

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Nos. 98-1807, 98-2311, 98-3145

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	Appeal from the United
	)	States District Court for the
v.	)	Northern District of Illinois,
	)	Eastern Division
CHICAGO HOUSING AUTHORITY,	)	
a corporation, and JOSEPH SHULDINER,	)	No. 66 C 1459
Executive Director, in his official capacity,	)	
	)	Chief Judge Marvin E. Aspen
Defendants.	)	

SUPPLEMENTAL APPENDIX
TO BRIEF OF DEFENDANTS-APPELLANTS
CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER
IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145

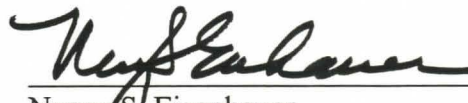
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Dated: September 15, 1998

CERTIFICATE

Pursuant to Circuit Rule 30(c), I certify that Defendants-Appellants Appendix and Supplemental Appendix contain the materials required by Circuit Rule 30(a) and (b).



Nancy S. Eisenhower

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	Chief Judge Aspen
	)	
Defendant.	)	

RECEIVER'S EMERGENCY MOTION FOR ENTRY OF ORDER DIRECTING CHA
TO COMPLY WITH 1987 RECEIVERSHIP ORDER AND 1998 HOPE VI ORDERS

DANIEL E. LEVIN and THE HABITAT COMPANY, (collectively "the Receiver")
move the Court, for the reasons set forth below, for the following relief against the defendant
Chicago Housing Authority:

- (1) That CHA cease all further unilateral non-elderly housing development activities without prior approval of the Court;
- (2) That CHA turn over control of all HOPE VI non-elderly housing development to the Receiver (including but not limited to operating and financial control);
- (3) That CHA disclose to the Receiver all information about its non-elderly housing development activities, including but not limited to agreements it has made (or has been negotiating) with tenants or others concerning new housing development; and
- (4) That CHA be enjoined from taking any steps to implement any purported agreement with tenants concerning the development of non-elderly public housing

(including the Cabrini-Green agreement described below), without advance express written consent of the Receiver or further Order of this Court.

This motion is submitted on an emergency basis because of the CHA's unilateral act in agreeing to a settlement of a lawsuit involving redevelopment plans for the Cabrini-Green housing project in the case of Cabrini-Green Local Advisory Council v. CHA, No. 96 C 6949, (N.D. Ill.) ("Cabrini-Green LAC"), which is apparently to be presented soon to Judge Coar, in a manner that appears to be inconsistent with the Gautreaux Court's Orders. In addition, counsel for the Receiver asked counsel for the CHA if it would agree to a standstill agreement to permit a regular, expedited briefing schedule on this Motion. Counsel for the CHA refused.

Because the Receiver has not been given a copy of the document, the Receiver has not formed an opinion on the merits of the proposed housing development to be implemented pursuant to the settlement. It may view the development as sound (or it may not). Nevertheless, the Receiver is concerned that the process followed by the CHA in entering into the purported settlement -- a process from which the CHA excluded the Receiver -- appears to violate this Court's Orders.

In support of this Motion, the Receiver states:

I. BACKGROUND RELATED TO CHA'S DUTY OF COOPERATION.

A. The Receivership Order.

1. By order of August 14, 1987 (Exhibit A hereto; "Receivership Order"), the Court appointed the Receiver to assume responsibility for the "scattered site program," which the Order defined as including "all CHA non-elderly public housing development programs which

may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459."

Receivership Order ¶(C).

2. The Receivership Order provides, among other things, that the Receiver's responsibilities include:

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefore in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program . . . and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel . . . as are determined by the Receiver to be necessary and appropriate to implement the scattered site program and to enable the Receiver to discharge its duties pursuant to the provisions hereof. [Emphasis added.]

3. The Receivership Order also directs the CHA to cooperate with the Receiver, and restrains the CHA from interfering with the Receiver:

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program. [Emphasis added.]

B. The February 23 Order.

4. By Order of February 23, 1998, Exhibit B hereto, the Court confirmed that the Judgment Order in this case "governs the CHA's use of HOPE VI funds" and that "any construction of public housing in Cook County must conform to the judgment order's locational requirements." Exhibit B at 5.

C. The CHA's Refusal to Implement the February 23 Order and the Motion for Further Relief.

5. By letter of March 13, 1998, the Receiver informed the Court of its unsuccessful efforts to obtain cooperation from the CHA concerning the HOPE VI application process. A copy of the March 13 letter is attached as Exhibit C hereto.^{1/}

6. As set forth in the March 13 letter, the Receiver met on March 10 with Joseph Shuldiner, the Executive Director of the CHA, and a representative of HUD:

At the meeting, Mr. Shuldiner stated that he did not agree with your February 23 Order, that he opposed the Receivership, and that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to "try to stop him." He made it clear that no cooperation would be forthcoming, and that if the Receiver opposed him, he would join tenants in pressing claims against us. [Ex. C at 1.]

7. Among the other matters discussed on March 10 was the following:

Mr. Shuldiner said that he reads the February 23 Order as dealing only with the location for HOPE VI housing, and not as a statement that HOPE VI-funded housing is within the Gautreaux judgment for all purposes. He added that he does not agree that the Court-ordered Gautreaux locational requirements (such

^{1/} The March 13 letter was subsequently verified by the March 30 Affidavit of Daniel Levin ¶17, and the March 31 Affidavit of Valerie Jarrett at ¶9. Those affidavits have never been controverted by the CHA.

as one-for-one construction of housing in limited and general areas, the designation of revitalizing areas, etc.) should limit the CHA's ability to place new housing units wherever it chooses. [Ex. C at 2.]

8. Following the service of the March 13 letter, the Plaintiffs filed a *Motion for Further Relief*. A copy of the Motion, and the Proposed Order submitted therewith, is attached as Exhibit D hereto. In the Motion, the plaintiffs requested an Order:

- (1) Ordering the CHA to cease all activities incident to the development of non-elderly public housing, "including without limitation entering into negotiations, making commitments to tenants or others, or seeking . . . approvals with respect thereto;"
- (2) Providing the Receiver with full information relating to development activities in which the CHA had engaged;
- (3) Making CHA employees available to respond to questions of the Receiver;
- (4) Executing all documents requested by the Receiver or HUD to transfer all housing development funds to the Receiver;
- (5) Making no application for funding for development without the written consent of the Receiver; and
- (6) Providing a statement of the CHA's plans for desegregation.

9. The Receiver supported the Motion for Further Relief, and submitted extensive affidavits and documentary evidence in support. The Court is respectfully referred to Affidavits of Daniel Levin, Valerie Jarrett, Philip Hickman, and Barry Miller, and accompanying documents.

D. The Emergency Motion Concerning the CHA's HOPE VI Duty of Cooperation.

10. While the Motion for Further Relief was pending, on March 31, 1998 HUD published a Notice of Funding Availability ("SuperNOFA") under the HOPE VI program. After reviewing the SuperNOFA, the Receiver wrote the CHA to ask to meet to discuss a joint application. After the CHA failed to respond to two letters, the Receiver filed on May 18, 1998 the *Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation*.

11. At a hearing on May 19, the CHA opposed the motion on the ground that the Receiver had no authority over HOPE VI. A copy of the transcript of that hearing is attached as Exhibit E hereto.

E. The Court's Comments and Order on May 19.

12. At the May 19 hearing, the Court stated, inter alia:

[M]y focus is not on whether he can get along with the Receiver or not. My focus is whether or not everyone, including the CHA, complies with the orders of this Court, the orders that I have issued thus far and the orders that I will issue in the future. I expect Mr. Shuldiner to comply with those orders, whether or not he feels that it's an impediment to follow my orders because he can't get along -- or feels he can't get along with the Receiver.

I will issue an order, and as long as the Seventh Circuit has not changed my order it's a viable order and I expect Mr. Shuldiner to comply with it. If he does not comply with it, I will do what I have to do to make him comply with it. I hope you will give him that message.

* * * * *

. . . [If Mr. Shuldiner's] belief conflicts with the orders of this Court, then Mr. Shuldiner will have to opt to follow the orders of this Court. You know, we're not in a lawless society where somebody has their own views as to the law or the construction of an agreement and can follow those if there is a Court order to the contrary.

* * * * *

[U]ntil and unless an order of the Court has been overturned by a reviewing court, I expect that order to be followed, regardless of Mr. Shuldiner's personal views as to how he thinks the law ought to operate. And please convey that to him.

* * * * *

I find that Mr. Shuldiner has thus far indicated that he would rather contest every aspect of the relationship between the Receiver rather than attempt to cooperate. And to the extent I can, I will straighten it out when I rule on the motions.

13. Later on May 19, the Court entered an Order granting the Emergency Motion. A copy of the Court's Order is attached as Exhibit F hereto. After discussing the prior Orders, including the Receivership Order's grant of "all powers of CHA" with regard to the development and administration of non-elderly housing development, the Court ruled:

On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver.

* * * * *

Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 19989 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

F. Before the CHA Would Produce Prior HOPE VI Applications to the Plaintiffs and the Receiver, the May 20 Order of this Court Was Required.

14. On May 20, the CHA presented a motion for a stay of the Court's May 19 Order pending appeal.^{2/} While in the courthouse on May 20, the CHA's counsel refused to produce HOPE VI applications that had been requested by counsel for the plaintiffs (and had long been requested by the Receiver). The Court granted the plaintiffs' oral motion to compel immediate production of the documents. A copy of the Court's Order is attached as Exhibit G hereto.

G. The Denial of the Motion for Further Relief.

15. On May 21, 1998, this Court denied the plaintiffs' Motion for Further Relief as moot. In its ruling, the Court expressed the view that most of the matters contained in the Motion for Further Relief had been disposed of by its May 19 Order concerning HOPE VI:

We do not believe such an order will be necessary. In an order issued on May 19, in response to an emergency motion from the Receiver, we wrote that "we [have previously] held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver." Accordingly we held that the parts of the HOPE VI program discussed in our opinion of February 23 "fit[] entirely within the Receiver's jurisdiction. . . . Many of the problems detailed in the plaintiff's motion concern the CHA's HOPE VI-related activity, and those problems were addressed by our prior order.

To the extent that the plaintiffs' motion raises issues unrelated to the Receiver's role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court's attention if it so chooses.

^{2/} For the Court's information, on May 29, 1998, the Seventh Circuit denied the CHA's motion to stay this Court's February 23 and May 19 Orders. The initial briefs of the CHA, the Receiver, and the plaintiffs have been filed in the Seventh Circuit. The CHA's Reply is due on August 12, 1998. No date has yet been set for oral argument.

H. Other Problems with the CHA Following the February 23 and May 19 Orders.

16. Since the May 19 Order, the Receiver has attempted to focus on resolving matters of immediate concern in a cooperative manner with the CHA.

