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

MAR 31 1998

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 Tuesday, March 31, 1998, we filed in the United States District Court for the Northern District of Illinois, Eastern Division, Plaintiffs' Response to Chicago Housing Authority's Motion for Stay, a copy of which is attached hereto and served upon you.



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March 31, 1998

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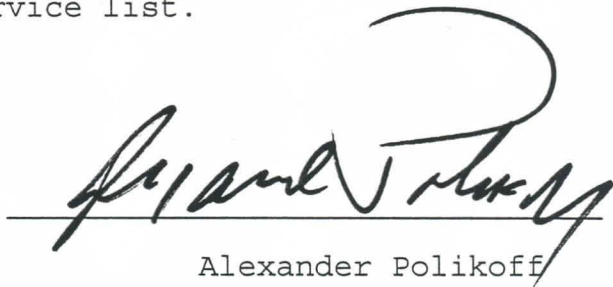
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CERTIFICATE OF SERVICE

I, Alexander Polikoff, an attorney, certify that on March 31, 1998, I served copies of the foregoing Notice and Plaintiffs' Response to CHA's Motion for Stay on the persons shown on the attached service list.



A handwritten signature in black ink, appearing to read 'Alexander Polikoff', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'A' and a long, horizontal stroke extending to the right.

Alexander Polikoff

IN THE UNITED STATES DISTRICT COURT
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PLAINTIFFS' RESPONSE
TO
CHA MOTION TO STAY¹

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Judge Marvin E. Aspen
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INTRODUCTION

There are several good and sufficient reasons to deny CHA's stay motion. One is that the last peaceable state of the parties before controversy erupted, the preservation of which is the office of a stay, is exactly what CHA seeks not to preserve but to change. That peaceable state was that the parties, CHA included, treated the judgment order as applicable to HOPE VI replacement housing. Ironically, therefore, a properly framed stay order would do CHA no good. An improperly framed one - allowing CHA to treat the

¹ The affidavits attached to the Receiver's Statement are incorporated herein by reference, and will also be incorporated by reference in support of our Reply to CHA's Response to our Motion for Further Relief, to be filed, as the Court has directed, on April 2, 1998. This is appropriate since both the

judgment order as inapplicable to HOPE VI replacement housing pending appeal - would unfairly and improperly change the last peaceable status quo.

"All Judge Aspen said is that locational restrictions apply as we have assumed that they do throughout. We asked that they not, and he said no, they do. Judge Aspen did not break new ground, he maintained the status quo." Joseph Shuldiner, Executive Director, CHA (emphasis added).²

A second reason to deny a stay is that the balance of harms tips sharply against CHA. At most it would suffer inconvenience, as its Executive Director has acknowledged:

"Shuldiner said Aspen's order 'would not negatively impact' the CHA's redevelopment goals. 'It just means we have to get court approval every time . . . and we would have preferred not having to do that for something we have been doing all along . . .'" Joseph Shuldiner, Executive Director, CHA.³

CHA's only argument respecting possibly serious harm - risk of loss of HOPE VI funds - is utterly unpersuasive, as the Court found in its ruling on the merits. The plaintiffs, on the other hand, -would (as we explain below) suffer a considerable risk of further frustration respecting the equitable relief they have been struggling to secure for nearly three decades. "This Court has repeatedly made it clear beyond any possible doubt that, absent some

Stay and Further Relief Motions have to do with the provision of remedial housing opportunities to plaintiff class families.

² March 4, 1998, e-mail from Joseph Shuldiner to Lou Berra (of HUD), attached as Exhibit A.

³ Chicago Sun-Times, March 19, 1998, Metro Section, p. 9, attached as Exhibit B.

extraordinary circumstances, delay in achieving desegregation will not be tolerated [citations omitted]."
Dandridge v. Jefferson Parish School Board, 404 U.S. 1219, 1220 (1971).

A third reason to deny a stay is that CHA does not have "a substantial case" raising "serious questions" on the merits. Thomas v. City of Evanston, 636 F.Supp. 587, 590, 591 (N.D. Ill. 1986). CHA has already conceded that the judgment order language (i.e., the definition of "dwelling unit") does cover HOPE VI replacement housing.⁴ The argument, that HOPE VI replacement housing must be nonetheless excised from the judgment order because HOPE VI and the judgment order are assertedly incompatible, is so weak (in the face of both the language and purpose of HOPE VI the Court's statement, "We see no incompatibility between the HOPE VI program and the judgment order," is so clearly correct) that CHA's chances on appeal are "negligible." Thomas, 636 F.Supp. at 591.

Fourth is the public interest, which clearly lies in effecting relief as promptly as possible for CHA's constitutional wrongs, not in protecting the public (as CHA would have it) against harms which upon inspection turn out to be imaginary.

We discuss below these several reasons for stay denial. It should also be noted, however, that the Court's HOPE VI

⁴ Transcript of Oral Argument, February 10, 1998, attached as Exhibit C, p. 37.

order is not appealable. The order is not a final judgment, see Resolution Trust Corporation v. Ruggiero, 994 F.2d 1221, 1224 (7th Cir. 1993), nor, as an order clarifying rather than modifying an injunction, is it appealable as an interlocutory order under 28 USC Sec. 1292(a)(1). ACORN v. Illinois State Bd. of Elect., 75 F.3d 304, 306 (7th Cir. 1996); Motorola, Inc. v. Computer Disp. Int'l, Inc., 739 F.2d 1149, 1155 (7th Cir. 1984).

Here the motion was styled and treated as a motion to clarify. Cf. SEC v. Investment Corp. of America, 369 F.2d, 383, 384 (7th Cir. 1966) ("In appearance, the relief sought was construction, and the district court declined to construe the injunction as [the defendant] requested. Language consistent with a request for modification and a denial thereof was not employed"). When plaintiffs argued that CHA was actually seeking a modification and should be held to modification standards (Plaintiffs' Response to CHA's Motion to Clarify, p. 3 n. 2), CHA responded:

"The CHA . . . has no burden of persuading the Court that the coverage of the Injunction should be changed. Despite plaintiffs' wish to have the Court treat the Motion as a motion to modify, (Response at 3 n.1, 17), the Motion seeks an interpretation - not a modification - of the Injunction . . .

. . . Before any modification of the Injunction is considered, it must first be decided whether a modification is necessary. This will be determined, one way or the other, by the Court's ruling on the Motion." (CHA's Reply Mem. at 2, 3.)

The effect of the order is clearly one of interpretation, not modification - the Court interpreted the judgment order in light of the subsequent enactment of a new federal program. The Eighth Circuit addressed a similar issue in Mikel v. Gourley, 951 F.2d 166 (8th Cir. 1991):

"Appellants argue that because of substantive changes since the 1977 injunction was issued the District Court's order was a modification . . . As a result of these substantive changes, according to Appellants, the District Court's order did substantially change the relationship of the parties.

"We disagree. The District Court's order merely clarified what the permanent injunction meant . . . The District Court did not change the legal relationship between the parties. . . No new or additional obligations were placed on Appellants which would substantially change the terms or force of the injunction. By simply interpreting the meaning of its permanent injunction, the District Court merely restated the parties' relationship in new terms and thus clarified its original injunction. We lack jurisdiction to review an order clarifying an injunction." 951 F.2d at 169.

While non-appealability may not absolutely preclude the granting of a stay, it is nevertheless an important factor given that a stay motion is directed to the equitable discretion of the trial court. See Thomas, 636 F.Supp. at 589-90.

I. A PROPER STAY WOULD BE POINTLESS

The office of a stay is to preserve the last peaceable state of the parties before the outbreak of war, "last actual, peaceable uncontested status which preceded the

pending controversy." LaRouche v. Kezer, 20 F.3d 68, 74, n.7 (2d Cir. 1994), quoting Black's Law Dict. 1410 (6th ed. 1990). Accord, e.g., Ramsburg v. American Invst. Co. of Illinois, 231 F.2d 333 (7th Cir. 1956); St. Charles Manuf. Co. v. St. Charles Furn. Corp., 482 F.Supp. 397, 405 (N.D. Ill. 1979). In Religious Tech. Cent. v. F.A.C.T. NET, Inc., 901 F.Supp. 1519 (D. Colo. 1995), the Court said:

"[T]he very purpose of an injunction is to preserve the status quo ante. That is a rather elegant piece of Latin which means the last existing state of peaceable, noncontested conditions which preceded the pending controversy. . . . [T]he complete phrase is status quo ante bellum which literally means 'that state of things before the war began.'" 901 F.Supp. at 1523.

CHA's Posture.

As we show below, the single most salient fact respecting the status quo is that CHA has not developed a single unit of HOPE VI replacement housing to date. The units that are closest to development, the only units that have so far been submitted for final HUD approval, are 44 units of leased housing at Mohawk North in the Cabrini-Green area. But the application for those units was filed by the Receiver, not by CHA. Allowing CHA to proceed for the first time in decades with development of housing that does not comply with the judgment order would be a radical change in the status quo; nothing could do more violence to the principles and concept of a stay.

CHA describes the status quo before entry of the Court's February HOPE VI order as one in which CHA "had acted for three years with respect to HOPE VI without complying with the Injunction [i.e., the 1969 judgment order] . . ." (p. 2), but the facts are glaringly to the contrary. For example, on May 18, 1995, transmitting to HUD its formal application seeking approval for demolition of 200 units in connection with the Cabrini-Green HOPE VI

66C1460" by the joint venture between the Receiver and an instrumentality of CHA.⁶

In addition to the documented record, illustrated by the foregoing examples, we have Mr. Shuldiner's public admission that "we [CHA] have assumed . . . throughout" that the locational provisions of the judgment order applied to HOPE VI replacement housing. (Exhibit A.) Obviously CHA could not simultaneously make that assumption, yet act with respect to HOPE VI without complying with the judgment order.

The Posture of the Receiver and Plaintiffs

Not content with thus misrepresenting its own posture respecting the applicability of the judgment order to HOPE VI replacement housing, CHA also says (p. 2) that the Receiver and the plaintiffs had likewise acted during the same three years without complying with the judgment order. As to the Receiver, CHA agreed with it in November 1995 as follows:

"This will confirm our understanding and agreement that as Receiver under the court order in the Gautreaux case, you will perform the function of CHA's "development manager" for the Cabrini Green development program, including the HOPE VI program, similar to the manner in which you are

⁶ Letter dated December 17, 1997, from the Habitat-led joint venture between Habitat and an affiliate of CHA, and cover page of PHA Development Proposal, both attached as Exhibit G. The joint venture arrangement is briefly described in Plaintiffs' Response to CHA's Motion to Clarify Injunction (p. 17, n.13), and in the memorandum of HUD's Assistant General Counsel for the Midwest, which is attached hereto as Exhibit M.

functioning in the Henry Horner Homes development program" (emphasis added).⁷

This was followed on March 25, 1996, by a letter from CHA's Executive Director, Mr. Shuldiner, to then HUD Secretary, Henry Cisneros, as follows:

"[W]hether as receiver for our scattered site units, or as development manager for replacement units at Cabrini, Horner and the Lakefront, the Habitat Company administers our new construction efforts."⁸

Among other facts completely inconsistent with CHA's assertion respecting the Receiver (see the Levin Affidavit, beginning at par. 18, and the Hickman affidavit beginning at par. 18), the Receiver "worked actively as Development Manager for the construction of all 493 [Cabrini] replacement units," for which CHA paid it \$149,881 in December 1996,⁹ and the Receiver and CHA entered into a development management agreement for the ABLA/Horner HOPE VI project in 1997.¹⁰

⁷ Letter dated November 14, 1995, from Edwin Eisendrath, then chair of the board of CHA and HUD's Secretary's Representative in Chicago, to Dan Levin of Habitat, attached as Exhibit H. Plainly the Receiver acts "as Receiver under the court order in the Gautreaux case" only where the judgment order applies.

⁸ Letter of March 25, 1996, attached as Exhibit I.

⁹ Letter of August 30, 1996 and check of December 27, 1996, both attached as Exhibit J.

¹⁰ Agreement dated April 21, 1997, attached as Exhibit K. Only with respect to CHA's third and last HOPE VI project, Taylor Homes, has there been an absence of Receiver participation, but this was because the Receiver was told by CHA that no replacement

For their part, plaintiffs consistently took the position that the judgment order applied to HOPE VI replacement housing. For example, in 1997, when CHA requested their letter of support for another HOPE VI application, they authorized CHA to use the requested letter only upon the condition that CHA so acknowledge.¹¹

The Posture of HUD and the Court

HUD too shares the same understanding that the judgment order applies to HOPE VI replacement housing and that only the Receiver (and to the extent authorized by the Court the Receiver-led joint venture) has power to develop it. On July 29, 1997, HUD's Assistant General Counsel for the Midwest Region wrote a memorandum to HUD personnel on the subject of "Development Authority Under Gautreaux." Among other things the memorandum stated:

"[I]t is the belief of this office that either the Receiver, for general purposes, or the Joint Venture, under the nunc pro tunc order for specific projects, has development authority. In regard to the 377 replacement units for Cabrini and Washington Park approved for funding by HUD in September 1993 and 1994, the Joint Venture has clearly been authorized by Judge Aspen. We also believe that any funds under HOPE VI which go to replacement housing are currently a Receiver responsibility. We do not believe the CHA

housing was planned. Hickman Affidavit, par. 59, filed in support of Receiver's Statement.

¹¹ Letter of July 18, 1997, from Alexander Polikoff to Andrew Rodriguez of CHA, attached as Exhibit L.

currently has any development authority for non-elderly units."¹²

Indeed it can fairly be said that during this period the Court itself shared the same understanding for upon the request of all the parties the Court entered its so-called nunc pro tunc order authorizing the joint venture to develop 377 replacement housing units which included Cabrini replacement units.¹³

* * *

Thus, the last peaceable status quo before the Court's HOPE VI order was not that "CHA, the plaintiffs and the Receiver had acted for three years with respect to HOPE VI without complying with the [judgment order]"; rather the exact opposite was the case. The three-year period CHA selects includes (among others) CHA's representation to HUD that replacement housing in the Cabrini HOPE VI project would be sited "in accordance with" Gautreaux orders, CHA's agreement that the Receiver would act as Development Manager for the Cabrini HOPE VI project, submission by the Receiver-led joint venture of the development plan for the first (44) replacement units at Cabrini, and CHA's agreement that the Receiver would act as Development Manager for the

¹² Memorandum dated July 29, 1997, from Lewis M. Nixon to Richard Kruschke, both of HUD, attached as Exhibit M.

ABLA/Horner HOPE VI project. It also included the plaintiffs' articulated position that the judgment order applied and that the Receiver therefore had the responsibility to develop all HOPE VI replacement housing, not to mention CHA's "assumption" "throughout" that the judgment order's locational restrictions applied to HOPE VI replacement housing, and its advice to Secretary Cisneros that "whether as receiver for our scattered site units, or as development manager for the replacement units at Cabrini, Horner, and the Lakefront, the Habitat Company administers our new construction efforts."

Precisely when (CHA refers to Spring 1997 - Motion to Stay, par. 16) and why CHA began to think differently (but not to act consistently with its new thinking, as the foregoing record demonstrates) is less important than the fact that a unilateral change of mind by one party does not effect a change in the last peaceable status quo before controversy. The status quo to be preserved is not a "photographic replication of the circumstances existing at the moment suit was filed"; if, as here, a defendant has "proceeded with a course of action known to be disputed," then courts may "compel a defendant to correct injury already inflicted by defining the status quo as the last peaceable uncontested status that existed before the dispute arose." Massachusetts Mutual Life Ins. Co. v. Assoc. Dry

¹³ For convenience the order is attached as Exhibit N.

Goods Corp., 786 F.Supp. 1403, 1427 (N.D. Ind. 1992, citations omitted).

Thus, in this case the relevant status quo - as the sworn and documented record makes abundantly clear - includes the applicability of the judgment order to HOPE VI replacement housing, which is precisely what the Court's HOPE VI order determined. The stay motion must therefore be denied on the ground (among others) of pointlessness - returning the parties by order to their last peaceable status respecting the applicability of the judgment order to HOPE VI replacement housing would leave the parties precisely where they are without such an order.¹⁴

¹⁴ In the face of this record on what does CHA base its indefensible characterization of the status quo? The answer is the Receiver's non-participation in CHA's three HOPE VI applications (p. 2), and the fact that neither the Receiver nor plaintiffs' counsel sought an order of contempt or other judicial determination of the Receiver's HOPE VI authority (p. 3). The relevant facts are:

(1) the Receiver did not know of two of the three applications (Hickman affidavit, pars. 18, 58), and the third was subject to a written agreement between CHA and plaintiffs that none of the award funds would be spent except upon their mutual agreement, with the Gautreaux court to resolve any disagreement (Exhibit E to Plaintiffs' Response to CHA Motion to Clarify);

(2) as soon as the Receiver learned of the applications it asserted its position (of development authority respecting replacement housing) to CHA and sought to negotiate a resolution (Levin affidavit beginning at par. 18, Hickman affidavit beginning at par. 18); and

(3) it brought the disagreement to the attention of the Court in July 1997, and sought thereafter to carry out the Court's request that the parties negotiate their differences (Levin affidavit, pars. 25-28, and Miller affidavit beginning at

II. THE BALANCING OF HARMS COMPELS DENIAL OF A STAY

Harm to CHA

CHA's irreparable harm argument is principally an in terrorem picture of the potential loss of HOPE VI funds should the order not be stayed (p.4). But CHA's picture is painted with pigments of pure speculation.

Not a single fact is referenced in support of CHA's speculations - that HUD may withdraw HOPE VI approvals already granted (p. 4), that CHA may be required to begin the application process anew (p. 4), that CHA's ability to participate in HOPE VI competitions will be impaired (because of the imagined requirement to show that half the replacement units would be in the General Areas, p. 10), and the like. In fact, the entire history of HOPE VI in Chicago speaks to the contrary of CHA's professed fear.

Fully understanding that the Receiver, not CHA, was authorized to develop HOPE VI-funded public housing (see Exhibit M), HUD nonetheless awarded CHA three HOPE VI grants, based in part on CHA's express representations that

par. 7), until CHA's HOPE VI motion, filed in September 1997, terminated that effort.

The courts have made it clear that attempts to settle differences out of court are to be encouraged. Courts will not "impel every disputant to immediate litigation, without first seeking amicable settlement, for fear of being accused of undue delay. The court does not understand such a result as being consistent with the efficient use of limited judicial resources." Massachusetts Mutual, 786 F.Supp. at 1427.

HOPE VI replacement housing would be provided in accordance with Gautreaux (see Exhibits D, E, F and H).

Moreover, at the oral argument on February 10, 1998, the Court specifically invited HUD to speak its mind. The colloquy that ensued included the following:

"THE COURT: Well, by the fact that you have decided not to file a brief and are not prepared to address the issue, I take it that my ruling really is a non-issue as far as HUD is concerned?

"MR. JENSEN [representing HUD]: I think that is true. . . We had very definite opinions, very much reflected in Mr. Shakman's brief of the Receiver, that indeed the Receiver has all the responsibility connected with the development, whether HOPE VI or otherwise." (Exhibit C, Transcript, p. 28.)

The facts are that nationwide CHA has been a close second to Baltimore in total HOPE VI dollars awarded (Chicago Reporter, "Court Ruling Puts More Teeth in Public Housing Plan," March 1998, p. 11); that these awards have been made by a HUD which believed Gautreaux applied to HOPE VI replacement housing, and believed also that the Receiver, not CHA, had development authority over such housing; and that the awards were made to a CHA which believed the same and represented it would comply with Gautreaux. Nothing supports CHA's we-may-lose-HOPE VI-funding threat.¹⁵

¹⁵ Congress has made clear that it does not view civil rights orders such as those in Gautreaux as rendered inapplicable to HOPE VI programs. Congress has said that HOPE VI applicants should not be given a competitive advantage by reason of applicable litigation requirements, thereby making it plain that such requirements are not overridden by HOPE VI laws and regulations. See Plaintiffs' Response to CHA's Motion to Clarify, p. 18, n.14.

Nor is there a credible showing of any other irreparable harm to CHA - indeed, of any harm at all; CHA offers only unsupported conclusory assertions (pp. 3-6, pars. 8-20). Thus, if one examines CHA's factual statements respecting harm (apart from the speculations about loss of HOPE VI, and by CHA paragraph number):

-8. CHA says social service and other dollars have been expended at Cabrini. This is not a showing of harm. There is no contention, let alone showing, that any of these expenditures will be wasted if a stay is denied.

-14. CHA says it will be forced to divert some resources to re-planning. This unsupported assertion crashes headlong into the statement of CHA's Executive Director that, "Under all HOPE VI plans we assumed that Gautreaux applied . . ." (Exhibit B.)

-15, 17, 19. CHA says further litigation costs would be avoided if a stay is entered. A stay delays but does not avoid further litigation. Indeed, CHA says litigation is necessary and would delay HOPE VI projects (par. 19). All the more reason not to delay it but to get on with it.

-21, 22, 23. CHA says it will be harmed by being forced to undertake a radical change in direction. This too is incompatible with, "Under all HOPE VI plans we assumed Gautreaux applied . . ."; and there is in any event no radical change (or any change) in direction. See this Court's three revitalization orders already entered at Horner, North Kenwood-Oakland and Cabrini-Green which are completely consistent with the "twin goals" of economic and racial integration to which CHA professes adherence.

In sum, CHA fails utterly to show any harm to it whatsoever (let alone irreparable harm) from prompt implementation of the Court's HOPE VI order.

Harm to Plaintiffs

On the other hand, harm to the plaintiffs - from the change in the last peaceable state CHA desires - would be

palpable. The first HOPE VI replacement units are at the threshold (Exhibit H). Substantial work, CHA acknowledges, has already been devoted to HOPE VI projects. CHA wishes, during the indefinite, possibly prolonged, period of an appeal, to be permitted to continue to exclude the Receiver from its unilateral preparations for the development of replacement housing in several HOPE VI projects.

