MEMORANDUM OF UNDERSTANDING

The Timbers Apartments

This Memorandum of Understanding (the "**MOU**") is between the Austin Housing Finance Corporation ("**AHFC**"), a Texas, public non-profit corporation and the Cesar Chavez Foundation (CCF) ("**Developer**"), a California nonprofit corporation.

The parties hereto hereby agree to work cooperatively to develop and maintain affordable housing at the following location, in accordance with the terms of this MOU:

The Timbers Apartments, a 104-unit multifamily rental housing development located at 1034 Clayton Lane in Austin, Texas (the "**Project**") on land described in Exhibit A.

In order to accomplish this purpose, the parties agree as follows:

AGREEMENTS:

A. <u>Ownership Structure</u>

1. A to-be-formed Texas limited partnership (the "**Partnership**") will own the Project. The AHFC Timbers Non-Profit Corporation, a Texas non-profit corporation which, will serve as general partner (the "**General Partner**") of the Partnership. A to-be-formed limited liability company will serve as special limited partner (the "**Special Limited Partner**") of the Partnership. The controlled(?) General Partner shall have primary responsibility for the management of the Partnership.

2. The Developer's guaranty obligations may include a development deficit guaranty agreement, an operating deficit guaranty agreement, and a tax credit recapture guaranty agreement (collectively, the "**Guaranty Agreements**").

B. <u>Tax Exemption</u>

The ownership structure contemplated herein is expected to make the Project exempt from ad valorem taxes. AHFC, as proposed owner of the land, shall provide confirmation of ad valorem tax exemption by the Travis Central Appraisal District.

C. <u>Financing</u>

1. The Partnership will apply for tax-exempt private activity bond financing (the "**Bonds**") through the Texas Bond Review Board and 4% housing tax credits (the "**HTCs**") through the Texas Department of Housing & Community Affairs ("**TDHCA**"). The AHFC will be the Issuer of the Bonds for the project and utilize the services of AHFC's Bond Counsel.

2. Assuming that Developer's efforts to obtain 4% HTCs for the Project are successful, the Partnership and Developer shall enter into a development agreement for the Project that will cover all aspects of the development of the Project, and will follow this MOU as an essential guide.

3. When the Partnership receives the Bonds, Developer shall be responsible for selecting the lender and negotiating the loan terms on behalf of the Partnership, provided that AHFC shall have the right to review and approve the financing arrangements and the terms and conditions of any loan documents.

4. Developer shall be responsible for negotiating the sale of the HTCs generated by the Project to one or more HTC investors, and the corresponding HTC equity (the "**Equity**"), provided that AHFC shall have the right to approve (which approval shall not be unreasonably withheld or delayed) the identity of the investor limited partner selected (the "**Investor Limited Partner**") and the terms of the letter of intent. The Developer and AHFC shall be jointly responsible for negotiating the terms and conditions of the Amended and Restated Partnership Agreement (the "**Partnership Agreement**"). The terms of the Partnership Agreement and the Guaranty and any other documents required by the Investor Limited Partner, as they relate to the Partnership's general partner, shall be consistent with the Internal Revenue Service requirements for 501(c)(3) organizations serving as general partners of for-profit limited partnerships and providing tax credit guarantees.

5. Developer shall pay the following pre-development costs: the costs and fees associated with applying for the Loan and Tax Credit, costs for a market study and Phase I environmental study, application fees, and such other costs and fees as Developer, in its sole discretion, determines are necessary in order to advance the development of the Project (the "**Predevelopment Costs**"). All Predevelopment Costs deemed eligible as part of the total development costs shall be reimbursed at Closing (as hereinafter defined) from the proceeds of the Bonds and Equity.

6. Developer shall be entitled to seventy percent (70%) of the developer fee for the Project.

7. General Partner shall be entitled to thirty percent (30%) of the cash flow, as that term will be defined in the Partnership Agreement. Cash flow payments will be in the form of a G.P. Supervisory Management Fee paid annually per the terms and conditions to be stated in the Partnership Agreement. The Special Limited Partner shall be entitled to seventy percent (70%) of the Cash Flow. Notwithstanding the foregoing, the cash flow provisions must be approved by the Investment Limited Partner, the permanent lender, and the U.S. Department of Housing & Urban Development as the permanent mortgage insurer.

8. All proceeds from sale or refinance of the Project will be shared, seventy percent (70%) to the Special Limited Partner and thirty percent (30%) to the Investor Limited Partner.