17. A HOPE VI application was filed by the CHA with respect to ABLA on June 29, 1998, and all parties agreed to the entry of a revitalizing order by this Court on June 19, 1998.

18. Nevertheless, in the preparation of the ABLA HOPE VI application, the CHA refused to allow the Receiver to sign the application and apply for the housing development as Receiver -- as required by the Receivership Order ¶2. In addition, the CHA did not fully cooperate in other respects in the HOPE VI application. See July 10, 1998 letter from Daniel E. Levin to the Court, a copy of which is attached as Exhibit H hereto.

19. The CHA also failed to comply with the Court's Orders and cooperate in performing the ministerial acts required to transfer \$7 million of funds, much of it to the Receiver. See 3/31/98 Jarrett Aff't ¶9-13 & Ex. 4 thereto. After the Court's May 19 Order, the transfer was obtained by the Receiver in early June through direct negotiations with HUD.

II. BACKGROUND CONCERNING CHA'S ACTIONS AT CABRINI-GREEN.

20. The following additional background is relevant to the CHA's recent disregard of this Court's orders as they relate to the Cabrini Development.

A. Originally the CHA Recognized the Receiver's Role in the Cabrini Redevelopment, then it Excluded the Receiver.

21. In 1993 the CHA unilaterally applied to HUD for HOPE VI funds for the Cabrini redevelopment. After the Receiver learned of the application and objected, the CHA agreed that Habitat would function as "development manager" for the construction of replacement units.

Aff't of Daniel E. Levin of 3/31/98 ¶¶18-19. This agreement was confirmed by letter of November 14, 1995 from the CHA's board chairman, Exhibit I hereto.

22. The Receiver functioned as development manager for Cabrini for over a year, after which the CHA instructed the Receiver (in September 1996) to stop work, and the CHA thereafter began performing some development tasks that are the Receiver's responsibility under the Receivership Order. 3/30/98 Aff't of Philip A. Hickman ¶¶28-39, 44-46.

B. After the Court Denied CHA's HOPE VI Motion, the CHA Announced its Intention to Proceed as it Saw Fit with Respect to Cabrini and other HOPE VI Development Activities.

23. As is related above, after the CHA excluded the Receiver from participation in Cabrini. Throughout the summer of 1997, the Receiver raised with the CHA the issue of the fact that HOPE VI authority was vested in the Receiver, and the CHA should not be acting in any development role at Cabrini-Green.

24. In July 1997, the Receiver advised the Court of the CHA's position that the Receiver had no role in HOPE VI funded development activities, and requested the Court's assistance. The Court urged the parties to meet to attempt to work out their differences. At first, the CHA refused to discuss the HOPE VI questions; it later agreed to negotiate. 3/31/98 Miller Aff't ¶¶7-8; Levin Aff't ¶¶25-38.

25. In September 1997, the CHA filed the HOPE VI motion that the Court denied in an Order of February 23, 1998. Following that Order the Receiver invited the CHA and HUD to a meeting to discuss how to implement the Order, which recognized that HOPE VI-funded housing was subject to the remedial orders in this case. Levin Aff't of 3/17/98 ¶¶ 3-5 and Ex. A thereto at 1.

26. In the March 10 meeting, Mr. Shuldiner stated as follows with respect to the Cabrini redevelopment, as Mr. Levin reported to the Court in his letter of March 13, 1998, p. 5:

Near the end of the meeting, Mr. Shuldiner told me that he had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver. He made it clear that he is going to continue to make plans with the residents at Cabrini-Green, and that we could only "try to stop him."

27. The circumstances described in Mr. Levin's March 13, 1998 letter led the plaintiffs to file a motion for further relief on March 18, 1998, which the Court subsequently dismissed as moot in view of its ruling on the Receiver's Emergency Motion of May 18, 1998.

28. After the Court granted the May 18 motion by its May 19, 1998 Order, the Receiver continued to request cooperation from the CHA and compliance with the Receivership Order. In view of the Court's clear statement to the CHA in the May 19 Order that it was obligated to cooperate with the Receiver (as well as statements in open Court), the Receiver hoped that the CHA would in fact provide such cooperation.

C. When the Receiver Objected to CHA's Unilateral Negotiation of Redevelopment Agreements with Tenants, the CHA Refused to Alter its Practice.

29. Thereafter, the Receiver, the CHA, and the City of Chicago entered into discussions in accordance with the May 19 Order jointly to prepare an application for additional HOPE VI funds to be submitted to HUD on June 29, 1998. In those discussions, the CHA referred to agreements it claimed to have made with tenants that limited the options available for development planning at the ABLA development.

30. On June 12, 1998 one of the Receiver's attorneys wrote one of the CHA's attorneys seeking information, and specifically focused on the CHA's negotiation of separate development arrangements with tenants. The June 12 letter (Exhibit J hereto) stated:

The CHA has repeatedly stated that it has entered into agreements with ABLA tenants, and that those agreements limit the redevelopment planning potential. . . . [W]e have not yet seen any executed agreements. The Receiver is sensitive to the importance of communication with tenants as part of the planning process. But we have not been afforded the opportunity to participate. Instead, we have been presented with an agreement we have not seen as a *fait accompli*.

While the agreement with ABLA tenants apparently predates the 5/19 Order, when the CHA follows the practice of negotiating agreements with tenants (to which the Receiver is not a party), that limit development options that may later be available, the CHA impermissibly occupies a portion of the Receiver's responsibility. We trust this won't happen again in the future.

In keeping with the above, with respect to ABLA and elsewhere, the Receiver requests that (1) the CHA provide it with information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City, and (2) the CHA not enter into any such agreements hereafter without the participation and written concurrence of the Receiver. [Emphasis added]

31. By letter of June 16, 1998, Exhibit K hereto, counsel for the CHA responded:

The CHA does not intend to provide the receiver with "information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City," nor does the CHA intend to refrain from entering into any such agreements "hereafter without the participation and written concurrence of the Receiver." . . . The CHA will provide information to the receiver regarding agreements made and proposed with regard to HOPE VI projects and any other projects that involve the construction of new housing. [Emphasis added.]

32. Despite the CHA's agreement to "provide information to the receiver regarding agreements made and proposed with regard to HOPE VI projects and any other projects that

involve the construction of new housing," the CHA did not provide any such information with respect to the Cabrini agreement.

D. The Cabrini-Green LAC Lawsuit.

33. In 1996, the Cabrini-Green Local Advisory Council, a tenant's organization, sued the CHA to enjoin the CHA's plan for redevelopment at Cabrini-Green under the HOPE VI program. This lawsuit essentially brought development activities at Cabrini-Green to a stop.

34. On January 22, 1997, Judge Coar issued an opinion denying the defendants' motion to dismiss, 1997 U.S. Dist. LEXIS 625 (copy attached as Exhibit L). In that opinion, Judge Coar addressed the relationship between the Cabrini-Green LAC case and Gautreaux.

35. In the motion to dismiss, the CHA argued that the Cabrini-Green LAC case was an impermissible collateral attack on Gautreaux's prohibition of building housing in racially segregated communities without court approval. 1997 U.S. Dist. LEXIS at *44. Indeed, the CHA's Memorandum in Support of the Motion to Dismiss, filed December 6, 1996, labeled the Cabrini-Green LAC case as "directly contrary to the court order that binds CHA in Gautreaux v. CHA"

36. On November 18, 1996, counsel for the CHA argued at a preliminary injunction hearing before Judge Coar that any redevelopment plan at Cabrini-Green was subject to the orders of the Gautreaux court:^{3/}

MR. JOHNSON: . . . One of the difficulties . . . is that the LAC is very much, as is their right, very much wedded to the earliest plans on Cabrini. And when Mr. Shuldiner meets with them, he receives from them the statement that they must go back to the original plan, and that's it. There is a bit of an

^{3/} A copy of the transcript is attached as Exhibit M hereto.

impasse. That plan was submitted to HUD and was not acceptable to HUD, not acceptable to the city. We believe it is also not acceptable to the Gertreaux [sic] plaintiffs.

* * * * *

Judge Aspen has Gertreaux [sic]. And, of course, Your Honor knows that in Gertreaux we have a race discrimination judgment against us that amongst many other things would preclude building in the Cabrini area, just as it has precluded building over at Horner. But we then have gone in Gertreaux [sic] and sought waivers fee that injunction based on specific showings to Judge Aspen that the building will be taking place in a revitalizing community. Otherwise the Gertreaux injunction would prohibit all redevelopment at Cabrini.

We then have to work with counsel for the residents, the class in Gertreaux [sic], Mr. Polikoff. And so in our mind there is a tremendous intersection between this case and Gertreaux [sic] in the sense that here we have race claims being made against us for, you know, redevelopment plans, which before they can take place must be reviewed by a different judge of this district in the context of a race discrimination judgment against CHA. [Ex. M at 20-21 (emphasis added).]

* * * * *

[N]o redevelopment at Cabrini can take place without a waiver, which is a contested proceeding in the Gertreaux court [Id. at 22]

37. Judge Coar disagreed, because the requested relief *might* not be within the scope of Gautreaux. In addition, Judge Coar expressly noted that the agreement the Cabrini-Green LAC was seeking to enforce was subject to Gautreaux, and that any relief ordered by the Court would take Gautreaux into account:

It is not clear that granting plaintiff's requested relief -- i.e., ordering CHA to specifically perform on its contractual agreements with LAC and its members -- will necessarily bring this case within the scope of Gautreaux. This conclusion is based on the fact that the agreement that plaintiff seeks to have enforced specifically states that the agreement is "subject to . . . Federal Court guidelines under Gautreaux." (Compl., P. 38). Any relief that this Court directs must necessarily take this provision into account.

1997 U.S. Dist. LEXIS at *44-45.

E. The Cabrini-Green Settlement.

38. The Receiver first learned details of the Cabrini agreement from an article appearing in the *Chicago Tribune* on July 29, 1998.

39. Following publication of the article, the CHA's General Counsel was not prepared to turn over to the Receiver the written settlement agreement without attempting to extract an advance agreement from the Receiver not to contest the as-yet unseen agreement before the CHA sought court approval from Judge Coar. See Letter of July 29, 1998, Exhibit N hereto.

III. THE NEED FOR ACTION BY THIS COURT.

A. The Facts Warrant Further Action by this Court.

40. It is clear from the foregoing that the CHA has intentionally chosen to disregard the requirements of the Receivership Order by entering into unilateral redevelopment agreements with tenants that are clearly part of the Receiver's responsibility.

41. Despite this Court's Orders of February 23 and May 18, 1998, the CHA has determined that it will proceed with taking unilateral actions with respect to housing development at Cabrini, with the Receiver left, in the words of Joe Shuldiner, to go to Court to "try to stop him." Ex. C at 1.

42. It is also clear that the CHA has failed to comply with the cooperation provision of the Receivership Order, and its own attorney's undertaking in the letter of June 16, 1998, to inform the Receiver regarding agreements made and proposed with regard to HOPE VI projects.