This is the same CHA whose Executive Director's statements on March 10 reflect an intention to disregard the remedial desegregation thrust of this Court's orders. "A continuing violation of constitutional rights constitutes irreparable injury [citations omitted]." Walters v. Thompson, 615 F.Supp. 330, 341 (D.C. Ill. 1985). And it is the same CHA which has time after time demonstrated its incompetence as a developer - in the period prior to 1987 when CHA's overwhelming incompetence finally led to the appointment of the Receiver, and twice more in the period following appointment of the Receiver when CHA failed to develop any of the 350 demonstration program units, and turned to the Receiver to prepare the development plan for the Mohawk North units).¹⁶

¹⁶ In 1995 HUD ranked CHA "among the worst" of public housing authorities. (Prepared testimony of Judy A. England-Joseph, Director, Housing and Community Development Issues, United States General Accounting Office, June 7, 1995, Federal News Service, p. 2, attached as part of Exhibit O.) Since then - i.e., since the HUD "takeover" - CHA's rating has gone down. CHA is now ranked 36th among the 40 largest public housing authorities. (The Transformation of America's Public Housing, A 1996 Status Report

It is galling for CHA to contend - based on a mischaracterization of the HOPE VI Order - that public housing tenants would suffer the harm of waiting "for replacement units to be built in General Areas" (par. 27). CHA repeatedly says the HOPE VI Order "obliges the CHA to build one-half of newly constructed replacement units in General Areas" (e.g., p. 4). The Order says no such thing. Unwilling to tie the parties to an inflexible formula, Judge Austin included the following Article in the judgment order:

"X. 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 proposed developments designed by CHA alone or in combination with other private or public agencies to achieve results consistent with this order, material changes in conditions existing at the time of this order or any other matter." (304 F.Supp. 736, 741.)

Pursuant to Article X the Court has repeatedly authorized the development of new replacement units in "revitalizing" areas, which are Limited Areas as to which the Court has made a specific "revitalizing" determination upon a "sufficient showing of revitalizing circumstances such that a responsible forecast of economic integration, and a longer term possibility of racial desegregation, could be made" (Horner Area Order of August 14, 1995, p. 2).

No party contended that the judgment order of 1969, or the order appointing the Receiver in 1987, precluded the

by Secretary Henry G. Cisneros, p. II-13, attached as part of Exhibit O.)

Court from thus authorizing the Receiver to develop new public housing in such areas. (Indeed, these were all agreed orders, entered with CHA's approval or upon its motion jointly with other parties.) In short the waiting-for-General-Area-replacement-units harm is imaginary.

III. CHA'S CASE ON THE MERITS IS INSUBSTANTIAL

CHA concedes - "no question about it" - that the language of the judgment order covers HOPE VI replacement housing. (Exhibit C, Transcript, p. 37.) The argument then is that the judgment order should be interpreted so as not to cover HOPE VI replacement housing because of the asserted incompatibility between HOPE VI and the judgment order.

"The locational requirements of the [judgment order] would require the CHA to construct one-half of any new replacement units in areas that would be far from the impacted neighborhoods that were the specific subjects of the CHA's HOPE VI applications" (pp. 12-13).

This argument is, of course, based on CHA's persistent mischaracterization of the judgment order pointed out above. Beyond that, CHA makes no serious effort to address the reasons why its incompatibility argument are totally unconvincing. These were addressed at length in the oral argument (Exhibit C, Transcript, pp. 13-17), and are restated in the Court's HOPE VI opinion (pp. 3-4). Lacking anything new from CHA on this issue, we simply refer the Court to its own opinion.

The other "serious questions" CHA proposes (paragraphs 29-38) are a rehash of misstatements and already-rejected arguments. Thus:

(i) The mischaracterization of the Court's order is twice repeated (paragraphs 32 and 37).

(ii) The in terrorem threat that HOPE VI in Chicago will be jeopardized is repeated four times (paragraphs 31, 33 and 35).

(iii) The unjustified assertion is made that the judgment order "constitutes an expansion of the proscriptions of the Injunction" (par. 30).

(iv) The contention is repeated that the judgment order does not apply to replacement housing (par. 34) in the face of repeated applications of the order to such housing with CHA participation, a history CHA lacks the forthrightness to acknowledge.

(v) The "separation of powers" assertion previously made and rejected is repeated (par. 35) without new adornment, and without even an attempt to address the reasons why the point is not a serious one. (See Plaintiffs' Response to CHA's Motion to Clarify, pp. 18-20.)

The stay motion should be denied because the Court's opinion on the merits is clearly correct; CHA's contrary arguments are wholly insubstantial.

IV. THE PUBLIC INTEREST DICTATES DENIAL OF A STAY

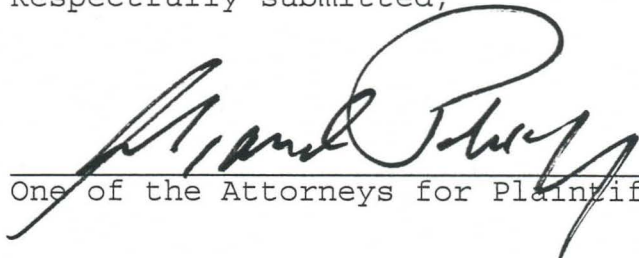
If we put to one side the astonishing assertion that CHA's interests "are coterminous with the public interest" (par. 28) - this from a constitutional wrongdoer whose intransigence and incompetence have combined to delay relief to the plaintiff class for decades - CHA's argument is that a stay would protect the public from the (non-existent)

harms to it that are discussed above. As the Court said (p. 4) in its February HOPE VI ruling, "Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities." The true public interest lies in not letting CHA further delay and frustrate the realization of those opportunities.

CONCLUSION

The motion for a stay should be denied; plaintiffs' motion for further relief should be granted and an appropriate order entered.

Respectfully submitted,



One of the Attorneys for Plaintiffs

March 31, 1998

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Subj: RE: Re[2]: HOPE VI - CHA
Date: 98-03-04 16:19:39 EST
From: VJarrett@HABITAT.com (Valerie Jarrett)
To: bammo@aol.com ('Barry Miller')

More.

> -----
> From: louis_berra@hud.gov[SMTP:louis_berra@hud.gov]
> Sent: Wednesday, March 04, 1998 7:43 AM
> To: JShuldin@thecha.org; robert_l._prescott@hud.gov
> Cc: vjarrett@habitat.com; phlickman@habitat.com; JButler@thecha.org;
> RMonocch@thecha.org; debra_a._torres@hud.gov;
> milan_m._ozdinec@hud.gov; david_sowell@hud.gov;
> ellnor_r._bacon@hud.gov; john_a._jensen@hud.gov;
> michael_h._reardon@hud.gov; karen_a._newton@hud.gov
> Subject: Re[2]: HOPE VI - CHA

> Joe,

> I believe you may be overreacting. It's apparent we have a
> different interpretation of Judge Aspen's Opinion.

> My intention in raising these questions was to prevent what
> happened in 1993 when our community almost lost \$ Millions
> of Development funds because of the confusion over who had
> "legal authority" to respond to HUD's NOFA; CHA or the
> Receiver.

> Our role is to support(to the extent possible):

- > a) Timely execution of existing HOPE VI funds(over \$
> 100 million)
- > b) Submission of competitive applications for future
> HOPE VI funding.

> We view HOPE VI as the "engine" that provides our community
> the means for adding new units using in addition to the
> traditional models, "mixed income/mixed finance model" and
> the demolition of a portion of those units that fail the
> "viability test" criteria.

> We believe the best way to leverage the use of these limited
> resources is to work effectively in partnership(CHA,
> Receiver and HUD).

> Lou

> Lou,

> I wish that you would speak with your attorneys before creating
> problems. All Judge Aspen said is that locational restrictions apply
> as
> we have assumed that they do throughout. We asked that they not, and
> said no, they do. Judge Aspen did not break new ground, he maintained
> the status quo.

> I also find it very offensive that you would write this email and copy

EXHIBIT A

> everybody. I suppose that it makes it clear what your views are, but
> you
> do not speak for HUD. I am meeting with the General Counsel in
> Washington on Tuesday where we will discuss among other things whether
> to appeal this ruling. Lest you forget, HUD supported our motion.

> Joe

> >-----Original Message-----

> >From: louis_berra@hud.gov [SMTP:louis_berra@hud.gov]
> >Sent: Thursday, February 26, 1998 3:07 PM
> >To: robert_l._prescott@hud.gov
> >Cc: Shuldiner, Joseph; vjarrett@habitat.com;
> phickman@habitat.com;
> >debra_a._torres@hud.gov; milan_m._ozdlnec@hud.gov;
> david_sowell@hud.gov;
> >elinor_r._bacon@hud.gov; john_a._jensen@hud.gov; mreardon@hud.gov;
> >karen_a._newton@hud.gov
> >Subject: HOPE VI - CHA

> >
> >
> > Bob

> > I received a copy of Judge Marvin E. Aspen's Memorandum
> > Opinion and Order dated 2/23/98, copy faxed to you.

> > This Order responds to CHA's request for clarification on
> > whether or not the Gautreaux judgement order governs the
> > CHA's use of HOPE VI funds.

> > Judge Aspen decided that the judgement order does govern
> > CHA's use of HOPE VI funds.

> > This raises a number of concerns:

> > 1. Will the existing HOPE VI RP's for Cabrini, ABBLA
> > and pending RP's for Henry Horner, Robert Taylor,

> > Robert Brooks need to be revised in anyway?

> > 2. Will future responses for HOPE VI NOFA's require

> > Recelver to apply for CHA?

> > 3. Any other issues/concerns you may have?

> > Please respond at your earliest convenience.

> > Lou

----- Headers -----

Return-Path: <VJarrett@HABITAT.com>

Received: from rly-za04.mall.aol.com (rly-za04.mall.aol.com [172.31.36.100]) by alr-za01.mall.aol.com (v40.2) with SMTP;

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by rly-za04.mall.aol.com (8.8.5/8.8.5/AOL-4.0.0)

with ESMTP id QAA07785 for <bammo@aol.com>;

Thursday, March 19, 1998

METRO

Court alters rules for CHA rebuilding

The Chicago Housing Authority must replace at least half the units it demolishes in make-overs of older projects in unsegregated neighborhoods, a federal judge has ruled.

U.S. District Judge Marvin E. Aspen issued the ruling last month after CHA attorneys had contended that replacement housing is not guided by the landmark 1969 Gautreaux desegregation decision, only new public housing units are, the Chicago Reporter said in its March issue.

Aspen is one of two federal judges overseeing the Gautreaux settlement that required the CHA to stop locating housing in predominantly black neighborhoods.

Under the ruling, which governs all CHA redevelopment programs, the agency has to build half of its replacement units in areas that are no more than 30 percent black unless the CHA can prove the neighborhood is revitalizing, the monthly race-relations periodical reported.

The housing authority has ongoing or planned replacement housing programs funded with federal HOPE VI grants at the Cabrini-Green, Robert Taylor, Henry Horner and the Addams, Brooks, Loomis and Abbott, or ABLA, complexes. It also has draft proposals calling for tearing down and renovating some high-rise and low-rise buildings at Stateway Gardens, Rockwell Gardens, Washington Park Homes and the Ida B. Wells complex.

CHA officials said they were using Gautreaux standards in planning replacement housing, but had hoped to be freed of getting federal court approval each time.

"Under all [federal] HOPE VI plans we assumed that Gautreaux applied . . . that 50 percent of replacement units be in communities undergoing revitalization," said

CHA Executive Director Joseph Shuldiner.

Shuldiner said Aspen's order "would not negatively impact" the CHA's redevelopment goals. "It just means we have to get court approval every time . . . and we would have preferred not having to do that for something we have been doing all along," he said.

Some replacement units may be on-site but others will be scattered in areas undergoing revitalization, such as the Near North Side Cabrini-Green area, where a \$1 billion city plan was unveiled in 1996 to construct 2,000 new residential units, including 650 public housing units mixed among them.

Although the focus of the HOPE program is reconstruction of distressed or obsolete public housing projects, it does not require that all money be spent within those areas.

"Congress and [the Department of Housing and Urban Development], through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing developments and to desegregate public housing, and the CHA is

duty-bound to vigorously pursue desegregation opportunities," Aspen wrote.

Alexander Polikoff, the lawyer who filed the original Gautreaux lawsuit, could not be reached for comment. He was quoted in the Reporter as hailing Aspen's order.

"This is certainly going to change CHA's anticipation that they could plan the revitalization of housing without regard to its desegregation obligations," Polikoff was quoted as saying.

In October, 1996, the CHA and HUD fulfilled the court-ordered relocation of 7,100 black CHA families into scattered-site housing. Court oversight of that portion of the consent decree was terminated last August by Aspen.



Marvin E. Aspen
'CHA is duty-bound'

EXHIBIT B

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

DOROTHY GAUTREAUX, et al.,	)	Docket No. 66 C 1459
	)	No. 66 C 1460
Plaintiffs,	)	
	)	
vs.	)	Chicago, Illinois
	)	February 10, 1998
SAMUEL R. PIERCE, et al.,	)	10:30 o'clock a.m.
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HON. MARVIN E. ASPEN

APPEARANCES:

For the Plaintiffs: MR. ALEXANDER POLIKOFF
Business and Professional
People for the Public Interest
(17 East Monroe Street
Chicago, Illinois 60603)

For Defendant CHA: SKADDEN ARPS SLATE MEAGHER & FLOM
BY: MS. SUSAN GETZENDANNER
(333 West Wacker Drive
Chicago, Illinois 60606)

For Defendant Department
of Housing and Urban
Development: MR. JOHN A. JENSEN
(77 West Washington Street
Chicago, Illinois 60604)

ALSO PRESENT: MR. MICHAEL SHAKMAN

MS. MARY M. GALLAGHER
Official Court Reporter
219 South Dearborn Street
Room No. 2524A
Chicago, Illinois 60604
(312) 663-0049

EXHIBIT C

1 THE CLERK: 66 C 1459, Gautreaux versus CHA.

2 MS. GETZENDANNER: Good morning, Judge.

3 MR. POLIKOFF: Good morning, your Honor.

4 THE COURT: Good morning.

5 Okay. This is the motion of the CHA, so I guess the
6 CHA will go first, right?

7 MS. GETZENDANNER: Judge, if you have any questions, I
8 would be happy to answer them, otherwise I am content to rely
9 on the briefs, so long as I can go after these fellows.

10 THE COURT: Okay.

11 Anything you wish to say?

12 MR. POLIKOFF: I will be happy to start, your Honor.

13 THE COURT: All right.

14 MR. POLIKOFF: Thank you.

15 Your Honor, as we see it, CHA advances two basic
16 arguments to support its view that the judgment order does not
17 apply to new HOPE VI funded public housing. One is that the
18 order only covers funding that adds to the aggregate housing
19 stock, not replacement funding; and the other is that the
20 judgment order's locational requirements are incompatible with
21 HOPE VI. And if you were to rule that the order applies to new
22 HOPE VI housing, you would effectively eject CHA from the HOPE
23 VI ballgame.

24 I will address these two basic arguments momentarily
25 and persuade you, I believe, that the judgment order clearly

1 does cover replacement housing based on its language, its logic
2 and the conduct of the Court and the parties in carrying it
3 out. And we will also show that there is no incompatibility
4 whatsoever between the judgment order and HOPE VI.

5 But first I would like, in a few words, to place this
6 HOPE VI dispute within the larger framework of the litigation.

7 The Fisher and Hickman affidavits attached to our
8 brief demonstrate that a dramatic current racial imbalance
9 still persists in CHA's housing stock. Largely thanks to the
10 receivership and your subsequent orders, the figure has been
11 reduced from 99 percent to the middle 80's, but we've still got
12 a long way to go.

13 It is, of course, indisputable that sufficient
14 desegregated housing opportunities for plaintiff class families
15 have not been provided to enable anyone to say -- and CHA
16 doesn't even assert -- that this principle remedial purpose of
17 the judgment order has been achieved.

18 Under these circumstances, the law places the burden
19 on CHA, ~~not~~ the plaintiffs, to show that the current racial
20 imbalance is not traceable in a proximate way to the prior
21 violation. That's a quote, as you may recognize, from Freeman
22 versus Pitts, 503 U.S. at 494.

23 And subsequent to Freeman the Supreme Court in U.S. v.
24 Fordice reiterated the same point, quote, that the burden of
25 proof falls on the state, not the aggrieved plaintiffs, to

1 establish that it has dismantled its prior de jure segregated
2 system.

3 Therefore, your Honor, with a current racial imbalance
4 not shown by CHA to be divorced from its original
5 constitutional wrong and as yet unachieved principle remedial
6 purpose, the law stands flatly opposed to CHA's desire to have
7 the judgment order interpreted in a relief-limiting way.

8 We've set forth some of the relevant cases at pages 13
9 to 17 of our written response. CHA's reply brief doesn't
10 address those cases, doesn't even refer to CHA's continuing
11 desegregation obligation. And I suggest, your Honor, that
12 those cases provide the legal framework within which the CHA
13 arguments, to which I now turn on the HOPE VI matter, must be
14 considered.

15 The first of the two major CHA arguments that the
16 judgment order should be interpreted as not applying to
17 replacement housing, flies in the face of the unambiguous
18 language of the judgment order. Indeed, CHA concedes that HOPE
19 VI funded replacement housing is covered by the dwelling unit
20 definition in the judgment order.

21 CHA says -- and I quote from page 6 of its reply brief
22 -- quote, the CHA does not disagree that HOPE VI funded units
23 would come within the definition of dwelling unit in the
24 judgment order. It's perfectly understandable that CHA doesn't
25 disagree. That dwelling unit definition was obviously written

1 to cover every imagineable way in which CHA might provide new
2 housing -- and I am quoting now from the order -- directly or
3 indirectly, whether in a structure owned in whole or in part by
4 CHA, whether or not newly constructed, whether otherwise made
5 available by or through CHA.

6 Plainly, Judge Austin was strained not to overlook any
7 kind of new housing CHA might provide.)

8 THE COURT: How about replacement housing on the site
9 that's demolished?

10 MR. POLIKOFF: Replacement housing -- it is new
11 construction -- is covered by this, your Honor, clearly, new
12 housing initially made available after the date of the judgment
13 order. And as I will show you in a moment, you have already
14 ruled, already exercised jurisdiction over replacement housing
15 designed for precisely that purpose.

16 THE COURT: How does that differ from a situation
17 where CHA might rehab completely?

18 MR. POLIKOFF: Big difference, because the judgment
19 order says, "initially made available after the date of the
20 order."

21 As we pointed out in our briefs, we have not sought --
22 ever in this case we have not sought to stretch the judgment
23 order to cover a rehab of a prior unit.

24 We have only said, when you are putting up a new unit,
25 even if it's in replacement of a demolished unit, it's covered

1 by the language of the judgment order, which, as I point out,
2 CHA itself concedes.

3 THE COURT: As a practical matter, is there really any
4 difference between the two?

5 Let's assume a hypothetical of 100 units; CHA razes
6 the building, puts up another building of 100 units, or, CHA
7 takes that original building, really guts it, rehabs it and
8 comes up with 100 units. You're saying one would be treated
9 differently than the other?

10 MR. POLIKOFF: Enormous difference, your Honor. Why?

11 THE COURT: But as a practical matter, should there be
12 any difference?

13 MR. POLIKOFF: Yes, there should be, and I will tell
14 you why.

15 If CHA razes a 100-unit building and is going to build
16 100 new replacement units, it has the opportunity thereby to
17 provide relief for the plaintiff class, because the 100 new
18 units don't have to be built in the same place that the razed
19 building stands. If you're gutting a building and rehabbing it
20 on site, you don't have that opportunity.

21 So desegregation opportunities, relief for the
22 plaintiff class, can be provided by the new 100 units. You can
23 put 50 of them out there, 50 of them in here, under your
24 current orders 50/50, so we would get 50 units of desegregated
25 housing.

1 If, on the other hand, they are simply rehabbing a
2 building, we could have drafted the order differently -- I
3 don't know whether Judge Austin would have gone along -- but we
4 made a distinction right at the outset between -- and he made a
5 judgment order on his own, a judgment decision on his own, I am
6 not going to tell CHA how to run its existing housing stock.
7 They want to rehab it -- and we didn't oppose that. We never
8 argued for that.

9 The distinction then is the distinction between an
10 opportunity to provide remedial housing opportunities to the
11 plaintiff class through newly constructed housing which has no
12 locational requirements imposed upon it and rehabbing an
13 existing building which obviously isn't being moved.

14 From the look on your face, I'm not sure you're 100
15 percent persuaded, but --

16 THE COURT: Well, following your construction, CHA may
17 have the -- assuming that your construction is the one that
18 will be followed, CHA may have the very difficult task of
19 making a policy decision that would be more costly.

20 For example, if CHA decides that it wants to keep the
21 100 units in the hypothetical building that I suggested and the
22 cost to rehab those units is more than the cost to raze the
23 building and put up 100 new units, CHA would be in a position
24 of having to pay that extra cost in order to keep those units
25 at the same site.

1 MR. POLIKOFF: They may very well, your Honor, if the
2 economics worked out that way; they might work out differently.
3 But --

4 THE COURT: It's taxpayers' money that we're talking
5 about, though.

6 MR. POLIKOFF: Yes, but if CHA has an obligation to
7 provide desegregation housing opportunities to the plaintiff
8 class members, which it does, that decision as to which way to
9 go ought to include a consideration of that persisting CHA
10 obligation to provide desegregation.

11 Indeed, I would argue -- not here arguing this point,
12 but in a hypothetical situation I would argue that that
13 obligation to provide desegregation housing for the plaintiff
14 class should weigh very heavily in CHA's decision-making.

15 But we have not tried to get into that, your Honor.
16 And if they decide to rehab under the language of the order,
17 they are free to do it without consequences under the Gautreaux
18 orders.

19 I pointed out that your Honor is being asked to
20 interpret the order in a way that does violence to its
21 language. For the reasons we have just discussed, it also does
22 violence to the logic.

23 The purpose of the order can be served, i.e.,
24 desegregation housing opportunities provided to the plaintiff
25 class through replacement housing just as effectively as

1 through incremental housing. So the purpose of the order also
2 argues for not imposing the restrictive limitation on it that
3 CHA is proposing. Indeed, I would say that CHA's request to
4 you is at war not only with the language of the order, but also
5 with its logic.

6 Finally, and perhaps most tellingly, the Court and the
7 parties have already interpreted the judgment order to embrace
8 replacement housing, starting with the Court's order of
9 December 10, 1993. The order is cited and discussed in the
10 briefs, but I've made extra copies for the Court and counsel.
11 This is the order that HUD calls the nunc pro tunc order.

12 (Document tendered.)