9. AHFC shall be entitled to $100,000.00 at the close of the transaction as developer fee.

D. Consents

Developer shall be responsible for obtaining approvals from the TDHCA for the change in ownership of the Project, provided; however, AHFC agrees to timely deliver such items as are reasonably necessary to facilitate such approval. Investor shall be responsible for obtaining approval from the applicable debt and equity participants. The terms of this MOU shall be subject to final approval from the board of directors of AHFC and Developer.

E. Management and Construction

The General Partner agrees that the Developer's management company shall manage the Property for the Partnership and that both parties shall execute whatever documents necessary to ensure the Developer's management company shall have responsibility for the day-to-day management and operation, record keeping, and maintenance and upkeep of the Project. The parties agree that an affiliate of Developer shall serve as the construction company to perform the rehabilitation work on the Project.

F. Exit Strategy

1. In order for the property to obtain an ad valorem tax exemption, the General Partner shall at all times have an option to compel title to the property. During the initial tax credit compliance period, this option price will be at a price satisfactory to the Investor Limited Partner so as to reimburse the Investor Limited Partner all Capital Contributions plus costs, expenses and lost profits if in the event the option is exercised. From and after the end of the initial tax credit compliance period, the purchase option shall be at fair market value.

2. The Special Limited Partner desires at the end of the 15 years to re-syndicate and rehabilitate the project and proceed in the same fashion as contemplated by this agreement. In the event that the General Partner and Special Limited Partner elect at the end of the tax credit compliance period to re-syndicate the Project to allow for additional improvements and to maintain the Project as affordable housing, the parties will enter into an agreement for the re-syndication under substantially the same terms and conditions as contained in this MOU.

G. Special Provisions

In the event the Parties enter into a ground lease whereby AHFC is the Landlord and the Limited Partnership is the Tenant, the ground lease shall specify that no vehicular access points to the Property will be gated unless required by future laws, codes, or ordinances.

H. Miscellaneous

1. This MOU reflects the understanding between the parties and may only be amended in writing, signed by all of the parties.

2. Each party hereto is prohibited from assigning any of its interests, benefits or responsibilities hereunder to any third party or related third party, with the exception that AHFC may assign its interest hereunder to a single-purpose entity owned 100% by AHFC, without the prior written consent of the other party.

3. The parties agree to execute such documents and do such things as may be necessary or appropriate to facilitate the consummation of their agreement herein.

4. This MOU may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

5. THIS MOU SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF CONFLICT OF LAWS PRINCIPLES.

6. In case any one or more of the provisions contained in this MOU for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this MOU will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. The parties hereto submit exclusively to the jurisdiction of the state and federal courts of Austin, Travis County, Texas, and venue for any cause of action arising hereunder shall lie exclusively in the state and federal courts of Austin, Travis County, Texas.

8. The subject headings contained in this MOU are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

9. This MOU shall continue until terminated upon the occurrence of one of the following conditions:

   (i) The parties sign a mutual consent to terminate this MOU;

   (ii) A party breaches its obligations under this MOU, the non-breaching party provides the breaching party notice of such fact and a thirty (30) day opportunity to cure, and the breaching party fails to do so; or

(iii) A party files for bankruptcy protection, makes an assignment for the benefit of creditors, has a receiver appointed as to its assets or generally becomes insolvent.

Upon termination of this MOU for any reason cited above, no party shall have any ongoing obligation to any other party with respect to this MOU.

10. The parties to this Agreement acknowledge that, if consummated, this transaction shall be governed and bound by the Partnership Agreement, the Contribution Agreement and the exhibits thereto.

11. All closing costs will be paid by Developer/Owner and can be paid at closing as eligible costs with tax credit equity and bond proceeds.

12. The General Partner will not assume responsibility for any of the Developer's or Limited Partners' debts to the Partnership, including Developer Fee Loans/Notes and any other loans to the partnership either during construction or after construction.

13. The tax structure and treatment of the various entities, including the General Partner, will be determined and finalized at a later date.

14. AHFC will not be responsible for any IRS ramifications due to forgiveness of debt if any restructuring occur such as non-payment of Developer Fees or Limited Partnership debts.

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EXECUTED to be effective as of the date above shown.

the
AUSTIN HOUSING FINANCE CORPORATION

By: ______________________________
Name: ELIZABETH A. SPENCER
Title: Treasurer

the
CESAR CHAVEZ FOUNDATION

By: ______________________________
Name:
Title:

EXHIBIT A
LEGAL DESCRIPTION

LOT 1, BLOCK A, THE TIMBERS, ACCORDING TO THE MAP OR PLAT THEREOF CORDED IN BOOK 99, PAGES 296-297, OF THE PLAT RECORDS OR TRAVIS COUNTY, TEXAS.