

10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

JUL 28 1997

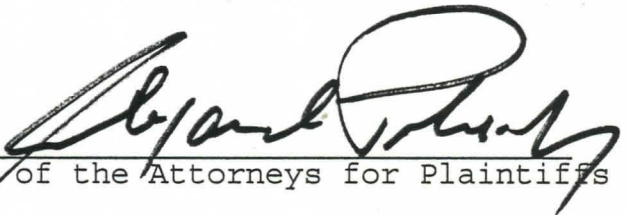
Judge Marvin E. Aspen
U.S. District Court

DOROTHY GAUTREAUX, et al.,)
)
Plaintiffs,)
)
v.) 66 C 1459
)
CHICAGO HOUSING AUTHORITY,) Hon. Marvin E. Aspen
)
Defendant.)

NOTICE

To: Attached Service List

PLEASE TAKE NOTICE that on Monday, July 28, 1997, I filed Plaintiffs' Reply Brief in Support of Motion to Modify CHA Judgment Order, a copy of which is attached hereto.


One of the Attorneys for Plaintiffs

July 28, 1997

Alexander Polikoff
Julie Elena Brown
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570

AFFIDAVIT

The undersigned, Alexander Polikoff, on oath says:

1. I am lead counsel for the plaintiffs in the Gautreaux litigation.

2. In that capacity I engaged in discussions with both HUD and CHA officials and lawyers respecting the CHA Section 8 program and paragraph 5.8.1 of the Gautreaux Consent Decree.

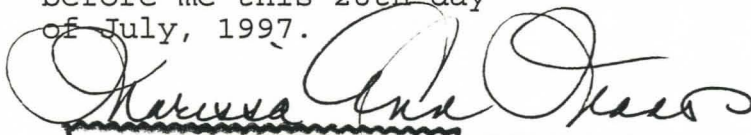
3. In the course of such discussions numerous letters were sent and received by me to and from such officials and lawyers respecting these matters.

4. Attached hereto are true and correct copies of a few of such letters, preceded by an index.

Further affiant sayeth not.



Subscribed and sworn to
before me this 28th day
of July, 1997.



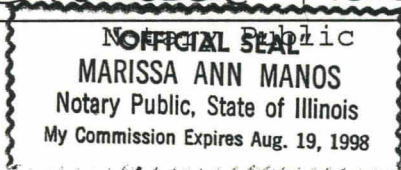


EXHIBIT A

RECEIVED
JUL 28 1997
Judge Marvin E. Aspen
U.S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	Hon. Marvin E. Aspen
	)	
Defendant.	)	

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF
MOTION TO MODIFY CHA JUDGMENT ORDER¹**

INTRODUCTION

Sweeping changes in federal housing programs, coupled with the simultaneous wind-down of remedies for Gautreaux families in the companion (HUD) case, compel modification of the CHA judgment order. These changes do not import, however, as CHA's brief implies, that the thirty-year-old Gautreaux case has become an anachronism in a changed urban environment, and that Gautreaux is a hindrance rather than a help in CHA's new demolish-and-replace programs.

In fact, far from having succumbed to dotage, the Gautreaux approach to a segregated public housing system is just coming of age. In cities across the country many Gautreaux-

¹ By its order of 5/30/97 the Court directed CHA to respond to plaintiffs' Motion to Modify Judgment Order, with plaintiffs to reply by 7/28/97. CHA filed its response, and HUD filed a "Federal Defendants' Response" as well, on 6/25/97. This is plaintiffs' reply brief to both the CHA and HUD filings.

type cases against housing authorities and HUD have recently been concluded by orders providing Gautreaux-type relief, including in a number of instances desegregation-oriented, Section 8 and scattered-site relief specifically with respect to the new demolish-and-replace programs. CHA's implication that Gautreaux has outlived its usefulness is belied by this substantial group of recent orders.

A separate introductory point is that CHA and HUD each misread our motion as requesting a particular remedial arrangement -- the Gautreaux Section 8 Program as it exists in the HUD case -- and direct many of their arguments to that precise program. In fact, the motion and its accompanying draft order refrain from proposing a specific form of relief. They request only a declaration that some form of Section 8 relief is warranted, and propose the crafting of a remedial order following such a declaration. Accordingly, many of the CHA and HUD arguments are at best premature and need not be addressed by the Court at this time.²

I. MODIFICATION OF THE JUDGMENT ORDER IS NOW APPROPRIATE

For two reasons, the judgment order already covers Section 8. First, the order says:

"CHA shall affirmatively administer its public housing system in every respect (whether or not covered by specific provision of this

² Our motion uses the phrase, "in a manner comparable to the companion case's Gautreaux Program . . ." (p. 7); this plainly does not request an order for a program identical to the one in the HUD case. Nor have we proposed, as CHA and HUD imply or assume, that the entire CHA Section 8 program be operated like the Gautreaux Program, or that all certificates available to CHA be restricted in location or for use by the plaintiff class. Those are among the programmatic issues to be decided in a separate subsequent order, hopefully through negotiation following a declaration that plaintiffs are entitled to some form of Section 8 relief.

judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures." 304 F.Supp. 736, 741 (1969).

As one of CHA's most significant programs, Section 8 is an obvious "respect" in which CHA is already obligated to administer its operations to the end of disestablishing its segregated housing system.³

Second, Section 8 is the successor program to the Leased Dwelling Unit Program that is specifically covered by the judgment order.⁴ Thus plaintiffs' motion seeks particularization, not expansion, of the judgment order.

The judgment order also specifically states:

"This court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to . . . material changes and conditions existing at the time of this order or any other matter." 304 F.Supp. at 741.

CHA expressly acknowledges that a "significant change in circumstances . . . warrants revision of the [judgment order]" (p. 2). It identifies the "relevant change" as a "substantial

³ "[I]naction in the face of the affirmative duty to desegregate is not lawful conduct." Brown v. Board of Educ. of Topeka, 978 F.2d 585, 592 (10th Cir. 1992); cert. denied, 509 U.S. 903 (1993).

⁴ The definition of "Dwelling unit" in the judgment order includes any unit --

"initially made available to and occupied by a low-income, non-elderly family . . . directly or indirectly by or through CHA, whether in a structure owned in whole or in part by CHA . . . or to be otherwise made available for occupancy by or through CHA to such a family,"

and "Dwelling units" specifically include "Leased Dwelling Units" as defined in the order. 304 F.Supp. at 737.

shift in the federal public housing laws and policies," particularly the recent policy to raze high- and mid-rise public housing buildings and to offer displaced residents, among other options, Section 8 rent subsidy certificates (id.).

Even though CHA thus acknowledges that this substantial change in housing policy warrants modification of the judgment order, it will be useful to briefly explain the consequences of this and related changes for the Gautreaux plaintiff class.

First, the swiftness and scale of the change from traditional "bricks and mortar" public housing to Section 8 is breathtaking. A recent article compares the ratio of Section 8 certificates/vouchers issued to project-based units committed:

1970s (last 4 years):	0.60 to 1.0
1980s (entire decade):	1.40 to 1.0
1990s (first 4 years):	4.75 to 1.0. ⁵

Section 8 has quickly become "HUD's primary form of housing assistance."⁶ The reduction in federal funding for public housing of course means that funding for scattered sites in Gautreaux is also being reduced.⁷

⁵ John M. Hartung & Jeffrey R. Henig, "Housing Vouchers and Certificates as a Vehicle for Deconcentrating the Poor," *Urban Affairs Review*, January 1997, at 403, 406.

⁶ John Goering & Judie Feins, "The Moving to Opportunity Social 'Experiment': Early Stages of Implementation and Research Plans," *Poverty Research News*, Northwestern Univ./Univ. of Chicago, Spring 1997, at 4.

⁷ CHA's unsupported assertion (p. 2) that scattered site public housing in white neighborhoods "is no longer viewed as the appropriate response" to segregated public housing is inaccurate. Replacement of demolished public housing by scattered sites is a frequent remedy in housing desegregation cases. See, e.g., Thompson v. HUD, et al., Civ. A. No. MJG 95-309 (D. Md. 1996) (Partial Consent Decree) (remedy included scattered site replacement units); Hollman v. Cisneros, et al., Civil 4-92-712 (D. Minn. 1995) (Consent Decree) (remedy included replacement units in suburban neighborhoods with low minority and poverty concentrations); Hawkins v. Cisneros, et al., Civ. No. 90-0-55 (D. Neb. 1994) (Court-approved Settlement Agreement) (remedy included scattered site units in

Second, as the Court knows, the Consent Decree between the plaintiffs and HUD is now ending, with the consequence that the Section 8 Gautreaux Program is winding down -- and with it the provision of Section 8 relief to plaintiff class families through that vehicle.⁸ Nor will there be future HUD set-asides to fund scattered sites, the Gautreaux Section 8 Program, or other Gautreaux desegregation opportunities.

Against the background of these important changes, the situation of most of the plaintiff class remains much as it was in 1969, and the principal objects of the judgment order -- disestablishment of CHA's segregated public housing system and relief for plaintiff class families who desire it -- remain largely unachieved. Although about a quarter of plaintiff class families (nearly 10,000) have received realistic opportunities to move into desegregated areas, mostly through the Section 8 Gautreaux Program in the companion case, three-quarters of plaintiff class families have not yet received any relief. Each year thousands attempt unsuccessfully to register for the now-terminating Gautreaux Program. (Affidavit of Mary Davis, Exhibit B attached.) The vast majority of CHA's family public housing still consists of the same segregated units, in the still segregated neighborhoods, to which the 1969

predominantly white census tracts). See note 14 below regarding access to these court orders.

⁸ Pursuant to letters dated 5/1/96 and 5/13/96, part of Exhibit A attached, HUD and the plaintiffs agreed to "wind down" the Gautreaux Program by using up the remaining funding and Section 8 certificates available to the program. The current estimate is that this will occur in the spring or early summer of 1998. As the Court is well aware, the termination of the HUD consent decree does not affect CHA's obligations under the CHA judgment order.

"This Consent Decree does not affect CHA's obligations under any orders entered in this action or preclude further proceedings against CHA pursuant thereto." 523 F.Supp. at 680.

judgment order was addressed.⁹

Thus, a sea-change in the form of housing assistance, from public housing to Section 8, is occurring precisely at the point when Section 8 relief for plaintiff class families is coming to an end, even while thousands of Gautreaux families unsuccessfully seek such Section 8 relief each year.

Under these circumstances, a modification of the judgment order to particularize Section 8 relief is compelling.

"Because the relief provided in the original injunction had resulted in little progress toward the achievement of the decree's stated objective of restoring workable competition, the Court concluded that modification would promote, not subvert, the 'purposes of the litigation.'" United States v. City of Chicago, 663 F.2d 1354, 1360 (7th Cir., 1981) (describing United States v. United Shoe Mach. Corp., 391 U.S. 244 (1968)).

Where a court's remedy has not accomplished its goal of disestablishing a segregated system, the court has the power and the duty to fashion an effective remedy to do so:

"[W]hatever [desegregation] plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed." Green v.

⁹ Scattered site units comprise only 3% of total CHA housing units. The figures are:

	<u>Units</u>	<u>Residents</u>
Family Housing	28,480	67,339
Section 8	15,696	43,532
Senior	9,822	10,222
Scattered Sites	1,489	4,658

"General Information, The New Chicago Housing Authority: Transforming Public Housing," a 1997 CHA brochure. These figures do not include 7340 certificates and vouchers recently approved for CHA, most or all of which have not yet been used. See, Exhibit 1 to HUD's Response.

Of course, we agree with CHA that "[a]ny modification . . . should be based on reality, and on what can be accomplished, under all of the relevant circumstances" (p. 4).

Would modification to include Section 8 be realistic and practical here?

As we show in the next section of this brief the answer is a resounding yes, demonstrated both by the successful Section 8 Gautreaux Program in the Chicago area, and by the widespread use of Section 8 remedies in recent cases across the country.

II. SECTION 8 RELIEF IS BOTH REALISTIC AND PRACTICAL

Although we emphasize that our motion does not at this stage request any precise form of Section 8 relief, the Gautreaux Program shows that Section 8 relief can realistically provide plaintiffs with effective relief, as it has to over 6,500 Gautreaux families. (Exhibit B attached.)

Moreover, the program has been hailed as a qualitative success,¹¹ so much so that it

¹⁰ The longevity of a case does not preclude modification of a remedial scheme. Nearly forty years after the Supreme Court's decision in one of the original Brown cases, a district court's obligation to formulate an appropriate remedy for segregation not yet ended was upheld. Brown, note 3 above, 978 F.2d at 593. Cf. United States v. United Shoe Mach. Corp., 391 U.S. 244, 251 (1968) ("If the decree has not, after ten years, achieved its 'principal objects,' namely, 'to extirpate practices that have caused or may hereafter cause monopolization, and to restore workable competition in the market' -- the time has come to prescribe other, and if necessary more definitive, means to achieve the result.").

¹¹ See, e.g., James E. Rosenbaum, "Black Pioneers -- Do Their Moves to the Suburbs Increase Economic Opportunity for Mothers and Children?," 2 Housing Policy Debate 1179 (1991).

has shifted national housing policy in the direction of "housing mobility"¹² and has led to a five-city demonstration program ("Moving to Opportunity") described as "the most significant social experiment HUD has implemented in the last 25 years."¹³

Evidence that Section 8 relief is both realistic and practical also comes from a host of "mini-Gautreaux-type" programs recently ordered as part of the remedial arrangements in desegregation lawsuits against housing authorities and HUD. Some (only) of these cases are:

- Comer v. Cuomo, et al., Civ. No. 89-1556C [BMHA] (W.D. N.Y. 1997) (Amended Stipulation of Settlement and Consent Decree): Remedy includes Section 8 certificates with locational restrictions based on race and poverty, and mobility counseling;
- Thompson v. HUD, et al., Civ. A. MJG 95-309 (D. Md. 1996) (Partial Consent Decree): Remedy includes Section 8 certificates with locational restrictions based on race, poverty, and assisted housing; mobility counseling plan for use of certificates throughout metropolitan area, not confined to inner-ring suburbs;
- Christian Community Action v. Cisneros, et al., 3:91 CV 00296 (D. Conn. 1995) (Settlement Agreement approved by Court): Remedy includes Section 8 certificates with locational restrictions based on minority concentration, and mobility counseling;

¹² Housing Mobility: Promise or Illusion? The Urban Institute, Washington, D.C., 1995.

¹³ Goering & Feins, note 4 above, at 4. In proposing Moving To Opportunity, HUD said:

"This proposal [is] for a demonstration modeled on the Gautreaux Demonstration in Chicago . . . A study of the effects of the 15-year Gautreaux Demonstration suggests that when very-low income families move to areas without high concentrations of persons living in poverty, the families become more economically independent through employment and the children of the families do better in school and have more and wider opportunities for post-secondary education . . . Research findings on the Gautreaux Demonstration appear to demonstrate for the first time that living outside of an area of poverty by itself has positive effects for high-risk families. . ." Expanding the Opportunities for Empowerment: New Choices for Residents, HUD FY1993 Budget Press Package, Moving to Opportunity for Fair Housing, at 1-2. Included as part of the HUD Press Package is a chart based on evaluation of the Gautreaux Demonstration, Exhibit C attached.

- Hollman v. Cisneros, et al., Civil 4-92-712 (D. Minn. 1995) (Consent Decree): Remedy includes Section 8 certificates with locational restrictions based on race and poverty, and mobility counseling;
- Walker v. HUD, et al., 3:85-CV-1210-R (N.D. Tex. 1995) (Remedial Order Affecting Dallas Housing Authority): Remedy includes Section 8 certificates to be used in predominantly white areas of Dallas and suburbs, and mobility counseling;
- Sanders v. HUD, et al., 872 F.Supp. 216 (W.D. Pa. 1994) (Consent Decree): Remedy includes Section 8 certificates with locational restrictions based on race, and mobility counseling;
- Hawkins v. Cisneros, et al., Civ. No. 90-0-55 (D. Neb. 1994) (1994 Settlement Agreement, approved by Court): Remedy includes Section 8 certificates with locational restrictions based on race, and mobility counseling;
- Hale v. HUD, et al., Civ. A. No. C-73-410 (W.D. Tenn. 1985) (Order Approving Settlement): Remedy includes Section 8 certificates with locational restrictions based on race, and mobility counseling;
- Hutchins v. Cincinnati Metro. Hous. Auth., et al., C-1-79-131 (S.D. Ohio 1984) (Order): Remedy includes Section 8 certificates with locational restrictions based on race, and mobility counseling.

These orders, entered in public housing desegregation cases similar to this one, and including some form of Section 8 program as part of their remedial arrangements, demonstrate that Section 8 relief, in this case and at this time, is eminently practical.¹⁴

III. CHA AND HUD LEGAL ARGUMENTS ARE PREMATURE AND WITHOUT MERIT

None of the CHA and HUD arguments on "federalism," "separation of powers," "equal protection," and "equities" is responsive to the threshold question for this Court: Are plaintiffs entitled to a declaration that some form of Section 8 relief should be provided in this case,

¹⁴ With filing and service of this brief we are supplying the Court, CHA and HUD with an "appendix" of the cited unpublished consent decrees and orders.

with the development of a specific remedial program as the next step? In addition, the arguments lack merit on their own terms; if the suggested legal barriers were real, one or more of them would have precluded Section 8 relief in at least some of the many public housing desegregation cases cited above.

CHA asserts (p. 5) that "[p]ermanent federal court control over the operations of the CHA violates principles of federalism." Nothing in our motion remotely suggests permanent court control. In fact, the motion seeks to speed CHA's desegregation process, moving the parties closer to the day when the Court can relinquish its oversight.¹⁵

CHA also asserts (p. 6) that existing court orders require a waiver process that results in programs different from the ones CHA would have chosen without Gautreaux. Indeed so; for absent Gautreaux, desegregation would at best be rhetorical window-dressing on CHA activities.¹⁶

CHA (but not HUD) refers to (p. 8), but makes no understandable argument about, HUD's takeover of CHA's operations. HUD chose to leave CHA's development operations in the hands of the CHA Receiver, and the HUD takeover did not relieve CHA of its judgment

¹⁵ In Brown (note 3 above) the Court said:

"Until the school district meets this burden [demonstrating the absence of a causal connection between any current condition of segregation and the prior de jure system], the district court must retain some measure of supervision over the school system. . . This supervision does not amount to the imposition of federal jurisdiction in perpetuity." 978 F.2d at 590.

¹⁶ Horner is a case in point; it was the Gautreaux mixed-income, revitalization requirement coupled with Gautreaux funding that prevented the Horner parties from replacing to-be-demolished public housing with 100% very low-income public housing units on the Limited Area site of the buildings coming down.

order obligations.¹⁷

Both CHA (pp. 5-6) and HUD (p. 5), again predicated an argument upon a premature assumption as to the specific remedial arrangements that will flow from our motion, assert that a court order earmarking certificates for desegregation purposes outside Chicago would violate federal law. Yet HUD has itself been a party to a number of cases, some of which are cited above, in which court orders do exactly such earmarking -- not to mention the companion case here.¹⁸

CHA argues (p. 9 -- again, HUD does not) that plaintiffs' motion is an attempt to obtain more relief from HUD than was obtained through the HUD consent decree. Not so. Plaintiffs' motion does not request any additional funding or certificates from HUD but addresses only the operation of the CHA program. (Plaintiffs do have pending in the

¹⁷ "This breach determination does not alter or affect existing court orders running against CHA, including its present receivership for development. . . CHA remains liable for its acts and omissions prior to the effective date of HUD's possession." (Exhibit D attached - the HUD "takeover" letter.)

¹⁸ Apart from the difficulty of squaring the CHA and HUD arguments with these cases, the distinction between desegregative locational restrictions inside (where they are conceded to be permissible) and outside Chicago does not withstand analysis. The argument appears to be that the 1988 "portability" statute (enacted before entry of several of the orders referred to above) authorizes certificates to be used state-wide and in abutting metropolitan areas. But this statute has nothing to do with and makes no reference to a court's equitable remedial powers, and draws no distinction between locations inside and outside the issuing authority's jurisdiction. No legislative history or case authority supports the counter-intuitive proposition that Congress would allow Section 8 restrictions for desegregation purposes inside urban centers already burdened with more than their fair share of segregated minority and impoverished populations, and preclude them outside the urban center where job growth and lower proportions of minority and poverty populations make the use of Section 8 as a desegregation vehicle especially attractive. Cf. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 17 (1971), where, with reference to a statute that did refer to judicial power ("nothing herein shall empower any . . . court . . . to issue any order seeking to achieve a racial balance in any school . . ."), the Supreme Court found "no suggestion of an intention to . . . withdraw from courts their historic equitable remedial powers."

companion case a motion regarding HUD's violation of par. 5.8.1 of the HUD consent decree which, although related, does not duplicate the motion here. Because of the relationship we provide some background in letters numbered 3-8 in Exhibit A attached, but emphasize that the motion here is "free standing" and may be considered and decided without reference to the 5.8.1 motion in the companion case.)

The only remaining CHA argument that requires comment, "equal protection," is rested on the predicate that we propose "all of the Section 8 certificates granted to the City . . . be used first for African-Americans . . ." (pp. 12-13). And HUD imagines that we might seek a Section 8 order that skipped Gautreaux families over other waiting list families (pp. 3-4). We have made no such proposals. Nevertheless some appropriate remedial preference arrangements are obviously permissible in desegregation cases and do not violate equal protection. Witness the "preference" granted to Latino plaintiffs in the consent decree HUD has itself recently entered into in the Latinos United case (see p. 2 of Exhibit 3 to HUD's Response), not to mention a host of school desegregation cases and many of the housing desegregation cases referred to above.

Finally, HUD contends (pp. 2-4) that it would be "inequitable" to require CHA to target any further certificates "away from other applicants" (apparently, applicants who are not Gautreaux class members). The reason given is that Gautreaux class members will be the primary recipients of CHA's recently allotted 7340 certificates, since these certificates are earmarked for tenants of family public housing projects who are perforce Gautreaux class members.

Apart from assuming a particular form of Section 8 order that is not before the Court, the "equity" on which the argument rests is no equity at all. We have learned the "hard way" that Section 8 certificates alone, without adequate mobility counseling and/or geographic targeting arrangements, do not produce desegregation. In Chicago, "families presently using the Section 8 certificates and vouchers are clustered in communities with Black populations over 90% and where there are also large concentrations of poverty."¹⁹ "[A]ffirmative mobility strategies are rare and, in almost every case, result from judicial intervention."²⁰ Without the aid of this Court there is every reason to believe that users of CHA's 7340 new certificates will similarly be clustered in communities with Black populations over 90%.²¹

¹⁹ "The Plan to Voucher Out Public Housing," Natalie P. Voorhees Center for Neighborhood and Community Improvement, The University of Illinois at Chicago, May, 1997, at 26.

²⁰ Hartung & Henig, note 5 above at 416.

²¹ Of course, as HUD says (p. 3), Gautreaux families "have always had the same right" as other eligible families to apply for Section 8, a "right" that provided no relief in the dozen years during which CHA's Section 8 waiting list was closed (the list was re-opened only earlier this month). Without the affirmative arrangements we seek, however, this "right" is illusory desegregation relief, as the 90% "clustering" figure and the cited housing desegregation cases show.

HUD seems indirectly to acknowledge the risk that without affirmative mobility arrangements Section 8 certificates will repeat the segregative pattern of public housing for it points to some mobility counseling funding provided to CHA, and to CHA "plans" to promote mobility. Exhibit 1 to HUD's Response. As with HUD's unusual suggestion respecting an "objection process" for Gautreaux class members (pp. 5-6), there will be time enough to consider these matters in the context of the crafting of a specific remedial order following the Court's declaration that plaintiffs are entitled to some form of Section 8 relief. Suffice it to note here that plaintiffs can hardly be expected to accept CHA "plans" in lieu of enforceable arrangements.

Thus no "equity" militates against the declaration plaintiffs seek; rather, the equitable remedial considerations discussed in Section I of this brief strongly support some specific form of Section 8 relief under the judgment order.

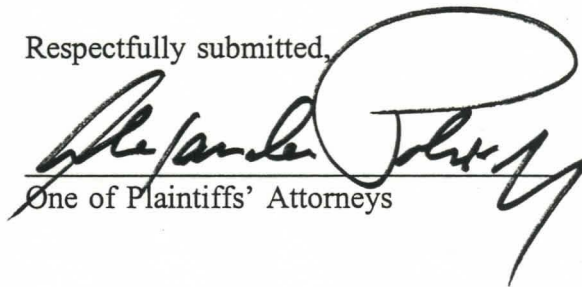
CONCLUSION

Although rapid change characterizes our lives, for a long time it appeared that conventional public housing in big cities would remain a disheartening exception. Suddenly, however, law and policy have shifted and, over time, some significant portion of big-city public housing appears likely to be transformed into Section 8 certificates.

Employed affirmatively, Section 8 has the potential to help desegregate public housing. However, in this case, which has led the way nationally both in calling for desegregation and in showing the potential of Section 8 as a desegregative tool, circumstances have combined to create a major irony: absent judicial intervention, Gautreaux plaintiff families who blazed the trail will be blocked from proceeding further along it. Some of the segregated buildings in which they still live are or will be coming down and CHA has received a large new allotment of Section 8 certificates for their resident families. Yet, absent the Court's aid, there will be no assurance that CHA Section 8 resources will not continue to be "clustered in communities with Black populations over 90%." The desegregation potential of the present time will be lost, and the still segregated CHA public housing system will simply have shifted to a new form of segregation.

The language of the judgment order, the power and duty of this Court, the absence of persuasive reasons to the contrary, and these circumstantial considerations all compel the conclusion that plaintiffs' motion should be granted.

Respectfully submitted,



One of Plaintiffs' Attorneys

Dated: July 28, 1997

Alexander Polikoff
Julie Elena Brown
Robert L. Jones, Jr.
Jeanne L. Nowaczewski
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570
312/641-5454 (fax)

INDEX

Letters Attached to Affidavit
of Alexander Polikoff

1. 5/1/96 Polikoff to Wilson and Schmeltzer
2. 5/13/96 Wilson to Polikoff
3. 10/1/93 Polikoff to Whitfield
4. 11/30/93 Polikoff to Herold
5. 12/13/94 Polikoff to Johnson and Herold
6. 6/5/95 Polikoff to Shuldiner
7. 10/31/96 Wilson to Shuldiner and Polikoff
8. 1/15/97 Wilson to Polikoff



Business and Professional People
for the Public Interest

Directors

Betty K. Salzman
President

Sherry B. Goodman
Ann Smith
Robert M. Weissbourd
Vice Presidents

Camilla Hawk Diaz-Perez
Secretary

Rayman L. Solomon
Treasurer

James M. Alrer
Lucy B. Ascoli
Frederick W. Askey
Sheila L. Baskin
Julian L. Berman
Henry C. Blanford
Chris Boulware
Barbara T. Bowman
Douglas W. Cassel, Jr.
Diane W. Dahl
Susan Davis
Leon M. Despres
Edward F. Dobbins, Jr.
Kevin Donnellon
Gary Edidin
Harriet Wilson Ellis
William Farley
William Geller
Eric Gershenson
Graham Grady
Frances R. Grossman
Harriet Hausman
Marc Hilson
Donald J. Jackson
Stephen Johnson
Joseph Kellman
Serge Kersten
Iris Krieg
Susan Larson
Paul Lehman
J. Lema
J. Lema

Ralph Martine
George R. McCoy
Zebadiah McLaurin
Rita McLennan
E. Hoy McConnell, II
Elena B. Mulcahy
Thomas J. Murphy
Thomas L. Nicholson
Alexander Polikoff
Hipolito Roldan
Jeremy Warburg Russo
Lowell Sachoff
Alan Saks
Dianne Sauter
Daniel Scheinfeld
Mary Skipson
Ada Skyles
Diane DeWenne Smith
Michael Spock
Leslie Ann Sulberg
Suzey Taloe
Judy Wise

Advisory Board

Donald Dean
Ronald Graywinski
Elliot Lehman
John McKnight
Dora Williams
Timothy W. Wright, III

Past Presidents

Gordon B. Sherman
Elliot Lehman
Robert B. Lifton
James W. Ashley
Alan Saks
E. Hoy McConnell, II

Attorneys

Alexander Polikoff
Executive Director
Julie Elena Brown
Adam Gross

Harry Galloway James
Vern L. Jones, Jr.
Jane L. Nowaczewski
Staff Counsel

Administrative Staff

Marissa Manos
Administrative Director
Eva Drichowski
Systems Manager
Edward Herberman
Development Aide
Paula Kruger
Macy Rice
Administrative Staff

May 1, 1996

BY FAX: 202/708-3351

Ms. Carole Wilson
Mr. Howard Schmeltzer
Office of General Counsel
U. S. Department of Housing and
Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410

Dear Carole and Howard:

Pursuant to our recent conversations and my letter of April 26, 1996, this letter proposes a partial workout of our discussions respecting paragraph 5.8.1 of the Gautreaux Consent Decree (and builds on paragraph 5 of Carole's letter to me of April 4).

We propose the following:

- (1) HUD will agree that the Leadership Council may continue to operate the Gautreaux Program until the Council uses all the Section 8 certificate authority the Program presently possesses, regardless of when the 7100 Consent Decree occupancy figure is reached, for a maximum period however of five years from the date of this letter, and that for this purpose the Council may use all necessary and appropriate funding made and to be made available to it under its current contract with HUD (which runs until 9/30/97).

The current Council certificate authority is approximately 597 certificates, including 317 certificates recently transferred from the FY1992 Gautreaux set-aside (originally placed with the Illinois Housing Development Authority as project-based funding), an additional 150 certificates recently transferred as part of HUD's FY1996 Gautreaux obligation, and approximately 130 certificates from prior Council authority not yet used. The Council tells me that the funding authorized under its current contract with HUD to 9/30/97 would suffice to enable it to process in the Council's normal manner the families who would ultimately use these approximately 597 certificates. The Council estimates that the approximately 597 certificates would be used by the

end of its present contract, 9/30/97, but the Council would be free to continue to process families beyond that estimated date, to a maximum of five years from the date hereof, until all the approximately 597 certificates were used, provided, however, HUD would not be obligated to make counseling or administrative funding available to the Council beyond what is already provided for under the Council's existing contract with HUD.

In other words, the Council could "wind down" the Gautreaux Program by using up approximately 597 existing certificates and contractually obligated funding, even beyond 7100 occupancies to a maximum of five years, but with no right to receive additional certificates or funding beyond what it already possesses or is contractually entitled to.

- (2). The above partial workout of our paragraph 5.8.1 discussions would be without prejudice to the freedom of either HUD or plaintiffs to take whatever positions and make whatever arguments they wished respecting a full disposition of the paragraph 5.8.1 matter, including without limitation HUD's freedom to deny any violation of paragraph 5.8.1 and to assert that the arrangements agreed to in paragraph (1) above constitute a form of 5.8.1 "relief" and that plaintiffs should be entitled to no more. Plaintiffs would agree to acknowledge that the paragraph (1) arrangements do in fact constitute a form of 5.8.1 relief, while remaining free to seek further relief.

The two above numbered paragraphs constitute our proposal. For clarity I wish to note that separate and apart from the foregoing we intend to request, unless Howard (again) persuades us that we are not entitled to it, that the FY1996 Gautreaux set-aside be given to us in the form of funding for the development of public housing (replacement) units. I am awaiting Howard's views as to this.

Given the time pressure I have previously referred to, I hope you can get back to me promptly.

Cordially,

Alexander Porikoff

ALP:mm



OFFICE OF GENERAL COUNSEL

May 13, 1996

Alexander Polikoff, Esq.
Business and Professional People
for the Public Interest
17 East Monroe Street, Suite 212
Chicago, Illinois 60603

Re: Gautreaux

Dear Alex:

This letter responds to the proposal for a partial workout described in your May 1, 1996 letter to Howard and me.

I am pleased to formally advise you that the Department has accepted the workout so that the Leadership Council can wind down the Section 8 certificate pipeline. There is one additional point that I want to add though. Namely, as we discussed over the telephone when we first received your letter, the plaintiffs also must agree that our consent to the workout will not be used or considered as an admission by HUD that it in any manner violated or failed to comply with paragraph 5.8.1. of the Gautreaux consent decree. You indicated at that time that the plaintiffs were agreeable to this additional provision. Accordingly, I am assuming, unless you advise me otherwise, that the terms specified in your May 1st letter along with the above addition constitute the agreement between HUD and the plaintiffs.

Sincerely,

Carole W. Wilson

Carole W. Wilson
Associate General Counsel for
Litigation and Fair Housing Enforcement

Agreed
Howard Polikoff
5/14/96

MAY 14 1996 17:06



BPI

Business and Professional People for the Public Interest

17 East Monroe Street, Suite 212

Chicago, Illinois 60603 • Telephone: (312) 641-5570 • FAX: 641-5454

October 1, 1993

Robert Whitfield
Chicago Housing Authority
22 West Madison Street
Chicago, Illinois 60602

Dear Bob:

As we discussed, this is a reminder letter on the CHA Section 8 program.

Our preliminary conversations have led us to the view that the new Section 8 increment of certificates and vouchers which CHA expects to receive this fall should be administered under the direction of the Leadership Council to provide effective motivational counseling and maximize the possibility of "affirmative" results, that this should be done jointly between the Leadership Council and CHA in a fashion to be mutually agreed upon to develop CHA's own capabilities in affirmative administration of a Section 8 program, and that we (BPI and CHA) should jointly seek an arrangement with HUD under which HUD would fund the extra costs of the Leadership Council role, probably in exchange for BPI's agreement to accept such funding as full "recompense" for HUD's failure to adhere to a provision of the Consent Decree respecting its funding of Section 8 programs in Chicago in the past.

To maximize the HUD funding possibilities, it is my thought that the above "joint" suggestion should apply to the entirety of CHA's forthcoming Section 8 allocation, and that we should not pursue the original thought of dividing the certificates and vouchers into a control and experimental group. I discussed this latter point with Vince today, and he is in accord.

Cordially,

Alexander Polikoff

ALP/pk

Directors

E. Hoy McConnell, II
President

Sherry Goodman
Betty K. Salzman
Robert M. Weissbourd
Vice Presidents

Judy Wise
Secretary

Rayman Solomon
Treasurer

James M. Alter

Maria G. Arlas-

Chapleau

Lucy B. Ascoli

Frederick W. Axley

Sheldon L. Baskin

Julian L. Berman

Henry C. Binkford

Barbara T. Bowman

Judy Langford Carter

Douglas W. Cassel, Jr.

Ruben Castillo

Martin R. Castro

Gail Christopher

George Conan

Donald R. Dann

Susan Davis

Leon M. Despres

Camilla Dwyer

Olga Perez

Edward P. Dobbins, Jr.

William Geller

Eric Gersenson

Bernard Gordon

Frances R. Grossman

Ronald Grzymalski

Herman H. Hsuan

Marc Hsuan

Jack A. Jaffe

Joseph Korman

Iris Krieg

Vincent Lane

Susan Larson

Samuel T. Lawton, Jr.

Elliot Lanman

Thomas J. Lenz

Paul Levy

Robert S. Lifton

Michael Matz

George R. McCoy

John McKnight

Barry McNamara

Sybil S. Miller

Bene B. Mucany

Thomas J. Murony

Thomas L. Nicholson

Eugene Polkow

Alexander Polikoff

Hopkins Roldan

Marvin A. Rosner

Jeremy Warburg Russo

Anne C. Rudnick

Alan Saks

Dianna Sauter

Daniel Schenfeld

Michael Schwarzwalder

Olivia DeVese Smith

Michael Spock

Cecil J. Troy

William A. Van Hoens, Jr.

Dora Williams

Timothy W. Wright, III

Past Presidents

Gordon B. Sherman

Elliot Lanman

Robert B. Lifton

James W. Askey

Alan Saks

Attorneys

Alexander Polikoff

Executive Director

Howard A. Leamer

General Counsel

Julie Elena Brown

David F. Jacobs

Mary Galloway James

Robert L. Jones, Jr.

Patricia M. Logue

Staff Counsel

Administrative Staff

Marietta Mancos

Administrative Director

Eva Opekonski

Systems Manager

Paula Kruger

Mary Rice

Administrative Staff



BPI

Business and Professional Institute for the Public Interest

17 East Monroe Street, Suite 212 • Chicago, IL 60603 • Telephone: (312) 641-5570 • FAX: 641-5454

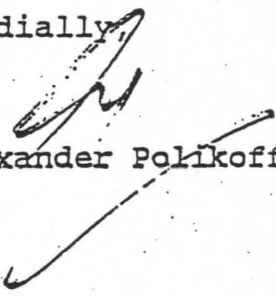
November 30, 1993

Mr. John Herold
Office of General Counsel
U. S. Department of Housing &
Urban Development
451 Seventh Street, S.W.
Washington, D. C. 20410

Dear John:

Concerning our discussions respecting paragraph 5.8.1 of the Consent Decree, and a possible plan to introduce some motivational counseling into CHA's Section 8 program, I would like to make it clear that subject to the outcome of those discussions, we expect prospective application of the consent decree provision to any new allocations of Section 8 certificates and vouchers that CHA receives, including the 334 certificates and vouchers that I understand CHA is to receive from FY1993 funding.

Cordially,


Alexander Polikoff

ALP:mm

cc: Robert Whitfield
Stephanie Suttles

Directors	James M. Alter	Dorand R. Dann	Iris Krieg	Thomas L. Nicholson	Dora Williams	Julie Elena Brown
E. Hoy McConnell, II	Maria G. Arise-Chapleau	Susan Davis	Vincent Lane	Eugene Piskow	Timothy W. Wright, III	David F. Jacobs
President	Lucy B. Ascoli	Leon M. Despres	Susan Larson	Alexander Polikoff	Past Presidents	Mary Galloway James
Sherry Goodman	Frederick W. Axley	Carmita Hewitt	Samuel T. Lawton, Jr.	Hipolito Roldan	Gordon B. Sherman	Robert L. Jones, Jr.
Betty K. Salzman	Sheldon L. Baskin	Jose Perez	Elliot Lehman	Marnie A. Roemer	Robert B. Litton	Patricia M. Loque
Robert M. Weissbourd	Julian L. Berman	Edward F. Doores, Jr.	Thomas J. Lenz	Jeremy Wardburg Russo	James W. Ashley	Staff Counsel
Vice Presidents	Henry C. Binford	William Geller	Paul Levy	Anne C. Rudzicka	Alan Saks	Administrative Staff
Judy Wise	Barbara T. Bowman	Eric Gershenson	Robert B. Litton	Glenn Sautter	Alan Saks	Marcia Menos
Secretary	Judy Langford Carter	Bernard Gordon	Michael Marz	Daniel Schenfeld	Attorneys	Administrative Director
Rayman Solomon	Douglas W. Cassel, Jr.	Francis R. Grossman	John McKnight	Michael Schwarzwald	Alexander Polikoff	Eva Ozekanski
Treasurer	Ruben Castillo	Ronald Grzymalski	Sally McNamara	Glenn Schwartz	Executive Director	Systems Manager
	Martin R. Castro	Harriet Hausman	Byron S. Miller	Michael Spock	Howard A. Learner	Paula Kruger
	Gail Christoner	Matt Milton	Dana B. Mucany	Cecil J. Tilly	General Counsel	Mary Rice
	George Cohen	Jack A. Jaffe	Thomas J. Murphy	William A. Van Horn, Jr.		Administrative Staff
		Jason Kellman				



BPI

Business and Professional People for the Public Interest

17 East Monroe Street, Suite 212 • Chicago, Illinois 60603 • Telephone: (312) 641-5570 • FAX: 641-5454

December 13, 1994

Marilyn Johnson
General Counsel
Chicago Housing Authority
17 East Monroe Street
Suite 201
Chicago, Illinois 60603

John Herold
Office of General Counsel
Department of Housing &
Urban Development
451 Seventh Avenue, S.W
Washington, D.C. 20410

Re: CHA Section 8

Dear Marilyn and John:

As you (probably) know, the Gautreaux consent decree between the plaintiffs and HUD prohibits HUD from funding the CHA Section 8 program unless not more than one third of the certificates issued are used in Limited Areas (less than 30% African-American population) of the city. In 1991 we became aware that more than 80% of CHA's Section 8 certificates and vouchers were being used in Limited Areas of the city. We raised the issue with both HUD and CHA and since that time have been in discussions with both regarding a remedy for the violation. While the consent decree provision technically applies to HUD, it obviously implies an obligation on CHA's part to operate its Section 8 program in accordance with the decree. (Of course, CHA has its own obligation under the judgment order to operate its programs toward the end of disestablishing its segregated housing system.)

Prior discussions on this subject (with Vince, Bob Whitfield, Bill Caruso, Stephanie Suttles, John Herold and several representatives of HUD's regional staff, among others) have virtually all considered providing mobility counseling ala the Leadership Council's Gautreaux Assisted Housing Program. We have discussed contracts with the Leadership Council to operate a portion of CHA's program or to provide training to CHA so it could operate its own mobility program, or some combination of the two.

Directors

E. Hoy McConnell, II
President

Sherry Goodman
Betty K. Seltman
Robert M. Weissbourd
Vice Presidents

Judy Wise
Secretary

Raymen Solomon
Treasurer

James M. Alter
Maria G. Artiss-
Chapreau
Lucy B. Ascoli
Frederick W. Axley
Sheldon L. Baskin
Julian L. Berman
Henry C. Blinford
Bernard T. Bowman
Chris Bouthiers
Judy Langford Carter
Douglas W. Cassel, Jr.
Martin R. Castro
Gail Christopher
Donald R. Davis

Susan Davis
Leon M. Deopras
Camilla Hewitt
Oliver Perez
Edward F. Oobins, Jr.
Gary Edidin
William Gasker
Eric Gershenson
Bernard Gordon
Frances R. Grossman
Ronald Grzywinski
Harriet Hausman
Marc Hilton
Jack A. Jaffe
Joseph Kellman

Iris Krieg
Vincent Lane
Susan Larson
Samuel T. Lawton, Jr.
Elliot Lefman
Thomas J. Lantz
Paul Levy
Robert B. Liffon
Michael Matz
George R. McCoy
John McKnight
Betsy McNamara
Byron S. Miller
Elena R. McCarthy
Th. Murphy

Thomas L. Nicholson
Nancy Pascher
Alexander Potliff
Hippolito Roldan
Marvin A. Rosner
Jeremy Warburg Russo
Anne C. Ruzicka
Alan Saks
Dianne Sauter
Daniel Schenfeld
Michael Schwerzelder
Mary Shipon
Diane O'Heese Smith
Michael Spock
Cecil J. Troy

William A. Van Hone, Jr.
Dora Williams
Timothy W. Wright, III

Past Presidents

Gordon B. Sherman
Elliot Lefman
Robert B. Liffon
James W. Ashby
Alan Saks

Attorneys

Alexander Potliff
Executive Director

Julie Elena Brown
David F. Jacobs
Mary Galloway James
Robert L. Jones, Jr.
Staff Counsel

Administrative Staff
Marissa Manos
Administrative Director

Eva Oskanoni
Systems Manager

Paula Kruger
Mary Rice
Administrative Staff

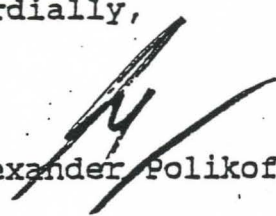
Resolving this violation is now even more important (and perhaps more complicated) because of the following factors:

- HUD's cut-off of CHA's FY 1995 Section 8 funding;
- CHA's need to revamp its program in order to obtain future HUD funding;
- the need to provide through Section 8 some portion of the replacement housing for units that may be demolished in Cabrini Green, Henry Horner, Kenwood-Oakland, etc.

I understand that CHA and HUD are now in the process of evaluating and planning for the reorganization of the program as a whole. Given the ongoing HUD consent decree violation, CHA's desegregation obligations, and HUD's and CHA's previously expressed desires to "infuse" the Section 8 program with a mobility component, it seems important that the reorganization of the basic program include a significant mobility component and that the Gautreaux plaintiffs be represented in the planning process. It might also be useful to include the Leadership Council in the discussions.

As I understand the planning process may have already begun, we should discuss this matter promptly. I'll call each of you soon for that purpose.

Cordially,


Alexander Polikoff

ALP/pk



Business and Professional People
for the Public Interest

June 5, 1995

Directors

E. Hoy McConnell, II
President

Sherry B. Goodman
Betty K. Seitzman
Robert M. Weissbourd
Vice Presidents

Judy Wise

Secretary

Rayman L. Solomon
Treasurer

James M. Alter

Marie G. Ariss-Chapman

Lacy B. Ascoli

Frederick W. Axley

Sheldon L. Baskin

Julian L. Berman

Henry C. Bissford

Chris Boulware

Barbara T. Bowman

Douglas W. Cassel, Jr.

Susan Davis

Leon M. Despres

Camilla Hawk Diaz-Perez

Edward F. Dobbins, Jr.

Gary Edidin

William Farley

William Geller

Eric Gershenson

Bernard Gordon

Francis R. Grossman

Harriet Hausman

Marc Hilton

Donald J. Jackson

Joseph Kellman

Kenneth

Levy

Leon

Elliot Lehman

Thomas J. Lenz

Paul Levy

Robert B. Lifron

Ralph Martire

George R. McCoy

Zabedee McLaurin

Rita McLennan

Betty McNamara

Byron S. Miller

Elena B. Mulcahy

Thomas J. Murphy

Thomas L. Nicholson

Alexander Polikoff

Hippolito Roldan

Marvin A. Rosner

Jeremy Warburg Russo

Anne Ruzicka

Alan Saks

Dianne Sauter

Daniel Scheinfeld

Michael Schwarzwald

Mary Skirron

Ada Skyles

Ann Surch

Diana DeWese Smith

Michael Spock

Leslie Ann Stulberg

Timothy W. Wright, III

Advisory Board

Donald Dana

Ronald Grzywinski

Vincent Lane

John McKnight

Dora Williams

Past Presidents

Gordon B. Sherman

Elliot Lehman

Robert B. Lifron

James W. Ashley

Alan Saks

Attorneys

Alexander Polikoff

Executive Director

Julie Elena Brown

Temple Courts

Mary Galloway James

Robert L. Jones, Jr.

Jeanne L. Nowaczewski

Staff Counsel

Administrative Staff

Mariann Manos

Administrative Director

Eva Dziekonski

Systems Manager

Paula Kruger

Via Messenger

Mr. Joseph Shuldiner
Chairman of the Board
Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60606

Re: Gautreaux: The CHA Judgment Order and HUD Consent Decree as They Relate to the CHA Section 8 Program

Dear Joe:

As I mentioned at our meeting on Tuesday, in our view CHA's Section 8 program is seriously out of compliance with Article VIII of the Gautreaux Judgment Order against CHA ("Judgment Order") which obligates CHA to disestablish its segregated system "in every respect." HUD shares responsibility for CHA's violation of the Judgment Order, for under Paragraph 5.8.1 of the Gautreaux Consent Decree with HUD ("Consent Decree"), HUD agreed not to "approve or set aside contract authority" for Section 8 housing in Chicago unless the Judgment Order's locational restrictions designed to foster desegregation were met by CHA.

As you may know, for several years we have discussed this issue with both CHA and HUD without reaching closure. Our purpose in writing this letter is to emphasize the importance of this issue to the Gautreaux plaintiffs, and to suggest that the planned privatization of the CHA Section 8 program provides the right occasion for finally dealing with the violations noted above. We suggest a prompt meeting with you or your staff to discuss how this issue should be "folded into" the current plans to privatize the CHA Section 8 program. To facilitate our discussion, this letter sets out the pertinent Judgment Order and Consent Decree provisions and some background facts.

THE JUDGMENT ORDER AND THE CONSENT DECREE

As you know, Gautreaux was designed to end and remedy the unconstitutional racially segregated housing programs and policies employed by CHA and approved by HUD. The Judgment Order and Consent Decree both utilize the terms "General Public Housing Area" and "Limited Public Housing Area." The former are census tracts that have less than 30% African-American population, the latter those that have 30% or more

Mr. Joseph Shuldiner
June 5, 1995
Page 2

African-American population. The Judgment Order -- and these terms -- apply to all "dwelling units" made available to eligible families, directly or indirectly through CHA. "Dwelling units" is broadly defined to include leased units. The Judgment Order also contains the overriding obligation that:

"CHA shall affirmatively administer its public housing system in every respect (whether or not covered by a specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures." (Judgment Order, Art. VIII.)

In addition, the Consent Decree with HUD specifically refers to the Section 8 program and restricts HUD funding for assisted housing in the Chicago metropolitan area as follows:

"... HUD will not approve housing assistance plans or approve or set aside contract authority for Section 8 New Construction or Existing (other than Moderate Rehabilitation) housing in the City of Chicago, unless (a) not less than one-third of the units . . . are to be physically located within the General Area, and (b) not more than one-third of the units . . . are to be physically located within the Limited Area." (Consent Decree, ¶ 5.8.1., emphasis added).

These obligations under the Order and the Decree are of course in keeping with the goals of Title VIII and with current national housing policy as Secretary Cisneros has consistently articulated it, right down to and including the Reinvention Blueprint.

HISTORY OF DISCUSSIONS

According to information provided to us by CHA in 1992, over 80 percent of the Section 8 certificates issued by CHA are used in Limited Areas of the City, and there is no reason to believe these figures have improved since then. This locational pattern not only violates both the Judgment Order and the Consent Decree, but deprives Gautreaux plaintiffs of an important remedy stream.

Mr. Joseph Shuldiner
June 5, 1995
Page 3

Here is a summary of the relevant written correspondence on this issue (in addition to numerous telephone conversations and meetings):

July 16, 1991:	BPI (A. Polikoff) to CHA (R. Whitfield) re: question of compliance with ¶5.8.1 of Consent Decree.
September 18, 1991:	CHA (G. Heine) to BPI (A. Polikoff), indicating that 82% of the "currently outstanding certificates and Vouchers are under lease within Limited Areas."
November 9, 1992:	CHA (A. Rodriguez) to BPI (J. Brown), reporting a "current recap of census tract locations" in the Sec. 8 program as finding 83.4% of the total in Limited Areas.
April 14, 1993:	BPI (A. Polikoff and J. Brown) to CHA (W. Caruso and M. Barricini) raising the violations of the Decree and Order, and suggesting a proposed remedy.
July 12, 1993:	BPI (A. Polikoff) to HUD (J. Herold) re: "HUD's failure to adhere to paragraph 5.8.1" of the Consent Decree
October 1, 1993:	BPI (A. Polikoff) to CHA (R. Whitfield), as a "reminder letter" to CHA concerning the proposed remedy for the violations of the Section 8 portions of the Order and Decree
November 30, 1993:	BPI (A. Polikoff) to HUD (J. Herold) concerning prospective remedy for compliance with paragraph 5.8.1 of the Consent Decree.
December 13, 1994:	BPI (A. Polikoff) to CHA (M. Johnson) and HUD (J. Herold), concerning state of non-compliance

Mr. Joseph Shuldiner
June 5, 1995
Page 4

and negotiations concerning proposed
remedy.

April 25, 1995:

BPI (A. Polikoff) to HUD (J. Jensen)
concerning negotiations on Section 8.

Copies of the foregoing letters are attached.

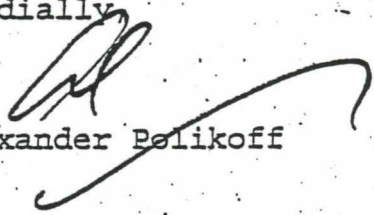
PROPOSED DISCUSSIONS

We understand that CHA's administration of its Section 8 program has been so severely criticized by HUD that HUD and CHA are considering "privatizing" the CHA Section 8 program. With but limited success we have sought to participate in these HUD-CHA privatization discussions so that the proposed arrangements could take our views concerning non-compliance into account. (See, e.g., Dec. 13, 1994 letter and April 25, 1995 note, referenced above.)

We believe that the privatization proposal affords a perfect opportunity to take effective administrative steps to change the segregatory pattern of CHA's Section 8 program, by, for example, earmarking new or "turnback" certificates for use only in the General Public Housing Area, and providing effective mobility counseling and housing search assistance to participating families in advance of lease expirations.

We'll call soon to arrange a meeting to discuss this matter.

Cordially,


Alexander Polikoff

ALP/pk
Enclosure

cc: Kevin Marchman (Via Messenger)
Harold Saether (Via Messenger)
John Herold (Via Fax and U.S. Mail)
John Jensen (Via Messenger)
Edwin Eisendrath (Via Messenger)
Marilyn Johnson (Via Messenger)



OCT 31 1996

OFFICE OF GENERAL COUNSEL

Joseph Shuldiner
Executive Director
Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60661-5601

Alexander Polikoff
Business and Professional People
for the Public Interest
17 East Monroe Street
Suite 212
Chicago, Illinois 60603

Re: Vacancy/Consolidation Certificates and Vouchers

Dear Mr. Shuldiner and Mr. Polikoff:

This letter is written to clarify several points made in Richard Kruschke's letter to Joseph Shuldiner dated October 9, 1996, regarding the 4000 vacancy/consolidation certificates given to CHA for the relocation of residents from distressed public housing developments.

Mr. Kruschke's letter stated that by law all vacancy/consolidation certificates must initially be used to assist families in those public housing developments listed in the October 9 letter. Once the 5.8.1 letter agreement is executed, however, the law will allow the certificates to be distributed to Gautreaux class members whether or not they are residing in one of the named projects.

The Fiscal Year 1995 Appropriations Bill, from which the 4000 vacancy/consolidation certificates and vouchers were funded, grants HUD authority to use assisted housing funds to implement "litigation settlements or court orders." Therefore, there is no legal restriction in earmarking fifty percent of CHA's vacancy/consolidation certificates for use only by Gautreaux class members as part of the settlement of HUD's alleged violation of 5.8.1 of the Consent Decree.

I hope this clarification resolves any uncertainty caused by the October 9, 1996 letter. HUD remains committed to final

¹The references to vacancy/consolidation certificates also include vacancy/consolidation vouchers.

approval and implementation of the 5.8.1 letter agreement.

Sincerely,

Carole W. Wilson

Carole W. Wilson
Associate General Counsel for
Litigation and Fair Housing
Enforcement

cc: MaryAnn Russ
Chris Hornig
Maddie Hastings
Richard Kruschke



U.S. Department of Housing and Urban Development
Washington, D.C. 20410-5000

JAN 15 1997

OFFICE OF GENERAL COUNSEL

Alexander Polikoff
Business and Professional People
for the Public Interest
17 East Monroe Street
Suite 212
Chicago, Illinois 60603

Re: Gautreaux 5.8.1 Letter Agreement

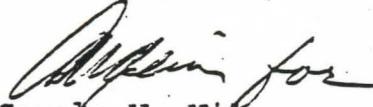
Dear Alex:

Enclosed you will find HUD's revision of your draft letter agreement which resolves the alleged violation of 5.8.1 of the Gautreaux Consent Decree. Please note that for the most part this version is a reorganization of your earlier draft, with the exception of several technical changes. In addition you will notice the following provisions have been changed and/or added:

1. The agreement is limited to the 4000 vacancy/consolidation certificates awarded CHA from FY 1995 appropriations. The Section 8 certificates that have been awarded to CHA for mandatory conversion in FY 1996, as well as any future certificates awarded for such purpose, must be set-aside without restriction as to where they can be used due to the necessity of moving tenants out of distressed public housing.
2. The inclusion of an ending date of April 1, 2003 by which all obligations under the agreement must terminate, if they have not already terminated.
3. A provision providing for notification to the Court upon execution of the agreement.
4. A provision allowing CHA to "borrow" certificates designated for use in connection with relocation of public housing residents for use in its regular Section 8 program. These "borrowed" certificates will be treated like turnover certificates under paragraph III.A, and will be replaced with those turnover certificates not subject to the locational restrictions.

This agreement has been reviewed by staff at HUD and the Department of Justice. It is subject to final approval by both agencies. Please let us know your thoughts as soon as possible.

Sincerely,



Carole W. Wilson
Associate General Counsel for
Litigation and Fair Housing
Enforcement

Enclosure

AGREEMENT

WHEREAS, the Gautreaux plaintiffs have asserted that the Department of Housing and Urban Development ("HUD"), the defendant, violated the terms of paragraph 5.8.1 of the Gautreaux Consent Decree.

WHEREAS, HUD denies all liability for all actions, and/or inactions with respect to the terms of paragraph 5.8.1 of the Gautreaux Consent Decree.

WHEREAS, the plaintiffs and HUD believe that settlement is in their best interests and best serves the interests of justice by avoiding further expense, inconvenience and other burdens of litigation.

WHEREAS, the Chicago Housing Authority (CHA) agrees to participate in this agreement with regard to the processing and distribution of the Section 8 certificates, as described herein.

NOW, THEREFORE, plaintiffs and HUD enter into this Agreement, stipulate that it constitutes a full and complete resolution of plaintiffs' claims regarding defendant's compliance with the terms of paragraph 5.8.1 of the Gautreaux Consent Decree, and agree to the following:

I. DEFINITIONS

A. The term "Gautreaux Plaintiffs" in this agreement means the class of individuals certified by the Court in this action, Gautreaux v. CHA, 265 F.Supp. 582, 583 on March 2, 1967.

B. The term "Gautreaux Consent Decree" in this agreement means the consent decree entered by the court on June 16, 1981.

C. The term "CHA" in this agreement means the Chicago Housing Authority or the Chicago Section 8 Housing Program (CHAC).

D. The term "Section 8 certificate" in this agreement means a Section 8 tenant-based certificate or Section 8 voucher under Section 8 of the U. S. Housing Act of 1937, 42 U.S.C. § 1437f, and subject to the usual terms of Section 8 assistance.

E. The term "Gautreaux type" in this agreement means a program for the counseling and placement of Gautreaux families in

page 1 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

non-minority areas similar to those duties and responsibilities of the Leadership Council for Metropolitan Open Communities under its contract with HUD pursuant to the Gautreaux Consent Decree.

F. The term "Yonkers-type basis" in this agreement means that families offered CHA "turnover certificates" shall have a maximum of 120 days from the date the subsidy is issued to submit a request for lease approval in the GPHA only before the subsidy expires and must be turned in for issuance to another family. However, CHA may grant one, and only one, additional 60-day extension of the subsidy to an applicant who does not submit a request for lease approval within the GPHA within that 120-day period if the mobility counselor certifies in writing, prior to the end of the 120-day period, that the family needs the additional time and has not been dilatory in looking for housing in the GPHA. During the additional 60-day period the family may enter into a lease for a unit wherever it is located. If the certificate holder is unable to rent a unit, upon the expiration of the original 120 days (or 180 days if the time period is extended), the certificate shall be issued to another eligible family.

G. The term "turnover certificates" in this agreement means a Section 8 subsidy issued from funding that becomes available to CHA because a participant previously issued a subsidy is no longer participating in the Section 8 tenant based program. For the purpose of this agreement it also includes the 1687 non-vacancy/consolidation certificates that CHA has received but as of September 4, 1996 had not been issued to Section 8 applicants.

H. The term "vacancy/consolidation program" in this agreement means the CHA program to relocate public housing families, reduce vacancies and/or consolidate occupancies in CHA public housing with the 4000 Section 8 certificates HUD awarded CHA from FY 1995 appropriations.

I. The term "General Public Housing Area or "GPHA" in this agreement means all census tracts in the Chicago Standard Metropolitan Statistical Area (SMSA) except those listed on Exhibit A-2 and Exhibit B-2 as defined by court order dated April 8, 1991.

J. The term "Limited Public Housing Area or "LPHA" in this agreement means those census tracts in the Chicago SMSA listed on Exhibit A-2 and Exhibit B-2 as defined by court order dated April 8, 1991.

page 2 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

II. DISTRIBUTION OF NEW CERTIFICATES:

A. At least fifty percent of the 4,000 Section 8 certificates made available for use in CHA's "vacancy/consolidation program" will be usable only in the General Public Housing Area (GPHA) as follows:

(1) CHA will offer to residents of targeted buildings in CHA's vacancy/consolidation program mobility counseling and certificates which may be used in either the GPHA, or the Limited Public Housing Area (LPHA) or other areas outside the jurisdictional boundaries of CHA.

(2) On a building-by-building basis CHA will then set aside for use only in the GPHA the certificates not actually used by resident-offerees (whether to lease apartments in the GPHA or in the LPHA) under paragraph A(1) preceding. At the end of each calendar quarter, to the extent such number of certificates set aside is less than such number of certificates actually used, CHA will set aside additional certificates for use only in the GPHA so that on a quarterly basis the number of such certificates set aside will at least equal the number of such certificates actually used. In the event that such number of certificates set aside is more than the number of certificates actually used, no additional certificates will be set aside. This paragraph also applies to any of the 4000 vacancy/consolidation certificates, described in paragraph 1 (d) below, that CHA has issued prior to the execution of this agreement.

(3) The certificates so set aside in paragraph A(2) above shall be administered by CHA in a "Gautreaux-type" program with mobility counseling appropriate to such a program. The distribution of these certificates shall not begin until April 1, 1997, except that, beginning in January 1997 and ending on March 31, 1997, the Leadership Council for Metropolitan Open Communities, upon the extension of its present contract with HUD, may offer per month until March 31, 1997 up to 40 of the certificates set aside pursuant paragraph 1(b) above to Gautreaux eligible class members.

(4) HUD is agreeing to provide \$1,000 per vacancy/consolidation certificate for counseling purposes. HUD has reserved \$4,000,000 in funding authority to be used for counseling purposes in connection with the 4,000 vacancy/consolidation certificates it has previously awarded

page 3 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

to CHA. It is expected that less than \$1,000 per family of such funding will be used under paragraph A.(1) above; the balance of such funds will be allocated by CHA as needed for counseling under paragraph A.(3) above to provide mobility counseling appropriate to a "Gautreaux-type" program. In addition, HUD is providing an additional \$2,000,000 in funding authority from Federal Fiscal Year 1996 appropriations for counseling in connection with the placement of other certificate holders, as described in this agreement. The \$6,000,000 in funding authority (less the amount provided to the Leadership Council for Metropolitan Open Communities pursuant to paragraph A.(3) above) will be provided to an organization selected through a competitive process to do the counseling.