13 MR. POLIKOFF: Do you need an extra copy?

14 MS. GETZENDANNER: Sure.

15 MR. POLIKOFF: On page 2 and 3 of this so-called nunc
16 pro tunc order, you see that paragraph -- it's at the bottom of
17 page 2 -- paragraph number 1 refers to CHA funding applications
18 for the familiar 18 units in Lawndale.

19 But paragraph 1 over at the top of page 3 now, your
20 Honor, also covers an additional 377 units. And two project
21 numbers are referenced there, which are at Washington Park,
22 which is at North Kenwood/Oakland, for 187 units, and Cabrini
23 Green for 190, making the total of 377.

24 Paragraph 2 of the order in the middle of page 3
25 authorizes the joint venture, led by Habitat as Receiver and

1 previously approved by the Court, to develop those 18 Lawndale
2 units. And then if you drop down to paragraph 4, at the bottom
3 of page 3, you see that that authorizes the same joint venture
4 to develop the 377 Washington Park and Cabrini units.

5 Now, your Honor, a couple of months before you entered
6 this order the funding for these same 377 units had begun to
7 come from HUD.

8 On September 10, 1993, HUD notified CHA that its
9 funding application for these Washington Park and Cabrini units
10 had been partially approved, quote -- and I emphasize this --
11 for replacement housing. That's in one of the letters that was
12 delivered to the Court and counsel early last week, and I
13 emphasize those replacement housing words. In other words,
14 your Honor, these 377 units were being funded with true
15 replacement, not incremental dollars.

16 Incidentally, the same HUD letter, which is signed by
17 Mr. Shuldiner, who was then in Washington with HUD, also says
18 -- and I am quoting -- these fund reservations are conditioned
19 upon agreement of the parties to the Gautreaux litigation and
20 approval by the Court of the entity that will develop these
21 replacement units, end quote.

22 So two months later, when the Court signed the nunc
23 pro tunc order you're holding in your lap, it was not only
24 authorizing the joint venture to develop true replacement
25 housing funded with replacement, not incremental dollars; it

1 was also satisfying the HUD requirement that the Court and the
2 Gautreaux parties agree on the entity to do the developing of
3 those 377 units.

4 By the way, your Honor, the Gautreaux-funded portion
5 of the 466 units at Horner, those are also true replacement
6 dollars, not incremental dollars.

7 Now, of course, we pointed out in our brief, referring
8 to this nunc pro tunc order, that true replacement housing
9 funding had already been subjected to the Court's orders.

10 Now, what does CHA say about that? Well, in its reply
11 brief CHA says correctly that the 18 Lawndale units are being
12 built with incremental funding. But CHA is then thunderously
13 silent about the Washington Park and Cabrini Green units,
14 thereby implying that the nunc pro tunc order relates only to
15 incremental funding and does not embrace true replacement
16 funding as well.

17 We are not favored with an observation from CHA,
18 therefore, your Honor, on the fact that the Court, with the
19 written approval of all the parties -- you will note that that
20 order was consented to in writing; the signature pages are also
21 in your lap, by all the parties. The Court and all the parties
22 already agreed upon an exercise by the Court of its
23 jurisdiction over true replacement housing.

24 Parenthetically, I want to note that this nunc pro
25 tunc order covers not only true replacement housing in a

1 non-HOPE VI context, which is Washington Park in North
2 Kenwood/Oakland, but it also covers replacement housing funding
3 to be used in a HOPE VI project at Cabrini Green, 190 out of
4 those 377 units.

5 It's true, those aren't HOPE VI dollars, but they are
6 dollars to be used in a HOPE VI project for the same
7 replacement housing purpose as HOPE VI dollars themselves may
8 be used.

9 In conclusion, your Honor, the replacement housing
10 horse has long since left the barn. The Court, with the
11 written concurrence of CHA and the other parties, has already
12 exercised judgment-ordered jurisdiction over replacement
13 housing, specifically including replacement housing for HOPE VI
14 projects. And you've done this not just in the nunc pro tunc
15 order but in subsequent orders.

16 As to the location of those replacement units, you
17 will note that paragraph 4 of that order refers to subsequent
18 orders having to do with location.

19 In the face, your Honor, of these several orders
20 relating to North Kenwood/Oakland, Cabrini, Henry Horner and
21 with the language of the judgment order concededly covering
22 replacement housing, while the rationale of the order supports
23 such coverage, it would be totally inappropriate to now reverse
24 field and act inconsistently with a whole series of the Court's
25 orders as well as extensive conduct of the parties based on

1 those orders.

2 I turn to the second major CHA argument, which is the
3 supposed incompatibility between HOPE VI and the judgment
4 order, a point made about a dozen times -- I counted them -- in
5 the CHA's briefs.

6 HOPE VI and the judgment order are said to be
7 inherently and absolutely inconsistent. We are told that CHA
8 could not hope to be competitive in HOPE VI awards if the
9 judgment order applied, and that denying CHA's motion is the
10 functional equivalent of enjoining CHA from HOPE VI
11 participation.

12 Simple answer to all this: It ain't true. It is not
13 true if one compares HOPE VI and judgment order language, and
14 it is not true if one looks at the competitive record of CHA in
15 HOPE VI competitions.

16 Let me turn to the language first. CHA says -- and
17 I'm quoting -- HOPE VI has clear locational requirements for
18 which proposition it cites and quotes the HOPE VI statute which
19 provides funding for addressing, as you know, severely
20 distressed or obsolete public housing projects, for the HOPE VI
21 statute does say the following: No more than 500 units shall
22 be provided to each participating city, and such units shall be
23 located in up to three separately defined areas containing the
24 community's most severely distressed projects, including family
25 high-rise projects, end quote. That's from the HOPE VI

1 statute, which is Exhibit B to CHA's brief.

2 And this is the locational requirement, the one I just
3 quoted, to which CHA refers when it says we are, quote, clearly
4 wrong in contending that HOPE VI has no locational requirements
5 for replacement housing.

6 But, your Honor, this locational requirement I just
7 quoted applies only to the 500 selected distressed or obsolete
8 units, not to their replacement units. That's perfectly clear

1 Obviously the neighborhoods that contain the community's most
2 distressed and obsolete public housing units are not likely to
3 be non-poverty neighborhoods.

4 In short, your Honor, there exists no locational
5 requirement for HOPE VI replacement housing at all, and CHA is
6 simply wrong in implying that the locational requirement
7 applicable to the 500 selected distressed or obsolete units
8 applies to the replacement housing for those units.

9 Now, CHA then attempts to buttress this mistaken
10 argument with a flat-out misstatement, presumably designed to
11 show that contrary to the statutory and guidebook language,
12 replacement housing is confined to these severely distressed
13 neighborhoods.

14 Referring to each of CHA's HOPE VI applications, CHA
15 says at page 15 of its reply brief, "All new construction was
16 designated for neighborhoods that were in limited areas." And
17 again, "No application called for the building of any new units
18 in any general area."

19 From among many statements which demonstrate the
20 contrary, I will refer to but one which has to do with
21 replacement housing for Cabrini.

22 Here is what CHA said in its August 11, 1993
23 application to HUD, which is another of the letters that was
24 delivered to Court and counsel early last week. In this letter
25 CHA seeks HUD's approval to demolish the first building it

1 wanted to tear down at Cabrini. The sentence appears under the
2 heading, quote, Location of Replacement Units, and I now quote
3 the sentence: The proposed new units will be built on
4 scattered sites in community areas around the Cabrini Green and
5 in other sites throughout the Chicago metropolitan area in
6 accordance with the consent decree and subsequent orders of the
7 Gautreaux litigation, end quote. That statement and the others
8 like it cannot be reconciled with CHA's reply brief assertion
9 that all new construction was designated for limited areas.

10 I turn to the competitiveness issue, the other aspect
11 of this HOPE VI judgment order alleged incompatibility.
12 CHA won its initial HOPE VI award at the end of '93 in a
13 nationwide competition.

14 Now, look at the dates of the letters I've just
15 referred to. In August '93 CHA says, we're going to develop
16 replacement housing in accordance with Gautreaux. In September
17 CHA receives its first HOPE VI replacement housing funding from
18 HUD.

19 Moreover, we know what HUD believes from its own
20 lawyer's legal opinion; I'm quoting from Receiver Exhibit B.
21 Quote, in regard to the 377 replacement units for Cabrini and
22 Washington Park approved for funding by HUD in September of '93
23 and '94, the joint venture has clearly been authorized by Judge
24 Aspen. Still quoting, we also believe that any funds under
25 HOPE VI which go to replacement housing are currently a

1 Receiver responsibility. We do not believe the CHA currently
2 has any development authority for non-elderly units, end quote.

3 Now, both the joint venture and the Receiver are, of
4 course, obligated to adhere to the locational requirements of
5 the judgment order, so HUD's understanding that HOPE VI
6 replacement housing would be developed under Gautreaux clearly
7 didn't render CHA uncompetitive.

8 It didn't render it uncompetitive at first, when it
9 got the Cabrini award in '93, and it hasn't rendered it
10 uncompetitive since, for subsequent to its Cabrini award CHA
11 has received, as you know, two more HOPE VI awards: One for
12 Robert Taylor and one for Henry Horner, ABLA.

13 Thus, your Honor, a HUD that believes replacement
14 housing, including in HOPE VI projects, must be developed under
15 Gautreaux, has awarded CHA three separate HOPE VI grants.

16 What is there, then, to support the competitiveness
17 argument? In answer, your Honor, there's nothing but rhetoric.

18 In sum, there is no incompatibility between HOPE VI
19 and the judgment order. And CHA has not been uncompetitive,
20 even though HUD, not to mention CHA itself, has viewed the
21 judgment order's locational requirements as applicable to HOPE
22 VI public housing.

23 Now, before I conclude, having thus dealt with CHA's
24 two principle arguments, I would like to address a couple of
25 the CHA's subsidiary arguments very briefly, your Honor.

1 First, CHA says we haven't objected to its HOPE VI
2 applications and, therefore, we must not ourselves believe that
3 the judgment order covers new HOPE VI housing. And it derides
4 our explanation; namely, that the applications covered
5 non-housing matters as well that aren't covered by the judgment
6 order.

7 Since this isn't the waiver of rights argument but an
8 argument about what we believe, it's really not worth taking
9 much of your time, for we have told CHA unambiguously what we
10 believe. And I quote from our letter to CHA dated July 15,
11 '97, which is CHA Exhibit F. Quote, it remains the Gautreaux
12 position that court orders require the Receiver to develop all
13 public housing units even though HOPE VI funds are used, end
14 quote.

15 That is what we believe, that is what we have
16 consistently told CHA we believe, and no tortured analysis is
17 required to determine what we believe.

18 Second, CHA says in its reply brief that plaintiffs
19 admit that the HOPE VI Cabrini project has gone forward without
20 any involvement of the Receiver. And they add there is, quote,
21 no dispute that the Receiver has had, quote, no role in the
22 Cabrini HOPE VI project.

23 Your Honor, these assertions are simply not true. For
24 example, among many other things, as a direct recipient from
25 HUD of replacement housing for Cabrini, the Receiver is deeply

1 engaged in the development of the very first Cabrini
2 replacement units. These are the 44 units in the Mohawk North
3 development adjacent to Cabrini that you yourself drove right
4 by, and they were pointed out to you in the bus tour
5 Mr. Shuldiner took you on last year.

6 Now, recently Habitat submitted a public housing
7 development proposal to HUD as Receiver for CHA -- it says it
8 right on the cover -- for these very first replacement units in
9 that Mohawk North development. This is the October 24th
10 letter, also delivered to the Court and counsel last week.

11 These units, by the way, represent not only the first
12 replacement unit at Cabrini, but a potentially important
13 forward step toward mixed income housing for Gautreaux
14 plaintiff class families because they are part of and dispersed
15 throughout a market rate development.

16 Getting approval for these units from HUD is a big
17 deal, as you can easily see by the thickness of the development
18 proposal, which I'm not going to do anything more than show
19 you. These are two thick volumes. (Indicating.)

20 The cover page, which you received as part of the
21 letter that was given to you last week, says, CHA development
22 proposal, Cabrini extension, replacement units, 44 units, the
23 Habitat Company as Receiver for the Chicago Housing Authority
24 Scattered Sites Program, two volumes to get HUD approval for
25 those units. And it was Habitat, as Receiver, that submitted

1 that.

2 But another letter had to be sent, which was the
3 fourth and final letter delivered to you and counsel last week.
4 Why? Because on receipt of this huge two-volume development
5 proposal for the 44 Mohawk North replacement units, HUD pointed
6 out that a couple of the certifications contained in the
7 proposal, the development proposal, were made by CHA and not by
8 the joint venture.

9 You see, these first 44 units, replacement at Cabrini,
10 are part of the original 190 units your nunc pro tunc order
11 authorized the joint venture to develop. Under that order the
12 joint venture, not CHA, has development authority for the
13 units, so HUD wanted the certifications to come from the joint
14 venture, not from CHA. And that's what was done in the second
15 letter sent to HUD December 17, 1997. You have that letter and
16 what was delivered last week.

17 The letter explicitly says, by the way, that the
18 development proposal for these 44 units is submitted pursuant
19 to your order of ten years ago appointing Habitat as Receiver.

20 So much, your Honor, for the assertions that the
21 Cabrini HOPE VI project is going forward without any
22 involvement of the Receiver.

23 A final CHA subsidiary argument seeks to draw an
24 analogy between our current dispute here and your 1991
25 Kenwood/Oakland order as well as a Seventh Circuit decision in

1 Romney. Suffice it to say that our controversy here is about
2 developing new public housing, something clearly covered by the
3 judgment order, whereas the 1991 Kenwood/Oakland order involved
4 only rehabilitation of existing housing, something not covered
5 by the judgment order, as we discussed a few minutes ago, and
6 the Romney model city's order involved no housing at all.

7 Your Honor, you will be pleased to know I am ready to
8 conclude.

9 Even if in the face of the language of the judgment
10 order, the logic of the order and the conduct of the Court and
11 the parties under the order, you were to accept CHA's view that
12 the judgment order doesn't cover new HOPE VI housing, it would
13 be the responsibility of the Court, as we have argued in our
14 briefs, to exercise its, quote, inherent capacity to adjust
15 remedies under Freeman, 503 U.S. at 487, to see to it that the
16 remedial possibilities offered by the new HOPE VI funded public
17 housing aren't lost to the plaintiff class.

18 But given the language, the logic and the conduct of
19 the Court and the parties that we do have, the right answer is
20 not to reach that issue of inherent capacity to adjust
21 remedies, but simply to deny CHA's motion.

22 What is really at stake here, your Honor, is neither
23 the figment of a judgment order that fails to embrace
24 replacement housing, nor an imagined incompatibility between
25 the judgment order and HOPE VI.

1 What is really at stake is whether CHA shall be free
2 to replace its old high-rise ghettos with new low-rise ones
3 and, thereby, deny Gautreaux families the remedial
4 opportunities HOPE VI replacement housing holds out to them.

5 The judgment order in this case is all that prevents a
6 CHA, whose briefs don't even mention its desegregation
7 obligations, from once again taking great swaths of Chicago
8 neighborhoods and thousands of families who have not yet
9 received the relief they are entitled to, down the old familiar
10 path of least resistance to hyper-segregation and concentrated
11 poverty.

12 Happily, your Honor, the judgment order by reason of
13 its language, its logic and your enforcement orders entered
14 with the concurrence of all the parties, does stand in the way.

15 I thank you.

16 THE COURT: Thank you, Mr. Polikoff.

17 Before -- yes, Mr. Shakman, you want to say something
18 on behalf of the Receiver?

19 MR. SHAKMAN: Yes. On behalf of the Receiver, if you
20 would like to hear a little bit, we had some comments.

21 THE COURT: Sure.

22 MR. SHAKMAN: Really three points, your Honor.

23 First, Mr. Levin, who's present in court today and is
24 available to answer any questions the Court may have,
25 recognizes that he serves as the Court's agent and at the

1 Court's discretion. He has not sought to be and does not want
2 to be in an adversarial relationship with anybody, but he does
3 think to the extent he has information that bears on the issue
4 before the Court, it's appropriate that he present that to the
5 Court.

6 It's for that reason that we filed a brief on behalf
7 of the Receiver. And in the brief we pointed out that from the
8 beginning of the appearance on the radar screen of HOPE VI, the
9 Receiver has taken the position that he reads the Court's order
10 appointing the Receiver as requiring that the Receiver
11 construct all new housing that is not elderly housing, and that
12 that includes the HOPE VI program.

13 At times the CHA has agreed with that, and we have
14 attached a letter from Mr. Eisendrath that reflects that
15 agreement. At other times the CHA has not agreed with that, as
16 they do not agree now.

17 Throughout that process Mr. Levin has asked me to
18 emphasize his attitude has been to try to avoid unnecessary
19 disputes with the CHA or with anyone else and to find a way of
20 working through these problems. And he's often been able to do
21 that by agreement with the CHA; for example, by operating under
22 the title of development manager pursuant to an agreement with
23 the CHA, which has permitted him to fulfill what he understands
24 to be the obligation that he assumed when he became the Court's
25 Receiver, and to do so in a manner that has been acceptable to

1 the CHA and has avoided unnecessary disputes. That's point
2 one. I have two more points.

3 The second point I would like to make relates to
4 correcting some errors that are found in the CHA's last brief
5 that, of course, we didn't have an opportunity to respond to.
6 Part of those issues have been addressed by Mr. Polikoff and I
7 won't repeat what he has said. They relate to the Cabrini
8 Green project.

9 But one point he didn't focus on that the Receiver has
10 asked me to respond to, to mention, is this: The last brief
11 filed by the CHA states in passing, but it's one of those
12 passing comments that stings and hurts, that the Receiver has
13 sought to extract a three percent fee solely for its work on
14 these 44 townhouses that Mr. Polikoff just referred to.

15 The Receiver asked me to mention to the Court that its
16 involvement in Cabrini Green went way beyond that. It included
17 at least a thousand hours of effort, over a year-and-a-half in
18 planning the redevelopment project, in hiring architects, in
19 preparing the request for proposal that then generated ten
20 responses.

21 In reviewing all of those responses and meeting with
22 the city, with the Park District, with the Board of Education,
23 of course with HUD, of course with the CHA, and in formulating
24 plans and responding to a large redevelopment program, the
25 Receiver also developed initially in Kenwood/Oakland the

1 point that the Receiver would like me to make. And he is, as I
2 mentioned, available in court to answer any questions the Court
3 may have.

4 The third point is this: That from the Receiver's own
5 experience in creating housing pursuant to the court order
6 appointing him as Receiver, he has something to say about
7 whether it is possible, as Mr. Polikoff says, or impossible, as
8 CHA says, to provide housing that meets both the goals of HOPE
9 VI and the goals of the Gautreaux receivership.

10 And what he has to say is this: If you look at the
11 material that's attached as Exhibit B to the initial motion
12 filed, the brief filed by CHA, it includes the guidebook
13 published by HUD. And the guidebook makes it quite clear that
14 the purposes of HOPE VI housing are, as Mr. Polikoff indicated,
15 quote, tearing down the eyesores that are often identified with
16 obsolete public housing and replacing them with homes that
17 complement the surrounding neighborhoods and are attractive and
18 marketable to the people they are intended to serve, end of
19 quote. And that they are, quote, intended to lessen
20 concentrations of poverty by placing public housing in non-
21 poverty neighborhoods or by promoting mixed-income communities
22 where public housing once stood, thereby ending the social and
23 economic isolation of public housing residents, end of quote.

24 What Mr. Levin would like me to mention to the Court
25 is that that is exactly what he has been doing in implementing

1 Gautreaux and in using HOPE VI funds, because ABLA and the
2 Horner Phase II are both Receiver projects that use HOPE VI
3 funds. So the notion of incompatibility is inconsistent with
4 what is actually happening in the field.

5 And in doing that, the objective that is reflected in
6 the HUD guidebook, which is a terribly important piece of
7 national policy as well as Gautreaux objective, of
8 deconcentrating and integrating public housing residents into
9 the community so that they have an opportunity for all of the
10 advantages that flow from that kind of deconcentration and that
11 kind of integration, economic, educational, employment
12 opportunities, many others -- that's precisely what the
13 Receiver has been doing in working with the community, because
14 there is an intensive community component in persuading
15 communities that CHA replacement housing will be an asset to
16 the community, in working with elected officials, in working
17 with HUD, in working with the CHA.

18 The message that I have been asked to deliver, and I
19 hope I have, is that there appears to be, to the Receiver, no
20 incompatibility whatsoever between those two programs; that is,
21 this Court's Gautreaux objectives and what the Receiver is
22 actually doing in implementing Gautreaux housing, in some cases
23 using HOPE VI funds.

24 If you have questions for Mr. Levin, he is available.

25 THE COURT: Thank you, Mr. Shakman.

1 Is there anybody from HUD here who wishes to address
2 the Court?

3 MR. JENSEN: Good morning, your Honor. I am Jon
4 Jensen. We did file a brief response.

5 THE COURT: I know you did.

6 MR. JENSEN: But we really had not been prepared to
7 address this particular issue, unless you had any questions for
8 us.

9 THE COURT: Well, by the fact that you have decided
10 not to file a brief and are not prepared to address the issue,
11 I take it that my ruling really is a non-issue as far as HUD is
12 concerned?

13 MR. JENSEN: I think that is true.

14 I guess the only point is, we decided -- HUD decided,
15 that is, to defer to the suggestion in CHA's original brief.
16 In a footnote in their brief they claim that the issue was not
17 who had development responsibility for HOPE VI funding but
18 whether HOPE VI funded activity was subject to the basic order
19 of the Court.

20 We had very definite opinions, very much reflected in
21 Mr. Shakman's brief of the Receiver, that indeed the Receiver
22 has all responsibility connected with the development, whether
23 HOPE VI or otherwise.

24 But CHA indicated in its footnote that that was not
25 the issue that was being presented to the Court. I think they

1 said that that would entail an entirely different briefing
2 schedule and -- a motion and entirely different briefing. HUD
3 as a department deferred to CHA's suggestion in that regard.

4 THE COURT: Thank you.

5 MR. JENSEN: Thank you.

6 THE COURT: Ms. Getzendanner?

7 (Brief pause.)

8 THE COURT: Let's take about a two-minute break for
9 this case so I can call one other case and let the lawyers go
10 on their way.