43. Because of the CHA's violation of the Receivership Order and the 1998 Orders regarding HOPE VI, the Receiver has been totally excluded from virtually all aspects of Cabrini

redevelopment planning, and specifically excluded from what has been reported in the press as a wide-ranging and far-reaching agreement with tenants, which includes the following components (according to press reports):

- The CHA agreed to build 895 apartments for people who qualify for public housing. Of those units, 700 would have rents set at 30 percent of a family's income; 195 units would be for families with incomes 40 percent of median income or below.
- Cabrini's tenant council would be the "co-general partner for the development of all units" on the site of demolished buildings "with a 51 percent interest in the ownership of the general partnership."^{4/}
- The tenant council would get a portion of developers' fees and profits--"provided it uses such fees and profits for not-for-profit purposes"--and a role in the selection of property managers and construction contractors.
- The agreement restricts redevelopment of other parcels of land in the area.
- The CHA has promised \$59 million over the next few years, apparently including the \$40 million in HOPE VI housing development money that has previously been authorized by HUD.
- In addition, on information and belief, the CHA names a separate company as its development consultant for the property in the settlement agreement.

All of these terms, if accurately reported by the press, pre-empt areas of responsibility entrusted to the Receiver by Receivership Order and reconfirmed by the February 23 and May 19 Orders.

^{4/} The 51% set aside for the tenants' partnership interest might otherwise be available for building additional housing.

44. The Receiver is concerned that the CHA may be following the course discussed by Mr. Shuldiner in the March 10 meeting when he threatened to fight and otherwise retaliate against the Receiver if the Receiver sought control of HOPE VI housing development.

45. Given the CHA's recent statements of opposition to the Judgment Order and the subsequent Orders of this Court, the Receiver is concerned that any agreement negotiated by the CHA *may* not give adequate weight to the CHA's desegregation obligations under this Court's Orders, or *may* represent compromises that limit desegregation opportunities that would otherwise be available.

46. The Receiver may support the entire Cabrini-Green agreement, or substantial aspects of it, after it has had an opportunity to study it. Nothing in this motion is intended to express a pre-judgment of the merits of that agreement. However, for the reasons stated, the Receiver strongly objects to the process that has generated the agreement, and the CHA's violations of this Court's Orders. At a minimum, the Receiver should have been fully informed of and involved in the negotiations leading to the formation of the proposed agreement. This Court's officer, appointed to implement the Court's important desegregation remedies, should not have been kept in the dark about negotiations concerning redevelopment of almost a thousand units of public housing.

47. Instead of unilaterally settling the lawsuit, the CHA should have consulted with the Receiver and sought its approval of the terms of any settlement agreement. This should have occurred before the CHA made any commitments to tenants -- let alone signing an agreement that the CHA has no authority to sign or enforce.

B. CHA Had No Actual Authority to Enter into this Settlement,
and All Parties Dealing with it Had Notice of that Fact.

48. The CHA had no actual authority to enter into this Settlement Agreement. The Receivership Order, as reaffirmed by the February 23 and May 19 Orders, transferred "all powers of the CHA" concerning the development of non-elderly housing to the Receiver.

49. The CHA and the plaintiff class in the Cabrini case had actual knowledge of the Gautreaux case -- it's applicability was briefed in the Cabrini case and Judge Coar's January 22, 1997 Order noted that any relief would be subject to Gautreaux. Both have actual knowledge of the Receivership Order.

50. It is hornbook law that parties negotiating agreements with government agencies are charged with knowledge of all limitations of those agencies' contracting authority, and that any contract that is *ultra vires* or otherwise entered into without authority is void. See, e.g., Lindahl v. City of Des Plaines, 210 Ill. App. 3d 281, 568 N.E.2d 1306, 154 Ill. Dec. 857 (1st Dist. 1991); Bank of Pawnee v. Joslin, 166 Ill. App. 3d 927, 521 N.E.2d 1177, 118 Ill. Dec. 484 (4th Dist. 1988).

51. Accordingly, neither the plaintiff class in Cabrini-Green LAC nor the CHA can claim any right in the settlement agreement -- as presently "approved" by the CHA -- since the CHA had no authority to enter into any portion of that agreement respecting housing development.

C. The Court Has Broad Authority to Issue
Supplemental Orders to Effectuate the Receivership.

52. The Court has broad authority to issue supplemental orders to effectuate the Receivership it created. Rhode Island Hosp. Trust Nat'l Bank v. Howard Commun. Corp., 980 F.2d 823, 829 (1st Cir. 1992)(affirming finding of civil contempt against defendants for impeding work of court-appointed receiver); SEC v. Hardy, 803 F.2d 1034, 1037-38 (9th Cir. 1986). Accord 13 *Moore's Federal Practice* §§66.06[4][a], 67.07[3] (3d ed. 1998). This is especially true in a racial discrimination case, where the defendant has resisted implementation of the Court's desegregation orders.

CONCLUSION

53. As the Court is aware, the Receiver has attempted for the past several years to work with the current CHA administration, and has worked since 1996 to attempt to voluntarily resolve disputes about HOPE VI.

54. The Receiver continues to be interested in working cooperatively with the CHA, and remains willing to seek the CHA's input in decisions as to which the Court has assigned responsibility to the Receiver.

55. After the parties presented the HOPE VI issue to the Court, the Court reaffirmed on May 19, 1998 that the Receiver had authority over non-elderly housing development under the Receivership Order, including HOPE VI.

56. The CHA has disobeyed the Receivership Order and has not accepted the Court's February 23 and May 19 Orders, and continues to act unilaterally with respect to HOPE VI housing development.

57. The Receiver continues to view its role as implementing the Court's wishes, as expressed in its Orders.

58. The Receiver shares the desire to redevelop Cabrini-Green as quickly as possible, in a manner that effectuates the desegregation remedy in this case.

WHEREFORE, for the foregoing reasons, the Court is respectfully requested to enter the following relief against the defendant Chicago Housing Authority:

- (1) That CHA cease all further unilateral non-elderly housing development activities without prior approval of the Court;
- (2) That CHA turn over control of all HOPE VI non-elderly housing development to the Receiver (including but not limited to operating and financial control);
- (3) That CHA disclose to the Receiver all information about its non-elderly housing development activities, including but not limited to agreements it has made (or has been negotiating) with tenants or others concerning new housing development; and
- (4) That CHA be enjoined from taking any steps to implement any purported agreement with tenants concerning the development of non-elderly public housing (including the Cabrini-Green agreement), without express written consent of the Receiver or further Order of this Court.

Respectfully submitted,
Daniel E. Levin and
The Habitat Company

DATE: July 30, 1998

By: _____
One of their attorneys

Michael L. Shakman
Barry A. Miller
Miller, Shakman, Hamilton Kurtzon & Schlifke
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action No. 66C1459
	)	66C1460
SAMUEL R. PIERCE, JR., Secretary	)	(Consolidated)
of the Department of Housing and	)	
Urban Development, and CHICAGO	)	
HOUSING AUTHORITY, et al.,	)	
	)	
Defendants.	)	

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' Motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

(B) This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

Department of Housing and Urban Development ("HUD"), CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered IL 2-096, IL 2-098, IL 2-103 through IL 2-109, and IL 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 65 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, (ii) employing, transferring and discharging staff for the scattered site program, (iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

Program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.3, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver. The Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs, expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with Rule 9(b) of the Civil Rules of the United States District Court for the Northern District of Illinois.

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:


United States District Judge

August 14, 1987

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.)
)
 Plaintiffs,)
)
 v.)
)
CHICAGO HOUSING AUTHORITY,)
)
 Defendant.)

No. 66 C 1459

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

Nearly thirty years ago, United States District Judge Richard B. Austin entered a judgment order against the Chicago Housing Authority (the CHA) with the hopes of correcting the effects of that agency's unconstitutional public housing site selection and tenant assignment procedures. *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969). Blacks then made up 90% of the CHA's tenant base, but the CHA had deliberately restricted the number of blacks who could live in the four housing projects which were located in predominantly white areas, to the point where 93% to 99% of the tenants in those units were white. *Gautreaux v. CHA*, 296 F. Supp. 907, 909 (N.D. Ill. 1969). The other CHA units – the 99 1/2 % which were located in predominantly black areas – housed the rest of the CHA's tenants, 99% of whom were black. *See id.* at 910. This arrangement, ruled Judge Austin, violated the Fourteenth Amendment. *See id.* at 914. And in a comment worth recalling here for its relevance today, he wrote:

It is . . . undeniable that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and urban renewal. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

Id. (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)) (emphasis added).

The building block of Judge Austin's remedial judgment order was the Dwelling Unit, "an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA." *Gautreaux*, 304 F. Supp. at 737. He barred the CHA from "authoriz[ing], approv[ing], or implement[ing] any plan for Dwelling Units" or from "seek[ing] any approval or request or accept[ing] any assistance from any government agency with respect thereto" unless the plan's Dwelling Units were located in conformity with the order's requirements. *Id.* at 738. The order mandated that the CHA erect three Dwelling Units in a General Area (i.e. areas in Cook County with a white population of 70% or more) for every one Dwelling Unit it erected in a Limited Area (i.e. areas with a minority population of 30% or more), *id.* at 738-39, though it did not *require* any new construction. This ratio was later changed from 3-to-1 to 1-to-1.

In 1993, the CHA applied for and received \$50 million from the Department of Housing and Urban Development (HUD) under the auspices of the HOPE VI program (an acronym for Homeownership and Opportunity for People Everywhere). Congress created the HOPE VI program in 1992 with the goal of "empower[ing the] residents of severely distressed and obsolete public housing." S. REP. 102-356, at 70 (1992). It intended to accomplish this via a three-part plan: (1) eliminating and (in some form) replacing dilapidated public housing structures, (2) providing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *See id.* at 71.

It is the first part which is now at issue, as the CHA believes that it must spend its HOPE VI construction funds exclusively in the "3 separately defined areas containing the community's most severely distressed projects," to which the 1992 HOPE VI appropriation refers. *See* Pub. L. No. 102-389, 106 Stat. 1579 (codified as a Note to 42 U.S.C. § 1473). This would mean, of

course, that any construction of new public housing units¹ would take place in the distressed areas, which, by unfortunate circumstance, are also Limited Areas as defined by the judgment order. Recognizing that the judgment order requires equal construction in the General and Limited Areas, the CHA has asked that we "clarify" the judgment order and read it as not governing any use of HOPE VI funds.

The plaintiffs take issue with this request. They have previously pointed out to this Court that the construction of new public housing units is no longer in vogue, *see Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997), and the HOPE VI money may be one of the few remaining funding sources for the construction of desegregated housing. Of course, if construction funds permanently dry up (and if the plaintiffs do not succeed in convincing us to modify the judgment order, *see, e.g., id.* at 1093-94), then this particular effort to desegregate public housing in Chicago will come to an end. We need not contemplate this possibility today, however, for the dilemma posed by the CHA – that the HOPE VI program compels spending only in Limited Areas while the judgment order compels equal spending in General Areas – rests on an illusion.