(5) If the \$6,000,000 described in paragraph A.4 is expended and less than 3262 placements of certificate holders have been made in the GPHA, HUD shall provide, one time only and subject to the availability of appropriations, funding authority for future counseling services in the amount of \$1,000 times the difference between 3262 and the actual number of placements of certificate holders in the GPHA. This agreement will continue in force until this additional funding is expended. However, in the event HUD has no appropriations available when the \$6,000,000 is expended and less than 3262 placements of certificate holders have been made in the GPHA, this agreement shall terminate as provided in section IV below. For purposes of determining the 3262 placements in the GPHA, all certificates that are newly issued to families after the execution of this agreement, as well as all certificates that are reused by a family living in the LPHA to move to the GPHA after the execution of this agreement, will be counted.

B. No certificates issued after the date hereof may be utilized in the census tracts in Exhibit A, attached hereto, except upon a determination by CHA, supported by a file memorandum or other written record, that a certificate is to be used to enable a family to remain in place, or to be proximate to a caregiver or place of employment, or upon the mutual determination on some other ground of CHA and the plaintiffs.

C. At the time of income recertification CHA shall offer mobility counseling to all families already participating in CHA's Section 8 program who desire to move from the LPHA to the GPHA.

page 4 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

III. TURNOVER CERTIFICATES:

A. One-half of CHA "turnover" certificates will be administered on a "Yonkers-type" basis for a period of 12 months from the date hereof April 1, 1997, after which CHA and the Gautreaux plaintiffs will mutually examine the results. If fewer than one-third of the families using such certificates have located in the GPHA, one-third of all future turnover certificates will be earmarked for use only in the GPHA until this agreement terminates.

B. If CHA determines that it needs Section 8 certificates from either the pool of the 4,000 vacancy/consolidation certificates, the 3340 certificates awarded to CHA in 1996, and/or any similar awards to CHA that designate certificates for use in connection with relocation of public housing residents, for its regular Section 8 certificates, it may borrow from that pool of certificates. Such "borrowed" certificates shall be treated like turnover certificates and shall be subject to the provisions of paragraph III.A above. CHA will replace each borrowed certificate from the portion of turnover certificates that are not subject to the geographic use restrictions described in section II.

IV. TERMINATION OF THE AGREEMENT:

A. HUD's and CHA's obligations under this agreement terminate, subject to the exceptions in paragraph II.A (5) above, after the \$6,000,000 described in paragraph II.A is expended.

B. In the event HUD's and CHA's obligations under this agreement have not already terminated by April 1, 2003 all such obligations under this agreement will terminate on April 1, 2003.

V. NOTICE TO THE COURT:

A. Within ten days of execution of this Agreement, the parties shall promptly notify the Court of such execution and submit a signed copy of the Agreement to the Court.

VI. ATTORNEYS FEES:

A. Plaintiffs shall not be entitled to any fees or costs incurred in monitoring the performance of this agreement.

page 5 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

VII. SUBSEQUENT LEGISLATION:

A. The parties shall not be obligated to carry out any term of this Agreement if any otherwise applicable federal or state statute or regulation that becomes effective after the signing of this Agreement precludes a party from complying with or withdraws that parties authority or obligation to perform, that term.

VIII. MISCELLANEOUS PROVISIONS:

A. This agreement, when accepted by CHA and HUD, shall constitute a full and final resolution of the Gautreaux plaintiffs' claim that HUD has violated paragraph 5.8.1 of the Gautreaux Consent Decree, and, subject to their right to enforce this agreement, the Gautreaux plaintiffs shall have no further rights under paragraph 5.8.1. This agreement may not be referred to as evidence of, and/or may not be construed as, an admission of wrongdoing, unlawful conduct or liability by HUD.

B. This Agreement cannot be amended, changed, or modified except by means of a written instrument that specifically refers to this Agreement, and is executed by all parties hereto.

C. Nothing contained in this agreement shall be deemed or interpreted (1) to require HUD to provide any funding to CHA or any other entity beyond that expressly provided by this agreement; (2) to impose duties or undertakings upon HUD or the CHA other than those explicitly stated herein; or (3) to provide that either HUD or CHA is a guarantor or insurer of the other's performance hereunder.

D. The plaintiffs and HUD agree that this agreement is not intended to modify the terms of the Gautreaux consent decree, and does not affect the provisions in the decree governing the termination of HUD's obligations and specifically, paragraph 5.1 of the decree. Accordingly, plaintiffs will not in any manner assert that this agreement precludes the termination of decree and the dismissal of HUD from the Gautreaux lawsuit, Civ. No. 66 C 1460.

E. Notwithstanding any other provision of this agreement, CHA may not restrict non-Gautreaux class members who receive turnover certificates from requesting lease approval outside the jurisdictional boundaries of CHA.

page 6 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

F. Any provision of this agreement which conflicts with the settlement agreements, court orders or other court-approved plans of action in Latinos United, et al. v. Chicago Housing Authority, et al., 94 C 1229 (1994), will be null and void.

APPROVED ON BEHALF OF PLAINTIFFS:

ALEXANDER POLIKOFF
ATTORNEY FOR THE PLAINTIFF CLASS

APPROVED ON BEHALF OF DEFENDANT:

FRANK W. HUNGER
Assistant Attorney General
JAMES B. BURNS
United States Attorney

LINDA A. WAWZENSKI
Assistant United States Attorney
219 S. Dearborn Street
Chicago, Illinois 60604
(312) 353-1994

MICHAEL SITCOV
Assistant Branch Director
Civil Division
U.S. Department of Justice
901 E Street, N.W., Room 944
Washington, D.C. 20004
(202) 616-8476

OF COUNSEL:

NELSON A. DIAZ
General Counsel
JAMIR COUCH

Acting Deputy General Counsel for Civil Rights and Litigation
CAROLE W. WILSON
Associate General Counsel for Litigation

page 7 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

and Fair Housing Enforcement
HOWARD SCHMELTZER
Assistant General Counsel for Litigation
U.S. Dept. of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410
(202) 708-0300

APPROVED ON BEHALF OF THE CHICAGO HOUSING AUTHORITY:

page 8 of 8

Initialed by counsel for:

plaintiffs

HUD

CHA

AFFIDAVIT

The undersigned, Mary Davis, on oath says:

1. For 21 years I have been employed by the Leadership Council for Metropolitan Open Communities which administers the Gautreaux Assisted Housing Program ("Gautreaux Program") pursuant to contracts with HUD. From its commencement in 1976, and through all of the ensuing years, I have been associated with the Gautreaux Program, first as a counselor, then from 1979 to 1985 as Director of the Gautreaux Supportive Services Program, and since 1985 as Vice President and Director of the Leadership Council's Legal Action Program with supervisory responsibility for the Gautreaux Program, which is my current position.

2. In its early years, the Gautreaux Program conducted registrations of approximately 1,000 persons twice each year by having registrants come to its office on a day selected as "Gautreaux registration day."

3. In January, 1984, beginning at about 4:00 a.m., thousands of people gathered outside the Leadership Council's offices on South State Street, seeking to register for the Gautreaux Program. The crowd grew so large that the subway station in front of 220 South State Street was closed, and CTA buses were rerouted. Mounted police were called to restore order and the registration had to be terminated.

4. Beginning in February, 1984, and in each year thereafter, down to and including its most recent Gautreaux

EXHIBIT B

registration on January 17, 1997, the Leadership Council has conducted its annual Gautreaux Program registration by "telephone lottery." Under the telephone lottery, the Leadership Council installs a "bank" of approximately 20 telephones, manned by volunteers from the time the telephones are turned on at approximately 9:00 a.m. until the telephones are turned off when the 2,000th registrant is reached, which is generally in the early afternoon. Volunteers record registration information from telephone callers. The procedure is described as a "lottery" because the ability of a caller to register depends upon his or her "luck" in dialing the Leadership Council Gautreaux Program telephone number at a moment in time when one or more of the 20 telephones is not in use.

5. The first year the telephone lottery was used a bank of telephones was installed at the Medinah Temple. To avoid a repetition of crowd-gathering on State Street the Leadership Council sought to publicize the fact that the only way to register for the program would be by telephone. On the day of the registration, telephone lines at the Medinah Temple were jammed, and dial tones were delayed not only for the designated exchange but for the whole downtown Chicago area. The next day telephone company officials revealed to the Leadership Council that the entire telephone system of the city had been near collapse due to the overload caused by the number of calls to the Gautreaux registration number, which they estimated at 17,000-19,000. In addition, the Leadership Council was called by

numerous businesses to complain that the Council's registration had disrupted their businesses because telephone callers could not get through, and several threatened lawsuits against the Council. (None were brought.)

6. Throughout the years since the telephone lottery registration began, including its most recent Gautreaux registration in January of this year, it has been the Leadership Council's experience that the Gautreaux registration telephones ring constantly from the time of turn-on at approximately 9:00 a.m. until early afternoon when the 2,000th registrant is reached and the telephones are turned off. Volunteers "spell" each other during this time so that the telephones are in continuous use from turn-on in the morning until turn-off in the afternoon.

7. Each year on Gautreaux registration day, including the most recent, the regular telephone lines to the Leadership Council main office, and the telephone lines to the suburban offices of the Leadership Council, are likewise inundated with calls. In addition, for days leading up to Gautreaux registration day, the number of telephone calls to the Leadership Council inquiring about Gautreaux Program registration increases significantly. For several days after registration the Leadership Council is called by many persons who claim they could not get through the phone lines on registration day, including calls from the offices of alderpersons on behalf of their constituents.

8. In about 1990 the Leadership Council became aware that

following its annual Gautreaux Program registration it was receiving numerous complaints from persons who said they had attempted unsuccessfully to register for the Gautreaux Program by telephone and complained that they had been given the wrong telephone number to call, or that they received unintelligible recorded messages when they dialed the given number.

9. Upon calling the telephone company to make inquiry about this situation the Leadership Council was informed that telephone company "trunk lines" serve individual geographic areas of the city, that when -- by reason of the volume of phone calls originating from within any such area at any point in time -- the capacity of the trunk lines is reached, callers receive busy signals or recorded messages, and that the volume of calls to Leadership Council telephone numbers on Gautreaux registration days was such that trunk line capacity was reached. We were further advised that adding additional phones or numbers to our phone bank would not alleviate the situation because trunk line capacity from a geographic area, not the number of receiving phones or numbers, is a limiting factor. The staff of the Leadership Council was advised of these conversations, and since then have been directed to inform persons who inquire about Gautreaux telephone registration that their likelihood of "getting through" on registration day will be increased if they attempt to telephone the Gautreaux Program from elsewhere (including from the suburbs) than highly concentrated public housing areas.

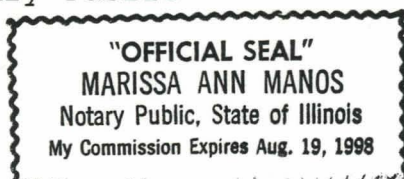
10. Since the commencement of the Gautreaux Program in 1976 through July 15, 1997, some 6,536 Gautreaux plaintiff class families have been placed in the Gautreaux Program, a majority in the Chicago Metropolitan Area outside the City of Chicago.

Further, affiant sayeth not.

Mary Davis
Mary Davis

Subscribed and Sworn to
before me this 25th day of
July, 1997. .

Marissa Ann Manos
Notary Public



Moving to Opportunity for Fair Housing The Benefits of Choice*

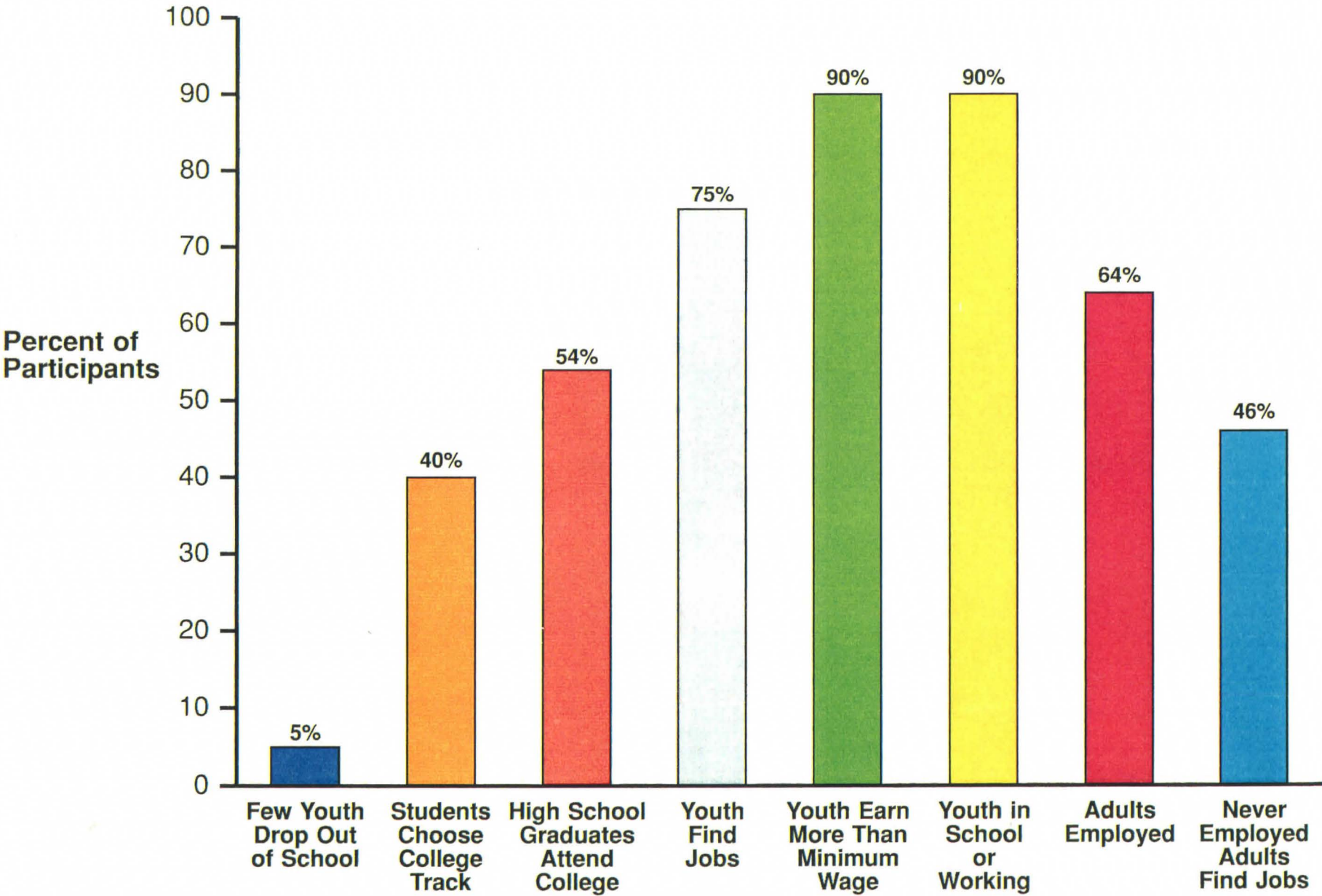


EXHIBIT C

* Based on evaluation of the Gautreaux Demonstration, Center for Urban Affairs and Policy Research, Northwestern University.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

June 2, 1995

Chicago Housing Authority
Board of Commissioners
626 W. Jackson Blvd.
Chicago, IL 60661

SUBJECT: Declaration of Substantial Breach and Substantial
Default of the Annual Contributions Contract

Dear Commissioners:

By this letter the Department of Housing and Urban Development ("HUD") hereby accepts the resolution of the Board of Commissioners of the Chicago Housing Authority, adopted on May 26, 1995, whereby the Board transferred operational control of the operations of the Chicago Housing Authority to HUD. The Department also acknowledges the resignations of all of the present members of the Board provided for in the Board's May 26 resolution.

On June 13, 1972, the Chicago Housing Authority (the "Authority" or "CHA") and the Secretary of the United States Department of Housing and Urban Development, entered into Consolidated Annual Contributions Contract No. C-1014, which as amended from time to time is hereafter referred to as the "ACC."

Pursuant to Sections 501 and 502 of the ACC, HUD has determined that the Authority is in Substantial Breach and Substantial Default of the ACC as such terms are defined in Section 506 and 507. Specifically, you have failed to operate the housing projects, developed with Federal financial assistance, for the purpose of providing decent, safe, and sanitary housing within the financial reach of low-income families as required by Section 201 of the ACC. This violation constitutes a Substantial Default under Section 506 (4) of the ACC. Moreover, you have flagrantly failed to maintain the projects in good repair, order and condition as required by Section 209 of the ACC. In addition you have flagrantly failed to operate the housing projects in an efficient and economic manner consistent with the requirements of Section 201 of the ACC. These violations constitute a Substantial Breach under Section 507(7) of the ACC.

These contractual violations also constitute the occurrence of a Substantial Default as that term is defined in Section 6(j) of the United States Housing Act of 1937 (the "Act") and 24 C.F.R. Section 901.05(y).

EXHIBIT D

In accordance with Sections 501 and 502 of the ACC, Section 6 (j) of the Act and 24 C.F.R Section 901.215, upon the occurrence of a Substantial Breach or a Substantial Default, the Local Housing Authority shall, upon demand by the Government, deliver possession of the projects to the HUD.

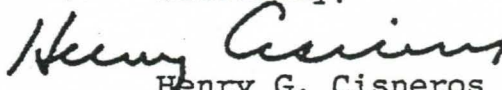
HUD recognizes CHA's cooperation to remedy these violations as evidenced by the Board's voluntary transfer of the CHA's projects and assets, including the day-to-day control over the operations of the CHA to HUD. On the effective date of this resolution, May 30, 1995, HUD took possession of CHA's projects.

During HUD's possession of CHA's projects, HUD's rights and obligations are defined by Section 505 of the ACC and by 24 C.F.R. Section 901.220(a). The ACC and the regulations explain that during possession of the projects, HUD assumes the operational responsibility of any or all existing public housing projects administered by the CHA.¹ In addition, the ACC allows HUD, while in possession of CHA's projects, to act in its own name and on its own behalf or to act as the CHA. ACC, Section 505(B). The regulations further support HUD's ability to act exclusively as the CHA during possession. 24 C.F.R. Section 901.220 (a).

Consistent with Section 505 and 24 C.F.R. Section 901.220 (a), HUD, while in possession of the CHA projects, will act in the name of and on behalf of the CHA. HUD's possession of the CHA's projects does not, however, supersede or replace the CHA Board of Commissioners as created in accordance with Illinois statutes. During HUD's possession of CHA's projects, the CHA Board loses all authority and power to operate and create policy relating to its public housing projects. However, the CHA remains liable for its acts and omissions prior to the effective date of HUD's possession. In addition, post-takeover, HUD, in its legal capacity as the CHA, does not impose liability on HUD for any acts or omissions committed by HUD, acting in its legal capacity as the CHA, while in possession of the projects. In other words, CHA and HUD retain their separate legal identities.

Once again thank you for your spirit of cooperation. It is my sincere hope that substantial and positive change can be made for the benefit of the residents of Chicago's public housing.

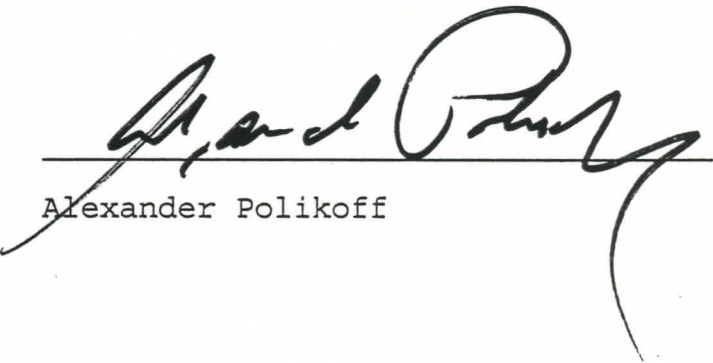
Sincerely,


Henry G. Cisneros

¹ This breach determination does not alter or affect existing court orders running against CHA, including its present receivership for development.

CERTIFICATE OF SERVICE

I, Alexander Polikoff, an attorney, certify that on July 28, 1997 I served copies of the foregoing Plaintiffs' Reply Brief in Support of Motion to Modify CHA Judgment Order, by personal service or mail on the persons listed on the attached service list.



Alexander Polikoff

GAUTREAU SERVICE LIST

Susan Getzendanner
Nancy Eisenhower
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive - #2100
Chicago, Illinois 60606
Personal Service

Linda Wawzenski
Assistant U. S. Attorney and
Deputy Chief Civil Division
219 South Dearborn - #500
Chicago, Illinois 60604
Personal Service

Jerome Butler
General Counsel
Chicago Housing Authority
200 West Adams - 2nd Floor
Chicago, IL 60606
Mail

Carole Wilson
Office of General Counsel
U. S. Department of Housing and
Urban Development
451 Seventh Street, S.W.
Washington, D. C. 20410
Mail

Lewis M. Nixon, Regional Counsel
John Jensen, Assoc. Regional Counsel
U. S. Department of Housing and
Urban Development
77 West Jackson Boulevard - #2620
Chicago, IL 60604
Mail

Michael L. Shakman
Barry A. Miller
Edward W. Feldman
Derek L. Cottier
Miller, Shakman, Hamilton, Kurtzon & Schlifke
208 South LaSalle Street - #1100
Chicago, Illinois 60604
Mail

Daniel Levin
The Habitat Company
350 West Hubbard Street
Chicago, IL 60610
Mail

**Appendix to Plaintiffs' Reply Brief in Support of Motion
to Modify CHA Judgment Order, July 28, 1997**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JESSIE COMER, et al.,

Plaintiffs,

-vs-

ANDREW M. CUOMO, et al.,

Defendants.

Civ. No. 89-1556C [BMHA]

AMENDED STIPULATION OF
SETTLEMENT AND CONSENT DECREE

FILED
97 JUN 26 PM 2:29
U.S. DISTRICT COURT
W.D.N.Y. - EGYPT

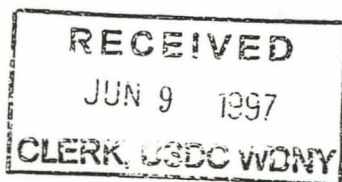


TABLE OF CONTENTS

- I. Definitions
- II. Density Reduction and Redevelopment of the Perry, Price, and Lakeview Projects
 - A. Demolition, Reconfiguration and Replacement Housing
 - B. Relocation
- III. Area Revitalization Planning Process
- IV. Metropolitan Area Fair Housing Initiatives
- V. The Community Housing Center
- VI. Tenant Selection and Assignment for New Admissions and Transfers in BMHA Federal Public Housing
- VII. "Section 3" Employment and Training in Conjunction with Construction, Demolition, Rehabilitation and Redevelopment of BMHA Projects
- VIII. Affirmatively Furthering Fair Housing: Removing Impediments to Metropolitan Wide Fair Housing and Locational Choice.
 - A. Federally Assisted Housing in the Metropolitan Area.
 - B. Housing Planning Documents
- IX. Specific Initiatives to be Undertaken by the City of Buffalo
- X. Density Reduction and Redevelopment of the Frederick Douglass Towers
- XI. HUD Review of Compliance
- XII. Monitoring of the Decree
- XIII. Class Certification
- XIV. Procedural Provisions

WHEREAS, the purpose of this Stipulation of Settlement and Consent Decree (Consent Decree or Decree) is to resolve amicably the above-referenced Complaint, NOW, THEREFORE,

1. Plaintiffs and the class they represent (plaintiffs), and Defendants Andrew M. Cuomo, the United States Department of Housing and Urban Development (HUD), the City of Buffalo (Buffalo) and the Buffalo Municipal Housing Authority (BMHA) enter into this Consent Decree for the purpose of settling Comer v. Cuomo, CIV 89-1556C [BMHA].

I. DEFINITIONS

2. "Community Housing Center" (CHC) means the institution established by the City of Buffalo pursuant to (and described in) the Stipulation of Settlement and Consent Decree in the Rental Assistance Corporation (RAC) and Belmont Shelter Corp. (Belmont) actions, to act as a clearinghouse, resource, counseling, training and referral center, to be administered by an entity selected pursuant to the Stipulation of Settlement and Consent Decree in the RAC and Belmont actions.

3. "General Occupancy Public Housing" means public housing owned by the BMHA and operated as assisted conventional public housing designated for general occupancy by families, the elderly and the disabled. This housing consists of the following developments: Lakeview Homes, Commodore Perry Homes, A.D. Price Extension, Jasper Parrish, Shaffer Village, Kenfield Homes,

LaSalle Courts, Langfield Homes, Scattered Site "A" (Redwood Village), Scattered Site "B" (Woodson Gardens), Scattered Site "C," Ferry-Grider, Kensington Heights, and the Frederick Douglass Towers. A "federal General Occupancy Public Housing Project" means any one of the foregoing that has been developed pursuant to the United States Housing Act of 1937 (USHA), as amended, 42 U.S.C. § 1437 et seq.

4. "Elderly and Disabled Public Housing" means public housing owned by the BMHA and operated as assisted conventional public housing designated for exclusive occupancy by the elderly and disabled. This housing consists of the following developments: A.D. Price Courts, Kelly Gardens, Schwab Terrace, Frank A. Sedita Apartments, Holling Homes, Kowal Apartments, Elmhurst Apartments, Slater Courts, Lyndon B. Johnson Apartments, Camden Apartments, Stuyvesant Apartments, Msgr. Leo A. Geary Apartments, and Mullen Manor.

5. "Federal Defendants" means Andrew M. Cuomo in his official capacity as Secretary of the United States Department of Housing and Urban Development, and the United States Department of Housing and Urban Development (HUD), as well as their successors during the life of this Amended Consent Decree. As used herein in reference to federal defendants, the word "action" shall include non-action.

6. "Metropolitan Buffalo" or the "Buffalo Metropolitan Area" means the County of Erie, including the City of Buffalo, in the State of New York. Unless otherwise indicated in this

Amended Consent Decree, the term "Metropolitan Buffalo" or the "Buffalo Metropolitan Area" does not mean the Metropolitan Statistical Area (MSA or SMSA) as defined by the Office of Management and Budget.

7. "Minority" means all non-whites (e.g., Blacks, Asians, Native Americans, and Hispanics).

8. "Minority Concentrated Area" means any census tract within Erie County with a minority population that is twenty percentage points or more greater than the overall percentage of the minority population in all of Erie County. A "Highly Concentrated Minority Area" is any census tract within Erie County with a minority population that is forty percentage points or more greater than the percentage of minorities in all of Erie County. Based upon 1990 U.S. Census Data, and until new U.S. Census or American Housing Survey Data becomes available, any census tract in Erie County with a minority population greater than 34% is a Minority Concentrated Area, and any census tract in Erie County with a minority population greater than 54% is a Highly Concentrated Minority Area. When new U.S. Census or American Housing Survey Data become available, the parties shall recalculate the percentage of minority concentration to establish the appropriate comparison percentages in accordance with these definitions.

9. A "Poverty Concentrated Area" means any census tract within Erie County in which more than 20% of the households are at or below the federal poverty level. A "Highly Concentrated

Poverty Area" is any census tract within Erie County in which more than 35% of the households are at or below the poverty level.

10. A "Non-Concentrated Area" means any census tract within the Erie County which is neither a Minority Concentrated Area nor a Poverty Concentrated Area. Conversely, a general reference to a "Concentrated Area" means any census tract within Erie County that is either a Minority Concentrated Area or a Poverty Concentrated Area.

11. "Parties" means all of the plaintiffs, intervenors and all members of the class, and all the defendants in CIV 89-1556C [BMHA], as listed in the caption to the Decree.

12. "Scattered Site Housing Units" means BMHA family public housing units which are scattered within Buffalo or Metropolitan Buffalo, rather than being part of a large multi-unit apartment or other complex.

13. "Small Multi-Family Housing" means singles and other buildings of up to four residential units.

14. "Suburban Buffalo Area" means all cities, towns and other units of general local government, other than the city of Buffalo, located within Erie County, excluding the City of Lackawanna.

15. "Tenant-Based Subsidies" means Section 8 Certificates or Section 8 Vouchers under Section 8 of the USHA, 42 U.S.C. §1437f, or under any other tenant-based subsidy program which may be enacted as an amendment to, or replacement for, Section 8 of

the USHA. As used in this Amended Consent Decree, "Tenant-Based Subsidies" are further denominated as "Relocation Subsidies" or "Equal Opportunity Subsidies."

16. "Turnover" means a tenant based subsidy issued from funding that became available to Buffalo because a participant previously issued a Tenant-Based Subsidy is no longer participating in the Section 8 tenant-based program.

II. DENSITY REDUCTION AND REDEVELOPMENT OF THE PERRY, PRICE AND LAKEVIEW PROJECTS

A. Demolition, Reconfiguration and Replacement Housing

17. BMHA and plaintiffs have agreed to a Reduction and Revitalization Plan involving the removal of 502 units within Commodore Perry Homes and Commodore Perry Extension (the Perry Projects), A. D. Price Extension and A. D. Price Courts (the Price Projects) and Lakeview Homes Apartments (Lakeview) by a combination of demolition and/or unit reconfiguration. The Reduction and Revitalization Plan will coordinate demolition, reconfiguration and relocation of tenants and provide for the availability of Relocation Subsidies to displaced families. Displaced families eligible for Relocation Subsidies will be provided with housing counseling services by the Community Housing Center as described below. The Reduction and Revitalization Plan will phase the demolition and reconfiguration efforts so as to minimize the time in which units intended for reconfiguration are unavailable for occupancy, and to ensure that

the remaining projects constitute viable and safe environments for the residents. Additionally, the City of Buffalo has agreed to participate in this effort to revitalize the neighborhoods in which these projects are located and to assist the residents through the activities described in Sections IX and X below.

A.) The plan provides for: the demolition of 300 units at the Perry Projects and 102 units at the Price Projects, and the demolition and/or reconfiguration of units at Lakeview such that the total number of units that are removed are 100.

B.) (i) By July 7, 1997, BMHA shall, subject to plaintiffs' counsel's consultation with BMHA, as described in paragraph 17 B.) (iv) below, choose to take one of the following two courses of action to complete the demolition and/or reconfiguration at Lakeview such that the total number of units that are removed are 100, pursuant to paragraph 17 A.) above (hereinafter, the "removal of 100 units"): (1) timely submission of an application pursuant to the April 14, 1997 Notice of Funding Availability (NOFA) published at 62 Fed. Reg. 18242 et seq. for revitalization activities that include funding sufficient to remove no fewer than 52 units of the 100 units, or (2) use of Comprehensive Grant funds (FY 1998 or later) to complete the removal of 100 units.

(ii) In the event BMHA chooses the first option set forth in paragraph 17 B.) (i) (i.e., submission of a 1997 HOPE VI application for Lakeview) and the HOPE VI application is not

funded by HUD sufficiently to complete the removal of 100 units, pursuant to paragraph 17 A.), BMHA shall (a) use its 1997 or earlier Comprehensive Grant funds to remove 48 units at Lakeview through demolition and/or reconfiguration, and (b) continue to file timely applications pursuant to every pertinent NOFA issued by HUD until such time as sufficient funding is obtained to complete the removal of 100 units at Lakeview by removing an additional 52 units, provided, however, that BMHA may choose at any time to use its Comprehensive Grant funds (FY 1998 or later), to complete the removal of 100 units at Lakeview.

(iii) In the event BMHA chooses the second option set forth in paragraph 17 B.) (i) (i.e., to use its Comprehensive Grant funds (FY 1998 or later) for Lakeview), it shall submit a HOPE VI application pursuant to the April 14, 1997 NOFA for revitalization activities for one of its other federal public housing developments.

(iv) BMHA agrees to consult with plaintiffs' counsel during the preparation of its 1997 HOPE VI application(s), by (a) permitting plaintiffs' counsel to meet with BMHA's 1997 HOPE VI planning consultants at the earliest practicable opportunity in the 1997 HOPE VI planning process to discuss the content and requirements of this paragraph 17 as well as the relative merits of targeting BMHA's 1997 HOPE VI application(s) to a particular development or developments; and (b) providing plaintiffs' counsel the opportunity to meet at least twice monthly throughout

the 1997 HOPE VI planning process with BMHA and its consultants to review drafts of the application[s] and to provide input relative to the requirements of this paragraph 17 and BMHA's obligation to affirmatively further fair housing.

C.) BMHA shall proceed with implementation of the Reduction and Revitalization Plan for the Perry Projects as soon as practicable. BMHA shall use its currently allocated Comprehensive Grant funding to demolish the 102 units at the Price Projects.

18. A.) HUD hereby commits to Buffalo funding authority for 500 Tenant-Based Subsidies as replacement units. One hundred of these 500 Tenant-Based Subsidies shall constitute the replacement for the removal of the first 100 units through demolition and/or reconfiguration at Lakeview, irrespective of whether such removal has occurred at the time these Tenant-Based Subsidies are issued.

B.) First priority for 50 of these 500 Tenant-Based Subsidies will go to tenants of Lakeview at the time the Subsidies are to be issued, who have expressed a desire, through the education and application process described in paragraph 38 below, to move to Non-Concentrated Areas; such tenants will be rank ordered pursuant to a random drawing procedure. All provisions applicable to the "Equal Opportunity Subsidies" set forth in paragraphs 26-27 and 29-33 below, shall apply to these 50 Tenant-Based Subsidies.

C.) Such subsidies will be in the form of an Annual Contributions Contract (ACC or Contract) amendment and by such

Contract amendments as may be needed to comply with the commitment established herein to provide, subject to the availability of appropriations, the highest priority for successive renewal(s) of these Contracts for fifteen years. Buffalo may appoint an agent or successive agents to administer the Tenant-Based Subsidies, provided that the appointment of each such agent shall be subject to HUD approval.

B. Relocation

19. BMHA will relocate residents of units scheduled for demolition or reconfiguration in a manner that provides them with as wide as possible a geographic choice of where to live; shall take no action to induce or encourage such residents to move to either Minority Concentrated Areas or Poverty Concentrated Areas; and shall refer all such residents who desire a Relocation Subsidy to the CHC for counseling services.

20. BMHA will offer households who are displaced, due to demolition or reconfiguration, the option of: 1) moving to another BMHA unit of appropriate size and type; or 2) accepting a Tenant-Based Subsidy that Buffalo is to receive pursuant to paragraph 18 A.), above.

21. In the event that Buffalo has additional Tenant-Based Subsidies available for distribution after providing subsidies to displaced households, Buffalo will make them available to class members in accordance with the provisions of paragraphs 28-34 below.

22. [THIS PARAGRAPH 22 IS LEFT BLANK IN THE AMENDED CONSENT DECREE]

III. AREA REVITALIZATION PLANNING PROCESS

23. Two "Area Revitalization Plans" will be produced by Buffalo in coordination with the City's Consolidated Planning Process and obligations in Section IX below. The two Plans will consist of: (1) a Perry/Price Area Revitalization Plan; and (2) a Lakeview Area Revitalization Plan.

24. Within thirty days of the entry of this Amended Consent Decree, HUD will provide plaintiffs with a list of up to four HUD contractors from which plaintiffs will select and HUD will retain one contractor who will prepare a study to assist the plaintiffs and Buffalo in the preparation of the Area Revitalization Plans.

IV. METROPOLITAN AREA FAIR HOUSING INITIATIVES

25. Tenant-Based Subsidies described in paragraphs 18 A.) and 21 above, that are not needed for relocation of public housing residents or become a turnover subsidy, Buffalo shall make available to eligible class members as "Equal Opportunity Subsidies".

26. These Equal Opportunity Subsidies are provided for the express purpose of enabling class members residing in federally subsidized public housing and class member applicants currently living in Minority Concentrated Areas to move to Non-Concentrated Areas.

27. Except as specifically provided for in paragraphs 28

and 32 below, Equal Opportunity Subsidies must be used in Non-Concentrated Areas.

28. First priority for Equal Opportunity Subsidies will go to the named plaintiffs and putative intervenors. These named plaintiffs and putative intervenors will be eligible for Equal Opportunity Subsidies so long as they meet income eligibility rules, regardless of whether they currently live in public housing or in Minority or Poverty-Concentrated Areas.

29. Second priority for Equal Opportunity Subsidies will go to class members living in general occupancy federally subsidized public housing units that are located in Minority Concentrated Areas who are not already subject to the offer of a Relocation Subsidy and who have expressed a desire, through the education and application process described in paragraph 38 below, to move to Non-Concentrated Areas. Applicants for these "Second Priority" Subsidies will be rank ordered on an Equal Opportunity Subsidy Distribution List pursuant to a random drawing procedure.

30. In the event any Equal Opportunity Subsidies remain unused after offers are extended to all current BMHA residents as described in paragraph 29 above, third priority for the remaining Subsidies will go to class member applicants for federal public housing living in Minority Concentrated Areas who have expressed a desire, through the education and application process described in paragraph 38 below, to move to Non-Concentrated Areas. Applicants for these "Third Priority" Subsidies will be rank ordered on an Equal Opportunity Subsidy Distribution List

pursuant to a random drawing procedure.

31. All households who are offered Equal Opportunity Subsidies will be provided with preliminary and ongoing housing counseling services offered by the CHC as described in paragraph 38 below.

32. Equal Opportunity Subsidy applicants who are offered Equal Opportunity Subsidies shall have a maximum of 120 days from the date the Subsidy is issued to submit a request for lease approval before the Subsidy expires and must be turned in for issuance to another applicant. However, Buffalo may grant one, and only one, additional 30-day extension of the Subsidy to an applicant who does not submit a request for lease approval within that 120-day period if the mobility counselor from the CHC certifies in writing, prior to the end of the 120-day period, that the applicant needs the additional time and has not been dilatory in looking for housing. During the additional 30-day period the applicant may enter into a lease for a unit wherever it is located.

33. Notwithstanding any other provision of this Amended Consent Decree, if and when the CHC ceases operation due to the depletion of its funding, Equal Opportunity Subsidy applicants shall be able upon issuance of the Equal Opportunity Subsidy to submit a request to lease a unit without regard to the location of the unit. In addition, in determining the fair share allocations, if any exist in future years, the Tenant-Based Subsidies provided by this Amended Consent Decree shall not be

considered part of the allocation to the Buffalo Metropolitan Area in terms of calculating the unmet need of the Area.

34. Within 90 days of entry of this Amended Consent Decree, Plaintiffs, Buffalo and BMHA will enter into an agreement defining the timing of distribution of the Relocation and Equal Opportunity Subsidies and the housing counseling services to be provided to applicants for and holders of these Subsidies.

35. Except to the extent barred by law, HUD, when it enters into any new or renewed contract to provide any form of project-based assistance to owners or managers of project-based low income housing projects in Metropolitan Buffalo, will include in the contract provisions that such owners and managers market their units to persons eligible to reside in such low income projects through the Community Housing Center established below in addition to any other marketing efforts. In the course of HUD monitoring reviews of these owners and managers, HUD will examine the compliance of such owners or managers with such contract provisions.

V. THE COMMUNITY HOUSING CENTER

36. In conjunction with the Settlement of the Section 8 Complaints in this action (Civ. No. 89-1556C [Belmont] and Civ. No. 89-1556C [RAC]), Buffalo will participate in the establishment of a clearinghouse, resource, counseling, training and referral housing center to be called the Community Housing Center, as described in the Section 8 settlement. The CHC will

provide counseling and other services and resources designed to promote regional housing mobility for low income households throughout the Metropolitan Buffalo Area.

37. HUD hereby commits to Buffalo \$800,000 in funding authority for use by the CHC towards a regional mobility program which shall include a Section 8 counseling program and clearinghouse for listings of affordable rental units outside areas of Minority Concentration in Metropolitan Buffalo. This amount is in addition to the amount that it may provide in settlement of the other complaints. HUD reserves the right to approve the operator of the CHC.

38. The CHC will:

A). Plan, establish, and implement a coordinated or consolidated subsidized housing application and waiting list process;

B). Provide information on Metropolitan Area-wide housing opportunities to all low-income applicants for federal housing programs;

C). Coordinate landlord recruitment throughout the Metropolitan Area; and

D). Provide information, counseling and resources to low-income families seeking affordable housing, and information and coordination to the current network of home-finding assistance providers, to maximize access by low-income families to existing affordable housing and homeownership opportunities, especially those located in Non-Concentrated Areas.

39. The CHC's activities with regard to the households assisted in conjunction with this Amended Consent Decree will be coordinated with the CHC's activities with regard to the households assisted in conjunction with the Decree in the Belmont and RAC Complaints to minimize unnecessary confusion and duplication of services.

40. Upon commencement of the operation of the CHC, HUD will promptly advise all current owners of HUD-assisted housing in Metropolitan Buffalo of the opportunity to list their units with and process referrals from the CHC.

VI. TENANT SELECTION AND ASSIGNMENT FOR NEW ADMISSIONS AND TRANSFERS IN BMHA FEDERAL PUBLIC HOUSING

41. BMHA shall develop modified Tenant Selection and Assignment procedures (TS&AP) for new admissions and transfers. BMHA will submit the TS&AP to HUD for approval within 60 days of the entry of this Amended Consent Decree. The purpose of the modifications is to effectuate a desegregative admissions and transfer plan for plaintiffs, and will operate as follows:

A). Promptly upon HUD approval of the TS&AP, BMHA will begin an aggressive marketing effort to non-minorities, including contacting Section 8 applicants on the waiting lists of other housing agencies in the Buffalo Metropolitan Area.

B). BMHA shall offer all minority applicants whose name comes to the top of the BMHA waiting list, by chronological order, the opportunity to accept a unit at one of the five projects with the highest percentage of vacancies, based upon

units available for occupancy.

C). BMHA shall offer all non-minority applicants whose name comes to the top of the BMHA waiting list by chronological order the opportunity to accept a unit at one of the five projects with the highest percentage of vacancies, based upon units available for occupancy; provided, however, that the list of five projects offered under this provision shall not include any of the following projects if the non-minority occupancy percentage has increased by more than 5% from the non-minority occupancy percentage in existence in April 1996: Sedita, Holling Homes, Slater Courts, Camden, Stuyvesant, Monsigneur Geary, and Mullen Manor.

D). In addition to the units offered pursuant to sub-paragraphs B) and C) above, BMHA will offer General Occupancy applicants available units in all General Occupancy Public Housing Projects in which the racial composition of the residents of the Project's general occupancy units does not exceed 75% of the applicant's minority or non-minority status. However, this provision will not be implemented until after the procedures described in sub-paragraph G)., below, are no longer in effect.

E). In addition to the units offered pursuant to sub-paragraphs B) and C) above, BMHA will offer elderly and disabled applicants available units in all Elderly and Disabled Public Housing Projects, and in all Elderly and Disabled sections of the General Occupancy Public Housing Projects, in which the racial composition of the Project or Section does not exceed 50% of the

applicant's minority or non-minority status. However, this provision will not be implemented until after the procedures described in sub-paragraph H). below, are no longer in effect.

F). All applicants who without good cause do not accept a unit in accordance with sub-paragraphs B), or C), above, will be removed from the waiting list and will have to reapply.

G). Notwithstanding sub-paragraphs B)., C)., D). and E)., above, whenever a unit becomes available in an Elderly and Disabled Public Housing Project which has a non-minority occupancy rate of more than 50%, or in an Elderly and Disabled Public Housing section of a General Occupancy Public Housing Project which has a non-minority occupancy rate of more than 50%, the unit shall be offered to class member applicants who are eligible for that size unit. BMHA shall develop a notification and selection process that includes a procedure to contact class member applicants as a group, rather than on a sequential basis. The selection system described in this paragraph shall become inapplicable two (2) years after the date of entry of this Amended Consent Decree.

H). Notwithstanding sub-paragraphs B)., C)., D). and E)., above, whenever a unit becomes available in a federal General Occupancy Public Housing Project which has a minority occupancy rate of more than 75%, the unit shall first be offered to non-minority applicants who are eligible for that size unit. BMHA shall develop a notification and selection process that includes a procedure that allows it to contact non-minority applicants as

a group, rather than a sequential basis. When a non-minority applicant accepts the unit, BMHA shall offer the first minority applicant or transferee who otherwise would have been offered that unit under the procedures specified in sub-paragraphs B). and D)., above, the following alternatives:

- i. a Tenant-Based Subsidy;
- ii. a unit, if available, of among the five projects with the greatest percentage of vacancies; or
- iii. an opportunity to wait on the waiting list for a unit to become available in the development which would have been offered to the applicant but for the selection of the unit by the non-minority applicant pursuant to this paragraph, provided that no other non-minority applicants select an available unit in that development pursuant to this sub-paragraph.

The selection system described in this sub-paragraph shall become inapplicable two (2) years after the date of entry of this Amended Consent Decree.

I). One (1) year following the date of entry of this Amended Consent Decree, BMHA, in the event that the obligations imposed on it pursuant to sub-paragraphs G). or H). above, are unreasonable or non-viable, shall have the right to request HUD to review and remove the obligation imposed on BMHA pursuant to sub-paragraphs G). or H). above. A copy of this request shall be forwarded to plaintiffs' attorneys. HUD shall approve or disapprove BMHA's request in writing within thirty (30) days.

J). If a federal General Occupancy Public Housing Project becomes fully occupied and has a minority occupancy rate of more

than 75%, Buffalo will offer an appropriate number of Section 8 certificates to minority residents to create openings. Buffalo will then make offers to non-minority applicants and provide Tenant-Based Subsidies to minority applicants in accordance with sub-paragraph H) ., above.

K). The provisions in sub-paragraphs G). and H). above shall only apply so long as Buffalo has Tenant-Based Subsidies described in paragraph 42 below to offer, or for two (2) years after the date of entry of this Amended Consent Decree, whichever is sooner.

L). On a one time basis, transfers for the following BMHA residents will be offered as follows: Any minority household residing in a project which has a 75% or greater minority occupancy rate, that was admitted to BMHA housing prior to the implementation of the Voluntary Compliance Agreement in 1991, may transfer to any other project in which minorities occupy less than 75% of the units available for occupancy. From the latter group of projects such households may receive up to five offers from the projects with the highest percentage of vacancies.

M). BMHA will pay all costs relating to these transfers including, but not limited to routine apartment preparation costs, moving expenses, utility hook-ups and extra security deposits.

42. HUD hereby commits to Buffalo funding authority for 300 Tenant-Based Subsidies. Such subsidies will be in the form of an ACC amendment and such subsequent Contract amendments as may

be needed to comply with the commitment established herein to provide, subject to the availability of appropriations, the highest priority for successive renewal(s) of these Contracts for fifteen years. Buffalo may appoint an agent or successive agents to administer the Tenant-Based subsidies, provided that the appointment of each such agent shall be subject to HUD approval. Buffalo shall use these Tenant-Based subsidies for the purposes enumerated in sub-paragraphs H). and J). of paragraph 41 above. In addition, all households who are offered the subsidies will be provided with preliminary and ongoing housing counseling services offered by the CHC, as described in paragraph 38 above.

43. When the provisions in sub-paragraphs H). and J). of paragraph 41 above become inapplicable, in accordance with sub-paragraph K). of paragraph 41, all of the 300 Tenant-Based Subsidies that have not been used as well as any turnovers of these subsidies shall be designated as Equal Opportunity Subsidies. These subsidies shall be distributed in accordance with paragraphs 29 and 30 above.

44. In conjunction with the single application and cross-listing procedures established by the Decree entered in Comer v. Cisneros CIV 89-1556C [Belmont and RAC], BMHA shall use the following procedures:

A). BMHA shall use substantially the same application form used by the Belmont and RAC, with an additional public housing section of the form to be used exclusively for individuals who apply for public housing.

B). BMHA shall routinely transmit copies of all BMHA applications to RAC, which shall, in conjunction with the procedures established in Comer v. Cisneros [Belmont and RAC], will place all BMHA applicants on RAC's Section 8 Existing Housing waiting list in chronological order, as of the date of their BMHA applications.

C). BMHA shall place on BMHA's waiting list in chronological order as of the date of the application, all applicants for Section 8 Existing Housing:

- i. from RAC, unless they indicate on their RAC application, that they do not want to apply for BMHA housing; and
- ii. from Belmont, if they indicate on their Belmont application that they want to apply for BMHA housing.

D). BMHA will provide to all BMHA applicants, in its application packet, a separate copy of the Belmont Section 8 Existing Housing application form, and an envelope that is pre-addressed to Belmont.

E). BMHA will provide to all BMHA applicants, in its application packet, a notice that explains the availability of Section 8 Existing Housing from RAC and Belmont, and the availability of mobility counseling services from the Community Housing Center.

45. No more than once every year, BMHA may send a Notice and Response Form to applicants on the BMHA waiting list to inquire whether they wish to maintain their status as BMHA applicants. BMHA may delete from its waiting list any such applicant who returns the Response Form stating that he or she

does not want to be an applicant for any unit in any BMHA project.

VII. "SECTION 3" EMPLOYMENT AND TRAINING IN CONJUNCTION
WITH CONSTRUCTION, DEMOLITION, REHABILITATION
AND REDEVELOPMENT OF BMHA PROJECTS

46. BMHA's Section 3 plan of December 4, 1995, prepared in accordance with 12 U.S.C. §1701u and 24 C.F.R. Part 135 (1994), is attached hereto as Appendix A.

47. BMHA agrees to provide notice to plaintiffs' counsel prior to any amendment to BMHA's Section 3 Plan attached as Appendix A with sufficient time to allow at least 30 days for review and comment.

48. BMHA agrees to forward to plaintiffs' counsel on a regular basis the periodic reports prepared for the City of Buffalo's Section 3 Compliance Officer at the time they are sent to the City's Section 3 Compliance Officer.

49. BMHA agrees to advise plaintiffs' counsel at the time of its bid review of its intention to award any contract in excess of \$250,000, together with sufficient information regarding the bids for plaintiffs' counsel to determine the number of jobs created by the bidders in compliance with Section 3.

VIII. AFFIRMATIVELY FURTHERING FAIR HOUSING: SYSTEMS TO ANALYZE
AND OVERCOME IMPEDIMENTS TO METRO WIDE FAIR
HOUSING AND LOCATIONAL CHOICE

A. Federally Assisted Housing In the
Metropolitan Area.

50. Towards the goal that federally assisted housing and community development programs in the Metropolitan Buffalo area be administered in a manner that will affirmatively further fair housing, the federal defendants agree as follows:

A). HUD will prepare an inventory of all federally assisted housing projects in Metropolitan Buffalo which receive project-based assistance, including all federally assisted, project-based "non-insured" projects which are regulated by New York State agencies;

B). HUD will by letter direct the owners of the projects in this inventory to supply (within one month) current demographic information regarding the racial characteristics of each project's resident population and of its waiting list;

C). HUD will prepare and submit to the CHC a list of these projects that is located in a census tract for which the poverty concentration is less than 30%;

D). Based on the information received in response to sub-paragraph B). above, HUD will identify all the projects identified in sub-paragraph A). above that have a minority occupancy percentage by household more than five percentage points below the overall minority household concentration in Erie County according to the most recent Decennial Census;

E). Within four months of the date of entry of this Amended Consent Decree, HUD will advise by letter and invite each project identified in sub-paragraph D). above to amend or adopt an Affirmative Fair Housing Marketing Plan and revise its admissions

policies to participate in a metropolitan wide marketing structure that will permit all households applying for or receiving Tenant-Based Subsidies, as well as all applicants for BMHA public housing, to indicate on a standardized pre-application form (to be prepared by HUD) that they wish to be considered for tenancy at all of the projects identified on the form except those which the subsidy holder or applicant shall specifically indicate it does not wish to be considered for (that is, those projects which the applicant affirmatively "de-selects"); the letter shall also advise owners that, should the owner choose to fill all vacancies exclusively by persons using such pre-application forms, such participation will constitute a "safe harbor" from HUD monitoring of the owner's compliance with affirmative fair housing marketing obligations.

F). HUD will prepare and submit to the Community Housing Center the standardized pre-application form and identify on the form the names and addresses of those projects, which in response to the letter described in sub-paragraph E). above volunteer to participate in that marketing process. The Community Housing Center, will forward the pre-application form to each of the assisted projects not "de-selected" by the applicant. It also will notify HUD if those projects do not add the applicant households to their waiting lists;

G). HUD will request in the letter described in sub-paragraph E). above that each project identified in sub-paragraph D). above make available for distribution by the Community

Housing Center a description of the neighborhood in which it is located in, including a description of available transportation, shopping and social services, and schools.

H). HUD, in consultation with state and local fair housing enforcement organizations, will continue to enforce Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Section 3 of the Housing and Urban Development Act of 1968, and other civil rights statutes within HUD's enforcement authority as they apply to providers of HUD-assisted housing in the Buffalo Metropolitan area.

I). Within six (6) months after the date of entry of this Amended Consent Decree, HUD shall require, to the extent practicable, each provider of federally assisted housing in Metropolitan Buffalo that uses a local residency preference to provide information that HUD may determine to be relevant to an analysis of possible racially discriminatory effects of the preference. Within six months of receipt of the data, HUD shall analyze this, and any other relevant data and determine, for each local residency preference, to determine whether the preference has an adverse discriminatory effect with respect to racial minorities. In the event HUD determines that any local residency preference has an adverse discriminatory effect, HUD shall take such enforcement action as it deems appropriate, which can include requiring the housing provider to eliminate the

preference or modify it to eliminate the discriminatory effect.

B. Housing Planning Documents

51. With respect to Consolidated Plan submissions to HUD from each of the local governmental units in the Metropolitan Buffalo, HUD shall require each jurisdiction to submit a certification that the jurisdiction will affirmatively further fair housing. This certification means the jurisdiction will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. The analysis of impediments that the local governmental units certify that they will conduct shall include identifying their policies which affect opportunities of minority households to select housing in the jurisdiction. In the event that HUD subsequently adopts regulations that conflict with this or any other paragraph herein, the subsequent regulations shall prevail.

52. HUD shall review annually each local government's performance under its Consolidated Plan including specifically, their certification described in paragraph 51 and, where appropriate, under 24 C.F.R. §§570.904(c) and 570.601(b). Reviews will include site visits by HUD and an evaluation of each governmental unit's performance reports. In the event HUD determines that a government's performance violates its legal

obligations, HUD shall take such enforcement action as it deems appropriate including, but not limited to, judicial enforcement, or suspension, abatement or conditioning of future federal funding, until such time as the jurisdiction complies with its obligations. In addition, HUD shall, if it deems it appropriate, refer determinations of non-compliance to other federal executive agencies for review and possible issuance of sanctions with respect to that agency's funding of the recipient, pursuant to Presidential Executive Order 12892 of January 17, 1994.

IX. SPECIFIC INITIATIVES TO BE UNDERTAKEN BY THE CITY OF BUFFALO

53. Within 120 days of the date of entry of this Amended Consent Decree, Buffalo will amend its Citizen Participation Plan (required in conjunction with its receipt of HUD funds from the Community Development Block Grant, HOME Investment Partnership, and Emergency Shelter Grants Programs), to require that at the start of each program planning year a letter be sent to each resident organization in each of BMHA's projects advising that the Public Housing Presidents Association will be permitted to designate one representative to sit on the Consolidated Plan Subcommittee to the Citizen Advisory Committee (CAC), and including in that explanation a brief summary of the Consolidated Planning Process, the timeline for the current planning year, a description of the programs included in the Consolidated Plan, the amounts of funds available to benefit low and moderate income households and an offer to provide technical assistance to the

tenants' organization with regard to formulating proposals under applicable programs.

54. Within 90 days of the date of entry of this Amended Consent Decree, Buffalo will create a six-person "BMHA Housing and Economic Development Task Force" consisting of two-representatives from BMHA's staff (one with expertise in social services or economic development, and one with expertise in BMHA's capital improvement and development programs), a representative of plaintiffs, a representative from the Public Housing Presidents Association and two designees from the City's Department of Community Development (one with expertise in job training and economic development, the other with expertise in housing development or rehabilitation programs.)

55. The BMHA Housing and Economic Development Task Force created in paragraph 54 shall identify the needs of BMHA residents and projects as they relate to the City's Consolidated Plan programs and formulate proposals to enhance the liveability of BMHA housing projects and promote economic opportunities for BMHA residents through the use of the Consolidated Plan programs.

56. The City's Community Development staff will be available to assist the BMHA Housing and Economic Development Task Force by supplying information requested by the Task Force to facilitate it in preparation of a report and recommendations which will include, but need not be limited to: proposals to target job training and employment programs (including Section 3 employment obligations directed to BMHA residents); plans to coordinate

housing inspection, code enforcement and revitalization activities in areas surrounding BMHA projects; and a plans to promote homeownership opportunities for BMHA residents.

57. On an ongoing basis, Buffalo will facilitate the involvement of BMHA residents in the Consolidated Planning process by making available at the BMHA management office for each project, the current Consolidated Plan, and at appropriate junctures during the planning year, copies of draft proposals as they become available for public comment, notices with respect to meetings of the Consolidated Plan Subcommittee, copies of the most recent Performance Reports, and copies of any proposed amendments or proposals for reallocations of program expenditures.

58. Buffalo agrees to engage in a plan of systematic code enforcement targeted to improve the maintenance, stability and economic resources of the neighborhoods surrounding BMHA projects, focusing initially on the areas immediately surrounding the Commodore Perry, A.D. Price, and Lakeview projects.

59. Buffalo shall contribute One Hundred Thousand dollars (\$100,000) a year for five (5) years to the CHC for a total of Five Hundred Thousand dollars (\$500,000) to fund activities of the CHC that the CHC undertakes but which is not otherwise funded by HUD.

X. DENSITY REDUCTION AND REDEVELOPMENT OF THE FREDERICK DOUGLASS TOWERS

60. BMHA will promptly enter a planning process with the

residents, resident organizations, social service providers and other affected community groups in the Frederick Douglass Towers development to develop a density reduction and redevelopment plan. This plan will consider how Frederick Douglass Towers may best be reconfigured to reduce the density of poverty in the area, meet the needs of the eligible population, reduce vacancies and provide alternative housing opportunities for minority families presently residing in these units.

61. The plan will include demolition and replacement of a portion of the Frederick Douglass Towers units so that the total number of units remaining in the development will be no fewer than 310 state assisted public housing units.

62. Plaintiffs will be integrally involved in all phases of the planning process.

63. Rents at Frederick Douglass Towers for all units constructed, rehabilitated or otherwise remaining in place shall be established at a rent level sufficient to ensure affordability to the tenants in residence on the date of the entry of Final Judgment by keeping the rent levels substantially at their current level, subject to adjustments for inflation.

64. Buffalo and BMHA agree to use their best efforts to ensure that the redevelopment initiatives described in this Section will be substantially completed within five (5) years of the date of entry of this Amended Consent Decree, provided that Buffalo, BMHA or the plaintiffs may seek modification pursuant to paragraph 81 below.

65. The density reduction and redevelopment of the Frederick Douglass Towers shall be carried out in accordance with paragraph 66 below, and shall be carried out in a manner that will minimize displacement of current Frederick Douglass Towers households by ensuring that replacement units are available to displaced households prior to their displacement. In the event it is not possible to supply replacement housing prior to displacement, or a family expresses a preference for a tenant-based subsidy, displaced households shall be provided non-federal relocation benefits comparable to those that would be available to a household eligible for relocation payments under the federal Uniform Relocation Act. Buffalo may satisfy this obligation by offering any displaced household a subsidy from its Section 8 program, exclusive of Relocation Subsidies.

66. A). The goals of the Frederick Douglass Towers Action Plan must be reasonably calculated to achieve the following:

- i. Improved physical integration of Frederick Douglass Towers with the surrounding communities;
- ii. Redevelopment of these areas into more viable neighborhoods with improved housing quality, social and other services, economic opportunity, and amenities comparable to those found in family subsidized housing located in Non-Concentrated areas within Metropolitan Buffalo;

B). The planning process must consider the following issues:

- i. Desirable numbers of public housing

units to remain on site in light of:

- a. The goals set out above;
 - b. Sound design principles for maximizing resident satisfaction, privacy, responsibility, stability and security in multi-family housing.
 - c. The desires of current and prospective residents regarding housing location after having been afforded a comprehensive program acquainting them with the potential benefits of living in Non-Concentrated Areas;
 - d. Alternative reuses of any land vacated by demolition or reconfiguration, including, but not limited to 1) parks or recreational, 2) commercial uses which create the potential for jobs for class members and other low-income residents of the area.
- ii. Desirable design improvements and levels of rehabilitation and modernization.
 - iii. Desirable amenity levels, including the desirability and feasibility of providing amenities in individual units beyond those normally provided in public housing in order to increase racial and economic integration;
 - iv. Needed public services and social services;

- v. Needed management improvements and desirable management innovations, including study of a self-management option;
- vi. Potential for homeownership, or a transitional housing program (such as a "lease to own", or an employment incentive program);
- vii. The potential for development of mixed income housing;
- viii. A timetable for removal and replacement of units designated to be demolished.

C). The Action Plan will identify the cost of each aspect of the Plan, identify the source and type of funds which will be required to effectuate the Plan. Prioritize the activities based upon the availability of the funds that could be used for the activities and indicate a schedule for completing the Plan.

67. Buffalo, directly or indirectly, will make available for each of the five (5) years following the entry of this Amended Consent Decree \$1.4 million per year for developments planned pursuant to this Amended Consent Decree regarding the Frederick Douglass Towers, provided that if Buffalo expends more than \$1.4 million in any given year the excess shall be credited towards Buffalo's funding commitment the following year. Buffalo may use appropriate funding sources to meet these commitments, including, but not limited to, Community Development Block Grant funds and such state assistance obtained at Buffalo's request which is directed toward the redevelopment activities pursuant to Section X of this Amended Consent Decree.