11 (Whereupon, the Court directed its attention to another
12 matter on its call, after which the following proceedings were
13 had herein:)

14 THE CLERK: Clerk 66 C 1459, Gautreaux versus CHA.

15 MS. GETZENDANNER: The CHA paid \$35,000 for these two
16 volumes. They have paid him nothing more, the Receiver.

17 The Receiver has no contract with respect to Cabrini
18 Green, he has no role with respect to Cabrini Green. He did
19 ask for a three percent fee based on the building of the
20 townhouses, and knowledge of that was more than the work he had
21 done for which he could be compensated. I believe that's what
22 he said. For the work where he could not be compensated, he
23 wanted that fee to cover that work and the CHA refused. It's
24 that simple.

25 There is no role for the Receiver at Cabrini Green and

1 that's been clear, I think, from the outset, since 1993.

2 To the extent that HOPE VI funds were made available
3 to this Court and to the Gautreaux plaintiffs, those were
4 pursuant to a set-aside that was negotiated back in 1993 when
5 HUD was still in the case.

6 Basically what happened was, HUD agreed to 350 units

1 there are geographic requirements in the HOPE VI program. The
2 whole thing talks about neighborhoods where distressed public
3 housing exists.

4 If CHA were to submit an application that met the
5 terms of the decree, it would provide 50 percent of any funds
6 used for new construction would be used in general areas. And,
7 Judge, it's the CHA's position that that is a non-starter.
8 That will not be approved by HUD.

9 THE COURT: I think HUD has had the opportunity to
10 speak to that point and apparently has chosen not to.

11 MS. GETZENDANNER: Pardon?

12 THE COURT: I say, HUD has had the opportunity to
13 speak to that point and apparently has chosen not to.

14 MS. GETZENDANNER: There's no question that we have a
15 letter from HUD that says that we cannot draw down the HOPE VI
16 funds unless we get this Court's approval, and that's what
17 drove us to file our motion. And we do not believe that the
18 Court has jurisdiction over the HOPE VI funds.

19 The HUD lawyer who wrote the letter, I am told, was
20 reprimanded for writing that letter. I don't think there's any
21 basis for HUD's conclusion that the injunction governs HOPE VI.

22 They looked at the order appointing the Receiver,
23 which is different. The Receiver has no authority if the
24 plaintiffs have no authority. So the fact that the Receiver's
25 order is broadly stated is not terribly relevant to what we are

1 raising with this Court, which is, what is the scope of this
2 injunction.

3 Now, I think the best way to talk about why HOPE VI
4 isn't covered by the injunction is to assume that it is. If
5 HOPE VI applies to -- or, I'm sorry, if the injunction applies
6 to HOPE VI, what will happen is that to present a competitive
7 application to HUD we will need a waiver from this Court. We
8 cannot submit a program that calls for 50 percent of new
9 construction in general areas.

10 It's the waiver process that is the most intrusive,
11 and we've spent a lot of time in our briefs talking about the
12 waiver process. But here's how it goes in reality: CHA needs
13 to get a waiver from the Court to do a HOPE VI program. That
14 means the Court will ask us to negotiate with Mr. Polikoff, as
15 plaintiffs' representative. And that's a perfectly appropriate
16 thing for the Court to do, to ask the parties to sit down --

17 THE COURT: It's gone on for a couple decades.

18 MS. GETZENDANNER: Yes, no question about it. So we
19 will sit down and negotiate.

20 Mr. Polikoff will begin the negotiations by first
21 examining what neighborhood it is we're focusing on; next, what
22 buildings do we want to demolish; next, what buildings do we
23 want to rehabilitate; next, where are we going to build the
24 replacement housing; and then it's going to go all the way down
25 to tenant selection and then to all of the other miscellaneous

1 things that were brought to the attention of the Court by the
2 Receiver in connection with Horner.

3 So the negotiation that would be required by the
4 Court, and properly so, would bring the plaintiffs into the
5 whole program. It's very intrusive. I don't think that their
6 statement that all they care about is new construction -- the
7 new construction of new units is just part of the whole. It's
8 part of the whole program designed by CHA.

9 So they are going to want to negotiate from the
10 beginning, and in order to get an agreed waiver we would have
11 to negotiate.

12 Now, when CHA negotiates and they agree on a waiver
13 and they bring it to you, they're not happy with that order.
14 That's what they've been able to negotiate. That's not what
15 they wanted, it's not what they hoped for, but it was what they
16 were able to negotiate. So you would be subjecting the entire
17 HOPE VI program to that process because you cannot expect any
18 application to meet the HOPE VI objectives and comply with the
19 injunction. -- The injunction will have to be waived.

20 And I think when you look at it that way, how can the
21 injunction cover this, this whole program, which is designed to
22 rehabilitate neighborhoods which are in limited areas? I don't
23 -- all the social services, for example -- 20 percent of the
24 funds have to be used for social services. I don't think you
25 can build the units in general areas and have social services

1 make any difference.

2 The whole thing is pointing to neighborhood
3 redevelopment and it's a new program. We cannot agree to waive
4 the HOPE VI requirements. CHA has no power to do that.

5 I think when HUD was in the case this Court had a lot
6 of authority because the HUD consent decree required them to
7 build so many new units, but that authority is now gone. The
8 Court can't tell HUD what to do, and I don't think the Court
9 would want to. I think that really would interfere with the
10 federalism concerns.

11 Mr. Polikoff argued in terms of HOPE VI presents an
12 opportunity for desegregation opportunities for his class.
13 HOPE VI does not provide a desegregation opportunity in the
14 general areas; it simply does not. And that's what the whole
15 injunction is tilted toward, building in general areas. It's a
16 way to achieve integration. It's a 30-year-old way; it's not
17 the way Congress is doing it today.

18 THE COURT: What about the language in the HOPE VI
19 manual? It seems to be consistent with the aims of the
20 plaintiffs.

21 MS. GETZENDANNER: Judge, think of the general areas
22 in the City of Chicago. How can building in the few remaining
23 general areas in the city help the reconstruction of the Robert
24 Taylor home neighborhood? It can't. It's unconnected. It's
25 not part of the program. It's an integrated program, it

1 requires demolition, rehabilitation, Section 8 certificates,
2 building of new replacement units and social services, job
3 training, the whole thing, all devoted to that neighborhood.
4 And the goal is to make it an economically diverse
5 neighborhood.

6 I don't think you can take a line out of a handbook
7 and ignore the legislative history, the language of the
8 statute, the fact that this is a new program that's supposed to
9 reform public housing policy. It's a brand new program. It's
10 never been before this Court before in this context directly:
11 Does HOPE VI apply? Is it governed by the injunction?

12 The CHA is required under HOPE VI to work with the
13 local government, which is the City of Chicago. There's no
14 requirement to -- there's no opportunity to use HOPE VI funds
15 for any remedial injunctive relief. After the Cisneros
16 set-aside for the 350 units, Congress amended the act and said
17 that's not going to happen again. So there really is no
18 opportunity to use those monies for the Gautreaux remedy.

19 We did not respond to the cases cited in
20 Mr. Polikoff's brief -- he made that point -- because they are
21 general statements and totally inconsistent with the Seventh
22 Circuit.

23 So if you look at the Seventh Circuit law, I don't
24 think since alliance to end repression, which was my case -- I
25 don't think there's been a consent decree that the Seventh

1 Circuit hasn't sent back for re-writing, which I think the
2 Rockford case -- or totally rejected; they set it aside. So no
3 consent decree has survived Seventh Circuit scrutiny.

4 I think there was a recent case --

5 THE COURT: CHA has never moved to terminate the
6 consent decree.

7 MS. GETZENDANNER: Nor do we want to, Judge.

8 THE COURT: With your track record in the Seventh
9 Circuit, it might be in your interest to do so.

10 (Laughter.)

11 MS. GETZENDANNER: We think that the evidentiary
12 battle necessary to establish the grounds for changing the
13 injunction would be very divisive for the community. You know,
14 is there segregation, who's responsible for it, what impact
15 does white flight have on it, what impact does any number of
16 factors have to do with it. We don't want that fight, Judge.
17 We don't want it for the community.

18 The Gautreaux remedy should stay in place. In the
19 event future-funding is made available which would permit the
20 CHA to build housing in general areas, where we have an
21 opportunity to use that funding for that purpose, a Gautreaux
22 remedy will be there. Perhaps at that time we will move to
23 vacate the decree, but there is no need to do that now.

24 Just as the Court held that the Section 8 certificates
25 are not governed by this decree, there is no distinction

1 between that analysis and the HOPE VI funds.

2 We agree that the HOPE VI new construction, forgetting
3 that it is replacement housing, that does fall within the
4 definition of dwelling unit, no question about it. But we are
5 asking the Court to construe the injunction in a way that's
6 consistent with its requirements, and its requirements are
7 geographical.

1 MS. GETZENDANNER: I would like to respond. I just
2 don't recall what he said.

3 THE COURT: I will let you respond to that later, if
4 need be.

5 MS. GETZENDANNER: Okay.

6 I don't think that the Court should interpret the
7 order as applying to HOPE VI because it is, in effect, an
8 injunction against the CHA from applying for the funds. That's
9 exactly the essence of it.

10 The CHA knows they're not going to get funds if you're
11 going to build in general areas, so we can't apply. And we
12 would suggest to the Court that that's as a result of the court
13 order. And that raises concerns, federalism concerns,
14 separation of power concerns, which we have addressed in our
15 brief.

16 Judge, the program, the HOPE VI program, cannot be cut
17 into pieces. It's an integrated, complex solution. Congress
18 has said it's new, it's to reform a new way of thinking about
19 public housing. It is clearly designed to repair neighborhoods
20 that have been destroyed by distressed public housing.

21 There is no possibility that we can apply for funds
22 and expect to use those funds for general areas.

23 We've gone back and forth in our briefs about who said
24 what to whom. And again, we don't want an evidentiary battle
25 here, but there are some things that are in the record,

1 including the letters Mr. Polikoff sent to you. But there are
2 also clear indicia that plaintiffs have known for years that
3 HOPE VI funds were not considered to be under the injunction.

4 On July 11, 1996, Mr. Cisneros wrote to Mr. Polikoff,
5 and that's at Exhibit D attached to our original memorandum,
6 and he says, as a matter of law we cannot use HOPE VI funds as
7 a set-aside for Gautreaux. As a matter of law we can't do
8 that. A set-aside to the Receiver is not appropriate because
9 the statute in the first instance leaves to the public housing
10 authority's discretion whether it wants to apply for a HOPE VI
11 grant at all and how it would want to use the funds for which
12 it applies.

13 So that's a clear statement by the then secretary of
14 HUD that the HOPE VI money could not be used for the Gautreaux
15 remedy, and this is after the 1993 set-aside, which did get
16 through but which Congress then condemned with an amendment to
17 the law. I withdraw condemned. They made sure it wasn't going
18 to happen again.

19 So the plaintiffs have known. We think that their
20 application on the Section 8 certificates is pretty positive
21 proof that they didn't think HOPE VI was governed.

22 There's nothing in the record that should be binding
23 on the CHA that their view is that the injunction covers HOPE
24 VI funds. I don't think there's anything in Edwin Eisendrath's
25 letter from several years ago; I don't think there's anything

1 in the record that should be binding on the CHA.

2 The CHA has taken the position since 1993 that HOPE VI
3 funds are outside the scope of the decree.

4 Thank you.

5 THE COURT: Thank you, Ms. Getzendanner.

6 I have a couple of questions of Mr. Polikoff, which I
7 will let you respond to, if you wish.

8 First of all, as a practical matter, assuming that the
9 social service and job training dollars of HOPE VI are used in
10 the area where the housing is demolished, how will the social
11 service and job training dollars be available in the general
12 areas? Is that a logistical problem?

13 MR. POLIKOFF: It isn't a problem because the
14 objective is not one that's required or even sought. I have an
15 example of that at Horner, which I will give you in a moment.
16 Even though it's not a HOPE VI project, it presents the
17 identical question you're raising.

18 I want to make it clear at the outset, in answering
19 your question, that as I think is plain but it keeps getting
20 blurred in CHA's written and oral presentations, we are not
21 talking about all of HOPE VI funding and programs, including
22 specifically the one you used in your question, the social
23 service programs. We have not suggested, are not suggesting,
24 we do not intend to suggest that your orders cover in any way
25 the social service programs --

1 THE COURT: No, and I understand that completely.

2 MR. POLIKOFF: Okay.

3 THE COURT: I am just concerned about whether the
4 persons in the new housing in the general areas will, by
5 necessity, not have the benefit of the HOPE VI dollars for
6 these other ancillary activities.

7 MR. POLIKOFF: It's up to CHA, your Honor, and I refer
8 to the example of Horner. In Horner a vote was taken -- which
9 is not a HOPE VI project but which CHA acknowledges in its
10 brief in many respects is like a HOPE VI project.

11 The tenants were given an opportunity to express their
12 choice with respect to the form of replacement housing, on
13 site, in the neighborhood, in other neighborhoods, scattered
14 site or Section 8. Roughly about half chose one, half chose
15 the other. So half of the Horner people have been dispersed to
16 other neighborhoods of the city.

17 Are the job training dollars, if there were any at
18 Horner, all the social services activities at Horner, to follow
19 those people to West Rogers Park? That's for CHA to decide or
20 not to decide. I think it's pretty clear that they are not.

21 Indeed, there was supposed to be a family needs
22 assessment taken under the Horner consent decree of all of the
23 people, and my understanding is it's pretty well decided not to
24 take such an assessment of people who have chosen to leave.
25 But even if it is taken, not to follow up the services.

1 Ms. Getzendanner is right when she says there is a
2 neighborhood focus to HOPE VI activities, and the focus on the
3 neighborhood of the job training dollars would be perfectly
4 appropriate.

5 If CHA wanted to offer any of those social services to
6 people who moved, it would be up to them. They could do that;
7 nothing to prevent them. We are not asserting, have not
8 asserted, any claim by a Gautreaux on anything but the
9 replacement housing, where it's located.

10 THE COURT: Okay.

11 Ms. Getzendanner --

12 MR. POLIKOFF: By the way, I want to add a footnote to
13 what I just said. That's consistent with the language of HOPE
14 VI. HOPE VI talks, as I quoted to you, about replacement
15 housing going into non-poverty neighborhoods. There is not one
16 indication in the statute or the guidebook that the HOPE VI
17 proponent, in this case CHA, has got to follow those people
18 into non-poverty neighborhoods with job training.

19 The whole theory of desegregation is that if you
20 enable families to move into non-poverty neighborhoods, they
21 would be forced to get into places where security is better,
22 where access to jobs is better, where schools is better and
23 they have a lesser need by reason of their location for social
24 services.

25 THE COURT: You quoted some language earlier of Judge

1 Austin's that applied to replacement housing in particular.

2 Ms. Getzendanner, I think --

3 MR. POLIKOFF: Yes. I think Ms. Getzendanner is -- it
4 pains me to say this, your Honor -- right and that we were not
5 right in this respect.

6 THE COURT: All right.

7 MR. POLIKOFF: I think what she is referring to and
8 what you were asking about was language that I quoted from the
9 judgment order.

10 THE COURT: Okay.

11 MR. POLIKOFF: And it referred -- it didn't use the
12 word replacement. It did talk in terms of housing provided
13 directly or indirectly by CHA, whether in a structure owned in
14 whole or in part by CHA, whether or not newly constructed or
15 not, et cetera. It did not use the word replacement.

16 THE COURT: It did not use the word replacement.
17 Okay. That's fine.

18 It's your contention that that language embraces
19 replacement housing, is that correct?

20 MR. POLIKOFF: Well, not only the language embraces
21 it, but as I argued, that's the rational thrust of the order,
22 because through replacement housing you can provide
23 desegregation opportunities. But, also, that your prior
24 orders, the nunc pro tunc and subsequent orders --

25 THE COURT: I understand my prior orders. I just want

1 to make sure we all have the same reference to Judge Austin's
2 --

3 MR. POLIKOFF: When I say embraces -- answer you
4 affirmatively by saying, yes, it's my contention it embraces
5 replacement housing, I mean that not because it says that in so
6 many words, but that it obviously sought to cover all kinds of
7 housing provided by CHA which could be used to provide
8 desegregation opportunities, and replacement housing answers
9 that description.

10 THE COURT: Okay. Thank you.

11 MR. POLIKOFF: Thank you, your Honor.

12 THE COURT: Do you want to reply to either of those
13 points, Ms. Getzendanner?

14 MS. GETZENDANNER: No. I'm happy to have his
15 concession.

16 MR. SHAKMAN: Mr. Levin asked me if I would poke my
17 nose in for a moment. May I?

18 THE COURT: Sure.

19 MR. SHAKMAN: He asked me to make this point, that
20 Cabrini, Horner II, which is a HOPE VI program, and ABLA, which
21 involves HOPE VI money, none of those required a waiver from
22 Gautreaux to permit a HOPE VI application. He asked me to
23 underscore that point for the Court.

24 Therefore, the statement that automatically you must
25 have a Gautreaux waiver in order to implement a HOPE VI

1 activity, for example, in those revitalizing areas, is not
2 correct.

3 And I am going to resist the urge to further debate
4 the scope of the --

5 THE COURT: You don't have to debate any ancillary
6 issues. I understand your position.

7 MR. POLIKOFF: Your Honor, might I make one more

1 Thank you.

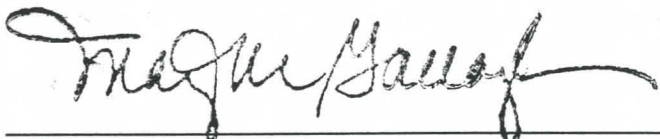
2 MR. POLIKOFF: Thank you, your Honor.

3 (Which were all the proceedings had at the hearing of
4 the within cause on the day and date hereof.)

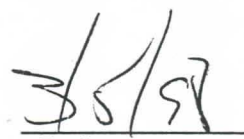
5 CERTIFICATE

6 I HEREBY CERTIFY that the foregoing is a true,
7 correct and complete transcript of the proceedings had at the
8 hearing of the aforementioned cause on the day and date hereof.

9

10 

11 Official Court Reporter
12 U.S. District Court
13 Northern District of Illinois
14 Eastern Division

15 
16 Date

17

18

19

20

21

22

23

24

25



The Chicago Housing Authority

Board of Commissioners

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Daniel Solis

Graham C. Grady
Chief Operating Officer

May 18, 1995

VIA MESSENGER

Mr. Edwin Eisendrath
Secretary's Representative
United States Department of
Housing and Urban Development
77 West Jackson Boulevard
Room 2608
Chicago, Illinois 60604-3507

Re: Application for Partial Demolition of Low
Income Public Housing (IL2-20)

Dear Mr. Eisendrath:

This correspondence is written to transmit to your office for approval the Chicago Housing Authority's ("Authority") formal "Application for Partial Demolition of Low Income Public Housing - IL2-20".

The Application requests HUD's approval for demolition of 398 units at the Cabrini Green Extension (IL2-20) for the following buildings:

1150-60 N. Sedgwick	262 units
1157-59 N. Cleveland	136 units

The 1157-59 N. Cleveland building is currently vacant and boarded-up and will be part of Phase I demolition. The 1150-60 N. Sedgwick structure presently has an occupancy rate of 67.94 percent and will be included in Phase II demolition.

The Application has been prepared in compliance with 24 C.F.R. Part 970, Public Housing Program-Demolition or Disposition of Public Housing Projects; HUD Handbook and Conversion Handbook; HUD Notice PIH 93-17 and 57 FR 46074, Requirements Relating to the Resident Organizations' Opportunity to Purchase Development proposed for Demolition.

626 West Jackson Boulevard • Chicago, Illinois 60661 • Telephone (312) 791-8500

EXHIBIT D

Mr. Edwin Eisendrath, HUD

May 18, 1995

Page 2

These buildings are being proposed for demolition due to their physical conditions as well as de-densification of the development.

Approval of this demolition request is vital to the Authority's efforts to rebuild and extend the life of this public housing development through the reduction of housing density as expressed in the Authority's May, 1993 Urban Revitalization Demonstration Application.

The Demolition Plan and the actions proposed therein are in compliance with applicable HUD regulations and the Authority's action is in compliance with applicable civil rights laws and compliance agreements.

Should you have any questions concerning the Application, please contact Andrew Rodriguez, Director, Construction Management at (312) 567-7775, extension 1004.

Sincerely,



Marilyn F. Johnson
Acting Executive Director/
General Counsel

MFJ:PNB:mr

a: Boc9.Demolit.let

4. Location of Replacement Units

The proposed new units will be built on sites in community areas around the Cabrini-Green development, and on other sites throughout the Chicago metropolitan area, in accordance with the *Gautreaux v. Chicago Housing Authority* (Nos. 66 C 1459 *et al.*) modified Consent Decree and subsequent orders or waivers thereto. All sites will be selected in accordance with applicable HUD requirements and the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

5. Development Schedule

The replacement housing units will be developed in accordance with time frames and requirements of the HOPE VI Grant Agreement between CHA and HUD. The schedule, which is subject to change with HUD approval is:

ACTION	ESTIMATED TIMEFRAME
HUD approval of HOPE VI Revised Plan to Revitalize Cabrini-Green and bond issue	Expected May 1995
Contract of Sale	November 1996
Construction Start	December 1996
Occupancy (Date of Full Availability) for all replacement units	December 1998

6. Resident Relocation

The building at 1157-1159 North Cleveland was vacated in October 1993 due to dangerous and hazardous conditions. Relocation of the 1150-1160 North Sedgwick building will occur as described in Section E and in accordance with the HUD relocation requirements.



The Chicago Housing Authority

August 11, 1993

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Chief Operating Officer

Dr. Daniel W. Blue, Jr.
Deputy Chief Operating Officer

F. Willis Caruso
General Counsel

Mr. Joseph P. Garaffa
Acting Regional Administrator
United States Department of Housing
and Urban Development
77 West Jackson Blvd-Room 2608
Chicago, Illinois 60604-3507

**Re: APPLICATION FOR DEMOLITION OF PARTIAL
LOW INCOME PUBLIC HOUSING PROJECT IL2-20**

Dear Mr. Garaffa:

This correspondence is written to transmit the Chicago Housing Authority's formal "Application for Demolition of Partial Low Income Public Housing Project - IL2-20", to your office for submission and approval.

The Application requests HUD approval for the demolition of a 262 unit building located at 1117-1119 N. Cleveland in the Frances Cabrini Homes Extension (IL2-20).

