the Company and/or AHF. This opinion is given, and all statements "to our knowledge" or statements of similar import, are made, in the context of the foregoing.

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B. To the extent that any of the Transaction Documents purport to allow a secured party to take possession of the Project prior to proper judicial foreclosure proceedings, New York law provides, generally, that a mortgagee has no absolute right, either before or after default, to the possession of or to charge rent for the property mortgaged.

C. The enforceability of the Transaction Documents may be subject to the effect of court decisions which have held that certain covenants and provisions of agreements are unenforceable where (i) the breach of such covenants or provisions impose restrictions or burdens upon the debtor, including the acceleration of indebtedness due under debt instruments, and it cannot be demonstrated that the enforceability of such restrictions or burdens is reasonable and necessary for the protection of the creditor or (ii) the creditor's enforcement of such covenants or provisions under the circumstances would violate the creditor's implied covenant of good faith and fair dealing.

D. New York law does not allow, by agreement made contemporaneously with or as part of a mortgage transaction, the mortgagor to bind itself not to assert its rights or its equity of redemption. Moreover, it is questionable, because of the equitable nature of a mortgage foreclosure proceeding, whether any provision relating to a waiver of defenses or confession of judgment would be generally enforceable under the Transaction Documents. It appears that the mortgagors' right of redemption under New York Law is extinguished upon the sale of the mortgaged premises.

E. Our opinion concerning the validity, binding effect and enforceability of the Transaction Documents means that: (a) the Transaction Documents constitute an effective contract under applicable law; (b) the Transaction Documents are not invalid in their entirety because of a specific statutory prohibition or public policy and are not subject in their entirety to a contractual defense; and (c) some remedy is available, including acceleration and foreclosure, if the Company is in material default under the Transaction Documents. Except as provided in the proviso to this sentence below, this opinion does not mean that (x) any particular remedy is available upon a material default or (y) every provision of the Transaction Documents will be upheld or enforced in any and every circumstance by a court; provided, however, that the unenforceability of any particular provision of the Transaction Documents will not render the Transaction Documents invalid as a whole or preclude: (i) the judicial enforcement of the obligation of the Company to repay the principal, together with interest thereon (to the extent not deemed a penalty or usurious), as provided in the Transaction Documents; (ii) the acceleration of the obligation of the Company to repay such principal, together with such interest as qualified above, upon a material default by the Company in the payment of such principal or interest as qualified above or upon a material default in any other material provision of the Transaction Documents; and (iii) the foreclosure in accordance with applicable law of the lien on and security interest in the real property and other collateral described in

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and encumbered by the Transaction Documents (to the extent that they create liens and/or encumbrances or grant security interests) upon maturity or upon the acceleration pursuant to (ii) above.

Furthermore, the validity, binding effect and enforceability of the Transaction Documents may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statutes, rules, regulations or other laws affecting the enforcement of creditors' rights and remedies generally and (b) the unavailability of, or limitation on the availability of, a particular right or remedy (whether in a proceeding in equity or at law) because of an equitable principle or a requirement as to commercial reasonableness, conscionability or good faith, and decisions governing, limiting or affecting the availability of any self-help relief or remedy and any relief or remedy which is equitable or discretionary in nature. The remedies of specific enforcement, injunctive relief or any other equitable remedies (including, but not limited to, the right to automatic appointment of a receiver) are subject to the discretion of the court before which any proceeding therefor may be brought. You should also be aware that Section 1301 of the New York Real Property Actions and Proceedings Law ("RPAPL") generally bars a mortgagee from maintaining concurrent actions to recover a monetary judgment on the mortgage debt (including suits against any guarantors) and to foreclose on the mortgage. Additionally, it is unclear whether New York Law would permit a mortgagee to concurrently institute one action under Section 1301 of the RPAPL as to the real property and a separate action under the New York Code as to the personal property. It is possible that Section 1301 of RPAPL could be interpreted to be a bar to an action with respect to the personal property while a foreclosure action against the real property was pending.

F. We are members of the Bar of the State of New York and do not hold ourselves out as being conversant with the laws of any jurisdiction other than those of the United States of America and the State of New York, and are expressing no opinion as to the laws of any jurisdiction other than those of the United States and the State of New York and our opinions are so limited. Accordingly, notwithstanding any opinions herein, to the extent that any of the Transaction Documents are governed by laws other than those of the State of New York and the United States of America, the opinions herein will not be applicable.

G. To the extent applicable, we also call your attention to the fact that Section 13 of the New York Lien Law provides, in part, that future advances made pursuant to a building loan mortgage after the filing of a mechanics' or other lien will be subordinate to such lien. Thus, only through a title search, updated to the date of disbursement of the future advance, can a lender be sure that the priority of the mortgage being relied upon as security for the future advance is intact.

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H. The enforceability of the Transaction Documents is subject to the unenforceability under certain circumstances of the provisions waiving, directly or indirectly, expressly or impliedly, defenses to obligations or rights granted by law, where such waivers are prohibited by law or are against public policy.