The 1992 HOPE VI authorization contemplates an "urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects," which is to be focused on "up to 3 separately defined areas containing the community's most severely distressed projects." Pub. L. No. 102-389. This does not, however, amount to a

¹ The CHA attempts to draw a distinction between replacement construction – construction which does not add to the agency's aggregate housing stock – and wholly new construction; the CHA argues that the injunction only governs the latter. This distinction may, as the CHA claims, have great significance to other housing decisions, but the judgment order does not differentiate between reconstruction and new construction: it speaks simply of Dwelling Units "initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof." *Gautreaux*, 304 F. Supp. at 737. Housing units constructed with HOPE VI funds obviously qualify, and the use of such funds for the ends of desegregation is in keeping with the sweeping nature of the judgment order, the terms of which are as broad as the violation which it was designed to correct.

requirement that all HOPE VI money must be spent physically within those distressed areas. One way to revitalize a distressed public housing neighborhood is to tear down some of the units there and rebuild them elsewhere, thereby lessening the concentration of public housing on the old site. See Pub. L. No. 104-134, 110 Stat. 1321 (the 1996 HOPE VI appropriation, providing funds for "replacement housing which will avoid or lessen concentration of very low-income families"); Pub. L. No. 104-204, 110 Stat. 2874 (the 1997 HOPE VI appropriation, providing for the same). HUD's HOPE VI Guidebook contemplates just such an approach, discussing "[p]ublic housing development (including on-site reconstruction *as well as construction of off-site housing*) funded by HOPE VI," Pls.' Br. Ex. D (Guidebook p. 1.D.1) (emphasis added), and the legislative history is in agreement, see S. REP. 102-356, at 73 ("The balance of the [demolished] units could be replaced through . . . traditional replacement means, including major reconstruction and *scattered-site development* [emphasis added]. . . ."). In a similar vein, the HOPE VI program also requires that some demolished public housing be replaced by Section 8 housing vouchers, see Pub. L. 103-124, which may be used without regard to the boundaries of the General or Limited Areas. See 42 U.S.C. § 1473f(r). We see no incompatibility between the HOPE VI program and the judgment order.

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: 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. See *Gautreaux*, 304 F. Supp. at 741 (judgment order Article VIII); see also *Gautreaux v. Landrieu*, 498 F. Supp. 1072, 1075 (N.D. Ill. 1980) ("Difficulty in attaining racially integrated public housing shall not be further condoned. . . . The CHA must have only one concern, housing in compliance with the repeated orders of this Court.").

We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. It is so ordered.


MARVIN E. ASPEN
United States District Judge

Dated

2/23/58



THE HABITAT COMPANY

March 13, 1998

BY MESSENGER

Hon. Marvin Aspen
United States District Court
Room 2548
Dirksen Federal Building
219 South Dearborn Street
Chicago, Illinois 60604

Re: Gautreaux v. CHA No. 66 C 1459

Dear Chief Judge Aspen:

In my role as Receiver, I am writing to request instructions. This request follows a meeting I had with the CHA and HUD on Tuesday, March 10, and the problems that I have encountered and foresee continuing in fulfilling my role as Receiver.

I had requested the meeting with the CHA and HUD to discuss implementation of your Order of February 23, 1998 relating to CHA housing funded under the HOPE VI program. The CHA's positions, as described in that meeting, have led me to conclude that I need direction from the Court.

Your February 23 Order stated that HOPE VI funds are within the Gautreaux case, a matter that had been disputed by the CHA. Therefore, after I received your February 23 Order, I asked Lewis Nixon, the Acting Secretary's Representative in Chicago for HUD, and Joseph Shuldiner, the CHA's Executive Director, to meet with me to discuss what I hoped would be a cooperative approach to new housing to be built with HOPE VI funds. (Your August 14, 1987 Order appointing me and The Habitat Company assigned to the Receiver responsibility for the CHA's non-elderly housing development programs, including all such programs "which may in the future be authorized by HUD" during the pendency of the Gautreaux action, p.2 §(c). Housing to be built with HOPE VI funding clearly appears to be within your Order.)

The meeting was scheduled for March 10, 1998, at Mr. Shuldiner's office. Because Mr. Nixon was unavailable, Janet Elson attended for HUD. Valerie Jarrett accompanied me; Richard Monocchio accompanied Mr. Shuldiner.

At the meeting, Mr. Shuldiner stated that he did not agree with your February 23 Order, that he opposed the Receivership, and that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to "try to stop him." He made it clear that no cooperation would be forthcoming, and that if the Receiver opposed him, he would join tenants in pressing claims against us.

Hon. Marvin Aspen

March 13, 1998

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Because of the extraordinary nature of the statements made, and their implications for my ability to carry out my responsibilities as Receiver, I feel it is necessary to set out in some detail what was said.

* * * * *

I began the meeting by expressing my desire to work cooperatively to implement your February 23 Order. Ms. Elson also expressed her desire that we work together.

Mr. Shuldiner said that he reads the February 23 Order as dealing only with the location for HOPE VI housing, and not as a statement that HOPE VI-funded housing is within the Gautreaux judgment for all purposes. He added that he does not agree that the Court-ordered Gautreaux locational requirements (such as one-for-one construction of housing in limited and general areas, the designation of revitalizing areas, etc.) should limit the CHA's ability to place new housing units wherever it chooses.

I pointed out the language of your February 23 Order, which states: "We hold that the judgment order governs the CHA's use of HOPE VI funds." Mr. Shuldiner said he didn't agree with that language. He repeated that your Order dealt only with location and, despite the language, that it had no other effect on HOPE VI housing, and had nothing to do with the Receiver's authority. In addition, Mr. Shuldiner said that he was considering appealing your Order, and that if he did not appeal, he would attempt to get rid of the Receiver, because he couldn't accept the consequences of the Receivership.

I suggested that we ask to discuss this issue with the Court, to determine what your February 23 Order meant, if there were any doubt. Mr. Shuldiner repeated that HOPE VI funding began long after Gautreaux and shouldn't be governed by it. I said that it was the CHA's responsibility under the Order appointing the Receiver to cooperate with us.

Mr. Shuldiner repeatedly expressed at length and in detail his anger at Mr. Polikoff, plaintiff's counsel. He asked if Mr. Polikoff is "going to control our life." He said there are over 3,000 housing units to be constructed at a cost of over \$300 million. He asked if we really expected that the Receiver was going to oversee the development of all this housing. If that is the Receiver's view, he stated, the CHA will ask the Court to eliminate the Receivership or provide that there be more than one party building the new housing.

I told Mr. Shuldiner that we were not seeking to function as a "dictator" of CHA development, wanted to work with him and the CHA, and understood the competing needs and pressures with which the CHA must work, of which desegregation was the paramount priority, but not the only

Hon. Marvin Aspen
March 13, 1998
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concern. If there is \$300 million of new housing to be built, it might make sense to bring in others to help (under the Receiver's supervision), especially if it is to be built in a short period of time. I suggested that we should all work together to resolve problems and make new housing available as quickly as possible.

We also discussed a series of meetings that occurred between the Receiver and the CHA after we met with you last summer. (As you will recall, following the Receiver's filing of an Emergency Motion in late May 1997, you suggested that the parties attempt to resolve their differences, which included the question of whether the Receiver or the CHA had authority over HOPE VI funding when used for new family housing development. During those discussions, the CHA expressed its opposition to the Receiver carrying out HOPE VI housing development, and we discussed the possibility of requesting the Court's agreement to permit the CHA to conduct certain non-elderly housing development on a demonstration basis, in order to see if the CHA had adequate development capability. At that point, there were fundamental differences between the Receiver, the CHA, and the Gautreaux plaintiffs concerning the CHA's desire to end oversight by the Receiver and the Court of new housing development by the CHA. When the CHA filed its motion seeking a determination that HOPE VI funding was not within the Gautreaux decree, the Receiver informed the CHA that the discussions were pointless since the Court would be resolving the dispute over the scope of the authority.)

In our March 10 meeting, Mr. Shuldiner said that if the Receiver did not agree that the CHA would assume future housing development responsibility for projects not already specifically allocated to the Receiver, he would "fight" and would oppose the Receiver in all respects. In particular, he said he would support a potential claim by the plaintiff class in the Homer case for damages against the Receiver if we did not agree to his demand. (As you know, the Receiver is building housing in the Homer case under the supervision of Judge Zagel, because of separate litigation ended by a consent decree. Late in 1996, an issue arose in that case as to whether the Receiver was falling behind schedule, and whether residents should receive damages if we were. Judge Zagel ruled that the issue was premature, and that he would address it when and if he had to. He directed that we provide liquidated damage provisions for delay in future contracts with contractors building Homer housing, to serve as a possible source to fund such damages, and we have done so.)

At our March 10 meeting, we also discussed certain issues relating to the cost of housing built by the Receiver. Mr. Shuldiner said that the CHA's signature is required by HUD procedures on certain Annual Contribution Contract ("ACC") forms to provide funding for disbursements to be made to the Receiver. He said that if the CHA's signature is required, the CHA will withhold its approval unless the Receiver satisfies the CHA with extensive backup material and data to the same extent as the CHA is required by HUD to satisfy HUD for its funding. Mr. Shuldiner thought it was unfair that HUD trusted the Receiver, and did not require as much detail as it requires from CHA.

Hon. Marvin Aspen

March 13, 1998

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(This is the first time Mr. Shuldiner has told us of that position, although over \$7.69 million is now held up by his refusal to execute the ACC amendments. The funds being held up are affecting our funding of new developments in several communities, including at Horner and Lawndale.) Mr. Shuldiner expressed resentment that HUD does not treat the CHA on the same basis that it treats the Receiver, because HUD accepts certain requests from the Receiver without elaboration, while requiring additional justification from the CHA. Mr. Shuldiner complained that HUD is a rubber-stamp for the Receiver, but applied a far more rigorous standard to the CHA.

Mr. Shuldiner expressed great hostility and distrust towards HUD's Chicago office. He also stated that he had taken steps to have a HUD employee removed from his responsibilities because that employee had cooperated with the Receiver. (We received copies of e-mails between Mr. Shuldiner and this employee, where Mr. Shuldiner berated the employee for even raising the possibility that the Receiver may have responsibility for HOPE VI funding following your February 23 Order.)

Mr. Shuldiner also said that the CHA intended to proceed to build new family housing at the Darrow Homes (in a limited area surrounded by other public housing), and anywhere else the CHA felt was appropriate. Mr. Shuldiner added that if anyone wants to stop the CHA, they are going to have to sue. He said that Darrow will be the test case and that it was always understood that CHA, and not the Receiver, would build the new housing for Darrow. He said that if the CHA loses on Darrow, it will appeal.