This Application has been prepared in compliance with 24 CFR Part 970, Public Housing Program-Demolition or Disposition of Public Housing Projects; HUD Handbook 7486.1, The Public Housing Demolition, Disposition and Conversion Handbook; HUD Notice PIH 93-17 and 57 FR 46074, Requirements Relating to the Resident Organizations' Opportunity to purchase Development proposed for Demolition.

The demolition of this nineteen-story vacant structure is an integral part of the Authority's Urban Revitalization Demonstration (URD) proposal submitted to the HUD Washington D.C. office in May, 1993.

In this proposal, the Authority requested \$50 million dollars in URD funding to aid in its comprehensive plan for the physical, social and economic restructuring and rebirth of the Cabrini-Green communities.

EXHIBIT E

**APPLICATION FOR DEMOLITION OF PARTIAL
LOW INCOME PUBLIC HOUSING PROJECT IL2-20**

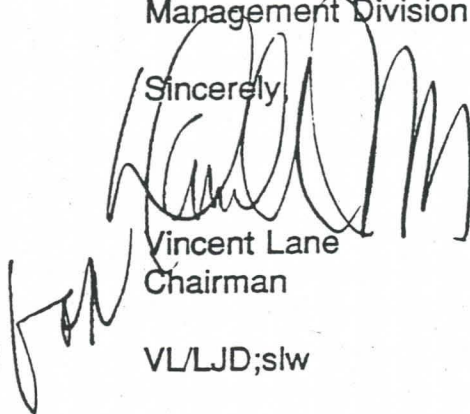
-2-

Therefore, approval of this demolition request is vital to the Authority's efforts to rebuild and extend the life of this public housing development through the reduction of housing density.

The Demolition Plan and the actions proposed therein are in compliance with applicable HUD regulations and: (1) the relocation resources are decent, safe and sanitary and affordable, (2) no demolition or disposition action shall take place until all displaced tenants have been successfully relocated, unless there is to be staged relocation and staged demolition or disposition, and (3) that PHA action is in compliance with applicable civil rights laws and compliance agreements.

Should you have any further questions concerning this Application, please contact Lela J. Davis, Assistant to the Director, Construction Management Division at (312) 567-7861.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Vincent Lane', is written over the typed name and title.

Vincent Lane
Chairman

VL/LJD;slw

3. DEVELOPMENT METHOD

The Authority intends to develop the 190 new development replacement units through new construction utilizing a modified Turnkey Development method, wherein CHA will acquire the sites required for construction.

The additional 72 replacement units are part of the Authority's Urban Revitalization Demonstration program application, which permitted treatment of up to 500 units of distressed housing in one development. The Authority intends to combine its development and rental program in the Cabrini area with a Mixed Income New Communities Strategy (MINCS) Program, as detailed in the URD application submitted to HUD on May 5, 1993.

Replacement of these URD units in the Cabrini Extension will be provided by a variety of means, including the development of new low-income units in multi-family housing complexes on existing large sites in the community surrounding area and in other areas throughout the city and suburbs; rehabilitated apartments in the Cabrini complex; renovated existing housing in the surrounding community; rental or purchase of housing in HUD, Fannie Mae, and Freddie Mac foreclosed or assigned properties through the Chicago metropolitan area.

4. LOCATION OF REPLACEMENT UNITS

The proposed new units will be built on scattered sites in community areas around the Cabrini-Green, and in other sites throughout the Chicago Metropolitan area, in accordance with the Consent Decree (and subsequent orders) of the Gaurteaux litigation. All sites will be selected in accordance with the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

Of the 500 total URD units, the Authority plans to replace 285 by constructing new low-income housing units on vacant land which presently exists in a one mile by three quarter mile area immediately surrounding (and including) the Cabrini-Green complex. The proposed replacement housing will be matched with development or market rate units to promote and economic, racial and cultural mix. The areas bounded by North Avenue on the North; Wells Street on the East; Superior on the South; and Chicago River and Halsted on the West.

The area contains over 40 acres of land, with about 25 acres of 62 percent already in public ownership by CHA, the Board of Education, or the City of Chicago. The remaining 16-plus acres of existing vacant land will be acquired on the open market at the fair market value or through eminent domain with court established compensation.



The Chicago Housing Authority

Board of Commissioners

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Deputy Chief Operating Officer

F. Willis Caruso
General Counsel

January 18, 1994

Mr. Edwin Eisendrath
Regional Administrator
Regional Housing Commissioner
U.S. Department of Housing and Urban Development
Chicago Regional Office, Region V
77 West Jackson Blvd. 26th Floor
Chicago, Illinois 60604

Dear Mr. Eisendrath:

Subject: Application for Partial Demolition IL2-20
Frances Cabrini Homes Extension

This correspondence is in response to your October 20, 1993 letter concerning the deficiencies in the Application for Partial Demolition of IL2-20, the Frances Cabrini Homes Extension.

The Chicago Housing Authority's responses to said deficiencies are as follows:

1. Resident Comments

Attached please find a certification indicating that no resident comments were received concerning the proposed demolition.

2. Condemnation Correspondence from City of Chicago

The Chicago Housing Authority did not offer the 1117 - 1119 N. Cleveland building for sale to the Cabrini Extension Local Advisory Council pursuant to Section 412 of the National Affordable Housing Act, Public and Indian Housing Notice 93-17 issued April 2, 1993 based on Federal Register 57 FR 46074 Section II (B) (1) which states as follows:

The CHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

As required by the Federal Register Notice, we are enclosing the following documentation demonstrating that the building is a threat to the health and

Mr. Edwin Eisendrath
January 18, 1994
Page Two

safety of residents: a complaint filed by the City of Chicago against the Chicago Housing Authority, 90M1403139, praying for relief in the form of either a permanent injunction or demolition of said building.

In addition, please find an Agreed Order of Dismissal in this cause of action granting a mandatory permanent injunction against the Chicago Housing Authority prohibiting it from renting, leasing or occupying 1117 - 1119 N. Cleveland.

Please be aware that we are not invoking the Section II (B)(2) exception of the Section 412 Federal Register Notice involving condemnation of the building and therefore are not enclosing a letter of condemnation from the City of Chicago.

3. Schedule for Requesting Replacement Housing Resources

As indicated in the original application for partial demolition, 72 of the 262 units proposed for demolition will be replaced with funding provided by the Authority's Urban Revitalization Demonstration (URD) for the Cabrini Extension. In a letter dated November 17, 1993, HUD approved the award of \$50 million to the Authority under the URD program. It is expected that development of these units will commence within 24 months of the execution of a grant agreement with HUD for the URD program.

On August 12, 1993, the Authority submitted an application for public housing development funds for replacement of the remaining 190 units. In his letter dated September 30, 1993, the Assistant Secretary for Public and Indian Housing indicated HUD's approval of funding for 107 of the 190 replacement housing units from the fiscal year (FY) 1993 Public Housing Development program. The development of these units has been subcontracted to the Joint Venture comprised of the Chicago Metropolitan Housing Development Corporation (CMHDC) and the Habitat Company. This arrangement has been approved by all parties involved and the Court. Development of the new public housing is expected to commence within 24 months.

With its development application and in subsequent correspondence, the Authority also requested that the

Mr. Edwin Eisendrath
January 18, 1994
Page Three

remaining 83 units be replaced through HUD's funding of 15-year Section 8 Certificates. In his letter dated December 10, 1993, Assistant Secretary Shuldiner indicates that HUD does not have sufficient funds in fiscal year 1993 to provide the Section 8 Certificates. His letter does state, however, "The Department will commit itself to providing the additional development units needed, subject to the availability of such funds."

The Authority (and/or the CMHDC/Habitat Joint Venture, as necessary) intends to apply for funding for the replacement units under Notices of Funding Availability (NOFAs) for the Public Housing Development program and the Section 8 Program in fiscal year 1994, and subsequent years if necessary. It is expected that development would commence within 24 months of funding approval.

4. Replacement Housing Plan - Census Tract Identification

In its October 18, 1993 letter, HUD has indicated that the Replacement Housing Plan (RHP) does not contain the census tract in which the Authority proposes to build replacement units. While this pre-identification may be possible for certain other public housing agencies (PHAs), the Chicago Housing Authority faces unique circumstances due to the constraints for site location imposed by the Gautreaux litigation.

The proposed new units will be built on scattered sites in accordance with the Consent Decree (and subsequent orders) of the Gautreaux v. CHA et. al. litigation. The Authority intends to continue working with the City of Chicago to acquire city-owned vacant lots and other suitable sites. All sites will be selected in accordance with the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

Since the replacement units will be developed by the CMHDC/Habitat Joint Venture, all site selection will be conducted through the regular development program approval process, with any proposed units in Gautreaux "Limited" Areas being presented to the Gautreaux waiver committee for determination. When they are identified, potential sites will be forwarded to HUD through normal review process, and

Mr. Edwin Eisendrath
January 18, 1994
Page Four

be subject to HUD site and neighborhood standards, environmental review, and other requirements, unless a waiver is approved by HUD. This process, under which determinations cannot be made until specific sites are proposed, is consistent with that outlined in your letter to the Authority of November 17, 1993 regarding the process for site selection under the Mixed Income New Communities Strategy (MINCS).

In addition, at the time the demolition application was submitted to HUD on August 11, 1993, the Authority had not even been notified by HUD of how many, if any, units would be approved for replacement. HUD did inform the Authority in mid-October of the award of funding for 105 replacement units, and subsequently indicated that sufficient funds were not available in fiscal year 1993 for the award of Section 8 Certificates to serve as replacement units for the remaining unfunded replacement units as requested by the Authority. Without knowing how many and when units will be funded, neither sites nor census tracts could be pre-identified.

Given this site review process, the uncertainty of the type of funding program (Development or Section 8) for all replacement units, and the unique constraints of Gautreaux, the identification of specific census tracts where replacement housing will be built is premature. The Authority therefore requests an exemption of HUD's request for identification of specific census tracts in the demolition application. If such a request requires a waiver of any regulations or HUD requirements, the Authority hereby requests such a waiver of good cause due to the unique constraints in the development process of the Gautreaux litigation and remedy.

City Council Resolution

The Authority has been working in conjunction with the Alderman's Office in the ward in which Cabrini is located, the Mayor's Office, HUD staff and others to obtain Chicago City Council approval of the replacement housing plan. To date, the Alderman has not been willing to introduce such an ordinance into City Council for consideration, due in large part to the relationship of this proposed demolition to the Urban Revitalization Demonstration (URD) Program.

Mr. Edwin Eisendrath
January 18, 1994
Page Five

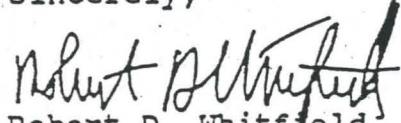
Given the unique circumstances involved with the URD and the ordinance for the replacement housing program for the proposed demolition under this application, the Authority is requesting an extension of 60 days to obtain City Council approval. It is our understanding that this extension request has already been forwarded from the HUD local office to HUD Headquarters for approval.

Board of Commissioners Resolution

The CHA Board of Commissioners approved the submission of the revised application for partial demolition and replacement housing plan of the 262 units in Francis Cabrini Homes Extension, (IL2-20) at its regular meeting on January 18, 1994. A copy of the resolution is attached.

If you have any questions, please do not hesitate to contact Thom Finerty at (312) 791-8612 or Lela Davis at (312) 567-7775.

Sincerely,


Robert D. Whitfield
Chief Operating Officer

Enclosures

RDW/LJD/blb
A:PARTDEMO



THE HABITAT COMPANY

December 17, 1997

Mr. Kevin Emanuel Marchman
Acting Assistant Secretary
Office of the Assistant Secretary for Public and Indian Housing
U.S. Department of Housing and Urban Development
451 Seventh Street SE
Washington, D.C. 20410-5000

RE: Submission of Development Plan for Mohawk North and Old Town Square

Dear Mr. Marchman:

The Habitat Company ("Habitat"), as Receiver for Chicago Housing Authority's Scattered Site Program, submitted the above referenced Development Plan (the "Plan") on October 24, 1997. With this letter, please note that the Plan is hereby submitted, pursuant to the Court Order, dated August 14, 1987, Gautreaux v. CHA and HUD, U.S. District Court, Northern District of Illinois, Case Nos. 66 C 1459 and 66 C 1460, by the Joint Venture between Habitat and the Chicago Metropolitan Housing Development Corporation ("CMHDC"), hereafter referred to as the "Joint Venture".

In addition, on Pages 14 and 29 of the Plan, it states that "CHA certifies...". Please strike those references and add the following in their place:

Page 14: The Joint Venture certifies that it will comply with the Uniform Relocation Act and all other applicable Federal relocation requirements.

Page 29: The Joint Venture hereby certifies, makes assurances and warrants to HUD in accordance with Section 941.606 (n) of the Regulations:

"That is has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under the Regulations..." (See Exhibit III for correspondence from HUD in regards to their opinion on the concept of the lease.)

The Joint Venture will be responsible to HUD for ensuring that the public housing units are developed in accordance with all applicable public housing requirements, including the ACC, and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time.

EXHIBIT G

Page 2

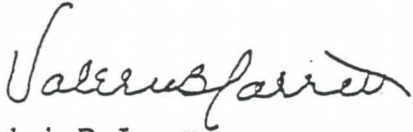
Letter to Kevin Emanuel Marchman

December 17, 1997

If you have further questions please feel free to contact us at 312.527.7471 (Jarrett), or 312.422.1680 (Leon).

Sincerely,

The Joint Venture Between Habitat and CMHDC



Valerie B. Jarrett
Executive Vice President
The Habitat Company, as Receiver



Rafael M. Leon
Executive Director
Chicago Metropolitan Housing Development Corporation

VBJ/RML/mjn

c: Louis Berra
Joseph Shuldiner
Jeffrey C. Rappin

LDRAFT\ADMIN\CABRINT\MOHWKOLD JV
192

THE HABITAT COMPANY
AS RECEIVER FOR
THE CHICAGO HOUSING AUTHORITY

SCATTERED SITES PROGRAM

PHA DEVELOPMENT PROPOSAL
CABRINI EXTENSION (IL2-20) REPLACEMENT UNITS

44 UNITS

CABRINI EXTENSION
IL06-P002-182
CHICAGO, ILLINOIS

Volume 1 of 2



November 14, 1995

Distribution: 11/17/95 kac
Executive Offices
J. Shuldiner
A. Vargas
J. Nelson
E. Moon
Dr. C. Adams
H. Holton
M. Johnson
R. Monacchio
D. Moore

S. Oriakhi
Pistilli/Owens
B. Prescott
A. Rodriguez
A. Rytyn
File

Mr. Daniel Levin
Chairman
The Habitat Company
350 West Hubbard Street
Chicago, IL 60610

RE: Cabrini Green Development Program

Dear Mr. Levin:

This will confirm our understanding and agreement that as Receiver under the court order in the Gautreaux case, you will perform the function of CHA's "development manager" for the Cabrini Green development program, including the Hope VI program, similar to the manner in which you are functioning in the Henry Horner Homes development program.

Sincerely,

Edwin Eisendrath
Secretary's Representative

Copy to: Joe Shuldiner

EXHIBIT H

Fee



The Chicago Housing Authority

March 25, 1996

Edwin Eisendrath
Chairman

Joseph Shuldiner
Executive Director

Executive Committee
Rosanna Marquez
Artensa Randolph
Timothy W. Wright III
Dr. Mildred Harris

Ed Moses
Deputy Executive
Director for Community
Relations & Involvement

John Nelson
Deputy Executive
Director for Operations

Ar Vargas
Deputy Executive
Director for Finance and
Administration

Hon. Henry G. Cisneros, Secretary
Dept. Of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Dear Secretary Cisneros,

Thank you for your letter to me dated March 15, 1996 in regard to the need to provide viable housing options for low income persons whose mobility impairments or health conditions prevent the use of stairs. Please be assured that we, at the Chicago Housing Authority, are very aware of the need to maximize the availability of such units. Further, because so much of our existing stock is not handicapped accessible, and cannot easily be made so, we, too, look upon the new construction replacement and scattered site units as our best opportunity to increase this stock.

Further be assured that I have mentioned this need to the Habitat Company in the past. As you know, whether as receiver for our scattered site units, or as development manager for the replacement units at Cabrini, Horner, and the Lakefront, the Habitat Company administers our new construction efforts.

I will share with them your letter and your concern, and continue to work with them to maximize the percentage of the units built which can be both lived in and visited by persons with mobility impairments.

Thank you again for your letter and support.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joe Shuldiner", written over the typed name.

Joseph Shuldiner

cc: Edwin Eisendrath
Dan Levin
Valerie Jarrett ✓
John Nelson
Andy Rodriguez

EXHIBIT I

THE HABITAT COMPANY

August 30, 1996

Mr. Richard Monocchio
Special Assistant to the Executive Director
Chicago Housing Authority
626 West Jackson Street, 7th Floor
Chicago, Illinois 60661

*Via Facsimile: 312/627-0346***Re: Cabrini-Green**

Dear Rich:

As you know, the Cabrini HOPE VI Revitalization Program includes funding for 303 units which has been funded directly to CHA, plus 190 replacement units funded directly to The Habitat Company as Receiver for the CHA Scattered Site/Replacement Program. Since the takeover of the CHA by HUD in 1995, we have worked actively as Development Manager for the construction of all 493 replacement units.

We have tabulated the exclusive costs attributed to date to the Cabrini HOPE VI, through June 30, 1996, and prorated the administrative and overhead costs attributable to the 190 units and the 303 unit HOPE VI, respectively. In the case where there are direct costs that can be attributable to the HOPE VI program only, such as the issuance of the RFP, then they were assigned as 100% to HOPE VI. An itemization of our cost is enclosed and the total amount attributable to the HOPE VI is \$149,881. We would appreciate your arranging for CHA to remit a check payable to The Habitat Company for this amount.

Although there is apparently a new issue regarding the role of The Habitat Company as Development Manager because of the expanded geographic areas beyond the original 9.3 acres, we continue to actively staff and coordinate the planning process. We look forward to quickly resolving any open matters and proceed to execute the Development Manager Agreement we have discussed over the past several months.

As always, we are available to discuss any aspects of the enclosed if you have any questions.

Sincerely,
SCATTERED SITE PROGRAM



Philip A. Hickman
Director

PAH/ksc

I:\phil\correspo\ssp\monocchio.ltr

350 West Hubbard Street - Chicago, Illinois 60610 - Tel: 312.527.5400 - Fax: 312.527.4639

EXHIBIT J

cc: Daniel Levin
Douglas R. Woodworth
Valerie B. Jarrett
Edwin Eisendrath
Alexander Polikoff, Esq.

The Habitat Company
Cabrini HOPE VI Urban Revitalization Program
Costs to date as of June 30, 1998

	Pgm. 182 (107 Units) 21.70%	Pgm. 182 (83 Units) 18.84%	HOPE VI (303 Units) 61.46%	TOTAL (493 Units) 100%
Administration - (Prorata)	\$43,321	\$33,604	\$122,878	(b) \$199,802
Planning - (100% HOPE VI)	0	0	26,764	(a) 26,764
Non-dwelling equipment - (Prorata)	156	121	441	717
	<u>43,477</u>	<u>33,725</u>	<u>149,881</u>	<u>227,083</u>

Note: Administration and Non-dwelling equipment expenses were prorated using the percentage of units in each program.

(a) Actual HOPE VI costs Included in Planning	
(1) Johnson & Lee	\$14,086
(2) Best Photo	419
(3) Mossner	1,493
(4) Chicago Motor Coach	462
(5) Terra Testing	10,304
TOTAL	\$26,764

(b) Actual HOPE VI costs Included in Administration	
Nontechnical Salaries	\$18
Technical Salaries	77,749
Legal Expenses	3,251
Employee Benefits	12,790
Travel	3,580
Publications	222
Membership dues	461
Telephone	2,341
Sundry (c)	22,262
TOTAL	\$122,675

Vendor/description	Check Number	Amount	Date Paid
(1) Johnson & Lee			
Architect	1938	\$4,350	31-Mar-96
	1989	9,736	30-Apr-96
TOTAL		\$14,086	

(2) Best Photo			
Cabrini Maps	1573	419	17-Nov-95
TOTAL		\$419	

(3) Mossner			
Cabrini Map	1275	\$28	14-Aug-95
Proposal copies	1275	48	14-Aug-95
Atlas Map	1293	30	22-Aug-95
Map Reproduction	1293	13	22-Aug-95
RFP	1557	229	13-Nov-95
RFP	1557	820	13-Nov-95
Handbook copies	1557	70	13-Nov-95
Map prints	1617	7	Dec-95
Planning Area Maps	1750	21	18-Feb-96
Soil Bor-Hope VI-addendum	1750	171	18-Feb-96
Copies	9596	56	21-Sep-95
Copies	9403	1	24-Jul-95
TOTAL		\$1,493	

(4) Terra Testing			
Soil borings	1654	\$10,304	19-Dec-95
TOTAL		\$10,304	

(5) Chicago Motor Coach			
Cabrini bus tour	1434	\$331	19-Oct-95
Cabrini bus tour	1435	\$331	19-Oct-95
Cabrini bus tour	Receipt	(\$200)	07-Nov-95
TOTAL		\$462	

TOTAL PLANNING COSTS	\$26,764
-----------------------------	-----------------

(c) Actual costs Included in Sundry	
Rent	5,977
Audit	2,369
Temporary Labor	11
R. M. Equipment	428
Office Supplies	805
Advertising	3,403
Meetings	5
Delivery/Messenger	193
Postage	72
Insurance	123
Equipment Leasing	2,264
Printing	822
Other	5,790
TOTAL	\$22,262

DEPOSIT TICKET
FOR CLEAR COPY, PRESS FIRMLY



American National Bank
and Trust Company of Chicago • Chicago, Illinois 60600

DATE

1/8/97

CURRENCY	COIN	LIST EACH CHECK	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			149881																			

PLEASE ENTER TOTAL

TOTAL DEPOSIT
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

TOTAL ITEMS

PLEASE BE SURE ALL ITEMS ARE PROPERLY ENDORSED

CMHDC/THE HABITAT COMPANY
JOINT VENTURE

Pgm 182
Reimbursement for
thru 6/30/96

⑈071000770⑈ 04294831⑈

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS TO THE TOP AND LEFT

THE CHICAGO HOUSING AUTHORITY

PAY LOC.	CHECK DATE	THE AMOUNT OF	CHECK NO.
CHICAGO	12/27/96	149,881.00	003394

ONE HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY ONE DOLLARS AND 00 CENTS

PAY ONLY 149881.00

PAY TO THE ORDER OF

THE HABITAT COMPANY
350 W. HUBBARD
CHICAGO, IL 60611

VOID OVER \$149,881.00

John Shields

⑈003394⑈ ⑈071923226⑈ 94 19829⑈

Customer Receipt

This transaction is subject to the rules of the Bank and to the agreements governing your account.
Deposits and payments are subject to verification by the Bank.