68. In the event Buffalo or BMHA are able to obtain funds through a public bonding initiative in an amount sufficient to finance the comprehensive redevelopment of Frederick Douglass Towers as outlined above, and subject to paragraph 69 below, Buffalo shall be relieved from its further obligation to continue providing \$1.4 million per year. For the purpose of this provision "comprehensive redevelopment" means that the redevelopment must include all of the buildings on the Frederick Douglass Towers site so that at the end of the redevelopment project no buildings or units are left in a vacant or unusable state.

69. In the event the development activities pursuant to this part are undertaken by a developer other than BMHA, the development proposal shall be subject to a competitive process in which the developer shall be reviewed by a panel consisting of the Executive Director of BMHA or her/his legal representative, a Frederick Douglass Towers resident, a representative of the plaintiffs, and a representative of the Department of Community Development. Selection of the developer shall be made by Buffalo and BMHA.

XI. HUD REVIEW OF COMPLIANCE

70. In conducting compliance reviews of Buffalo and BMHA in connection with public housing and Section 8 certificate/voucher programs, HUD shall evaluate Buffalo and BMHA compliance with the provision of this Decree and take such action as HUD deems

appropriate and is permitted by law.

XII. MONITORING OF THE DECREE

71. During the time this Amended Consent Decree remains in effect, Buffalo and BMHA shall file a biannual report with the parties, which shall describe the activities carried out and the results achieved in implementing this Amended Consent Decree.

72. HUD shall maintain statistics that it normally receives on the racial/ethnic identify of heads of households for each project or unit location in all HUD assisted housing programs in the Metropolitan Area. BMHA shall maintain similar data for their respective assisted housing programs. Buffalo shall require the CHC to maintain data enabling the parties to track the moves of all Section 8 participants who receive housing counseling services throughout the term of this Decree and to make such data available to plaintiffs upon written request.

73. Upon reasonable advance written notice, defendants shall make available for inspection and copying, any non-privileged documents reasonably requested by plaintiffs relating to defendants' compliance with the terms of this Decree.

74. The terms of this Decree shall apply pursuant to Fed. R. Civ. P. 65(d), i.e., are "binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

XIII. CLASS CERTIFICATION

75. The definition of the class in this action is hereby modified and shall be as follows:

All minorities adversely affected by the acts or omissions alleged in the complaint, and who:

(i) currently reside in BMHA public housing; (ii) resided in BMHA public housing in the past; (iii) apply to reside in, or who are on the waiting list for, BMHA public housing at any time during the period of time that this Consent Decree is in effect.

XIV. PROCEDURAL PROVISIONS

76. No party is responsible for the performance of the actions or obligations of any other party to this Consent Decree.

77. Notwithstanding any other provision of this Consent Decree, any obligation of HUD hereunder subsequent to Federal Fiscal Year 1996, if any, is subject to the availability of appropriations for such purpose.

78. Upon execution of this Consent Decree by the parties, the parties shall jointly apply to the Court for an Order substantially in the form appended hereto as Exhibit 1, establishing procedures relating to a hearing pursuant to Rule 23 of the Federal Rules of Civil Procedure to determine whether the Court should approve this Consent Decree.

79. If the Court approves this Consent Decree, a Final Judgment, the entry of which shall be a condition precedent to any obligation of any party pursuant to this Consent Decree, shall be entered by the Court substantially in the form appended hereto as Exhibit 2:

A). Approving the Consent Decree set forth herein, and adjudging the terms thereof to be fair, reasonable, and adequate.

B). Dismissing with prejudice all claims in the BMHA Complaint.

C). Providing that all of the class members, as defined in paragraph 75 above and paragraph 1 of Exhibit 1, or any of them, shall be barred and enjoined forever from prosecuting any claims or causes of action that have been or could have been asserted by reason of, or with respect to, or in connection with, or which arise out of any of the matters alleged in the BMHA Complaint.

D). Discharging and releasing each defendant named in the BMHA Complaint, and their administrators or successors, and any department, agency, or establishment of any defendant and any officers, employees, agent, or successors of any such department, agency, or establishment, from any and all claims and causes of action which have been asserted in the BMHA Complaint, or could have been asserted in the Complaint, or administratively, by reason of, or with respect to, or in connection with, or which arise out of any of the matters alleged in the BMHA Complaint, which the class members, or any of them had, have or may have against the aforementioned released persons or entities, or any of them.

E). Providing that the obligations set forth herein, except for Section X and XIV of the Consent Decree, shall be in effect until five (5) years after the date of entry of the Final Judgment and shall have no force or effect after the expiration

of such time period.

80. The named plaintiffs in the BMHA Complaint, all of the members of the class they represent, as defined in paragraph 75 above and paragraph 1 of Exhibit 1, and each of them, and their heirs, administrators, successors, or assigns (together, the "Releasors"), hereby release and forever discharge the defendants and their administrators or successors, and any department, agency, or establishment of any defendant and any officers, employees, agents, or successors of any such department, agency, or establishment (together the "Releasees"), from any and all claims and causes of action which have been asserted in the BMHA Complaint, or administratively, by reason of, or with respect to, or in connection with, or which arise out of, any of the matters alleged in the BMHA Complaint, which the Releasors, or any of them have against the Releasees, or any of them.

81. Nothing contained in this Consent Decree or in the Final Judgment shall:

A). Impose on any defendant any duty, obligation or requirement the performance of which would be inconsistent with law or governmental rules or regulations at the time of such performance; or

B). Alter the parties' agreement that the funding HUD is providing herein is the sole funding from HUD, and is not subject either to modification without HUD's consent or to the modification procedures in sub-paragraph (c) below; or

C). Impair any party's right, if any, to seek

modification of this Consent Decree, or any part thereof, if authorized by law. If any party intends to seek modification of the Consent Decree, or if any defendant concludes that the provisions of sub-paragraph A). have become applicable during the effective period of the Consent Decree, the following procedures shall apply:

(i) Written notice shall be sent to counsel for all parties to the Consent Decree, setting forth with particularity the basis for the modification sought or for the conclusion that sub-paragraph A)., above, has become applicable; and

(ii) After receipt of said notice, counsel for the affected parties will, within a reasonable time, confer and make good faith efforts to resolve any outstanding issues; and

(iii) In the event that agreement cannot be reached, despite good faith efforts, any party may, after following these procedures, seek any recourse available to it under law.

82. This Consent Decree and any order approving this Consent Decree are not and shall not be construed as an admission by the defendants, or any of them, of the truth of any allegation or the validity of any claim asserted in the BMHA Complaint, or of defendants' liability therein, nor are they a concession or an admission of any fault or omission in any act or failure to act, or in any statement, written document, or report heretofore issued, filed or made by any defendant, nor shall any of the terms hereof be offered or received in evidence or in any way referred to in any civil, criminal, or administrative action or proceeding other than such proceedings as may be necessary to consummate or enforce this Consent Decree, nor shall they be construed by anyone for any purpose whatsoever as an admission or

presumption of any wrongdoing on the part of the defendants, or any of them, nor an admission by any party that the consideration to be given hereunder represents the relief which could be recovered after trial or that the scope of the class could be ordered by the Court without the consent of the defendants.

83. A). Following entry by the Court of Final Judgment, no default by any person or party in the performance of any of the covenants or obligations under this Consent Decree, or any judgment or order entered in connection therewith, shall affect the dismissal of the BMHA Complaint, the injunction against prosecution of actions, the discharge and release of defendants, or any other provision of sub-paragraphs 79 B). C). or D). hereof, or the judgment entered approving these provisions.

B.) In the event of any alleged default by any person or party in the performance of any of the obligations under this Consent Decree, or any judgment or order in connection therewith, the parties agree that the steps and procedures described in sub-paragraph 81 C). shall be taken before any motion is filed with Court, in order to provide all parties with notice and the alleged defaulting party with the opportunity to cure any default. The Notice hereunder pursuant to this sub-paragraph and the motion must identify the particular party alleged to be in default and specify the covenant or obligation of the Consent Decree.

84. If the Consent Decree is finally disapproved by any court, or in the event that it fails to become effective for any

reason whatsoever, or if the Final Judgment is finally reversed or modified on appeal, except for the obligations of the parties under this Paragraph 84 and the provisions of paragraphs 82 and 89 hereof, this Consent Decree shall be null and void, shall have no further force and effect, and shall not be used in the RAC or Belmont action or in any other action or proceeding, and this Consent Decree and all negotiations, proceedings, and statements made in connection herewith shall be without prejudice to any person or party, shall not be deemed or construed to be an admission by any party of any fact, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this action or in any other action, court or administrative proceeding.

85. The terms of the numbered paragraphs of this Consent Decree, and the attachments hereto, constitute the entire agreement of the parties, and no statement, remark, agreement, or understanding, oral or written, which is not contained herein, shall be recognized or enforced, nor does the Consent Decree reflect any agreed-upon purpose other than the desire of the parties to reach a full conclusion of the BMHA action as between the parties and to resolve this matter without the time and expense of further litigation.

86. Upon the Court's approval of this Consent Decree and the entry of a Final Judgment, as described in paragraph 79 of this Consent Decree, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the claims alleged in the BMHA

Complaint will be dismissed with prejudice.

87. As soon as is practicable after the entry of Final Judgment pursuant to this Consent Decree, HUD shall pay to plaintiffs attorney's fees, expenses, and costs in the amount of \$550,000 in full and final settlement of any and all claims in the BMHA action for attorney's fees, expenses, or costs, pursuant to any statute or other basis for services that have been performed or that will be performed in the future in connection with the BMHA Complaint or in any administrative or court proceeding arising under or relating to the BMHA Complaint. Any other claims for attorney's fees, expenses, or costs by any plaintiff or plaintiffs or by any counsel for any plaintiff or plaintiffs, against any defendant, shall be forever barred, provided, however, that the plaintiffs do not waive any right they might have to attorney's fees with respect to future enforcement proceedings in connection with the Consent Decree. However, the plaintiffs will not be entitled to an award of enforcement-related attorney's fees unless the plaintiffs show that the defendants were in contempt of the Consent Decree, and that the contempt was willful. Nothing in this Consent Decree will prevent any defendant from applying to the Court for attorney's fees, as appropriate, with respect to any enforcement proceeding brought by the plaintiffs.

88. The Releasees (as defined in Paragraph 80) are released from any additional liability for attorney's fees, expenses, or costs based on any and all claims and causes of action which have

been, could have been, or will be asserted in the BMHA Complaint by reason of, or with respect to, any of the matters alleged in such Complaint, which the Releasors (as defined in Paragraph 80) had, now have, or may subsequently have against the Releasees, including, without limitation, any and all claims for attorney's fees, expenses, or costs for services that may be performed in the future in connection with the BMHA Complaint or in any administrative or court proceeding arising under or relating to the BMHA Complaint, provided, however, that the plaintiffs do not waive any right they might have to attorney's fees with respect to future enforcement proceedings in connection with the Consent Decree. However, the plaintiffs will not be entitled to an award of enforcement-related attorney's fees unless plaintiffs show that the defendants were in contempt of the Consent Decree, and that the contempt was willful.

89. The provision for attorney's fees, costs, and expenses in this Consent Decree is not a finding that the position of any of the defendants in the BMHA Complaint or in connection with the matters to which this Complaint relates was not substantially justified or that the defendants are liable as a matter of law for the payment of any attorney's fees, expenses, or costs. This Consent Decree is not and shall not be construed as an admission by the defendants of the truth of any allegation or the validity of any claim asserted in this action or of the defendants' liability therein, nor are they a concession or an admission of any fault or omission in any act or failure to act, or in any

statement, written document, or report heretofore issued, filed or made by any defendant, nor shall this Consent Decree nor any papers related hereto, nor any of the terms hereof be offered or received in evidence or in any way referred to in any civil, criminal, or administrative action or proceeding with than such proceedings as may be necessary to consummate or enforce this Consent Decree, nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the defendants. The provision of attorney's fees, expenses, and costs in this Consent Decree is by agreement of the parties and shall not serve as precedent in, or be referred to in, any other case.

90. Because of the large number of the members of the class, payment of the \$550,000 as set forth in Paragraph 87, above, shall be made directly to Greater Upstate Law Project, Inc., as lead counsel for the plaintiffs, at the address set forth below.

91. The plaintiffs' counsel who are signatory hereto hereby represent, warrant and guarantee that such counsel are duly authorized to execute this Consent Decree on behalf of the plaintiffs, the members of the plaintiff class, and all counsel for plaintiffs and the members of the plaintiff class, including without limitation for the purpose of discharging, releasing, and barring any claim against the defendants for attorney's fees, expenses, or costs relating to past, present, or future services as set forth herein, by any and all counsel that might be

compensable in connection with the BMHA Complaint, irrespective of whether names of such counsel are set forth below.

92. The provisions of the Consent Decree entered on September 9, 1996, shall remain in full force and effect except as specifically amended herein or by stipulation of the parties. This Amended Consent Decree is intended to be a unitary document that reflects both the original Consent Decree and the amendments thereto. Accordingly, references in the Consent Decree to the "Consent Decree" or "Decree" have been amended according to the following protocols in this Amended Consent Decree:

A. Certain references to the "Consent Decree" or "Decree" have been changed to "Amended Consent Decree" because (i) the parties have agreed that the time for performance of certain obligations shall now be measured from the effective date of this Amended Consent Decree, or (ii) the provisions are only prospective in application.

B. Other references to the "Consent Decree" or "Decree" have not been changed because (i) the provisions in which they appear relate to actions that have already occurred (§§ 78, 79, 84, 86), or (ii) the effect of the provisions commenced with the entry of the original Consent Decree and their effect will continue unabated and apply with full force and effect under this Amended Consent Decree (§§ 1, 74, 75, 76, 77, 80, 81, 82, 83, 85, 87, 88, 89, 90, 91).

WESTERN NEW YORK LAW CENTER, INC.
Attorneys for Plaintiffs

By

James M. Morrissey

5/28/97

JAMES M. MORRISSEY, ESQ.
454 Ellicott Square Building
295 Main Street
Buffalo, New York 14203
(716) 855-0203

Date

GREATER UPSTATE LAW PROJECT, INC.
Attorneys for Plaintiffs

By

Ellen M. Yacknin

5/27/97

ELLEN M. YACKNIN, ESQ.
MICHAEL L. HANLEY, ESQ.
80 St. Paul Street, Suite 660
Rochester, New York 14604
(716) 454-6500

Date

NAACP LEGAL DEFENSE AND EDUCATIONAL
FUND, INC.
Attorneys for Plaintiffs

CHARLES STEPHEN RALSTON, ESQ.
99 Hudson Street, Suite 1600
New York, NY 10013
(212) 291-1900

DAMON & MOREY, LLP
Attorneys for BMHA

By

Chal / Carr

5/28/97

CHARLES S. CARRA, ESQ.
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202
(716) 856-5500

Date

CITY OF BUFFALO, NEW YORK
Michael B. Risman
Acting Corporation Counsel

By

David R. Hayes
DAVID R. HAYES, ESQ.

5/28/97
Date

Assistant Corporation Counsel
Department of Law
1100 City Hall
65 Niagara Square
Buffalo, New York 14202
(716) 851-4343

OF COUNSEL:

UNITED STATES DEPARTMENT OF JUSTICE
Attorneys for the Federal Defendants

By

Stuart A. Licht
STUART A. LICHT, ESQ.

6/4/97
Date

HOWARD GLASER, ESQ.
Acting General Counsel
SARA MANZANO, ESQ.
Assistant General Counsel
for New York State Office
CAROLE W. WILSON, ESQ.
HOWARD M. SCHMELTZER, ESQ.
PATRICIA SHARIN FLAGG, ESQ.
U.S. Department of Housing
and Urban Development
451 7th Street, S.W.
Washington, DC 20410
(202) 708-0300

United States Department
of Justice
Civil Division
Federal Programs Branch
901 E Street, N.W.
Washington, DC 20004
(202) 514-4265

SO ORDERED:

Dated:

June 26, 1997

John T. Curtin

JOHN T. CURTIN
United States District Judge

[THE TEXTS OF APPENDIX A ("SECTION 3" EMPLOYMENT AND TRAINING PROVISIONS) AND EXHIBITS 1 AND 2 TO THE CONSENT DECREE ARE NOT CHANGED BY THE AMENDED CONSENT DECREE AND THEREFORE ARE NOT ATTACHED]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CARMEN THOMPSON, et al.,

Plaintiffs

vs.

UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT, et al.,

Defendants.

Civil Action No. MJG 95-309

FILED
JUN 25 1996
ENTERED
RECEIVED

AT BALTIMORE
CLEM. U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

PARTIAL CONSENT DECREE

I. INTRODUCTION AND PURPOSE

1.1 Plaintiffs have asserted claims in this action against the United States Department of Housing and Urban Development ("HUD"), Henry G. Cisneros in his official capacity as Secretary of HUD, the Housing Authority of Baltimore City ("HABC"), Daniel P. Henson III in his official capacity as Executive Director of HABC and Commissioner of the Baltimore City Department of Housing and Community Development, and the Mayor and City Council of the City of Baltimore (the "City"), alleging that defendants and/or their predecessors established de jure racial segregation in public housing in Baltimore, and that each failed to disestablish and perpetuated that racial segregation, in violation of the Fifth, Thirteenth, and Fourteenth Amendments to the Constitution of the United States, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 1981, 1982 and 1983, the U.S. Housing Act of

52

1937, the Housing and Community Development Act of 1974, and the Administrative Procedure Act.

1.2 This suit was brought on behalf of a proposed class of all African-Americans who presently reside, or will in the future reside, in Baltimore City family public housing units.

1.3 The parties have entered into this Partial Consent Decree to settle certain issues raised in the Plaintiffs' Complaint and Motion for Preliminary Injunction and to avoid the expense and inconvenience of litigation. The defendants deny all liability for all actions, practices or omissions raised in Plaintiffs' claims.

1.4 The HABC and the City intend to demolish and replace the following five public housing projects: Lafayette Courts, Fairfield Homes, Lexington Terrace, Flag House Courts, and Murphy Homes. The purposes of this Decree are to provide for the redevelopment of the housing units which have been or will be demolished at those projects, to settle certain of plaintiffs' claims in this case, and to provide enhanced desegregative housing opportunities for residents of Baltimore City public housing.

II. DEFINITIONS

For purposes of this Partial Consent Decree only, the following definitions, as may be modified by future statutes or regulations, apply:

2.1 "Baltimore Housing Market" means the Baltimore Metropolitan Statistical Area (MSA) as defined by the U.S.

Census Bureau, specifically Baltimore City, Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County and Queen Anne County. **"Neighboring Area/Jurisdiction"** as used herein means any governmental unit or geographic area outside Baltimore City but within the Baltimore MSA. **"Counties in the Baltimore Housing Market"** refers to the counties, listed above, located in the Baltimore MSA.

2.2 **"Housing Projects"** means the following public housing developments: Lafayette Courts, Lexington Terrace, Murphy Homes, Flag House Courts, and Fairfield Homes.

2.3 **"Displacee"** means a family residing at Lexington Terrace, Murphy Homes or Flag House Courts as of August 19, 1995, that is required to be moved because a demolition application for the Housing Project in which the family resides has been or will be submitted. **"Displacee"** also includes former resident families of Lafayette Courts who are alleged not to have received all the benefits of the Uniform Relocation Act.

2.4 **"Relocatee"** means a non-Displacee former resident family of one of the Housing Projects who has been moved because of the planned or approved demolition of one or more of the Housing Projects.

2.5 **"Certificate"** means rental assistance under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f, or a successor program.

2.6 **"Tenant-based Certificate"** means a portable certificate issued to an eligible family.

2.7 **"Project-based Certificate"** means a certificate that is attached to a housing unit or project to subsidize or assist the rental of that unit or a unit in that project by an eligible family.

2.8 **"Special Certificate"** means a Tenant-based Certificate that is coupled with mobility counseling, as discussed in this Decree, for the household receiving the Certificate. Except as expressly provided herein, a Special Certificate may only be used in a Non-impacted Area.

2.9 **"Regular Certificate"** means a certificate from HABC's regular inventory of Section 8 certificates and vouchers, with or without mobility counseling. This Decree does not restrict Regular Certificates to use in Non-impacted Areas or otherwise impose conditions on their use by an eligible family.

2.10 **"Non-impacted Area"** means, in the Baltimore Housing Market, one of the following census tracts:

Baltimore City:

801.01, 1308.03, 2401.00, 2402.00, 2502.06, 2601.01, 2603.01, 2605.01, 2606.05, 2701.01, 2701.02, 2702.00, 2703.02, 2704.01, 2704.02, 2705.01, 2705.02, 2706.00, 2707.03, 2712.00, 2713.00, 2714.00, 2715.01, 2715.03, 2720.02;

Anne Arundel County:

7011.00, 7012.00, 7013.00, 7021.00, 7022.01, 7022.02, 7022.03, 7023.00, 7024.00, 7026.00, 7027.00, 7063.00, 7067.00, 7070.00, 7080.98, 7301.01, 7303.00, 7304.00, 7305.02, 7305.04, 7306.01, 7306.02, 7307.00, 7308.00, 7309.01, 7309.02, 7310.02, 7310.03, 7311.01, 7311.02, 7311.03, 7312.01, 7312.02, 7312.03, 7312.04,

7313.03, 7313.04, 7313.05, 7313.06, 7313.07, 7401.02, 7402.01,
7402.02, 7402.03, 7403.01, 7403.03, 7405.00, 7406.00, 7407.00,
7408.00, 7409.00, 7410.10, 7501.01, 7502.02, 7502.03, 7503.00,
7504.00, 7505.00, 7506.00, 7507.00, 7508.01, 7510.00, 7511.01;

Baltimore County:

4001.00, 4002.00, 4004.01, 4005.00, 4006.00, 4007.01, 4007.02,
4010.00, 4013.01, 4013.02, 4014.00, 4015.03, 4015.04, 4022.02,
4033.00, 4034.02, 4035.00, 4036.01, 4036.02, 4037.01, 4037.02,
4038.01, 4038.02, 4038.03, 4041.00, 4044.01, 4044.02, 4045.00,
4046.01, 4048.00, 4049.00, 4050.00, 4060.00, 4070.00, 4081.00,
4082.00, 4083.00, 4084.00, 4085.02, 4085.03, 4085.04, 4085.05,
4086.01, 4086.02, 4087.01, 4087.02, 4088.00, 4089.00, 4101.00,
4102.00, 4111.01, 4111.02, 4112.01, 4112.02, 4113.02, 4113.03,
4113.04, 4113.05, 4114.02, 4114.04, 4114.05, 4114.06, 4201.00,
4202.00, 4203.02, 4203.03, 4204.01, 4204.02, 4205.01, 4205.02,
4206.00, 4207.01, 4207.02, 4208.00, 4211.01, 4211.02, 4212.00,
4301.02, 4304.00, 4305.00, 4306.00, 4307.00, 4308.00, 4401.00,
4402.00, 4403.00, 4404.00, 4405.00, 4406.00, 4407.00, 4408.00,
4409.02, 4411.01, 4411.02, 4501.00, 4502.00, 4504.00, 4505.01,
4506.00, 4509.00, 4510.00, 4511.00, 4512.00, 4517.01, 4517.02,
4518.02, 4519.00, 4520.00, 4521.00, 4523.00, 4524.00, 4525.00,
4901.00, 4902.00, 4903.01, 4903.02, 4904.00, 4905.00, 4906.01,
4906.02, 4906.03, 4907.02, 4908.00, 4910.00, 4911.00, 4912.01,
4912.02, 4913.00, 4915.00, 4916.00, 4917.01, 4917.02, 4919.00,
4920.01, 4920.02, 4921.01, 4921.02, 4922.00;

Carroll County:

5020.00, 5030.00, 5041.00, 5042.01, 5042.02, 5051.00, 5052.01, 5052.02, 5061.00, 5062.00, 5075.00, 5076.00, 5077.00, 5078.00, 5081.00, 5082.00, 5090.00, 5100.00, 5110.00, 5120.00, 5130.00, 5141.00, 5142.00;

Harford County:

3011.01, 3011.02, 3012.00, 3013.00, 3014.01, 3014.02, 3015.00, 3016.02, 3017.00, 3021.00, 3022.00, 3028.01, 3031.00, 3032.01, 3032.02, 3033.00, 3034.00, 3036.01, 3036.02, 3037.00, 3038.00, 3039.00, 3041.00, 3042.01, 3042.02, 3051.00, 3052.00, 3053.00, 3063.00, 3064.00;

Howard County:

6011.01, 6011.02, 6021.00, 6022.00, 6023.01, 6023.02, 6026.00, 6027.00, 6028.00, 6029.00, 6030.00, 6040.00, 6051.01, 6051.02, 6054.00, 6056.00, 6066.01, 6066.02, 6067.01, 6067.02, 6067.03, 6068.01, 6068.02, 6069.01, 6069.02, 6069.03;

Queen Anne County:

8103.00, 8104.00, 8105.00, 8106.00, 8108.00, 8109.00, 8110.00.

Provided that this list of census tracts may be amended, by agreement of the Parties, based upon the official publication by the U.S. Census Bureau of future decennial census data or other population data at the tract level, or as otherwise provided in this Decree. Provided further that none of the following census block groups will be treated currently as part of a Non-Impacted Area, even though located at this time within a census tract that is or would be considered to be a

Non-Impacted Area: 2603.011, 2603.012, 2603.013, 2603.014, 2603.015, 2605.011, 2605.012, 2605.013, 2605.014, 2605.015, 2606.052, 2606.053, 2606.054, 7402.029.

2.11 **"Impacted Area"** means any area in the Baltimore Housing Market that is not a Non-impacted Area.

2.12 **"Non-subsidized Market Rate Unit"** means:

(a) with respect to the Murphy Homes and Flag House Courts sites, a fee simple, condominium, or cooperative homeownership unit subject to underwriting criteria that require purchasers to have incomes that are at or above sixty percent (60%) of median;

(b) with respect to the Murphy Homes site, a rental unit for which neither the owner nor the occupant has received a capital grant or deferred loan to reduce the rent below sixty-two percent (62%) of HUD's Fair Market Rent (FMR) level (based on the FMR level set at the 45th percentile, as to be calculated by the HABC in the event HUD no longer calculates the FMR level based upon the 45th percentile), nor a rental assistance subsidy, under any federal, state, or local rental assistance program, for persons who have incomes below sixty percent (60%) of median;

(c) with respect to the Flag House Courts site, a rental unit for which neither the owner nor the occupant has received a capital grant or deferred loan to reduce the rent below the lesser of HUD's FMR level or the rent "which the market will bear" in the Flag House neighborhood, nor a rental assistance subsidy under any federal, state or local rental

assistance program for persons who have incomes below sixty percent (60%) of median. The rental amount "which the market will bear" will be determined by an independent survey of market rents in an area that includes the census tract in which Flag House Courts is located (Census Tract 302). The market rent survey shall be obtained by the HABC and provided to HUD and the Plaintiffs. If, after all parties have been provided the information obtained through the market rent survey, the parties are unable to agree upon the rental amount "which the market will bear" in that neighborhood, the dispute resolution procedures set forth in Section 13.2 of this Decree will apply;

(d) a rental or homeownership unit shall not be deemed a "subsidized" unit solely because the purchaser, seller, or developer has received mortgage insurance, below market rate financing, or a federal, state, or local tax credit or exemption;

(e) a homeownership unit shall not be deemed "subsidized" solely because the owner-occupant has received a loan or grant to reduce the settlement expenses, or a second mortgage that is deferred or forgiven based on the continued occupancy of the homeowner for a period of years.

2.13 "Hard unit" as used in this Decree does not include a "non-subsidized market rate unit" or a "market rate unit," but does include homeownership and project-based units developed pursuant to Section 3.2 et. seq.

2.14 "Parties" means the Plaintiffs, the Local Defendants, and the Federal Defendants.

2.15 **"Plaintiff"** means Carmen Thompson, Rhonda Harris, Joann Boyd, Doris Tinsley, Lorraine Johnson, and Isaac J. Neal, and, when it is certified, the plaintiff class.

2.16 **"Federal Defendants"** means HUD and Secretary Henry G. Cisneros and their successors. "Action" as used when referencing the Federal Defendants shall include non-action.

2.17 **"Local Defendants"** means the HABC, the Mayor and City Council of Baltimore, and Commissioner Daniel P. Henson, III and their successors.

2.18 **"Redevelopment Plan"** means a plan for the redevelopment, either on-site or off-site, of the units of a Housing Project that have been demolished or will be demolished as provided in this Decree. A Redevelopment Plan is independent of any Replacement Housing Plan required by Section 18 of the U.S. Housing Act of 1937.

2.19 **"Redevelopment Housing"** means housing developed or provided pursuant to a Redevelopment Plan.

2.20 **"RFP"** means a Request for Proposal for housing development for public response under this Decree. In all situations where this Decree imposes duties or obligations with respect to RFPs or the RFP process, such duties shall be interpreted so as to accord with Federal and State law. To the extent duties with respect to RFPs or the RFP process are inconsistent with the requirements of Federal or State law, and cannot be interpreted to accord with such law, such Federal and State law shall prevail. Section 13.2 on Dispute Resolution shall apply to disputes regarding whether or not the duties

regarding RFPs or the RFP process are inconsistent with Federal or State law, or can be interpreted to conform thereto.

2.21 "Supplementary City funds" means a total amount of \$35,304,060 (\$5,034,660 in State Fiscal Year 1995 and \$5,044,900 in each of State Fiscal Years 1996 through 2001) in local bond funds, Community Development Block Grant (CDBG) funds, if any, awarded to the Local Defendants in the normal course, and Section 108 loan guarantees, if any, awarded to the Local Defendants in the normal course, committed by the Local Defendants as the local contribution toward the development costs of units financed, in whole or in part, with Partnership Rental Housing Program ("PRHP") funds appropriated by the Maryland General Assembly for Baltimore City public housing replacement. CDBG funds and Section 108 loan guarantees may be used for the above-stated purpose only if such use is authorized by applicable law and regulations.

2.22 As used in this Decree, "effective date of the Decree" and "date of approval of the Decree" are used interchangeably and are equivalent in meaning.

III. RENT-SUBSIDIZED HOUSING AND HOMEOWNERSHIP DEMONSTRATION

3.1 Tenant-Based Assistance

3.1.1 Upon approval of this Decree, HUD hereby commits funding authority for use by the HABC pursuant to this Decree for a total of 1,342 Section 8 Certificates from Federal Fiscal Year 1995 funds for tenant-based assistance. Except as needed for single, disabled, non-elderly certificate holders selected under Section 7.3 of this Decree, and to relocate current one-

bedroom tenants, these certificates shall be for units of greater than one (1) bedroom. Upon execution of the applicable Annual Contributions Contract amendment(s) ("ACC amendment(s)"), HABC will issue these certificates in accordance with applicable law and regulations and this Decree. These certificates shall have an initial term of three (3) years and shall be renewed for the longest term allowed by law and for the number of terms that totals, including the initial term, fifteen (15) years; and, such future year funding is subject to the availability of appropriations and section 3.3.1 of this Decree. The applicable initial ACC amendments shall be executed on a yearly basis unless the parties otherwise agree, based upon the estimated needs; provided that the initial ACC amendment shall be executed when the Mobility Counselor has been selected and is ready to begin operations. After a total of fifteen (15) years of assistance, any special conditions connected with these certificates that are imposed by this Decree will terminate, and the certificates themselves will be further renewed, expire and/or otherwise be treated in accordance with HUD's generally applicable policies as to Section 8 certificates at that time. If, under the Comparable Relief provision, tenant-based rental subsidies are provided under a program other than the current Section 8 program, after a total of 15 years of assistance, any special conditions on the tenant-based rental subsidies that are imposed by this Decree will terminate, and said subsidies themselves will terminate, be further renewed, expire and/or otherwise be treated in accordance with HUD's generally

applicable policies as to said subsidies at that time. In addition, if and when the Mobility Counselor ceases operation due to the depletion of its funding, the tenant-based assistance awarded by this Decree will be used without the special conditions imposed by this Decree. Further, the parties agree that for the purpose of determining federal fair share allocations of tenant-based rental assistance in future years, the 1,342 Special Certificates described herein shall not be considered part of the allocation upon which HABC is normally evaluated.

3.1.2 Upon receipt of a Special Certificate after completion of the initial stage of the Mobility Counseling program (see Section VIII, infra), the holder of that Certificate shall have 120 days from the date of issuance of the certificate (the "Initial Search Period") in which to enter into a lease or other applicable contract for the rental of a unit in a Non-impacted Area. During the Initial Search Period, the holder of the Certificate shall be entitled to accept or reject any offer for rental in a Non-impacted Area. Upon the expiration of the Initial Search Period, the holder of the Certificate may continue searching for an additional thirty (30) days (the "Extended Search Period") in Non-Impacted Areas, if the Mobility Counselor certifies that the Certificate holder has been searching for such opportunities and has considered offers, if any, in good faith, and that an extension is necessary to enable the family to utilize the Certificate. Submission of a

Request for Lease Approval shall toll the running of all time periods for searches under this section.

3.1.3 Except as provided in Sections 3.1.3.1 and 3.1.3.2 of this Decree, if the holder of a Special Certificate has not entered into a lease within 120 days of issuance of the Certificate upon completion of the initial stage of the Mobility Counseling program, and the Mobility Counselor does not make the certifications discussed in Section 3.1.2 above, the holder shall return the Certificate to the HABC for redistribution in accordance with the terms of this Decree. If the Mobility Counselor has made the certifications at the end of the Initial Search Period, and the Certificate holder has failed to enter into a lease or other applicable contract by the end of the Extended Search Period, the Certificate holder shall return the Certificate for redistribution in accordance with the terms of this Decree. If the Certificate holder is on any HABC waiting list for public housing, regular Section 8 assistance, and/or other type of assisted or subsidized housing, return of the Certificate under this section will not affect the Certificate holder's standing on such waiting list. Submission of a Request for Lease Approval shall toll the running of all time periods for searches under this section.

3.1.3.1 If a displacee requests a Section 8 certificate and wishes the option of using the certificate in an Impacted Area, the HABC will issue the displacee a Regular Certificate. If no Regular Certificate is available, the HABC will issue the displacee one of the 150 certificates discussed in Section 3.2.3

of this Decree, which certificate will be converted to a tenant-based certificate and used without any of the special conditions imposed by this Decree. If none of the certificates discussed under Section 3.2.3 is available, HABC will issue the displacee one of the certificates discussed in Section 3.2.2 up to a limit of 150 such certificates, which will be converted to a Regular Certificate and used without any of the special conditions imposed by this Decree. If none of the certificates discussed in the preceding sentence is available, the ACC will be amended as necessary and the HABC will issue the displacee one of the certificates discussed in Section 3.1.1 which will be converted to a Regular tenant-based certificate and used without any of the special conditions imposed by this Decree. In either case, HABC will then replace the converted certificate with the next available Regular certificate.

3.1.3.2 If a displacee wishes to live in a Non-impacted Area, the displacee will be issued one of the Special Certificates under this Decree with all special conditions attached. If, however, the displacee fails to find such housing within the 120-day Initial Search Period and, if applicable, the Extended Search Period, the Special Certificate will then be converted to a Regular Certificate and used without any of the special conditions imposed by this Decree. The HABC will then replace the converted Special Certificate with the next available Regular Certificate.

3.1.4 A Special Certificate holder who has rented a unit in a Non-impacted Area may, using that Certificate, move to an

Impacted Area after living in the Non-impacted Area for a period of one (1) year. If such a family thereafter terminates its use of the Certificate, the special conditions imposed by this Decree will apply upon the next re-use of that Certificate by another family under this Decree.

3.1.5 Upon termination of a family's participation in the Special Certificate program, the Special Certificate shall be returned for re-use pursuant to the terms of this Decree.

3.1.6 The HABC and/or the Mobility Counselor [see section VIII infra] shall inform each Special Certificate holder of the special conditions of the Special Certificate program, as well as the general terms of the Section 8 assistance, including the possible availability of exception rents in excess of the Section 8 FMR, subject to all applicable approvals and regulations. The HABC shall inform the Special Certificate holder of the location and telephone number of the Mobility Counselor which will be providing services to the Special Certificate holder, and shall likewise inform the Mobility Counselor of the name, address, and telephone number of the Special Certificate holder.

3.1.7 The parties agree that, in certain circumstances, exceptions to FMR limits may be necessary to enable the Special Certificates to be used in Non-impacted Areas. The HABC agrees to use its best efforts to collect data on, and to monitor, market rents at the census tract level in Non-impacted Areas of the Baltimore Housing Market.

3.1.7.1 Within 120 days of approval of this Decree, if supported by data, and thereafter at the times necessary, HABC shall apply to HUD for permission to provide exception rents of up to 120% of FMR for units in Non-impacted Areas in the Baltimore Housing Market. HABC shall use its best efforts to support its application with the data and information required by HUD. HUD shall grant such permission for such exception rents if HABC's application is consistent with federal regulations.

3.1.7.2 In addition, subject to the availability of HABC funding reserves and the limitations of 24 C.F.R. Part 882.106, the HABC shall approve exception rents up to 110% on a unit-by-unit basis as necessary to enable use of Special Certificates in Non-impacted Areas where 120% exception rents are not sought or approved.

3.1.8 With respect to each certificate discussed in section 3.1.1 that is used as a Special Certificate outside of the City of Baltimore, HABC shall transfer, upon the direction of the parties, the administration of the certificate and the normal administrative fee to the public housing authority where the certificate is being used, except that in the case of Baltimore County, as to each Special Certificate that is used in Baltimore County, HABC shall transfer 100% of the administrative fee to the County. Such a transfer pursuant to the preceding sentence does not remove the certificate from the Special Certificate program.

3.2 Project-Based Assistance

3.2.1 Subject to the provisions of 3.2.1.1, the HABC will utilize \$18,648,000 of the Urban Revitalization Demonstration ("URD") Grant funds that have been awarded for the redevelopment of Lafayette Courts to create at least 168 homeownership units in Non-impacted Areas of the Baltimore Housing Market. Each of these homeownership units shall be for a unit of greater than one (1) bedroom.

3.2.1.1 Within one year after execution of this Decree, the parties will attempt to develop a process and plan, which shall be incorporated into this Decree, to implement the home ownership demonstration program referenced in Section 3.2.1 above, including a "rent to own" strategy using best efforts to make homeownership under this demonstration program feasible and affordable to HABC families at the average income of HABC households.

3.2.1.2 Should the parties be unable to jointly develop a process and plan or should the parties determine that the homeownership program referenced in Section 3.2.1 above is not practicable, lawful, feasible or affordable, the HABC will, to the extent permitted by law, utilize the funds discussed in Section 3.2.1 to create 168 project-based rental subsidies in Non-impacted Areas of the Baltimore Housing Market, with a term of fifteen (15) years, to be developed under the procedures discussed in Sections 3.2.5 through 3.2.13 of this Decree. In the event the homeownership program is practicable, lawful, visible and affordable with regard to fewer than 168 units,

remaining funds will be utilized in accordance with the preceding sentence.

3.2.2 Upon approval of this Decree, HUD hereby commits to HABC funding authority for 496 Section 8 certificates from Federal Fiscal Year 1995 funds. These certificates shall be for an initial term of three (3) years, and shall be renewed for the longest term allowed by law and for the number of terms that, including the initial term, totals fifteen (15) years; and, such future year funding is subject to the availability of appropriations and section 3.3.1 of this Decree. After 15 years of assistance, any special conditions connected with the certificates that are imposed by this Decree will terminate, and the certificates themselves will be further renewed, expire, and/or otherwise be treated in accordance with HUD's generally applicable policies as to Section 8 subsidies at that time. If, under the Comparable Relief provision, project-based rental subsidies are provided under a program other than the current Section 8 program, after a total of 15 years of assistance, the special conditions on the project-based rental subsidies that are imposed by this Decree will terminate and said subsidies themselves will terminate, be further renewed, expire and/or otherwise be treated in accordance with HUD's generally applicable policies as to said subsidies at that time.

3.2.2.1 To the extent it is practicable, lawful, feasible and affordable, HABC shall use the certificates referenced in Section 3.2.1 above to develop homeownership units in Non-impacted Areas. Within one year after execution of this Decree,

the parties will attempt to develop a process and plan, which shall be incorporated in this Decree, to implement this homeownership demonstration program, including a "rent to own" strategy, using their best efforts to make homeownership under this demonstration program feasible and affordable to HABC families at the average income of HABC households.

3.2.2.2 Should the parties be unable to jointly develop a process and plan or should the parties determine that the homeownership demonstration program referenced in Section 3.2.2.1 above is not practicable, lawful, feasible, or affordable for some or all of the units, the certificates discussed in Section 3.2.2 which are not utilized in the homeownership program will be used as Project-based Certificates in Non-impacted Areas of the Baltimore Housing Market, to be developed under the procedures discussed in Sections 3.2.5 through 3.2.13 of this Decree.

3.2.3 Subject to the availability of appropriations, HUD will also provide HABC funding authority for a total of an additional 150 certificates from Federal Fiscal Year 1996 appropriations, and if not from such 1996 appropriations, from appropriations from Federal Fiscal Years 1997-2000. These 150 certificates shall be for the longest initial term allowed by law and shall be renewed for the longest term allowed by law and for the number of terms, including the initial term, that totals at least 15 years of assistance, subject to the availability of appropriations and Section 3.3.1. After a total of fifteen (15) years of assistance, the special conditions connected with the

certificates that are imposed by this Decree will terminate, and the certificates themselves will be further renewed, expire, and/or be otherwise treated in accordance with HUD's generally applicable policies as to Section 8 subsidies at that time. If, under the Comparable Relief provision, tenant-based rental subsidies are provided under a program other than the current Section 8 program, after a total of 15 years of assistance, any special conditions on the tenant-based rental subsidies that are imposed by this Decree will terminate, and said subsidies themselves will terminate, be further renewed, expire and/or otherwise be treated in accordance with HUD's generally applicable policies as to said subsidies at that time.

3.2.3.1 To the extent it is practicable, lawful, feasible and affordable, and consistent with the provisions of Section 3.1.3.1 of this Decree, HABC shall use these certificates to develop homeownership units in Non-impacted Areas. Within one year after the execution of this Decree, the parties will attempt to develop a process and plan, which shall be incorporated into this Decree, to implement this homeownership demonstration program, including a "rent to own" strategy, using their best efforts to make homeownership under this demonstration program feasible and affordable to HABC families at the average income of HABC households.

3.2.3.2 Should the parties be unable to jointly develop a process and plan or should the parties determine that the homeownership demonstration program referenced in Section 3.2.3.1 above is not practicable, feasible, affordable or lawful

for some or all of the units, the certificates discussed in Section 3.2.3 which are not utilized in the homeownership program will be used as Project-based Certificates in Non-impacted Areas of the Baltimore Housing Market, to be developed under the procedures discussed in Sections 3.2.5 through 3.2.13 of this Decree.

3.2.4 The provisions of Sections 3.2.5 through 3.2.13 below shall apply for units as to which it is determined that the homeownership demonstration program discussed in either Section 3.2.1, Section 3.2.2.1, or Section 3.2.3.1 above is not practicable, feasible, affordable or lawful.

3.2.5 Within 120 days of a determination that the homeownership demonstration program discussed in Section 3.2.1 is not practicable, lawful, feasible, or affordable for some or all of the units, the HABC will issue a Request for Proposals (RFP) for the project-based URD subsidies referred to in Section 3.2.1.2.

3.2.6 Within 120 days of a determination that the homeownership demonstration program discussed in either Section 3.2.2.1 or Section 3.2.3.1 is not practicable, feasible, affordable or lawful for some or all of the units, and of the execution of an applicable ACC amendment (if an applicable ACC amendment has not already been executed), the HABC shall issue an RFP for the project-based certificates in question.

3.2.7 RFPs issued pursuant to paragraphs 3.2.5 and 3.2.6 shall inform potential contractors, inter alia, that:
(a) proposals are sought for the development of units to receive

for some or all of the units, the certificates discussed in Section 3.2.3 which are not utilized in the homeownership program will be used as Project-based Certificates in Non-impacted Areas of the Baltimore Housing Market, to be developed under the procedures discussed in Sections 3.2.5 through 3.2.13 of this Decree.

3.2.4 The provisions of Sections 3.2.5 through 3.2.13 below shall apply for units as to which it is determined that the homeownership demonstration program discussed in either Section 3.2.1, Section 3.2.2.1, or Section 3.2.3.1 above is not practicable, feasible, affordable or lawful.

3.2.5 Within 120 days of a determination that the homeownership demonstration program discussed in Section 3.2.1 is not practicable, lawful, feasible, or affordable for some or all of the units, the HABC will issue a Request for Proposals (RFP) for the project-based URD subsidies referred to in Section 3.2.1.2.

3.2.6 Within 120 days of a determination that the homeownership demonstration program discussed in either Section 3.2.2.1 or Section 3.2.3.1 is not practicable, feasible, affordable or lawful for some or all of the units, and of the execution of an applicable ACC amendment (if an applicable ACC amendment has not already been executed), the HABC shall issue an RFP for the project-based certificates in question.

3.2.7 RFPs issued pursuant to paragraphs 3.2.5 and 3.2.6 shall inform potential contractors, inter alia, that:
(a) proposals are sought for the development of units to receive

project-based rental subsidies in Non-impacted Areas within the Baltimore Housing Market; (b) development may be through new construction, existing housing, or acquisition with rehabilitation; (c) preference shall be accorded proposals that contain a significant proportion of housing for large families (at least three bedrooms); (d) proposals should be for scattered-site or mixed-income development that physically integrates the assisted units with market-rate apartments or single-family dwellings; (e) preferences shall be accorded proposals that contain commitments by the owner for continued use of the units as affordable housing beyond the term of the federal assistance awarded under this Decree; (f) HUD has discretion whether or not to authorize contract rents of up to 120 percent of the Section 8 FMRs for any development, upon the HABC's showing that such rents are "reasonable" under the standards set forth in 24 C.F.R. § 882.714 and 24 C.F.R. § 983.12(a), 60 Fed. Reg. 34722 (July 3, 1995), and otherwise meet the requirements of those regulations; and (g) owners of units receiving the project-based subsidies shall be required to rent the units to eligible families referred by the HABC and selected by the owner in accordance with 24 C.F.R. § 983.203, 60 Fed. Reg. 34726.

3.2.8 Within forty-five (45) days of a determination that the homeownership demonstration program discussed in Section 3.2.1 is not practicable, affordable, feasible or lawful for some or all of the units, or within forty-five (45) days of such a determination with regard to the homeownership program

discussed in either Sections 3.2.2.1 or 3.2.3.1 and of the execution of each applicable ACC amendment (if an applicable ACC amendment has not already been executed), the HABC shall transmit the RFPs in draft form to the Plaintiffs for their review and comment. Plaintiffs shall transmit their comments to HABC within twenty (20) days of the receipt of the draft RFPs. No later than twenty-five (25) days after the expiration of this review and comment period, HABC shall transmit to HUD either a draft RFP that is satisfactory to both HABC and the Plaintiffs, or a draft RFP that is satisfactory to HABC together with Plaintiffs' comments and a statement explaining the HABC's reasons why the RFP should not be modified. HUD shall consider the Plaintiffs' comments and HABC's statement and shall, if HUD deems appropriate, require the HABC to amend the RFP.

3.2.9 Proposals for project-based housing received by HABC in response to RFPs issued pursuant to Sections 3.2.5 and 3.2.6 shall be evaluated and ranked by a RFP Review Panel that includes, but is not limited to, one member selected by the Plaintiffs and one member selected by the affected resident organizations.

3.2.9.1 The RFP Review Panel shall evaluate and rank proposals in accordance with the criteria in the RFP, with Appendix A to this Decree, and the applicable regulations, including those at 24 C.F.R. Part 983, 60 Fed. Reg. 34717 et seq. (July 3, 1995) and 24 C.F.R. Part 882, subpart G, as applicable. HABC shall select proposals in accordance with available funding and, unless it demonstrates good cause to the

contrary, in accordance with the recommendations of the RFP Review Panel, and shall forward any selected proposals to HUD in accordance with 24 C.F.R. §§ 983.52-983.57, 60 Fed. Reg. 34723-34724. Once selected by HABC, the project-based proposals under this Decree shall be processed in accordance with HUD regulatory procedures, and will be approved by HUD within thirty (30) days if consistent with law, applicable regulations, and this Decree.

3.2.10 HABC shall use its best efforts to complete development and occupancy with regard to: 1) the URD project-based rental subsidies discussed in Section 3.2.1.2, within three years of a determination that the URD will not be used for homeownership; and 2) the Project-based Certificates discussed in Sections 3.2.2.2 and 3.2.3.2, within three years of execution of each applicable ACC amendment. In any event HABC shall complete occupancy of those units within six and one-half (6½) years of the approval of this Decree.

3.2.11 Beginning thirty (30) days after RFPs are issued, the HABC shall provide quarterly status reports to HUD and plaintiffs regarding all projects being developed, or under consideration for possible development, as project-based housing or homeownership units under Section 3.2.1.2, 3.2.2.2, or 3.2.3.2 of this Decree. The status report shall include a brief description of the proposals received in response to RFPs, the status of developments awarded project-based certificates, all known obstacles to completion or implementation, and projected dates of occupancy.

3.2.12 If within 180 days of the date of the issuance of each RFP under Section 3.2.5 and/or Section 3.2.6, the HABC has not received approvable development proposals to generate sufficient units to utilize all of the project-based certificate units included in the RFP, then the HABC shall continue to re-issue additional RFPs until twenty-four (24) months have elapsed from the date of initial issuance of the RFP or until acceptable proposals have been received for all funded units, whichever occurs earliest.

3.2.13 If within twenty-four (24) months from the date of initial issuance of an RFP under Section 3.2.5 or 3.2.6 of this Decree, HABC has not received approvable development proposals likely to generate sufficient units to utilize some or all of the project-based subsidy or certificate units included in the RFP, or if HABC is otherwise barred by legal or factual impossibility from utilizing some or all of the project-based subsidies or certificates included in the RFP, then the HABC shall, after consultation with HUD and Plaintiffs' counsel, and subject to HUD's approval, amend its Redevelopment Plan(s) and any Replacement Housing Plan(s) required by Section 18 of the U.S. Housing Act of 1937 in the following order of priority:

(a) Unless prohibited by law, to convert the unutilized URD project-based subsidies discussed in Section 3.2.1.2 and/or the Project-based Certificates discussed in Sections 3.2.2.2 or 3.2.3.2 to tenant-based subsidies or certificates of the same term as the project-based subsidies or certificates would have had, and, except as to the URD project-

based subsidies discussed in Section 3.2.1.2, renewable for the same total number of years, subject to the availability of appropriations; or

(b) To use any of the URD funds discussed in Section 3.2.1 that remain unutilized to construct, acquire or rehabilitate public housing units, on scattered sites or integrated with market rate units in a mixed-income development, located within any Non-impacted Area. The HABC shall seek cooperation agreements with Neighboring Areas/Jurisdictions in the Baltimore Housing Market in order to develop some or all of these public housing units in Non-impacted Areas outside Baltimore City; or

(c) To seek, on a case-by-case basis, the approval of the parties to any proposed alternatives that the parties agree will be consistent with the purposes of this Decree. In attempting to reach such an agreement, the parties shall take into consideration the criteria set forth in Appendix B to this Decree. If the parties cannot agree on an alternative, the dispute resolution procedures set forth in Section 13.2 of this Decree shall apply.

3.2.14 Upon successful operation of the homeownership demonstration program discussed in Section 3.2.2.1 of this Decree, the parties will consider using some of the 1,342 Special Certificates as part of a homeownership program, including a "rent to own" strategy.

3.2.15 To the extent it accords with applicable laws and HUD regulations and procedures, HUD will make FHA

single-family or multi-family property disposition units available to the Local Defendants for use with the subsidies provided under Section 3.2.1, 3.2.2, or 3.2.3 of this Decree, to develop homeownership units, project-based rental or other hard units in accordance with applicable laws and HUD regulations and procedures.

3.3 Other Provisions

3.3.1 HUD shall give no lesser priority to the funding and renewal of the certificates described in Sections 3.1.1, 3.2.2, and 3.2.3 of this Decree, than to Section 8 or successor program subsidies provided under other litigation settlements and consent decrees. If Congress fails to appropriate monies that HUD determines can be used to fund rental assistance sufficient to fund the certificates to be provided pursuant to Section 3.2.3 of this Decree by the end of Federal Fiscal Year 1999, the comparable relief provisions of this Decree at Section XVII shall apply.

3.3.2 If and when the Mobility Counselor ceases operation due to the depletion of its funding, the Special Certificates will be used without the special conditions imposed by this Decree.

3.3.3 If unutilized URD project-based subsidies are converted to use as Tenant-based subsidies pursuant to Section 3.2.13(a), the special conditions imposed by this Decree will terminate after a total of fifteen years of assistance from the date of the conversion of those subsidies to use as tenant-based subsidies.

IV. FAIRFIELD HOMES REPLACEMENT PLAN

4.1 Upon the execution of this Decree, the HABC shall amend its Fairfield Homes Replacement Housing Plan to provide for:

a) Twenty (20) units of conventional public housing in the 700, 800 and 900 blocks of East Preston Street;

b) 110 units of conventional public housing, to be built on the Lafayette Courts site, which will be funded by the Local Defendants with state PRHP funds and/or supplementary city funds and/or private funds, and regarding which the HABC may submit to HUD an allocation plan that will allocate these units for elderly housing;

c) Thirty-eight (38) scattered-site units in the Sandtown area that are being developed by HABC and financed with State PRHP funds;

d) 170 units of conventional public housing constructed on the site of Lexington Terrace in conformity with the terms of this Decree.

4.2 The units referred to in Sections 4.1(b) and 4.1(c) above shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these units are developed in accordance with federal public housing development requirements, they will receive, subject to the availability of appropriations, operating subsidies as provided under Section 9 of that Act or a successor provision of law.

4.3 HUD will approve the allocation plan for elderly housing referred to in Section 4.1(b) above if that plan complies with applicable law and regulations.

4.4 The demolition of Fairfield Homes shall not be considered a prohibited activity under this Decree.

4.5 The Local Defendants will take all other actions necessary to replace Fairfield Homes in accordance with Section 4.1 of this Decree.

V. LAFAYETTE COURTS REDEVELOPMENT PLAN

5.1 On or before the date of execution of this decree, HABC will prepare a Redevelopment Plan for Lafayette Courts that is consistent with, and incorporates the terms of, this Partial Consent Decree. The Redevelopment Plan for Lafayette Courts shall provide for:

a) 228 hard units on the Lafayette Courts site, of which 130 units will be funded with URD dollars that have already been awarded to Baltimore City and ninety-eight (98) units with State PRHP and/or supplementary City funds. The ninety-eight (98) units developed with State and/or supplementary City funds shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these 228 units are developed in accordance with federal public housing development requirements or the URD requirements, as applicable, they will receive, subject to the availability of appropriations,

operating subsidies as provided under Section 9 of the U.S. Housing Act or a successor provision of law.

i) 210 of these 228 hard units of housing will be sited on the West block of Lafayette Courts known as the "Superblock," and will be subdivided for future condominium, cooperative or fee simple homeownership under a plan to be developed by the Local Defendants in accordance with State law. The units fronting on Aisquith Street shall be subdivided in fee simple, and all other units will be subject to a vertical subdivision to the extent permitted by law.

ii) Eighteen (18) of the 228 hard units will be transitional housing for teen parents sited on the Mid-block. The units will be constructed with State PRHP funds and/or supplementary City funds.

b) 345 of the 1,342 certificates referenced in section 3.1.1 of this Decree;

c) At least 168 homeownership units in Non-impacted Areas and/or project-based URD rental subsidies for units in Non-impacted Areas at a cost of no more than \$18,648,000 (pursuant to Sections 3.2.1 and 3.2.1.2 of this Decree);

d) Ten (10) hard units developed at the Montpelier Apartments site with State PRHP funds and/or supplementary City funds;

e) Forty (40) hard units developed in Non-impacted Areas under the RFP procedures in Section 3.2.5 et. seq. of this Decree with State PRHP funds and/or supplementary City funds, to be funded no later than State Fiscal Year 1998 and ready for

occupancy no later than six and one-half (6½) years from the date of approval of this Decree.

5.2 The HABC may build up to 110 one-bedroom units on the Lafayette Courts site, as provided in Sections 4.1 and 4.3 of this Decree.

5.3 The fifty (50) hard units referred to in Sections 5.1(d) and 5.1(e) above shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these units are developed in accordance with federal public housing development requirements, they will receive, subject to the availability of appropriations, operating subsidies as provided under Section 9 of that Act or a successor provision of law.

VI. DEMOLITION AND REDEVELOPMENT OF OTHER HIGH RISE DEVELOPMENTS

6.1 With regard to Lexington Terrace, Flag House Courts, and Murphy Homes, the right of tenants and tenant councils to involvement in the demolition, redevelopment or replacement housing plan process, to the extent authorized by law, shall include the Plaintiffs.

6.2 The City of Baltimore and HABC will expeditiously develop comprehensive Redevelopment Plans, including relocation plans, for Lexington Terrace, Flag House Courts, and Murphy Homes. In the case of Lexington Terrace, the sections in the September 1, 1995 revised URD application relating to on-site development shall constitute a comprehensive Redevelopment Plan as to on-site development as meant by this section. These plans

will incorporate the commitments of the parties under this Decree, will not delay the demolition of these projects as required by Section 6.3 of this Decree, and are independent of any replacement housing plan required by Section 18 of the U.S. Housing Act of 1937. The Redevelopment Plans will be developed based on a strong participatory process that includes residents and resident organizations, local educational institutions, foundations, churches, financial institutions, non-profit organizations, and community leaders who have a demonstrated interest in improving the quality of housing and other opportunities for public housing families, in addition to HABC staff and representatives of City agencies. In the case of Lexington Terrace, the participatory process as meant by this section shall be the process required by the URD statute as implemented by HUD.

6.2.1 The Redevelopment Plan for Lexington Terrace shall be submitted to HUD within 120 days of the execution of this Decree, and shall be consistent in all respects with the URD agreement relating to Lexington Terrace, as awarded and as may be amended. The submission of demolition applications required under this Decree and the actual demolition discussed in Section 6.3 shall not be delayed by the provisions of this Section. The Redevelopment Plans for Flag House Courts and Murphy Homes shall be submitted to HUD within one (1) year of the execution of this Decree, provided that the submission of demolition applications required under this Decree and the actual demolitions will not be delayed.

6.2.2 At least sixty (60) days before a Redevelopment Plan is submitted to HUD, HABC shall provide complete copies of the draft Plan to the Plaintiffs and resident organizations, and shall cooperate with the project Resident Council to provide all households residing in the project with an executive summary of the Plan. HABC shall solicit comment by Plaintiffs and resident organizations prior to making the Plan final, and shall provide a thirty-day period for comment by Plaintiffs and other residents. HABC shall either modify the Plan or provide the parties with an explanation as to why it should not be modified, as part of the Redevelopment Plan submitted to HUD. To assure that residents have an opportunity to comment on the Redevelopment Plans, the HABC shall notify the residents that they may apply for technical assistance from independent consultants and HABC will underwrite expenses incurred to disseminate information to project residents.

6.2.3 All draft RFPs for the development of units under the Redevelopment Plans for Lexington Terrace, Murphy Homes, and Flag House Courts will be submitted by the HABC to the Plaintiffs' representative for their review and comment pursuant to the procedure set forth in Paragraph 3.2.8 of this Decree.

6.2.4 Proposals received by the HABC in response to the RFPs discussed in section 6.2.3 above shall be evaluated and ranked by an RFP Review Panel that includes, but is not limited to, one member selected by the representative of the Plaintiff class and one member selected by the affected resident organizations.

6.2.5 The RFP Review Panel shall evaluate and rank proposals in accordance with the criteria in the RFP and applicable laws and regulations. HABC shall select proposals in accordance with available funding, and, unless it demonstrates good cause to the contrary, in accordance with the recommendations of the RFP review panel.

6.3 Demolition Applications

6.3.1 As soon as practicable, but no later than thirty (30) days from the approval of this Decree, HABC and the City of Baltimore will submit to HUD a demolition application and, if required by law, a Replacement Housing Plan for the replacement of Lexington Terrace. As soon as practicable, but no later than sixty (60) days from the approval of this Decree, HABC and the City of Baltimore will submit to HUD demolition applications and, if required by law, Replacement Housing Plans for the replacement of Flag House Courts and Murphy Homes. The demolition applications and Replacement Housing Plans shall be consistent with and incorporate the commitments of the parties under this Consent Decree. The HABC shall provide counsel for Plaintiffs with a copy of the demolition applications and Replacement Housing Plans when they are submitted to HUD.

6.3.2 HUD shall expeditiously approve the demolition applications, and any replacement housing plans required by law, submitted by HABC and the City pursuant to Section 6.3.1 above, if they satisfy applicable statutory and regulatory requirements and the commitments by the parties under this Decree, or shall expeditiously direct HABC to make specific modifications to

bring the applications and replacement plans into compliance with applicable law and this Decree.

6.3.3 The demolition of Lexington Terrace, Murphy Homes, and Flag House Courts will be fully completed as follows: Lexington Terrace will be demolished in 1996; either Murphy Homes or Flag House Courts will be demolished between 1998 and 2000; and the third of these projects will be demolished no later than 2001.

6.4 Lexington Terrace, Flag House Courts and Murphy Homes units demolished shall be replaced at the earliest practicable date in accordance with the provisions of this Decree. The redevelopment units shall house at least the same number of individuals and families which could be served by the housing to be demolished, and demolished units will not be replaced with housing units designated for elderly or disabled only occupancy except insofar as specifically provided in section 6.5(a) of this Decree. Nothing in this Section shall affect the provisions of Section 3.1.1 of this Decree.