(There had been discussions among Mr. Polikoff, the Receiver, and the CHA about allowing CHA to build 38 units of new housing at Darrow as a demonstration project. As is discussed below, no agreement has been reached for the CHA to build that housing -- or a greatly expanded project it recently submitted to the City's Planning Commission without the Receiver's knowledge. At our March 10 meeting, Ms. Elson noted that Vincent Lane, when he was CHA Chair, had tried to prove the CHA's development capacity by developing 350 units as a demonstration program. When the CHA was unable to develop even one unit after 3½ years, the Receiver assumed responsibility in a joint venture with CMFDC, an arm of the CHA.)

Mr. Shuldiner said that the "whole revitalizing area concept is ridiculous." He said that the CHA should be able to house people wherever it can house them. CHA residents at Robert Taylor Homes, he stated, have to be housed. Mr. Shuldiner asked if we wanted to go deal with the gangs at Taylor, as he has to do.

Mr. Shuldiner said that Mr. Polikoff is "with the unborn residents, and future generations." Mr. Shuldiner said that "we [the CHA] throw in our lot with the current residents." (In context, it was clear that he was saying that he wanted to provide new housing for residents wherever possible,

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regardless of the locational requirements based on the desegregation provisions of the Gautreaux judgments.)

Mr. Shuldiner said that the CHA doesn't need the Receiver to lease housing. He said again that if the CHA goes back to court it will ask the Court to get rid of the Receiver.

Mr. Shuldiner raised the question of how much money Habitat was making from its role as Receiver. Richard Monocchio asked about the pass-through of costs incurred by the Receiver, expressed the view that many developers hide profits in such costs, and implied that we were doing the same thing. I said we didn't make a penny of profit on out-of-pocket costs. (The Receiver is entitled to a fee of 2% on turnkey and 3% on conventional developments, under the August 14, 1987 Order. The fee is not based on all costs, but on certain construction-related costs. My time and other executives' time is not billed. Administrative costs represent an average of 4 to 4½% of project costs, and are approved by HUD. They are a pass-through of our expenses, without mark-up.)

I said that the CHA acts as if it doesn't trust us and doesn't believe I'm telling the truth. I added that if all we wanted was money we would do as little as we could and get out. Mr. Monocchio said he knows we aren't doing that. We also discussed Habitat's fees for leased units.

I repeated that it might be well to ask for a meeting with you. I also said we would talk to HUD about our views, and that the very poor relationship between the Receiver and the CHA wasn't serving the people who need housing. Mr. Shuldiner said he had to consult with his lawyers before agreeing to a meeting with you.

Ms. Jarrett said that it was unfortunate Mr. Shuldiner felt the way he did, since we had a common purpose. She said that Mr. Shuldiner was telling us that the Court's February 23 Order was meaningless, we are dishonest, and that the CHA would like to get rid of us.

I told Mr. Shuldiner that I was proposing to make a cooperative arrangement with the CHA, but the CHA must acknowledge that the Court's February 23 Order has some meaning, and that the CHA must acknowledge its obligation to plan and consult with the Receiver. I said at least five times that I was willing to try to work with him to solve problems. I emphasized that I was not seeking to sit in his chair, and was not trying to make all of the decisions.

Near the end of the meeting, Mr. Shuldiner told me that he had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver. He made it clear that he is going to continue to make plans with the residents at Cabrini-Green, and that we could only "try to stop him."

.

The statements made by Mr. Shuldiner at the March 10 meeting are the latest developments in a difficult relationship between the Receiver and the CHA over at least the past year. I will briefly discuss the relevant background.

Your August 14, 1987, Order appointed me and The Habitat Company as Receiver, with responsibility for new housing development. Your Order gave the Receiver authority to develop "all CHA non-elderly public housing development programs . . . authorized by HUD during the pendency of" this litigation. August 14, 1987 Order at 2, ¶(C).

The HOPE VI program was created by HUD annual appropriation statutes in fiscal year 1993 and each fiscal year since. Substantial funding has already been allocated (and additional sums may be allocated in the future) to the CHA for the purpose of developing new non-elderly public housing. HUD has determined that the Receiver, and not the CHA, is responsible for new non-elderly housing development with HOPE VI funds. (See Lewis Nixon's July 29, 1997 memo attached to the December 19, 1997 Statement we filed with the Court.)

The February 23, 1997 Order (at 5) held that the Gautreaux Judgment Order "governs the CHA's use of HOPE VI funds."

Despite the Court's Orders and the statutory background, prior to our meeting on March 10 the CHA has made intermittent objections to the Receiver exercising authority over non-elderly housing construction funded by HOPE VI, as well as filing the motion that led to your February 23 Order.

Much of the factual history is described in the Statement we filed on December 19, 1997, commenting on the CHA's Motion. Following the 1995 takeover of HUD by the CHA, the Receiver worked hard to cooperate with the new CHA management led by Mr. Shuldiner, and tried to avoid bringing a dispute to Court concerning the Receiver's authority. The "development manager" concept was created so that the Receiver could administer HOPE VI funds in cooperation with the CHA, without a dispute over the Receiver's role.

The CHA, however, revoked the earlier written confirmation from its then Chairman, Edwin Eisendrath, that the Receiver would function as development manager at Cabrini-Green, and did not include the Receiver in the HOPE VI applications for Taylor and ABLA II.

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Disputes between the CHA and the Receiver escalated during 1997. Many of the disputes concerned the Horner development. As you will recall, the Receiver filed an Emergency Motion seeking instructions, describing our view, among other things, that the CHA was failing promptly to fill completed units at Horner. The CHA objected, and made charges against the Receiver. Judge Zagel resolved certain matters relating to Horner.

You scheduled a conference in chambers in July 1997, and observed that the Emergency Motion seemed to betray greater difficulties in the relations among the parties. You urged the parties to negotiate their differences.

The Receiver scheduled a series of meetings with Mr. Shuldiner, his counsel, and other CHA representatives. Among the issues discussed were the Receiver's desire to assume its responsibilities for HOPE VI funded non-elderly housing development, and the CHA's opposition to any role for the Receiver.

The parties discussed the possibility of entering into an agreement as discussed above. Before a final agreement was reached, the CHA decided to file the motion that led to the February 23 Order, seeking a determination that HOPE VI housing was outside the scope of the Gautreaux judgments.

* * * * *

The CHA's position has complicated and will, if adhered to, further complicate and impede the Receiver's actions — and in many cases the desegregation goals of the Gautreaux Orders — in a number of ways.

(a) Robert Taylor Homes. The Receiver understands that the CHA applied in 1996 for HOPE VI funds for Taylor. Press reports indicate \$25 million was awarded.

The Receiver was not aware of the application at the time it was made. The Receiver does not know what portion of the funding is for new non-elderly housing construction development, but we are aware of the CHA's attempt to enter into long-term leases in the limited area without approval of a revitalizing designation. (The use of long-term leases for public housing was considered by the Receiver before it was mentioned by the CHA. The leasing concept is based on a HUD memo that HUD development funds could be used for long-term leases as a form of expanding the supply of new public housing.)

Mr. Shuldiner indicated that the CHA intends to demolish all of Taylor. Mr. Shuldiner's comments reflect that he (and/or his staff) had extended discussions with tenants, and possibly with others, in the area relating to replacement housing.

We do not know if those discussions have ripened to commitments, since the CHA has not shared any of this information with us or involved us in any way in its planning. If replacement housing units are developed, it appears likely that they would fall within the language of the August 14, 1987 Order. If the Receiver is to take any action to construct new housing for residents of Robert Taylor, it is important that we immediately be made aware of the status of HOPE VI (and other) funding, and all prior communications with the City, tenants, and others. It is also important that we discuss how such housing will be built consistent with the desegregation obligations of the CHA under the 1969 Judgment Order in this case.

(b) Darrow. Mr. Polikoff, the Receiver, and the CHA had a series of discussions concerning the possibility of the CHA creating a housing demonstration project at Darrow. Several years ago, the CHA received \$8.5 million from HUD under either the modernization or Comprehensive Grant program to rehabilitate a building at Darrow. The CHA spent about \$500,000 on architectural plans. It then learned that the cost of rehab exceeded the funds available, and demolished the building, after agreeing (without court permission or consultation with us) with the tenants that it would build replacement housing on site.

The funds available allow for approximately 80 replacement units. Mr. Polikoff and the Receiver discussed with the CHA that if the Receiver did not need to use 38 units built in Rogers Park to offset units the Receiver was building in Woodlawn (on the 1-for-1 formula provided by the Judgment Order, as amended), then the CHA could use the 38 units on a one-for-one basis to build 38 units at Darrow without a court waiver of the Gautreaux locational requirements. The CHA also considered seeking permission to build an additional 40 units (approximately) on site. No agreement was reached.

We next heard about the CHA's plans for this development by chance, when Valerie Jarrett of Habitat attended a Chicago Plan Commission Meeting in February 1998, where a formal proposal was scheduled to be presented by Andrew Rodriguez for the CHA for a 105-unit project at Darrow that we (and plaintiffs' counsel) knew nothing about. After the Receiver objected, the matter was deferred.

As noted above, Mr. Shuldiner said in our March 10, 1998 meeting that he intends to proceed with the Darrow project, and that the Receiver (or anyone else) would have to take legal action to stop him. Mr. Shuldiner's plans appear to conflict with the Court's August 14, 1987 Order.

(c) Cabrini-Green. A November 14, 1995 letter from Edwin Eisendrath confirms that Habitat would act as development manager for the Cabrini project, including HOPE VI, in its role as Receiver. But as discussed in our December 19, 1997 Statement filed with the Court, the CHA subsequently vacillated among involving the Receiver in the redevelopment of this project,

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abandoning the Receiver, and pursuing the project on its own, and reinvolving the Receiver in the leasing of 44 units at Mohawk North and Old Town Square.

Since 1993, no units have been produced by the CHA. In addition, the Receiver has 190 units of Gautreaux funding authorized for use in this area. It has been blocked from using any of these units because of lack of a comprehensive plan, from which the CHA has largely excluded us. There has also been a separate lawsuit brought by Cabrini tenants against the CHA.

Until the March 10 meeting, we had understood that nothing had been resolved at Cabrini. At the March 10 meeting, we learned for the first time that Mr. Shuldiner has made some kind of promise to residents that they would be partners with development entities to be created by them and the CHA. It was clear from Mr. Shuldiner's comments that his arrangement with the tenants does not include a role for the Receiver. Any promises made by Mr. Shuldiner could jeopardize our ability to comply with the Gautreaux Orders, and would be contrary to our responsibilities under the August 14, 1987 Order appointing us.