Thank you for doing business with American National Bank.

[Signature]

149,881.00 DDA DEP 6994 003-051
JAN08-97 13:49:08 4294831

American National Bank
and Trust Company of Chicago

F77 1119 000 R.5.91

THE HABITAT COMPANY
350 W. HUBBARD
CHICAGO IL 60611

THE CHICAGO HOUSING AUTHORITY

NAME		VENDOR NO.		CHECK NO.	
THE HABITAT COMPANY		904302		003394	
INVOICE DATE	INVOICE NO.	INVOICE DESCRIPTION	GROSS AMOUNT	DISC.	NET AMOUNT
10/10/96	THC149	FEES FOR WORK ON THE: CABRINI-GREEN REDEVEL.	149,881.00	0.00	149,881.00 0.00
					149,881.00
TOTAL NET AMOUNT					149,881.00

C O P Y

HORNER HOPE VI AND
ABLA/BROOKS EXTENSION
HOPE VI DEVELOPMENT MANAGEMENT AGREEMENT

April 21

This AGREEMENT ("Agreement") is made and entered into as of _____, 1997 between the Chicago Housing Authority, a municipal corporation organized and existing under the laws of the State of Illinois (the "Authority"), and The Habitat Company, an Illinois corporation ("Habitat").

RECITALS:

- A. The Authority is a public housing agency authorized to operate public housing in the City of Chicago pursuant to the Illinois Housing Authorities Act. Daniel Levin and The Habitat Company were appointed Receiver for the development of all non-elderly CHA public housing development programs on August 14, 1987, by the U.S. District Court (Gautreaux Case).
- B. The Authority submitted an application to the United States Department of Housing and Urban Development ("HUD") for funding of a Hope VI-Urban Revitalization Demonstration Program (Hope VI) pursuant to which HUD authorized the development of 200 units of housing to replace units scheduled for demolition in the public housing development community known as Brooks Extension (IL 2-31), which is a part of the combined public housing property known as ABLA (Abbott, Brooks, Loomis, Addams) and 150 units of housing to replace units scheduled for demolition in the public housing development community known as Henry Horner Homes - Phase II (IL 2-19), and Extension (IL 2-35), all as described in the application.
- C. HUD approved funding for the Hope VI-Urban Revitalization Demonstration Program and pursuant thereto, HUD and the Authority plan to enter into an Implementation Grant Agreement (Form HUD- 1 044) to develop 200 replacement public housing units for the total amount of twenty-four million four hundred eighty-three thousand two hundred fifty dollars (\$24,483,250), and to develop 150 replacement public housing units for the total amount of eighteen million four hundred thirty-five thousand three hundred dollars (\$18,435,300).
- D. Hope VI provides for the integration of public housing units into a sustainable, mixed-income community, which requires coordinated and comprehensive planning, and effective implementation of the plan.
- E. The Authority desires to contract with Habitat to be development manager for the 350 public housing replacement units contemplated under HOPE VI Program (The Program). The Authority may desire to delegate to Chicago Metropolitan Housing Development Corporation (CMHDC) certain responsibilities/activities referred to in this Agreement as those of the Authority.

EXHIBIT K

- F. Notwithstanding this contract, the terms of the Receivership Order in the Gautreaux Case dated August 14, 1987, appointing Daniel Levin and The Habitat Company as Receiver for the development of all non-elderly CHA public housing development programs (Receiver) are not affected or altered in any way by this contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Obligations of Habitat and the Authority. Habitat and the Authority shall cooperate with each other in coordinating and managing the planning and implementation of the Program in accordance with the provisions of the Program in accordance with the provisions of the Annual Contribution Contract No. IL06URD00___ (Note: issuance by HUD is pending at this time (the "ACC")), as the same may be amended from time to time, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. Habitat agrees that in performing its obligations hereunder, it will comply with all applicable laws, including but not limited to, the applicable provisions of the United States Housing Act of 1937, as amended, the ACC and the applicable HUD regulations and HUD handbooks, but nothing shall prevent Habitat from requesting the Authority to seek a waiver of any of the applicable provisions of any of the foregoing. Habitat understands that although the Authority may request a waiver from HUD, there is no guarantee that HUD will grant such a waiver. In such event, Habitat shall not be relieved of performing its obligations hereunder in accordance with all applicable laws and regulations.

- A. Planning Phase. The Authority in conjunction with Habitat shall solicit comment from the City of Chicago agencies, elected officials, community and business organizations and residents of ABLA. The Authority and Habitat shall solicit qualifications and proposals from, and retain design professionals and other consultants deemed necessary by Habitat to assist in the physical planning and coordination of the development contemplated. The Authority shall review with Habitat the proposals and approve of the contracts for the selected design professionals and consultants.

Habitat and the Authority shall solicit and analyze the proposals in light of the comments received. Habitat shall assist, as requested, and cooperate with the Authority with regard to the preparation of a revised HOPE VI Revitalization Plan for submission to HUD, if necessary, and after seeking approval from counsel for the Gautreaux plaintiffs, shall prepare a request to the U.S. District Court for permission to build replacement public housing in the ABLA area by declaring it a "Revitalizing Area."

- B. Implementation Phase. Upon the Authority's and HUD's approval of an acceptable development program (the "Approved Program"), Habitat shall in cooperation with the

Authority, be responsible for all aspects of the implementation phase of the Approved Program including, without limitation:

- 1) Land acquisition, as necessary;
- 2) Unit design and density;
- 3) Determination of form of construction arrangement and negotiation of terms thereof,
- 4) Development budgets for each phase of the Program;
- 5) Selection of design professionals and consultants;
- 6) Negotiation of contracts with developers selected by Habitat to implement the Approved Program and
- 7) Supervision of the construction during the construction phase and coordination with the Authority and HUD during the warranty and post-construction phases.

The Authority and Habitat shall each delegate a staff person as the Official Representative (O.R.) to respectively represent the Authority and Habitat in business matters regarding this Agreement. The O.R. (or his/her designee) of the Authority shall provide prompt review of any request for approvals by Habitat. Examples of situations/activities requiring prior approval by the Authority's O.R. are:

- a. Contracts to acquire real property;
- b. Final design and the development site plan;
- c. Selection of design professionals and consultants;
- d. Construction contracts;
- e. The total development cost (TDC) budget prepared for HUD approval.

The Authority's approval of the total development cost budget attached hereto as Exhibit B expressly authorizes Habitat to expend and draw down funds from CHA to the extent the amounts are within the limitations in the following budget categories: administration, planning and IOD, site acquisition (except for the property purchases).

Habitat shall advise the Authority in advance of all communications, presentations and submissions to government officials, community organizations or representatives in connection with its role as Development Manager for the Program. Should the Authority deem it appropriate for Authority personnel to become involved in the aforesaid activities, Habitat shall fully operate with the Authority in any such effort.

- C. Personnel and Performance Habitat shall devote such time and personnel as necessary for the diligent, effective, thorough and careful performance of its duties hereunder. Habitat agrees to use its best skill and judgment in the performance of its obligations hereunder and to cooperate with Authority staff or agents in promoting the interests of the Approved Program. Habitat agrees to provide timely administration and advice, and to provide professional superintendence and administration of the work related to the Approved Program.

D. No Employer/Employee Relationship. Notwithstanding the foregoing, it is explicitly acknowledged that Habitat is engaged as an independent contractor for the performance of the services described herein. The Authority and Habitat are not partners, or joint venturers, and have no employer/employee relationship.

2. Compensation. Habitat shall be paid a development manager fee ("Developer Fee") equal to the greater of 3% of the Total Development Cost ("TDC") or \$3672.49 per unit, for each completed unit of public housing under the Approved Program. This fee is provided for in the "planning" category of the Development Budget. Additionally, Habitat shall be reimbursed for all administrative costs directly associated with site acquisition, administration and planning ("Costs") listed in the Development Budget. Notwithstanding the foregoing, the sum of all Developer Fees and Administrative Costs payable by the Authority shall not exceed the greater of 7% of the TDC, or \$8569.14 per unit, whichever is greater. The portion of the Developer's Fee attributable to each completed unit shall be earned and paid upon completion (denoted by issuance of a Certificate of Occupancy by the City of Chicago) and transfer of such unit. Costs shall be paid within 30 days of receipt of an invoice. Habitat shall invoice the Authority no more than once each month. Notwithstanding the foregoing, it is expressly agreed to and acknowledged that the Authority shall not be responsible for the payment of salaries, wages or other employee compensation and benefits, FICA, payroll taxes, administrative costs, or any federal, state or local taxes relative to Habitat's business. In addition to the above fees and administrative costs to Habitat, the Authority shall receive fees of 3% of the TDC.

The Program contemplates the development of public housing but there may also be market rate housing in a mixed-income setting. To the extent that Habitat receives any development management fees or other compensation in connection with its role in the planning for and/or development of market rate housing, such fees or other compensation shall be divided between the Authority and Habitat as follows: 1/3(one third) to the Authority, 2/3(two thirds) to Habitat.

3. Resident Outreach. The Authority shall be the principal public spokesperson with respect to the Approved Program. As such, the Authority shall coordinate with, and be the principal communication link to the ABLA residents, their official representatives and their consultants. The Authority shall provide Habitat advance notice of such meetings and communications and shall cooperate with Habitat to facilitate the coordination of such communication by joint attendance at such meetings.

The Authority shall be responsible for the demolition and social service components of the Hope VI Program.

4. Cooperation of the Parties. The Authority and Habitat agree to fully cooperate with one another to carry out the planning and implementation of the Approved Program. Both parties agree to execute and deliver any all documents reasonably requested by the other or required

by any governmental authority relative to the Approved Program. The parties agree that if modifications of the ACC or waivers of HUD regulations or provisions are necessary to appropriately implement the Program, they will seek such amendments or waivers from HUD.

5. Indemnification. The Authority shall indemnify and hold Habitat harmless from and against all liabilities, costs, damages and expenses (including without limitation, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) incurred by Habitat in connection with the Authority's breach of any of its duties and obligations under this Agreement, except any resulting from the gross negligence, or willful breach of any obligation under this Agreement by Habitat, its agents, or others under its direct control. Habitat shall indemnify and hold the Authority harmless from and against all liabilities costs, damages and expenses (including without limitation, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) incurred by the Authority in connection with Habitat's breach of any of its duties and obligations under this Agreement, except any resulting from the gross negligence of Authority or its willful breach of its obligations under this Agreement.
6. Term. The term of this Agreement shall commence on the date hereof and shall expire upon completion of the Approved Program unless sooner terminated in accordance with the terms hereof. In the event that the (Program or) Approved Program is terminated, or otherwise limited or forestalled for reasons beyond the Authority's control, the Authority may, at its option, terminate this Agreement by written notice to Habitat. Upon termination of this Agreement, including termination pursuant to default, as provided in paragraph 7, Habitat shall immediately refrain from entering into any further contracts or agreements with respect to the implementation of the Approved Program, subject however to its obligations as Receiver, to the extent any obligations exist. Habitat shall also transfer to the Authority, at the time and in the manner reasonably directed by the Authority, all of its right, title and interest in completed and uncompleted work, supplies, materials, contracts, agreements, guarantees, books, papers, reports, records, plans, specifications, drawings, surveys, schedules, reports, and all other property resulting from and related to the performance of Habitat's obligations under this Agreement. Habitat shall be relieved of all responsibility to provide any further services hereunder and the Authority shall assume all and full responsibility for all matters and contracts assigned to it and for the performance of Habitat's obligations hereunder. Furthermore, upon such termination, Habitat shall be promptly paid all compensation for services provided prior to such termination.
7. Default. In the event that Habitat breaches any of its duties or fails to meet any of its obligations hereunder, the Authority shall notify Habitat in writing of such breach or failure. Habitat shall have thirty (30) business days from the date of receipt of such notice to cure such breach or perform such deficient obligation. It shall be an event of default if Habitat has failed to cure any breach or correct any performance deficiency within thirty (30) business days after receipt of notice given in accordance with the terms of this Agreement. Upon the occurrence of an event of default, the Authority shall have the following rights and remedies.

- (a) The right to terminate this Agreement as to any or all of the Approved Program activities effective at a time specified by the Authority;
- (b) All other rights and remedies available at law or in equity.

The parties acknowledge that this provision is solely for the benefit of the Authority and that if the Authority permits Habitat to continue to perform despite Habitat's default, Habitat shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the Authority waive or relinquish any of these rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law or in equity. No delay or failure to exercise any right or power accruing upon any event of default shall impair any such right or power nor shall it be construed as a waiver of any event of default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

- 8. Minority and Women Business Enterprise Commitment. Habitat agrees to comply with the terms and conditions of the Authority's Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") conditions, provided, however, that the Executive Director may waive the MBE and WBE participation requirements. The MBE and WBE schedules are attached as Exhibit C.

During the term of this Agreement, Habitat hereby agrees to provide, and to contract with all contractors and subcontractors performing work/services pursuant to this Agreement to provide, opportunities to the Authority Residents in accordance with C.F.R. Part 135. The MBE and WBE schedules and 24 C.F.R. Part 135 Participation plans shall be attached hereto as Exhibit C and incorporated by references as if fully set forth herein.

- 9. Audit Requirement. Habitat shall keep books, documents, paper, records and accounts in connection with the Approved Program accessible and open to audit by the authority, HUD, the Comptroller General of the United States or their duly authorized representatives, and allow inspection, copying, abstracting and transcriptions. Habitat shall make these records available to the Authority at reasonable times during the performance of this Agreement. In addition, Habitat shall retain all such documents and records in a safe place and make them available for at least three (3) years after the final payment is made in connection with this Agreement and all other pending matters are closed.

Payment of any invoice by the Authority does not constitute a waiver of the Authority's rights to subsequently question, compromise or request repayment or future credit for any invoice previously paid. Habitat shall maintain records showing actual time devoted and

costs incurred.

10. Drug-Free Workplace. Habitat should establish procedures and policies to promote a "Drug-Free Workplace" and should notify all employees of this policy for maintaining a "Drug-Free Workplace," including the penalties that may be imposed for drug abuse violations occurring in the workplace. Habitat agrees to notify the Authority, in writing, if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.
11. Conflict of Interest and Anti-Lobbying. No member of the governing body of the Authority or other units of government and no other officer, employee, or agent of the Authority or other unit of government who exercises any functions or responsibilities in connection with the Approved Program to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and/or Authority executive and senior staff or employee shall be admitted to share in any part of this Agreement or any financial benefits arising thereunder.

Pursuant to the conflict of interest requirements in OMB Circular A- 1 02 and 24 CFR §85.36(b)(3), no person who is an employee, agent, consultant, officer, or appointed official of the Authority and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for itself or for those whom it has family or business ties, during his or her tenure with the Authority or for one year thereafter. Furthermore, the Authority represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended.

12. Compliance with HUD Regulations. In addition to the obligations stated in Paragraph 1, Habitat shall comply with the applicable provisions of HUD regulations, and all state and local laws, ordinances and executive orders including, but not limited to, the Uniform Administrative Requirements contained in 24 C.F.R. §§ 85.1 et seq., (1993), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); National Environmental Policy Act of 1969 (24 CFR Part 58); Clean Air Act (42 U.S.C. § 7401/et seq.); Federal Water Pollution Control Act (33 U.S. C. § 1251 et seq.), as amended; Flood Disaster Protection

Act of 1973 (42 U.S.C. 4106); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601); Executive Order 11246, as amended by Executive Orders 12086 and 11375; Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 483 1 (b)); Executive Order 12372; Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd "Anti-Lobbying" Amendment (31 U.S.C. § 1352); Debarment and Suspension (Executive Orders 12549 and 12689); and the regulations implementing the laws as set forth in 24 C.F.R. Section 85.1 et seq., (1993), as amended.

13. Governing Law : Dispute Resolution. This Agreement will be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the performance thereof may, if so elected by a party, be submitted to, and determined by, arbitration if good faith negotiations among the parties do not resolve such claim, dispute or other matter within sixty (60) days. Such arbitration shall proceed in accordance with the Commercial Arbitration rules of the American Arbitration Association then pertaining (the "Rules"), insofar as such Rules are not inconsistent with the provisions expressly set forth in this Agreement, unless the parties mutually agree otherwise, and pursuant to the following procedures:

(a) Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Each party shall appoint an arbitrator, and those party-appointed arbitrators shall appoint a third neutral arbitrator within ten (10) days. If the party-appointed arbitrators fail to appoint a third neutral arbitrator within ten (10) days, such third neutral arbitrator shall be appointed by the American Arbitration Association in accordance with the Rules. A determination by a majority of the panel shall be binding.

(b) Reasonable discovery shall be allowed in arbitration.

(c) The costs and fees of the arbitration, including attorney's fees, shall be allocated by the arbitrators.

(d) The award rendered by the arbitrators shall be final and judgement may be entered in accordance with applicable law and in any court having jurisdiction thereof.

14. Patents and Copyrights. The Authority reserves an exclusive, perpetual and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for the Authority's purposes, including, but not limited to, commercial exploitation: (a) the copyright or patent in any work or deliverables developed in connection with the implementation of the Approved Program under this Agreement; and (b) any rights of copyright or patent to which Habitat purchases ownership with the funds awarded pursuant to this Agreement. If HUD determines that the patent or copyright, which is

either developed or purchased by Habitat serves a federal government purpose, a royalty-free, non-exclusive and irrevocable license shall vest in HUD.

Any discovery or invention (37 C.F.R. part 40) arising out of, or developed in conjunction with the work to be performed under this Agreement shall become the exclusive property of HUD and be promptly and fully reported to HUD for a determination as to whether patent protection on such invention or discovery should be sought.

15. Religious Activities. Habitat agrees that in connection with this Agreement: (a) it shall not discriminate against any person on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion; (b) it shall not discriminate against any person applying for employment on the basis of religion and shall not give preference to persons on the basis of religion; and (c) it shall provide no religious instruction or counseling, conduct no religious worship services, engage in no religious proselytizing, and exert no other religious influence in connection with its performance hereunder.
16. Miscellaneous.
 - A. Further Assurances. Each party shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement as are not inconsistent with the terms hereof.
 - B. Reporting. Each quarter, during the term of this Agreement, Habitat shall prepare a written report to the Authority describing the status of the Approved Program. Specifically, the report shall include an accounting of all expenditures made or incurred in connection with the Approved Program, and summaries of actions taken pursuant to Paragraph 1(b) hereof. Said report shall be delivered to the Executive Director of the Authority no later than the 20th day following the beginning of each quarter. In addition, Habitat shall attend regularly scheduled meetings at such time intervals the Authority deems desirable regarding Habitat's progress in implementing the Approved Program.
 - C. Authority. Each party warrants and represents to the other that its execution of this Agreement has been duly authorized and the individuals signing this Agreement on behalf of each party have the authority to do so.
 - D. Construction. The paragraph captions used in this Agreement are for the purposes of convenience only and are not intended to, and shall not, affect the meaning, interpretation or construction of the text of this Agreement.

- E. Entire Agreement: Amendment. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. It may not be modified or amended except with the written consent of both parties.
- F. Confidentiality. Each party, for itself and its agents and employees, agrees that the documents and information made available to it (other than documents and information otherwise available in the public domain) are to be held by each party in the strictest confidence, that copies shall not be distributed to any party other than such parties whose knowledge of such documents and information is reasonably necessary to effect the purposes of this Agreement.
- G. Enforcement Costs. If either the Authority or Habitat brings an action against the other party to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action shall be entitled to recover from the other party costs, reasonable attorney's fees and any other expenses incurred in connection therewith.
- H. Notices. All notices, waivers demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when received; provided that no item shall be deemed received unless such messenger obtains a written receipt therefor, (ii) if mailed, on the third business day after deposit in the United States mail, certified or registered, postage prepaid, return receipt requested, (iii) if telexed or telecopied, twenty-four hours after being dispatched by telex or telecopy with confirmation of valid transmittal with a copy delivered by mail in the manner set forth in subsection (ii) above, and (iv) if sent by commercial overnight carrier, prepaid for next day delivery, on the next business day after delivery to such courier, in each case addressed to the party's address appearing below:

Authority: Chicago Housing Authority
626 W. Jackson Boulevard
7th Floor
Chicago, Illinois 60661
Attention: Executive Director

Habitat: The Habitat Company
350 West Hubbard Street
Chicago, Illinois 60610
Attention: Chairman

or to such other address(es) or addressee(s) as any party entitled to receive notices hereunder shall designate to others in the manner provided herein for the service of notices.

IN WITNESS WHEREOF, Habitat and the Authority have executed this Agreement as of the day and year first above written.

THE CHICAGO HOUSING AUTHORITY

By:  _____
Executive Director

THE HABITAT COMPANY

By:  _____
Chairman



Business and Professional People
for the Public Interest

Directors

Bertie K. Saltzman
President

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

Camilla Hawk Diaz-Perez
Secretary

Rayman L. Solomon
Treasurer

James M. Alter
Lucy B. Ascoli
Frederick W. Axley
Sheldon L. Baskin
Julian L. Berman
Henry C. Binkford
Barbara T. Bowman
Douglas W. Casel, Jr.
Susan Davis

Leon M. Despres
Edward F. Dobbins, Jr.
Kevin Donnellon

Gary Edidin
Harriet Wilson Ellis
William Farley

William Geller
Eric Gershenson
Graham Goady

Frances R. Grossman
Marc Hilton
Donald J. Jackson

Stephen Johnson
Joseph Keilman
Steve Kersten

Iris Krieg
Susan Lacion
Paul Lehman

Thomas J. Lenz
Paul Levy
Robert B. Lifton

Ralph Martre
George R. McCoy
Zebadiah McLaurin

Rita McLennan
E. J. McConnell, II
E. J. Mulcahy

D. J. Netach
Alexander Polikoff
Hippolyte Roldan

Lowell Sachoff
Alan Saks
Dianne Sauter

Daniel Scheinfeld
Mary Skipton
Ada Skyles

Diana DeWeese Smith
Michael Spock
Leslie A. Stulberg

Sandy Taylor
Judy Wise

July 15, 1997

BY FAX: 312/207-0249

Mr. Andrew Rodriguez
Director/Redevelopment Division
Chicago Housing Authority
626 West Jackson Boulevard
Chicago, Illinois 60661

Dear Andy:

Here is a draft of the ABLA letter we discussed yesterday. Let me know if you'd like any changes to be made. As you can see, the letter calls for the current NOFA docket number, which I'd appreciate your filling in.