6.5 On-site Housing: Subject to Sections 6.5.1 and 6.5.2 of this Decree, hard units shall be constructed on the sites of Lexington Terrace, Flag House Courts and Murphy Homes as follows and shall be ready for occupancy no later than three (3) years after the date of each demolition:

(a) Lexington Terrace: In addition to the 170 units referred to in Section 4.1(d) of this Decree, the Local Defendants will develop 133 rental units (100 of which will be one-bedroom, elderly units) and 113 Nehemiah eligible-

homeownership units (see Public Law No. 100-242 (1987)) in accordance with the Lexington URD, as may be amended. Thirty-five (35) of the elderly units and the thirty-three (33) non-elderly rental units shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these units are developed in accordance with federal public housing development requirements, they will receive, subject to the availability of appropriations, operating subsidies as provided under Section 9 of the Act or a successor provision of law.

(b) Flag House Courts: The Local Defendants will develop 130 hard units with State PRHP funds and/or supplementary City funds. In the event that PRHP funds or supplementary City funds are not available to fund any or all of these units, the unfunded units shall be funded with other funds lawfully available to the Local Defendants that can be used for that housing purpose. The Local Defendants shall make a determination whether such funds are available, and shall notify the parties of their determination and the basis for it. In the event of a dispute, the dispute will be resolved pursuant to the procedures discussed in Section 13.2 of this Decree. Nothing herein shall preclude or prevent the Federal Defendants from exercising any authority or pursuing any other remedy available to the federal government with regard to the availability or use of such funds.

i) The units discussed in subsection (b) above shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these units are developed in accordance with federal public housing development requirements, they will receive, subject to the availability of appropriations, operating subsidies as provided under Section 9 of the U.S. Housing Act of 1937 or a successor provision of law. The Local Defendants will not develop low-income housing units on this site other than the 130 hard units referenced above.

(c) Murphy Homes: The Local Defendants will develop seventy-five (75) hard units with State PRHP funds and/or supplementary City funds. These units shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these units are developed in accordance with federal public housing development requirements, they will receive, subject to the availability of appropriations, operating subsidies as provided under Section 9 of the U.S. Housing Act of 1937 or a successor provision of law. The Local Defendants will not develop low-income housing units on this site other than the seventy-five (75) hard units referenced above.

6.5.1 At least fifty percent (50%) of the units located on the Flag House Courts site and the Murphy Homes site after redevelopment must be Non-subsidized Market-rate units to be

developed by the Local Defendants. To the maximum extent feasible, the hard units referred to in Sections 6.5(b) and 6.5(c) above shall be physically integrated with the market rate units at Murphy Homes and Flag House Courts. Any party may move for the modification of Section 6 as it pertains to Flag House Courts and Murphy Homes, if such party demonstrates that the Non-subsidized Market-rate development is impossible in spite of its best efforts, provided that no such modification shall increase the financial obligations of the Federal Defendants under this Decree.

6.5.2 The HABC shall adopt and implement, with the technical assistance of HUD and in consultation with the plaintiffs, a strategy to affirmatively market the non-subsidized market rate units, which strategy shall include specific steps to solicit applications from families in the housing market who are least likely to apply without special outreach.

6.6 Off-site Housing: The remaining 1639 demolished housing units for Lexington Terrace, Flag House Courts, and Murphy Homes shall be redeveloped as follows:

- (a) 956 of the certificates provided pursuant to Section 3.1.1 of this Decree;
- (b) 496 of the certificates provided by HUD pursuant to Section 3.2.2 of this Decree;
- (c) 188 hard units developed off-site, of which eighty-five (85) will be located in Sandtown (the 25 "Stricker Street" units and the 60 units from "Sandtown Packages 4 and

5"), eleven (11) will be located on Old Frederick Road (the "Mutual Housing" units), thirty (30) at Norwood Gardens, and sixty-two (62) at the three Mount Pleasant sites. The units at Norwood Gardens and Mount Pleasant will be physically integrated with other units at those sites that are not part of this Decree. These 188 units will be developed using State PRHP funds and/or supplementary City funds, and shall be ready for occupancy no later than six and one-half (6½) years from the date of approval of this Decree.

6.6.1 The 188 hard units referred to in Section 6.6(c) above shall be developed in accordance with federal public housing development requirements and shall be operated as low-income housing under the U.S. Housing Act of 1937 or a successor provision of law. If these units are developed in accordance with federal public housing development requirements, they will receive, subject to the availability of appropriations, operating subsidies as provided under Section 9 of the U.S. Housing Act of 1937 or a successor provision of law.

6.7 In addition to the on-site and off-site housing discussed in Sections 6.5 and 6.6 above, the Local Defendants will develop thirty (30) homeownership units in the Poppleton area under the funding designated in the Lexington URD, as may be amended.

6.8 Should Section 18 of the U.S. Housing Act of 1937 require the HABC to submit a Replacement Housing Plan for Lexington Terrace, Flag House Courts, and/or Murphy Homes, the housing developed pursuant to this Decree shall be considered

replacement housing under Section 18 as set out in Appendix D to this Decree.

VII. ALLOCATION OF SPECIAL CERTIFICATES

7.1 Eligible families shall be selected to participate in the Special Certificate program in accordance with the process and priorities set out in Section 7.3 of this Decree. Families which do not meet Section 8 eligibility criteria, or have one or more members who have engaged in the actions or inactions (e.g., certain criminal activity) described in 24 C.F.R. 982.552, 60 Fed. Reg. 34714-34715 (July 3, 1995), will not be offered a Special Certificate by the HABC or by the Mobility Counselor. A family using a Special Certificate under this Decree may voluntarily participate in a housing authority Family Self Sufficiency (FSS) program within the meaning of 24 C.F.R. Part 984. To the extent permitted by law, the escrow account created on behalf of such a participating family may be used for homeownership. The Mobility Counselor shall advise the family in writing that participation in a FSS program is voluntary.

7.2 Within ninety (90) days of entry of this Decree, HUD, in consultation with the parties, shall decide upon the process and timetable for distribution of the tenant-based certificates awarded under Section 3.1.1 of this Decree.

7.3 Selections of families shall be made in the following order of priority:

7.3.1 First, pursuant to Sections 3.1.3.1 and 3.1.3.2 and XIX, HABC shall provide certificates to displacees and to the named plaintiffs listed in Section 2.15 of this Decree. HABC

shall assure itself it has sufficient certificates to meet the needs of this group before making any Special Certificates available to the other priority groups.

7.3.2 Second, HABC shall provide certificates to relocatees who wish to move to Non-impacted Areas.

7.3.3 Third, to other public housing residents living in projects, including scattered-site, with 75% or more African-American residency in Impacted Areas who wish to move to a Non-impacted Area. Within this category, HABC will design a process that gives special consideration to:

(a) Families with prior applications for Section 8 assistance or requests for transfer;

(b) Families with an urgent need for relocation, including but not limited to: a documented health condition of a family member, or the need of a family member to obtain housing closer to a place of employment, education or training; and

(c) Families with children, provided that a head of household is willing to participate in an appropriate job training program. Refusal to participate in a FSS program as provided in 24 C.F.R. Part 984 shall not deprive a family of a preference under this subsection.

7.3.4 Fourth, to public housing applicants, on the waiting list as of the date of execution of this Decree, living in Impacted Areas who wish to move to a Non-impacted Area.

7.3.5 Fifth, to Section 8 applicants, on the waiting list as of the date of execution of this decree, to the extent that

they are not entitled to any higher priority under this Decree, living in Impacted Areas who wish to move to a Non-Impacted Area.

VIII. MOBILITY COUNSELING SERVICES

8.1 All of the certificates awarded under this Decree that are used as tenant-based certificates under this Decree are Special Certificates, except as provided in Sections 3.1.3.1 and 3.1.3.2.

8.2 Upon approval of this Decree, HUD hereby commits \$3,375,550 in funding authority from Federal Fiscal Year 1995 funds to the HABC to create a Mobility Counseling program, designed to counsel and assist persons seeking to use the Special Certificates awarded under this Decree.

8.2.1 Within sixty (60) days after approval of this Decree, HUD shall award the funding authority referenced in Section 8.2 for use in the Mobility Counseling program.

8.2.2 With regard to any Project based Certificates that are converted to use as Tenant based Certificates pursuant to Section 3.2.13(a) of this Decree, the HABC shall contribute \$275 per certificate, minus that portion of the \$275 which has been expended prior to the determination that the certificates should be converted to tenant-based use.

8.2.3 The Local Defendants, in cooperation with the Mobility Counselor, shall make all reasonable efforts to secure additional funding, including charitable grants and federal formula or block grant funding, in the event the budgeted amounts are insufficient or additional funding is required to

provide the specified services and tasks as the Special Certificates turnover and are reissued to other families.

8.3 All of the Special Certificates shall be administered in conjunction with a mobility counseling program to be administered by a nongovernmental entity ("the Mobility Counselor").

8.3.1 HABC may not release certificates for use as Special Certificates until it certifies that mobility counseling services are available to each recipient of the Special Certificates involved, although HABC may continue to administer its Regular Certificate program without restriction. Each family selected to receive a Special Certificate must complete the initial stage of the Mobility Counseling program in order to obtain the Certificate.

8.3.2 Within thirty (30) days of approval of this Decree by the Court, the parties shall convene a panel composed of one member selected by the Plaintiffs, one selected by HUD, and one selected by the Local Defendants. Within 120 days of the approval of this Decree, the panel will decide upon the design of the Mobility Counseling program, including the minimum acceptable percentage of Special Certificates being used within the maximum total period of search time (150 days) allowed under Sections 3.1.2 and 3.1.3.2 of this Decree ("the minimum acceptable percentage"); the process and criteria for selection of the Counselor; and objective criteria to be used in evaluating the Counselor's performance ("performance criteria"). If agreement among the panel concerning the design of the

program and the performance criteria cannot be reached, the dispute resolution procedures of Section 13.2 of this Decree shall apply. The City will draft a solicitation or RFP to advertise for provision of mobility counseling services, and the responses will be evaluated by the panel. Any decision to select, retain or terminate the Contractor may not be effectuated unless HUD concurs in writing with the decision, except with regard to performance-based terminations as provided in Section 8.3.3.

8.3.3 The initial term of the Mobility Counselor's contract shall be one (1) year. The panel will evaluate the counselor's performance on an annual basis pursuant to the performance criteria discussed in Section 8.3.2, and decide whether to renew the contract. Any such decision may not be effectuated unless HUD concurs in writing with the decision, except that the provisions of Section 13.2 of this Decree shall apply in the event of a dispute concerning the termination of the Contractor on performance grounds.

8.3.4 Before making any decision described in Sections 8.3.2. and 8.3.3 of this Decree, except for the determination of the minimum acceptable percentage, the panel shall consult and, as appropriate, share information with the counties in the Baltimore Housing Market.

8.3.5 The panel will conduct a review of the utilization of the Special Certificates within one (1) year of the commencement of the counseling and annually thereafter. If the panel finds that less than the minimum acceptable percentage of

Special Certificates is being used with the special conditions imposed by this Decree within the allotted maximum search period of 150 days, then it will consider whether any changes are necessary to facilitate the use of the certificates and decide upon how to implement such changes. But in any event, the panel will not alter or abrogate any of the special conditions, including the geographic conditions, imposed on the use of the certificates by this Decree until three (3) years after the approval of this Decree. Before deciding whether to alter or abrogate any of the geographic conditions, the panel shall consult and, as appropriate, share information with the counties in the Baltimore Housing Market. If agreement among the panel cannot be reached, the dispute resolution procedures of Section 13.2 shall apply.

8.4 Duties of the Mobility-Counselor

The Mobility Counselor shall:

8.4.1 Develop and implement a strategy to market participating families holding Special Certificates to landlords in Non-impacted Areas and coordinate recruitment of landlords (see Part III of Appendix C to this Decree) in Non-impacted Areas throughout the Baltimore Housing Market for the Special Certificate program;

8.4.2 Provide families with detailed information about locational options in Non-impacted Areas and maintain listings of available vacancies;

8.4.3 To the extent possible, refer each family to at least three (3) identified vacancies in Non-impacted Areas that are located in neighborhoods selected by the family;

8.4.4 Provide services to assist families as they look for housing, including transportation, escort services, and child care;

8.4.5 Provide counseling, as needed, to families to assist them to pass standard tenant-screening procedures;

8.4.6 Assist families with needed transitions after the move, including help in locating schools, churches, child care, employment, social services, and, insofar as practicable, assistance in reducing the sense of isolation or in resolving disputes with neighbors;

8.4.7 Provide appropriate referrals to families who encounter illegal discrimination or harassment; and

8.4.8 Advise the HABC if it believes that FMRs are too low and are inhibiting the success of the program.

IX. HUD ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING AND OVERCOME IMPEDIMENTS TO METROPOLITAN-WIDE FAIR HOUSING AND LOCATIONAL CHOICE

9.1 In connection with Consolidated Plan submissions of the Baltimore Housing Market jurisdictions to HUD as provided under 24 C.F.R. Part 91, as amended, 60 Fed. Reg. 1896 et seq. (January 5 1995), HUD shall require each jurisdiction to submit a certification that the jurisdiction will affirmatively further fair housing. This certification means the jurisdiction will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to

overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. The analysis of impediments that the local governmental units certify to conduct shall include the identification of their policies which affect opportunities of minority households to select housing in the jurisdiction. In the event that HUD subsequently adopts regulations that conflict with this paragraph, the subsequent regulations shall prevail.

9.2 All parties shall promptly report to one another, in writing, any significant opposition that is communicated to, or that otherwise comes to the attention of, any party regarding any hard unit housing acquisition or development opportunity being pursued by HABC and/or developers pursuant to this Decree.

The parties shall likewise report any significant improper opposition that is communicated to, or that otherwise comes to the attention of, any party regarding the efforts of the Mobility Counselor to publicize the mobility program and to refer participants to landlords in Non-impacted Areas throughout the Baltimore Housing Market. Any unlawful form of such opposition shall, in addition, be promptly reported to cognizant legal authorities. HABC shall not fail to pursue, and HUD shall not fail to approve, where such approval is necessary, any hard unit housing acquisition or development opportunity governed by this Decree because of unlawful opposition from any person or entity.

9.3 In the event HUD determines that any person or local government receiving federal funds for housing and urban

development is unlawfully impeding or failing to cooperate with proposals by the Local Defendants or private developers to site hard unit housing provided under this Decree within a neighboring jurisdiction, with the efforts of Special Certificate holders to lease units within the neighboring jurisdiction, or with the efforts of the Mobility Counselor to market the program to landlords operating housing in neighboring jurisdictions, HUD shall take whatever enforcement action it deems appropriate against that person or local governmental entity to enforce such obligations. In addition, HUD shall, if it deems it appropriate, refer determinations of non-compliance to other federal executive agencies for review and possible issuance of sanctions with respect to that agency's funding of the recipient, pursuant to Presidential Executive Order 12892 of January 17, 1994 (Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing). The City and HABC may consult with HUD in developing strategies, including incentives, to encourage cooperation by all jurisdictions within the Baltimore Housing Market outside of Baltimore City, with respect to the development of hard unit housing provided under this Decree, if such cooperation is necessary, regardless of whether the jurisdictions are currently recipients of HUD funding. Nothing in the preceding sentence shall be construed as obligating HUD to provide funding beyond that which is specifically provided in this Decree.

9.4 In the event HABC seeks to develop public housing pursuant to this Decree in Non-impacted Areas outside of

Baltimore City, HUD shall send a letter to the chief executive officer of each local governmental jurisdiction in the Baltimore Housing Market (other than Baltimore City) which is a recipient of federal housing and urban development funds. HUD shall provide the other parties with a copy of this letter and a list of the recipients. The letter to the chief executive officers shall:

9.4.1 Inform them about the Redevelopment Housing provisions in the Decree;

9.4.2 Encourage them to enter into cooperation agreements, if necessary, with the HABC or another public housing agency for the development of public housing units pursuant to this Decree;

9.4.3 Advise them that failing to enter into a cooperation agreement with HABC or another public housing agency regarding public housing redevelopment units will be taken into consideration by HUD in determining whether they are failing to comply with their certifications to affirmatively further fair housing.

9.5 Although HUD does not concede that any provision of this Decree grants the Court jurisdiction to review any HUD enforcement decision regarding the redevelopment housing or relocation assistance discussed in this Decree, HUD recognizes its responsibilities under Section 808(e)(5) of the Fair Housing Act (42 U.S.C. § 3608(e)(5)), which requires it to administer its programs in a manner to affirmatively further fair housing, and will make enforcement decisions in a manner that it decides in its discretion is consistent with that section.

9.6 HUD shall advise the owners, operators, and managers (hereinafter "owners") of FHA-insured or other assisted housing developments (not including public housing and project-based owners) in the Baltimore Housing Market of, and invite the owners' participation in, the process of filling vacancies in assisted developments from among Special Certificate holders referred by the Mobility Counselor. The notice shall include materials with which the owners can register to participate in this process.

9.7 Based upon information provided by the plaintiffs, HUD shall advise the owners, operators, and managers of Low-Income Housing Tax Credit properties and other properties receiving assistance from non-Federal sources in the Baltimore Housing Market concerning the existence of this Decree, and invite them to accept prospective tenants from among Special Certificate holders referred by the Mobility Counselor.

X. SCOPE OF DECREE AND DISMISSAL AND RELEASE OF CLAIMS

10.1 Upon Court approval of this Decree, and except as otherwise provided in this Decree, the Plaintiffs, for themselves, and all members of the class they represent, and their successors, heirs, and assigns, hereby withdraw, release and forever discharge each of the Federal Defendants, and their successors, employees, agents, attorneys, officers, directors, trustees, subsidiaries, heirs, assigns, and personal representatives, from every claim, claim for relief, right, cause of action, suit and issue, known and unknown, contingent or liquidated, asserted or unasserted, with respect to the site

selection, site approval, acquisition, construction, development, density, operation, maintenance, modernization, improvement, neighborhood improvement, rehabilitation, replacement, re-development, relocation, displacement, disposition, funding, administration, monitoring, supervision, oversight, or enforcement, or any similar claim, with regard to the Housing Projects, including any claim concerning the lawfulness of the replacement housing or Redevelopment Housing for those projects and any claim involving alleged segregation, alleged failure to desegregate or disestablish segregation, or alleged failure to affirmatively further fair housing with respect to the Housing Projects, from the beginning of time through the date upon which the obligations of the Federal Defendants under this Decree terminate. This release does not release Plaintiffs' claims against the Federal Defendants as to other Baltimore City family public housing; does not release any claim by Plaintiffs for attorneys' fees and costs; and does not release any claims by plaintiffs for prospective injunctive relief as to tenant selection and assignment so long as that relief does not require the expenditure of more than de minimis federal funds in the performance of ministerial duties or actions. This release does not release any claims which members of the Plaintiff class did not assert and could not have asserted in this litigation prior to the date this Consent Decree is approved by the Court, to the extent that such future claims are unrelated to any claim involving alleged segregation, alleged failure to desegregate or disestablish segregation, or

alleged failure to affirmatively further fair housing with respect to the Housing Projects, or any similar claim.

10.2 Upon Court approval of this Decree, and except as otherwise provided in this Decree, the Plaintiffs, for themselves, and all members of the class they represent, and their successors, heirs, and assigns, hereby withdraw, release and forever discharge each of the Local Defendants, and their successors, employees, agents, attorneys, officers, directors, trustees, subsidiaries, heirs, assigns, and personal representatives, from every claim, claim for relief, right, cause of action, suit and issue, known and unknown, contingent or liquidated, asserted or unasserted, with respect to the site selection, site approval, acquisition, development, density, modernization, rehabilitation of on-site units, replacement, redevelopment, relocation, displacement, construction, disposition, funding for Redevelopment Housing, improvements to Redevelopment Housing units, monitoring, supervision, oversight, enforcement or any similar claims, with regard to the Housing Projects, including any claim concerning the lawfulness of the Replacement Housing for those projects and any claim involving alleged segregation, alleged failure to desegregate or disestablish segregation, or alleged failure to affirmatively further fair housing with respect to the Housing Projects, from the beginning of time through the date upon which the obligations of the Local Defendants under this Decree terminate. This release does not release Plaintiffs' claims against the Local Defendants as to other Baltimore City family public

housing; does not release any claim by Plaintiffs for attorneys' fees and costs; and does not release any claims by Plaintiffs against the Local Defendants for relief as to tenant selection and assignment. This release does not release any claims members of the Plaintiff class did not assert and could not have asserted in this litigation prior to the date this Consent Decree is approved by the Court, to the extent that such future claims are unrelated to any claim involving alleged segregation, alleged failure to desegregate or disestablish segregation, or alleged failure to affirmatively further fair housing with respect to the Housing Projects, or any similar claim.

10.2.1 Section 10.2 does not release Plaintiffs' claims for relief against the Local Defendants for equalization and/or neighborhood improvement with respect to activities and conditions at the Housing Projects and Redevelopment Housing sites that post-date the execution of this Decree, provided that such claims may not be based in whole or in part on site selection, site approval, acquisition, development, density, construction, modernization, rehabilitation of on-site units, replacement, re-development, improvements to Redevelopment Housing units, relocation, displacement, funding for development of Redevelopment Housing, monitoring, supervision, oversight or enforcement with respect to the Housing Projects and Redevelopment Housing.

10.3 In resolving the merits of Plaintiffs' remaining claims, no party shall seek to introduce evidence with regard to any alleged action or proposed action, or inaction, by the

Federal Defendants with regard to the demolition and development of replacement housing or Redevelopment Housing for the Housing Projects. The parties intend, however, that this Partial Consent Decree shall have no effect on the Court's consideration of any defense of laches, statute of limitations, or standing raised by the Federal Defendants that Plaintiffs may overcome by showing a continuing violation of the law, and the parties shall be free to seek to introduce, and to interpose objections to the introduction of, any evidence relevant to these defenses. In the event evidence is introduced relevant to these defenses that would otherwise be inadmissible pursuant to this section (10.3), that evidence shall be introduced for the sole and specific purpose of rebutting the evidence raised by the Federal Defendants, and may not be used for any other purpose and may not be used to enhance the relief Plaintiffs seek from the Federal Defendants.

10.4 In resolving the merits of Plaintiffs' remaining claims, no party shall seek to introduce evidence with regard to any alleged action or proposed action, or inaction, by the Local Defendants with regard to the demolition and development of replacement housing for the Housing Projects, except that Plaintiffs may seek to introduce such evidence to prove their tenant selection and assignment claims against the Local Defendants and, consistent with Sections 10.2 and 10.2.1 of this Decree, to prove their equalization/neighborhood improvement claims against the Local Defendants or to obtain such relief from the Local Defendants, and nothing in this Decree shall be

interpreted to restrict the introduction of such evidence for that purpose. The parties intend, however, that this Partial Consent Decree shall have no effect on the Court's consideration of any defense of laches, statute of limitations, or standing raised by the Local Defendants that Plaintiffs may overcome by showing a continuing violation of the law, and the parties shall be free to seek to introduce any evidence relevant to these defenses. In the event evidence is introduced to rebut these defenses that is otherwise inadmissible pursuant to this Section (10.4), that evidence shall be introduced for the specific purpose of rebutting the evidence raised by the Local Defendants, and may not be used for any other purpose and may not be used to enhance the relief Plaintiffs seek from the Local Defendants.

10.5 This Partial Consent Decree is not a comprehensive settlement of the claims set forth in Plaintiffs' Complaint against the Federal Defendants, and Plaintiffs and Federal Defendants reserve the right to contest the merits of all of Plaintiffs' claims against the Federal Defendants not expressly released herein. Nothing in Section 10.1 shall be construed to prohibit Plaintiffs from seeking to introduce against the Federal Defendants evidence related to the Housing Projects not specifically deemed inadmissible pursuant to Section 10.3 for purposes of proving Plaintiffs' remaining claims against the Federal Defendants, as not released above in Section 10.1 of this Decree, through evidence that the Federal Defendants established and failed to disestablish segregation or failed

affirmatively to further fair housing in Baltimore City's public housing system as a whole. Defendants reserve the right to interpose all other possible objections to the introduction of such evidence. The relief that could be awarded against the Federal Defendants with respect to any such claim, if established, would be limited by the provisions of Sections 10.1 and 10.3, and would be consistent with the provisions of Section 10.7.

10.6 This Partial Consent Decree is not a comprehensive settlement of the claims set forth in Plaintiffs' Complaint against the Local Defendants, and Plaintiffs and Local Defendants reserve the right to contest the merits of all of Plaintiffs' claims against the Local Defendants not expressly released herein. Nothing in Section 10.2 shall be construed to prohibit Plaintiffs from seeking to introduce against the Local Defendants evidence related to the Housing Projects and Redevelopment Housing not specifically deemed inadmissible pursuant to Sections 10.2.1 and 10.4 for purposes of proving Plaintiffs' remaining claims against the Local Defendants, as not released above in Sections 10.2 and 10.2.1, through evidence that the Local Defendants established and failed to disestablish segregation or failed affirmatively to further fair housing in Baltimore City's public housing system as a whole. Defendants reserve the right to interpose all other possible objections to the introduction of such evidence. The relief that could be awarded against the Local Defendants with respect to any such claim, if established, would be limited by the provisions of

Sections 10.2 and 10.4 and would be consistent with the provisions of Section 10.7.

10.7 In the event Plaintiffs prevail as to their remaining claims and the Court awards, as part of any final relief, relief in the form of "desegregative housing opportunities," each of the Defendants shall receive credit for the relief provided in this Decree in accordance with a formula to be determined by the parties or, if the parties cannot reach agreement, by the Court that shall provide at a minimum that each of the Defendants receives one credit for each Special Certificate with mobility counseling provided pursuant to this Decree, and for each project-based unit and for each hard unit located in a Non-impacted Area. However, Defendants will not claim a credit for providing a "desegregative housing opportunity" for the use of a Special Certificate by a non-minority family. If as part of any final relief, the Court awards relief in a form other than "desegregative housing opportunities," each of the Defendants shall receive credit for the relief provided in this Decree in accordance with a formula to be determined by the parties or, if the parties cannot reach agreement, by the Court. The Defendants shall not be denied any credits or have their credits reduced due to the action or inaction of Plaintiffs or any non-party. The Federal Defendants shall not be denied credits or have their credits reduced due to the action or inaction of any of the Local Defendants, and the Local Defendants shall not be denied credits or have their credits reduced due to the action or inaction of any of the Federal Defendants.

10.8 Upon approval of this Decree, Plaintiffs will withdraw with prejudice their Motion for Preliminary Injunction, and the parties will submit a joint stipulation of dismissal with prejudice in accordance with Sections 10.1, 10.2, and 10.2.1 of this Decree.

XI. CLASS CERTIFICATION

11.1 The parties agree that the Plaintiff class should be certified and defined as follows:

All African-Americans who resided in Baltimore City family public housing units at any time between January 31, 1995 and the date of approval of this Decree, who presently reside in Baltimore City family public housing units, or who will in the future reside in Baltimore City family public housing units prior to the time the Defendants' obligations under this Decree, exclusive of any provision of operating subsidies, terminate.

The Defendants expressly reserve the right to seek decertification or modification of this class, or any subclass, for any purpose other than this Partial Consent Decree. All of the parties' obligations under this Decree are conditioned upon the Court's certification of a Plaintiff class that is broad enough to include, at a minimum, all such current and future residents.

11.2 Upon execution of this Partial Consent Decree by all parties, the parties shall promptly file it with the District Court and request that the Court enter an order:

(a) certifying a class as stated in Section 11.1 of this Decree;

(b) preliminarily approving the proposed Decree as fair, reasonable, and adequate;

(c) approving publication and dissemination of a class action notice describing the settlement terms, the date of the fairness hearing, and the right to comment or object; and

(d) scheduling a hearing to determine the fairness, reasonableness, and adequacy of the proposed settlement and whether the Court will approve the Consent Decree.

11.3 Pursuant to Federal Rule of Civil Procedure 23(e), all known class members shall be given notice, the form of which shall be agreed upon by counsel for all parties, or determined by the Court in the event that there is no such agreement, of the terms of this Decree and their right to object to the terms thereof. HABC shall post the notice in all HABC offices and other government and social service agency offices where class members are likely to frequent, as well as pay for radio announcements. Special means, including but not limited to translation of notices, shall be devised to provide effective notice to foreign language speakers. HABC shall also mail (with address correction requested) or deliver the notice to all known class members. HABC will publish the class notice for one day in a Sunday edition of The Baltimore Sun, for one day in The Afro American, as well as community newspapers serving predominantly minority areas of Baltimore City. Counsel for all parties shall be provided a copy of the addresses of all persons to whom notice is mailed or delivered. Class members will have until ten (10) days before the date of the fairness hearing within which to file written objections to the proposed terms of this Decree. Between the execution of this Decree and the

fairness hearing, the Defendants shall direct all inquiries from class members regarding the Decree to Plaintiffs' counsel. For the purposes of this section, the date of execution of this Decree is the date that the last party executes the Consent Decree.

11.4 A fairness hearing shall be held at such time and place as ordered by the Court to consider whether this proposed Decree should be approved as fair, reasonable, and adequate. Any class member who has submitted a timely written objection may appear at the hearing and show cause why this Consent Decree should not be approved. Objections raised at the hearing will be limited to those matters addressed in timely written objections.

XII. RETENTION OF JURISDICTION

The Court's jurisdiction over the Federal Defendants under this Decree shall terminate seven (7) years after the Court's approval of this Decree. The Court will retain jurisdiction over the Local Defendants until their commitments under this Decree are met. Until such time, the Local Defendants will not seek public housing funds from HUD for public housing construction or acquisition with rehabilitation in Impacted Areas, and will not seek and engage in public housing construction or acquisition with rehabilitation with State PRHP funds in Impacted Areas. While the court retains jurisdiction as to the Federal Defendants under this Decree, any party may apply to the Court for such further orders as may be necessary and appropriate for the enforcement of this Decree against the

Federal Defendants, but not to increase the Federal Defendants' obligations under the Decree. While the Court retains jurisdiction as to the Local Defendants under this Decree, any party may apply to the Court for such further orders as may be necessary and appropriate for the enforcement of this Decree against the Local Defendants, but not to increase the Local Defendants' obligations under the Decree. Prior to the submission of any dispute under this Decree to the Court, the parties shall comply with the dispute resolution procedures set out in Section XIII of the Decree.

XIII. DISPUTE RESOLUTION

13 The parties may attempt to resolve disputes relating to this Decree in any manner, but before seeking relief from the Court, the parties must comply with all procedures set out in Sections 13.1 and 13.2 below.

13.1 Any allegation by a party of a violation of the terms of this Decree by one or more of the other parties shall be by written notice to all counsel of record. The notice shall specify the facts supporting the allegation, and shall precede the filing of any motion to enforce the terms of this Decree. Upon receipt of the notice by counsel, the party alleged to have committed the violation shall either remedy the alleged violation and so notify all other counsel in writing, or provide written explanation within thirty (30) days, or ten (10) business days in the case of an alleged violation involving an individually affected class member who requires emergency relief. At the end of such period, if the issue is not

resolved, any party may seek relief from the Court concerning the alleged violation of this Decree.

13.2 In the case of a dispute about the meaning or application of this Decree that does not involve an allegation of a violation thereof, the party or parties who wish to raise the disputed issue shall send written notice to the counsel for all other parties. At the end of a thirty-day period during which the parties will attempt to resolve the dispute without the Court's involvement, the party or parties who raised the issue in writing may seek a decision of this Court to resolve this dispute. Disputes under this Decree shall be resolved in accordance with the purposes of this Decree. However, matters relegated to the discretion of a party by the terms of this Decree or by law, as well as the Federal Defendants' reasonable interpretations of federal regulations, shall not be subject to the procedures under this Section or otherwise contested. Matters relegated to the discretion of a party include, but are not limited to: HUD's determination with respect to selection or retention of the mobility counselor or HUD's decision to terminate or otherwise take action with regard to the counselor due to criminal actions or other violation of federal or state law; HUD's determination under Section 9.3 that a federally funded entity is unlawfully impeding or failing to cooperate with hard unit Redevelopment Housing proposals; and any consequent enforcement action (as "action" is defined in this Decree). A determination to terminate the Mobility Counselor on performance grounds is not relegated to HUD's discretion by

this Decree. However, in the event a dispute arises between the parties with regard to the termination of the Counselor on performance grounds, no party shall contend that HUD's position is based upon grounds other than HUD's evaluation of the Mobility Counselor's performance, or that HUD's position otherwise is a subterfuge.

XIV. MONITORING AND ENFORCEMENT OF THE PARTIAL CONSENT DECREE

14.1 The terms of this Decree shall apply to each of the named Plaintiffs and proposed Plaintiff Class members, their agents, successors, heirs, and assigns, and shall apply to each of the Defendants, their officers, directors, agents, employees, successors, and assigns.

14.2 During the first year following entry of this Decree, Local Defendants and the Mobility Counselor shall each file a report with the Court and the parties every three (3) months, which shall describe the activities carried out in implementing this Decree. During the second and third years following entry of this Decree, such reports must be filed every six (6) months. After three years, such reports must be filed at least annually until such time as the Court's jurisdiction over this Decree terminates. In addition, the Mobility Counselor shall provide to the parties monthly statistics showing the number of placements made in the preceding month by jurisdiction and the addresses of the units leased. Upon request of a party, the Mobility Counselor shall provide to the party eligibility information about a Special Certificate holder or holders.

14.3 Upon at least twenty (20) days advance written notice

by any other party to this Decree, a party shall make documents available for inspection and copying or otherwise respond to reasonable requests for documents made by a party directly relating to the responding party's compliance with the terms of this Decree, with the exclusion of any documents that would not be discoverable on grounds of privilege. In determining the reasonableness of any request under this Section, the demands and other priorities relating to the litigation of this case shall be taken into consideration.

14.4 Nothing in this Decree shall be construed to make Federal Defendants the guarantors of the obligations of any Local Defendant or the Mobility Counselor, nor shall it be construed to make the Local Defendants the guarantor of the performance of the Federal Defendants or the Mobility Counselor. However, should HUD determine that there has been non-compliance with this Decree by any other party, it will advise all parties of its determination. Nothing in this Decree shall obligate HUD to provide any funding authority except the funding authority that it has specifically agreed to provide in Sections 3.1.1, 3.2.2, 3.2.3, and 8.2 of this Decree, or, in the case of Sections 4.2, 5.1, 5.3, 6.5(b) & (c) and 6.6.1, that it has agreed to provide contingent on compliance by the Local Defendants with HUD public housing development requirements.

XV. SUBSEQUENT LEGISLATION

A Defendant shall not be obligated to carry out any term of this Decree if any otherwise applicable current federal statute or regulation, or future federal statute or regulation

that becomes effective after the execution of this Decree, precludes that party from complying with, or withdraws that party's authority to perform, that term.

XVI. FUNDING

The Federal Defendants' duty to discharge the obligations imposed upon them by this Decree is subject to the availability of funding authority from Congress for any purpose for which funding is required. Nothing in this Decree shall be construed to require the Federal Defendants to provide funding or funding authority other than that which is expressly agreed to herein, except as may be provided for comparable relief under Section XVII below.

XVII. COMPARABLE RELIEF

17.1 The Federal Defendants shall not be found in violation of this Decree or otherwise be held in contempt of this court due to a failure to perform any obligation imposed upon them by the terms of this Decree which results from the unavailability of funding from Congress necessary for compliance, from the modification or revocation of statutory authority necessary for compliance, or from the failure of HUD or any other person to seek such funding or authority from Congress. Notwithstanding the foregoing, if at any time before the discharge of HUD's obligations under this Decree, Congress fails to appropriate funds necessary for compliance with HUD's funding obligations in Sections 3.1.1, 3.2.2, 3.2.3, and 8.2 of the Decree, or revokes or otherwise substantially modifies any statutory authority of HUD necessary for compliance with any

material and substantial provision of relief in this Decree, then Plaintiffs shall be entitled to receive alternative relief, consistent with HUD's revised funding or statutory authority, which is comparable to the relief that HUD can no longer perform. Such comparable relief shall not require the Federal Defendants to provide or expend funds in an amount greater than that expressly agreed to by the Federal Defendants under the terms of this Decree, nor shall the Federal Defendants be required to take any action, or to attempt to take any action, which would circumvent or violate, or have the effect of circumventing or violating, the intent of Congress. In addition, in no event shall such a revision in HUD's funding or statutory authority constitute grounds for reopening this Decree.

17.2 In implementing Section 17.1, the parties shall consult in an effort to agree upon a proposed modification of this Decree to provide such relief. If the parties agree upon a proposed modification, they shall promptly submit same to the Court for approval. If after sixty (60) days the parties cannot agree, any party may submit the matter to the Court for adjudication, after providing ten (10) days advance written notice of its intent to do so. In the event comparable relief for a requirement is impossible to provide, in whole or in part, HUD shall be discharged from performance of all or the remainder of that obligation.

XVIII. RELOCATION

18.1 A person required to move from his/her dwelling on account of demolition required or carried out under this Partial Consent Decree (this "Decree") shall be considered, for purposes of this Section only, a "Displaced Person." The Local Defendants make no admission or representation in this Section of the Decree that persons relocated from any of the five (5) Housing Projects which are the subject of this Decree were/are/will be "displaced persons" as contemplated under the URA. HABC may not move a Displaced Person unless assistance is provided as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601 et seq.) and implementing regulations codified at 49 C.F.R. Part 24 (the "URA") in a manner consistent with Title VI of the Civil Rights Act of 1964 ("Title VI") and Title VIII of the Civil Rights Act of 1968 ("Title VIII"), and relocation housing is provided as required by this Section. Subject to Section 18.12 of this Decree, the provisions of the URA that are in effect as of the time of execution of this Partial Consent Decree are hereby incorporated into the Decree, are requirements of the Decree, and shall continue to apply to and govern the relocation of persons from the Housing Projects irrespective of any change of law, as long as and only if the change in law would permit the Local Defendants to continue to follow the above referenced provisions of the URA.

18.2 Each Redevelopment Plan shall include a relocation plan for each project that incorporates the requirements of the URA and this Decree.

18.3 Displaced Persons shall be entitled to first preference for public housing, tenant-based assistance (including Special Certificates to the extent the Displaced Persons meet the definition of Displacee in Section 2.3 of the Decree), Redevelopment Housing provided pursuant to this Decree, and HUD assisted housing throughout the Baltimore Housing Market.

18.4 Relocation Counseling and Housing Search Assistance:
HABC shall provide relocation assistance and advisory services, as required by the URA, to minimize hardship to Displaced Persons and assure that Displaced Persons are offered housing of their choice in a full range of neighborhoods, both inside and outside areas of minority concentration. These services shall be available to Displaced Persons beginning at least 120 days before the first tenants will be required to move.

18.4.1 HABC shall, either directly or by contract with a housing mobility contractor, provide timely and effective relocation counseling and advisory services, including personal interviews to determine the relocation needs and preferences of each Displaced Person, to explain the relocation housing options and financial assistance for which the Displaced Person is eligible under the URA, and to educate families about the availability of federal and state assisted affordable housing opportunities throughout the Baltimore Housing Market.

18.4.2 HABC shall use its best efforts to assure that Displaced Persons are afforded reasonable opportunities to relocate to decent, safe and sanitary dwellings not located in an area of minority concentration. HABC shall use its best efforts to recruit landlords for relocation housing in Non-Impacted Areas, and shall provide reasonable transportation to families searching for relocation housing.

18.5 Relocation Housing

18.5.1 HABC shall make specific offers of relocation housing and other assistance in a timely manner so that the Displaced Person has sufficient time to negotiate and complete the purchase or lease of the relocation housing before the date he or she will be required to move. If a family has requested tenant based assistance, HABC shall issue the type of certificate requested and offer mobility counseling at least 120 days before the earliest date that the family will be required to move. If a Regular Certificate is not available, then the provisions of Section 3.1.3.1 shall apply.

18.5.2 If sufficient tenant-based assistance is not available for all Displaced Persons that select that option, then those families shall be relocated to their second choice and will retain their Displaced Person preference for the next available tenant-based assistance. Displaced Persons may not be required to accept permanent relocation to other public housing in lieu of tenant-based assistance.

18.5.3 HABC shall give each Displaced Person a 90-day written notice that indicates the earliest possible date the

resident may be displaced. No later than thirty (30) days before the family is required to move, HABC shall give the family written notice of the exact moving date.

18.6 In the case of an urgent or emergency situation, if the HABC determines that a person's continued occupancy will constitute a substantial danger to health or safety or otherwise constitutes an urgent or emergency situation as stated in the URA (42 U.S.C. § 4625(c)(3)), the HABC may relocate the person on a temporary basis and/or give notice within a shorter time period than specified under Sections 18.5.1 and 18.5.3, and shall thereafter provide the relocation assistance required by the URA and this Decree. Provided, however, that a failure to commence relocation services and to offer relocation housing and other assistance in a timely manner in advance of demolition activities shall not be deemed an urgent or emergency situation.

18.7 Reimbursement of Relocation Expenses: Displaced Persons shall receive payment for moving and related expenses as provided under the URA. Upon timely hardship request, HABC shall make such payment in advance of the scheduled moving date.

18.8 Persons Displaced From Lafayette Courts

18.8.1 Persons previously displaced from Lafayette Courts may submit claims for relocation assistance to the HABC at any time up to eighteen (18) months after the date of displacement. HABC shall determine whether the family is entitled to any additional relocation assistance pursuant to the URA, the Lafayette Courts Relocation Plan, and this Decree, and will obtain verification of claimed expenses. HABC shall use

its best efforts to include timely notice to former Lafayette residents of their rights under this Section in a regular mailing that goes to former Lafayette Courts residents, and in the newsletter.

18.8.2 HABC shall give all persons' previously displaced from Lafayette Courts an opportunity to receive relocation and mobility counseling and to select relocation housing of their choice, including Special Certificates in accordance with the priorities in section 7.3 of this Decree. Any person temporarily moved who must make a second move to obtain a Special Certificate or housing of his or her original choice(s) shall receive relocation assistance in accordance with the URA, the Lafayette Courts Relocation Plan, and this Decree.

18.9 Persons Displaced From Fairfield Homes and the 734 W. Fayette Street and 770 W. Saratoga Street Buildings of Lexington Terrace: HABC shall notify persons previously displaced from Fairfield Homes and the 734 W. Fayette Street and 770 W. Saratoga Street buildings of Lexington Terrace that they are entitled to apply for, and participate in, the distribution of Special Certificates as set forth in Section 7.3.2 of this Decree. Said notice need not be specifically made to the former Fairfield Homes and Lexington Terrace displaced persons if it is accomplished in accordance with a general notification that may be implemented as part of the process for distribution of Certificates to be developed pursuant to Section 7.2 of this Decree.

18.10 HABC shall maintain records and documents with respect to relocation that the URA requires, and upon reasonable advanced notice, shall make copies of those documents available to HUD and the Plaintiffs.

18.11 Nothing in Sections 18.1 through 18.10 shall alter the selection priorities established in Sections 7.3 through 7.3.5 of this Decree.

18.12 None of the provisions in Sections 18.1 through 18.10 applies to, or creates any obligation on behalf of, the Federal Defendants.

XIX. NAMED PLAINTIFFS

The named Plaintiffs shall receive first priority for Special Certificates, homeownership units and redevelopment housing provided pursuant to the Decree, so long as they meet eligibility rules, regardless of where they currently live.

XX. ATTORNEYS' FEES AND COSTS

Plaintiffs' counsel reserve the right to petition for attorneys' fees and costs at a later date, but in no event more than twenty (20) days after a final judgment or final consent decree is entered in this case. Defendants reserve the right to contest, in whole or in part, any petition for fees and costs filed by the Plaintiffs.

XXI. STAY

The parties agree to negotiate in good faith, for a period of six (6) months from the Court's approval of this Partial Consent Decree, a resolution of the remaining claims in this case. During this period, the parties agree to a stay of

litigation; provided, however, that any party may seek to obtain preliminary relief with respect to actions that are discovered or occur after the parties' signing of this Partial Consent Decree, which, if not enjoined, would jeopardize the availability of the relief to be provided under this Partial Consent Decree; provided further, that the six-month period of delay caused by this stay will not be raised as a defense to motions to enjoin actions that are discovered or occur after the signing of the decree that cannot be brought until after the conclusion of the six-month stay. Any party may make a reasonable request for documents necessary for the effective conduct of the negotiations referenced above under the procedures discussed in Section 14.3 of this Decree. The stay of litigation will remain in effect for the entire six-month period referenced above.

XXII. OTHER TERMS AND CONDITIONS

22.1 The signature of the parties on this Partial Consent Decree constitutes a Settlement Agreement for purposes of reservation of funds only.

22.2 This Partial Consent Decree may be signed in counterpart.

22.3 The benefits and burdens of this Decree are binding upon the parties hereto, and their successors and assigns, and no third party not a signatory hereto may rely upon, enforce, or otherwise claim any rights, interests or benefits by virtue of this Decree.

22.4 No party is acting as the agent of the other, and no obligation or provision of this Decree shall be construed to give the authority of any party to bind the other in any manner, nor shall either party be liable in any manner for the acts, omissions or conduct of the other party or its agents.

22.5 This Decree shall be executed in quadruplicate, and each executed Decree shall be considered an original.

22.6 The parties signing this Decree are represented by Counsel and are fully informed as to the contents of this Decree, and sign hereon freely without being under any duress or undue influence. The actual person signing below represents and warrants his or her ability to bind the respective corporate or governmental party, and by the signature below, each party agrees that the person signing has the apparent authority to bind the respective corporate party above their signature.

22.7 This Decree and its appendices shall constitute the entire understanding and agreement of the parties.

22.8 No statement, remark, agreement or understanding, oral or written, which is not expressly contained herein, shall be recognized or enforced. This Decree shall not be subject to

any change, modification, amendment, or addition without the express written consent of all the parties.

CONSENTED TO:

THE PLAINTIFFS, CARMEN THOMPSON, ET AL.

BY:

[Signature]
ACLU Foundation of Maryland
Counsel for Plaintiffs

[Signature]
Jenner & Block
Counsel for Plaintiffs

THE HOUSING AUTHORITY OF BALTIMORE CITY AND ITS EXECUTIVE DIRECTOR

BY:

THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY

BY:

[Signature]
Kent L. Schmoke

THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND ITS SECRETARY

BY:

[Signature]
MICHAEL SITCOV
JOSEPH V. JEST
Attorneys
U.S. Department of Justice
Civil Division
Federal Programs Branch
901 E Street, N.W.
Washington, D.C. 20004

Of counsel:

[Signature] 3/29/96
NELSON A. DIAZ
General Counsel
U.S. Dept. of Housing and Urban Dev.
SARA MANZANO
Deputy General Counsel for Civil
Rights and Litigation
CAROLE W. WILSON
HOWARD M. SCHMELTZER
STEPHEN I. SHAW

IT IS SO ORDERED.

[Signature] 6/25/96
Honorable Marvin J. Garbis
United States District Judge

52

APPENDIX A

CRITERIA FOR THE EVALUATION AND RANKING OF PROPOSALS FOR PROJECT-BASED REDEVELOPMENT HOUSING

In response to RFPs issued by the HABC for project-based Redevelopment Housing, sponsors may submit proposals for newly constructed units or existing units (with or without rehabilitation). All proposals must meet the threshold criteria in order to be considered for selection. Proposals meeting the threshold criteria will then be evaluated and ranked on a point system. Sponsors may submit proposals specifically for 15-year URD rental subsidies and/or shorter-term Section 8 rental subsidies; each category shall be separately evaluated and ranked. Proposals not selected for URD subsidies may be considered and ranked for shorter-term Section 8 subsidies.

Threshold Criteria

1. Location of site in a Non-impacted Area as defined by the Partial Consent Decree.
2. Commitment to select tenants for subsidies/subsidized units from among HABC residents and applicants referred by HABC and/or the mobility contractor.
3. Compliance with general development criteria and federal mandates applicable to URD and/or Section 8 project-based assistance projects.
4. Proposed rents must be no more than 120% of FMR.
5. The sponsor must submit a detailed schedule for completion of the project. If the sponsor does not have site control and/or required zoning approval(s), the sponsor shall submit a schedule for obtaining site control and/or necessary approval.

Rating and Ranking Criteria

In addition to threshold criteria, each proposal will be rated and ranked based on the extent to which it is calculated to achieve the desegregative purpose of the Decree (see Section 1.4) and the following specific objectives:

1. Development of housing on a scattered-site and mixed-income basis that integrates redevelopment units with market rate housing and surrounding communities (20 points).

- Proposals for single family or duplex units should be located on widely scattered sites. To achieve maximum points, sites should be at least two (2) blocks from other sites.

- Multi-family or townhouse developments should be physically integrated with market rate units, and to achieve maximum points may not exceed 20% of units in the development.

2. Development of housing in locations that will diversify HABC's inventory and provide HABC families with housing opportunities in safe neighborhoods that are well served by public and commercial facilities (20 points).

To achieve maximum points, proposals should:

- maximize production of redevelopment housing in areas and types of neighborhoods where assisted housing is not currently available and avoid areas where assisted housing is already concentrated (5 points);

- avoid concentration of its housing redevelopment units in the same areas and neighborhoods (5 points);

- maximize production of units in stable neighborhoods and/or growth areas and avoid location of sites in areas that are experiencing racial transition toward minority concentration, declining rates of homeownership or economic decline (5 points);

- maximize production of units in neighborhoods with quality public and commercial services (including schools, public safety, transportation, social services, and retail facilities) and proximate or accessible to major employment centers for entry level, blue collar and clerical job opportunities; avoid areas that are poorly served and/or have high rates of unemployment (5 points).

3. Development of housing that is not physically identifiable as "subsidized housing" to minimize objections from the surrounding community and help market the development for racial and economic integration (15 points).

To achieve maximum points, the proposed developments should:

- incorporate sound design principles for maximizing resident satisfaction, privacy, responsibility, stability, and security (5 points);

- be compatible in design and scale with the surrounding community (5 points);

- offer amenities in individual units that exceed those usually found in public housing and are comparable to those provided in market rate units in the development and/or surrounding community (5 points).

4. Development of a supply of housing in Non-impacted Areas for families that are more difficult to serve through the

Special Certificate program, i.e., large families and families requiring handicapped accessibility. Maximum points will be awarded for proposals that maximize production of three or more bedroom units and exceed minimum requirements for wheelchair accessible units (10 points).

5. Cost effectiveness: The reasonableness of project costs and requested rents shall be considered in relation to the overall quality of the project. HABC shall not be bound to accept proposals based on the lowest cost and may take into account higher costs to acquire sites in Non-impacted Areas and to produce housing that is compatible with surrounding market rate communities. Proposals projecting rents up to 120% of FMR's will not be penalized, provided appropriate documentation for approval of exception rents is submitted (10 points).

6. Continued use as affordable housing after the expiration of the subsidy period. Points will be awarded to proposals based on the extent to which they are structured to assure low-income use and rent restrictions beyond the term of the subsidy contract and/or those structured for potential resident homeownership (5 points).

7. Capacity of the sponsor: maximum points will be awarded to proposals submitted by owners/managers with a demonstrated record of high quality management with respect to construction, maintenance, security, affirmative marketing, tenant relations, community accountability, and fiscal practices (15 points).

8. Selection of developers/owners with a demonstrated commitment to Section 3 resident employment and contracting requirements, as well as compliance with Minority Business Enterprise and Women's Business Enterprise requirements (5 points).

9. Overall quality of proposal: Maximum points will be awarded to those proposals that best demonstrate a commitment to the goals and objectives of the program and a viable plan to meet them, including proposals that offer extraordinary or innovative features (5 points).

APPENDIX B

1. The site and development proposal would rank highly if evaluated under the rating and ranking criteria of Appendix A.

2. The proposed units will be developed on a scattered-site or mixed-income basis that integrates redevelopment units with market rate housing.

- Proposals for single family or duplex units should be located at least two (2) blocks from another redevelopment or other subsidized housing site.

- Multi-family or townhouse units must be physically integrated with market rate units, and redevelopment and other subsidized housing units may not exceed 20% of units in the development.

3. The site must meet the poverty impactation standard of the Decree.

- If the site is located in a non-residential tract or block newly developed for residential use, it must be located in a mixed-income or market rate development;

4. The site may not be located in a neighborhood experiencing economic decline, racial transition toward minority concentration, or decline in homeownership; and

5. The site may not be located in a neighborhood that does not have municipal services comparable to services in neighborhoods lacking concentrations of assisted housing.

APPENDIX C

THE MOBILITY COUNSELING SERVICES CENTER: DUTIES OF THE CONTRACTOR

I. Purpose of the Program

The purpose of the Mobility Counseling Services Program is to remove barriers which may impede the exercise of informed choice by eligible families receiving Section 8 assistance in determining where they utilize such assistance.

These barriers may include lack of information about other neighborhoods, lack of information about portability features and exception rents in the Section 8 program, lack of transportation, lack of child care, difficulty in effectively applying for available units, difficulty in satisfying tenant screening requirements, lack of a comprehensive listing of housing units produced with various forms of governmental assistance that are located in Non-impacted Areas, lack of affirmative marketing efforts by owners of such units, landlord unfamiliarity or misconceptions regarding the Section 8 program, illegal discrimination, and lack of assistance with transition--related problems following a move.

Nothing in the preceding paragraphs constitutes an admission of any kind by any defendant.

All duties, services, optional services, obligations and tasks of the Mobility Counselor enumerated in this Appendix or in Section VIII of this Decree shall be on behalf and for the purpose of assisting families who hold Special Certificates as meant by this Decree.

II. Housing Counseling Services to Families Holding Special Certificates

On behalf of families holding Special Certificates, the Contractor shall:

1. Provide families with detailed information about locational options in Non-impacted Areas and maintain listings of available vacancies;

2. To the extent feasible, refer each family to at least three (3) identified vacancies in Non-impacted areas that are located in neighborhoods selected by the family;

3. Provide services to assist families as they look for housing, including transportation, escort services and child care;

4. Provide individual counseling and advocacy, as needed, to families to assist them to pass standard tenant screening procedures;

5. Assist families with needed transitions after the move, including help in locating schools, churches, child care, employment, and social services, and assistance in reducing the sense of isolation or in resolving disputes with neighbors;

6. Provide assistance and appropriate referrals to families who encounter illegal discrimination or harassment;

7. Counsel families regarding homeownership options if and when HUD implements a program permitting the use of Section 8 assistance with homeownership; and

8. In determining an appropriate placement for a family with school age children, take into account the schooling needs of each child in the family and attempt to place the family in an area where those needs will be best met.

III. Mobility Administration for the Special Certificates

On behalf of families holding Special Certificates, the Contractor shall:

1. Apply the HUD Section 8 screening and eligibility criteria found at 24 C.F.R. § 982.552(b), 60 Fed. Reg. 34715 (July 3, 1995) to determine which families will be eligible for Special Certificates, provided that the HABC will apply all other eligibility criteria, such as income criteria, and avoid placing families with landlords who have defaulted on any obligation to HUD or have a history of serious code violations.

2. Develop and implement a strategy to market the program and families to landlords in Non-impacted Areas and coordinate market-wide recruitment of landlords in Non-impacted Areas for the Special Certificate program.

3. Serve as a clearinghouse for information on housing located in Non-impacted Areas of the Baltimore Housing Market that is financed, in whole or in part, with Low Income Housing Tax Credits, mortgage or industrial revenue bonds, FHA mortgage insurance, or federal or state loans or grants, which are eligible to accept families with Special Certificates. These clearinghouse activities shall include compiling and updating the following data: units becoming available at initial rent-up, vacancies and turnover, location, unit size, rent levels and utility costs, security deposits, application and tenant selection procedures and any residency preferences used.

4. Monitor the affirmative marketing, advertising, and outreach efforts of the owners of such housing, including commitments made by owners in connection with the allocation of

Low Income Tax Credit projects to serve public housing eligible families.

5. Monitor market rents in Non-impacted Areas and assist HABC in applying for increases in FMRs and/or blanket exception rents.

6. Analyze the extent to which transportation is an impediment to the use of Special Certificates and to the ability of participating families to access the full range of housing in the Baltimore Housing Market. The parties agree to jointly seek a solution to the identified transportation problems of such families, which may include, but is not limited to, seeking expansion of public transportation in areas where families with Special Certificates reside or work. HUD and the Local Defendants are not obligated by virtue of this section to provide any funding authority, nor shall this section create any obligation on behalf of or with regard to any other federal official, agency, or entity.

7. At the direction of the parties, develop a plan for implementing use over a six-year period of the 1,342 Special Certificates referenced in Section 3.1.1 of this Decree in Non-impacted Areas, including the following distributions:

a) Baltimore City--200 certificates (i.e., 33 per year);

b) Baltimore County--360 certificates (i.e., 60 per year).

8. Work with the interested local jurisdictions in the Baltimore housing market to prevent the creation of undue concentrations of poverty. To the extent permitted by law, the contractor shall arrange placements so that no more than twenty percent (20%) of the units in any one apartment complex or development with fifty (50) or more units are leased by Section 8 certificate holders. In other areas, the mobility counselor will review concerns about concentration on a more specific level than census tracts in an effort to ensure that undue concentrations of poverty are not created.

9. Execute, at HUD's direction, a subcontract for the post-placement duties to interested Counties and/or their public housing authorities ("PHAs") or other appropriate local entities in the Baltimore Housing Market. The subcontract shall be in the amount of \$500 per Special Certificate for the first year of initial use, and \$250 per Special Certificate for the second year of initial use.

10. Receive input from interested local jurisdictions on issues of local significance, including the identification of units and landlords and the coordination of post-placement counseling and support services. In addition, the counselor shall confer with the designee of the relevant neighboring

APPENDIX D

Listed below are the replacement plans for Lexington Terrace, Flag House Courts, and Murphy Homes, if federal law retains or restores the one-for-one replacement requirement and the 50% cap on the tenant-basing of replacement units.

LEXINGTON TERRACE

- 33 limited-capital funded hard units on-site;
- 35 hard units on-site suitable for elderly housing (PRHP-funded), concerning which the local defendants intended to submit an allocation plan for such use;
- 188 off-site hard units (PRHP-funded) at the following locations: 25 "Stricker Street" units in Sandtown; 11 "Mutual Housing" units on Old Frederick Road; 30 "Norwood Gardens" units; 60 "Sandtown Packages 4 and 5" units; 62 "Mount Pleasant" units;
- 338 tenant-based Section 8 certificates; and
- 83 project-based Section 8 certificate units.
- 677 Total Replacement Units

FLAG HOUSE COURTS

- 130 on-site hard units (PRHP-funded);
- 239 tenant-based Section 8 certificates; and
- 109 project-based Section 8 certificate units.
- 478 Total Replacement Units

MURPHY HOMES

- 75 on-site hard units (PRHP-funded);
- 379 tenant-based Section 8 certificates; and
- 304 project-based Section 8 certificate units.
- 758 Total Replacement Units

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUL 1 10 33 AM '95
CHRISTIAN COMMUNITY ACTION,
INC., et al.,

Plaintiffs,

v.

HENRY CISNEROS, in his official
capacity as Secretary of the
United States Department of
Housing and Urban Development,
et al.,

Defendants.

Civil Action No.:
3:91CV00296 (AVC)

MAY 11 9 41 AM '95

FILED

SETTLEMENT AGREEMENT

7/7/95. FINALLY APPROVED AND SO ORDERED.
Alfred V. Covello
Alfred V. Covello, U.S.D.J.

WHEREAS, plaintiffs Christian Community Action, Inc., Velma Williams, Lisa Bostick, Tracy Jaynes, Shartarra Penn, Earlene Jaynes, Beverly Wright and Christine Edwards, individually and on behalf of a class of similarly-situated low-income African-American and Hispanic residents of, and applicants for residency in, public housing provided by defendant Housing Authority of the City of New Haven ("HANH"), brought the above-captioned action alleging, inter alia, that defendants HANH and the United States Department of Housing and Urban Development ("HUD"), individually and jointly, intentionally discriminated on the basis of race in the siting of, and assignment of tenants to, public housing in New Haven, Connecticut, in violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, et seq.; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.; the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983; the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437, et

seq.; the Housing and Community Development Act of 1974, 42 U.S.C. § 5301, et seq.; the Fifth and Fourteenth Amendments to the United States Constitution; and other federal statutes, regulations and guidelines; and

WHEREAS, HANH and HUD deny the said claims; and

WHEREAS, HUD approved funding in 1989 for HANH's implementation of the Elm Haven Replacement Plan, which provided for HANH's creation, within 6 years, of 183 public housing and 183 project-based Section 8 rental units to replace, as required by the United States Housing Act, the 366-unit Elm Haven High-Rise that was subsequently demolished pursuant to that Plan; and

WHEREAS, HUD has determined that HANH, despite its efforts, has been - and likely will continue to be - unable to attract sufficient proposals from developers to create, within the City of New Haven, 183 project-based Section 8 rental units in neighborhoods that, consistent with HANH's obligations under applicable law, are located outside areas of minority concentration; and

WHEREAS, HANH and HUD, without regard to the merit or lack of merit of plaintiffs' claims asserted against them in this action, consider it desirable to settle this action both to avoid further expense, inconvenience and other burdens of litigation, and to put plaintiffs' claims asserted in this action to rest; and

WHEREAS, plaintiffs believe that it is desirable for both the individual plaintiffs and the plaintiff class to compromise

and settle plaintiffs' claims alleged against HUD and HANH in this action upon the terms and conditions hereinafter set forth;

NOW THEREFORE, the aforementioned parties agree as follows:

I. DEFINITIONS

A. "Area of minority concentration" means a Census block group (other than block group 1413-2 and block group 1414-2 in New Haven) that exceeds by more than twenty (20) percentage points the percentage representation of minorities in the New Haven-Meriden Metropolitan Statistical Area ("MSA"), as defined by the United States Bureau of the Census. For purposes of this definition, 1990 Census data shall be used to calculate minority representation unless more current block group data has been published by the United States Bureau of the Census and made available to plaintiffs, HANH or HUD, in which case the more current data shall be used. Census block groups within New Haven which are, under the 1990 Census, "areas of minority concentration" are identified in Appendix A to this Settlement Agreement.