(d) Horner. Judge Zagel is supervising the construction of replacement housing at Horner, which is occurring under a consent decree in separate litigation. You have received copies of reports on the status of construction there. (We are proud to say our construction recently won a national award.)

As discussed above, an issue arose in that case as to whether the Receiver was falling behind schedule, and whether residents should receive damages if we were. Judge Zagel ruled that the issue was premature, and that he would address it when and if he had to. He provided that we should require contractors to provide liquidated damages for delay in future contracts with contractors building Horner housing.

At the March 10 meeting, Mr. Shuldiner stated that if we oppose him on the HOPE VI issue, he will encourage Horner residents to seek damages from the Receiver. We are concerned that this threat reflects an attitude of hostility under which it will be more difficult to work.

(e) ABLA and Horner II. These development efforts are complicated by the existence of the Horner lawsuit, and the need to coordinate plans with tenants, neighbors, local elected officials, and the court supervising the Horner reconstruction process. Developing procedures to implement the desegregation objectives of Gautreaux, while building replacement housing, presents difficult issues. In view of Mr. Shuldiner's statements we are concerned that necessary cooperation will not be provided by CHA.

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(f) Scattered site housing. We continue to build scattered-site housing in the General Area and, as recently as this week, closed on two additional buildings. In a letter of March 6, sent by Mr. Shuldiner to me shortly before our March 10 meeting, he made a number of complaints about our work as Receiver. We do not see the need to respond in detail at this time to Mr. Shuldiner's views, although we are prepared to do so. We do want to note our concern that Mr. Shuldiner apparently doesn't agree with the Court's determination that revitalizing areas are a step towards desegregation, even though CHA has repeatedly agreed to court orders to that effect.

(g) Funding. At the March 10 Meeting, Mr. Shuldiner said he would withhold approval for \$7.69 million in funding for the Receiver. We believe we have met all of the requirements for the funding. HUD has approved it, and sent it to CHA for final signature. No CHA signature is required under the August 14, 1987 Order. Therefore, those funds should be transferred. Without the transfer, the progress of our program will be severely impeded. We are already overdue on bills awaiting the funding.

(h) Information. CHA has not provided us with information concerning its HOPE VI and other new non-elderly housing development plans. We do not know the scope of other planned non-elderly housing development that CHA has considered, or may even have authorized. We do not know to what Mr. Shuldiner was referring when he discussed 3,000 units of housing costing \$300 million.

In addition, after the filing of our Emergency Motion in May 1997, the CHA directed the managers of its scattered site housing not to provide information directly to us, and that prohibition remains in effect. That is contrary to the cooperation requirement in the August 14, 1987 Order. Information concerning the occupancy of the scattered site units is necessary, among other reasons, to trigger the cutoff of certain payments from the development budget we administer.

We were told that the reason for the prohibition was our filing of the Emergency Motion against the CHA. Since we were a litigant, the CHA would not allow us access to their agents without going through counsel. We were advised that all requests for information must proceed through counsel.

* * * * *

We recognize that it is not our role to determine the scope or duration of our responsibility as Receiver. It is our responsibility, however, to advise you that our ability to act effectively is being impaired.

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We accepted the position of Receiver to be a developer of housing, not to be a policeman over the CHA, and certainly not to be a litigant with the CHA over all housing-related decisions. Unfortunately, the CHA's conduct has frequently forced us to involve our counsel in litigation-type activity, at the expense of focusing on housing development.

The CHA's frequent adversarial attitude to the relationship with the Receiver clearly impedes the development of new housing urgently needed by CHA residents.

The Receiver would like to develop new housing in a cooperative manner with the CHA. We would like to respond to CHA needs, while also meeting the desegregation objectives of Gautreaux. A working relationship has to develop between the CHA and the Receiver. The CHA should share its needs and ideas with the Receiver in advance of making commitments. It should meet on an ongoing basis to try to develop solutions for the benefit of residents. That has not been happening.

I had held off asking for the Court's directions, in the hope that we could work through the process with the CHA and reach pragmatic solutions that respected our responsibilities as Receiver while not offending the CHA. Based on the most recent meeting with Mr. Shuldiner, I believe that there is no prospect of a solution being developed without Court intervention. Our effectiveness as Receiver is clearly impaired by the problems posed by the CHA's actions and attitudes.

We appreciate the responsibility you have given us as your Receiver. We also appreciate and support the important goals to be accomplished by implementation of the Court's Orders in this litigation. It is a privilege to perform this public service.

We reiterate our willingness to operate in a cooperative fashion with the CHA.

We need your assistance and directions in carrying out the tasks you have entrusted to us.

Respectfully,
THE HABITAT COMPANY



Daniel E. Levin

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cc: Jerome Butler/Susan Getzendanner
Valerie Jarrett
John Jensen/Linda Wawzewski
Lewis Nixon/Tanet Elson
Alexander Polikoff/Julie Brown
Michael L. Shakman
Joseph Shuldiner/Karen Newton

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

DOROTHY GAUTREUX, et al.,)
Plaintiffs,)
vs.)
SAMUEL R. PIERCE, et al.,)
Defendants.)

Docket No. 66 C 1459
No. 66 C 1460
Chicago, Illinois
May 19, 1998
9:30 o'clock a.m.

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

APPEARANCES:

For the Plaintiffs:

MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
BY: MR. MICHAEL L. SHAKMAN
MR. EDWARD FELDMAN
(208 South LaSalle Street
Suite 1100
Chicago, Illinois 60604

and

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. NANCY EISENHAUER
(333 West Wacker Drive
Chicago, Illinois 60606)

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

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

2 MS. EISENHAUER: Good morning, your Honor. Nancy
3 Eisenhower for CHA and Joseph Shuldiner.

4 THE COURT: Good morning.

5 MR. SHAKMAN: Good morning, Judge. Mike Shakman and
6 Eddie Feldman for the Receiver.

7 THE COURT: Good morning.

8 MR. POLIKOFF: Good morning, your Honor.

9 THE COURT: Mr. Polikoff.

10 MR. SHAKMAN: Judge, this is the motion by the
11 Receiver for emergency relief in connection with the HOPE VI
12 application which we hope to file in cooperation with the CHA,
13 if possible, by June 29, which is the deadline established by
14 HUD for submission of applications.

15 We view it as an emergency because we have been unable
16 to obtain a response from the CHA to our request for
17 cooperation and information needed to move forward with the
18 application.

19 The City of Chicago has indicated that it supports the
20 principle of a joint application, will work with us on it.
21 There is up to \$35 million in funding for housing and for other
22 services that's potentially available.

23 Mr. Levin and his colleagues, Valerie Jarrett, who's
24 in court today, and the others of the Receiver's staff are most
25 concerned that the opportunity to obtain this kind of funding

DOROTHY GAUTREAUX, et al.,

v.

Defendant.

PROPOSED ORDER

(A) In its order of August 14, 1987 ("Receivership Order") the Court defined the "scattered site program" as including all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of this action, and appointed Daniel Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer such scattered site program as effectively and expeditiously as possible in compliance with the Court's orders;

SSA 48

powers ("Housing Development Activities");

- (C) In the Receivership Order the Court further ordered that CHA, its agents, servants and employees, should provide full cooperation and assistance to and not interfere with the Receiver in the performance of the Receiver's responsibilities under the order, including without limitation providing full access to all information, records, documents, and files relating to the scattered site program; and
- (D) The Plaintiffs have filed a motion and supporting affidavits showing that, among other things:
 - (i) CHA has failed to recognize the Receiver's exclusive authority over Housing Development Activities;
 - (ii) CHA has failed to provide full cooperation and assistance to the Receiver, as required by the Receivership Order, including by failing to provide approvals to the United States Department of Housing and Urban Development ("HUD") needed to cause HUD to release funds to the Receiver for Housing Development Activities, as a result of which more than \$7 million in funds needed by the Receiver for such Activities has been withheld;
 - (iii) CHA has initiated and pursued Housing Development Activities that fall within the responsibility of the Receiver under the Receivership Order,

including without limitation at CHA's Cabrini-Green, Darrow and Robert Taylor Homes developments, and including the submission of a proposal to the Chicago Plan Commission for approval of a planned unit development for the construction of over 100 units of non-elderly housing at the Darrow development, all without prior consultation with or consent from the Receiver; and

- (iv) These and other activities of the CHA have impaired the Receiver's ability to carry out the Housing Development Activities assigned to the Receiver by the Receivership Order;

And the Court having heard the presentations of the parties with respect to the foregoing and being persuaded that it will aid in the achievement of the objectives of the Receivership Order and the Judgment Order in this case (304 F.Supp. 736) to further particularize the manner in which CHA's cooperation and assistance to the Receiver shall be provided:

NOW, THEREFORE, IT IS HEREBY ORDERED:

- (1) CHA, its officers, agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this order (collectively "CHA"), shall forthwith cease any and all activities incident to the development of non-elderly public housing ("Housing Development

Activities" as defined in paragraph B hereof), including without limitation entering into negotiations, making commitments to tenants or others, or seeking financing or other approvals with respect thereto.

- (2) Within 14 days from the date hereof CHA shall provide the Receiver with full information in writing and all documents relating to Housing Development Activities in which CHA has engaged since May 26, 1995.
- (3) Whenever from time to time requested by the Receiver CHA shall make any of its agents, servants and employees available at reasonable times and upon reasonable notice to meet with the Receiver for the purpose of responding fully to all questions concerning Housing Development Activities asked of such agents, servants or employees.
- (4) CHA shall forthwith execute all documents as requested by the Receiver or the Department of Housing and Urban Development ("HUD") which may be necessary or appropriate to transfer or assist in the transfer to the authority of the Receiver all funding or accounts for Housing Development Activities as to which CHA may now or in the future have any claim of authority, and subject to normal HUD requirements shall cooperate fully with the Receiver and HUD in effecting such transfer(s).

- (5) CHA shall make no application for funding capable of being used for Housing Development Activities without the express written consent of the Receiver, and shall advise and consult with the Receiver respecting the availability or potential availability of any such funding promptly upon learning thereof.
- (6) Within 28 days from the date hereof CHA shall furnish the Receiver and plaintiffs' counsel with a written statement of CHA's plans for the vigorous pursuit of desegregation opportunities, and provide them with all relevant information and documents relating thereto, and to funds available to CHA (including HOPE VI funds) that are capable of being employed in that pursuit.
- (8) The 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.

Enter:

Judge

March __, 1998

1 for the city not be lost because of lack of cooperation, and
2 for that reason we have filed the motion.

3 I could go into greater detail but I know you read
4 these things.

5 THE COURT: Any response?

6 MS. EISENHAUER: First two factual matters -- or one
7 factual matter.

8 We're not aware of a response from the City of Chicago
9 to this. I'm not saying it hasn't happened; I just want you to
10 know the CHA has not been informed of that.