In the present circumstances I feel compelled to point out it remains the Gautreaux position that court orders require the Receiver to develop all public housing units, including any to be developed at ABLA, even though HOPE VI funds are used. Accordingly, unless and until court orders are changed or we agree to some other arrangement (as we have at Darrow pending a court order), I can only authorize CHA to use our ABLA letter upon the understanding that it too accepts that position.

Cordially

Alexander Polikoff

ALP:mmm

cc: By Fax:
Jerome Butler (312/726-6053)
Joseph Shuldiner (312/627-0346)
Edwin Eisendrath (312/886-2729)
Rosanna Marquez (312/744-2324)

EXHIBIT G

EXHIBIT L



U.S. Department of Housing & Urban Development
Office of the Assistant General Counsel - Midwest
77 West Jackson Boulevard, Room 2833
Chicago, IL 60604-3807

July 29, 1997

MEMORANDUM FOR: Richard Kruschke, Public Housing Director,
Office of Public Housing, Illinois State
Office, 5APH

ATTENTION: Louis Berra, Director, Distressed and Troubled
Housing Recovery, 5APH

FROM: *Katherine Abraham*
Lewis M. Nixon, Assistant General Counsel for the Midwest,
SAC

SUBJECT: Development Authority Under Gautreaux

At the oral request of Richard Kruschke and Louis Berra on July 28, 1997, we are responding to the question of whether the Chicago Housing Authority or the court appointed Receiver has the general responsibility for development of non-elderly public housing serving as replacement units at Cabrini-Green.

The August 14, 1987 Gautreaux order appointed Daniel E. Levin and the Habitat Company jointly as receiver to develop the scattered site program. The 'scattered site program' was defined to include all CHA non-elderly public housing development programs which might in the future be authorized by HUD. The December 3, 1993 order, the nunc pro tunc order as we typically refer to it, specifically gave development authority for 377 additional scattered site units to serve as replacement housing for Washington Park and Cabrini Green to the Joint Venture comprised of the Receiver and the Chicago Metropolitan Housing Development Corporation ("CMHDC"). In the same order, the Joint Venture was given authority for the eighteen unit Lawndale replacement units, the 350 unit demonstration program and the 25 Family Self Sufficiency Program.

In the August 15, 1993 Joint Venture Agreement, CMHDC is described as an affiliate of the CHA. Provision 5.1 of the Agreement states that overall management and control of the business of the Joint Venture shall be vested in Habitat provided that Habitat would consult with CMHDC on Major Decisions.

Based on the referenced materials, it is the belief of this office that either the Receiver, for general purposes, or the Joint Venture, under the nunc pro tunc order for specific projects, has development authority. In regard to the 377

EXHIBIT M

replacement units for Cabrini and Washington Park approved for funding by HUD in September 1993 and 1994, the Joint Venture has clearly been authorized by Judge Aspen. We also believe that any funds under HOPE VI which go to replacement housing are currently a Receiver responsibility. We do not believe the CHA currently has any development authority for non-elderly units.

We have reviewed David Sowell's letter of July 14, 1997 to Rich Monocchio concerning a draft proposal for 44 units of replacement units for Cabrini Green and note that Mr. Sowell says CMHDC would have to separate from CHA and have its own identity. If that is true, then the Joint Venture Agreement and the draft proposal are inconsistent because as stated above, under the Joint Venture Agreement CMHDC is described as an affiliate of CHA. It is our understanding the reason behind the Joint Venture was for CMHDC to develop expertise under the wing of the Receiver, so it could become the development arm of the CHA.

Depending on the nature of Judge Aspen's expected August 15, 1997 ruling it may be time for the parties to consider dissolving the Joint Venture and for filing a motion before Judge Aspen based on such a discussion. It may also be appropriate to ask the court for clarification concerning development authority under HOPE VI.

If you have further questions please send a memorandum to the attention of Jan Elson.

RECEIVED

Judge Marvin E. Aspen
U.S. District Court

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and HENRY
CISNEROS, Secretary of Department of
Housing and Urban Development

Defendants.

66 C 1459

66 C 1460

(Consolidated)

DOCKETED

DEC 15 1993

AGREED ORDER

all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including: (1) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (1) submission to HUD of applications for funding, development programs and other documents (Order, pp. 2-3);

WHEREAS, on March 9, 1990, the Court entered an Agreed Order recognizing that the August 14, 1987 Order had given the Receiver the authority to develop and administer the scattered site program "on an exclusive basis" (Order, p. 1), but nonetheless granting CHA the authority to develop up to 350 units of scattered site housing as a demonstration program (the "Demonstration Program");

EXHIBIT N -

WHEREAS, on August 3, 1993 in a status conference with the parties conducted by telephone, the Court approved a Joint Venture Agreement between the Receiver and the Chicago Metropolitan Housing Development Corporation, an affiliate of CHA, for the development of the 350 Demonstration Program units, which agreement contemplated the possibility that the Joint Venture would seek authority to develop 18 units of scattered site housing in the North Lawndale area (as replacement for 18 public housing units proposed to be demolished in that area) and 25 units of scattered site housing under the Family Self-Sufficiency Program (Agreement, p. 5);

WHEREAS, CHA has submitted applications to HUD for funding to develop such 18 scattered site units and such 25 scattered site units, as well as for 377 units of additional scattered site units (Projects IL06-P002-180 and P002-182) to replace certain other public housing units proposed to be demolished;

WHEREAS, the 18 scattered site units proposed to be constructed in the North Lawndale area are in the Limited Public Housing Area as defined by previous Court orders; and

WHEREAS, believing that it is in the best interests of the Gautreaux plaintiff class that the Joint Venture be authorized to develop the scattered site units referred to above, the parties are in agreement that the aforementioned Court orders should be modified as set forth below;

THEREFORE, IT IS HEREBY ORDERED THAT:

1. CHA shall be deemed, nunc pro tunc, to have had the authority to apply for funding for the development of 18 units of

scattered site housing in the North Lawndale area as replacement for 18 units of public housing proposed to be demolished in that area, 25 units of scattered site housing under the Family Self-Sufficiency Program, and 377 additional scattered site units (Projects IL06-P002-180 and P002-182) to replace certain other public housing proposed to be demolished, provided, however, that unless otherwise ordered by this Court all future funding applications for scattered site development shall be submitted by the Receiver in accordance with the August 14, 1987 Order of this Court;

2. The Joint Venture is hereby authorized to develop such 18 units of scattered site housing in the North Lawndale area of Chicago, a Limited Public Housing Area, in addition to the 350 Demonstration Program units previously authorized;

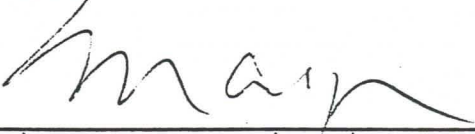
3. The Joint Venture is hereby authorized to develop such 25 units of scattered site housing under the Family Self-Sufficiency program, in addition to the 350 Demonstration Program units previously authorized, subject to further orders of this Court, if necessary, respecting the location of such units;

4. The Joint Venture is hereby authorized to develop such numbers of units of scattered site housing as HUD may authorize pursuant to such CHA applications for funding for 377 additional scattered site units to replace certain other public housing units proposed to be demolished, subject to further orders of this Court, if necessary, respecting the location of such units; and

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:

December 10, 1993



United States District Judge

AGREED TO ON BEHALF OF:



Plaintiffs



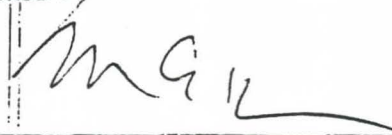
Chicago Housing Authority 12/1/93

U. S. Department of Housing
and Urban Development

Receiver

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:



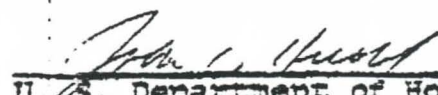
December 10, 1993

United States District Judge

AGREED TO ON BEHALF OF:


Plaintiffs
Chicago Housing Authority

12/1/93


U. S. Department of Housing
and Urban Development

Receiver

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:

December __, 1993

United States District Judge

AGREED TO ON BEHALF OF:

Plaintiffs

Chicago Housing Authority

U. S. Department of Housing
and Urban Development

Daniel Levin
Receiver

DANIEL LEVIN
THE HABITAT COMPANY

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JUDY A. ENGLAND-JOSEPH,
DIRECTOR, HOUSING AND COMMUNITY DEVELOPMENT ISSUES,
RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE
BEFORE THE COMMITTEE ON BANKING AND FINANCIAL SERVICES,
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
HOUSE OF REPRESENTATIVES

BODY:

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss troubled public housing, in particular the takeover by the Department of Housing and Urban Development (HUD) of the Chicago Housing Authority (CHA). Over a dozen large public housing authorities (PHA) are "troubled" because they do not score high enough against HUD's management assessment criteria. These low performances are generally due to a combination of factors at the PHAs, including ineffective management, inability to productively use federal funding assistance, and deteriorated housing stock.

As a result, HUD recently has focused highly structured "recovery" efforts at several large troubled authorities to upgrade them from troubled status. When recovery fails, however, more drastic actions can occur, such as the court-appointed receivership in the District of Columbia or the HUD takeover 2 weeks ago in Chicago. However, these kinds of actions are rare. During the past 16 years, many large authorities have remained troubled for 10 years or more without HUD taking strong corrective actions. Although these chronically troubled authorities manage 14-percent of all public housing and account for most of the distressed developments, troubled authorities represent only 92 out of the nation's 3,300 housing authorities.

Today we will discuss the long-standing problems at the Chicago Housing Authority, our view of the HUD's capacity to take over troubled authorities, and several administration proposals to enhance a housing authority's ability to overcome its distressed housing. Our statement is based on our ongoing work for this Subcommittee as well as reports that we have issued and testimony that we have given over the past several years.

In summary,

- the Chicago Housing Authority has a long history of troubled management and distressed housing conditions that stem, in part, from deficient management systems; aging, deteriorated, and poorly designed stock; and the very-low-income levels of residents;

- HUD's ability to effectively take over the operations of a troubled housing authority has been hampered in the past, in part because of limited resources and staff expertise; however, key officials with housing management expertise have joined HUD in the past 2 years and the long-run benefits of taking such a drastic action outweigh the costs of continued troubled status; and

- proposed statutory changes, such as repealing the one-for-one replacement requirement, reforming rent calculation rules, and changing public housing eligibility criteria could result in better use of available federal funds for assisted housing.

BACKGROUND

Troubled large public housing authorities have been persistent problems for HUD's assisted housing program for many years. While a relatively small number--13 of the nearly 100 large PHAs--account for about 14 percent of the 1.4 million units of public housing nationwide; these authorities account for most of the distressed, dilapidated, and boarded up housing stock. Even though some distressed housing can be found in even a high-performing PHA's inventory, a troubled authority is much less able to remedy the distressed conditions than one in good shape.

EXHIBIT 0

In 1979, HUD began to focus on low-performing PHAs and classified 23 large (those with more than 1,250 units) PHAs as troubled at that time, and five of these authorities still remain on the current list (see app. D). They are in Philadelphia, Detroit, New Orleans, Chicago, and Washington, D.C. To measure a PHA's performance, HUD developed the Public Housing Management Assessment Program (PHMAP) that scores PHAs on a series of performance indicators--including vacancy rates, use of modernization funds, and housing conditions. An authority is designated as troubled if it achieves a score of 60 or below. In 1994, HUD substantially revised its oversight approach by creating an Office of Distressed and Troubled Housing Recovery that focuses on proactive outreach to troubled authorities. The office provides troubled authorities with direct, on-site assistance from experienced teams of housing professionals and major funding to rehabilitate distressed housing.

HUD provides all PHAs with operating subsidies and funds to build and modernize public housing. In return, the PHAs agree to provide housing that meets HUD's standards. If a housing authority does not meet the standards, HUD can take corrective action and, if necessary, take over the assets and management of the authority. Since 1979, HUD has initiated takeovers at large housing authorities in Chester, PA, Philadelphia, East St. Louis, and Chicago; court-appointed receivers have taken over authorities in Kansas City, Boston, and the District of Columbia.

CHICAGO HOUSING AUTHORITY: A LONG HISTORY OF MISMANAGEMENT AND POOR HOUSING CONDITIONS

With over 40,000 units, the Chicago Housing Authority is the third largest PHA after New York and Puerto Rico. Yet in contrast to the well-run New York authority, HUD ranked CHA among the worst (see app. II for CHA's PHMAP scores for 1993-1995). In 1989, we reported that CHA had had longstanding management problems in virtually all operating areas.⁽¹⁾ Our analysis of 48 reports issued by various sources and covering the period 1979 to 1987 showed material weaknesses in CHA's internal control systems, poor fiscal responsibility, and frequent turnover of top management. We said that CHA operated for years without reasonable assurance that federal funds were adequately safeguarded against waste, loss, or misuse.

In 1989, we reported that deteriorating buildings, damaged heating and water systems, broken elevators, and roach and rodent infestation were commonplace at many projects. Abusive tenants had also contributed to this situation. At that time, CHA estimated that it would need about \$1 billion over a 5-year period to upgrade its projects. After receiving modernization grants of over \$100 million each year from 1991 through 1995, CHA's estimate of its funding needs to modernize its stock is still over \$1 billion.

Additional insight into CHA's problems, especially its recent conditions, is available from a consultant report completed for HUD.⁽²⁾ This report highlighted the following conditions at CHA:

- CHA's high-rise family projects were built in excessively large concentrations. For example, Robert Taylor Homes and Stateway form one continuous 6,059-unit development. In contrast, the average size of New York's public housing high-rises is 1,000 units.
- CHA's high operating costs are due in part to the relatively high percentage of its residents being on welfare: 68 percent compared to New York's 25 percent.

- CHA has experienced an especially marked increase in the number of public housing households with incomes below 10 percent of the local area median income, indicating extreme economic disadvantage.

The consultant report also noted many organizational issues that impede CHA's ability to effectively manage its total program. Among the problems noted were the following:

- large and loosely structured middle management that impedes program accountability and causes operational inefficiencies;
- inability to consistently set and enforce performance standards throughout the agency; and
- inability, despite extraordinary efforts, to control the general living environment--management rules, security, and physical conditions--at certain housing developments.

HUD HAS BEEN RELUCTANT TO TAKE OVER TROUBLED PHAS

According to HUD's OIG and an official its District of Columbia field offices, HUD is reluctant to take over troubled authorities because the Department lacks the resources and confidence that it can succeed in turning around the authority. On the other hand, HUD top management told us that the Department is staffed with key officials who have experience in operating large and troubled PHAs. These officials are now learning how to marshal that expertise to effectively take over a troubled authority. Still, when key officials are deployed to a takeover, it creates a need to backfill their posts with other staff. HUD field office and headquarters officials told us that when HUD field staff are temporarily assigned to take over the operations or participate in the recovery of all or part of an authority, they are unavailable to perform their primary duties overseeing PHAs in their home jurisdiction.

In May 1987, HUD's Chicago field office recommended that HUD place CHA in the hands of private management. In addition, the Philadelphia Regional Office recommended that HUD take over the District's housing authority. In both instances, HUD headquarters decided not to follow the field offices or Regional office's recommendation, and in both cases the authorities have ultimately been taken over--one by HUD and one by a receiver.

The cost of taking over this authority may be high because of the need to rehabilitate much of its 40,000 units of public housing and the associated costs of administration. We believe that estimating the takeover cost will be difficult because of the large but unspecific balance of unspent federal funding accumulated by CHA. We reported in 1994 that CHA's public housing program has \$472 million in approved funds, and, according to a HUD official in HUD's recovery office, most of this funding is still available for CHA's use. (3) HUD officials believe that other funds granted to CHA but not yet spent may also be available. With CHA officials estimating that about \$1 billion will be needed to rehabilitate CHA's distressed housing and address its unmet housing modernization needs, the unexpended balance of earlier grants may be available to offset the needed funds for rehabilitation. However, competent management will be needed to ensure these funds are employed productively. Notwithstanding the possible availability of federal funds already allocated to CHA, the total cost of turning around the authority is high. However, these costs could be outweighed by the costs of not taking over CHA. CHA's current vacancy rate is 17 percent, or over nearly 7,000 units. At an average rental of about \$2,000 per year, CHA has been losing over \$14 million per year in rental income due to vacancies. This income must be made up with federal funding to subsidize CHA's operating costs. Moreover, as we have testified in the past, housing authorities spend millions of dollars on vacant properties and more money to rehabilitate aging buildings than it would cost them to construct new ones. (4) In addition, backlogged modernization funds mean that rehabilitation is not being done and deterioration is escalating along with the crime and vandalism associated with vacant buildings.

PROPOSED STATUTORY CHANGES COULD HELP PHAS TO PROVIDE BETTER HOUSING ASSISTANCE WITH THE SAME LEVEL OF FEDERAL FUNDING

Several statutory changes proposed as part of HUD's American Community Partnerships Act have the potential for helping housing authorities provide better assistance to low-income families. These changes include repealing the requirement that PHAs must replace on a one-for-one basis any nonviable housing units they tear down or sell or at least provide certificates for equivalent rental assistance. Two other important proposals include (1) reforming current rules for rent calculations for tenants of public housing so working families are not penalized and (2) relaxing federal preference rules that force PHAs to favor the lowest income families when filling vacancies in public housing so PHAs can attract higher-income families. HUD believes that adopting this proposal would not only raise rent collections but also provide role models for other tenants.

According to officials at several large PHAs, constraints related to the "one-for-one" requirement either make it difficult for PHAs to tear down housing that costs more to maintain than replace or, in some cases, prevent them from doing so. These constraints include insufficient federal funding for new housing or other replacement assistance and a lack of suitable sites for replacement housing. Not tearing down nonviable housing leads to excessive operating costs, inefficient use of federal subsidies, and the costly crime and vandalism associated with vacant public housing.

Reforming rent calculations and federal preference rules could raise the average income of tenants in public housing. Raising average income could, in turn, reduce the operating subsidies HUD pays to housing authorities. Currently, working families pay 30 percent of their adjusted income as rent in public housing. Moreover, 30 percent of any increases in the incomes of family members must also be paid as rent. This presents a significant disincentive to work. Also, current law requires housing authorities to offer vacant units to the lowest-income families first. These two requirements contribute to the decline of average public housing incomes from 34 percent of area median in 1982 to 16 percent in 1995, and for operating subsidies increasing from \$1.9 billion in 1990 to \$2.9 billion in 1995 (both amounts in nominal dollars).

In conclusion, Mr. Chairman, we believe that HUD's recovery efforts at large troubled housing authorities--and its more drastic move to take over housing authorities such as CHA--are important first steps. These steps signal that the federal government will not tolerate poorly managed, federally funded assisted housing. Essential to this leadership is the capacity and sustained commitment to resolve the management problems that threaten the viability of low-income housing.

Legislative proposals, such as those suggested by HUD to help working families, can provide housing authorities with greater flexibility to make public housing viable and promote economic self-sufficiency.

We believe that the focused nature of HUD's recovery teams and the exercising of takeover rights are essential actions. However, even with the recent addition of key officials with housing management expertise, we are concerned about HUD's capacity, particularly in the longterm, to maintain sustained commitment necessary to address the problems of chronically troubled housing. The critical next steps to ensure that HUD's intervention at CHA and other troubled authorities results in sorely needed improvement will be the most telling.

Mr. Chairman, this concludes my statement. We would be pleased to answer any questions that the Subcommittee Members might have at this time.

APPENDIX I APPENDIX I

Table I. 1: TROUBLED PUBLIC HOUSING PERFORMANCE AND FUNDING

PHA Number PHMAP Years HUD FY 1995 HOPE VI Funding of Units Score (as Troubled (a Recovery (millions) of 1/95) of 1/95) Budget

Allegheny County, PA 4,052 37.50 a \$75,634 \$0
 Atlanta, GA 14,722 36.59 1979-1982; 1,079,921 42.4 1990-1995 Chester, PA 1,717 50.00 1991-1995 876,130 0
 Chicago, IL 40,119 46.38 1979-1995 307,424 50.0 Detroit, IL 8,994 37.60 1979-1995 3,033,732 87.9
 District of Columbia 11,786 22.38 1979-1995 2,052,093 15.7
 Jackson- ville, FL 3,444 54.67 1979-1984; 25,000 0 1990-1995
 Kansas City, MO 2,058 51.46 1991-1995 774,500 47.6
 Memphis, TN 7,089 56.13 a 775,000 47.8
 New Haven, CT 3,555 59.87 1979-1995 75,000 45.3
 New Orleans, LA 13,414 48.21 1979-1995 510,060 44.3
 Philadel- phia, PA 22,766 28.86 1979-1995 2,249,738 50.0
 Pitts- burgh, PA 9,392 46.42 a 186,000 31.6
 Puerto Rico 57,800 53.00 1982-1995 369,780 50.0
 Spart- anburg, SC 1,555 53.

46 a 0 0

Spring- field, IL 1,479 57.61 1979-1981; 75,000 19.8 1991-1995

TOTALS \$12,465,012 \$532.4

Source: HUD Office of Distressed and Troubled Housing Recovery

d Data not available

APPENDIX II

PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM (PHMAP)

HUD's Public Housing Management Program implements section 502(a) of the National Affordable Housing Act of 1990 and evaluates the performance of PHAs in 11 major areas of management operations. The PHMAP provides the HUD with a system of measuring PHAs' performance using standard indicators for all PHAs. The following table depicts CHA's PHMAP scores for the past three years.