B. "Minorities" means all persons other than those counted by the United States Bureau of the Census as white non-Hispanic persons.

C. "New Haven Area" means all geographical areas within the New Haven-Meriden MSA.

D. "Surrounding Area/Jurisdictions" means all governmental units or geographical areas outside the City of New Haven but within the New Haven Area.

E. Except in the context of the creation of Section 8 project-based housing, "Section 8 certificate" means either a Section 8 tenant-based certificate or a Section 8 tenant-based voucher under Section 8 of the United States Housing Act, 42 U.S.C. § 1437f.

F. "Special Section 8 certificate", as used in connection with the "converted" (§ II.B), "bridge" (§ III), and "mobility" (§ IV) Section 8 tenant-based certificates referred to herein, means a Section 8 certificate that is subject to the usual terms of Section 8 tenant-based assistance, except that: (1) solely with respect to the first time in which the Section 8 certificate is awarded and only during the first one hundred eighty (180) days after the Section 8 certificate is awarded, the certificate may not be used in connection with the rental of any housing unit located inside an area of minority concentration; (2) the certificate must be used to rent housing within two hundred seventy (270) days after issuance; and (3) the certificate holder must attend at least one mobility counselling session within one hundred eighty (180) days after the certificate is awarded to that certificate holder. However, (a) such special terms shall not apply unless the mobility counselling program specified in § VI is operational at the time the special Section 8 certificate is awarded; (b) special term number "(1)" above may be waived for a family, no less than one hundred twenty (120) days after the certificate is awarded, if the Mobility Counsellor certifies to HANH that the family has attended at least one mobility

counselling session but has subsequently informed the Mobility Counsellor that the family no longer finds it feasible or desirable to move to a neighborhood outside areas of minority concentration; and (c) for purposes of this definition, HANH's reissuance of a certificate pursuant to § VII.E shall be deemed to be the first award of that certificate.

II. ELM HAVEN REPLACEMENT HOUSING PLAN

A. NON-SECTION 8 REPLACEMENT UNITS

Scope: The terms of § II.A of this Settlement Agreement relate to units of non-Section 8 housing under the Elm Haven Replacement Plan that have not yet been sited.

1. All yet-to-be-sited non-Section 8 replacement units that must be created under the Elm Haven Replacement Plan shall be developed by HANH outside of areas of minority concentration, within the City of New Haven. HUD shall not disapprove, on racial-concentration grounds, any HANH non-Section 8 replacement housing acquisition or development unless it is in violation of the terms of this paragraph.

2. HANH shall promptly pursue, and make every reasonable effort to bring to fruition at the earliest possible time, opportunities for development that:

- a. meet the requirements of § II.A.1;
- b. are monetarily feasible in light of factors including, but not limited to, applicable total-development-costs limitations, available funding, and the financial costs or risks associated with such development; and

c. would be reasonably likely to be found by HUD to satisfy all other valid legal requirements.

HANH shall not fail to pursue, or fail to bring to fruition, any development opportunity or category of development opportunity (e.g., detached single-family homes, townhouses, multifamily developments) as a consequence of any belief on the part of HANH that its pursuit or realization of such a development opportunity would be opposed by any persons or entities whose approval is not legally required for such development to occur. HANH shall promptly seek development reformulations from HUD if it becomes apparent that existing formulations are incompatible with the objective of developing and tenanting all non-Section 8 replacement units governed by this Settlement Agreement within the time period specified in § II.A.5.

3. HANH shall make every reasonable effort:

a. to obtain, at the earliest possible time, a certificate of occupancy for each unit developed pursuant to § II.A.1 for which certificates of occupancy are legally required; and

b. to ensure that each unit is tenanted within thirty (30) days of the development's "date of full availability," as that term is defined in ¶ 12-91 of HUD's Public Housing Development Handbook, or in the case of an acquired unit that requires minimal repairs to be occupiable, to ensure that such repairs are made as soon as possible after the unit's

acquisition and that each such unit is tenanted within thirty (30) days after the completion of such repairs.

4. Until all 183 non-Section 8 Elm Haven replacement units have been occupied by tenants, HANH shall provide quarterly status reports to HUD and plaintiffs' counsel regarding all projects being developed or under consideration for development under § II.A of this Settlement Agreement. The first report shall be provided no later than one (1) month after the effective date of this Settlement Agreement. Each quarterly report shall briefly provide with respect to each prospective site for development (including all sites suggested by plaintiffs to HANH): address; Census block group; number of units which potentially could be developed at the site; status of HANH's efforts to acquire, otherwise to develop and/or to gain HUD approval for development; and a description of any known obstacles to HANH's efforts to acquire, develop, gain site control with respect to, or gain approval for development. Each report also shall briefly describe the status of development and occupancy for each site approved by HUD. All parties shall treat as confidential and, to the extent legally permissible, shall safeguard from disclosure under freedom-of-information, discovery, or other laws, the location and all other site-specific information in a status report; however, such proscriptions shall no longer apply to information regarding a site once HANH has issued a notice of public hearing with respect to that site.

5. HANH shall make every reasonable effort to complete the development and occupancy of the units referred to in § II.A.1 within three (3) years of the effective date of this Settlement Agreement.

6. For as long as the Court has jurisdiction over enforcement of this Settlement Agreement, HANH shall retain, pertinent to each non-Section 8 replacement housing opportunity that HANH pursues, and HUD shall retain, pertinent to each such opportunity that HUD becomes aware that HANH is pursuing, any existing

a. files of correspondence, including records of phone calls,

b. records of meetings between HUD officials and/or HANH Commissioners or employees and other federal, state or local public officials, and

c. tape records of public hearings.

Such files shall be made available to plaintiffs' counsel after plaintiffs' counsel provides reasonable advanced notice of a desire to review the files. HUD and HANH may redact these files to remove privileged materials prior to plaintiffs' counsel's review of the files.

7. HANH shall promptly report to police and HUD any acts of violence or vandalism, as well as any acts of threatened violence or vandalism, directed at

a. any site acquired or proposed to be acquired by HANH for development of the units specified in § II.A.1; or

b. any person residing at, or expecting to reside at, such site, except that HANH shall not be required to report to HUD any such act of violence or vandalism if it is manifest from the nature of such violence or vandalism that the act was not motivated by opposition to HANH's development activity under the Elm Haven Replacement Plan or by any racial or ethnic animus. HANH shall also provide HUD with copies of any police or fire records in HANH's possession pertaining to any violence or vandalism that must be reported to HUD pursuant to this paragraph.

8. HANH shall give plaintiffs' counsel at least one (1) week notice of all public hearings to be held concerning any site proposed or acquired by HANH for the units specified in § II.A.1.

B. SECTION 8 REPLACEMENT UNITS

Scope: The terms of § II.B of this Settlement Agreement relate to units of Section 8-assisted housing to be created under the Elm Haven Replacement Housing Plan.

1. HUD hereby approves an amendment to the Elm Haven Replacement Plan converting fifty (50) of the originally-planned Section 8 project-based certificates to fifty (50) special Section 8 tenant-based certificates. These special certificates will be issued in accordance with § V. HANH shall offer these special Section 8 tenant-based certificates, as well as any other special tenant-based certificates which may be created through conversion of Section 8 project-based units pursuant to § II.B.7,

in accordance with HANH's Section 8 waiting list. HANH shall explain the special terms (as provided in § I.F) of these Section 8 certificates to each family offered one. Refusal to accept an offer of such a certificate shall not affect any family's place on any HANH waiting list.

2. Development of the sixty-two (62) Section 8 project-based units under the Elm Haven Replacement Plan that were not under an agreement to enter a contract for Housing Assistance Payments as of the date this Settlement Agreement was executed by the parties shall proceed as described below.

a. Proposals for development which were pending with HANH or HUD as of the date this agreement was executed shall be further pursued by HANH or processed by HUD; however, no such proposal shall be approved by HUD if it involves development within an area of minority concentration.

b. Within ninety (90) days after the effective date of this Settlement Agreement, HUD shall transmit to plaintiffs and HANH for their review a draft RFP which shall provide, among other appropriate terms, that:

(1) proposals are sought for development of Section 8 project-based units to be located outside areas of minority concentration, within surrounding jurisdictions;

(2) contract rents of up to one hundred twenty percent (120%) of the Section 8 fair market rent (FMR) will be authorized for any development upon the developer's showing that, based upon representative rental housing survey

data or other reliable evidence, increased contract rents are "reasonable" under the standards set forth in 24 C.F.R. § 882.714(c) and otherwise meet the requirements of that regulation;

(3) for 15 years, owners of Section 8 project-based units shall offer the units only to families referred to the owners by HANH in accordance with HANH's Section 8 waiting list; and

(4) owners of Section 8 project-based units shall be required promptly to notify HUD in the event that HANH fails to refer, within thirty (30) days of the owner's notification to HANH of a vacancy at the unit, a sufficient number of individuals on HANH's Section 8 waiting list to the owner.

c. Plaintiffs and HANH shall transmit their written comments on the draft RFP described in the preceding paragraph within fifteen (15) days after receipt of the draft RFP. HUD shall consider plaintiffs' and HANH's written comments regarding its draft RFP and shall, as HUD deems appropriate, amend the RFP to incorporate the comments. HUD shall promptly thereafter issue the RFP.

d. Within ninety (90) days after the effective date of this Settlement Agreement, HANH shall transmit to plaintiffs and HUD for their review a draft RFP which shall provide, among other appropriate terms, that (1) proposals are sought by HANH for development of Section 8 project-based units

within the City of New Haven but outside areas of minority concentration; and (2) contract rents of up to 120% of FMR will be available under the circumstances set forth in § II.B.2.b(2) above.

e. HUD and the plaintiffs shall transmit their written comments on the draft RFP described in the preceding paragraph within fifteen (15) days after receipt of the draft RFP. HANH shall consider such comments, and shall make any changes directed by HUD, with regard to the RFP. HANH shall promptly thereafter issue the RFP.

3. During the twelve (12) month period following the issuance of each of the RFPs described in § II.B.2 above, HUD and HANH shall each develop and issue an RFP pursuant to the process described in § II.B.2 at least one more time. However, no further RFPs shall be issued by HUD or HANH after that 12-month period.

4. If HUD receives acceptable development proposals for some or all of the Section 8 project-based units in response to the RFP it issues on behalf of HANH, HUD shall offer the opportunity to execute and administer a Housing Assistance Payments ("HAP") contract for the units to each public housing authority with the legal capacity to administer a HAP contract in the area in which the units are located, including as appropriate any state housing authority. If a housing authority agrees to execute and administer the HAP contract, HANH shall execute an agreement, to be provided by HUD, that will enable HUD to

redirect, to such other housing authority, the requisite number of Section 8 project-based certificates currently under Annual Contributions Contract with HANH. HUD shall review the compliance of such other housing authority, as well as the compliance of HANH and project owners, with the tenanting terms set forth in § II.B.2.b.(3)-(4).

5. If no housing authority agrees to execute the HAP contract as described in the preceding paragraph, HUD shall enter into the HAP contract directly with the developer of the units. HANH shall execute an agreement, to be provided by HUD, that will enable HUD to provide to the developer, from funds currently under Annual Contributions Contract with HANH, the requisite number of Section 8 project-based certificates. HUD shall retain an agent, which may be HANH, to administer the units under the HAP contract.

6. If HANH receives acceptable development proposals in response to its RFP, it shall process such proposals in accordance with HUD regulations. HUD shall not disapprove, on racial-concentration grounds, any HANH Section 8 project-based development proposal unless the development proposed is in an area of minority concentration.

7. To the extent that HUD, as a result of the process described in the preceding paragraphs, does not approve sixty-two (62) units of project-based Section 8 housing for development either inside or outside New Haven, HANH shall submit to HUD, and HUD shall approve, an amendment to the Elm Haven Replacement Plan

redirect, to such other housing authority, the requisite number of Section 8 project-based certificates currently under Annual Contributions Contract with HANH. HUD shall review the compliance of such other housing authority, as well as the compliance of HANH and project owners, with the tenanting terms set forth in § II.B.2.b.(3)-(4).

5. If no housing authority agrees to execute the HAP contract as described in the preceding paragraph, HUD shall enter into the HAP contract directly with the developer of the units. HANH shall execute an agreement, to be provided by HUD, that will enable HUD to provide to the developer, from funds currently under Annual Contributions Contract with HANH, the requisite number of Section 8 project-based certificates. HUD shall retain an agent, which may be HANH, to administer the units under the HAP contract.

6. If HANH receives acceptable development proposals in response to its RFP, it shall process such proposals in accordance with HUD regulations. HUD shall not disapprove, on racial-concentration grounds, any HANH Section 8 project-based development proposal unless the development proposed is in an area of minority concentration.

7. To the extent that HUD, as a result of the process described in the preceding paragraphs, does not approve sixty-two (62) units of project-based Section 8 housing for development either inside or outside New Haven, HANH shall submit to HUD, and HUD shall approve, an amendment to the Elm Haven Replacement Plan

allowing conversion of the uncommitted project-based certificates to special tenant-based certificates. In any event, any project-based Section 8 certificates that are not covered by an agreement to enter a contract for Housing Assistance Payments within three (3) years after the Court's approval of this Settlement Agreement shall be converted to special tenant-based certificates pursuant to the procedure described in the preceding sentence.

C. Except to the extent that any provision hereof dictates to the contrary, whenever actions of HANH under § II of this Settlement Agreement require HUD approval, HUD will take one of the following actions, in writing, within 30 Federal working days of the receipt of HANH's request for approval by the Connecticut State Office of HUD: 1) approve the request, with or without conditions; 2) disapprove the request and specify the reasons for its disapproval; 3) notify HANH that HUD requires specified further information or justification; or 4) notify HANH that HUD, because of its workload or other good cause, has been unable to fully address the request and requires an additional 15 Federal working days to do so. HANH will have the opportunity to discuss any request with HUD prior to HUD's determination with respect to the request.

D. The completion of the provisions of § II above by HUD and HANH shall constitute full performance of the obligations undertaken by each in connection with the Elm Haven Replacement Plan.

III. "BRIDGE" CERTIFICATES

Scope: The terms of § III of this Settlement Agreement relate to HUD's issuance of special "bridge" Section 8 tenant-based certificates which are being issued because not all of the demolished Elm Haven units have been replaced within the six years specified in the Elm Haven Replacement Plan.

A. HUD hereby commits to HANH an amount of funding deemed by HUD to be sufficient to fund special bridge Section 8 tenant-based certificates for one hundred fifty-two (152) families, to be selected pursuant to this section. The special bridge certificates shall be awarded in accordance with the provisions of this section and § V to families who meet Section 8 eligibility criteria. HANH shall explain the terms of special bridge certificates to each family offered one. A family's refusal to accept an offer of a special bridge certificate shall not affect the family's place on any HANH waiting list.

B. HANH shall award sixty-two (62) special bridge certificates in accordance with HANH's Section 8 waiting list.

C. HANH shall award forty-five (45) special bridge certificates in accordance with HANH's family public housing waiting lists, merged (solely for the purposes specified in this Settlement Agreement) to create a single list of families prioritized without regard to the size of the unit (one-bedroom, two-bedroom, etc.) sought by the families.

D. HANH shall award forty-five (45) special bridge certificates to families living in HANH family public housing

who, at the time they are offered such a certificate, are not the subject of any adverse action initiated by HANH because of an alleged lease violation, except that before HANH denies a certificate to a family on such grounds, HANH shall offer the family a reasonable opportunity, at an informal conference, to resolve the pending adverse action. Offers of certificates under this subsection shall be made in accordance with a waiting list developed as follows:

1. HANH shall notify all families living in HANH family public housing of the availability of special bridge certificates for a limited number of public housing families. In this notice, HANH also shall advise public housing tenants who are interested in receiving a special bridge certificate to provide written confirmation of their interest to HANH within thirty (30) days.

2. After the thirty (30) day period specified in the preceding paragraph has passed, HANH shall create a priority list of all family public housing tenants who submitted a timely response to the HANH notice. Priority on the list shall be determined through a random drawing.

E. HANH shall request, and HUD shall grant to the extent permitted by law, whatever regulatory waivers or other determinations of good cause that HANH may need in order to comply with §§ III.B-III.D in light of relevant legal provisions governing the award of Section 8 assistance in accordance with the Section 8 waiting list and federal preferences.

F. HUD shall not retire any special bridge certificate as a consequence of the production of an Elm Haven replacement unit or the completion of the Elm Haven Replacement Plan.

G. If, for any reason other than a failure by HANH to comply with applicable law or other provisions of this decree (or in the case of HUD, if for any reason), the amount of funding deemed, pursuant to § III.A, to be sufficient to fund all the special bridge certificates under this section in fact proves to be insufficient for HANH to award such certificates to all 152 families contemplated by sections III.B-III.D, neither HANH nor HUD shall be required to provide additional funding to ensure that 152 certificates are awarded. Rather, the responsibilities of HANH and HUD shall be limited to HANH's (1) making every reasonable effort to ensure that no category of recipients (i.e., Section 8 waiting list families, public housing waiting list families, or public housing families) is disproportionately disadvantaged by such insufficiency of funding, and (2) applying to HUD for additional Section 8 funding, which HUD shall not be obligated to provide, to enable HANH to fully implement sections III.B-III.D.

IV. MOBILITY CERTIFICATES

A. HUD hereby commits to HANH an amount of funding deemed by HUD to be sufficient to fund special mobility Section 8 tenant-based certificates for three hundred six (306) families, to be selected pursuant to this section. The special mobility certificates shall be distributed in accordance with the

provisions of this section and § V to families who meet Section 8 eligibility criteria. HANH shall explain the terms of special mobility certificates to each family offered one. A family's refusal to accept an offer of a special mobility certificate shall not affect the family's place on any HANH waiting list.

B. HANH shall award one hundred (100) special mobility certificates to families in accordance with HANH's Section 8 waiting list.

C. HANH shall award one hundred (100) special mobility certificates to families in accordance with HANH's family public housing waiting lists, merged (solely for the purposes specified in this Settlement Agreement) to create a single list of families prioritized without regard to the size of the unit (i.e., one-bedroom, two-bedroom, etc.) sought by the families.

D. HANH shall award one hundred (100) special mobility certificates to families living in HANH family public housing in accordance with the provisions of § III.D.

E. HANH shall issue one special mobility certificate each to plaintiffs Lisa Bostick, Tracy Jaynes, Shartarra Penn, Earlene Jaynes, Beverly Wright and Christine Edwards, provided they meet financial eligibility requirements for the Section 8 program at the time of such issuance. To the extent any such plaintiff is not financially eligible for Section 8 assistance, HANH shall issue that plaintiff's special mobility certificate to an additional family pursuant to either § IV.C or § IV.D above.

F. HANH shall request, and HUD shall grant to the extent permitted by law, whatever regulatory waivers or other determinations of good cause that HANH may need in order to comply with §§ IV.B-IV.E in light of relevant legal provisions governing the award of Section 8 assistance in accordance with the Section 8 waiting list and federal preferences.

G. If, for any reason other than a failure by HANH to comply with applicable law or other provisions of this decree (or in the case of HUD, if for any reason), the amount of funding deemed, pursuant to § IV.A, to be sufficient to fund all the special mobility certificates under this section in fact proves to be insufficient for HANH to award such certificates to all 306 families contemplated by sections IV.B-IV.E, neither HANH nor HUD shall be required to provide additional funding to ensure that those 306 certificates are awarded. Rather, the responsibilities of HANH and HUD shall be limited to HANH's (1) making every reasonable effort to ensure that none of those three categories of recipients (i.e., Section 8 waiting list families, public housing waiting list families, or public housing families) is disproportionately disadvantaged, relative to another, by such insufficiency of funding, and (2) applying to HUD for additional Section 8 funding, which HUD shall not be obligated to provide, to enable HANH to fully implement sections IV.B-IV.E.

V. SCHEDULE FOR, AND CONDITIONS OF, ISSUANCE AND RECEIPT OF SPECIAL SECTION 8 CERTIFICATES

A. No special converted (specified in § II.B), bridge (specified in § III), or mobility (specified in § IV) Section 8

certificates shall be awarded by HANH until HANH receives written notification from the Mobility Counsellor (described in § VI below) that mobility counselling is available.

B. Except to the extent that the Mobility Counsellor informs HANH that it cannot provide mobility services to families in accordance with the schedule set forth below or the parties agree to a different schedule, and subject to modifications that may be dictated by sections III.G and IV.G above with regard to the total number of certificates that can be awarded, the special converted, bridge and mobility certificates shall be awarded to the families chosen to receive those certificates pursuant to the terms of §§ II, III, and IV of this Settlement Agreement in accordance with the following schedule:

1. Within thirty (30) days after HANH receives written notification from the Mobility Counsellor that mobility counselling is available, HANH shall award special mobility certificates to plaintiffs Lisa Bostick, Tracy Jaynes, Shartarra Penn, Earlene Jaynes, Beverly Wright and Christine Edwards, in accordance with § IV.E above.

2. In addition to the six (6) certificates issued pursuant to the previous paragraph, during the first eighteen (18) months after HANH receives written notification from the Mobility Counsellor that mobility counselling is available, HANH shall award 200 special certificates as follows:

a. families residing in public housing shall be awarded forty-five (45) special bridge certificates and fifteen (15) special mobility certificates;

b. applicants on the public housing waiting list shall be awarded forty-five (45) special bridge certificates and thirty-five (35) special mobility certificates; and

c. applicants on the Section 8 waiting list shall be awarded thirty (30) special converted replacement certificates and thirty (30) special bridge certificates.

3. During the ensuing twelve (12) months, HANH shall award 100 special certificates as follows:

a. families residing in public housing shall be awarded forty-five (45) special mobility certificates;

b. applicants on the public housing waiting list shall be awarded thirty-five (35) special mobility certificates; and

c. applicants on the Section 8 waiting list shall be awarded twenty (20) special bridge certificates.

4. During the next ensuing twelve (12) months, HANH shall award 100 special certificates as follows:

a. families residing in public housing shall be awarded forty (40) special mobility certificates;

b. applicants on the public housing waiting list shall be awarded thirty (30) special mobility certificates; and

c. applicants on the Section 8 waiting list shall be awarded twelve (12) special bridge certificates, ten

(10) special mobility certificates and eight (8) special converted replacement certificates.

5. During the next ensuing twelve (12) months,

a. applicants on the Section 8 waiting list shall be awarded ninety (90) special mobility certificates, twelve (12) special converted replacement certificates and any project-based Section 8 certificates that have been converted to tenant-based certificates pursuant to § II.B.7; and

b. any other tenant-based Section 8 certificates governed by this Settlement Agreement that have yet to be awarded shall be awarded.

C. Unless HANH agrees to the contrary, no more than sixty (60) of the certificates referred to in § V.B above shall be issued to families residing in public housing in any twelve month period.

VI. REGIONAL MOBILITY PROGRAM

A. HUD hereby commits to HANH four hundred fifty-eight thousand dollars (\$458,000) in funding for a regional housing mobility program which shall include a Section 8 tenant counselling program and clearinghouse for listings of affordable rental units outside areas of minority concentration in the New Haven area.

B. The mobility program shall be administered by an independent organization ("Mobility Counsellor") which shall be legally separate and distinct from HANH and the City of New Haven.

C. HUD shall draft an RFP seeking funding proposals from organizations that are willing to serve as Mobility Counsellor within twenty-one (21) days of the effective date of this Settlement Agreement. HUD shall provide the draft version of this RFP to plaintiffs' counsel and to HANH's counsel. Plaintiffs and HANH shall transmit their written comments on the draft RFP to HUD within fifteen (15) days after plaintiffs' receipt of the draft RFP from HUD. HUD shall consider plaintiffs' and HANH's written comments regarding the draft RFP and shall, as HUD deems appropriate, amend the RFP to incorporate plaintiffs' and HANH's comments. The RFP shall provide, among other terms, that:

1. The mobility counselling program shall provide, at a minimum, the following services:

a. outreach to, recruitment of, and establishment of relationships with, owners and managers of properties in the New Haven area that are outside areas of minority concentration;

b. collection, and circulation to each certificate holder, of rental listings in all neighborhoods in the New Haven area that are outside areas of minority concentration, as obtained from local community papers, real estate agents, rental signs, landlord recruitment, landlord referrals, and other sources;

c. assistance to individual certificate holders in finding housing, including but not limited to counselling

tenants regarding choices available in different communities, assistance in applying to specific units, transportation, and directed referrals to specific landlords where appropriate;

d. an initial group housing counselling session for families referred to the program, and individual housing counselling for each such referred family that requests such assistance; and

e. to the extent feasible, the provision, to each family referred to the program, of at least three (3) viable rental listings in locations outside areas of minority concentration that the family has expressed an interest in moving to.

2. As soon as feasible, the Mobility Counsellor shall provide written notification to HUD, HANH and plaintiffs' counsel that mobility counselling is available;

3. The Mobility Counsellor shall coordinate its activities closely with those of HANH and shall report to HUD, HANH and plaintiffs' counsel on its activities at least annually until either all funding provided to the Mobility Counsellor pursuant to this Agreement has been expended or the Court's jurisdiction over this Agreement ends, whichever occurs first, although nothing in this provision shall be deemed to limit the right of HANH or HUD to require, by contract, activity reports to be submitted to them until all funding provided to the Mobility Counsellor pursuant to this Agreement has been expended;

4. The Mobility Counsellor shall maintain records regarding the basis for any waivers it grants pursuant to the last sentence of § I.F and shall include, in the reports referred to in the previous sentence, a summary of the information contained in these records; and

5. Evaluation of the performance of the Mobility Counsellor shall be based in part on the total number of families who are assisted in moving.

D. HANH shall issue the RFP within fifteen (15) days after receiving from HUD the RFP as modified in light of the comments of HANH and the plaintiffs.

E. The Mobility Counsellor shall be chosen competitively from among the proposals received by HANH in response to the RFP by a three (3) person committee composed of one (1) representative each from HUD, HANH and plaintiffs.

F. In addition to providing the services referred to in § VI.C above, the Mobility Counsellor shall:

1. fully inform each recipient of a special Section 8 certificate of the usual terms of Section 8 assistance, including the availability of exception rents in excess of Section 8 fair market rents;

2. fully inform each recipient of a special certificate of the special terms of such assistance, as set forth in § I.F. above; and

3. provide each recipient of a special certificate with a map or other delineation of areas of minority concentration within the New Haven Area.

G. The Mobility Counsellor shall provide HANH with descriptive information regarding all of the Mobility Counsellor's services and shall do so in a form that would enable HANH to distribute the descriptive information to recipients of restricted Section 8 certificates and recipients of HANH's regularly-issued Section 8 certificates.

H. The Mobility Counsellor shall inform HANH if, within one hundred eighty (180) days after receipt of a restricted certificate, the recipient fails to attend at least one (1) counselling session with the Mobility Counsellor.

I. To the extent permitted by law, HUD shall require that, as a term of the next contract for project-based assistance which HUD executes with any owner of private HUD-assisted multifamily housing development in the New Haven Area, each owner shall market its units to persons eligible to reside in such development through the clearinghouse referred to in § VI.A above. Prior to expiration of the owners' existing contracts for assistance, HUD shall encourage owners to market their units to persons eligible to reside in such developments through the clearinghouse referred to in § VI.A above.

VII. HANH'S RESPONSIBILITIES WITH REGARD TO SECTION 8 MOBILITY

A. HANH shall inform each recipient of a Section 8 certificate of the location and phone number of the Mobility

Counsellor and shall briefly describe the services offered by the Mobility Counsellor.

B. HANH shall provide the name, address and phone number of each recipient of a Section 8 certificate to the Mobility Counsellor, and shall specify whether the Section 8 certificate held by the recipient is special.

C. HANH shall cooperate with the regional mobility program in the provision of its services to current and future members of the plaintiff class.

D. HANH shall adopt, in consultation with plaintiffs' counsel, a Section 8 mobility plan to be incorporated into the Section 8 Administrative Plan for HANH and submitted to HUD for approval. Such mobility plan shall include, at minimum, the following elements:

1. multiple written and oral notification to Section 8 certificate holders about their right to move throughout the region and state;

2. dissemination of information regarding the regional mobility program to Section 8 certificate and voucher holders;

3. facilitation and support of the efforts of the regional mobility program, including designation of at least one staff person to work in cooperation with the regional housing mobility program to implement mobility for Section 8 certificate holders and to facilitate the dissemination of listings of

affordable apartments that are outside areas of minority concentration throughout the New Haven area;

4. direct administration of Section 8 certificates in towns where this is permitted;

5. improved discrimination referral provisions;

6. outreach to all participating New Haven landlords informing them of the program and recruiting them to participate with their suburban properties;

7. subscriptions to all area suburban weekly papers and classified circulars, for the purpose of collecting suburban rental listings to be distributed to Section 8 tenants;

8. self-created, non-legally-binding target goals for implementation of its mobility efforts; and

9. staff training, record-keeping, and reporting provisions, including a means of documenting HANH's compliance with all HUD requirements regarding the provision of portability information to Section 8 families.

E. In the event that HANH is informed that a recipient of a special Section 8 certificate has failed to attend at least one (1) counselling session with the Mobility Counsellor within one hundred eighty (180) days after the award of a special Section 8 certificate, HANH shall reclaim the certificate from the recipient. Any such certificate reclaimed shall be reissued, in accordance with § VI above, to a family from the same tenant or applicant population (i.e., HANH public housing tenants, HANH public housing waiting list members, or HANH Section 8 waiting

affordable apartments that are outside areas of minority concentration throughout the New Haven area;

4. direct administration of Section 8 certificates in towns where this is permitted;

5. improved discrimination referral provisions;

6. outreach to all participating New Haven landlords informing them of the program and recruiting them to participate with their suburban properties;

7. subscriptions to all area suburban weekly papers and classified circulars, for the purpose of collecting suburban rental listings to be distributed to Section 8 tenants;

8. self-created, non-legally-binding target goals for implementation of its mobility efforts; and

9. staff training, record-keeping, and reporting provisions, including a means of documenting HANH's compliance with all HUD requirements regarding the provision of portability information to Section 8 families.

E. In the event that HANH is informed that a recipient of a special Section 8 certificate has failed to attend at least one (1) counselling session with the Mobility Counsellor within one hundred eighty (180) days after the award of a special Section 8 certificate, HANH shall reclaim the certificate from the recipient. Any such certificate reclaimed shall be reissued, in accordance with § VI above, to a family from the same tenant or applicant population (i.e., HANH public housing tenants, HANH public housing waiting list members, or HANH Section 8 waiting

list members) from which the family forfeiting the special certificate had been selected.

VIII. SECTION 8 EXCEPTION RENTS AND FAIR MARKET RENTS

A. Exception Rents.

1. 110 Percent Rents.

a. HANH shall approve, on a unit-by-unit basis, a Housing Assistance Payments contract that provides for a Section 8 contract rent of up to 110 percent of the fair market rent upon:

(1) certification by the Mobility Counsellor, or any person's presentation of other reasonable evidence, to the effect that a recipient of a Section 8 certificate under this Settlement Agreement will not reasonably be able to use that certificate outside an area of minority concentration unless the recipient is allowed to rent a unit that exceeds the fair market rent; or

(2) HANH's agreement to do so, in the absence of such certification or evidence.

b. Should HANH be prevented from approving a contract rent that is greater than the fair market rent because it has reached the HUD regulatory limit on the granting of such exception rents, HUD will authorize HANH to approve a contract rent of up to 110 percent of the fair market rent if justified under the standards set forth in HUD regulations.

2. 120 Percent Rents

a. Plaintiffs will explore the possibility of conducting, with regard to rental properties in the City of New Haven and in jurisdictions surrounding the City of New Haven that are outside areas of minority concentration, rent surveys of the type that would be needed to establish, under HUD regulations, the justification for HUD's approval of contract rents of up to 120 percent of the fair market rent under the Section 8 certificate program for (1) all units of a given size or type within a designated municipality, county, or similar jurisdiction, or (2) all units of a given size or type in a specified neighborhood.

b. To the extent that the results of any rent surveys of the type described above that are conducted by the plaintiffs would appear to the plaintiffs to establish a justification for HUD to approve contract rents of up to 120 percent of the fair market rent, the plaintiffs shall provide all necessary information regarding the surveys to HANH and HUD. Should HUD determine that the plaintiffs' rent surveys appear to accurately reflect the rents for the units in the geographical areas in question, HANH shall provide HUD with any additional information required under HUD regulations to be submitted by a housing authority in connection with a request for approval of such contract rents, and HUD will authorize HANH to approve a contract rent of up to 120 percent of the fair market rent if justified under the standards set forth in HUD regulations.

B. Fair Market Rents.

1. Plaintiffs will explore the possibility of conducting a study of rents in suburban communities within the New Haven MSA, to be submitted to HUD at the time of the publication of proposed fair market rents.

2. HUD, while preserving its full discretion under existing regulations to decide whether or not to raise fair market rents in the New Haven MSA, will consider such a study, consistent with HUD regulations, to determine if the then-proposed FMRs for the New Haven area merit adjustment.

IX. MAXIMIZING HOUSING OPPORTUNITIES FOR HANH APPLICANTS

A. At any future time during which HANH's Section 8 waiting list is open to new applicants, HANH shall alter the application process for Section 8 and public housing so that an application for either form of housing will be treated as an application for both forms of housing, unless an applicant expressly affirms in writing that the applicant:

1. understands that he/she has the right to have the application treated as an application for both forms of housing; and

2. does not want to be placed on the waiting list for any other form of housing.

B. Beginning 60 days after the effective date of this agreement:

1. No public housing applicant's rejection of an offer of HANH public housing shall affect that applicant's position on HANH's Section 8 waiting list;

2. No Section 8 applicant's rejection of a HANH Section 8 certificate or voucher shall affect that applicant's position on HANH's public housing waiting list; and

3. No HANH Section 8 applicant's federal preference status will be adversely affected solely by that applicant's acceptance of HANH public housing.

X. HUD MONITORING ACTIVITIES

A. HUD, in cooperation with state and local fair housing enforcement organizations, will continue to enforce Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Section 3 of the Housing and Urban Development Act of 1968, and other civil rights statutes within HUD's enforcement authority as they apply to providers of HUD-assisted housing in the New Haven area.

B. Within six months after entry of this Settlement Agreement, HUD shall determine, to the extent practicable, which public housing agencies in jurisdictions surrounding New Haven employ residency preferences in determining admission to public housing and in awarding Section 8 assistance. Provided the New England Office of HUD has staffing that HUD deems adequate to comply with the obligations of this provision, HUD shall

investigate, in each twelve-month period thereafter during which the Court has jurisdiction over enforcement of this Settlement Agreement, two (2) such public housing authorities to determine whether those housing authorities' residency preferences are having a discriminatory impact on racial minorities, in violation of any law within HUD's authority to enforce. In the event HUD determines that any such residency preference is being used in violation of the law, HUD shall take whatever enforcement action it deems appropriate.

C. Upon receiving notice of any failure, or alleged failure, of HANH to comply with the provisions of this agreement, HUD may investigate such failure and, to the extent it finds that such failure is a violation of any law that is within HUD's authority to enforce, HUD may take appropriate enforcement action, including, but not limited to:

1. declarations of breach of an Annual Contributions Contract;
2. withholding or conditioning of HUD funding;
3. debarment of persons or entities responsible for such violation; or
4. referral of a matter to the Department of Justice for appropriate action.

D. Upon receiving notice of any action taken or not taken, or alleged to have been taken or not taken, by any agent of the City of New Haven that has the effect of interfering with, or failing to facilitate, any person or entity's compliance with the

obligations of this agreement, HUD may investigate such failure and, to the extent it finds that such failure is a violation of any law that is within HUD's authority to enforce, HUD may take appropriate enforcement action including, but not limited to:

1. declarations of breach of an assistance agreement with HUD;
2. withholding or conditioning of HUD funding;
3. debarment of persons or entities responsible for such violation; or
4. referral of a matter to the Department of Justice for appropriate action.

XI. HUD FUNDING AND HANH USE THEREOF

A. HUD has previously reserved public housing development and Section 8 project-based certificate funds to complete the Elm Haven replacement plan. These funds shall remain available for that purpose. Subject to total-development-cost limits and availability of future appropriations should the present fund reservation for public housing development be insufficient, HUD shall ensure that public housing development funding for replacement public housing is made available to HANH in amounts deemed by HUD to be sufficient to enable HANH to complete the Elm Haven replacement plan. Nothing in the previous sentence shall be deemed to limit HUD's authority, pursuant to 24 C.F.R. § 941.406 or other pertinent HUD regulations, to approve HANH project costs in excess of the amounts set forth in the total-

development-cost guidelines established by HUD pursuant to 24 C.F.R. § 941.204.

B. HUD shall encourage governmental entities in the New Haven-Meriden MSA - and HANH hereby agrees - to apply for and utilize HUD funds in the future, to the extent practicable, to create affordable housing opportunities for minority persons outside areas of minority concentration.

XII. CLASS CERTIFICATION AND NOTICE

A. Upon execution of this agreement, the parties shall promptly notify the District Court of such execution and request the Court to enter an order certifying a class, for the purposes of the above-captioned litigation, consisting of all minority residents of, and applicants for, federally-funded low-income public housing in the City of New Haven as of June 3, 1991 or thereafter, and all minority applicants for HANH federally-funded Section 8 assistance as of June 3, 1991 or thereafter.

B. All of the parties' obligations under this Settlement Agreement are conditioned upon the Court's certification of a plaintiff class that is broad enough to include, at minimum, all such residents and applicants.

C. Upon execution by all parties, the parties shall promptly file this Settlement Agreement with the District Court and request that the Court enter an order:

1. preliminarily approving the proposed settlement as fair, reasonable, and adequate;

2. scheduling a final hearing to determine the fairness, reasonableness, and adequacy of the proposed settlement and whether the Court should approve the Settlement Agreement; and

3. approving publication and dissemination of a class action notice containing the settlement terms, the date of the final hearing, and information regarding the right to comment or object.

D. Pursuant to FED. R. CIV. P. 23(e), all class members shall be given notice of the terms of the Settlement Agreement and their right to object to the terms thereof. The form of such notice shall be agreed upon by counsel for all parties or by the Court in the event that there is no such agreement. Such notice shall, at minimum, advise class members (1) that they shall have until ten (10) days before the date of the fairness hearing within which to file written objections or comments with the Court - or to contact plaintiffs' counsel with oral or written objections or comments - with respect to the proposed terms of this Settlement Agreement and (2) that any class member who has made such written or oral objections or comments may appear at the hearing and show cause why this Settlement Agreement should not be approved. Between the signing of this Settlement Agreement and the fairness hearing, HUD and HANH shall direct all inquiries regarding the Settlement Agreement from class members to plaintiffs' counsel.

XIII. ATTORNEYS' FEES

HUD and HANH shall pay attorneys' fees and costs to plaintiffs in amounts to be stated in one or more agreements to be executed simultaneously with this Settlement Agreement. Neither HUD nor HANH shall be liable for attorneys' fees or costs beyond these amounts, except that if plaintiffs subsequently move the Court for enforcement of the Settlement Agreement, and the Court finds a defendant to be in violation of the Settlement Agreement, plaintiffs may apply to the Court for an award of fees with respect to that defendant.

XIV. JURISDICTION OF COURT

The Court shall retain jurisdiction over the parties to this Settlement Agreement, after its entry, for the purpose of enabling any party to the Agreement to apply to the Court for such further orders as may be necessary or appropriate for the enforcement of this Agreement. The Court's jurisdiction over HANH shall terminate upon HANH's discharge of all of its responsibilities under the Agreement. The Court's jurisdiction over HUD shall terminate four years after the Court's final approval of the Agreement.

XV. SUBSEQUENT LEGISLATION

The parties shall not be obligated to carry out any term of this Settlement Agreement if any otherwise applicable federal or state statute or regulation that becomes effective after the signing of this Agreement precludes a party from complying with, or withdraws that party's authority to perform, that term.

XVI. MISCELLANEOUS

A. This Settlement Agreement, if approved by the Court, shall constitute a full and final resolution of all claims arising from the facts set forth in the plaintiffs' Amended Complaint in this action that plaintiffs, including the plaintiff class, have asserted, or could have asserted, against defendants HUD (including its officers, employees, agents, successors, or assigns), the Secretary of HUD, HANH (including its officers, employees, agents, successors, or assigns), the Executive Director of HANH, and the estate of David Echols. Upon the Court's approval of this Settlement Agreement, plaintiffs, including the plaintiff class, release and forever discharge the aforementioned defendants from such claims.

B. Neither this Settlement Agreement nor its contents may be referred to as evidence of, or may be construed as, an admission by the aforementioned defendants of liability, wrongdoing, or unlawful conduct.

C. This Settlement Agreement cannot be amended, changed, or modified except by means of a written instrument that specifically refers to this Settlement Agreement, is executed by all parties hereto, and is approved by the Court.

D. Nothing contained in this Settlement Agreement shall be deemed or interpreted (1) to require HUD to provide any funding to HANH or to any other entity beyond that expressly provided for herein; (2) to impose duties or undertakings upon HUD or HANH other than those explicitly stated herein; or (3) to provide that

either HUD or HANH is a guarantor or insurer of the other's performance hereunder.

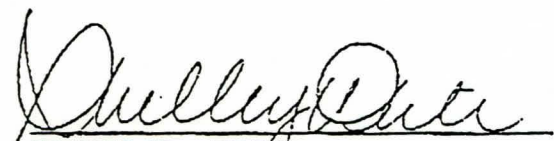
E. This Agreement may be signed in counterpart.

SO ORDERED

District Court Judge

FOR PLAINTIFFS:

Dated: 5-9-95


GLENN W. FALK
SHELLEY WHITE
New Haven Legal Assistance
Association, Inc.
426 State Street
New Haven, CT 06510
(203) 946-4811

Dated:

PHILIP D. TEGELER
JONEL NEWMAN
Connecticut Civil Liberties
Union Foundation
32 Grand Street
Hartford, CT 06106
(203) 247-9823

either HUD or HANH is a guarantor or insurer of the other's performance hereunder.

E. This Agreement may be signed in counterpart.

SO ORDERED

District Court Judge

FOR PLAINTIFFS:

Dated:

GLENN W. FALK
SHELLEY WHITE
New Haven Legal Assistance
Association, Inc.
426 State Street
New Haven, CT 06510
(203) 946-4811

Dated: 5-10-95

MP D. TEGELER
PHILIP D. TEGELER
JONEL NEWMAN
Connecticut Civil Liberties
Union Foundation
32 Grand Street
Hartford, CT 06106
(203) 247-9823

FOR UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT AND OTHER
FEDERAL DEFENDANTS:

Dated:



ANNE L. WEISMANN
LOIS B. OSLER
United States Department of Justice
901 E Street, N.W., Rm. 990
Washington, D.C. 20530
(202) 514-3770

Dated:

NELSON A. DIAZ
General Counsel
United States Department of
Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
(202) 708-2244
(Of Counsel)

FOR HOUSING AUTHORITY
OF THE CITY OF NEW HAVEN
OTHER HANH DEFENDANTS:

Dated:

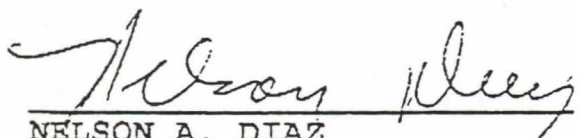
FRANK W. COCHRAN
Cooper, Whitney, Cochran & Francois
51 Elm Street
New Haven, CT 06508
(203) 865-7380

FOR UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT AND OTHER
FEDERAL DEFENDANTS:

Dated:

ANNE L. WEISMANN
LOIS B. OSLER
United States Department of Justice
901 E Street, N.W., Rm. 990
Washington, D.C. 20530
(202) 514-3770

Dated: 5/10/95



NELSON A. DIAZ
General Counsel
United States Department of
Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
(202) 708-2244
(Of Counsel)

FOR HOUSING AUTHORITY
OF THE CITY OF NEW HAVEN
OTHER HANH DEFENDANTS:

Dated:

FRANK W. COCHRAN
Cooper, Whitney, Cochran & Francois
51 Elm Street
New Haven, CT 06508
(203) 865-7380

FOR UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT AND OTHER
FEDERAL DEFENDANTS:

Dated:

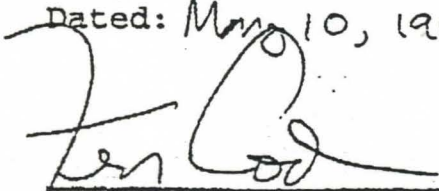
ANNE L. WEISMANN²
LOIS B. OSLER
United States Department of Justice
901 E Street, N.W., Rm. 990
Washington, D.C. 20530
(202) 514-3770

Dated:

NELSON A. DIAZ
General Counsel
United States Department of
Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
(202) 708-2244
(Of Counsel)

FOR HOUSING AUTHORITY
OF THE CITY OF NEW HAVEN
OTHER HANH DEFENDANTS:

Dated: May 10, 1995



FRANK W. COCHRAN
Cooper, Whitney, Cochran & Francois
51 Elm Street
New Haven, CT 06508
(203) 865-7380

NEW HAVEN AREAS OF MINORITY CONCENTRATION

<u>Tract</u>	<u>Block Groups</u>	<u>Tract</u>	<u>Block Groups</u>
1401	1	1415	1
1402	1		2
1403	1		3
	2		4
	3		5
			6
			7
			8
1404	1	1416	1
	3		2
1405	1		3
	2		4
	3		5
			6
1406	1	1417	4
	2		
	3	1418	3
	4		4
	5		
1407	1	1421	1
	3		2
	4		
	5	1423	2
	6		3
			4
1408	1		5
	2		6
	3		
	4	1424	1
1409	1		2
	2		3
	3		4
			5
1412	1	1425	2
	5		
1413	1	1426.02	2
			3
1414	3		

APPENDIX A

AGREEMENT REGARDING ATTORNEYS' FEES AND COSTS

WHEREAS the parties to this Agreement Regarding Attorneys' Fees and Costs have entered into a Settlement Agreement, filed with the Court herewith, to resolve issues raised in Christian Community Action, Inc., et al. v. Cisneros, et al., Civil Action Number 3:91CV00296 (AVC),

THOSE PARTIES FURTHER HEREBY AGREE AS FOLLOWS:

1. The Federal defendant shall pay to the New Haven Legal Assistance Association, Inc., on behalf of all plaintiffs and plaintiffs' attorneys, the sum of \$140,000 in attorneys' fees and costs.

2. The Housing Authority of the City of New Haven (HANH) shall pay to the New Haven Legal Assistance Association, Inc., on behalf of all plaintiffs and plaintiffs' attorneys, the sum of \$80,000 in attorneys' fees and costs.

3. Plaintiffs agree that the New Haven Legal Assistance Association, Inc., as designated payee for all plaintiffs, will arrange for and distribute to all other counsel for plaintiffs, from the payments of attorneys' fees referred to in provisions 1 and 2 above, such amounts as may be appropriate.

4. This Agreement Regarding Attorneys' Fees and Costs is incorporated into, and subject to each term of, the Settlement Agreement filed with the Court herewith.

5. All obligations set forth in this Agreement Regarding Attorneys' Fees and Costs are made subject to the condition that the Court approves the Settlement Agreement filed with the Court herewith.

FOR PLAINTIFFS:

Dated:

GLENN W. FALK
SHELLEY WHITE
New Haven Legal Assistance
Association, Inc.
426 State Street
New Haven, CT 06510
(203) 946-4811

Dated:

PHILIP D. TEGELER
JONEL NEWMAN
Connecticut Civil Liberties
Union Foundation
32 Grand Street
Hartford, CT 06106
(203) 247-9823

FOR UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT AND OTHER
FEDERAL DEFENDANTS:

Dated:

ANNE L. WEISMANN
LOIS B. OSLER
United States Department of Justice
901 E Street, N.W., Rm. 990
Washington, D.C. 20530
(202) 514-3770

Dated:

NELSON A. DIAZ
General Counsel
United States Department of
Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
(202) 708-2244
(Of Counsel)

FOR HOUSING AUTHORITY
OF THE CITY OF NEW HAVEN
OTHER HANH DEFENDANTS:

Dated:

FRANK W. COCHRAN
Cooper, Whitney, Cochran & Francois
51 Elm Street
New Haven, CT 06508
(203) 865-7380

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

Lucy Hollman, Shirlnice Givens, Mai Yang, Charlotte Brown, Vanessa Boateng, Lia Shoua Pha, Anne Balentine, Josephine Hill, Joyce Charles, Her Hang, Marlene Holloway, Patricia Scott, Gertrude Marks, Michelle Barnes, Earline Robertson, Jacqueline Trass, and Lawrence Madison, on behalf of themselves and all others similarly situated, and the Minneapolis Branch of the National Association for the Advancement of Colored People ("NAACP"),

Plaintiffs,

v.

Henry Cisneros, in his official capacity as Secretary of the Department of Housing and Urban Development ("HUD"); Thomas T. Feeney, in his official capacity as Acting Minnesota State Coordinator of HUD; Cora McCorvey, in her official capacity as Executive Director of the Minneapolis Public Housing Authority ("MPHA"); MPHA, in and for the City of Minneapolis, a public body corporate and politic; the Minneapolis Community Development Agency ("MCDA"), a public body corporate and politic; the City of Minneapolis, a public body corporate and politic; the Metropolitan Council ("Metro Council"); Curtis W. Johnson, in his official capacity as Chair of Metro Council; and Thomas McElveen, in his official capacity as Manager of the Metropolitan Council Housing and Redevelopment Authority unit ("Metro HRA"),

Defendants,

Cora McCorvey, in her official capacity as Executive Director of the MPHA; MPHA; MCDA, and City of Minneapolis,

Defendant Cross-Claimants,

v.

Henry Cisneros, in his official capacity as Secretary of HUD; Thomas T. Feeney, in his official capacity as Acting Minnesota State Coordinator of HUD; Metropolitan Council ("Metro Council"); Curtis W. Johnson, in his official capacity as Chair of Metro Council; and Thomas McElveen, in his official capacity as Manager of the Metropolitan Council Housing and Redevelopment Authority unit ("Metro HRA"),

Defendants.

CONSENT DECREE

Civil 4-92-712

I. INTRODUCTION

1. Plaintiffs Lucy Hollman, *et al.*, ("Individual Plaintiffs") and Plaintiff National Association for the Advancement of Colored People (NAACP), and Defendants Henry Cisneros, Thomas T. Feeney, the United States Department of Housing and Urban Development (HUD) ("federal Defendants"), Cora McCorvey, the Minneapolis Public Housing Authority (MPHA), the Minneapolis Community Development Agency (MCDA), the City of Minneapolis ("Minneapolis Defendants"), and the Metropolitan Council, Curtis W. Johnson, and Thomas McElveen ("Metropolitan Defendants"), enter into this Consent Decree ("Decree") for the purpose of settling this lawsuit.

2. Plaintiffs initiated this action alleging that Minneapolis and federal Defendants have administered the Public Housing and Section 8 Existing Housing programs in Minneapolis so as to create and perpetuate patterns of racial segregation, in violation of the United States Constitution, and federal and state laws. Subsequently, Plaintiffs added Metropolitan Defendants to the case, alleging the Metropolitan Defendants abandoned efforts to encourage the spread of low-income housing throughout the metropolitan area in violation of the law, thus making it more difficult for Plaintiffs to effectuate relief in this case on a metropolitan area-wide basis. Minneapolis Defendants then filed cross claims of a similar nature against Metropolitan Defendants, as well as filing cross claims against federal Defendants. Defendants deny all claims and cross claims. .

3. The parties have entered into this Decree to address the issues raised in the Plaintiffs' complaint and the Minneapolis Defendants' cross claims, and to avoid the expense and inconvenience of further litigation. The purpose of this Decree is to set out a series of actions to

be taken by Defendants which will promote equal housing opportunity, expand and maximize geographic choice in assisted housing, and encourage racial integration, by (1) deconcentrating racially concentrated family public housing projects, (2) improving living conditions in remaining family public housing units, (3) relocating public housing units to areas outside of minority concentrations, (4) improving administration of the Section 8 Existing Housing program so as to remove barriers to effective choice, (5) expanding access to application opportunities for assisted housing, (6) developing means to encourage expansion of low-income housing opportunities in suburban cities in the metropolitan area, and (7) ensuring Defendants remain committed to preserving and expanding locational choice and the goals of fair housing. Through this Decree the parties seek to expand access to assisted housing not only in areas outside of minority- and poverty- concentration in Minneapolis, but in such areas throughout the Minneapolis-St. Paul Metropolitan Area.

4. The parties have agreed to the terms set forth below and have agreed to the entry and implementation of this Decree. Therefore, based on the agreement of the parties, and all materials submitted to the Court on the appropriateness of the relief set forth in this Decree, it is ordered, adjudged and decreed that the parties shall be bound to undertake the obligations set out below.

II. DEFINITIONS

5. Family Public Housing means public housing owned by the MPHA and specified herein as Mn 2-1, Glendale Apartments; Mn 2-2, Olson Apartments, excluding the Bryant Highrise; Mn 2-3, Lyndale Apartments,

excluding 800 North 5th Street Highrise; Mn 2-4, Glenwood Apartments; Mn 2-5, Sumner Field Homes; Mn 2-7, Sumner Annex; Mn 2-25B, Near North Apartments; Mn 2-13, Mn 2-38, Mn 2-39, Mn 2-40, Mn 2-43, Mn 2-44, Mn 2-45, Mn 2-47, Mn 2-48, scattered site projects; including replacement units for Mn 2-2, Mn 2-3, and Mn 2-5 that are in existence as of the date of this Decree.

6. Federal Defendants means Henry Cisneros in his official capacity as Secretary of HUD, and Thomas T. Feeney, in his official capacity as Acting Minnesota State Coordinator of HUD, as well as their successors during the life of this Decree. "Action" as used when referencing HUD shall include non-action.
7. ~~Metropolitan Defendants~~ means the Metropolitan Council established by MINN. STAT. § 473.123, subd. 1, Curtis W. Johnson in his official capacity as Chair of the Metropolitan Council, and Thomas McElveen in his official capacity as manager of the Metropolitan Council Housing and Redevelopment Authority Unit, as well as their successors during the life of this Decree.
8. Minneapolis Defendants means Cora McCorvey, in her official capacity as Executive Director of the Minneapolis Public Housing Authority (MPHA) as well as her successor during the life of this Decree; the MPHA, in and for the City of Minneapolis, a public body corporate and politic; the Minneapolis Community Development Agency (MCDA), a public body

corporate and politic; and the City of Minneapolis, a public body corporate and politic.

9. Minneapolis-St. Paul Metropolitan Area or Metropolitan Area means the counties of Anoka, Carver, Dakota excluding the City of Northfield, Hennepin excluding the City of Hanover, Ramsey, Scott excluding the City of New Prague, and Washington. Unless otherwise indicated by the context of this Decree, the term "Metropolitan Area" does not mean the Metropolitan Statistical Area ("MSA" or "SMSA") defined by the Office of Management and Budget.
10. Minority means a person other than a non-Hispanic white.
11. Minority Concentrated Area means: any census tract in the Metropolitan Area with a minority population which is twenty percentage points greater than the percentage of minority population in the Minneapolis-St. Paul Metropolitan Statistical Area (MSA). Until new census data becomes available, any census tract with a minority population greater than 28.69% is a minority concentrated area. As soon as new census data becomes available, the parties shall revise the definition of minority-concentrated areas to comply with the definition set out above.
12. Multi-Family Housing means a residential building containing more than four dwelling units.

13. Nonconcentrated Area means any census tract within the City of Minneapolis or the remainder of the Metropolitan Area which is not minority-concentrated or poverty-concentrated.
14. Northside Projects means MPHA family public housing projects in the Near Northside of Minneapolis, consisting of Mn 2-2, Olson Apartments, excluding the Bryant Highrise; Mn 2-3, Lyndale Apartments, excluding 800 North 5th Street Highrise; Mn 2-4, Glenwood Apartments; Mn 2-5, Sumner Field Homes; Mn 2-7, Sumner Annex; Mn 2-25B, Near North Apartments; and other scattered site units in the immediate vicinity of the Sumner-Glenwood area.
15. Parties means all the Plaintiffs and all the Defendants in this action, as listed in the caption to the Decree.
16. Poverty Concentrated Area means: (1) in Minneapolis or St. Paul, a census tract with a population at or below poverty which is fifteen percentage points greater than the percentage of population below poverty in the City. Until new census data becomes available, Minneapolis census tracts with a population at or below poverty of at least 33.5% of the census tract population and St. Paul tracts with a poverty population of at least 31.7% of the tract population are poverty-concentrated areas. (2) In the suburbs, a census tract with a poverty population which is one and a half times greater than the percentage of population below poverty in the Metropolitan Area as a whole are poverty concentrated areas. Until new

census data becomes available, suburban census tracts with a poverty population of at least 12.2% of the census tract population are poverty-concentrated areas. As soon as new census data becomes available, the parties shall revise the definition of poverty concentrated areas to comply with the definition set out above.

17. Project-Based Low-Income Housing means housing in which the subsidy enabling the tenant's housing cost to be set at no more than 30% of the tenant's income remains attached to the building even if the current tenant moves.
18. Scattered Site Units means family public housing units which are scattered throughout a particular city or the Metropolitan Area, rather than being part of a large multi-unit apartment or other complex.
19. Single Family Housing means buildings of one to four residential units.
20. Suburbs means all cities, towns, and other units of general local government, other than the cities of Minneapolis and St. Paul, located within the Metropolitan Area as defined in Paragraph 9.
21. Section 8 Certificate or Certificate means either a Section 8 Certificate or a Section 8 Voucher under Section 8 of the United States Housing Act, 42 U.S.C. § 1437f.

III. DECONCENTRATION AND IMPROVEMENT OF NORTHSIDE PROJECTS

A. Demolition and/or Disposition

22. Defendant MPHA will submit two applications for demolition and/or disposition and replacement of 770 public housing units in two phases. The first application will be done promptly and will include 402 units in the first phase: the Sumner Field project, projects Mn 2-5 and 2-7, currently consisting of 350 units; 4 units located in the Glenwood Project; and 48 scattered site units detailed in IV below. The first phase demolition and/or disposition will be completed three years from the date of HUD approval of the phase I application.

The second phase will consist of the units in the Glenwood Project, Mn-2-4, currently consisting of 220 units (less the 4 in the first phase); the Olson Project excluding the Bryant Highrise, Mn 2-2, currently consisting of 66 units; the Lyndale Project excluding the 800 N. 5th St. Highrise, Mn 2-3, consisting of 86 units. This application will be submitted to HUD within six months and in any event before September 30, 1995. The second phase demolition and/or disposition may begin before the first is completed and will be completed within five years of entry of the Decree.

These applications shall be provided to Plaintiffs for comments before submission to HUD.

23. HUD will promptly process, and shall approve the applications unless they fail to meet the applicable statutory standards..

24. Within three months of entry of the Decree, Defendant MPHA and Plaintiffs will agree to a plan for demolition of Sumner Field which will coordinate the demolition, relocation, and development of replacement housing in order to achieve the following goals: development of replacement housing as quickly as possible, provision of relocation certificates as soon as a mobility housing counseling program can be effectively established, phasing of demolition so as to minimize the time in which units otherwise available for occupancy are vacant, and phasing of demolition so as to ensure that the remaining project constitutes a viable and safe environment for its residents.

25. MPHA and HUD agree that they will promptly take all steps necessary to comply with federal law with respect to the status of the Sumner Field Project as a property potentially eligible for inclusion on the National Register of Historic Places.

26. HUD agrees that Northside Project land made vacant by demolition may be disposed of by MPHA at substantial writedown, consistent with the re-use of the property as ultimately determined herein.

27. The MPHA and MCDA agree that they will promptly undertake, in conjunction with residents and organizations in the affected Northside community, a study process to develop a comprehensive plan for reuse of the Sumner Field site and any additional land vacated by second phase demolition. The planning process will be coordinated with the Minneapolis Neighborhood Revitalization Program (NRP) planning process for this area to the extent feasible. The MPHA has contracted with the Design Center for the American Urban Landscape of the University of Minnesota to provide technical assistance in this process. The

planning process will be completed within two years of entry of the Decree and will consider the following:

- a. alternative uses, including:
 - (1) park recreational and/or wetland areas;
 - (2) mixed income housing and/or owner-occupant opportunities; and
 - (3) commercial and industrial uses which create the potential for jobs for class members and other low-income residents of the area.
- b. the need for buffers to separate residences from highways and industrial uses.
- c. the extent to which connections to and reintroduction of commercial services to the area and the surrounding community are necessary and feasible.
- d. the extent to which changes in public services, including police, transportation and social services are necessary to reduce the isolation of the area and produce a more viable neighborhood. Particular attention should be paid to means to enhance residents' sense of personal security from crime.
- e. whether to provide for the re-introduction of streets through and subdivision of the "superblock" area west of the site area.

B. Relocation

28. Residents of units scheduled for demolition will be relocated by Defendant MPHA in a manner which provides the residents with as wide as possible a geographic choice of where to live. Where possible, permanent replacement units will be created prior to scheduled demolition so that persons to be relocated may move directly into replacement housing. Persons moving into scattered site public housing units in nonconcentrated areas, will receive counseling to enable them to achieve a successful transition into such neighborhoods. In addition,

Defendant MPHA will provide information to neighborhood residents to facilitate their acceptance of replacement housing.

29. When MPHA residents must be relocated due to pending demolition and permanent replacement units are not yet available, such residents shall be provided with Section 8 certificates (relocation certificates) to enable them to relocate, along with housing mobility counseling services, described in paragraph 70 herein, in order to provide the opportunity to move to non-concentrated areas. Following completion of counseling services, residents using relocation certificates shall be free to use their certificates to move to any location they desire, subject to federal statutory and regulatory laws governing the Section 8 Existing Housing Program.

30. Persons who receive relocation certificates because permanent replacement units are not yet available, shall be offered permanent replacement units when such units do become available. In the event a person chooses to move into a permanent replacement unit, the relocation certificate shall be returned to the pool of relocation and mobility certificates described herein in paragraph 64.