11 More importantly, we filed a motion to stay in the
12 Seventh Circuit this morning. I --

13 THE COURT: Has it been granted?

14 MS. EISENHAUER: We filed it this morning. We --

15 THE COURT: All right. Well, the case is still here,
16 so I'm not really concerned about that.

17 MS. EISENHAUER: I'm just informing you we did. And
18 in connection with that motion to stay we filed an affidavit of
19 Joe Shuldiner in which he states the CHA will not be able to
20 prepare a timely or competitive application before the June
21 28th deadline if it is forced to work with the Receiver, and
22 because of that the CHA and the City of Chicago may lose up to
23 \$35 million worth of funding.

24 Second of all, the issues raised by the Receiver here
25 are the same issues raised by the plaintiffs in the motion for

1 further relief, which we believe requires briefing on the scope
2 of the receivership order and also hearing from Mr. Shuldiner
3 to present his views on the topic and his description of his
4 actions.

5 And third, in the response to the motion to clarify
6 that the plaintiffs filed with this Court, they wrote that the
7 applicability of the judgment order cannot be determined
8 definitely at the HOPE VI application stage; that is at page 8
9 of their response. Because of that statement and for other
10 reasons, we would argue that this injunction is too vague to be
11 enforced against the CHA in this context.

12 MR. SHAKMAN: I would like to briefly respond, unless
13 Mr. Polikoff wants to say something?

14 MR. POLIKOFF: No.

15 MR. SHAKMAN: First of all, I want to note that we
16 have not received a response to Dan Levin's letter to the
17 Receiver that he wrote on May 5th or to my letter to
18 Mr. Butler, general counsel of the CHA, that I wrote last
19 Friday. The only response is the filing of a motion for a
20 stay, which indicates that the CHA, as counsel has said, has
21 concluded that it can't work with the Receiver. I don't
22 understand why that couldn't have been communicated by a phone
23 call to Mr. Levin or a letter to me or a phone call to me.

24 So I want to raise a question because it seems to me
25 that the fact that that conclusion had been reached but not

1 communicated to us illustrates in part some of the problems we
2 are having in our relationship with the CHA. We were entitled
3 to be told that and we shouldn't have had to file a motion with
4 this Court to receive that information.

5 In terms of the connection between the motion for
6 further relief and this motion, all I can say is Mr. Polikoff,
7 representing the plaintiffs, does what he deems appropriate
8 representing his clients.

9 Mr. Levin operates as the Court's agent. He has
10 duties the Court has entrusted to him and he is attempting to
11 carry those out. Mr. Levin, as I am sure the Court knows, is
12 not by nature a litigious man or a confrontational man. His
13 staff shares his views. We are here only because nothing else
14 seems to hold promise for moving this process forward.

15 In terms of the application of the judgment order for
16 HOPE VI, we are here seeking to enforce the 1987 order
17 appointing the Receiver and the cooperation requires that that
18 order imposes upon the CHA.

19 Whether or not the HOPE VI order is stayed, no effort
20 has been made to stay the 1987 order appointing the Receiver,
21 no effort is being made to stay the obligations of the CHA to
22 cooperate with the Receiver as specified in that order.

23 So for those reasons, I would suggest that Ms.
24 Eisenhower's comments really aren't addressed in the merits of
25 this motion.

1 MS. EISENHAUER: May I respond to that?

2 THE COURT: Sure.

3 MS. EISENHAUER: First, on the point of has the CHA
4 advised the Receiver that they can't work with them on these
5 applications, the CHA believes it has been advising the
6 Receiver of that for several months now.

7 Part of the reason the CHA believes that it will not
8 be able to file a timely application, that was not simply
9 because it cannot work with the Receiver but because of the
10 information that would need to be compiled and the fact that it
11 appears that the Receiver and the CHA have different views on
12 what HOPE VI requires and what the Gautreaux injunction
13 requires. And for that reason any negotiation would not come
14 to anything except for the same disputes that have been going
15 on in this Court repeatedly.

16 Second, I understand it's the Receiver's motion. My
17 only point with regard to the motion for further relief is that
18 it raises the same underlying issues, and one of those issues
19 is whether the 1987 order applies to HOPE VI, whether this
20 Court's February 25th order envisions that the 1987 order
21 necessarily applies.

22 As you know, the CHA has argued from the beginning
23 that the conclusion that you reached on February 25th does not
24 necessarily lead to the conclusion that the Receiver is drawing
25 today here with regard to the 1987 order. And again, we've

1 raised that issue repeatedly in the past month, at least.

2 MR. SHAKMAN: One comment, if the Court -- if counsel
3 is done?

4 MS. EISENHAUER: Yes.

5 MR. SHAKMAN: If the CHA believes that the August 14,
6 1987 order appointing the Receiver should be modified, the CHA
7 has been free to make that motion for these many months that
8 this issue has been percolating in this Court and it's elected
9 not to make that motion. Therefore, the Court has not had an
10 opportunity to address such a motion.

11 So we, as the Receiver, are operating under the duties
12 imposed upon us by the Court and we willingly accept it in
13 trying to carry out those duties.

14 THE COURT: Okay. Mr. Polikoff, do you have anything
15 you want to say?

16 MR. POLIKOFF: No, your Honor.

17 THE COURT: Well, I am concerned that Mr. Shuldiner
18 feels that he can't go along with the Receiver. I find that
19 disturbing and I find that surprising because everyone else
20 involved in this litigation through the years, other than
21 Mr. Shuldiner, has had no problem getting along with the
22 Receiver.

23 But my focus is not on whether he can get along with
24 the Receiver or not. My focus is whether or not everyone,
25 including the CHA, complies with the orders of this Court, the

1 orders that I have issued thus far and the orders that I will
2 issue in the future. I expect Mr. Shuldiner to comply with
3 those orders, whether or not he feels that it's an impediment
4 to follow my orders because he can't get along -- or feels he
5 can't get along with the Receiver.

6 I will issue an order, and as long as the Seventh
7 Circuit has not changed my order it's a viable order and I
8 expect Mr. Shuldiner to comply with it. If he does not comply
9 with it, I will do what I have to do to make him comply with
10 it. I hope you will give him that message.

11 Thank you.

12 MS. EISENHAUER: Your Honor, could I ask a question?

13 I just want to clarify that it is not that
14 Mr. Shuldiner has some problem with the Receiver, refuses to
15 work with him on a personal level. It is that he believes and
16 the CHA believes that the 1997 order does not -- and the
17 February 25th order does not necessarily lead to the conclusion
18 that the CHA must turn over authority for this program to the
19 Receiver, and that's the basis for the objection.

20 THE COURT: Well, if that belief conflicts with the
21 orders of this Court, then Mr. Shuldiner will have to opt to
22 follow the orders of this Court. You know, we're not in a
23 lawless society where somebody has their own views as to the
24 law or the construction of an agreement and can follow those if
25 there is a Court order to the contrary.

1 Mr. Shuldiner is not reluctant to appeal my orders and
2 I hold no animosity toward anyone who appeals one of my orders.
3 But until and unless an order of the Court has been overturned
4 by a reviewing court, I expect that order to be followed,
5 regardless of Mr. Shuldiner's personal views as to how he
6 thinks the law ought to operate. And please convey that to
7 him.

8 Thank you.

9 MR. SHAKMAN: Your Honor, I have one other request, if
10 I may.

11 It's fairly apparent that the proceedings are under
12 way, that additional appeals may be taken to the Seventh
13 Circuit. There is law in the Seventh Circuit that the Receiver
14 needs the approval of the appointing court to participate in
15 the appellate process. We would, therefore, ask permission to
16 participate in any pending or future appeals from this
17 collection of issues.

18 THE COURT: All right. I will enter an order to that
19 effect.

20 MR. SHAKMAN: Thank you, Judge.

21 MS. EISENHAUER: Your Honor, can I make one more
22 comment?

23 I would just like to say that Joseph Shuldiner
24 certainly intends to comply with this Court's orders. He does
25 have obligations under state statutes and under -- that he's

1 already made to HUD, and he believes that the orders as
2 interpreted by the Receiver are in conflict with those other
3 obligations that he has.

4 Second of all, I certainly understand your point, and
5 Joseph Shuldiner does as well, that he must comply with orders
6 of this Court. We do not read any of the orders of this Court
7 to require CHA to turn over responsibility for this program to
8 the Receiver.

9 THE COURT: If there are any problems with the
10 construction of any of my orders, obviously it will be brought
11 to my attention and I will make it perfectly clear for
12 Mr. Shuldiner.

13 MS. EISENHAUER: We believe that we brought that issue
14 to your attention in connection with the briefing on the motion
15 for further relief.

16 MR. POLIKOFF: Your Honor, might I add one word if Ms.
17 Eisenhower is finished?

18 THE COURT: Yes.

19 MR. POLIKOFF: The rhetoric of turning over this
20 program to the Receiver that's been used in the briefs and
21 responded to, is not an accurate characterization of what is
22 involved, and I didn't want my silence to --

23 THE COURT: I agree with you, Mr. Polikoff, and I
24 should have said something as well. That's Mr. Shuldiner's
25 pique at having to follow the orders of the Court and that's

1 the language he uses.

2 Go ahead. I didn't mean to interrupt.

3 MR. POLIKOFF: No. That's all I wanted to say.

4 MR. SHAKMAN: Your Honor, I will second that.

5 The whole thrust of Mr. Levin's approach to this issue
6 and Mr. Shuldiner has been that this should be done on a
7 cooperative, joint basis, not that Mr. Levin should scoop up
8 all the responsibility and run away from it and not permit the
9 CHA to participate.

10 THE COURT: Mr. Levin has never done anything in the
11 past, nor have I found any of his actions in the recent
12 brouhaha to indicate that he wants to usurp any of
13 Mr. Shuldiner's authorities.

14 On the contrary, I find that Mr. Shuldiner has thus
15 far indicated that he would rather contest every aspect of the
16 relationship between the Receiver rather than attempt to
17 cooperate. And to the extent that I can, I will straighten it
18 out when I rule on the motions.

19 MR. SHAKMAN: Thank you.

20 THE COURT: Thank you.

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

23

24

25

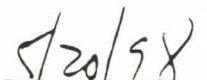
CERTIFICATE

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



Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division


Date

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Receiver's emergency motion for entry of order implementing CHA's duty of cooperation.

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion is granted.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court.		number of notices	Document Number
No notices required.			
Notices mailed by judge's staff.			
☒ Notified counsel by telephone.		date docketed	
Docketing to mail notices.		docketing deputy initials	
Mail AO 450 form.		date mailed notice	
Copy to judge/magistrate judge.		mailing deputy initials	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	

ORDER

Now before us is the "Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation." In it the Receiver asks that we order the CHA to cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project.