Based solely upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York with power and authority to own its properties and conduct its affairs as described in the Transaction Documents, to execute and deliver the Transaction Documents and to carry out and perform its obligations thereunder.
2. AHF is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York with power and authority to own its properties and conduct its affairs as described in the Transaction Documents, to execute and deliver the Transaction Documents and to carry out and perform its obligations thereunder.
3. AHF is qualified as a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provision of prior law, and has received a letter from the Internal Revenue Service to that effect, which letter, based solely upon the Closing Certificate, has not been modified, limited or revoked, and, based solely upon the Closing Certificate, AHF is in compliance with all the terms, conditions and limitations, if any, contained in such letter or other notification, and we are informed, without inquiry, that the facts and circumstances which form the basis of such letter or other notification as requested to the Internal Revenue Service continue to exist, and AHF is exempt from Federal income taxation, except for unrelated business income subject to taxation under Section 511 of the Code.
4. The execution and delivery by the Company of the Transaction Documents to which it is a party, has been duly authorized by the Company. Each of the Transaction Documents has been duly executed and delivered by an authorized officer of the manager of the Company and is a legal and valid binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforcement of the Transaction Documents may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws relating to fraudulent conveyances or affecting the enforcement of rights of creditors of the Company generally and equitable principles of general applicability.

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5. The execution and delivery by the Company of the Transaction Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not conflict with or constitute on the part of the Company a breach of or default under: (a) the Company's articles of organization or operating agreement; or (b) based solely upon the Closing Certificate, (i) any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured, or (ii) any judgment, order or decree of any governmental instrumentality or court having jurisdiction over the Company or any of its properties.

6. The execution and delivery by AHF of the Transaction Documents to which it is a party, has been duly authorized by AHF. Each of the Transaction Documents has been duly executed and delivered by an authorized officer of AHF and is a legal and valid binding obligation of AHF enforceable against AHF in accordance with its terms, except as the enforcement of the Transaction Documents may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws relating to fraudulent conveyances or affecting the enforcement of rights of creditors of AHF generally and equitable principles of general applicability.

7. The execution and delivery by AHF of the Transaction Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not conflict with or constitute on the part of AHF a breach of or default under: (a) AHF's certificate of incorporation or by-laws; or (b) based solely upon the Closing Certificate, (i) any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which AHF is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured, or (ii) any judgment, order or decree of any governmental instrumentality or court having jurisdiction over AHF or any of its properties.

8. All authorizations, approvals and orders of any court or public regulatory body of the State of New York or the United States required on the part of the Company and/or AHF with respect to the transactions contemplated by the Transaction Documents have been obtained by the Company and/or AHF prior to the time required by any such court or regulatory body and we have no reason to believe that all such authorizations, approvals and orders to be obtained in the future will not be obtained prior to the time required by any such court or regulatory body.

9. Based solely upon the Closing Certificate, there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the Company and/or AHF, wherein an unfavorable decision, ruling or finding would in any way (a) question the corporate or company existence, as applicable, of the Company or



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AHF or the right of any of their respective members, managers or officers to their respective offices, (b) prohibit, restrain or enjoin the operation of the Project or the issuance of the Citizens LOC, or (c) question or adversely affect the validity or enforceability of the Transaction Documents or the transactions contemplated therein or (d) materially and adversely affect the financial condition of the Company or AHF.

Notwithstanding the foregoing, we express no opinion as to:

A. The validity or enforceability of those provisions of the Transaction Documents which purport by their terms: (a) to relieve a party, or to indemnify a party, against any liability for the negligence or misconduct of such party; (b) to relieve a party from responsibilities and liabilities of a "mortgagee in possession" under New York law; or (c) to obligate a mortgagor to bear the legal and other expenses of litigation between the mortgagor and the secured party in a situation where the mortgagor prevails.

B. The effect of compliance or noncompliance by any of the Financing Parties with any state or federal laws or regulations applicable to the transaction because of the nature of the businesses of such Financing Party.

C. The enforceability of any provision requiring the payment of attorneys' fees except to the extent that a court determined such fees to be reasonable.

D. The creation or perfection of a security interest intended to be created pursuant to any purported assignment of or transfer of an interest in any agreement, lease, or governmental approval, license or permit which is subject to restrictions upon assignment or transfer except to the extent that consent or approval of such assignment, transfer or such perfection has been obtained from the appropriate governmental body or third party.

E. No opinion is given with respect to the enforceability of the Transaction Documents in the event of the failure of any Financing Party or such party's respective successors to comply with the requirements of the following Sections of the New York Code: Section 207(1) (failure of a secured party to use reasonable care in the custody and preservation of collateral in the secured party's possession); Section 502(2) and Section 504(2) (insofar as they require accounting by the secured party for surplus proceeds of collateral); Section 504(3) (relating to dispositions of collateral by a secured party); Section 505(2) (dealing with the acceptance of collateral as discharge of an obligation); and Section 506 (dealing with redemptions of collateral).