31. The MPHA will pursue strategies to maximize home ownership opportunities for persons relocated.

C. Replacement Housing and Metropolitan Mobility Incentive Housing

1. Resources and Statutory Requirements

32. Within two weeks after Court approval of this Decree, HUD will submit to MPHA an Annual Contributions Contract (ACC) for development of 770 units of public housing. These units will either replace public housing units demolished pursuant to III.A. or

will be used to provide incentives to other PHAs to accept replacement units located in nonconcentrated areas as set out in paragraph 37 below. Units provided as incentives to other PHAs will not be required to provide a priority to applicants from the MPHA waiting list and will not count as replacement units pursuant to 42 U.S.C. § 1437p. Replacement units may be located either in Minneapolis or in the Metropolitan Area suburbs. All replacement units will give priority to applicants on the MPHA waiting list.

33. The MPHA will submit, as part of its disposition application, and HUD will approve a replacement housing plan which will permit the MPHA to count as replacement housing for purposes of 42 U.S.C. § 1437p a portion of the 900 section 8 tenant based certificates to be provided pursuant to paragraph 61, up to the statutory maximum of 50% of the units to be demolished or disposed of.

34. The Sumner Field Units and all scattered site units to be disposed of pursuant to IV. will be replaced with tenant based Section 8 certificates or with public housing located in nonconcentrated areas as set out in III.C.2. below. The remaining units to be demolished will either be replaced in nonconcentrated areas as set out in III.C.2. below or at or adjacent to the current site of the four Northside Projects, to be determined pursuant to the planning process set out in III.C.3. below.

2. Replacement in nonconcentrated areas.

35. All of the project based replacement units for the Sumner Field Project, scattered site public housing, and the replacement units for the Glenwood, Olson, and Lyndale Projects which are not to be located on current Northside Project sites pursuant to III.C.3. below will be located in nonconcentrated areas of Minneapolis and Metropolitan Area suburban

locations. No less than 80 of these units will be replaced in Minneapolis. New construction replacement units will be located within the Metropolitan Urban Services Area or within Free Standing Growth Centers as those terms are defined in the Metropolitan Council's Regional Blueprint.

36. In the course of implementing the replacement housing plan, MPHA will solicit suburban housing authorities and other local government units, and contract with such authorities or units as necessary, in order to place replacement scattered site public housing in the suburban Metropolitan Area.

37. MPHA may offer a portion of the 770 public housing development units provided by HUD pursuant to III.A. above to suburban jurisdictions as an incentive to accept MPHA replacement units in those suburban jurisdictions. These incentive units need not give priority to applicants from the MPHA waiting list. The number of units offered as suburban incentives will not exceed the number of tenant based certificates counted as replacement housing and will not exceed 203 without Plaintiffs' and HUD's written consent.

38. Defendant MPHA will focus its replacement housing efforts on acquisition of existing single family units with modest rehabilitation requirements, including single family property disposition units, although appropriate HUD multifamily property disposition projects also may be considered. These efforts also will explore the feasibility of new construction of smaller multifamily buildings. Replacement will focus on units with bedroom sizes approximating the needs of MPHA applicant and transfer waiting lists. With respect to any multifamily properties acquired as replacement housing, or with respect to newly constructed or rehabilitated multifamily units used for replacement housing the following restrictions shall

apply: for projects containing 100 or fewer dwelling units, no more than ten (10) units shall be replacement units; for projects containing more than 100 dwelling units, no more than ten (10) percent of the units or 35 units whichever is less, shall be replacement units. MPHA, however, will not use federal funds toward acquiring dwelling units that will not be made available as public housing units.

39. Persons displaced or scheduled for displacement by demolition of units in which they were residing shall have first priority for replacement units regardless of where such units are located in the Metropolitan Area. Second priority shall be given eligible persons on Defendant MPHA applicant and transfer waiting lists who reside in minority or poverty concentrated areas, regardless of where such units are located in the Metropolitan Area. Third priority shall be given all other eligible persons on Defendant MPHA applicant and transfer waiting lists.

40. HUD, in connection with the above 770 public housing replacement units, will consider waiver of applicable HUD Total Development Cost (TDC) caps and will grant such waivers only to the extent of increased acquisition cost of housing of modest design in nonconcentrated areas.

41. HUD will make FHA single family or multifamily property disposition units available to the Minneapolis Defendants only in accordance with applicable HUD regulations and procedures.

42. HUD agrees that MPHA may proceed with developing replacement housing immediately upon approval of the demolition/disposition application, and that such activity need not wait until the demolition of units is accomplished.

43. HUD agrees that in the event MPHA and a suburban PHA enter into a joint powers agreement under which the suburban PHA develops or manages replacement housing in the form of scattered site public housing, MPHA shall not be required to take bids for the development or management of the replacement housing.

44. Replacement housing shall be completed by MPHA and available for occupancy within six years of HUD approval of the demolition or disposition application. MPHA shall make all reasonable efforts to phase in completion of the replacement housing over the course of the six year period so that most of the replacement units are complete prior to the end of the six years.

3. Redevelopment Of Olson, Glenwood, and Lyndale Project Site.

45. The MPHA will promptly enter into a planning process with the residents, resident organizations, social service providers and other affected community groups in the Glenwood, Lyndale, and Olson Projects, the Golden Age Apartments, and the scattered site units located on Smith Circle to develop a plan for these projects. This plan will consider to what extent replacement should take place on the current site, how any resulting vacant land should be re-used, and how any public housing replaced on site can be improved to better meet resident needs. The MPHA has contracted with the Design Center for American Urban Landscape to provide technical assistance in this process and the Design Center's preliminary evaluation of the projects will be used as a starting point in the planning process. The Plaintiffs will be integrally involved in this planning process. The process will be coordinated with Minneapolis Neighborhood Revitalization Program (NRP) planning for this area and will be completed within two years of entry of the Decree.

46. HUD will approve replacement of up to 368 units on the current sites as meeting the "overriding need" standard in 24 C.F.R. § 941.202(c)(1)(ii) based on the representations of neighborhood redevelopment and revitalization made by the Minneapolis Defendants and the participation of the Plaintiff class and other tenants in the formulation of a redevelopment and revitalization plan.

47. HUD and the MPHA will attempt to find ways to replace units on the current site through substantial rehabilitation of existing units.

48. HUD agrees that Northside Project land made vacant by demolition may be disposed of by MPHA at substantial writedown, consistent with re-use of the property as ultimately determined herein.

D. Action Plan

49. HUD will explore with MPHA how to provide at least \$175,000 to carry out the studies of reuse of the Sumner Field site and the study of replacement of the Glenwood, Lyndale and Olson projects, including authorizing the use of development funds, so long as that will not require an increase in the amount of HUD funding for the ACC and is permitted by law..

50. Based upon both studies, Minneapolis Defendants will produce an action plan which will provide for the restructuring of the Smith Circle, Golden Age, Glenwood, Lyndale and Olson projects, and redevelopment of the Sumner Field site as well as any vacant land resulting from second phase demolition, to be presented to the parties within two years of entry of the Decree.

51. Subject to the dispute resolution procedure set out in paragraph 97, any party may petition the Court to review the action plan. In determining the adequacy of the action

plan, the Court shall find the plan invalid to the extent that it is not reasonably calculated to achieve the goals set out in subparagraph A below or fails to fully consider the factors set out in subparagraph B below or omits information required by subparagraph C below. In the event the Court invalidates any aspect of the plan, the Minneapolis Defendants shall amend the plan as required by the Court.

A. The goals which the plan must be reasonably calculated to achieve are the following:

- i. substantial deconcentration of the Northside Projects;
- ii. improved physical integration of the Northside Projects with the surrounding communities;
- iii. redevelopment of the area into a more viable neighborhood with improved housing quality, social and other services, economic opportunity, and amenities comparable to those found in family subsidized housing located in predominately white metropolitan-area neighborhoods, including re-use of vacant land as described in paragraph. 27; and
- iv. providing housing in a variety of locations for low-income families on the MPHA's waiting lists.
- v. Responsiveness to the expressed preferences of current and prospective residents regarding housing type and location.

B. The planning process must fully consider the following issues:

- i. Desirable numbers of public housing units to remain on the site, in light of
 - a. the goals set out above;
 - b. sound design principles for maximizing resident satisfaction, privacy, responsibility, stability and security in multifamily housing;
 - c. ability of the MPHA's housing stock to meet the needs of current residents and applicants in a variety

of locations, especially those that are racially and economically integrated.

- d. Preferences of current and prospective residents regarding housing location.
- ii. Desirable locations and bedroom sizes for replacement units.
- iii. Desirable design improvements and levels of rehabilitation and modernization.
- iv. Desirable amenity levels, including the desirability and feasibility of providing amenities in individual units beyond those normally provided in public housing in order to increase racial and economic integration.
- v. Needed public services and social services.
- vi. Needed management improvements and desirable management innovations, including study of a self-management option.
- vii. Potential for homeownership, either on site or as an individual option for residents who choose to leave the site.
- viii. The potential for development of mixed income housing.
- ix. To the extent that recommendations produced suggest additional demolition resulting in developable parcels, the study will be expanded to include surrounding community organizations and will recommend reuses for the developable parcels. This process will be coordinated with that described in paragraph 27 (First Phase above) and will address the same issues.
- x. The plan will set out a timetable for removal and replacement of all units designated to be demolished and strategies to minimize the amount of time involved in occupying replacement units and to provide for maintenance of remaining housing and grounds to provide a safe, sanitary and decent living environment during the phased removal and replacement of units.

xi. Long term viability of the remaining units, given the soil conditions and measures necessary to mitigate the effects of adverse soil conditions on common areas and individual units.

C. The plan shall identify the cost of each aspect of the plan, identify the source and type of funds which will be required to effectuate the plan, and indicate a schedule for completing the plan.

52. With respect to the cost of implementation of the plan, the MPHA will make available up to \$2,500,000 of year five and six Comprehensive Grant Funds for demolition, and provision of amenities. HUD will be responsible only for funding the 770 units of public housing and will not be required by this Decree to fund any other elements of the plan. (This provision does not limit HUD's responsibility for funding the planning activities as described above and for funding other activities specifically set forth in parts V, VI, and VIII of this Consent Decree). HUD will approve demolition or disposition of units in the Golden Age project and scattered site units on Smith Circle as indicated by the plan unless the applications fail to meet the applicable statutory standards. The Minneapolis Defendants shall be obligated to provide only such funding as is necessary for their compliance with their obligations with respect to preparation or implementation of the action plan.

53. Once the action plan is presented to the parties and the parties have had thirty (30) days to present objections or comments, Minneapolis Defendants shall implement the plan according to the schedule set out in the plan.

54. During and following implementation of the action plan, and subject to the dispute resolution procedure set out in paragraph 97, any party may seek the Court's review in the event those persons or entities carrying out the plan depart from the plan, fail to effectuate all aspects of the plan, or lag behind the timetable set out in the plan.

IV. DECONCENTRATION OF SCATTERED SITE UNITS

55. MPHA agrees to evaluate 129 of its 376 scattered site units which are in minority concentrated areas for possible demolition/disposition. These 129 units were generally built before 1970 or have not received major modernization work within the past five years, and are the units most likely to need lead paint abatement and substantial rehabilitation.

56. The MPHA has adopted a policy, set out in Appendix A, under which units being evaluated will be demolished or otherwise disposed of if the cost of lead paint treatment and required modernization is substantial and unless the units after lead paint treatment and modernization are especially desirable for some other reason, such as large bedroom size or high amenity level. Any such units that are demolished or otherwise disposed of will be replaced in Nonconcentrated Areas. In addition to the commitments made by MPHA in the preceding sentences regarding the location of replacement scattered site units, MPHA agrees that any non-replacement scattered site units developed in the future by MPHA will not be located in poverty-concentrated areas and will in general not be located in areas which are minority-concentrated. Nothing in this paragraph shall be deemed to constitute a waiver of HUD's right under applicable law to review and approve or disapprove sites proposed by the MPHA.

57. The MPHA estimates that application of this policy will result in approximately 100 units located in minority concentrated areas being replaced in non-concentrated areas. To date, 44 units have been submitted to HUD for demolition or disposition. HUD has approved demolition or disposition of 19 of these. The remaining 25 will

be resubmitted to HUD along with an additional 23 units as part of the 770 unit package referred to in part III. Demolition/disposition applications for all scattered site units referred to in paragraph 56 above shall be submitted to HUD, after providing Plaintiffs with copies and the opportunity to comment, by no later than two years from entry of the Decree. HUD shall approve all disposition or demolition applications consistent with this policy unless the applications fail to meet applicable statutory standards.

58. HUD agrees that scattered sites may be turned over to the MCDA or nonprofit developers at no cost in order to foster homeownership or similar public policies intended to ensure long term ownership of the premises and avoid the kind of absentee ownership which may lead to neglect.

59. Demolition/disposition of scattered site units and production of replacement units shall be coordinated so as to minimize the period of time between demolition/disposition and the initial operation of replacement units. All replacement units will give priority to MPHA tenants and applicants. Paragraphs 28, 31. and 35 herein applicable to first phase demolition, relocation and replacement shall also be applicable to demolition/disposition of scattered site units herein.

V. METROPOLITAN AREA FAIR HOUSING INITIATIVE

60. The parties intend the provisions of this Decree to serve as a demonstration program in order to provide a national model for deconcentrating public housing and maximizing geographic choice throughout a metropolitan area. To that end, HUD will become a co-sponsor of this initiative as described herein, cooperate with the other parties in

developing and implementing the policies set out below, and will provide the substantial funding described in paragraphs 32, 61, 69, and 74.

61. Within two weeks after entry of the Decree, HUD shall provide an Annual Contributions Contract amendment for funding an additional 600 tenant-based Section 8 certificates and 300 tenant based Section 8 Vouchers (hereinafter referred to as Certificates), for relocation and mobility purposes, to Defendant MPHA. From this pool of certificates, MPHA shall provide residents of units scheduled for first phase demolition such certificates, known as relocation certificates, for all such residents for whom acceptable permanent replacement units are not available.

62. Following the receipt of housing counseling services as described in paragraph 70, persons receiving Section 8 relocation certificates shall be free to use their certificates throughout Minneapolis and the Metropolitan Area, subject only to federal statutory and regulatory laws governing the Section 8 Existing Housing Certificate and Voucher Programs.

63. All remaining certificates in the pool of 900 shall be designated mobility certificates. Mobility certificates are provided for the express purpose of enabling public housing residents living in public housing in areas of minority and poverty concentration to move to nonconcentrated areas. These certificates, along with housing counseling services, shall be offered to public housing residents currently living in either family rowhouse units or scattered site units which are located in areas of minority or poverty concentration and which are not already subject to the offer of a relocation certificate pursuant to demolition. Following completion of housing counseling services, certificate holders will be allowed 180 days to enter

into a lease for the rental of a unit in a nonconcentrated area. At the expiration of the 180 days, if the certificate holder has received an offer of housing in a nonconcentrated area facilitated by the housing counseling service and a Housing Assistance Payments Contract or a Housing Voucher Contract has not been executed, the certificate will be returned for distribution to other public housing residents. In the event a certificate holder has not received an offer of housing in a nonconcentrated area facilitated by the housing counseling service the certificate may be retained by the holder until such an offer has been received. The same restrictions shall apply to any reuse of the certificates (i.e., turnovers); however, if the reuse is by the certificate holder after having resided in a unit in a nonconcentrated area for one year, the restriction shall not apply.

64. In the event some mobility certificates remain unused after offers are extended to all current MPHA residents as described in paragraph 63 above, the remaining mobility certificates will be offered to MPHA's waiting list for public housing with priority given to households with children living in minority- or poverty-concentrated areas. In the event relocation or mobility certificate holders subsequently give up their certificate, such certificate shall be returned to the pool of 900 certificates to be used first for relocation of residents subject to subsequent demolition/disposition, and secondly, as a mobility certificate for MPHA's waitlist, with priority given to households with children living in minority- or poverty-concentrated areas..

65. First priority for mobility certificates shall go to Plaintiffs Lucy Hollman, Shirlnice Givens, Mai Yang, Charlotte Brown, Vanessa Boateng, Joyce Charles, Josephine Hill, Lia Shoua Pha, Anne Balentine, and Her Hang. These named plaintiffs shall be eligible for

mobility certificates as long as they meet income eligibility rules, regardless of whether they currently live in public housing or in minority- or poverty-concentrated areas. After that, eligible public housing residents shall receive certificates pursuant to paragraphs 63 and 64 above in the order of their seniority within MPHA public housing, with those residing in MPHA public housing units the longest receiving certificates first.

66. The parties agree that for the purpose of determining fair share allocations of Section 8 resources in future years, the allocation of 900 certificates described herein will be in addition to the fair share allocation which MPHA and the Metropolitan Council would normally receive pursuant to 24 C.F.R. Parts 791, 882 and 887. In determining the Metropolitan Council's and the MPHA's fair share allocations in future years, the parties agree that mobility certificates shall not be considered part of the allocation on which Minneapolis and the Metropolitan Council are normally judged, due to the unique purpose of these certificates.

67. Within 90 days of entry of the Decree, Plaintiffs and MPHA shall enter into an agreement defining the timing of distribution of certificates and housing counseling services to those entitled to relocation certificates, mobility certificates, and current holders of Section 8 certificates who will be entitled to counseling services.

68. Except to the extent barred by law, HUD, when it enters into any new or renewed contract to provide any form of HUD assistance to owners or managers of Metropolitan Area low income projects, shall include in the contract provisions that such owners and managers market their units to persons eligible to reside in such low-income projects through the Clearinghouse/Network established herein in addition to any other marketing efforts. In the

course of HUD monitoring reviews of these owners and managers, HUD will examine the compliance of such owners or managers with such contract provisions.

VI. ADMINISTRATION OF TENANT-BASED SECTION 8 PROGRAM

A. Mobility Counseling for Certificate and Voucher Holders

69. Federal and Minneapolis Defendants shall provide funding to create a Housing Mobility Counseling Program, at a budget estimated to be approximately \$1,409 per household, which shall be designed to assist persons seeking to use either mobility certificates, relocation certificates or regular MPHA certificates or vouchers outside areas of minority- or poverty-concentration. Federal and Minneapolis Defendants shall fund, or arrange funding for the program at a level sufficient to serve 850 regular MPHA Section 8 households over three years in addition to funding these services for 900 households obtaining mobility or relocation certificates. Notwithstanding the above two sentences, HUD's sole obligation is to provide MPHA with \$1,750,000 for use in the Housing Mobility Counseling Program, within 90 days after the approval of the Decree by the Court.. The Metropolitan Council will contribute up to \$100,000 to fund any additional costs of this program. The Minneapolis Defendants shall fund or arrange for the funding of the remaining cost of the program described in the next paragraph, up to \$615,000, primarily from CDBG funds and foundation grants and donations. In the event the budgeted amounts become insufficient to perform the counseling tasks set out herein, the Minneapolis Defendants agree to take all reasonable efforts to seek additional funding from sources other than HUD.

70. The purpose of the Housing Mobility Counseling Program is to remove as many barriers as possible which impede the exercise of informed choice by class members in

determining where they will use their Section 8 certificate. These barriers include lack of information about other neighborhoods and cities, lack of information about portability features and exception rents in the Section 8 program, lack of transportation, lack of child care, difficulty in effectively applying for available units, difficulty in satisfying tenant screening requirements, landlord unfamiliarity or misconceptions regarding the Section 8 program, illegal discrimination, language barriers, and lack of assistance with transition related problems following a move. To that end, the program will include the following elements:

- a. Providing Section 8 recipients with detailed information about locational options in non-concentrated areas, both in Minneapolis and throughout the Metropolitan Area;
- b. Providing services to assist recipients as they look for housing, including transportation, escort services and child care;
- c. Providing intensive counseling and advocacy, as needed, to recipients to assist them to pass standard tenant screening procedures;
- d. Assisting recipients with needed transitions after the move: help finding schools, churches, child care, employment; locating needed social services, etc.; assistance and support in reducing any sense of isolation and in resolving disputes with neighbors;
- e. Providing assistance and appropriate referrals to recipients who encounter illegal discrimination;
- f. Marketing the program to landlords in non-concentrated areas;
- g. Counseling regarding homeownership options when HUD implements a program permitting the use of Section 8 assistance with homeownership;
- h. Interpreting for foreign language speakers and people with language disabilities.

71. Various elements of the program will be administered by one or more nonprofit organizations under contract with the MPHA. The MPHA and the Plaintiffs shall agree on the selection of the nonprofit entities. Such approval by Plaintiffs shall not unreasonably be withheld. MPHA shall promptly select the nonprofit entities and begin program operations within six months of entry of this Consent Decree. Any nonprofit entities are subject to approval by HUD Headquarters. Persons in receipt of relocation and mobility certificates will have first priority for housing counseling services, but all persons with certificates or vouchers seeking housing outside areas of minority concentration are eligible for such services.

72. The organization(s) administering the housing mobility counseling program shall determine by the end of the program's first year whether lack of transportation is a major impediment to locating in suburban areas. If so, the parties agree to jointly seek a solution to this problem, which may include, but is not limited to, seeking expansion of public transportation.

73. Individual named Plaintiffs participating in MPHA's Section 8 certificate/voucher program at the time the housing mobility counseling program is initiated shall have first priority for access to such services, and any individual named Plaintiffs who subsequently participate in the Section 8 certificate/voucher program shall have first priority for such services upon receipt of a certificate or voucher.

74. The Metropolitan Council has begun a pilot program in cooperation with the MPHA and St. Paul PHA to provide mobility counseling services, similar to those set out above, to certificate and voucher holders in the Minneapolis and St. Paul programs (50 households in each program.) HUD will contribute \$100,000 to this pilot program and the

Metropolitan Council is funding remaining costs up to \$50,000. In light of the Metropolitan Council's desire to immediately initiate its pilot program, HUD will include, in the agreement pursuant to which HUD grants the aforementioned \$100,000 to the Metropolitan Council, a provision that will allow the Metropolitan Council to reimburse itself, up to that amount, for costs that the Metropolitan Council may incur, prior to execution of that grant agreement, for Section 8-authorized mobility counseling activities carried out pursuant to the pilot program.

B. Improvement In Administration Of MPHA Certificate Program.

1. Recruitment of Landlords

75. MPHA will take the following steps to increase participation in the Section 8 program of landlords who control property located in Nonconcentrated areas of Minneapolis:

a. MPHA will obtain, from the Minneapolis Inspections Department, a list of all owners of rental property in non-impacted areas. This list will identify the size of the unit, the number of units owned by each landlord, and whether the landlord is a Repeat Offender Code Compliance Initiative landlord or owns property with recent serious code violations. The list will be updated annually.

b. MPHA will develop a marketing strategy for the Section 8 program as follows. MPHA will consult with Plaintiffs in developing this strategy:

1. MPHA will survey the literature on techniques used to recruit landlords.

2. MPHA will hire a marketing consultant.

3. MPHA will survey a sample from the landlord list developed in 1 above, selected to provide a valid sample of various types of landlords (e.g., "mom and pop;" part-time owners; full-time professionals) to identify interest in and barriers to participation in the Section 8 program. Landlords with serious code violations will be excluded from the sample.

4. MPHA will devise and implement a marketing strategy, based on the results of the survey, which will include:

i. changes in program administration to address landlords' concerns, to the extent permitted by HUD regulations.

ii. periodic mailings to all owners

iii. attempts to recruit landlords to market the program to other landlords.

c. MPHA will continue to work closely with the Minnesota Multi-Housing Association, the Star-Tribune FONAHOME staff, and similar entities to promote the Section 8 program among real estate professionals.

d. Implementation of this program will begin no later than six months from entry of the Decree.

e. The MPHA agrees to work with the Metropolitan Council and others interested to affirmatively recruit to the Section 8 program more landlords who control property outside of Minneapolis which is not located in minority- or poverty-concentrated areas.

2. Information Packet.

76. The MPHA, in consultation with Plaintiffs, shall revise the informational packets provided to MPHA Section 8 certificate and voucher holders, as necessary, within 30 days of the commencement of the Housing Mobility Counseling Program.

3. Exceptions To Fair Market Rents.

77. The parties agree that in certain circumstances exceptions to Fair Market Rent limits may be necessary to enable class members to use certificates outside areas of minority concentration, both within Minneapolis and in the suburbs. MPHA agrees that in such circumstances, subject to the limitations of 24 C.F.R. Part 882, it will provide exception rents within its jurisdiction. In order to determine which nonconcentrated areas within the City of Minneapolis have rent levels sufficiently high that exception rents of 10% or 20% will be necessary, the MPHA will undertake a study, the design of which will be made reasonably acceptable to Plaintiffs, of rent levels at the census tract level, broken down by unit size, throughout Minneapolis.

78. Following the study of rent levels by census tracts, MPHA agrees to promptly apply to HUD for permission to provide blanket exception rents of up to 120% of fair market rents for such tracts in Minneapolis. This study will be undertaken as soon as practicable after HUD has determined fair market rents for this Metropolitan Area for fiscal year 1995, but by no later than 90 days from entry of the Decree. HUD shall grant such permission for such exception rents if MPHA's application is consistent with federal regulations. In addition, MPHA shall consider exception rents up to 20% on a unit-by-unit basis for class members seeking

housing in nonconcentrated areas outside blanket exception rent areas, where special circumstances may exist.

4. Voucher Payment Standards.

79. The MPHA has undertaken the analysis necessary to adjust its voucher payment standard and will apply to HUD for an increase in the voucher payment standard to 100% of FMRs within 30 days of signing of this Decree by the parties. HUD will promptly review the application, and will approve the increase unless the application fails to meet applicable statutes or regulations. MPHA will review its voucher payment standard on an annual basis to ensure that the voucher payment standard is sufficiently high so as to enable class members holding vouchers to exercise a wide choice of available units in nonconcentrated areas.

5. Provision Of Services.

80. To the extent the MPHA Housing Mobility Counseling Program provided for herein is unable to provide services to class members with either mobility certificates or regular certificates or vouchers who are seeking to move, MPHA shall ensure that services are provided to said class members as required by statutes and regulations generally applicable to the Section 8 Program.

VII. FAIR HOUSING MOBILITY CLEARINGHOUSE/NETWORK

81. MPHA agrees to fund, as set out in the next sentence, a Metropolitan Area-wide housing mobility Clearinghouse/Network designed to maximize access to existing low-income housing, particularly for central city residents of minority- and poverty-concentrated areas least likely to otherwise apply for housing throughout the Metropolitan Area. MPHA shall

provide \$500,000 per year for five years from its Comprehensive Grant funds to the Clearinghouse/Network for use in connection with assisting and establishing mechanisms and procedures to assist public housing residents and applicants to obtain housing.

82. The parties agree to jointly develop this housing mobility Clearinghouse/Network which, through intergovernmental cooperation and coordination and contracting with nonprofit entities, would:

- a. plan, establish, and coordinate procedures for implementing a coordinated or consolidated subsidized housing application process and/or waiting list.
- b. provide information on Metropolitan Area-wide housing opportunities to all low-income applicants for federal housing programs;
- c. coordinate metropolitan-wide landlord recruitment for the Section 8 program; and
- d. provide information to low-income families seeking affordable housing and information and coordination to the current network of home-finding assistance providers to maximize access by low-income families to existing affordable housing and homeownership opportunities, especially those located in non-concentrated areas.

83. The Clearinghouse/Network activities would be coordinated with housing counseling services for Section 8 recipients described above, although these housing counseling services would not necessarily be carried out by the Clearinghouse/Network.

84. In developing and implementing the Clearinghouse/Network, the parties will involve social service agencies, private owners of low-income housing projects, and non-party government agencies such as the Minnesota Housing Finance Agency (MHFA) (with its oversight over privately owned Section 8 projects) and Hennepin County. Within 60 days of entry of the Decree, the Metropolitan Council will convene a working group consisting of

representatives of the parties, governmental entities, housing and social service agencies, and other appropriate providers. The working group will examine funding and operational issues and make recommendations for implementing the Clearinghouse/Network. The Metropolitan Council will provide staff assistance and direction as needed to enable the working group to complete the planning and development of the Clearinghouse/Network. The Clearinghouse/Network will begin operation within one year of entry of the Decree.

85. After receiving notice from the parties that operation of the Clearinghouse/Network is imminent, HUD shall promptly notify all current owners of HUD-assisted housing in the Metropolitan Area of the existence of the Clearinghouse/Network established herein and encourage them to participate in the Clearinghouse/Network's activities.

**VIII. AFFIRMATIVELY FURTHERING FAIR HOUSING:
SYSTEMS TO ANALYZE AND OVERCOME
IMPEDIMENTS TO METRO WIDE FAIR HOUSING
AND LOCATIONAL CHOICE**

A. Housing Planning Documents.

86. With respect to Consolidated Plan Submissions of Metropolitan Area local governmental units to HUD, HUD shall require each jurisdiction to submit a certification that it will affirmatively further fair housing, which means it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. The analysis of impediments that the local governmental units certify to conduct shall include identifying their policies which affect opportunities of

minority households to select housing in the jurisdiction. In the event HUD subsequently adopts regulations which conflict with the preceding sentence, such subsequent regulations shall prevail.

87. The Metropolitan Council will commence coordinating housing planning documents on a Metropolitan Area-wide basis as soon as feasible following entry of the Decree. To assist units of general local government and other participating jurisdictions to fulfill their responsibilities to draft and submit such housing planning documents, the Metropolitan Council will: (1) identify the unmet need for affordable housing for low-income households throughout the Metropolitan Area; (2) develop metropolitan and community indices to serve as standards to encourage appropriate types of local government activities to achieve a metropolitan distribution of affordable housing, alternative housing types and tenure and rehabilitation of existing housing; and (3) assist in the coordination of Metropolitan Area strategies to achieve a metropolitan distribution of affordable housing. Within 60 days of entry of the Decree, HUD will retain one of its consultants to perform studies with regard to items (1), (2), and (3) above. The studies will be made available to the other parties. Upon signing of this Decree by the parties, the other parties will begin to review and work with HUD in arriving at a scope of work order for the consultant and in the production of the work. All parties will provide the HUD consultant with any relevant data in their possession that is requested.

B. Fulfilling Responsibilities To Affirmatively Further Fair Housing.

88. In the event HUD determines that any local government receiving federal funds for housing and urban development is unlawfully impeding or failing to cooperate with proposals by the Minneapolis Defendants to site replacement housing for Minneapolis residents within the local government's jurisdiction, HUD shall take whatever enforcement action it

deems appropriate against that local governmental entity to enforce such obligations, including, but not limited to, judicial enforcement, or suspension, abatement or conditioning of future federal funding, until such time as the jurisdiction complies with its obligations. In addition, HUD shall, if it deems it appropriate, refer determinations of non-compliance to other federal executive agencies for review and possible issuance of sanctions with respect to that agency's funding of the recipient, pursuant to Presidential Executive Order 12892 of January 17, 1994 (Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing). HUD shall cooperate with the local parties in developing strategies, including incentives, to encourage cooperation by all suburban jurisdictions, regardless of whether they are currently recipients of HUD funding. Nothing in the preceding sentence shall be construed as obligating HUD to provide funding beyond that which is specifically provided in this decree.

89. HUD shall review annually each Metropolitan Area local government's performance under its Consolidated Plan including specifically, the certification described in paragraph 86 and, where appropriate, under 24 C.F.R. §§ 570.904(c) and 570.601(b). Reviews will include site visits by employees in so far as practicable and evaluation of the government's performance reports. In the event HUD determines that a government's performance violates its legal obligations, HUD shall take whatever enforcement action it deems appropriate including, but not limited to, judicial enforcement, or suspension, abatement or conditioning of future federal funding, until such time as the jurisdiction complies with its obligations. In addition, HUD shall, if it deems it appropriate, refer determinations of non-compliance to other federal executive agencies for review and possible issuance of sanctions with respect to that agency's funding of the recipient, pursuant to Presidential Executive Order 12892 of January 17, 1994.

90. Within six months after the entry of the Decree, HUD shall require, to the extent practicable, each Metropolitan Area housing provider that uses a local residency preference with respect to any federally assisted housing, to provide information that HUD may determine to be relevant to an analysis of possible racially discriminatory effects of the preference. Within six months of receipt of the data, HUD shall analyze this, and any other relevant data and determine, for each residency preference, whether the preference has an adverse discriminatory effect with respect to racial minorities. In the event HUD determines that any local residency preference has an adverse discriminatory effect, HUD shall take whatever enforcement action it deems appropriate, which can include requiring the housing provider to eliminate the preference or modify it to eliminate the discriminatory effect.

91. For purposes of this Decree, all obligations set out herein apply both to grantees which constitute consortiums of smaller sub-grantees; and each of the sub-grantees themselves. In the case of consortiums where a sub-grantee is failing to fulfill its responsibilities set out herein, the consortium grantee is responsible for ensuring compliance by the sub-grantee, and the consortium grantee may, if necessary, suspend or terminate sub-grants to the sub-grantee.

92. HUD shall send to the Chief Executive Officer of each local governmental jurisdiction in the Metropolitan Area which is a recipient of federal housing and urban development funds a letter, at the beginning of each federal fiscal year, with respect to certain relevant portions of this Decree. The letter shall: 1) encourage jurisdictions to participate in developing housing planning documents with the Metropolitan Council as described in paragraph 87; 2) inform them about the replacement housing provisions in the Decree and the provisions concerning HUD's review of performance under their certifications to affirmatively further fair

housing; 3) encourage them to enter into cooperation agreements for replacement housing; and 4) advise them that the failure to sign a cooperation agreement will be taken into consideration by HUD in determining whether they are failing to comply with their certifications to affirmatively further fair housing. HUD shall provide the other parties with a copy of this letter and a list of the recipients each year.

93. Although HUD does not concede that any provision of the Decree grants the Court jurisdiction to review any HUD enforcement decision, HUD recognizes its responsibilities under Section 808(e)(5) of the Fair Housing Act (42 U.S.C. § 3608(e)(5)), which requires it to administer its programs in a manner to affirmatively further fair housing, and will make enforcement decisions in a manner that is consistent with that section.

C. Metropolitan Area Housing Policy Activities

94. The Metropolitan Council is considering and has a variety of housing policy activities underway which are intended to assist local governmental units meet their statutory responsibility under Minnesota Statutes Chapter 473 to adopt local land use plans and implementation programs for providing adequate opportunities to meet existing and projected local and regional housing needs. These housing policy activities may include:

- a. a housing profile that looks at each community's share of lower income households, units affordable to those households, forecasts of population and households, household composition and household income distributions, number of subsidized housing units, rent distribution, and housing value distribution;
- b. an analysis and report on this information;
- c. an index and analysis of selected variables like low-income households and affordable units establishing a norm and analyzing each community's relationship to the norm; and

- d. a review and analysis of barriers to the production of lower cost housing using existing information.

95. The analysis set out in paragraph 94 may be incorporated into other appropriate Metropolitan Council policy work and may be applied to appropriate Metropolitan Council decisions and recommendations regarding the Metropolitan Council's funding, construction, or approval of regional wastewater and transportation facilities. The Metropolitan Council will redraft its review guidelines for comprehensive plan housing elements to encourage affordable and life cycle housing in local planning and implementation activities and, when the Metropolitan Council determines it is appropriate, it will conduct negotiations with the affected units of local government to determine the steps necessary to facilitate such housing. The Metropolitan Council will prepare affordable housing comments on major regional facility reviews and may undertake work related to recommendations on the rehabilitation and redevelopment process after completing the housing redevelopment and rehabilitation study required under 1994 Minnesota Laws Chapter 577. For the purposes of this paragraph, affordable housing means housing affordable to households of low and moderate income.

IX. RELEASE OF CLAIMS

96. Except for claims which arise after the date upon which this Decree is filed, upon Court approval of this Consent Decree and subject to the rights of the parties to enforce this Consent Decree, all parties mutually release and forever discharge every claim, cross-claim, counter-claim, right, cause of action and issue, known and unknown, under federal, state or common law which any party (including its officers, employees, agents, successors or

assignees) has asserted or could have asserted against any other party (including their officers, employees, agents, successors or assignees) in this action by reason of, or with respect to, or in connection with, or which arises out of any matters alleged in this action through the date upon which this Consent Decree is terminated. In the event sections of this Decree are nullified pursuant to paragraph 110, any claims released herein relevant to those sections shall be reinstated and this paragraph shall have no effect as to those claims.

X. DISPUTE RESOLUTION

97. The parties may attempt to resolve disputes relating to this Decree in any manner, however before seeking relief from the Court, the parties must comply with the procedures set out in this paragraph. Any allegation of a failure to comply with the terms and conditions of this Decree by one or more of the parties shall be by written notice to all counsel of record. The notice shall specify the facts supporting the allegation, and shall precede the filing of any motion to enforce the terms of this Decree. Upon receipt of the notice by counsel, the alleged defaulting party shall either remedy the alleged failure and so notice all other counsel in writing, or provide written explanation within thirty (30) days, or within ten (10) business days in the case of an alleged violation involving an individually affected class member. At the end of such period, if the issue is not resolved, any party may seek relief from the Court.

XI. HUD REVIEW OF COMPLIANCE

98. In conducting compliance reviews of Minneapolis Defendants in connection with the public housing and Section 8 certificate/voucher programs, HUD shall evaluate Minneapolis Defendants' compliance with the provision of this Decree and take such action to ensure Minneapolis Defendants' compliance as HUD deems appropriate and is permitted under law.

XII. CLASS CERTIFICATION

99. The parties have previously agreed pursuant to stipulation and Court Order dated July 5, 1994, and hereby reiterate that, for the purposes of this Decree, the plaintiff class should be certified and defined as follows:

minority families and individuals who, at any time during the period beginning with court certification of the class and continuing through completion of implementation of any relief that may be ordered in this case:

- 1) hold Section 8 tenant-based certificates or vouchers administered by the Minneapolis Public Housing Authority ("MPHA") or are on the MPHA waiting list for, and are eligible to receive, such certificates or vouchers; or
- 2) reside in any of the public housing projects owned by the MPHA and specified herein (Mn 2-1, Glendale Apartments; Mn 2-2, Olson Apartments, excluding the Bryant Highrise; Mn 2-3, Lyndale Apartments, excluding 800 North 5th Street Highrise; Mn 2-4, Glenwood Apartments; Mn 2-5, Sumner Field Homes; Mn 2-7, Sumner Annex; Mn 2-25B, Near North Apartments; Mn 2-13, Mn 2-38, Mn 2-39, Mn 2-40, Mn 2-43, Mn 2-44, Mn 2-45, Mn 2-47, Mn 2-48, scattered site projects; including replacement units for Mn 2-2, Mn 2-3, and Mn 2-5 that are in existence at the time of class certification) or are on the MPHA waiting list for, and are eligible to be placed in, public housing owned by the MPHA.

100. Upon execution by all parties, the parties shall promptly file this proposed Consent Decree with the District Court and request that the Court enter an order:

- a. preliminarily approving the proposed settlement as fair, reasonable and adequate;
- b. approving publication and dissemination of a class action notice containing the settlement terms, the date of the final hearing, and the right to comment or object.
- c. scheduling a final hearing to determine the fairness, reasonableness, and adequacy of the proposed settlement and whether the Court should approve the Consent Decree.

101. Pursuant to FED. R. CIV. P. 23(e), all class members shall be given notice, the form of which shall be agreed upon by counsel for all parties, or by the Court in the event that there is no such agreement, of the terms of the Consent Decree and their right to object to the terms thereof. MPHA shall post the notice in all MPHA offices and other government and social service agency offices where class members are likely to frequent, as well as pay for radio announcements. Special means, including but not limited to translation of notices, shall be devised to provide effective notice to foreign language speakers. MPHA shall also mail (with address correction requested) or deliver the notice to: (1) class members who hold Section 8 tenant-based certificates or vouchers; (2) class members who are on the waiting list for public housing or Section 8 certificates or vouchers; and (3) residents of the public housing projects owned by MPHA and specified in paragraph 99. MPHA will publish the class notice for one day in a Sunday edition of the *Minneapolis Star Tribune*, for one day in a Sunday edition of the *Saint Paul Pioneer Press*, as well as community newspapers serving predominantly minority areas of Minneapolis. Counsel for all parties shall be provided a copy of the addresses of all persons to

whom the notice is mailed or delivered. Class members will have until 10 days before the date of the fairness hearing within which to file written objections to the proposed terms of this Consent Decree. Between the signing of this Consent Decree and the fairness hearing, the Defendants shall direct all inquiries regarding the Decree from class members to Plaintiffs' counsel. For the purposes of this paragraph, the date of signing of this Decree is the date that the last party signs the Consent Decree. All of the Defendants shall share equally in the cost of this notice.

102. A fairness hearing shall be held at such time and place as ordered by the Court to consider whether the proposed Consent Decree should be finally approved as fair, reasonable, and adequate. Any class member who has submitted a timely written objection may appear at the hearing and show cause why this Consent Decree should not be approved. Objections raised at the hearing will be limited to those matters addressed in timely written objections.

XIII. MONITORING OF THE DECREE

103. During the first year following entry of this Decree, Defendants shall file a report with the Court and the parties each three months, which shall describe the activities carried out and the results achieved in implementing this Decree. During the second and third years following entry of this Decree, such reports must be filed every six months. After three years, such reports must be filed at least annually until such time as the obligations of the Defendants terminate under this Decree.

104. HUD shall maintain statistics that it normally receives on the racial/ethnic identity of heads of households for each project or unit location in all HUD assisted housing programs in the Metropolitan Area. MPHA and the Metropolitan Council shall maintain similar data for their respective assisted housing programs. MPHA shall also maintain data enabling the parties to track the moves of all Section 8 participants who receive housing counseling services throughout the term of this Decree. Upon written request, MPHA shall provide such statistical information to Plaintiffs.

105. Upon reasonable advance written notice, Defendants shall make available free for inspection and copying pursuant to the Minnesota Government Data Practices Act and other applicable state and federal law governing access to and disclosure of government data or information, any documents requested by Plaintiffs relating to Defendants' compliance with the terms of this Decree.

106. The terms of this Decree shall apply to the Plaintiffs and Plaintiff class, and to each of the Defendants, their officers, directors, agents, employees, successors and assigns. All entities or persons acting in concert or participating with Defendants and who receive notice of this Decree are enjoined from interfering with, obstructing or otherwise frustrating the implementation of this Decree.

XIV. RETENTION OF JURISDICTION

107. The Court will retain jurisdiction over this matter for the purpose of enabling any party to this proceeding to apply to the Court for such further orders as may be necessary or appropriate for the enforcement of this Decree. In the event any occurrences outside the control of the parties frustrate the completion of the actions agreed to herein, any party may

apply to the Court for modification of this Decree, but not to increase any party's obligations under the Decree. Prior to the submission of any dispute under the Decree to the Court, the parties shall comply with the dispute resolution procedure set out in paragraph 97.

108. Plaintiffs and the Minneapolis Defendants have identified a number of additional government entities with potential liability in this lawsuit including, but not limited to: the State of Minnesota, the Minnesota Housing Finance Agency, Hennepin County, and various Cities and Public Housing Authorities within the Metropolitan Area. Because the current parties began settlement discussions early in the litigation, these additional entities were not joined at the date on which this Decree was entered. However, the parties reserve their right to move the Court pursuant to the All Writs Act, 28 U.S.C. § 1651(a) or any other basis, for joinder of any additional entities or for injunctive or other relief necessary or useful in order to fully effect the relief ordered in this Decree.

109. The Consent Decree terminates and the Court's jurisdiction over each Defendant shall end seven years after the entry of this Decree unless a party moves before that date to have the Court extend its jurisdiction over a Defendant. The Court may extend its jurisdiction over that Defendant only if it determines that the Defendant has not complied with a specific obligation imposed in the Decree on that Defendant. If the Court extends its jurisdiction over a Defendant, such jurisdiction shall end upon the fulfillment of the specific obligation.

XV. SUBSEQUENT LEGISLATION

110. In the event Congress or the State of Minnesota subsequently enacts legislation which conflicts with any obligations as set out in this Decree, such subsequent federal or state legislation shall control. Defendants shall not be obligated to carry out any term of this

Decree if any otherwise applicable current or future federal or state statute or regulation precludes Defendants from complying with, or withdraws Defendants' authority to perform, that term. HUD's funding commitments are based on the availability of present appropriations. In the event that Congress rescinds or otherwise reduces the appropriations such that the funding becomes unavailable to perform the obligations specified in paragraphs 32, 61, 69, and 74, HUD is relieved from funding those obligations; however, this decree shall be dissolved to the extent it resolved issues addressed by HUD's now rescinded funding commitments, and the parties shall resume litigation of remaining issues, subject to the dispute resolution procedures of paragraph 97.

XVI. ATTORNEYS' FEES AND COSTS

111. HUD and the Minneapolis Defendants shall pay to Plaintiffs attorneys' fees and costs in the amounts to be stated in one or more agreements to be executed simultaneously with this Decree. The Plaintiffs and the Minneapolis Defendants shall not assert any claims for attorney fees or costs against the Metropolitan Council. No Defendants shall be liable for attorneys fees or costs beyond these amounts, except that if Plaintiffs subsequently move the Court for enforcement of the Decree, and the Court finds any Defendant to be in violation of the Decree, Plaintiffs may apply to the Court for an award of fees with respect to that Defendant.

XVII. OTHER TERMS AND CONDITIONS

112. The signature of the parties on the Decree constitutes a Settlement Agreement for purposes of reservation of funds only. Upon signature, HUD will immediately reserve the funds specified in paragraphs 32, 61, 69, and 74.

113. No Defendant shall be held in violation of this Consent Decree because of the amendment, modification, revocation or absence of statutory or regulatory authority necessary for compliance.

114. The claim that any violation of this Decree is caused by circumstances beyond the control of a Defendant may be considered by the Court in any motion by any party to enforce the Decree.

115. Except as expressly provided herein, this Consent Decree shall have no effect on any Defendant's authority to administer, manage or operate its Public Housing and Section 8 Housing programs.

116. The Defendants do not admit, and expressly deny, that they are subject to any liability whatsoever by reason of the matters alleged in this action. This Consent Decree and all the documents, negotiations and proceedings related to it are not, and shall not be construed to be, an admission by the Defendants of any liability with respect to the allegations, claims, and cross-claims in this action. This Consent Decree shall not be offered or be admissible in evidence against the Defendants in any action or proceeding except any action or proceeding to enforce its terms.

117. With the exception of the additional agreements to be negotiated pursuant to paragraphs 24 67, and 111, this Consent Decree and its attachments shall constitute the entire understanding and agreement of the parties. No statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced. This Decree shall not be subject to any change, modification, amendment, or addition without the express written consent of all parties to this Decree, except as provided for in paragraph 107 above.

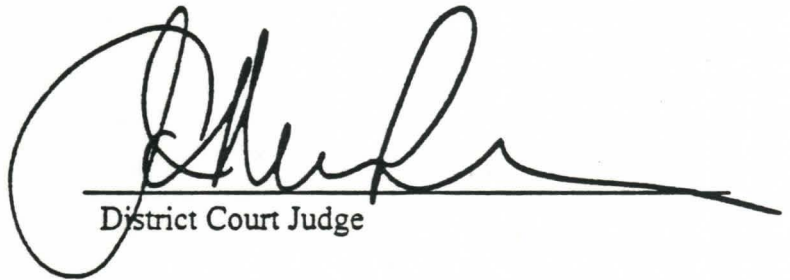
118. This Decree shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

119. This Consent Decree shall be construed under and governed by the laws of the State of Minnesota and applicable federal law.

120. This Consent Decree may be signed in counterpart.

SO ORDERED

April 20, 1995



District Court Judge

Approved as to Plaintiffs:

Dated: 3-1, 1995

**LAW OFFICES OF THE LEGAL AID
SOCIETY OF MINNEAPOLIS**

By: 

Attorneys for Individual and
Class Plaintiffs

Timothy L. Thompson

Attorney No. 109447

Dorinda L. Wider

Attorney No. 162334

430 First Avenue North, Suite 300

Minneapolis, MN 55401-1780

(612) 332-1441

Susan Carroll

Attorney No. 15398

Samuel D. Magavern II

Attorney No. 217475

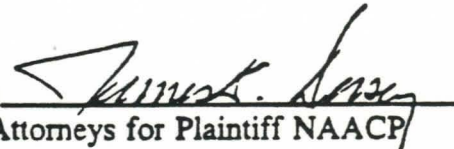
2507 Fremont Avenue North

Minneapolis, MN 55411

(612) 588-2099

Dated: March 2, 1995

FREDRIKSON & BYRON, P.A.

By: 

Attorneys for Plaintiff NAACP

James E. Dorsey

Attorney No. 137893

Corinna Vecsey

Attorney No. 23221X

1100 International Centre

900 Second Avenue South

Minneapolis, MN 55402-3397

(612) 347-7079

Dennis Hayes

General Counsel, NAACP

4805 Mt. Hope Drive

(410) 486-9197

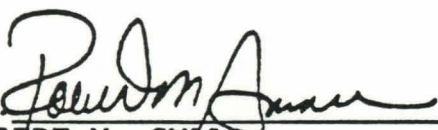
FRANK W. HUNGER
Assistant Attorney General

ANNE L. WEISMANN
Assistant Director
Federal Programs Branch

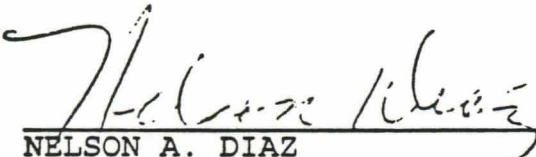


PATRICIA LEITNER
Attorney
United States Department of Justice
Federal Programs Branch
Room 1042
901 E St., N.W.
Washington, DC 20004

DAVID L. LILLEHAUG
United States Attorney


BY _____
ROBERT M. SMALL
Assistant United States Attorney
Attorney ID No. 10212x
234 United States Courthouse
110 South Fourth Street
Minneapolis, Minnesota 55401

OF COUNSEL:



NELSON A. DIAZ
General Counsel
United States Department of
Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

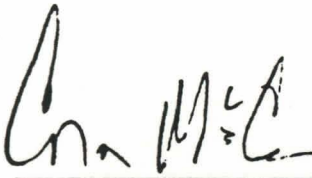
COUNSEL FOR FEDERAL DEFENDANTS

3-8-95
DATED

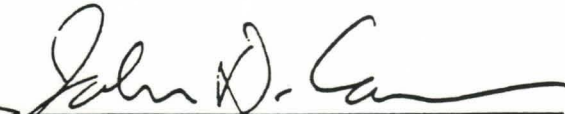
Approved as to Defendants Cora McCorvey and Minneapolis Public Housing Authority:

Dated: March 8, 1995

Dated: March 8, 1995



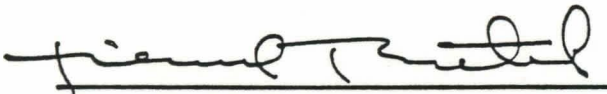
Cora McCorvey
Executive Director,
Minneapolis Public Housing Authority
1001 Washington Avenue North
Minneapolis, MN 55401
(612) 342-1408



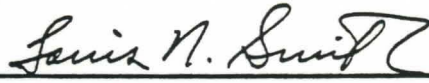
John D. Cann Reg. No. 174841
1929 South 5th Street, Suite 200
Minneapolis, MN 55454
(612) 321-0273

Dated: March 8, 1995

Dated: March 8, 1995



Richard Brustad
Chair,
Minneapolis Public Housing Authority
Board of Commissioners
1001 Washington Avenue North
Minneapolis, MN 55401
(612) 342-1408



Donald M. Lewis Reg. No. 62844
Louis N. Smith Reg. No. 152493
Popham, Haik, Schnobrich & Kaufman, Ltd.
3300 Piper Jaffray Tower
222 South Ninth Street
Minneapolis, MN 55402
(612) 333-4800

Attorneys for Defendants Cora McCorvey
and Minneapolis Public Housing Authority

Approved as to Defendant Minneapolis Community Development Agency:

Dated: March 9, 1995



WALTER DZIEDZIC
Chairperson
Board of Commissioners
Minneapolis Community Development Agency
Crown Roller Mill, Suite 200
105 Fifth Avenue South
Minneapolis, MN 55401

Dated: March 9, 1995



REBECCA YANISCH
Executive Director
Minneapolis Community Development
Agency
Crown Roller Mill, Suite 200
105 Fifth Avenue South
Minneapolis, MN 55401

Dated: March 10, 1995



FRED BURSTEIN, Reg. No. 13911
Dylan J. McFarland, Reg. No. 12543X
Burstein, Hertogs, Olsen & McFarland, P.A.
5450 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 339-6561

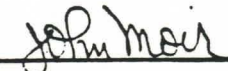
Attorneys for Defendant
Minneapolis Community Development Agency

FOR THE CITY OF MINNEAPOLIS

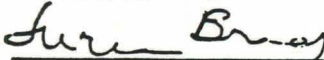
CITY OF MINNEAPOLIS

By 
Mayor

Attest 
City Clerk

Countersigned 
Finance Officer

Approved for execution:


SURELL BRADY
City Attorney
Atty. Reg. No. 217153
Office of the City Attorney
City of Minneapolis
300 Metropolitan Centre
333 South Seventh Street
Minneapolis, MN 55402-2453
(612) 673-3272
and


MICHAEL T. NORTON
Assistant City Attorney
Atty. Reg. No. 79935
Office of the City Attorney
City of Minneapolis
300 Metropolitan Centre
333 South Seventh Street
Minneapolis, MN 55402-2453
(612) 673-2465

March 8, 1995

Date: 3/7/95

Date: 3-7-95

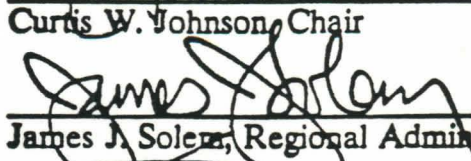
Date: 3-8-95

Date: 3-8-95

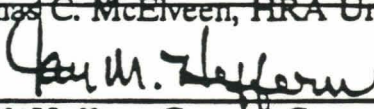
Date: 3/8/95

FOR THE METROPOLITAN COUNCIL

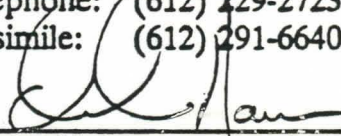

Curtis W. Johnson, Chair


James J. Soler, Regional Administrator


Thomas C. McElveen, HRA Unit Manager


Jay M. Heffern, General Counsel #4331X
David D. Theisen, Ass't Gen. Counsel #178652

Mears Park Centre
230 East Fifth Street
Saint Paul, Minnesota 55101-1634
Telephone: (612) 229-2723
Facsimile: (612) 291-6640


Charles N. Nauen #121216
William A. Gengler #210626
Schatz Paquin Lockridge Grindal & Holstein
2200 Washington Square
100 Washington Avenue South
Minneapolis, Minnesota 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981

APPENDIX A

MPHA Scattered Site Disposition Policy



MINNEAPOLIS PUBLIC HOUSING AUTHORITY

Item No. 7

September 1, 1993

REPORT TO THE COMMISSIONERS

FROM: Cora McCorvey, Executive Director

SUBJECT: Scattered Site Disposition Policy

Previous Directives: Supports agreement with plaintiffs in Hollman, et al. vs. Cisneros, et al.

Resident Council Review/Recommendation: Not applicable.

Budget Impact: Long-term lower operating costs by replacing older units with substantial maintenance costs with newer lead-free units.

Affirmative Action Compliance: Replacement units will expand housing opportunities for MPHA residents.

RECOMMENDATION: IT IS RECOMMENDED THAT THE ATTACHED SCATTERED SITE DISPOSITION POLICY BE APPROVED.

There are 377 scattered site units in minority identified census tracts, 53% of the MPHA inventory. Of these units, 113 were built before 1960 or have not received major modernization work within the past five years. These are the units that are most likely to need lead paint abatement and substantial rehabilitation.

The following disposition policy is recommended:

The MPHA will dispose of units within the minority identified census tracts unless there is a compelling reason to preserve the unit. Such compelling reasons include large number of bedrooms (four or more), above average unit features (high quality construction, very functional floor plan), and above average neighborhood amenities (parks, shopping, schools).

DOCUMENT NO. 93-114P

Staff would conduct and document an evaluation based on the following factors:

1. Estimated rehabilitation and lead paint abatement cost;
2. Number of bedrooms;
3. Floor plan (below average, average, above average);
4. Neighborhood amenities (below average, average, above average);
5. Heating cost, compared to MPHA average by bedroom size;
6. Proximity to other scattered site houses;
7. Opportunity and feasibility of a development project to improve all assisted units and/or other on the block.

This evaluation will be completed by October 30, 1993.

This report was written by Lisa Kugler. For further information, please call 342-1403.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

FEB - 7 1995

NANCY DOHERTY, CLERK

BY _____
Deputy

DEBRA WALKER, ET AL.

v.

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET AL.,

and

U.S. DEPARTMENT OF JUSTICE.

CIVIL ACTION NO.

3:85-CV-1210-R

CLASS ACTION

ENTERED ON DOCKET
PURSUANT
TO F. R. C. P. RULES
58 AND 79a

REMEDIAL ORDER AFFECTING DHA

Vestige A. 2,876 (92%) of the 3,116 black households in DHA's non-elderly public housing projects units¹ reside in predominantly black or minority concentrated projects in predominantly black or minority concentrated areas where the poverty rate exceeds 40% [plaintiffs' 9/27/94 exhibit # 79]. 6,133 of the 6,411 units in DHA's non-elderly public housing projects are in these predominantly black or minority concentrated areas where the poverty rate exceeds 40% [plaintiffs' 9/27/94 exhibit # 79].

DHA is ordered to take the following actions to eliminate this vestige:

A.1. demolish at least 2,630 units of the public housing in the West Dallas project.

A.2. provide one-for-one replacement units for each unit to be demolished before the demolition of that unit. The 100 public

¹ These figures exclude the approximately 46 single family homes for which DHA does not separately report racial occupancy data [plaintiffs' 9/27/94 exhibit # 68 - excerpt from DHA monthly report].

housing units and 1,335 Section 8 certificates and vouchers previously provided by HUD are one-for-one replacement units. The 339 public housing units allocated to DHA since 1990 are one-for-one replacement units. The 335 public housing units allocated under the HUD Urban Revitalization Demonstration Grant are one-for-one replacement units. The additional 698 Section 8 vouchers promised in the HUD plan submitted to the Court are one-for-one replacement units to the extent that HUD and DHA are proceeding with demolition under the previously approved demolition plan and if the number of units in the one, two, three, four, and five bedroom unit categories being replaced are matched in the allocations of replacement units. If a new demolition plan is approved then the 42 U.S.C. 1437p prohibition against the use of vouchers as replacement units will apply.

A.3. Develop, through construction or acquisition, an additional 3,205 public housing family units in predominantly white areas. These units shall be in place and occupied before any non-family units or any units in non-predominantly white areas are developed. The restriction set out in the immediately preceding sentence does not apply to the use of public housing units in the reconfiguration of the West Dallas projects provided for in ¶ B.7. of this order. The site for each unit must be approved by the Court and the units, projects, and neighborhoods for the units must provide housing opportunities substantially equivalent to the units, projects, and neighborhoods in and around the predominantly white located HUD assisted projects in

Dallas County. The units may not be located in areas where the poverty rate exceeds 13%, the county average. The development of these units is dependent upon the provision of funding for public housing or comparable programs by HUD to DHA.

A predominantly white area, as this term is used in this order, is determined by first computing the racial composition of the geographic area within a one-quarter mile radius of the center point of the center of the proposed location of the project. If the population, using the block level data for the most current US Census, is less than 37% total non-Hispanic African-American, Hispanic, or other minority persons, then it may be a predominantly white area. The area is not a predominantly white area if it is located on or near a dividing line, such as a highway, major thoroughfare, or railroad tracks, between a predominantly white area and a racially concentrated minority area. The area is not a predominantly white area if it is located in an isolated, non-residential area. The relevant area for the determination of the poverty rate shall be the US Census census tract block group in which the site is located.

The already allocated 674 units of new public housing units shall be occupied within 3 years of the date of this order or, if allocated for suburban development within 3 years and 6 months of the date of this order, unless an extension is granted by the Court for good cause.

A.4. DHA shall make an application for public housing assistance at each available opportunity. All units allocated by

HUD in the future shall be occupied within 3 years of the date of the allocation unless an extension is granted by the Court for good cause.

A.5. 350 of the currently available new public housing units and 50% of all subsequent allocations shall be tentatively reserved for use in predominantly white areas of the Dallas suburbs. DHA shall request that the suburbs enter into a cooperation agreement with DHA to allow the development of a reasonable number of public housing units in each suburb. If there are not enough suburban cooperation agreements signed or suburban sites available for acquisition within 6 months of the date of this order, then DHA shall develop the units in predominantly white areas of the City of Dallas. The three years for the initial occupancy of these units will begin to run after the expiration of 6 months from the date of the order.

A.6. DHA shall request the assistance of Dallas County, Texas, as part of the County's compliance with its obligation to affirmatively further fair housing in its housing and community development related activities, in securing cooperation agreements between DHA and the area suburbs.

A.7. Given the applicants' and residents' stated preference for Section 8 units, DHA is urged to devise and submit for court approval a plan which would use Section 8 certificates and vouchers to substitute for at least part of the future allocations of new public housing in predominantly white areas. In order to be approved by the Court such a plan must:

a. ensure that the Section 8 units are from an allocation over and above DHA's past allocations and over and above DHA's future fair share allocation and are not provided as a substitute for any units which would be provided to DHA under the normal allocation process. The housing assistance must be over and above what DHA or the City would otherwise receive from HUD, and can have no effect on the amounts of future assistance HUD may provide or award to DHA or the City, and

b. ensure that the certificates and vouchers for which an offset against the new public housing development is claimed are and will be in use in predominantly white areas for the foreseeable future.