Table II.1: Public Housing Management Assessment Program Performance Indicators - Chicago Housing Authority Score for Fiscal Year Indicator Indicator Description 1991 1992 1993 1994 #1 Vacancy (Number & Percent) 0 5.0 3.0 3.0 #2 Modernization Program 7.13 9.25 10.0 7.5 #3 Rents Uncollected 0 3.0 0 5.0 #4 Energy Consumption 8.50 7.0 10.0 10.0 #5 Unit Turnaround 0 0 0 0 #6 Outstanding Work Orders 7.0 7.0 5.0 8.5 #7 Annual Inspection: Unit 1.25 2.31 2.13 6.06 Condition and Systems #8 Tenant Accounts Receivable 0 0 0 0 #9 Operating Reserves 0 0 7.0 0 #10 Routine Operating Expenses 7.0 7.0 10.0 0 #11 Resident Initiatives 10.0 10.0 10.0 10.0

----- Total score 33.6 47.8 46.3 50.3

----- Endnotes

1 Public Housing: Chicago Housing Authority Taking Steps to Address Long-standing Problems (GAO/RCED-89-100, June 8, 1989).

2 Chicago Housing Authority: Management Capacity Assessment, TAG Associates, Inc., (Norwood, MA: Sept. 1994)

3 Public Housing: Information on Backlogged Modernization Funds (GAO/RCED-94-217FS, July 15, 1994)

4 Public Housing: Housing Agency Officials Want More Flexibility in Replacing Deteriorated Housing (GAO/T-RCED-94-159, March 22, 1994).

END

LANGUAGE: ENGLISH

LOAD-DATE: June 9, 1995

The Transformation of America's Public Housing

A 1996 Status Report

By Secretary Henry G. Cisneros

Contents

I. The Public Housing Challenge	1
II. A New Era: The State of Public Housing Today	3
A. Replacing the Worst Developments Now	4
Highlights of the Best Remakes of Public Housing	4
B. Recovery Partnerships for Troubled Housing Authorities	7
List of 40 Largest Public Housing Authorities	8
C. Infusing Positive Incentives and Tougher Expectations in Public Housing	10
Instill Positive Incentives	10
Set Tougher Expectations and Respect Residents	13
Appendix: Changing the Face of Public Housing	15

I. The Public Housing Challenge

Since 1937, the Federal government has invested some \$90 billion in the Federal housing inventory. The legacy of that investment is mixed.

On one hand, public housing provides a stable supply of rental housing that is affordable to families with very low incomes. Approximately 1.3 million households live in public housing developments operated by some 3,400 public housing agencies. Approximately 45 percent of these households are families with children, 35 percent are elderly, and another 10 percent are people with disabilities.

For these people, public housing provides a real, tangible response to the failure of the private market to provide sufficient housing at affordable rents. Nationally, the supply of affordable housing units falls well short of the demand — by about 4.7 million units. That gap would be far greater without public housing or other forms of federal housing assistance.

But despite serving this critical function, the current public housing system is plagued by a series of deeply-rooted and systemic problems. Concrete high rises have become vacant shells, scarring the urban landscape. Other projects are beset by crime and gang activity. The very names of some places — Cabrini Green, Robert Taylor Homes, Desire — haunt the American imagination. Other problems exist in the 100-odd public housing agencies that are classified as troubled entities.

Change is needed. Far-reaching reform is warranted. But long-lasting reform must respond to the full scope of the problem. The following key structural problems afflict the current public housing system.

- **Public housing concentrates the very poor.** The average income of families living in public housing is approximately 17 percent of area median income, or \$6,100.
- **Public housing is itself concentrated in high poverty neighborhoods.** Public housing tends to be located in areas lacking jobs, economic opportunities and basic amenities. A recent General Accounting Office study of four metropolitan areas indicated that less than 10 percent of Section 8 recipients live in high poverty neighborhoods, while 23 percent of public housing residents live in such areas.
- **Federal laws penalize public housing tenants who work.** They discourage employed families from working and working families from staying. Public housing rents take away earned income and often charge far higher rates than that which the unit would command in the private market.
- **The discipline of the real estate market does not apply to public housing.** Residents who are in the best position to identify management deficiencies and compel changes are denied the ultimate tool available to consumers — the ability to take their business elsewhere.
- **The federal method of overseeing the public housing industry aggravates all these problems.** Federal statutes and rules regulate every aspect of public housing, including admissions, rents, evictions, resident rights and relations, modernization, development and procurement.

II. A New Era: The State of Public Housing Today

The last 15 months have been a watershed period for HUD, particularly for the public housing program and for the people who live in public housing. The period began with the President's ambitious proposals to overhaul and remake federal housing policy, amid calls for elimination of the Department. It has ultimately led to remarkable bipartisan collaboration — in appropriations and authorization legislation — to produce far-reaching, progressive reforms.

The legislative victories in the area of public housing — although incomplete and unfinished — are already having an enormous impact on families, communities and cities across the country. The elimination or relaxation of restrictive rules and the provision of flexible resources has already allowed and facilitated the demolition of some of the worst housing in America and the emergence of a new form of public housing — smaller-scale, economically-integrated housing that is an anchor for neighborhood renewal.

Though the public housing system seems vast and a "bottomless well of troubles," the Administration has turned an important corner. HUD is in the midst of implementing the most far-reaching transformation of public housing since its inception.

First, HUD has embarked on a massive physical reconstruction of public housing that is now underway in the worst and most infamous projects in the nation, places such as Cabrini Green in Chicago, where three towers are coming down to make way for townhouses, and similar transformations of obsolete high-rises in Newark, Detroit, Philadelphia, Atlanta, Baltimore, and St. Louis.

Second, specific recovery partnerships have been formed with the worst-performing housing

authorities, those that have consistently scored failing grades (below 60%) in HUD's performance measurement system. Through slow but steady creation of these partnerships, we now have a work-out plan in place for the eight most troubled big city housing authorities — New Orleans (28.8), Washington (33.3), Detroit (34.7), Philadelphia (35.2), Chicago (45.0), Atlanta (49.8), Pittsburgh (47.6), and Puerto Rico (54.0).

Third, beyond the physical and management turnarounds, HUD is putting in place a regime of positive incentives and tougher expectations in public housing in order to change the underlying system so that the housing can work for people. Among the positive incentives are new admissions preferences for working families and changes in rent rules so that working families are not penalized by higher rents as they earn more income. These measures, along with support services, are designed to achieve what virtually every multi-family expert in the nation says must be achieved in public housing — a mix of family incomes in some of today's developments where no one works, where nearly every family is headed by a female single parent, and where the average income has dropped to an impossible 15 percent of the area median income.

The tougher expectations include providing managers with more complete criminal and drug histories so that they can screen out those who would abuse and intimidate residents who want to raise their children in peace. The President's "one-strike and you're out" policy is part of this effort and it has overwhelming support from residents all across the nation.

The following describes each of these points in greater detail.

Replacing the Worst Developments Now

Prior to this Administration, legislative impediments and preservation of the status quo led to approximately 1,600 units of public housing torn down per year. The Clinton Administration will tear down an unprecedented 24,000 units of bad public housing. That 4-year pace betters the 20,000 units demolished in all of the last ten years combined.

HUD has pursued two tracks to physically redesign public housing. First, HUD has aggressively implemented HOPE VI, a large-scale initiative to provide localities with maximum funds and flexibility to reshape public housing neighborhoods and to build lives through education and skills training, job placement and development, and other supportive services. It supplies up to \$50 million to remake an entire development from A to Z.

Second, HUD has relaxed existing program and funding rules to speed the reconstruction of public housing. HUD sought and got the repeal of the one-for-one replacement law which forced housing authorities to replace each demolished unit with a new one—a very expensive mandate. HUD has also invested substantial time and effort to break the gridlock in court over major demolitions, such as the redevelopment plans for Chicago's Henry Horner Homes and Cabrini Green.

HUD, together with local housing agencies, their residents and private sector developers have drawn on the best of contemporary thinking to rebuild public housing: high-rises are being replaced with townhouses and garden-style apartments; urban street grids are being reconfigured; and defensible space strategies are being used to enhance safety in the community. To build on these local innovations, HUD has developed an exciting enhancement to present efforts called Campuses of Learners, where children and adults can pursue an array of educational opportunities, including the education and computer skills necessary to compete for new jobs. Several telecommunications firms including Apple Computer, Microsoft, and Ameritech have expressed interest in partnering with HUD on the Campus of Learners model.

To date, the Administration has accomplished the following to change public housing as we know it:

- awarded more than \$1.4 billion of HOPE VI grants to redesign 85 public housing developments nationwide;
- approved the demolitions of over 30,000 public housing units;
- demolished approximately 13,800 units of public housing to date;
- by the summer of 1996, will have 65 percent of replacement housing under construction.

The Appendix lists all of the major sites on which renovations will be occurring this year.

Highlights of the Best Remakes of Public Housing

- **Techwood/Clark Howell Homes (Atlanta):** Techwood and Clark Howell Homes, constructed in 1936 and 1940, consist of 41 buildings located across from the Olympic Village. Demolition of all 1,000 units began in May 1995. A combination of larger townhomes with private entrances and garden-style apartments will be built on site. The community will also be home to a new K-5 magnet school focused on math and science, a new public library, and a new YMCA recreational center. In addition, 40 percent of the new homes to be built in and outside of the community will be market rate housing to attract working and middle-class families.
- **Lafayette Courts (Baltimore):** Beginning last August, all six high-rise buildings and 17 low-rise developments that make up Baltimore's Lafayette Courts were torn down. On-site construction of the new townhomes, low-rise family apartments and senior buildings for nearly 400 households will begin later this month. A new

McDonald's and other businesses will also be built in the neighborhood to provide job opportunities for residents.

- **Henry Horner Homes (Chicago):** Redevelopment is underway at Henry Horner Homes, the setting of Alex Kotlowitz's shocking book, *There Are No Children Here*. HUD has demolished two high-rises (466 total units) and will tear down three additional mid-rises by next spring. These five buildings will be replaced by 700 new townhouses and two- and three-flat homes throughout Chicago's Near West side.
- **Cabrini Green (Chicago):** HUD has accelerated the stalled redevelopment of the infamous Cabrini Green development, located just blocks away from the shops and restaurants of Michigan Avenue. Demolition began for the first two of three buildings to be torn down. Meanwhile, HUD is currently seeking private sector partners in rebuilding Cabrini Green. Also, over \$5 million has been released to residents for community services, GED training, job placement, entrepreneurship, and other social services.
- **Cotter and Lang Homes (Louisville, KY):** Built in 1959, the development — home to 620 families — consists of 63 buildings squeezed onto only 42 acres of land. Demolition of over 1,100 units of housing began last spring. The new community will offer a range of garden-style apartments, low-rise townhomes, and single family homes built on site and throughout the city for low- and moderate-income families.
- **Christopher Columbus Homes (Newark):** Christopher Columbus Homes was the epitome of bad public housing, with rows of dilapidated, high rise buildings providing homes for over 1,500 families on only 14 acres of land. The development stood vacant since 1990. Last April, demolition began on the vacant buildings. Construction has already begun to build

nearly 2,000 townhouse apartments both around the neighborhood and throughout the city.

- **Vaughn Development (St. Louis):** Beginning last April, all 656 units of housing at Vaughn public housing complex were demolished. Vaughn exemplifies the Administration's model of tomorrow's public housing: leveraging federal funds with private and public resources to build a new community of garden-style apartments; creating market-rate housing for mixed-income families; and seeking private management for the development.
- **Ellen Wilson Homes (Washington, D.C.):** Next month, HUD will tear down and begin the remake of Ellen Wilson Homes, a dilapidated 13-building public housing development near the U.S. Capitol. Ellen Wilson will be redesigned as a townhouse community that fits into the architectural character of Capital Hill. The neighborhood will include 134 new apartments, 27 new townhomes for sale to moderate-income families, a day-care facility, a community center, and a small park.

B. Recovery Partnerships for Troubled Housing Authorities

The next page has a list of the 40 largest public housing authorities in the nation. As one can see, many large cities such as St. Paul, Seattle, and New York have high-performing housing agencies. But eight of the 40 PHAs are deemed troubled. HUD defines a PHA as "troubled" if it scores less than 60 out of possible 100 on our management evaluation system. Scoring on that system, is based on the PHAs' ability to: (1) do quality modernization, maintenance, inspections, and other tasks to maintain the overall physical conditions of buildings; (2) collect rents; (3) turn over vacant units for occupancy; and (4) work with residents to provide programs, opportunities, and safe and drug-free environments.

40 Largest Public Housing Authorities	Number of Units	Performance Management Score (PHMAP)	High Performing S=Standard T=Troubled
St. Paul, MN	4,344	98.64	H
Denver, CO	4,081	98.49	H
Richmond, VA	4,461	98.30	H
Seattle, WA	6,667	96.99	H
Norfolk, VA	4,457	96.59	H
Los Angeles, CA	8,750	94.61	H
Louisville, KY	5,971	94.15	H
Dallas, TX	7,343	92.95	H
Nashville, TN	6,429	92.86	H
Mobile, AL	4,125	92.86	H
Milwaukee, WI	4,749	92.76	H
San Antonio, TX	8,230	92.42	H
Brownsville, TX	8,086	92.42	H
Tampa, FL	4,936	91.67	H
New York City, NY	115,017	91.60	H
Birmingham, AL	6,811	90.95	H
Dade County, FL	11,260	87.11	S
Minneapolis, MN	6,785	84.05	S
Columbus, OH	5,445	84.05	S
El Paso, TX	6,268	80.53	S
Dayton, OH	4,524	80.03	S
Akron, OH	5,126	78.18	S
Cleveland, OH	12,068	76.50	S
Hawaii	5,263	71.43	S
Buffalo, NY	5,047	71.43	S
Baltimore, MD	17,993	70.27	S
Newark, NJ	10,814	70.12	S
Memphis, TN	7,089	69.77	S
St. Louis, MO	6,769	68.63	S
Cincinnati, OH	7,618	67.92	S
San Francisco, CA	6,757	66.49	S
Boston, MA	12,759	62.19	S
Puerto Rico	57,800	54.00	T
Atlanta, GA	14,722	49.77	T
Pittsburgh, PA	9,344	47.65	T
Chicago, IL	40,119	44.97	T
Philadelphia, PA	22,766	35.15	T
Detroit, MI	8,744	34.68	T
District of Columbia	1,786	33.33	T
New Orleans, LA	13,414	28.75	T

In 1992, the number of troubled agencies appeared almost unmanageable. But over the last three years, HUD has reduced the troubled agencies to a manageable number and confronted the remaining ones in sequence. As indicated from the list, there are only eight troubled authorities among the 40 largest. HUD has an intensive recovery partnership in place for each one:

1. New Orleans (Performance Score out of 100 points: 28.8). HUD recently entered into a unique partnership with Mayor Marc Morial and Tulane and Xavier Universities to improve the nation's worst housing authority. An executive monitor has been named to oversee a very rigorous program of recovery.
2. District of Columbia (33.3). HUD, with the support of Mayor Marion Barry, took the management of the housing agency out of District control and into the hands of a court-appointed receiver. Since HUD's partnership with the District, DPAH's management is improving. David Gilmore, the court appointed receiver, is making solid progress.
3. Philadelphia (35.2). HUD's partnership with the City of Philadelphia exemplifies the effectiveness of strong mayoral leadership. In the summer of 1993, Mayor Ed Rendell agreed to become the Chairman of the new Board of the housing authority. Under his two-year stewardship and HUD guidance, the PHA's management improved by nearly 40 percent. Mayor Rendell recently agreed to renew his Chairmanship for another two years. The PHA is expected to take a big leap forward this year.
4. Detroit (34.7). In response to the stark conditions in the City, HUD entered into a short-term partnership with Mayor Archer to facilitate the transformation of several public housing developments and to improve management deficiencies. As a positive step forward, the City Council recently passed a resolution to dissolve the troubled housing department and create an independent and accountable Detroit Housing Commission.
5. Chicago (45.0). HUD's partnership with Mayor Richard Daley has brought visible improvements to the city's public housing. In six months, we have demolished run-down buildings at Henry Horner and Cabrini Green, implemented community policing, designed tougher admission and eviction policies, and put in place management systems to build a sound foundation for long-term recovery.
6. Pittsburgh (47.65). HUD entered into a formal agreement with Mayor Tom Murphy and the Pittsburgh Housing Authority approximately six months ago to move the housing authority out of "troubled" status by the end of 1996. Mayor Murphy has appointed a private sector "turn-around" expert, Herb Elish, former CEO of Weirton Steel, as Chairman of the Housing Authority Board. He is devoting his full attention to improving the management of the housing agency.
7. Atlanta (49.8). HUD has had an extensive recovery team and technical assistance effort in Atlanta since 1994. With HUD's help, the Atlanta housing agency has put together one of the most ambitious plans to seek private-public partnerships in the development of modern, mixed-income public housing. In just one year, the Atlanta HA has improved operations in which they scored an "F" or "D" — rent collections, resident initiatives, facilitating operating reserves — and brought them to "A" status. The Atlanta Housing Authority will, through its Olympic Legacy Program, remake 3,000 or 20% of its units over the next two years.
8. Puerto Rico (54.0). Puerto Rico is unique in that it operates the only public housing system that is all privately managed. The haphazard conversion of public housing to private management, begun in 1992, left a housing system with little public oversight and weak accountability on the part of private managers. Due to the Administration's assistance, the public housing system is stabilizing, attracting greater competition and better services and housing conditions for families.

Beyond the largest 40 housing authorities, other 75 of the 3,400 HUD works with are also graded troubled. HUD is now embarking on a recovery strategy for each one of these smaller authorities as well.

C. Infusing Positive Incentives and Tougher Expectations in Public Housing

The existing dynamic of public housing rules as they operate today is very often negative. Rent rules discourage work and destroy family stability; lease enforcement policies condone crime; and isolation from support systems results in multigenerational dependence. We must change the social dynamic in public housing so that families can achieve self-sufficiency. HUD has changed a web of rules and policies to:

- instill positive incentives in public housing so that we reward people who work and give families and their children a platform to advance their learning and opportunities; and
- set tougher expectations on individual responsibility and preserve residents' right to safe and quality housing.

Only by changing the negative social dynamic will our other efforts to transform public housing possibly be successful. We cannot fix buildings as fast as they can be destroyed if criminal activity dominates, if young people are completely alienated, if families are splintered, and hope is non-existent.

HUD has taken the following decisive actions to ensure that our programs embody conditions that help people do all they can to help themselves and to build a positive community.

Instill Positive Incentives

- **Reward People Who Work.** HUD has worked with Congress to enact rent reforms that will reward people who work and ensure that they can keep more of their newly earned income. Specifically, rent reforms and changes in

admissions rules which facilitate mixed-income communities, admit working families, and encourage residents who work to stay in public housing to serve as role models in the community.

- **Allowing Adjustments in Income When Calculating Rent.** Previously, laws and rules required public housing residents to pay approximately 30 percent of their income towards rent. However, the rules discouraged families from working because 30 percent of every new dollar of income earned had to go toward rent. HUD will now permit PHAs to allow adjustments to income when calculating a resident's rent, thus encouraging residents to work and earn more pay. For instance, PHAs can disallow newly earned income or medical insurance payments in calculating a resident's income, thus altering the amount the resident has to pay in rent. This reform not only rewards work but also helps unify and strengthen families who might otherwise split up to avoid the penalty of additional income earned.

- **Imposing Rent Ceilings.** HUD permits PHAs to impose rent ceilings so that public housing rents will not exceed market rents. This will make public housing rents competitive with the private market and attract and maintain low-income working families.

- **Changing Admissions Requirements.** Congress has repealed federal preferences for admissions which restricted public housing primarily to the very poor. HUD will now allow PHAs to use locally designed preferences that can enable more working families to live in public housing.

- **Create Campuses of Learning.** HUD is working to transform selected public housing developments into "Campuses of Learners" so that adults and youth can access computer-based learning, other educational opportunities, and job advancements so they can achieve more promising futures. On these Campuses,

residency may be time-limited; upon completion of the Campus program, residents should be prepared to move into private housing and secure jobs. HUD anticipates designating 12-15 public housing developments as Campuses of Learners by May 1996.

Set Tougher Expectations and Respect Residents

- **"ONE STRIKE AND YOU'RE OUT" Screening and Eviction Policies.** The Administration has issued guidelines for PHAs to effectively design and implement "One Strike and You're Out" policies that rely on tough screening and lease enforcement procedures to keep drug dealers and other criminals out of public housing. Public housing residents have the same rights as all other Americans to live in peace and free from fear, intimidation, and abuse. At a time when federal resources are scarce, public housing should be made available to only responsible individuals.
- **Crack Down on Crime with Local Law Enforcement Officials.** HUD, in partnership with the FBI, ATF, DEA and local law enforcement officials, is cracking down on gangs, drugs, and violent crime in public housing. Operation Safe Home combines undercover operations, witness relocation, and crime prevention strategies to address the pervasive crime problems in some of America's most troubled public housing communities. To date, Operation Safe Home has resulted in thousands of arrests of gang members and drug dealers and confiscation of their guns, assault weapons, and drugs.
- **Encourage Community Policing and Crime Prevention Programs.** HUD will seek to expand community policing efforts in public housing by giving PHAs

discretion under the proposed FY 1997 performance funds to hire residents for security efforts. HUD's Drug Elimination Program has supported resident-driven crime prevention programs that include community policing, tenant patrols, and innovative youth programming.

Already public housing agencies across the country are using these new concepts well. The Denver Housing Authority has partnered with Telecommunications, Inc., several local universities and the local school district to convert the North Lincoln Homes public housing development into a townhouse community that provides a network of family services and computer-based learning opportunities to help residents transition to self-sufficiency. By this summer, families will be ready to enter into a pledge that commits them to achieve education and employment goals as a condition for living in the community.

Two years ago, the housing authority in Toledo drafted a tougher lease and instituted a lease enforcement policy in public housing that is working. In the last 12 months, 41 tenants were evicted for drug or other criminal activities. During that same period, over 330 out of 2,300 applicants were rejected for criminal histories or unfavorable landlord references. Since 1993, when its One Strike policy went into effect, the overall level of crime has dropped in Toledo's public housing communities.

The Flint Housing Commission in Michigan has implemented a community policing program with the local police department and a private security firm that uses both foot patrols and car patrols to provide greater police visibility and coverage to their developments. Community policing and anti-crime programs have been so successful that drug-related arrests in public housing communities have dropped substantially, from 3,800 total arrests between 1991 and 1993 to only 12 drug arrests in 1993-94.