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F. Other than with respect to environmental liability of the Company and AHF, the survival of the indemnifications provided in the Transaction Documents after foreclosure of the interest of any Financing Party in any portion of the Project, receipt of conveyance of any portion of the Project in lieu of foreclosure or exercise of other remedy or payment.

Our opinion is rendered as of the date hereof and does not purport to analyze, evaluate or consider the legal effect of any event after this date that may alter the validity of this opinion.

We disclaim any undertaking to advise you hereafter of developments occurring or coming to our attention subsequent to the date hereof, whether or not the same (if now existing and known to us) would cause any change or modification herein. This opinion is limited solely to the matters set forth above. No other opinion is intended, nor should any other opinion be inferred herefrom.

This opinion is delivered to you upon the instructions to the Company and is solely for the benefit of the addressees, and may be relied upon by their respective legal counsel representing them in this transaction. This opinion is rendered solely in connection with the law on the date hereof concerning the Citizens LOC. This opinion may not be relied upon by any other person or entity or for any other purpose.

Very truly yours,



Cannon Heyman & Weiss, LLP

**EXHIBIT A**

**CLOSING CERTIFICATE**

The undersigned are delivering this certificate ("Certificate") to Cannon Heyman & Weiss, LLP, as of the date of closing, with the intent that Cannon Heyman & Weiss, LLP may rely upon the matters contained in this Certificate in rendering an opinion to Citizens Bank, N.A. ("Citizens"), relating to the substitution of a letter of credit from Citizens in the principal amount of \$5,548,115.00, for an original letter of credit issued by KeyBank, N.A., in the principal amount of \$5,623,979.00. Capitalized terms used but not defined herein shall have the same meaning as ascribed in the opinion to which this certificate is attached.

Each of the undersigned does hereby certify, only as to themselves, as follows:

(1) The execution, delivery and performance by the undersigned of the Transaction Documents to which each is a party, and compliance by the undersigned, as applicable, with the provisions of such documents, as applicable, does not and will not (1) conflict with or violate any court order, writ, judgment or decree to which the undersigned are subject, or (2) conflict with or violate or constitute a breach of the provisions of or constitute a default under, or result in the creation or imposition of a lien, charge or encumbrance upon any of the properties or assets of the undersigned pursuant to any agreement, indenture, mortgage, lease or other obligation or instrument (other than the Transaction Documents) to which the undersigned are a party or by which their respective properties or assets are bound.

(2) The undersigned is not (1) in default in any material respect under any mortgage, deed of trust, lease, loan or credit agreement, or other instrument to which it is a party or by which any of its properties or assets is bound, or (2) in default with respect to any order, writ, decree, injunction or demand of any court or governmental agency.

(3) There is no action, suit, proceeding, inquiry or investigation at law or in equity (hereinafter "Proceeding") to which either of the undersigned is a party pending or, to each of the undersigned's knowledge after due inquiry, threatened, in any court or before or by any governmental agency, public board or body in any way affecting the existence of the undersigned, involving the Project or seeking to restrain or to enjoin the issuance of the Citizens LOC, or in any way contesting or affecting the validity or enforceability of the Transaction Documents, or contesting the power, authority or competency of the undersigned with respect to the Transaction Documents to which either of the undersigned is a party.

(4) Except for such approvals as have been heretofore obtained, no approval, authorization or other action by or a filing with any governmental authority, agency, or quasi-governmental agency or private corporation is required as a condition to the execution, delivery or performance by the undersigned of the Transaction Documents to which they are a party.

(5) There are no violations of the undersigned's representations, warranties and covenants contained in the Transaction Documents and all such representations, warranties and covenants are true and correct as of the date hereof.

(6) The Company is a limited liability company validly existing and in good standing under the laws of the State of New York.

(7) The activities of the Company will be conducted strictly in accordance with the terms of the Company's Operating Agreement.

(8) AHF is a not-for-profit corporation validly existing and in good standing under the laws of the State of New York.

(9) AHF has received a letter from the Internal Revenue Service stating that AHF is qualified as a 501(c)(3) charitable organization, which letter has not been modified, limited or revoked. AHF is in compliance with any and all terms, conditions and limitations contained in such letter, and the facts and circumstances which form the basis of the letter continue to exist.

(10) The Project is not in violation of any law, ordinance, rule, regulation or requirement, including, without limitation, those pertaining to building, health, safety and environmental matters of the municipal, county, state or federal government and the current use of the Project as well as the use thereof upon completion of the rehabilitation are and will be in conformance with all local zoning regulations.

*Remainder of Page Intentionally Left Blank*

IN WITNESS WHEREOF, the parties hereto have caused this Certificate to be duly executed as of the 18<sup>th</sup> day of April, 2007.

AHF COLUMBIA CREST, LLC

By: American Housing Foundation, Inc.,  
its Manager

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

AMERICAN HOUSING FOUNDATION, INC.

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