A.8. DHA may use a race conscious tenant selection method for the purposes of preventing or reducing racial identifiability if every person skipped over because of race is provided an equivalent [in terms of cost to the tenant, convenience and suitability for the family's individualized needs and location preferences] alternative housing opportunity. Before use, the method shall be submitted to the Court for approval. The race conscious tenant selection and assignment method should be used only in those instances where the desegregative benefit is substantial enough to justify the use of the resources for the alternative housing opportunities needed to achieve the benefit.

A.9. DHA may use a tenant selection and assignment method which maximizes applicant choice to the extent the exercise of such choice does not unavoidably cause or maintain racially

identifiable projects. For example, if there are 10 units in predominantly black projects available and the top ten applicants on the list are black, then the exercise of choice will not unavoidably cause or maintain racially identifiable projects. If there are 7 units in predominantly black projects and three units in a non-racially identifiable project and the top ten applicants 7 blacks and 3 whites, then the exercise of choice could cause or maintain racially identifiable projects depending on the preferences of the individual applicants.

A.10. Until another method is approved by the Court, DHA shall make the applicant with the oldest application date one offer which if refused results in placement at the bottom of the waiting list. If any appropriate units vacant at the time of the offer is located in an area or project where the applicant's race does not predominate, those units shall be offered to the applicant. Any offer to the West Dallas project may be refused by an African-American applicant and that applicant shall not lose her place on the waiting list. Any offer of a unit in a predominantly white project or location may be refused by a white applicant and that applicant shall not lose her place on the waiting list.

A.11. DHA shall ensure that each African-American household accepting a non-elderly, handicapped, or disabled designated public housing shall be placed on the Section 8 waiting list with an application date of the acceptance of the public housing. If the person accepting public housing is already on the Section 8 waiting list, then the application date is the actual application

date. Each African American household in a non-elderly, handicapped, or disabled designated public housing unit who is also on the Section 8 waiting list shall have a desegregated housing opportunity preference equal to a federal preference.

A.12. A racially identifiable minority public housing project has 75% or more non-Hispanic black, Hispanic, or other minority total population. A racially identifiable white public housing project has 75% or more non-Hispanic white total population.

A.13. Propose and implement a plan, as approved by the Court, providing magnet project improvements for any family project located in minority racially concentrated areas for which there is not a substantial decline in racial identifiability within the three years after the unit, project, and neighborhood improvements required below are completed.

Vestige B. The units, projects, and neighborhoods available for the black occupants of and applicants for DHA's low rent public housing projects are substantially inferior to the conditions in which low income whites receive HUD assistance [plaintiffs' 9/27/94 exhibits ## 62 - 66, 68 - 80]. Walker v. HUD, 734 F.Supp. 1231, (N.D. Tex. 1989).

DHA is ordered to take the following actions to eliminate this vestige:

B.1. Prepare and submit for court approval a schedule for achieving the unit and project improvements necessary to make the

unit and project conditions at DHA's projects substantially equal to the unit and project conditions at the HUD assisted projects located in predominantly white areas of Dallas and including the improvements listed in paragraphs 32 - 35 on pages 23 - 25 and 38 - 46 on pages 26 - 27 of the DHA proposed permanent injunction for each DHA project. The schedule should be drafted to achieve the improvements in the least possible time given the funding likely to be available and list the possible sources of funding for each improvement. Priority should be given to achieving the improvements in security necessary to achieve a safe environment within each project. The projects with the highest crime rate should be given priority in the funding for the prevention of crime.

B.2. The funding available for these improvements includes the \$15,000,000 in CIAP funding and DHA's formula Comprehensive Grant Program funding. Future funding may become available through other programs from local or federal agencies. DHA shall make application for all funding which could be used to address the inequalities affecting its public housing program. DHA's ability to achieve the improvements in B.2. is limited by the resources available, the need to maintain all of its units in decent, safe, and sanitary condition, and to comply with the statutory and regulatory requirements of DHA's low income housing programs.

B.3. HUD has the authority to increase DHA's operating subsidy beyond the performance funding system formula amount when

f. lack of decent, standard, affordable, single family units in the neighborhoods around the projects for the persons now residing in those neighborhoods who wish to remain in those areas,

g. high concentrations of poverty households and households on public assistance, and

h. public schools challenged by high percentages of students failing to pass minimum competency tests.

B.6. DHA's ability to affect these neighborhood conditions around the existing projects is limited to the operation of its own projects and to requesting actions by local and federal agencies and the private sector. DHA's plan for improvement of the neighborhood conditions shall include the determination of which agencies and institutions can improve the conditions and a request to those agencies and institutions for the actions which will improve the conditions.

B.7. In addition to the improvements listed for each DHA project, DHA shall implement a reconfiguration of and improvements to the West Dallas project units consistent with the concepts in the Lakewest Master Plan submitted to the Court under the following conditions:

a. no more than 950 units of public housing may remain in place after the configuration and improvements and this number shall be reduced by the number of City Consent Decree ¶ 3.5 units provided as part of the reconfiguration,

b. prior to the use of any new public housing units in the

reconfiguration of the West Dallas project, DHA and plaintiffs shall seek the cooperation of the City of Dallas in provision of up to 200 necessary infill units under ¶ 3.5 of the City Consent Decree in this case.

c. In the event that City Consent Decree ¶ 3.5 units are not available in time to be used in the reconfiguration of the first village no more than a total of 50 new public housing units may be used in the reconfiguration and improvements of that village,

d. In the event that no City Consent Decree ¶ 3.5 units become available for use in the reconfiguration of the West Dallas projects, no more than a total of 200 units of new public housing may be used in that reconfiguration. The use of these units shall not result in more than 950 public housing units remaining in place after the reconfiguration.

e. Plaintiffs are arguing for a provision in the order that would prohibit any reconfiguration or improvements to the West Dallas site "until the status of the RSR/Murmur site on the National Priorities List and any remedial efforts have been fully resolved." DHA opposes this language because "there is no evidence of any significant environmental health hazard to residents of DHA's West Dallas developments arising out of lead contamination connected with the RSR/Murmur site" and thus there should be no reason to delay the construction of improvements in West Dallas [DHA's Response to Plaintiffs' Motion for Entry of Remedial Order Affecting DHA, page 1]. This paragraph is the only paragraph in this order that has not been consented to by DHA [DHA's Response to Plaintiffs' Motion for Entry of Remedial Order Affecting DHA, page 1]. Therefore, the resolution of this issue will be set for a future hearing and resolution by the Court.

f. any construction, rehabilitation, excavation or other construction work will be done in compliance with all necessary safeguards against releases of hazardous substances,

g. DHA has requested a change in zoning to provide an adequate "buffer zone" between the industrial zoning and uses on Singleton Blvd. and the areas of the West Dallas project to be used for residential purposes.

h. the tenant selection and assignment plan shall provide that no applicant shall lose her or his place on the waiting list because a unit in the West Dallas project has been rejected,

i. the specific reconfiguration and improvements have been

necessary because of circumstances beyond DHA's control. 42 USC § 1437g; 24 CFR 990.108(d). This order requiring a remedy for the constitutional and statutory violations of racial segregation is just such a circumstance. HUD has itself admitted the need for such increased funding by its continued provision of the operating subsidy for the vacant West Dallas units. DHA shall take the remedial needs imposed by this order into account when submitting its request for its operating subsidy from HUD. If the subsidy provided, in combination with other funding actually available to DHA, does not allow DHA to meet the obligations imposed under this order within a reasonable time, DHA or the plaintiffs may apply to the Court for relief.

B.4. The neighborhood conditions around DHA's projects which must be addressed in order to achieve substantial equality with the conditions in and around the HUD assisted projects in predominantly white areas include those listed in B.5. below.

B.5. The conditions adversely affecting all or some of DHA's projects include:

- a. high rates of crime,
- b. exposure to industrial uses and environmental hazards,
- c. inappropriate industrial zoning,
- d. unsatisfactory streets, curbs, drainage, sidewalks, lighting and other municipally provided facilities,
- e. lack of neighborhood commercial services such as grocery stores, pharmacies, banks or other financial institutions, and medical facilities,

approved by the Court.

B.8. DHA shall submit a plan for achieving and maintaining substantial equality of conditions in DHA's existing and future projects to the Court for approval within 90 days of the date of this order.

Vestige C. At least 2,850 [59.2%] of the black households on DHA's Section 8 certificate and voucher program live in predominantly black or racially concentrated and low income areas. Only 21% of those households live in predominantly white areas. 45.6% of white DHA Section 8 households live in predominantly white areas.

C.1. DHA's September, 1994 survey showed that at least 23% of those on the waiting list preferred housing in the suburbs, 27% preferred housing in North Dallas, and 11% preferred housing parts of Dallas "Other" than those listed [plaintiffs' 9/27/94 exhibit # 91].

C.2. DHA shall provide the mobility services to African-American applicants for DHA's low income housing programs and class members necessary to achieve and maintain a percentage of DHA's Section 8 allocation in predominantly white areas of the Dallas suburbs and a percentage of DHA's Section 8 allocation, including those in the suburbs, in predominantly white areas of North Dallas, predominantly white other parts of Dallas County, and predominantly white adjoining areas. The percentages shall be set after completion of another survey of the area preferences of DHA's applicants and participants. DHA and plaintiffs shall

attempt to agree on the contractor for the survey and the content and procedure of the survey. In the event such agreement cannot be reached, the Court will determine any issues upon which there is no agreement.

The results of the survey shall be considered by DHA and the plaintiffs in their proposals for the target percentages for the mobility program. If agreement cannot be reached, the Court will set the target percentages. These percentages shall be achieved within four years of the date of the order setting the targets and maintained thereafter.

C.3. The mobility services provided shall include landlord recruitment, FMR and voucher payment levels, child care and transportation services, and Title VIII enforcement actions. The mobility services provided by DHA shall include the provision of neighborhood specific information on crime rates, objective indicators of school quality such TAAS results for the schools in the area, social services, job training and employment opportunities, day care, medical facilities, neighborhood shopping services, transportation, and environmental hazards or other conditions inimical to family life.

C.4. DHA's ability to provide the mobility services and achieve the target percentages depends on the availability of funding for the provision of those services, the availability of willing landlords with units in appropriate areas, the Fair Market Rent and voucher payment standard levels, and the choices of the program participants. The need to avoid concentrations of

assisted persons in individual locations shall also be taken into account in determining DHA's performance in achieving the target percentages.

C.5. DHA shall conduct quality control review inspections of at least 10% of all Section 8 EHP units within 90 days after the initial or annual Housing Quality Standards inspection and comply with all HUD HQS requirements.

Vestige D. The neighborhood conditions for a majority of the black Section 8 participants are substantially inferior to the conditions in which low income whites receive HUD assisted housing and to the conditions in which whites paying rent comparable to the total rent paid by and on behalf the Section 8 households reside [plaintiffs' 9/27/94 exhibits ## 70 - 73, 76, 78].

D.1. DHA shall conduct perimeter inspections of all Section 8 EHP units at least twice annually, noting all obvious code violations on surrounding properties and reporting those violations to appropriate city code officials.

D.2. DHA shall monitor criminal activity, including criminal drug related activity, at and around all apartment projects in which 10 or more DHA Section 8 participants reside. A level of criminal activity at rates higher than the overall City of Dallas rates for any category of crime which level exists for more than six months shall be grounds for refusing to approve any additional Section 8 contracts at that project and for relocating those Section 8 participants in residence.

E. Monitoring and reporting

E.1. DHA shall file quarterly reports detailing the status of compliance with each provision of this order and specifically reporting the results of that compliance.

E.2. The report for each quarter shall be filed with the Court and copies served on the parties within thirty days of the end of the quarter covered by the report.

E.3. DHA shall give Plaintiffs' counsel access upon request and upon reasonable terms to information and documents relevant to compliance with the decree.

F. Jurisdiction of the Court

F.1. The Court retains jurisdiction to enforce and modify this injunction according to general equitable principles.

F.2. Should DHA choose to assert that unitary status has been achieved, then DHA shall submit to the Court, with a copy to all other parties, a detailed, factual account upon which the assertion is based and all documents upon which the assertions are based. The account shall include: all steps taken to eradicate the vestiges of racial segregation, any publicly assisted housing desegregation procedures which were not used and the explanation for the failure to use those procedures, the basis upon which the party relies for the assertion that no further action to remove the vestiges of racial segregation is practical or required, whether or not actions by an organization, entity, or person other than DHA could further desegregation, what such actions are and the steps taken by DHA to secure the

performance of such actions and the results of those steps, and any other information relevant to the determination of unitary status.

F.3. Unitary status means that the all reasonable methods have been employed and all available resources marshalled to eradicate the vestiges of racial segregation in DHA's public housing and Section 8 housing programs, and that such vestiges have been eradicated to the extent practical.

7 Feb 95
Date

Jersey Buchmeyer
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY HAWKINS, ERSALENE DAVIS,
TONI HARRIS, and ETHEL BYNUM
on behalf of themselves
and others similarly situated,

Plaintiffs

VS.

HENRY CISNEROS, Secretary of the
United States Department of
Housing and Urban Development;
THE UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT;
HOUSING AUTHORITY OF THE
CITY OF OMAHA, and
the CITY OF OMAHA

Defendants,

Civ. No. 90-0-55

SETTLEMENT AGREEMENT

WHEREAS, plaintiffs have filed a lawsuit challenging alleged actions taken by the United States Department of Housing and Urban Development ("HUD"), the Omaha Housing Authority ("OHA"), and the City of Omaha in connection with the development and administration of Omaha's public housing as violations of the United States Housing Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, the Fifth and Fourteenth Amendments to the Constitution of the United States, and other federal statutes, regulations and guidelines; and

WHEREAS, a class was conditionally certified on July 31, 1991, consisting of all then-current residents of Logan Fontenelle Homes who are eligible for but allegedly excluded from participation in

a program of scattered site single-family dwellings operated by OHA; and

WHEREAS, the plaintiffs, on behalf of both themselves and the class referred to in paragraph 20 of this Agreement, consider that, in light of the benefits derived from the settlement, it is desirable to compromise and settle the claims alleged in this action upon the terms and conditions hereinafter set forth; and

WHEREAS, the defendants maintain that the claims against them are without merit, but consider it desirable to settle this action in the manner and upon the terms and conditions hereinafter set forth to avoid further expense, inconvenience and the distraction of burdensome litigation, and to finally put to rest the claims asserted in this action; and

WHEREAS, the parties recognize that OHA is primarily responsible under law for the development and management of low-income public housing in the City of Omaha;

NOW THEREFORE, the parties agree as follows:

THE RELOCATION OF LOGAN-FONTENELLE NORTH RESIDENTS

1.(a). OHA agrees that it will use all reasonable efforts to re-contact all previous Logan Fontenelle-North residents displaced due to the pending demolition of that project between May 10, 1990 and November 13, 1991, the date of the Court's Order partially granting plaintiffs' motion for preliminary injunction (hereinafter referred to as "Logan Fontenelle displacees"), and provide these displacees with another opportunity to state their preferences for housing owned, operated or administered by OHA.

which is to the maximum extent practicable housing of their choice. For the purposes of this Agreement, Mary Hawkins, Ersalene Davis, and Toni Harris will also be considered to be "Logan-Fontenelle displacees." OHA will comply with all HUD requirements applicable to the relocation of residents displaced by demolition when offering the Logan Fontenelle displacees another opportunity to state their housing preferences and when offering housing.

1.(b). All previous Logan Fontenelle-North residents who were evicted or whose tenancy was terminated for violation of lease between May 10, 1990, and November 13, 1991, are not considered to be "Logan Fontenelle displacees" within the meaning of this paragraph.

1.(c). As part of the reasonable efforts undertaken pursuant to this paragraph to contact the Logan Fontenelle displacees, the OHA shall mail to the last known address of all displacees a notice informing them that they will be offered another opportunity to select housing and inviting them to receive counseling on their housing choices. In addition, the OHA agrees to publicize and conduct four meetings for Logan-Fontenelle displacees, two on a weekday and two on a weekend, at which the displacees will be counseled on their housing choices and offered another opportunity to state their preferences for housing owned, operated or administered by OHA which is to the maximum extent practicable, housing of their choice.



1.(d). The counseling to be provided to the Logan-Fontenelle displacees pursuant to this paragraph will include, in addition to the counselling program referred to in paragraph 11 below and in Appendix B, the following: (1) explanation of moving expenses; (2) explanation that the individual has up to 30 days to make his or her decision and to make the move; (3) full description of the types of scattered-site housing currently available; (4) explanation of, and assistance with, the procedures for arranging school transfers and arranging school transportation; and (5) explanation of the restrictions during the first 120 days after issuance on the 75 certificates and 25 vouchers to be provided by HUD pursuant to paragraphs 9 and 10.

1.(e). It is the goal of the parties to re-contact and re-counsel all Logan-Fontenelle North displacees to the fullest extent practicable. To that end, OHA agrees to undertake additional measures to contact Logan-Fontenelle displacees if the mailing of the notices and the publication of the meetings described in this paragraph fails to elicit responses from more than 80% of the Logan-Fontenelle displacees within four months from the beginning of OHA's efforts to re-contact the Logan-Fontenelle displacees. These additional measures will include enlisting the assistance of the Nebraska Department of Social Services (NDSS) to include information in their mailings to Douglas County residents about the additional housing opportunities available to Logan-Fontenelle displacees; (2) some amount of radio and newspaper advertising designed to inform Logan-Fontenelle displacees about the additional

housing opportunities available to them; and (3) enlisting the services of a private investigative firm to try to locate the Logan-Fontenelle displacees. If these additional measures become necessary, OHA will not be obligated to spend more than \$5,000 on radio and-newspaper advertising and/or private investigative efforts.

1.(f). Within 30 days of attendance at one of the meetings held pursuant to this paragraph, or within 30 days of receipt of a notice mailed pursuant to this paragraph, the displacees must inform the OHA, should they desire to move, of their preferences (or, if more than one preference, the order of preferences) that the displacees desire. The OHA shall not be obliged to offer housing to any displacee who fails to inform the OHA of their preferences within 30 days of receiving counseling about their housing choices. In the succeeding six months, the OHA shall offer any qualified displacee who has submitted his or her preferences to the Authority pursuant to this paragraph the opportunity to occupy housing of their choice should an appropriate vacancy occur or should a Section 8 certificate become available.

1.(g). The term "qualified displacee" means a displacee who, at the time the offer is made, is qualified for public housing and eligible for the unit offered. Nothing in this paragraph shall be construed to require the OHA to offer housing to a Logan-Fontenelle displacee for which that displacee is not eligible under HUD regulations or HUD approved OHA policies.

1.(h). If a displacee accepts an offer of housing made

pursuant to this paragraph, OHA shall provide such displacees with a relocation allowance of Two Hundred Dollars (\$200.00) and payment for moving expenses not to exceed Three Hundred Dollars (\$300.00), based upon the following schedule: 1 bedroom unit - \$125.00; 2 bedroom unit - \$175.00; 3 bedroom unit - \$200.00; 4 bedroom unit - \$250.00; 5 bedroom unit - \$300.00.

1.(j). If a displacee refuses an offer of housing made pursuant to this paragraph without good cause, OHA shall not be obligated to extend any further offers of housing to the displacee. For the purposes of this paragraph, a refusal for "good cause" shall be defined in the same way that a refusal for good cause is defined in OHA's HUD approved tenant selection and assignment policy which is attached as Appendix A.

1.(k). OHA agrees not to begin its efforts to contact the Logan-Fontenelle displacees until it has received the 75 Section 8 certificates and 25 vouchers to be provided by HUD to OHA pursuant to paragraph 9 of this Agreement. These 100 Section 8 certificates and vouchers will be among the housing opportunities offered to the eligible Logan Fontenelle displacees. The Logan Fontenelle displacees will have priority over all other applicants and residents with respect to the ability to choose to receive one of the 100 Section 8 certificates and/or vouchers to be provided by OHA to HUD pursuant to paragraph 9 of this Agreement.

THE REMAINING MULTIFAMILY PUBLIC HOUSING PROJECTS

2. As soon as practicable, but no later than the schedule required in paragraph 5 below, OHA, pursuant to Section 18 of the U.S. Housing Act of 1937, as amended, and the implementing regulations will submit to the Omaha City Council for approval, and, if approved by the Omaha City Council, to HUD, proposals to demolish, sell, or otherwise dispose of, and replace with alternate forms of housing (referred to hereinafter as "demolition proposals") the following:

- (a) Logan Fontenelle South,
- (b) six or more buildings in Hilltop Homes,
- (c) Pleasantview Towers East and West.

In the event that Logan Fontenelle South, Pleasantview Towers East and West or those portions of Hilltop Homes for which the OHA proposes to submit demolition proposals pursuant to this paragraph are purchased by tenants or tenant organizations, such purchase(s) will relieve HUD and OHA of any obligations pursuant to paragraphs two through six of this Agreement with respect to those portions of the project(s) which are purchased.

3. The OHA agrees to include in its replacement plans for each of the projects referenced in paragraph 2 a commitment to locate at least 75% of the replacement units outside of "impacted" census tracts. OHA agrees that the first 25% of the replacement units for each project demolished, sold or otherwise disposed of pursuant to paragraphs 2 and 4 will be located outside of "impacted" census tracts. For the purposes of this paragraph, a

census tract is "impacted" if it has a minority population greater than 35% according to the 1990 U.S. Census. In addition, OHA agrees not to construct or purchase any replacement housing for projects demolished pursuant to paragraph 2 of this Agreement in census tract 58, as set forth in the 1990 U.S. Census.

4. HUD will approve, subject to the availability of appropriations, demolition proposals submitted by the OHA pursuant to paragraph 2 which satisfy HUD's administrative, regulatory and statutory requirements and HUD will not approve demolition proposals from OHA that do not contain the commitments by OHA regarding the location of replacement units which are referenced in paragraph 3.

5.(a) OHA agrees to submit the proposal to demolish, sell or otherwise dispose of Logan-Fontenelle South to the Omaha City Council for approval, and, if approved by the Omaha City Council, to HUD, within one year from the effective date of this Settlement Agreement. OHA agrees to submit the proposal to demolish six buildings in Hilltop Homes within four years from the effective date of this Agreement unless submission within that time period is impracticable. If OHA does not submit the Hilltop demolition proposal within four years from the effective date of this Settlement Agreement, it agrees to submit to HUD an explanation of the impracticability of submitting the proposal to demolish Hilltop within that four year time period. OHA agrees to submit the proposal to demolish Pleasantview Towers East and West within six years from the effective date of this Settlement Agreement unless

submission within that time period is impracticable. If OHA does not submit the Pleasantview Towers East and West demolition proposal within that time period it agrees to submit to HUD an explanation of the impracticability of submitting the proposal to demolish Pleasantview Towers East and West within that time period.

5.(b) All residents subject to displacement pursuant to these demolition plans shall be offered an opportunity to state their preference for relocation housing owned, operated, or administered by OHA which is, to the maximum extent practicable, housing of their choice. OHA will comply with all HUD requirements applicable to the relocation of residents displaced by demolition when offering these residents an opportunity to state their housing preferences and when offering housing. Each resident whose unit is identified for demolition under a plan approved by HUD shall be provided with written material, provided by the counseling provider, informing the resident about the availability of the counseling services provided by the counseling provider. Each such displacee who expresses a preference for Section 8 will be required to attend the initial counseling session described in Appendix B, II.A before being allowed to receive a certificate. HUD agrees that OHA's administration of any certificates provided to displacees pursuant to this paragraph will not be included in any review by HUD of OHA's performance in administering the Section 8 program. During the relocation counseling described in this paragraph, OHA and its employees shall not discourage relocatees from seeking mobility counseling.

TENANT SELECTION AND ASSIGNMENT POLICIES

6.(a) OHA will follow its existing one-offer tenant selection and assignment plan for making assignments to its multi-family, non-elderly, conventional units. A copy of this tenant selection and assignment plan is attached hereto as Appendix A.

(b) OHA will combine the waiting lists for Section 8 and conventional public housing so that an application for either form of housing will place the applicant on both waiting lists, assuming that the applicant is eligible for both forms of housing. Rejection of an offer of conventional public housing shall not impact an applicant's position on the Section 8 waiting list and rejection of a Section 8 certificate or voucher shall not impact an applicant's place on the conventional housing waiting list. Applicants who accept an offer of conventional public housing will not lose their federal preferences for purposes of the Section 8 waiting list;

(c) Offers of housing will be made from each list on a first-come, first-served basis in accordance with Appendix A;

(d) Nothing in this paragraph shall be construed to prevent HUD from approving OHA proposals to modify its tenant selection and assignment policies with respect to the handicapped, the disabled or the elderly;

(e) Nothing in this application assignment policy shall change the priorities set forth in OHA's current transfer policy which are given to current residents who will be displaced because of demolition and replacement plans submitted pursuant to this

Settlement Agreement. Further, nothing in this Agreement shall affect the priority given to Logan-Fontenelle North displacees for scattered site units vacated during the time periods referred to in the last sentence of paragraph 1(f) of this Agreement.

7. OHA agrees to continue to take applications for conventional public housing at a central location for five years from the effective date of this Settlement Agreement.

8. OHA agrees to adhere to the tenant selection and assignment plan described in paragraph 6 and attached as Appendix A for a period of three years from the effective date of this Agreement. After three years from the effective date of this Agreement, the OHA may make any modification or amendment to the tenant selection and assignment plan it determines is necessary or desirable, subject to approval by HUD as required by law, a finding by HUD that such modification or amendment is consistent with the relevant legal requirements, and notice to plaintiffs' counsel from HUD that such a request for modification has been submitted to HUD. Nothing in this paragraph shall be construed to prevent the OHA from seeking modifications at any time to those parts of its tenant selection and assignment policies which apply to the handicapped, the disabled or the elderly.

SECTION 8

9. HUD agrees to provide OHA with 75 Section 8 certificates and 25 Section 8 vouchers. Although these 100 Section 8 certificates and vouchers shall be available to the eligible Logan-Fontenelle displacees as a housing opportunity and such displacees will have priority over all other applicants with respect to receipt of one of these certificates and vouchers, as provided in paragraph 1, these Section 8 certificates and vouchers shall not otherwise be limited only to the eligible displacees. These certificates and/or vouchers will be provided within 90 days from the effective date of this Settlement Agreement.

10. For the first 120 days after each of these 100 Section 8 certificates are issued, they may only be used to rent housing located in census tracts which are less than 35% minority and may not be used in Census Tract 58 as that tract is defined in the 1990 Census. Thereafter, the certificates may be reissued by OHA without any limitation under this Agreement and in accordance with the OHA's ordinary policies and procedures. Both Logan-Fontenelle displacees and non-Logan Fontenelle displacees who are offered an opportunity to receive one of these 100 certificates and vouchers while the 120-day restriction is still in effect will, subject to the availability of unrestricted certificates or vouchers, be offered a choice between a certificate or voucher with a 120-day limitation and a certificate or voucher without such restrictions. In the event that an individual chooses not to

receive a certificate or voucher with a 120-day limitation, such refusal shall not effect that person's position on the waiting list for either Section 8 or conventional public housing. No individual shall be issued a restricted certificate or voucher without being informed about the nature of the restrictions on where the certificate or voucher may be used. HUD agrees that OHA's administration of these 100 certificates and vouchers will not be included in any review by HUD of OHA's performance in administering the Section 8 program.

SECTION EIGHT MOBILITY PROGRAM

11. HUD agrees to fund and implement a Section 8 mobility counseling program as described in Appendix B to this Agreement. This program will be operated by a private non-governmental housing entity with at least one year's experience in housing placement. HUD will provide the counseling provider with a lump sum of \$500,000 for the administration of the counseling program described in Appendix B. In addition, anytime from October 1994, until seven years from the effective date of this Settlement Agreement, the counseling provider may receive, pursuant to a request from the provider which demonstrates an actual need for additional funds, up to \$300,000, subject to the availability of appropriated funds for mobility counseling.

TOMMIE ROSE GARDENS

12. In August, 1993 HUD conducted a management review of the Tommie Rose Gardens project, and identified a substantial number of units that did not meet Section 8 Housing Quality Standards. On

September 20, 1993, HUD advised the owner of the project that all the units not meeting the standards must be brought into compliance within 60 days, or HUD would withdraw the Section 8 subsidy for any noncomplying unit until the unit is brought into compliance. HUD will conduct a reinspection of Tommie Rose Gardens in late November or early December, 1993, and will withdraw the Section 8 subsidy for any unit not meeting Housing Quality Standards, until the unit is brought into compliance. HUD will conduct another inspection of the project in June, 1994. If any units are found not to meet Housing Quality Standards, HUD will require that the units be corrected within 30 days, or the units will lose their Section 8 subsidy until they are brought into compliance. Notice of HUD activities, reports, and findings in this regard will be given to counsel for the plaintiff class.

CDBG INVESTMENT IN TARGETED INVESTMENT AREA

13. So long as Pleasantview Homes and Spencer Homes are owned by OHA as low-income housing projects, or until the Prospect Hill and Highlanders Target Area Neighborhoods are no longer deemed blighted and substandard, the City of Omaha agrees to continue to use CDBG funds in the Prospect Hill and Highlanders Target Area Neighborhoods in order to carry out the City of Omaha Homeowner Housing Rehabilitation Program.

DEMONSTRATION HOMEOWNERSHIP PLAN

14. Nothing in this Agreement shall affect the OHA's ability to maintain existing HUD-approved eligibility standards and tenant assignment policies for the Homeownership Plan or to establish, in

accordance with applicable federal statutes and regulations, eligibility standards and tenant assignment policies for the Homeownership Demonstration Program. Nothing in this Agreement shall require the OHA to house any person in a single-family home that is part of OHA's Homeownership Plan or its Homeownership Demonstration Program who does not meet the eligibility standards for such a unit. OHA agrees that none of the persons occupying Logan-Fontenelle North replacement units on the effective date of this Settlement Agreement will be moved or asked to move in order to allow those units to be designated for inclusion in any homeownership plan. All OHA residents shall be informed, at the time of their annual review, of the eligibility requirements for the Homeownership Demonstration Program and the Incentive Transfer Policy.

SCHOOL BUSING

15. HUD agrees to encourage discussions between OHA, the School Board, and other parties to amend Omaha's school desegregation plan to selectively eliminate "wrong-way busing" for public housing recipients with school age children who live in projects or areas where their race does not predominate. For purposes of this provision 'wrong-way busing' is defined as follows: when, pursuant to the OPS desegregation plan, a white child living in federally assisted housing located in an impacted census tract (i.e., more than 35% minority) is transported to a school in a non-impacted census tract or when a black child living in federally-assisted housing located in a non-impacted census

tract (i.e., less than 35% minority) is transported to a school located in an impacted census tract.

UTILITY ALLOWANCES

16. HUD agrees to conduct a review of the sufficiency of the utility allowances currently provided in the City of Omaha to residents of scattered-site and Section 8 units. This review is to be completed within one year from the date of the execution of this Agreement. HUD agrees to require OHA to remedy deficiencies found in the review. HUD will provide a copy of all such reviews to counsel for the plaintiff class. Nothing in this paragraph shall be construed to prevent OHA from offering a response to the findings of HUD's review or HUD from thereafter modifying its findings in accordance with its own administrative policies and regulations.

REVIEW OF HOUSING QUALITY STANDARDS IN SECTION 8 UNITS

17. For a period of three years, in addition to the review of Tommie Rose Gardens to be conducted pursuant to paragraph 10, HUD will conduct an annual housing quality standards review of a representative sample (5%) of Section 8 units in the City of Omaha. HUD will provide copies of all such reviews to counsel for the plaintiff class.

ATTORNEY'S FEES

18. The federal government shall pay plaintiffs' counsel, in satisfaction of all of plaintiffs' claims for any attorney's fees, costs and expenses arising out of this litigation up to the date of this Agreement, the following amounts:

Mary Clarkson: \$ 394,016.96

Arthur Benson: \$ 119,630.85

The federal government further agrees to pay plaintiffs' reasonable attorneys' fees and costs, at a maximum rate of \$160 per hour, for work done on behalf of the plaintiff class from September 15, 1993, through the completion of the fairness hearing described in paragraph 20 of this Agreement. Upon the submission of plaintiffs' counsels' time records and billings for this time period to the federal government, the federal government will determine the amount of plaintiffs' counsels' reasonable attorneys' fees and costs. In the event that plaintiffs' counsel does not agree with the federal government's determination of what constitutes reasonable attorney's fees and costs, plaintiffs' counsel may file a motion with this court seeking to be awarded the remainder of its fees pursuant to the applicable statute(s) and the federal government may oppose such-fee petition(s). Neither the OHA nor the City shall be obligated to pay any part of plaintiffs' attorney's fees, costs and expenses arising out of this litigation. Nothing in this Settlement Agreement shall be construed to prevent the plaintiff class and/or its counsel from seeking recovery of reasonable attorneys' fees and expenses yet to be incurred for legal actions necessary to enforce this Settlement Agreement.

GENERAL PROVISIONS

19. Nothing in this Agreement shall be construed to require HUD to perform the obligations of a public housing agency or to act as a guarantor of OHA's performance under this Agreement. With the

exception of the 100 Section 8 certificates and/or vouchers to be provided by HUD to OHA pursuant to paragraph 9, HUD shall not be obligated to provide any funding to OHA to carry out the terms of this Agreement. The cost of providing the relocation allowances referenced in paragraph 1, and any other administrative costs incidental to the obligations OHA assumes under this agreement will be borne by the OHA. Except as specifically set forth in this Agreement, OHA and the City shall not be required to expend any funds. Nothing in this Agreement shall be construed to require HUD to process OHA requests for funding in a different manner than it processes requests for funding from other housing authorities. In addition, nothing in this Agreement shall be construed to affect or otherwise change the ordinary annual funding provided to the OHA through those housing programs administered by HUD.

20. The parties agree that the Agreement shall be implemented in the following manner:

a. Upon execution, the parties shall promptly file this Settlement Agreement with the District Court and request the Court to enter an order:

- (1) Preliminarily approving the proposed settlement as presumptively fair, reasonable and adequate;
- (2) Certifying a class for the purposes of this Settlement Agreement consisting of all past and present applicants for and past and present recipients of federal housing assistance administered by the OHA for low-income persons in

Omaha and the past and present residents of Tommie Rose Gardens.

(3) Requiring that notice of the terms of this Settlement Agreement, and the right to object to the proposed settlement be given to all members of the class consisting of all past and present applicants for and past and present recipients of federal housing assistance administered by the OHA for low-income persons in Omaha and the past and present residents of Tommie Rose Gardens.

(4) Scheduling a fairness hearing to determine the fairness of the proposed settlement and compromise with respect to the class consisting of all past and present applicants for and past and present recipients of federal housing assistance administered by the OHA for low-income persons in Omaha and the past and present residents of Tommie Rose Gardens.

b. Pursuant to Rule 23 (e), all class members shall be given notice, the form of which shall be agreed upon by counsel for all parties, or by the Court in the event there is no such agreement, of the terms of this Settlement Agreement and their right to object to the proposed settlement. OHA shall post the notice in all OHA conventional rental management/central offices and mail or deliver the notice to the residents of Logan-Fontenelle South, Hilltop Homes, Pleasantview Towers East and West and to the

last known addresses of the Logan-Fontenelle displacees. OHA will publish the class notice for one day in a Sunday edition of the Omaha World Herald and for one day in the Evening Star. HUD will reimburse OHA for printing, postage and newspaper advertising costs it incurs by providing notice to the class pursuant to this paragraph. In addition, HUD will mail or deliver the notice to all residents of Tommie Rose Gardens. Counsel for all parties shall be provided a copy of the addresses of all persons to whom the notice is mailed. In addition, OHA shall file with the Court, under seal, a copy of the names and addresses of all present residents of OHA-administered multi-family public housing and recipients of Section 8 housing assistance administered by OHA, and no person or parties shall be permitted to review such information without a showing of good cause acceptable to the court. Class members will have until ten (10) days before the date of the fairness hearing within which to file written objections to the proposed settlement. Between the effective date of this Agreement and the fairness hearing, the defendants and their employees will not communicate with members of the proposed class concerning the proposed settlement agreement except by means of the court-approved notice. For the purposes of this Agreement, the effective date of this Agreement is the date that the Court enters an Order approving the settlement as fair, reasonable and binding on the class. Nothing in this paragraph shall be construed to prevent any of the defendants from communicating with the proposed class concerning OHA's already existing policies and programs or OHA's demolition proposals for

Logan Fontenelle South and Hilltop in order to comply with HUD's administrative, regulatory or statutory requirements.

c. A fairness hearing shall be held at such time and place as ordered by the district court to consider whether the proposed settlement should be finally approved as fair, reasonable, and adequate. Any class member who has submitted a timely written objection may appear at the hearing and show cause why the settlement and compromise proposed in the Settlement Agreement should not be approved. Objections raised at the hearing will be limited to those matters addressed in timely written objections.

d. It is an express condition of this Agreement that the class described in this paragraph be certified and be bound by this Agreement.

21. All parties agree to the dismissal of all of plaintiffs' claims in this case with prejudice, upon the entry of the Order approving this settlement, except that the parties specifically and expressly agree that the Court shall retain jurisdiction of the Settlement Agreement for a period of seven years from the effective date of this Agreement for the sole and limited purpose of permitting any party to apply to the Court, by motion and in accordance with the Federal Rules of Civil Procedure, for such further orders as may be necessary or appropriate to enforce the obligations in this agreement, but not for modification. This Agreement may not be modified except by the consent of all of the parties to this Agreement.

22. Any allegation of a failure to comply with the terms and

conditions of this Agreement by one or more of the parties shall be by written notice to the undersigned counsel. Said notice shall specify the facts supporting the allegation, and shall precede the filing of any motion to enforce the terms of this Agreement. Upon receipt of said notice by counsel, the alleged defaulting party shall either remedy the alleged failure and so notice all other counsel in writing or provide written explanation within thirty (30) days. At the end of such period, if the issue is not resolved, any party may seek relief from the Court.

23. This Settlement Agreement is binding on all parties and their successors, assigns, representatives, and trustees and shall be null, void, and of no force or effect if this Court does not approve this settlement, except that nothing in this Settlement Agreement shall be construed to waive rights to assert claims for relief from future violations of laws and regulations.

24(a). To enable the plaintiff class to monitor the implementation of this Settlement Agreement, OHA shall provide to HUD, and HUD shall regularly provide to counsel for plaintiff class, the data and reports listed in Appendix C, attached hereto, with the exception of census tract information for the scattered-site replacement housing referred to in paragraphs B and C of Appendix C, which information shall be provided to counsel for the plaintiff class by HUD. Such information shall be provided on the schedule set forth in Appendix C.

(b). Nothing in this Agreement shall affect HUD's existing right to require OHA to submit such additional information and

reports as HUD may deem necessary.

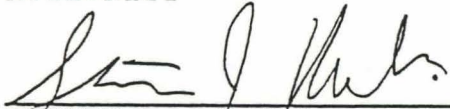
25. Defendants shall not be obligated to carry out any term of this Agreement if any otherwise applicable current or future, state or federal, statute(s) or regulation(s) preclude the defendants from complying with, or withdraw defendants' authority to perform, that term.

26. This Agreement does not represent an admission of liability by any defendant.

27. The terms of this Agreement constitute the entire understanding among the parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

Agreed:

FOR THE OMAHA HOUSING
AUTHORITY



STEVEN J. RIEKES
OHA General Counsel
Richards, Riekens, &
Zabin
1125 South 103rd Street
Suite 600
Omaha, Nebraska 68124

FOR THE CITY OF OMAHA



CHARLES K. BUNGER
Assistant City Attorney
804 Omaha-Douglas Civic Center
Omaha, Nebraska 68183

FOR THE PLAINTIFFS



MARY P. CLARKSON
Broom, Johnson, Fahey
Clarkson
1722 St. Mary's Avenue
310 Flatiron Building
Omaha, Nebraska 68102

ARTHUR A. BENSON II
1000 Walnut Street
Suite 1125
Kansas City, Missouri 64104

Karen L. Shepard, Esq.
The Law Building
500 South 18th Street
Omaha, Nebraska, 68102

FOR DEFENDANTS HENRY CISNEROS,
SECRETARY OF HOUSING AND URBAN
DEVELOPMENT AND THE UNITED
STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

FRANK W. HUNGER
Assistant Attorney General

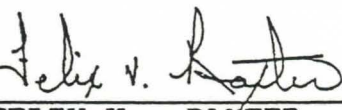
OF COUNSEL:

JOHN W. HEROLD
Associate General
Counsel for Litigation

HOWARD SCHMELTZER
Asst. General Counsel
for Assisted and Fair
Housing Litigation

STEPHEN SHAW
Trial Attorney
Office of Litigation
Room 10258
451 7th St., S.W.
Washington, D.C. 20410

THOMAS JUSTIN MONAGHAN
United States Attorney
PAUL W. MADGETT
Assistant U.S. Attorney


FELIX V. BAXTER


KEVIN M. SIMPSON
COLLEEN B. GRZESKOWIAK
Attorneys
U.S. Department of Justice
Civil Division - Room 938
901 E St., N.W.
Washington, D.C. 20530

APPENDIX A

HOUSING AUTHORITY OF THE CITY OF OMAHA
RESIDENT SELECTION AND ASSIGNMENT POLICY

Approved
January 14, 1993

RESIDENT SELECTION AND ASSIGNMENT POLICY

I. PURPOSE POLICY.

This Policy is for the purpose of determining the assignment of residents to all dwellings under the jurisdiction of the Housing Authority of the City of Omaha. Only eligible persons, as defined by Federal and state, law may be assigned a dwelling unit.

II. NON-DISCRIMINATION STATEMENT.

The Housing Authority of the City of Omaha shall not discriminate because of race, color, religion, sex, handicap, familial status, or national origin in the leasing, rental, or other disposition of housing or related facilities (including land) included in any project or projects under its jurisdiction covered by a contract for annual contributions under the United States Housing Act of 1937, as amended, or in the use or occupancy thereof. The Housing Authority shall not, on account of race, color, religion, sex, handicap, familial status, or national origin, deny to any family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs.

III. RECORDS.

The Housing Authority of the City of Omaha records with respect to applications for admission to any low-rent public housing assisted under the United States Housing Act of 1937, as amended, shall indicate on each application the date and time of receipt; the determination of the Housing Authority as to eligibility or non-eligibility of the applicant; where eligible, the unit size for which eligible; the priority rating, if any; the date, location, identification and circumstance of each vacancy offered and accepted or rejected. In addition, records will be kept on complaints of discrimination, with specifics of correspondence, findings made, and action taken on such complaints.

IV. TRANSFERS.

Transfers under this plan will be made in accordance with OHA's Transfer Policy.

V. APPLICANT--Priority Factors.

At the time of application, and subject to appropriate verification, each applicant will be given priority points determined as follows: Priority factors are determined by applicant's present living conditions with the following priorities:

PRIORITY
POINTS

1. *Applicant has been involuntarily displaced 100
2. *Applicant is living in substandard housing 100
3. *Applicant is paying more than 50% of income for rent 100
4. Applicant has been removed from his/her dwelling by the rehabilitation, clearance or redevelopment of slums, condemnation, enforcement of minimum dwelling standard ordinances, or the exercise of the power of eminent domain as a result of governmental action and is therefore displaced. (Note: These points will be given in addition to, and not in lieu of, involuntarily displaced above.) 300
5. Applicant lives in a unit where utilities have been shut off because of payment beyond his/her ability as it relates to his/her annual income. This shall be verified by actual shut-off notice from MUD and OPPD. 15
6. The applicant is a Veteran or Serviceman or is the spouse or parent of a Veteran or Serviceman 10
7. Applicant lives in an overcrowded dwelling. A dwelling is considered overcrowded if the number of persons occupying it exceeds the following standards: 5

No. Bedrooms in Home	No. of Persons	
	Minimum	Maximum
0	1	1
1	1	2
2	2	4
3	3	6
4	5	8
5	8	10 plus

*Federal Preferences

The foregoing priority points will be totaled for each applicant and those with the highest number of points will

receive priority according to the time and date of application.

VI. ASSIGNMENT OF VACANT UNITS.

Whenever any unit shall become vacant, the priorities for filling said vacancy shall be as follows:

- A. Transfers in accordance with OHA Transfer Policy to correct occupancy and hardships.
- B. Applicants according to the priority points, time, and date of application on a single community-wide waiting list.

In the event that any persons have equal priority, time, and date of request to transfer or application shall prevail.

The Housing Authority hereby establishes a plan under which an eligible applicant must accept a vacancy offered. If there is a suitable vacant unit in more than one location, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the unit offered without good cause, he or she shall be dropped from the waiting list and shall be ineligible to reapply for a period of six months.

"Location" means any low-rent housing site as established in a Development Program, except that when sites are adjacent or within a block of each other, such sites collectively shall be considered one location. For purposes of determining the "location" of scattered-site developments, including single-family homes and duplexes, the same shall be determined geographically as follows:

- A. All scattered-site units in that Quadrant of the City of Omaha which is North of Dodge Street and East of 42nd Street collectively shall be considered one location;
- B. All scattered-site units in that Quadrant of the City of Omaha which is North of Dodge Street and West of 42nd Street collectively shall be considered one location;
- C. All scattered-site units in that Quadrant of the City of Omaha which is South of Dodge Street and East of 42nd Street collectively shall be considered one location; and
- D. All scattered-site units in that Quadrant of the City of Omaha which is South of Dodge Street and West of 42nd Street collectively shall be considered one location.

"Good cause" means a situation in which the applicant presents to the satisfaction of the Authority clear evidence that at the

time he or she was offered a unit, he or she was unable to move due to hardship or handicap not related to considerations of race, color, or national origin (such as hospitalization, illness, financial inability and the like). A good cause refusal of an offer shall not be counted, and the applicant shall not lose his or her position on the list.

VII. ASSIGNMENT OF VACANT SINGLE-FAMILY HOMES ON SCATTERED SITES SUBJECT TO THE HOMEOWNERSHIP PLAN.

- A. Notwithstanding Section VI of this Policy entitled "Assignment of Vacant Units," the assignment of vacant units in all single-family homes on scattered sites, except those single-family homes which are part of the Logan Fontenelle North Replacement Plan, shall be made pursuant to the Housing Authority's Homeownership Plan. Said plan provides that the current residents of said scattered-site single-family homes shall be given first priority in regard to opportunities for home ownership. Should any of said units become subsequently vacant, or should the Housing Authority acquire additional single-family homes which are not part of the Logan Fontenelle North Replacement Plan, then existing eligible residents of the Housing Authority shall be given an opportunity to occupy said units pursuant to the provisions of said Homeownership Plan. After all exiting residents of the Authority are given the opportunity to participate in the Homeownership Program, and in the event that there are single-family scattered-site homes still available, then those residents currently assisted with Section 8 Certificates or Vouchers and not otherwise subject to contractual restriction will be given an opportunity to participate. The Homeownership Plan and the Housing Authority's Transfer Policy shall govern the assignment of said units for said purposes. In the event that there are single-family scattered-site homes still available, then pursuant to said Homeownership Plan, and in conjunction therewith, the following provisions of this Section VII of this Policy shall then be applicable.
- B. A notice will be sent to all families currently on the Housing Authority's waiting list, including the Section 8 waiting list, who are in need of two to four bedrooms, notifying them of the opportunity to participate in OHA's Homeownership Program, and the requirements for participation. The notice will instruct those applicants on said waiting lists who believe that they meet all the requirements of the program to submit a request in writing to the OHA to receive an application within thirty (30) days of receipt of the notice. The application must be returned to the Authority within sixty (60) days after receipt of the application.

Applicants will have priority to participate in the Homeownership Program based upon the time and date said applications are received by the PHA, subject to eligibility and preference factors. An application for home ownership shall not affect said applicant's place on the waiting list for public housing or Section 8, as the case may be. A separate record of eligible applicants will be kept by the OHA for use in the event OHA acquires additional single-family homes or vacancies shall occur in said single-family homes after opportunities for participation in the program have been extended to current residents and others as provided in said Homeownership Plan and as stated in Paragraph A above.

- C. New applicants for public housing or Section 8 who have families in need of two to four bedrooms shall be informed at the time of their application of the Housing Authority's Homeownership Program and the Requirements for participation. Those who are interested and who believe they meet all of the requirements of the program may request an application form. The form must be completed by the applicant and mailed back to the Housing Authority. Applications shall be dated as received by the OHA, and subject to eligibility and preference factors, selections shall be made in the order of receipt. Applications for home ownership shall not affect an applicant's place on either the public housing waiting list or the Section 8 waiting list. No new applicant for either public housing or Section 8 shall be selected for occupancy of a vacated or newly acquired single-family home under the Homeownership Program unless all current residents have had such opportunity as provided in the Transfer Policy and all other persons that have priority under said Homeownership Plan and as stated in Paragraph A above have had such opportunities, and for purposes of the initial implementation of this Policy, more than ninety (90) days has passed since notice was sent to all persons on the then-current waiting list for public housing and for Section 8, as provided in Paragraph B above. A separate record of said eligible applicants for home ownership will be kept by the OHA for use in the event the OHA acquires additional single-family homes or vacancies in the same shall occur.
- D. When a vacancy shall occur in a single-family home, the Housing Authority shall notify the eligible family with the highest priority on the separate record of eligible applicants kept by the OHA. Said families shall receive an orientation, and after said process is complete and prior to occupancy, shall execute a Homeownership Lease as provided in said Homeownership Plan.

- E. If any eligible applicant who has submitted an application to be considered for the Homeownership Program shall decline to accept the offer of a lease of a single-family home, then said applicant shall not lose his or her priority on any other waiting list, however, unless the declination was for good cause, said applicant's name shall be removed from consideration for the Homeownership Program. Said applicant shall be required to reapply for consideration, but shall be ineligible to do so for a period of twelve (12) months from the time the initial offer was declined.

[Reserved for Home Ownership Demonstration Program.]

HOUSING MOBILITY PROGRAM

I. THE NATURE OF THE COUNSELING

A third-party not-for-profit organization (the counselling provider) shall carry out a mobility program whose purpose shall be to encourage Section 8 certificate/voucher holders to choose housing in racially non-impacted areas unfamiliar to them. The counseling provider will offer the following services:

A. The initial counseling session1. Substance of personal briefings

The provider will design and conduct an initial counseling session that stresses that the mobility program affords an opportunity for greater economic independence in a community where jobs, as well as better housing, may be more available. The briefings should cover detailed explanations on the following:

- (a) the calculation of 30% of income,
- (b) fair market rent schedules and exceptions,
- (c) utility allowances,
- (d) security deposits,
- (e) the forms used in Section 8 program administration,
- (f) an explanation of portability,
- (g) the forms of racial and familial discrimination, the rights protected by the Federal Fair Housing Act, those of the State of Nebraska and the City of Omaha, and what to do if discrimination occurs.
- (h) the nature of the additional services that will be available to them if they wish to continue a program of mobility counselling

2. Written materials to be provided to the counselees

The provider shall prepare a package of attractive, readable materials to be provided to all counselees. This material shall include:

- (a) a description of the residential areas of Omaha,
- (b) average rental prices, fair market rents,
- (c) identification of community resources and services,
- (d) information on employment levels and wages.
- (e) samples of newspapers, with rental listings and information on when they are published and where they can be secured, shall also be provided.

B. Additional Mobility Services To Be Offered

At the initial counseling program, counselees will be offered the opportunity, financial resources of the counseling provider permitting, to receive additional counseling and support through an individual counselor which will be assigned to the counselees. These additional services may include one or more of the following elements.

1. The opportunity to receive neighborhood-specific information to allow families to access housing in areas unfamiliar to them, including information about transportation to and from the housing; information on social services, employment and training opportunities, crime rates; schools available in the neighborhoods in question; and procedures for transferring or enrolling school-age children.
2. The opportunity to view housing and schools in such areas through an escort service (use of a van shall be considered).
3. Counseling on housing search techniques to provide assistance in how low-income families can successfully present themselves as prospective tenants to undecided landlords in non-impacted areas, including accompanying them to interviews where requested to do so.
4. Assistance in conducting physical inspections of the units.
5. Assistance in preparing any necessary paperwork attendant to the move.
6. Assistance in the actual move-in.
7. Continued contacts after move-in to resolve problems.

C. Additional Non-Counseling Activities

The provider shall encourage private housing landlords, in racially non-impacted areas, to accept Section 8 voucher/certificate holders who choose areas unfamiliar to them. The provider will make the names of these landlords available to counselees as part of the initial counseling session described in Section II.A.

D. Guarantee of Full Counseling Services to All Counselees Not Required

The counseling provider may not have the financial resources to be able to offer the full range of the counseling services described in Section II.B. to all of the counselees who may wish to receive these services. In the event that the financing\resources available to the counseling provider in any given year are inadequate to supply the full range of counseling services to all willing counselees, it will be incumbent on the counseling provider to apportion these counseling services among the counselees, provided, however, that in so apportioning its services, it will give priority to providing full counseling services for the holders of the 100 certificates and vouchers referred to in paragraph II.A., below, and to the displacees whose units are demolished pursuant to the plans referred to in paragraphs 5(a) and 5(b) of the Settlement Agreement.

II. THE SCOPE OF THE PROGRAM

A. Linking counseling services to the 100 certificates

As part of the proposed Settlement Agreement, HUD will provide to the OHA 75 certificates and 25 vouchers to be offered to the Logan-Fontenelle displacees first and then to others on the Section 8 waiting list. For 120 days after issuance, these certificates/vouchers may not be used to rent housing in census tracts with over 35% minority population or in Census Tract 58 as that tract is defined in the 1990 Census. Thereafter, the certificates may be reissued by OHA without any limitation under this Agreement and in accordance with the OHA's ordinary policies and procedures. In addition, individuals eligible to receive these certificates will be informed that their participation in the full counseling program offered by the counseling provider (described above in II.A and II.B) is required in order for them to receive one of these 100 certificates. In addition, pursuant to paragraph 5(b) of this Agreement, each displacee who expresses a preference for Section 8 will be required to attend the initial counseling session described in Appendix B, II.A before being allowed to receive a certificate.

B. Soliciting participation from the remainder of the waiting list

The OHA presently holds frequent "update" meetings for small groups of persons approaching the top of the Section 8 waiting list in order to ensure that the information establishing their eligibility is still current. In addition, OHA holds briefing sessions for larger groups during which available Section 8 certificates are actually distributed. Representatives of the counseling provider will be permitted to attend any or all of these "update" or briefing sessions for the purposes of offering supplemental counseling and informing Section 8 applicants, both orally and through the distribution of written materials, about the counseling and services available through the counseling provider.

III. REPORTING REQUIREMENTS

On an annual basis, the counseling provider will supply the OHA, HUD, and counsel for the plaintiff class with a report providing operational details of its activities during the preceding year. This report shall include:

1. The identities of the people to whom initial counseling services were provided;
2. The identities of the people to whom extended counseling and supportive services were offered and the nature and extent of those services;
3. Information concerning where the individuals who received extended counseling or supportive services found housing following the receipt of the services and/or counseling.
4. A statement of accounts detailing how funds were spent during the preceding year and an anticipated budget for the following year.

APPENDIX C
INFORMATION COLLECTION

MONITORING

Annual Reports

A. Tenancy of existing scattered-site units

New placements: race and address.

- B. Scattered-site housing purchases made pursuant to a replacement plan submitted in connection with the demolition proposals for Logan Fontenelle South, Hilltop or Pleasantview Towers East and West

Addresses, units per address, bedrooms per unit, census tract.

- C. Scattered-site housing construction pursuant to a replacement plan submitted in connection with the demolition proposals for Logan Fontenelle South, Hilltop or Pleasantview Towers East and West

Addresses, units per address, bedrooms per unit, census tract.

- D. Tenancy of non-elderly multi-family public housing projects

Racial composition by project

Placement information: race of tenant, project where placed, bedroom size of unit

Vacancy information: number of units vacant at end of reporting period, number and bedroom size of each such unit.

- E. Information concerning displacees displaced in connection with the demolition proposals for Logan Fontenelle South, Hilltop and Pleasantview Towers East and West

Race of displacee, address where placed or where Section 8 certificate redeemed, and bedroom size of unit.

- F. Information concerning "Logan-Fontenelle displacees"

Race of displacee, address where placed or where Section 8 certificate redeemed, and bedroom size of unit. This information is to be provided by OHA to the plaintiffs six months after the last "recounseling" meeting mentioned in paragraph 1(e).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

443 FILED
DISTRICT COURT
DISTRICT OF NEBRASKA

JAN 21 PM 1:44

MARY HAWKINS, et al.,
on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

HENRY G. CISNEROS, Secretary of the
United States Department of Housing
and Urban Development; THE
UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT;
HOUSING AUTHORITY OF THE
CITY OF OMAHA, and
THE CITY OF OMAHA,

Defendants.

CIV. NO. 90-0-55
H. EBEL
CLERK

ORDER

This matter is before the Court pursuant to the Settlement Agreement reached by all parties and the Court's Order dated December 8, 1993. On January 21, 1994, a hearing was held to consider objections to the proposed Settlement Agreement.

The Court has considered the terms of the Settlement Agreement and the parties' compliance with provisions for notification to members of the Plaintiff class.

The Court finds that the notification given to class members is fair, adequate and in compliance with Federal Rules of Civil Procedure.

The Court has received no written or oral objections to the Settlement Agreement from any members of the class.

Copies mailed on 1-21-94

The Court has examined the provisions of the Settlement Agreement and hereby finds that it should be finally approved as fair, reasonable and adequate and the Court hereby finally approves said Settlement Agreement.

The Court finds that the class of persons consisting of all past and present applicants for and past and present recipients of federal housing assistance administered by the Omaha Housing Authority for low income persons in Omaha and the past and present residents of Tommie Rose Gardens, and all Defendants named herein are bound by the terms of the Settlement Agreement.

Pursuant to the Settlement Agreement, Plaintiffs' claims are dismissed with prejudice except that the Court shall retain jurisdiction of the Settlement Agreement for a period of seven years from the date of the Court's Order for the sole and limited purpose of permitting any party to apply to the Court, by motion in accordance with the Federal Rules of Civil Procedure, for such other further Orders as may be necessary or appropriate to enforce the obligations in the Settlement Agreement, but not for modification.

The Court further finds that pursuant to the Preliminary Injunction entered by this Court on November 11, 1991, Plaintiffs deposited a bond in the amount of \$250.00. Said bond is hereby released and the Clerk is ordered to reimburse same to Plaintiffs' counsel.

Pursuant to oral request by Plaintiffs' counsel, Exhibit No. 141 is to be released to Plaintiffs' counsel and substituted with a photographic duplicate.

DATED THIS 21st day of January, 1994.

BY THE COURT:



United States District Judge

Prepared and Submitted By:

Mary P. Clarkson, #10701
BROOM, JOHNSON, FAHEY & CLARKSON
1722 St. Mary's Avenue
310 Flatiron Building
Omaha, Ne 68102
(402) 346-8323
Attorney for Plaintiffs

1/21/94

**Frances E. HALE, et al., Plaintiffs,
v.
UNITED STATES DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT, et al., Defendants.**

Civ. A. No. C-73-410.

United States District Court, W.D.Tennessee.

Aug. 23, 1985.

Richard B. Fields, Memphis, Tenn., for
plaintiffs.

Terry L. Beck, Memphis, Michael Parsons,
Nashville, Tenn., Brenda Goranflo,
Washington, D.C., C. Bradford Foster, Clifford
Pierce, Jr., Memphis, Tenn., for defendants.

ORDER APPROVING SETTLEMENT

HORTON, Chief Judge.

**I.
INTRODUCTION**

*1 This is a certified class action lawsuit filed on behalf of all black residents of the City of Memphis who are eligible applicants for or tenants of publicly subsidized housing pursuant to the United States Housing Act of 1937, as amended, 42 U.S.C. § 1401 et seq., and Section 201 of Title II of the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f. The defendants are the United States Department of Housing and Urban Development ("HUD"); Samuel R. Pierce, Jr., Secretary of Housing and Urban Development; [FN1] the City of Memphis, Tennessee ("the City"); Richard C. Hackett, Mayor of Memphis; [FN2] the Memphis City Council; the Memphis Housing Authority ("MHA"); and the Tennessee Housing Development Agency ("THDA"). The amended complaint alleges that defendants have refused to allow or refused to approve low-rent subsidized housing in white residential areas, and that defendants located such housing primarily in black residential areas. Plaintiffs seek declaratory and injunctive relief for alleged violations by

defendants of the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution; the Civil Rights Acts of 1866 and 1871, 42 U.S.C. §§ 1981, 1982 and 1983; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; and title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq. Defendants deny any liability as set forth in the complaint or the amended complaint.

This action has been pending for more than eleven years. Trial commenced in August 1981 but has not been completed. The parties desire to avoid the expense, delay and inconvenience of further litigation in this matter. Accordingly, the parties have agreed to resolve this matter without any admission by any of the defendants of liability on the terms set forth below and have agreed to entry and implementation of this Order.

**THEREFORE, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED:**

**II.
SETTLEMENT AGREEMENT
A. MEMPHIS HOUSING AUTHORITY
TENANT**

SELECTION AND ASSIGNMENT

1. Within sixty (60) days after entry of this Order by the Court, MHA [FN3] will adopt and HUD [FN4] will approve, a modification of MHA's tenant assignment procedures to provide for an "integrative move-in option" so that applicants for low-income public housing [FN5] who wish to move to projects in which their race does not predominate [FN6] may do so when they come to the top of the waiting list. If an applicant refuses to accept the units offered under the integrative move-in option, his or her application will be considered under MHA's regular tenant assignment plan as approved by HUD, which is Plan B of the HUD Handbook.

a. The "integrative move-in option" will operate as follows: When an applicant comes to the top of the waiting list, he or she will first be offered housing in all public housing projects in which vacancies of appropriate size

exist and in which his or her race does not predominate (regardless of whether the applicant has expressed an interest in the integrative move-in option and informed that he or she may decline that offer and still receive the offer of units he or she would have received in the absence of the integrative move-in). If no such units are available at the time an applicant reaches the top of the waiting list, he or she will be given the option of waiting for a vacancy of appropriate size in at least one (1) such project before being offered units under MHA's regular tenant assignment plan. In the case of projects which consist of units on more than one (1) site, each non-contiguous location of units will be treated as a separate project for purposes of applying this procedure. A list of current projects and sites treated as projects is attached hereto as Appendix A, and incorporated by reference. This list will be updated as units are developed. The integrative move-in option will not apply to projects completed after January 1, 1985, until 40% of the units in the project are occupied. In the case of a project with units on more than one site, completed after January 1, 1985, the integrative move-in option will not apply to each location treated as a project until 40% of the units in the location are occupied.

*2 b. MHA will not be required to implement the "integrative move-in option" unless and until the following conditions exist:

(i) with respect to family projects a majority of the units in any family project are occupied by non-black families;

(ii) with respect to elderly projects a majority of the units in any elderly project are occupied by non-black elderly families;

(iii) when the above conditions exist, notices will be given at the time the person registers for admission to the program. The notice will have substantially the same content as the notice attached hereto as Appendix B, and incorporated herein by reference.

c. At least annually, MHA will ascertain the

racial composition of all MHA public housing projects and of all locations of units being treated as a project to determine which race predominates in each project for purposes of applying the "integrative move-in" procedure.

d. The "integrative move-in" procedure will be in effect for six (6) years after entry of this Order and will take precedence over all other tenant assignment plans and procedures of MHA.

2. Within sixty (60) days after entry of this Order,

MHA will adopt and HUD will approve a modification of MHA's inter-project transfer policy and procedures to allow "integrative transfers", i.e., transfers from a project in which a household's race predominates to one in which a household's race does not predominate.

a. The basis for an integrative transfer shall be in addition to the other bases for permitting a transfer. The option for an integrative transfer does not take precedence over transfers for overcrowding or other valid transfer reasons.

b. This procedure will operate as follows: When a public housing resident requests the opportunity to transfer to a project in which his or her race does not predominate, that request will be treated chronologically, except that MHA may treat all such transfer requests made within any twelve (12) month or shorter time period as being simultaneous and may determine the order of transfer by lottery. MHA will not deny a resident's request to make an "integrative transfer" unless the resident is currently not in good standing; no requests for an "integrative transfer" will be denied based on past problems with the resident's tenancy, such as problems relating to housekeeping, relationships with other tenants or payment of rent, unless the problem is continuing in nature. When a resident comes to the top of the waiting list for transfers either by date of request or lottery, he or she will be offered housing in all public housing projects in which vacancies of

appropriate size exist in which his or her race does not predominate. If no such units are available at the time, the resident will be bypassed until such time as he or she can be and is offered a unit of appropriate size in two projects, or locations treated as projects, in which his or her race does not predominate. In the case of projects which consist of units of more than one (1) site, each noncontiguous location of units will be treated as a separate project for purposes of this procedure. A list of current projects and sites treated as projects is attached hereto as Appendix A and incorporated by reference. This list will be updated as units are developed. The integrative transfer procedure will not apply to projects completed after January 1, 1985 until 40% of the units in the project are occupied. In the case of such a project with units on more than one site completed after January 1, 1985 the integrative transfer procedure will not apply to each location treated as a project until 40% of the units in the location are occupied.

*3 c. MHA will permit at least fifty (50) integrative transfers per year, assuming that at least that number of households request such transfers and that units of appropriate size are available. Fifty integrative transfers will be permitted annually regardless of whether transfers are being permitted for other reasons, such as overcrowding. However, in no case will the provisions of this paragraph operate to deprive an eligible applicant at the top of the waiting list from moving into an appropriately sized unit.

d. In determining whether MHA has provided at least fifty (50) integrative transfers in a given year. MHA will be permitted to count transfers for over-crowding which result in a household moving into a project in which its race does not predominate.

e. MHA will not be required to implement the "integrative transfer option" unless and until the following conditions exist:

(i) with respect to family projects a majority of the units in any family project are occupied by non-black families;

(ii) with respect to elderly projects a majority of the units in any elderly project are occupied by non-black elderly families;

(iii) when the above conditions exist, notice will be given at the time the person registers for admission to the program. The notice will have substantially the same content as the notice attached hereto as Appendix B, and incorporated herein by reference.

f. If at the time of admission, a public housing applicant is offered an opportunity to make an integrative move, he or she will not be eligible for an integrative transfer for three (3) years from the date of admission. If at the time of admission, the applicant makes an integrative move, he or she will not be eligible for a later integrative transfer.

g. Each household will be eligible for only one (1) integrative transfer, so that once such a transfer has been made, a second integrative transfer will not be provided.

h. At least annually, MHA will ascertain the racial composition of all of MHA public housing projects and of all locations of units being treated as a project to determine which race predominates in each project for purposes of applying the "integrative transfer" procedure.

i. The above policy and procedure relating to integrative transfers will be in effect for six (6) years after entry of this Order and will not be subject to periodic freezes which may be imposed on transfers for other reasons.

3. MHA shall review, at least annually, family composition. Families housed in units which are too small or too large shall be identified and placed on the transfer list. Identified families shall be transferred as soon as an appropriate-sized unit is available.

4. Within ninety (90) days of entry of this Order, MHA will design, with HUD's technical assistance, and will implement an affirmative marketing plan for public housing which will seek to encourage applications from those racial groups least likely to apply. The

plan will identify the agencies, organizations, businesses and other sources through which MHA is likely to reach racial groups least likely to apply for subsidized housing. This affirmative marketing plan may include, but not be limited to such methods as follow:

*4 a. Advertisements, on local radio stations, primarily on stations that have an audience that includes a substantial number of eligible persons from racial groups least likely to apply. The advertisements will be aired between the hours of 7:00 a.m. and 11:00 p.m.;
b. Continuous advertising through cards or placards in Memphis City buses; and

c. Written notices of distribution to clients at the Memphis offices of Tennessee Department of Human Services. Said notices will contain, at a minimum, the information about MHA public housing described in Section II A3 of this Order.

The affirmative marketing plan will be carried out for six (6) years after entry of this Order and will have an annual budget in the range of \$8,000.00 (Eight Thousand Dollars) to \$10,000.00 (Ten Thousand Dollars).

B. SECTION 8 EXISTING HOUSING PROGRAM

Within sixty (60) days of the entry of this Order, MHA will submit a Special Mobility Program (SMP) designed to assist households eligible to participate in the MHA Section 8 Existing Housing Program and the Special Mobility Program and who wish to live in racially integrated areas and who are qualified to make an "integrative move". The households will be drawn from the MHA chronological waiting list for the Section 8 Existing Housing Program. The MHA tenant selection plan will indicate that when a household comes to the top of the MHA waiting list for the Section 8 Existing Housing Program it may opt either for participation in the SMP or the regular Section 8 housing program. If the household does not opt to participate in the Special Mobility Program prior to lease-up, it will be offered a certificate under MHA's regular Section 8 Existing

Housing Program. All households shall have a non-discriminatory opportunity to obtain housing under the Section 8 Existing Housing Program including housing from landlords in the SMP. Under no circumstances will a household that does not choose to be in the Special Mobility Program be moved to the bottom of the MHA waiting list until it is offered and declines a certificate under the regular MHA program. Upon review and modification, if necessary, HUD, MHA and plaintiff will approve the plan. Upon approval by MHA and plaintiff, MHA will immediately implement the plan. For purposes of this program, an "integrative move" will consist of a black family obtaining housing with a Section 8 Existing Housing certificate in a census tract which is less than forty percent (40%) black in the 1980 census or a white family obtaining housing with a Section 8 Existing Housing certificate in a census tract which is more than forty percent (40%) black in the 1980 census. The program will be operated for six (6) years from the date the contracting agency receives the first 90 SMP certificates. Nothing in this Order prohibits the defendants from continuing the program, in their discretion, following completion of the sixth year of the program.

a. Upon entry of the Order, MHA and HUD will set aside ninety (90) certificates for the program from HUD's fiscal year 1985 budget. Funding for these ninety (90) certificates may come from unused allocations already under contract to MHA or from new allocations. All subsequent certificates set aside for the program will be provided by MHA and HUD out of new allocations. Any such set aside of certificates from new allocations may be deducted by HUD from any new allocation of funding for certificates that MHA receives in any one fiscal year.

*5 b. MHA and HUD will provide one hundred eighty (180) certificates per year at the beginning of HUD's fiscal years 1986 and 1987 and ninety (90) certificates at the beginning of HUD's fiscal year 1988 up to a total of five hundred forty (540) certificates. HUD will be obligated to provide such certificates unless it has no funding authority

(including recapture or discretionary funding) under Section 8 or comparable programs, at any time in the fiscal year that can be legally used for that purpose. If any annual allocation of certificates is not provided solely because of lack of legally available funding authority, that allocation will be provided, if otherwise required under the Order, in addition to the certificates that would be provided in a subsequent year in which funding authority is available. For purposes of this paragraph, the program will be deemed to have begun on the date on which the contract referred to in subparagraph II(B)(e) below goes into effect.

c. The certificates set aside for the Special Mobility Program will include two (2), three (3) and four (4) bedroom units in a ratio of sixteen (16) to three (3) to one (1). This ratio will be subject to reasonable modification, in the discretion of HUD and MHA, at the request of the contracting agency referred to in subparagraph (f) below.

d. Section 8 certificates which are used in connection with a leasehold which terminates for any reason during the life of the SMP will continue to be available for use in the SMP.

e. MHA will contract with a contracting agency to perform services to implement the Special Mobility Program and the agency will have responsibility for the five hundred forty (540) certificates. This contracting agency's services will consist of counseling and assisting certificate holders in obtaining suitable housing, including escort services when necessary and within the contracting agency's program budget limits.

f. MHA will provide to the contracting agency any and all preliminary fees, hard-to-house fees and administrative fees provided by HUD to MHA in connection with the five hundred forty (540) certificates provided by MHA to implement the Special Mobility Program.

g. MHA will implement appropriate procedures for referring eligible persons on its Section 8 Existing Housing waiting list to the contracting agency for participation in the

Special Mobility Program.

h. The contracting agency shall advise MHA of those MHA proposed candidates denied participation in the program because of poor credit history (24 CFR § 882.210) or a demonstrated lack of interest in making an integrative move or failure to meet special program criteria developed by the contracting agency and reviewed by MHA, HUD and plaintiffs' counsel based on the purpose of the SMP.

i. The contracting agency will inspect units to be rented under the Special Mobility Program and will perform all other functions relating to the program which would normally be performed by MHA as the agency responsible for administering the Section 8 Existing Housing Program.

*6 j. MHA will contract with the Housing Opportunities Corporation to perform services to implement the Special Mobility Program during the first year of the program. Should the contract between HOC and MHA be terminated, MHA may select another agency to perform the services described in subparagraph (e) during the second through sixth years of the program, subject to concurrence of counsel for the plaintiffs and subject to approval of the contract by HUD, which concurrence will not unreasonably be withheld.

C. EQUAL OPPORTUNITY PLAN

Within sixty (60) days after entry of this Order, MHA will implement an equal opportunity housing plan for its Section 8 Existing Housing Program which will include, but not be limited to, effective outreach to landlords and prospective certificate holders; dissemination of detailed information about fair housing rights; and provision of information about the characteristics of residential areas in Memphis and the existence of available rental units, particularly outside areas of minority concentration.

D. SITE SELECTION AND HOUSING

PRODUCTION

1. For six years following entry of this Order, MHA will develop at least fifty percent (50%) of all units developed under its public housing program in census tracts where blacks comprise less than forty percent (40%) of the population and in which less than fifteen percent (15%) of the housing units are subsidized. [FN7] HUD will not approve the location of more than fifty percent (50%) of all public housing units to be developed by MHA in census tracts in which blacks constitute more than forty percent (40%) of the population or in which fifteen percent (15%) or more of the housing units are subsidized. In the case of Section 8 Moderate Rehabilitation housing, MHA will develop at least one third of all such units in census tracts in which blacks comprise less than forty percent (40%) of the population; HUD will not approve applications that permit more than two-thirds of all such units to be located in census tracts in which blacks comprise more than forty percent (40%) of the population. In addition, HUD will apply applicable site and neighborhood standards in its review of sites for units developed by MHA under its public housing program and in approving applications for the Section 8 Moderate Rehabilitation program.

a. In implementing this provision, MHA will not seek HUD site approval or start construction or rehabilitation of one or more units in a census tract which is more than 40% black unless it has first obtained site approval or started construction or rehabilitation of an equal or greater number of public housing units in census tracts which are less than 40% black, (or in the case of Section 8 Moderate Rehabilitation housing, started rehabilitation of at least one unit in a census tract which is less than 40% black for every two units to be rehabilitated in census tracts which are more than 40% black unless MHA has demonstrated to HUD's satisfaction that compliance with this requirement concerning moderate rehabilitation housing is not possible due to factors beyond the control of MHA). However, in the case of a public housing project which consists entirely of a single family or duplex

housing, development of units may be processed at MHA's discretion as long as, at the time of completion of the project, at least one half of all MHA's public housing units have been completed under Part C of this Order.

*7 b. 1980 census data will be used in applying the site selection ratios until such time as the 1990 advance census data become available, whereupon the advance counts will be used until final counts become available. Availability of census data shall be deemed to occur ten (10) days after it is in the possession of the City of Memphis.

2. MHA will not develop, and HUD will not approve, MHA family public housing projects which have in excess of 150 units on a site, are more than three stories in height, or are in close proximity to other public housing. Family public housing will be deemed to be in close proximity to other public housing if development of the project or units in a project will result in there being more than 200 units of public housing within a radius of 1,000 feet. This provision will remain in effect for six (6) years following entry of this Order.

3. HUD will recapture funds currently held in reservation for public housing projects Tenn. 1-29, 1-30 and 1-31.

E. MULTI-FAMILY HOUSING

1. The City has supported and endeavored to have constructed 141 units of multi-family housing and will support and endeavor to have constructed 200 additional units of multi-family housing, all of said units for persons of low and/or moderate income as defined under Section (103(b)(4)(A) of the U.S. Internal Revenue Code, in areas of Memphis outside of minority concentration and meeting the City's Housing Assistance Plan ("HAP").

2. The units described in Section E.1. above have been or will be financed by The Health, Educational and Housing Facility Board of The City of Memphis ("HEHFB"), and the location and availability of these units are subject to the approval of the Board of

Directors of HEHFB.

F. SINGLE FAMILY HOUSING

1. The parties recognize that the Section 8 new construction program is no longer in existence. The River Branch development, which is the subject of plaintiff's claims against THDA, was to be financed and administered under this program. In light of this, the program embodied in this compromise pertains to single rather than multi-family housing. It is the intention of THDA that by providing relatively low cost single-family dwellings at reduced mortgage rates in Memphis, the amount of multi-family housing available to the low and moderate income groups will be increased.

2. Under T.C.A. § 13-21-121, THDA has the authority to issue bonds for the purpose of generating revenue to be used to finance home purchases in the State of Tennessee at reduced mortgage rates. That statute also provides that Shelby County may choose to exercise this authority in any given fiscal year by issuing its own bonds. When such an election is made, THDA is without authority to conduct a single-family housing program in the county. For the current fiscal year, Shelby County has declined to exercise this authority.

3. THDA is presently engaged in financing single-family housing in Memphis as part of its statewide program. In addition to this, THDA will endeavor to establish to an owner-built, or "sweat equity", demonstration home construction project in the City of Memphis. Funding for this project would come from the proceeds of the bond issue discussed in paragraph 2 above.

*8 a. THDA has had previous success with a project of this type in Davidson County, Tennessee. Said project was developed in coordination with the Neighborhood Housing Services program in the Belmont area of Nashville. THDA makes specific reference to this project as a guide for the possible form of the program to be established pursuant to this Order.

b. THDA will attempt to locate a developer of

an appropriate plan, to establish a relationship with a primary lender to back the project, to secure the cooperation and sponsorship of appropriate local government and quasi-government agencies, and to include minority participation in the development.

c. If an appropriate developer is located, and the necessary agreements and approvals are secured, THDA will provide funds to finance the development.

d. In order to assure that members of the plaintiff class are made aware of the existence of this program, THDA will, independently or in conjunction with the developer, make use of appropriate means of publicity. These might include acceptance of referrals from agencies such as Housing Opportunities Corporation, communications with minority lenders and other financial institutions, release of information to the Memphis Commercial Appeal, the Tri-State Defender, and other appropriate media in the Memphis area.

e. THDA will not discriminate against any persons on the basis of race, creed, sex, color, religion or national origin in its administration of this development. THDA will secure from the developer a similar pledge.

f. The continuation of this program in future years is contingent upon the developer's ability to continue, the success of the demonstration project, THDA's continued authority to issue bonds for these purposes under state law, Shelby County's continuing election not to create a separate single-family housing program and issue its own bonds, and the availability of funds through the bond market. THDA will evaluate continuation of this program on an annual basis.

g. THDA will require the developer to make an annual report concerning the project. The report shall indicate the number of homes being built, their location, the name, age, race, sex and national origin of all applicants for participation in the program, the progress of each dwelling's construction, the terms of

(Cite as: 1985 WL 11179, *10 (W.D.Tenn.))

221(d)(3) Below Market Interest Rate and Rent Supplement programs, the Section 236 program, the Section 8 New Construction and Substantial Rehabilitation programs, and the Section 8 property disposition program if the programs are available.

END OF DOCUMENT

Development Block Grant program of HUD or successor comparable programs. Continued contract funding for each year will be subject to negotiations and approvals of the City and HOC.

HOC is acting as an independent contractor under this Order of Settlement. HOC will continue to act as an independent fair housing enforcement entity for the benefit of the public. Funding under existing contracts between HUD and HOC and THDA and HOC shall not be affected by any terms of this Order of Settlement and the referenced contract.

***10 2.** This Order shall remain in effect until six (6) years from the date of its approval and entry by the Court, upon which date the action will be dismissed with prejudice.

3. Defendants agree to pay plaintiffs the following amounts in attorneys' fees and costs:

Attorneys' Fees and Costs	
City	\$48,750.00
MHA	48,750.00
HUD	48,750.00
THDA	45,000.00

Such payment will be made within forty-five (45) days after entry of this Order of Settlement. Plaintiffs waive all other claims for attorneys' fees, costs or expenses in connection with this litigation incurred through the date of this Order.

FN1. Former HUD Secretary Moon Landrieu was named as a defendant in his official capacity in the amended complaint, filed on April 10, 1980. Pursuant to Fed.R.Civ.P. 25(d)(1), current HUD Secretary Samuel R. Pierce, Jr., is substituted for former Secretary Landrieu as a party.

FN2. Former Memphis Mayor Wyeth Chandler was named as a defendant in his official capacity in the amended complaint, filed on April 10, 1980. Pursuant to Fed.R.Civ.P. 25(d)(1), current Memphis Mayor Hackett is substituted for former Mayor Chandler as a party.

FN3. The term "MHA" when used in this Order shall include MHA and all employees, agents,

officials, directors, successors and representatives of MHA.

FN4. The term "HUD" when used in this Order shall include HUD and all employees, agents, officials, successors and representatives of HUD.

FN5. The term "public housing" when used in this Order shall include low-income public housing authorized by the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., as amended

FN6. The term "predominate" when used in this Order shall mean "more than fifty (50) percent." For purposes of determining race of a resident or applicant for MHA housing in this Order, two groupings will be used: (1) black persons and households with heads of households who are black ("black") and (2) all other persons and households ("non-black").

FN7. Subsidized housing units are those under the Low Rent Public Housing Program, the Section

financing of each dwelling, the value of the labor contributed by the owner/builder and the projected date of completion. This report will be made available to plaintiffs' counsel, along with information from THDA concerning the overall financing of the development and the status of future financing of the project.

G. OTHER PROVISIONS

1. The parties are subject to the following reporting requirements for the next six (6) years unless a different time period is specified:

a. MHA will provide the following information to plaintiffs' counsel on at least an annual basis:

(1) The number of elderly households, by race, on the public housing waiting list, the Section 8 waiting list, and the waiting list for integrative transfers; and the number of families, by race, on the public housing waiting list, the Section 8 waiting list, and the waiting list for integrative transfers.

*9 (2) The racial composition of families in MHA public housing projects and locations of units treated as projects under Part A; the racial composition of elderly housing projects and locations of units treated as projects under Part A; and for the first six (6) years from the date of entry of this Order, the racial composition and location of families and elderly households in the Section 8 Existing and Section 8 Moderate Rehabilitation programs of MHA.

(3) A list of landlords renting units under the Section 8 Existing Housing program for the first six (6) years from the date of entry of this Order.

b. MHA will give plaintiffs' counsel notice of and provide access to (1) all applications for funding from HUD when made; (2) all requests to HUD for site approval when requests are made; and (3) all notices of site approvals and disapprovals when received from HUD.

c. HUD will give plaintiffs' counsel notice of, and access to all site approvals and disapprovals when made by HUD.

d. HUD will provide to plaintiffs' counsel copies of correspondence to MHA stating the results of reviews performed by the Fair Housing and Equal Opportunity Division and Management Division of HUD when they are provided to MHA.

e. MHA will provide plaintiffs' counsel reasonable access to files on offers under the Tenant Assignment Plan and interproject transfer program.

f. The City will notify plaintiffs' counsel of the location of the units described in Section IIE.1. of this Order and of the location of the certification information for each apartment complex as provided by the apartment developer.

g. HOC, the contracting agency for the Special Mobility Program, will provide HUD with a report after the end of each program year concerning the operation of the program. The report will include the following: (1) general criteria and methods of selecting tenants for the program; (2) general description of placement and counseling services provided to participants; (3) to the extent the information is readily available the number of households that rented units under the SMP, the length of time they rented units under the program, and available information concerning whether households leaving the program live in integrated areas; and (4) the number of households participating in the program but that did not lease a unit under the program.

h. The City, through its Division of Housing and Community Development, will increase its contract for the fiscal year 1985-86 with Housing Opportunities Corporation ("HOC") by Forty-Five Thousand Dollars (\$45,000.00) for the Fair Housing Complaint and Referral Center currently funded by the City and operated by HOC, subject to budgetary approval by the City and funding availability to the City under the Community

FILED
KENNETH J. MURPHYIN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISIONJUN 30 4 05 PM '84
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FLORA HUTCHINS, et al.,

Plaintiffs

v.

C-1-79-131

CINCINNATI METROPOLITAN
HOUSING AUTHORITY,

Defendant

ORDER

This matter is before the Court for approval of a class action settlement.

No written objections having been filed and no objectors appearing at a hearing held June 29, 1984, such settlement is hereby APPROVED.

The Clerk of this Court is DIRECTED to close this case.

IT IS SO ORDERED.


Carl B. Rubin, Chief Judge
United States District Court

REC'D

JU

P. 10
MOBILITY
Program

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FLORA HUTCHINS, <u>et al.</u> ,	:	Civil Action No. C-1-79-131
Plaintiffs	:	Chief Judge Carl Rubin
vs.	:	
CINCINNATI METROPOLITAN HOUSING AUTHORITY, <u>et al.</u> ,	:	<u>ORDER</u>
Defendants	:	

Plaintiffs brought this action against the Cincinnati Metropolitan Housing Authority [hereinafter referred to as CMHA] and the U.S. Department of Housing and Urban Development [hereinafter referred to as HUD] seeking declaratory and injunctive relief and alleging violations of the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution; the Civil Rights Acts of 1866 and 1871, 42 U.S.C. 1981, 1982, and 1983; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, et seq.; the National Housing Act of 1934, as amended, 12 U.S.C. 1701, et seq.; the United States Housing Act of 1937, as amended, 42 U.S.C. 1401, et seq.; the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301, et seq. and the Administrative Procedure Act, 5 U.S.C. 501, et seq. Plaintiffs allege that the federally assisted housing programs administered by defendant CMHA are segregated on the basis of race and that this segregation results from deliberate policies and practices of the defendants.

The Defendants acknowledge that low rent public housing in Cincinnati was provided on a racial basis prior to 1955. The Defendants also acknowledge that racial imbalances presently exist in CMHA housing. The Defendants, however, deny that there is any connection between the present racial composition of CMHA administered

housing and the past practices. Nor do the Defendants admit any liability as alleged in the Complaint or the Amended Complaint.

The parties desire to avoid the expense and inconvenience of further litigation in this matter. The parties also desire to undertake steps to promote racial integration in federally assisted housing administered by CMHA. Accordingly, the parties have agreed to resolve this matter on the terms set forth below and have agreed to entry and implementation of this Agreed Order.

Therefore, it is hereby ORDERED, ADJUDGED and DECREED:

I. TENANT SELECTION AND ASSIGNMENT

1. Within sixty (60) days after entry of this Order, CMHA¹ will enact, HUD² will approve, and CMHA will implement a modification of CMHA's tenant assignment procedure to provide for an "integrative move-in option" so that applicants for low-rent public housing³ who wish to move to projects in which their race does not predominate⁴ may do so when they come to the top of the waiting list. If an applicant refuses to

¹The term "CMHA" when used in this Order shall include CMHA, all CMHA officials who are also named as defendants in the Complaint or Amended Complaint, and all employees, agents, officials, successors, and representatives of CMHA.

²The term "HUD" when used in this Order shall include HUD, all HUD officials who are also named as defendants in the Complaint or Amended Complaint, and all employees, agents, officials, successors, and representatives of HUD. The term "defendants" when used in this Order shall include both CMHA and HUD.

³The term "public housing" when used in this Order shall include any successor program to the current low rent public housing program. The term "Section 8 Existing Housing Program" when used in this Order shall include any successor program to the current Section 8 Existing Housing Program.

⁴The term "predominate" when used in this Order shall mean "more than fifty (50) percent." For purposes of determining race of a resident of or applicant for CMHA housing in this Order, two groupings will be used: (1) black persons and households with heads of household who are black and (2) all other persons and households.

accept the units offered under the integrative move-in option, his or her application will be considered under CMHA's regular tenant assignment plan as approved by HUD.

- a. The "integrative move-in option" will operate as follows: When an applicant comes to the top of the waiting list, he or she will first be offered housing in all public housing projects in which vacancies of appropriate size exist and in which his or her race does not predominate (regardless of whether the applicant has expressed an interest in the integrative move-in option). If no such units are available at the time an applicant reaches the top of the waiting list, he or she will be given the option of waiting for a vacancy of appropriate size in at least one (1) such project before being offered units under CMHA's regular tenant assignment plan. In the case of projects which consist of units on more than one (1) site, each non-contiguous location of units will be treated as a separate project for purposes of applying this procedure. A list of current projects and sites treated as projects is attached hereto as Appendix A, and incorporated by reference. This list will be updated as units are developed. The integrative move in option will not apply to projects completed after February 1, 1984 until 40 percent of the units in the project are occupied. In the case of a project with units on more than one site, completed after February 1, 1984 the integrative move in option will not apply to each location treated as a project until 40 percent of the units in the location are occupied.
- b. The "integrative move-in option" will apply to all CMHA low rent public housing units, with the exception of units which consist of a single family house or a duplex on a site not contiguous to other

public housing or which consist of two single family houses on contiguous sites which are not contiguous to other public housing. With regard to such single family and duplex housing, CMHA will use its best efforts to ensure that at least one-half (1/2) of all such units in census tracts which are less than forty percent (40%) black (in the most recent census) are occupied by blacks.

- c. CMHA will give a written notice to all persons who register for admission to CMHA's low rent public housing program, informing them of the existence of the "integrative move-in" procedure. This notice will be given at the time the person registers for admission to the program. The notice will have substantially the same content as the notice attached hereto as Appendix B, and incorporated herein by reference.
- d. At least annually, CMHA will ascertain the racial composition of all CMHA public housing projects and of all locations of units being treated as a project to determine which race predominates in each project for purposes of applying the "integrative move-in" procedure.
- e. The "integrative move-in" procedure will be in effect for 15 years and will take precedence over all other tenant assignment plans and procedures of CMHA.

2. Within sixty (60) days after entry of this Order, CMHA will enact, HUD will approve, and CMHA will implement a modification of CMHA's inter-project transfer policy and procedures to allow "integrative transfers," i.e., transfers from a project in which a household's race predominates to one in which a household's race does not predominate.

- a. This procedure will be in addition to any procedure for transfers due to overcrowding or other reasons.
- b. This procedure will operate as follows: When a public housing resident requests the opportunity to transfer to a project in which his or her race does not predominate, that request will be treated chronologically, except that CMHA may treat all such transfer requests made within any twelve (12) month or shorter time period as being simultaneous and may determine the order of transfer by lottery. CMHA will not deny a resident's request to make an "integrative transfer" unless the resident is currently not in good standing; no requests for an "integrative transfer" will be denied based on past problems with the resident's tenancy, such as problems relating to housekeeping, relationships with other tenants or payment of rent, unless the problem is continuing in nature. When a resident comes to the top of the waiting list for transfers either by date of request or lottery, he or she will be offered housing in all public housing projects in which vacancies of appropriate size exist in which his or her race does not predominate. If no such units are available at the time, the resident will be bypassed until such time as he or she can be and is offered a unit of appropriate size in two projects, or locations treated as projects, in which his or her race does not predominate. In the case of projects which consist of units of more than one (1) site, each non-contiguous location of units will be treated as a separate project for purposes of this procedure. A list of current projects and sites treated as projects is attached hereto as Appendix A and incorporated by reference. This list will be updated as units are developed. The

integrative transfer procedure will not apply to projects completed after February 1, 1984 until 40 percent of the units in the project are occupied. In the case of such a project with units on more than one site completed after February 1, 1984 the integrative transfer procedure will not apply to each location treated as a project until 40 percent of the units in the location are occupied.

- c. This procedure will apply to all CMHA low rent public housing units with the exception of units which consist of a single family house or a duplex on a site not contiguous to other public housing or which consist of two single family houses on contiguous sites which are not contiguous to other public housing. With regard to such single family and duplex housing, CMHA will use its best efforts to ensure that at least one-half (1/2) of all such units in census tracts which are less than forty percent (40%) black (in the most recent census) are occupied by blacks.
- d. CMHA will permit at least fifty (50) integrative transfers per year, assuming that at least that number of households request such transfers and that units of appropriate size are available. If necessary to permit 50 transfers per year, CMHA will hold vacancies open to permit such transfers, rather than assign units under the tenant assignment plan, but shall not be required to hold any unit vacant if there are currently no persons on the integrative transfer waiting list eligible and willing to transfer to such unit. Fifty (50) integrative transfers will be permitted annually regardless of whether transfers are being permitted for other reasons, such as overcrowding.

- e. In determining whether CMHA has provided at least fifty (50) integrative transfers in a given year, CMHA will be permitted to count transfers for overcrowding which result in a household moving into a project in which its race does not predominate.
- f. CMHA will give a written notice describing its policy and procedures relating to "integrative transfers" to all current public housing residents within sixty (60) days of entry of this Order, and thereafter, to all newly admitted public housing tenants upon their admission to CMHA's low rent public housing program. This notice will also contain a description of the Special Mobility Program for Section 8 existing housing described in Part II of this Order. The notice will have substantially the same content as the notice attached hereto as Appendix C, and incorporated herein by reference.
- g. If at the time of admission, a public housing applicant is offered an opportunity to make an integrative move, he or she will not be eligible for an integrative transfer for three (3) years from the date of admission. If at the time of admission, the applicant makes an integrative move, he or she will not be eligible for a later integrative transfer.
- h. Each household will be eligible for only one (1) integrative transfer, so that once such a transfer has been made, a second integrative transfer will not be provided.
- i. At least annually, CMHA will ascertain the racial composition of all CMHA public housing projects and of all locations of units being treated as a project to determine which race predominates in each project for purposes of applying the "integrative transfer" procedure.

- j. The above policy and procedure relating to integrative transfers will be in effect for fifteen (15) years; except that after six (6) years, such transfers will be subject to the periodic freezes imposed on all other transfers, provided that if integrative transfers are frozen at any time between the seventh and twelfth years, CMHA will permit at least 300 integrative transfers from the beginning of the seventh year until the end of the fifteenth year following the date of this Order.

3. Within sixty (60) days of entry of this Order, CMHA will amend, and HUD will approve (if approval is necessary), CMHA policies and procedures to provide for written notice to be given to all applicants for CMHA's public housing and Section 8 Existing Housing programs, advising them of their right to apply for low rent public housing, the Section 8 Existing Housing Program of CMHA, the Special Mobility Program described in Part II of this Order and the Section 8 Existing Housing Program of Hamilton County. Such notice will be given on a permanent, on-going basis to all applicants currently on a CMHA waiting list and to future applicants at the time they first register for admission to either of these two programs. The notice used by CMHA shall contain the substance of the notice attached hereto as Appendix D, and incorporated herein by reference.

Upon termination of the Special Mobility Program, all references to that program shall be deleted from this notice.

4. Within sixty (60) days of entry of this Order, CMHA will design, with HUD's technical assistance, and will implement an affirmative marketing plan for public housing which will seek to encourage applications from those racial groups least likely to apply. This affirmative marketing plan will include, but not be limited to:

- a. Ten (10) advertisements per month, including public service advertisements, on local radio stations, primarily on stations that have

an audience that includes a substantial number of eligible persons from racial groups least likely to apply. The advertisements will be aired between the hours of 7:00 a.m. and 11:00 p.m.;

- b. Continuous advertising through cards or placards in at least twenty-five (25) Queen City Metro buses; and
- c. Written notices for distribution to clients at the Hamilton County Welfare Department. Said notices will contain, at a minimum, the information about CMHA public housing contained in Appendix D of this Order.

The affirmative marketing plan will be carried out for fifteen (15) years and will have an annual budget in the range of \$8,000.00 (eight thousand dollars) to \$10,000.00 (ten thousand dollars). The media used may be changed by agreement of the parties during the next six (6) years, and by CMHA thereafter, if the plan is not achieving the desired goals.

5. With regard to Plaintiffs Flora Hutchins, Mary Ewing and Algerrine Williams, each will be treated by CMHA as a new applicant who has reached the top of the CMHA waiting list for low rent public housing, and each will be offered the opportunity to select a unit under the "integrative move-in option" described above, provided they are qualified for public housing. The option may be exercised by each Plaintiff after a time of her choosing within twelve (12) months of the entry of this Order. Each Plaintiff will remain eligible to exercise this option until she has been given the opportunity to move into vacancies of an appropriate size in at least two (2) projects in which her race does not predominate.

II. SECTION 8 EXISTING HOUSING PROGRAM

1. Within sixty (60) days of the entry of this Order, HUD will approve the establishment of, and CMHA will institute, a Special Mobility Program designed to assist households participating in the CMHA Section 8 Existing Housing Program who wish to live in racially integrated areas and who are willing to make an "integrative move." For purposes of this program, an "integrative move" will consist of a black family obtaining housing with a Section 8 Existing Housing certificate in a census tract which is less than forty percent (40%) black in the 1980 census or a white family obtaining housing with a Section 8 Existing Housing certificate in a census tract which is more than forty percent (40%) black in the 1980 census. The program will be operated for six (6) years. Nothing in this Order prohibits the defendants from continuing the program, in their discretion, following completion of the sixth year of the program.

- a. HUD will approve the set-aside of family (including large family) Section 8 Existing Housing certificates for the program. At the commencement of the program, CMHA and HUD will set aside forty (40) certificates for the program. Funding for these forty (40) certificates may come from unused allocations already under contract to CMHA or from new allocations. All subsequent certificates set aside for the program will be provided by CMHA and HUD out of new allocations. Any such set aside of certificates from new allocations may be deducted by HUD from any new allocation of funding for certificates that CMHA receives in any one fiscal year.

- b. CMHA and HUD will provide forty (40) certificates per year up to a total of two hundred forty (240) certificates during the six years during which the program is in effect. HUD will be obligated to provide such certificates unless it has no funds (including recapture or discretionary funding), at any time in the fiscal year that can be legally used for that purpose. If any allocation of forty (40) certificates is not provided solely because of lack of legally available funds, that allocation will be provided, if otherwise required under the Order, in addition to the forty (40) certificates that would be provided in a subsequent year in which funding is available. For purposes of this paragraph, the program will be deemed to have begun on the date on which the contract referred to in subparagraph (k) below goes into effect. New certificates in increments of forty (40) each will be provided annually after the first year's set aside, whenever the number of certificates available to the program, but not under lease, drops below thirty (30). These additional certificates will be provided if the number of unused certificates drops to twenty-nine (29) or less on the first day of the new program year or any time thereafter during the program year.
- c. The certificates set aside for the Special Mobility Program will include two (2), three (3) and four (4) bedroom units in a ratio of sixteen (16) to three (3) to one (1). This ratio will be subject to reasonable modification at the request of the contracting agency referred to in subparagraph (f) below.

- d. CMHA will grant a 10% increase in the fair market rents for all certificates in the program. In doing so, CMHA must comply with all HUD regulations, including 24 C.F.R. 882.106(a)(2). For purposes of applying the 20 percent limitation of Section 882.106(a)(2), "units authorized by an ACC" shall include all certificates under Annual Contribution Contract, not just a particular allocation given by HUD in one year. In addition, if the contracting agency so requests, CMHA will request that HUD grant a twenty percent (20%) increase in fair market rents. The request by the contracting agency may be for all certificates in the program, all certificates of a particular bedroom size, or for a single certificate.
- e. Section 8 certificates which are used in connection with a leasehold which terminates for any reason during the life of the program will continue to be available for use in the program.
- f. CMHA will contract with a local agency [hereinafter referred to as the "contracting agency"] to perform services to implement the Special Mobility Program. These services will consist of publicizing and affirmatively marketing the program among both prospective tenants and owners of housing who may want to participate in the program, and will also include counseling and assisting certificate holders in obtaining suitable housing, including escort services when necessary and within the contracting agency's program budget limits.
- g. CMHA will devote sufficient financial resources for the successful operation of the Special Mobility Program. The funding level for the

contracting agency is negotiable subject to the following constraints:

(1) it is agreed that \$40,000.00 (forty thousand dollars) is a reasonable estimate of the amount of funding required during the second year of the program to cover the cost of services described in subparagraph (f) above; (2) in subsequent years, the amount of funding for such services will take into account allowances for increased costs due to inflation and additional funding to cover the cost of securing leases for certificates previously used to lease a unit, but for which placement assistance is necessary because a landlord has declined to renew a lease or a tenant has withdrawn from the program or decided to move. Payments by CMHA to the contracting agency will be made on a regular basis rather than on a per placement basis.

- h. CMHA will implement appropriate procedures for referring persons on its Section 8 Existing Housing waiting list to the contracting agency for participation in the Special Mobility Program. Residents of CMHA public housing will be permitted to participate in the Special Mobility Program and will receive a priority over other applicants for one-half (1/2) of the certificates in each forty (40) unit allocation. This priority shall not apply to certificates actually used by a CMHA resident to lease a unit in the program that are subsequently returned to the program.
- i. The contracting agency will have the authority to recommend to CMHA that households not be permitted to participate in the program

because of either a poor credit history or a demonstrated lack of interest in making an integrative move.

- j. CMHA will inspect units to be rented under the Special Mobility Program on a first priority basis and will perform all other functions relating to the program which must be performed by CMHA as the agency responsible for administering the Section 8 Existing Housing Program.
- k. The existing contract between CMHA and Housing Opportunities Made Equal, Inc., (HOME), executed on November 30, 1983, regarding placement services will constitute the first year contract for the Special Mobility Program required by subparagraph (f), with the following modifications:
 - (1) CMHA public housing residents will be eligible for the program as described in subparagraph (h);
 - (2) Fair market rents will be governed by subparagraph (d);
 - (3) The bedroom mix will be governed by subparagraph (c); and
 - (4) Subparagraph (i) will apply.
- l. The obligation of HUD and CMHA to provide certificates as described in subparagraphs (a) and (b) supra, will not be affected by any terms in the current HOME/CMHA contract.
- m. Commencement of the second year contract to provide for the services described in subparagraph (f) will not be delayed as a result of any terms regarding duration contained in the current HOME/CMHA contract referred to in subparagraph (k).

n. CMHA's selection of an agency to perform the services described in subparagraph (f) during the second through sixth years of the program will be subject to the concurrence of counsel for the plaintiffs, which concurrence will not unreasonably be withheld.

2. Within sixty (60) days after entry of this Order, CMHA will modify its policies and procedures relating to its Section 8 Existing Housing Program, and HUD will approve such modifications, to provide that all Section 8 certificates may be used anywhere within CMHA's territorial jurisdiction. This modification will be in effect for fifteen (15) years and all notices and briefings will be changed to reflect this modification.

3. Within sixty (60) days after entry of this Order, CMHA will implement an equal opportunity housing plan for its Section 8 Existing Housing Program which will include, but not be limited to, effective outreach to landlords and prospective certificate holders; dissemination of detailed information about fair housing rights; notification to all applicants, orally and in writing, of their right to participate in the Special Mobility Program, the CMHA public housing program and the Hamilton County Section 8 Existing Housing Program; and provision of information about the characteristics of residential areas in Hamilton County and the existence of available rental units, particularly outside areas of minority concentration.

III. SITE SELECTION AND HOUSING PRODUCTION

1. CMHA will develop at least fifty percent (50%) of all units developed under its low rent public housing program in census tracts where blacks comprise less than

twenty percent (20%) of the population⁵ and in which less than fifteen percent (15%) of the housing units are subsidized.⁶ HUD will not approve the location of more than fifty percent (50%) of all low rent public housing units to be developed by CMHA in census tracts in which blacks constitute more than twenty percent (20%) of the population or in which fifteen percent (15%) or more of the housing units are subsidized. In the case of Section 8 Moderate Rehabilitation housing, CMHA will develop at least one third of all such units in census tracts in which blacks comprise less than twenty percent (20%) of the population; HUD will not approve applications for funding that permit more than two-thirds of all such units to be located in census tracts in which blacks comprise more than twenty percent (20%) of the population. In addition, HUD will apply applicable site and neighborhood standards in its review of sites for units developed by CMHA under its low rent public housing program and in approving applications for the Section 8 Moderate Rehabilitation program.

- a. In implementing this provision, CMHA will not seek HUD site approval or start construction or rehabilitation of one or more units in a census tract which is more than 20% black unless it has first obtained site approval or started construction or rehabilitation of an equal or greater number of public housing units in census tracts which are less than 20% black, (or in the case of Section 8 Moderate Rehabilitation

⁵Census tracts which were more than 10.0 percent black in the 1970 Census and less than 25.0 percent black in the 1980 Census shall be considered as less than 20.0 percent black in the 1980 Census.

⁶Subsidized housing units are those under the Low Rent Public Housing Program, the Section 221(d)(3) program, the Section 236 program, the Section 8 New Construction and Substantial Rehabilitation programs, and the Section 8 property disposition program.

housing, started rehabilitation of at least one unit in a census tract which is less than 20% black for a every two units to be rehabilitated in census tracts which are more than 20% black). However, in the case of a public housing project which consists entirely of single family or duplex housing, development of units may proceed at CMHA's discretion as long as, at the time of completion of the project, at least one half of all CMHA's public housing units completed under Part III of this Order are in census tracts that are less than 20% black.

- b. For purposes of determining compliance with the above site selection ratios, elderly units, one bedroom family units, and units with two or more bedrooms will each be treated separately; and the ratios will be met with respect to each category.
- c. The site selection ratios apply to sites for all units not yet selected and approved as of December 28, 1983, in projects 4-38, 4-40, and 4-42; to sites for all units for which agreements to enter into housing assistance payments contracts have not been signed under CMHA's Section 8 Moderate Rehabilitation program as of December 28, 1983; and to all future allocations of public housing (including the 200 unit allocation described in paragraph 3, below) and future allocations of Section 8 Moderate Rehabilitation housing which become available to CMHA within twelve (12) years following entry of this Order.
- d. 1980 census data will be used in applying the site selection ratios until such time as the 1990 advance count census data become available, whereupon the advance counts will be used until final

counts become available. Availability of census data shall be deemed to occur ten (10) days after it is in the possession of the City of Cincinnati.

2. CMHA will not develop, and HUD will not approve, CMHA family public housing projects which have in excess of 150 units on a site, are more than three stories in height, or are in close proximity to other public housing. Family public housing will be deemed to be in close proximity to other public housing if development of the project or units in a project will result in there being more than 200 units of public housing within a radius of 1,000 feet. This provision will remain in effect for twelve (12) years following entry of this Order.

3. HUD will provide CMHA with 200 units of family public housing out of the Fiscal Year 1984 budget. The units shall be three (3) and four (4) bedroom units, except that HUD may in its sole discretion provide up to twenty (20) units as two (2) bedroom units.

- a. HUD funding for these units will be based on 160% of prototype costs at the time of reservation, plus an inflation factor of eighteen (18) months, in accordance with HUD Handbook 7417.1 Rev.-1.
- b. With regard to the applicability of Section 201(c) of the Housing and Urban-Rural Recovery Act of 1983, in the event CMHA determines (1) that development of the 200 units through new construction would cost less than acquisition or acquisition with rehabilitation in areas which are less than twenty percent (20%) black or (2) that there are insufficient units for acquisition or acquisition with rehabilitation in

areas which are less than twenty percent (20%) black, CMHA will promptly request that HUD permit development of any units in the project to be provided in census tracts which are less than 20 percent black as new construction, and HUD will not unreasonably deny any such request which is properly documented. HUD will consider all such requests in accordance with whatever procedures it adopts to implement Section 201(c), subject to the other provisions of this subparagraph. In the case of all subsequent allocations of public housing, CMHA will have the same obligations to request that HUD permit the project to proceed as new construction, under the circumstances stated above. Section 201(c) does not apply to CMHA projects 4-38 or 4-42.

- c. With regard to future allocations of public housing to CMHA, HUD will deduct the 200 units from any funding which would otherwise be provided in Hamilton County until Hamilton County's "share" (defined as .5 percent (.5%) of all new construction units available to HUD) exceeds 200 units. Thereafter, the provision of the 200 units will have no effect upon funding allocations in Hamilton County. In addition, the provision of the 200 units will have no effect upon funding allocations in Hamilton County under Section 8 or any other subsidized housing program other than public housing and Section 8 new construction.

4. CMHA will employ its best efforts to complete projects 4-38, 4-40, 4-42 and its current allocation of Section 8 Moderate Rehabilitation housing. CMHA will also apply for, and employ its best efforts to develop, all future allocations of public housing and Section 8 housing for which it is eligible in the next twelve (12) years; such applications will be consistent with HUD's NOHAA's and NOFA's.

5. With regard to possible recapture by HUD of assisted housing reserved for CMHA, HUD agrees to the following:

- a. In the case of project 4-38, CMHA will have until August 1, 1984 to obtain site approval and twelve (12) months thereafter to start construction.
- b. In the case of project 4-42, CMHA will have until August 1, 1984 to obtain site approval and twelve (12) months thereafter to start construction.
- c. In the case of the allocation of 200 units of public housing described in paragraph 3 above, CMHA will have twenty-four (24) months from the date of funding reservation to obtain site approval and twenty-four (24) months from the date of site approval to start construction. This allocation will be treated as four (4) individual projects for purposes of permitting the start of construction [HUD is to consider permitting staged construction of a single project].

- d. For purposes of subparagraphs (a), (b), and (c) above, the start of construction of one unit will constitute the start of construction for the entire project.
- e. The recapture rules set forth in HUD notice 83-20 and attachment, (Appendix E attached hereto) do not apply to CMHA project 4-40 and CMHA's Section 8 Moderate Rehabilitation program.
- f. If litigation results in the delay of any CMHA project referred to in subparagraphs (a), (b), and (c), above, HUD will extend the time for recapture unless HUD finds (a) the litigation was invited by CMHA or resulted from CMHA having taken action which it knew or should have known was contrary to law, or (b) the project would not have met the deadlines even without the litigation.
- g. Notwithstanding any other provision of this paragraph 5, funding provided for housing development under this Order shall be subject to any recapture mandated by future Congressional statute.

6. Funds provided by HUD for housing for elderly, family and large family households in Hamilton County over the next six years will be provided in proportion to their respective percentages in the "households in need of assistance" table in the 1983 and 1986 Hamilton County and Cincinnati Housing Assistance Plans (HAPS). Deviations of up to $\pm$ 3 percent will be permitted, except in the case of allocations for housing for large families, for which upward deviation without limitation will be permitted. This paragraph does not apply to funding allocated directly to Hamilton or the City of Cincinnati under Section 301 of the Housing and Urban-Rural Recovery Act of 1983.

7. In order to facilitate the provision of assisted housing in Hamilton County outside the City of Cincinnati, CMHA will use its best efforts to secure cooperation agreements from all suburban jurisdictions⁷ in Hamilton County. At a minimum, whenever funding becomes available in the next twelve (12) years, CMHA will write to all such jurisdictions to request a meeting for the purpose of explaining the nature and benefits of CMHA housing programs, and to request the cooperation of those jurisdictions. HUD will provide technical assistance to CMHA with regard to these efforts.

IV. OTHER PROVISIONS

1. A plaintiffs' class is certified as follows: all black persons who are eligible to reside in assisted housing administered by CMHA and who reside in, have applied for, or will apply for housing administered by CMHA.

2. The parties are subject to the following reporting requirements for the next fifteen (15) years unless a different time period is specified:

a. CMHA will provide the following information to plaintiffs' counsel on at least an annual basis:

(1) The number of elderly households, by race, on the public housing waiting list, the Section 8 waiting list, and the waiting list for integrative transfers; and the number of families, by race, on

⁷The term "suburban jurisdiction" means all municipalities and townships, as well as Hamilton County government, in Hamilton County excluding the City of Cincinnati and the City of Lincoln Heights.

the public housing waiting list, the Section 8 waiting list, and the waiting list for integrative transfers.

(2) The racial composition of families in CMHA public housing projects and locations of units treated as projects under Part I; the racial composition of elderly housing projects and locations of units treated as projects under Part I; and for the next six (6) years, the racial composition and location of families and elderly households in the Section 8 Existing and Section 8 Moderate Rehabilitation programs of CMHA.

(3) A list of landlords renting units under the Section 8 Existing Housing program for the next six (6) years.

b. CMHA will give plaintiffs' counsel notice of and provide access to (1) all applications for funding from HUD when made; (2) all requests to HUD for site approval when requests are made; and (3) all notices of site approvals and disapprovals when received from HUD.

c. HUD will give reasonable advance notice to plaintiffs' counsel of its intent to recapture any units/funding from CMHA; and will give plaintiffs' counsel notice of, and access to all site approvals and disapprovals when made by HUD.

d. CMHA and HUD will provide reports, at least annually, to plaintiffs' counsel describing the steps taken and progress made to comply with the terms of this Order. HUD will also provide to plaintiffs' counsel correspondence to CMHA stating the results of reviews performed by

the Fair Housing and Equal Opportunity Division and Management Division of HUD when they are provided to CMHA.

- e. CMHA will provide to plaintiffs' counsel reasonable access to files on offers under the Tenant Assignment Plan and interproject transfer program.
 - f. The contracting agency for the special mobility program will provide HUD with a report after the end of each program year concerning the operation of the program. The report will include the following: (1) General criteria and methods of selecting tenants for the program; (2) cost per placement; (3) general description of placement and counseling services provided to participants; (4) to the extent the information is readily available and provided by CMHA, the number of households that rented units under the program, the length of time they rented units under the program, and available information concerning whether households leaving the program live in integrated areas (CMHA will provide the contracting agency with a list of households that have rented units under program and have returned their certificates and any known address of such households); and (5) the number of households participating in the program but that did not lease a unit under the program.
3. Each party in this action shall bear its own costs and attorneys' fees.

4. If the parties to this Order are in agreement that modification of the Order is necessary to effectuate its purposes, the Order with approval of the Court, will be modified.

Entered at Cincinnati, Ohio this _____ day of _____, 1984.

UNITED STATES DISTRICT JUDGE

Brenda G. Goranflo

BRENDA G. GORANFLO
Trial Attorney for Federal Defendants
Department of Justice
Civil Division, Room 3953
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 633-3953

DATE Feb. 23, 1984

Edward G. Weil

EDWARD G. WEIL
Attorney for Federal Defendants
United States Department
of Housing and Urban Development
Washington, D.C. 20410

DATE Feb. 23, 1984

DAVID C. STOCKDALE, Trial Counsel
IRVING H. ROSEN
ARONOFF, ROSEN & STOCKDALE
Attorneys for CMHA Defendants
1400 First National Bank Center
425 Walnut Street
Cincinnati, Ohio 45202
(513) 241-0400

DATE _____

JOHN E. SCHRIDER, JR.
Trial Attorney for Plaintiffs
Co-Counsel
MICHAEL O'HARA
Legal Aid Society of Cincinnati
901 Elm Street
Cincinnati, Ohio 45202
(513) 241-9400

DATE _____

Of Counsel:
BRUCE S. GELBER
National Committee Against
Discrimination in Housing, Inc.
1425 H Street, N.W., Suite 410
Washington, D.C. 20005
(202) 783-8150

APPENDIX A

Winton Terrace, 4848 Winneste Ave.
English Woods and Addition, 1990 Sutter Ave.
Laurel Homes and Addition, 595 Armory Ave.
Lincoln Court, 619 Ezzard Charles Dr.
Millvale South, 3357 Beckman
Millvale North, 3357 Beckman
The Beechwood, 330 Forrest Ave.
Findlater Gardens and Addition, 595 Strand Ln.
Marquette Manor, 1990 Sutter Ave.
Setty Kuhn, 3064 Mathers
Stanley Rowe Towers, 1609 Linn St.
Marriana Terrace, 1700 Wabash, Lincoln Heights
Maple Tower, 601 Maple St.
The Redding, 3700 Reading
The President, 784 Greenwood Ave.
The Park Eden, 2610 Park Ave.
415-417 Catherine (Scattered Sites, 4-23)
The Riverview House, 2538 Hackberry
The Pinecrest, 3951 West Eighth
Beekman (4-28),* adjacent to Millvale
Quebec Road, 2012 Quebec Rd.
Clinton Springs, 100 Rion Lane
Fernside Place (Acq Rehab, 4-30), 3400 Block of Fernside Place
Ebersole (Acq Rehab, 4-30), 5000 Block of Ebersole
Horizon Hill, Warsaw and Grand
San Marco, 1601 Madison
Beacon Glen (4-39), 6300 Block of Beechmont Ave.
Galbraith (4-39), Galbraith Road
Ledgewood (4-39), 4048 Ledgewood Dr.
Patricia Gardens (4-39), 918-24 Nassau, 2154-56 Sinton
Eden Apartments (4-39), 2106 Sinton
Manville (4-39), 420 Glenwood
Race Street (4-39), 1600 Block Race St.
Grandview Apartments (4-39), 1040 Considine
Poplar (4-39), Poplar St., West End
Queensgate II (4-40), Chestnut, Clark, Elizabeth, Ezzard Charles Sts., West End
Washington Terrace (4-40), 3055-77 Kemper, 117-46 Taft, 49-72 Washington Terrace
CWFF (4-40), 415-35 Roackdale, 418 Kasota, 3465-67 Knott, 420-40 Prospect
St. Paul (4-40), 2117-19, 2120 Sinton
McMicken (4-40), 122-30 East McMicken

*The integrative transfer procedure will apply to the Beekman project; the integrative move in option will not.

**NOTICE TO ALL REGISTRANTS FOR
CMHA PUBLIC HOUSING
ABOUT OBTAINING A PUBLIC HOUSING UNIT**

The names of persons registering for an apartment in public housing are placed on a waiting list according to the size apartment needed and priorities approved by the Department of Housing and Urban Development. When we reach your name on the waiting list we shall mail you an appointment time to come to the Admissions and Occupancy Office to make application. You should keep us informed of any change of address. As soon as your application is completed you will be notified of the approximate time we expect to be able to offer you an apartment in one of our projects. If units are available at the time the application is completed you shall be offered a unit immediately.

A list of the names and addresses of CMHA projects and separate locations of multifamily buildings in CMHA's scattered site projects is on the back of this notice. [The list is the same as Appendix A of The Order]. You should understand that you cannot count on being offered an apartment in the location or projects of your choosing. The particular project or location in which you will be offered an apartment is determined by whether vacancies of appropriate size are available, and by CMHA's policy to maintain full occupancy in all projects and to provide equal opportunity in housing.

Under this policy you will first be offered one or more apartments in projects in which the majority of the residents are not of your race. If you do not choose one of those units offered, you will be offered two apartments in succession in projects in which vacancies exist without regard to the racial composition of the project.

If you refuse all the vacancies that CMHA can offer you when you come to the top of the waiting list, you will be returned to the bottom of the waiting list. However, if you are willing to take the apartment which is offered but are unable to move at that time, or if there is a satisfactory reason why you cannot accept the location offered, this will not count as one of your refusals before placing your name at the bottom of the waiting list.

The complete policy is posted in the Admissions & Occupancy Office and in each Management Office for your information, if additional information is desired.

ADMISSIONS & OCCUPANCY DIVISION

**NOTICE TO CMHA RESIDENTS
OF SPECIAL INTERPROJECT TRANSFER PROGRAM
AND SPECIAL SECTION EIGHT EXISTING HOUSING PROGRAM**

As a resident of CMHA public housing you should know that CMHA permits residents to transfer into other projects and into the Section 8 existing housing program. Whether you can receive such a transfer depends on three things:

- (1) whether you are a tenant in good standing;
- (2) whether you are willing to live in a project or area in which members of your race are less than one half the population; and
- (3) how many transfer applicants for these programs are ahead of you.

SPECIAL INTERPROJECT TRANSFER PROGRAM

If you are a CMHA resident in good standing and are willing to live in a project or area in which members of your race are less than one half the population, you can apply for such a transfer by contacting the Admissions and Occupancy Division at 16 West Central Parkway, telephone 721-4580.

A list of the names and addresses of CMHA projects and separate locations of multifamily buildings in CMHA's scattered site projects is on the back of this notice. [The list is the same as the list on Appendix B of the Order]. You should understand that you can request a transfer to one or more of the locations listed on the reverse side of this notice. We do not know when you will be permitted to transfer or whether you will be offered a unit in any particular location. This depends on how many persons are ahead of you on the list for special interproject transfers and which locations have vacancies of the size you need. However, if you remain on the waiting list, you will eventually be offered a unit in a project or location, if an appropriate size unit exists and becomes vacant and your transfer would result in your living in a situation in which more than one half of the CMHA households are of the opposite race.

You should also know that if, when you moved into CMHA, you were given an opportunity to live in a project or location in which more than one half the households were of the opposite race, you will not be permitted to receive a special interproject transfer for three years; and if you moved into the unit offered, you will not be eligible at all for a special interproject transfer. Also a CMHA resident may receive only one special interproject transfer.

SPECIAL SECTION EIGHT EXISTING HOUSING PROGRAM

If you are a CMHA resident in good standing and want to live in an area which is racially integrated, you can apply for CMHA's special Section 8 existing housing program by contacting (telephone and address of contracting agency). Under this program you can apply for a Section 8 existing housing certificate. Whether and how soon you receive a certificate depends on how many CMHA households of your size are ahead of you in applying. There is also a limit to the total number of certificates available.

If you receive a certificate under the Special Section 8 existing housing program you will be responsible for finding a landlord who will rent to you under the program. CMHA will subsidize your rent in a way similar to how it is subsidized in public housing. You will receive assistance from the staff of the special Section 8 program in locating a unit and landlord willing to rent to you. You may also receive help with transportation in looking for an apartment or house.

Under this program you can use your certificate to rent a unit only if your living in the area has a racially integrative result. If you later choose to move, you might not be able to keep your certificate if you move to an area where your race is in the majority.

**NOTICE TO REGISTRANTS FOR
CMHA PUBLIC HOUSING AND THE SECTION 8
EXISTING HOUSING PROGRAM**

As a registrant for CMHA housing, you should know that there are four main subsidized housing programs operated by governmental bodies in the Cincinnati and Hamilton County area. People are permitted to apply for all of these housing types.

1. CMHA Low Rent Public Housing

This program provides subsidized housing for families and elderly households in units it rents in the City of Cincinnati, the City of Lincoln Heights and other parts of Hamilton County. You may apply at the CMHA central office, 16 West Central Parkway, telephone 721-4580. A list of the names and addresses of CMHA projects and separate location of multifamily buildings in CMHA's scattered site projects is on the back of this notice [the list is the same as Appendix A of the Order].

2. CMHA Section 8 Housing

Generally this program provides certificates which entitle the user to have part of their rent paid by CMHA. The household receiving a certificate must find a landlord who will rent to it under the program. The household receiving a certificate may obtain housing anywhere in Hamilton County except a small area in the northwest corner of the County. The program is for families and elderly households. You may apply at the CMHA Section 8 office in the Alms and Doepke Building, 222 East Central Parkway, telephone 241-7300.

3. CMHA Special Section 8 Housing Program

This program is similar to CMHA's regular Section 8 housing program. The main difference is that it is for families who want to live in areas which are racially integrated.

Applicants who receive Section 8 certificates under this program might receive certificates more quickly than under the regular Section 8 existing housing program. Applicants who receive certificates under the special Section 8 program will get special assistance in locating housing. You may apply for the CMHA Section 8 existing housing program at CMHA's Section 8 office in the Alms and Doepke Building, 222 East Central Parkway, telephone 241-7300.

4. Hamilton County Section 8 Existing Housing Program

The program is similar to CMHA's regular Section 8 housing program. The main difference is that certificates can be used only in the parts of Hamilton County outside Cincinnati and Lincoln Heights. Persons who live in Cincinnati are eligible, but must use the certificates outside Cincinnati and Lincoln Heights. You may apply at the Hamilton County Section 8 office in the Court House Annex, Court and Main, telephone 632-8771.

Other Subsidized Housing - Privately Owned

There are other kinds of subsidized housing in the Cincinnati and Hamilton County area. Those include subsidized housing under the Section 8 new construction program, the Section 8 substantial rehabilitation program, the Section 221(d)(3) program, and the Section 236 program. This housing is owned by private persons or companies. You may contact the U.S. Department of Housing and Urban Development in Cincinnati for more information.