This motion is the outgrowth of three of our earlier decisions. In the first, issued August 14, 1987, we appointed the Receiver on the joint motion of the plaintiffs and the CHA. We gave the Receiver "all powers of CHA" with regard to the development and administration of the *Gautreaux* scattered site program, which included "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. In the second, issued February 23, 1998, we held that the *Gautreaux* "judgment order governs the CHA's use of HOPE VI funds" distributed by HUD. Our conclusion was compelled by the clear language of the judgment order and our view that there was no conflict between its requirements (as later amended) and those of the HOPE VI program. The CHA appealed this order. In the third, issued May 12, 1998, we denied the CHA's motion to stay our February 23 order pending appeal. The CHA filed today a motion to stay with the Seventh Circuit.

The CHA, in open court this morning, made clear that the basis for its objection to the Receiver's motion is its view that our February 23 order did not directly address the Receiver's status with regard to the HOPE VI program and that the Receiver's status is not obvious from our prior orders in this case. We disagree. HOPE VI is a "non-elderly public housing development program[] . . . authorized during the pendency" of the *Gautreaux* litigation, and it therefore fits entirely within the Receiver's jurisdiction. On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver. Moreover, the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the *Gautreaux* judgment order, as well as to assist in making that proposal as competitive as possible. The Receiver even indicated its interest in the CHA's thoughts on decisions which are ultimately the Receiver's responsibility. We hope that this open-minded and enthusiastic offer of cooperation sets an example for everyone involved in this case.

We denied the CHA's motion for stay pending appeal, and unless and until the Seventh Circuit issues its own stay or reverses our underlying order, the parties must comply with our orders. Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

It is so ordered.

A handwritten signature in black ink, appearing to be 'M. G. L.', is written over the text 'It is so ordered.'

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/20/1998
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ☒ [Other docket entry] Plaintiff's oral motion that the court order the defendant, CHA to produce documents is granted. The defendant, CHA, is ordered to allow Mr. Alexander Polikoff and Barry Miller to inspect Hope VI Applications forthwith. Defendant's oral motion to stay this order is denied.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.		3	Document Number
		number of notices	
		date docketed	
		docketing deputy initials	
		5/20/1998	
		date mailed notice	
GL	courtroom deputy's initials	GL	
		Date/time received in central Clerk's Office	mailing deputy initials



THE HABITAT COMPANY

July 10, 1998

Hon. Marvin E. Aspen,
Chief Judge
U. S. District Court
219 South Dearborn
Room 2548
Chicago, IL 60604

RE: Gautreaux

Dear Judge Aspen:

I wish to report to you concerning the status of the HOPE VI application relating to the March 31, 1998 SuperNOFA. I am happy to report that the CHA submitted an application to HUD on June 29, 1998. It is our hope that the application will be competitive. I also want to report that following entry of your orders of May 19, 21 and 22, there are some efforts by the CHA at cooperation with the Receiver concerning the preparation of the application, and there were several meetings attended by representatives of CHA, the Receiver and the City.

However, as summarized in a letter I wrote to Mr. Shuldiner on June 26, 1998, a copy of which is enclosed, I believe the CHA's cooperation and compliance with your orders was less than complete. Among the difficulties we encountered were (i) the CHA's refusal to submit a joint application despite the language of paragraph 1 of your June 19, 1998 ABLA revitalizing order; (ii) the CHA's decision to share only one draft of the application with the Receiver and refusal to share the final draft prior to its submission, (iii) unilateral attempts by CHA in the application to cut a substantial portion of the Receiver's fee out of the budget, and (iv) substantive disagreements concerning some of the proposals in the CHA's application. Because of the tight time pressures, we chose not to involve the Court in the process prior to the submission of the application. We believe that most of these items can be addressed before the actual development occurs, should the application be funded.

As always, our preferred course of action is to exhaust attempts to resolve differences outside of Court. Our differences with CHA concerning the application will become significant only in the event that HUD awards a grant. If that occurs, we will work hard to reach resolution on these

Hon. Marvin E. Aspen
July 10, 1998
Page 2

issues informally with CHA. If we cannot do so, we may seek relief from the Court at that time.
As always, we welcome any instructions you may have for us.

Sincerely,



Daniel E. Levin, Receiver
The Habitat Company, Chairman

DEL/jm

CC: All counsel of record in the Gautreaux case
Michael L. Shakman/Barry A. Miller/Edward W. Feldman

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OFFICE

Secretary's Representative

November 14, 1995

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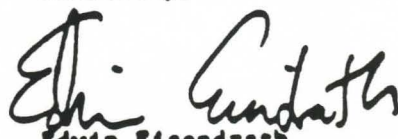
Mr. Daniel Levin
Chairman
The Habitat Company
350 West Hubbard Street
Chicago, IL 60610

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 for [illegible]~~

MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

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OF COUNSEL
DAVID J. KRUPP
MAURICE ROSENFELD
WRITERS DIRECT LINE

759-7231

June 12, 1998

By Fax and Mail

Nancy Eisenhauer
Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606-1285

Re: Gautreaux v. CHA

Dear Nancy:

I am writing in response to your letter of June 9, 1998. You asked that we advise you of any problems or difficulties that the Receiver perceives in connection with the CHA's cooperation in connection with preparation of the current HOPE VI application. We have been advised of the following problem areas:

1. Provision of Information.

The CHA has been slow or non-responsive in providing requested information. Here are three examples:

- (a) The 1997 ABLA Application. Phil Hickman requested last week that a copy of the 1997 ABLA HOPE VI application (which was submitted to, but rejected by, HUD) be provided. CHA has not yet done so. (I believe this was one of the documents that Chief Judge Aspen ordered produced for inspection on May 20.) At the time, we briefly reviewed a copy; but you said it could not be photocopied immediately. There is no reason that a photocopy could not have been made by now. Please have a copy of this document delivered to Phil immediately.
- (b) The ABLA Tenants' Agreement. Last week, the CHA and representatives of ABLA tenants referred to an agreement between them concerning rehabilitation and redevelopment at ABLA. Phil Hickman and Valerie Jarrett requested a copy of the agreement, and

Nancy Eisenhower
June 12, 1998
Page 2

were told it would be provided to them. I discussed the matter with Jerome Butler on June 5, and he told me that he would locate it and fax it to me that day or Monday the 8th. I wrote Jerome about the matter on June 9. I have received no response.

We have received a revised, unsigned draft agreement, but have not seen any executed agreement. We would appreciate being advised immediately whether any agreement was ever executed, and if so, when. Also, please provide the promised copies of any executed agreements.

- (c) Other information on rehabilitation. Phil Hickman wrote Andy Rodriguez on May 30 requesting information about the CHA's rehabilitation plans. They are relevant to consideration of the proper development plans at ABLA. Mr. Rodriguez wrote back on June 3 rejecting the request. I wrote Mr. Butler about this request, and a related request for documents concerning Horner, on June 4. When Mr. Butler did not respond, I called on June 5 and discussed the matter. Mr. Butler promised to produce the information requested in Mr. Hickman's May 30 letter and my June 4 letter to us as soon as possible. I wrote Mr. Butler on June 9 asking when the information would be produced. I have not received a response.

We would appreciate it if you would expedite production of this information and these documents, which we need as soon as possible for the Receiver's work on the ABLA re-development application.

2. Preparation of the Application. The Receiver views its responsibility as including the preparation of the portion of the HOPE VI application relating to new housing development. The August 14, 1987 Order says, with respect to "all CHA non-elderly public housing development programs which may in the future be authorized by HUD:"

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

- (a) Making all determinations governing the . . . program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents [Emphasis added.]

Nancy Eisenhower

June 12, 1998

Page 3

The CHA has prepared and given the Receiver a sheet purporting to allocate responsibilities for the application and has assigned itself the responsibility of preparing the development portion, contrary to the Court's Order.

Indeed, at present, the CHA won't even let the Receiver see the application it is preparing. When Mr. Hickman discussed the applicable Court Orders with Jane Hornstein of the CHA, Ms. Hornstein said that as long as the Orders are being contested (presumably referring to the appeal to the Seventh Circuit), the CHA didn't feel it had to comply.

It is necessary that the Receiver has an opportunity to review and revise the application on a timely basis and that it agree with the final version. The CHA's approach is clearly unacceptable. We hope you will discuss with Ms. Hornstein and other CHA employees their obligations to comply with the Court's Orders, and that you will ensure that the CHA will immediately take steps to cooperate with the Receiver in this respect so that the Receiver can perform its court-ordered role respecting the development portion of the application to HUD.

Much remains to be done. The Receiver believes a more expeditious approach to drafting the application would be to let the CHA draft those portions that are its responsibility under the Court Orders -- social services, existing site conditions, etc. -- while the Receiver drafts the development portion -- which, in any event, is its responsibility under the Court Orders.

3. **Control of the Development Funding (and Related Fee).** Under the Court's Orders, the Receiver is to perform the development work at ABLA. The CHA's acceptance of this provision of the Order is not clear. This is illustrated by Ms. Hornstein's statements to Mr. Hickman that the CHA intends to request two-thirds of the administrative fee for the development portion of the ABLA HOPE VI redevelopment, leaving one-third for the Receiver. Under the Court's Orders, the Receiver is entitled to a fee for its development work, to be approved by the Court.

4. **Staging of Development.** Success in implementing the desegregation goals of the Gautreaux orders will depend in part on the staging of construction. The Receiver is concerned, from comments that have been made, that the CHA contemplates beginning rehabilitation or other construction at ABLA in a way that may not be sensitive to the impact of staging upon overall marketing of the non-low income portions of the redeveloped housing. The CHA should not begin any rehabilitation or other construction at ABLA without an agreement with the Receiver as to the staging of development.

Nancy Eisenhauer

June 12, 1998

Page 4

The Receiver has a related concern about the administration of relocation. Relocation could be performed in a way that either furthers or inhibits successful development. This is an area that requires further discussion.

5. Numbers and Types of Units. The CHA, the Receiver, the City and ABLA tenant representatives are continuing to discuss the allocation of units by income levels and types, density, and other issues. On Friday, June 5, all of the parties reached consensus on an overall goal respecting ratios and numbers. The working group was directed to meet together and report back with a financing structure based on those numbers. Instead, the CHA unilaterally changed the numbers to support its proposal for a financing scheme, without consultation with the Receiver or the City concerning how the consensus reached on June 5 could be honored with an appropriate financing proposal.

6. Agreements with Tenants. The CHA has repeatedly stated that it has entered into agreements with ABLA tenants, and that those agreements limit the redevelopment planning potential. As discussed above, we have not yet seen any executed agreements. The Receiver is sensitive to the importance of communication with tenants as part of the planning process. But we have not been afforded the opportunity to participate. Instead, we have been presented with an agreement we have not seen as a *fait accompli*.

While the agreement with ABLA tenants apparently predates the 5/19 Order, when the CHA follows the practice of negotiating agreements with tenants (to which the Receiver is not a party), that limit development options that may later be available, the CHA impermissibly occupies a portion of the Receiver's responsibility. We trust this won't happen again in the future.

In keeping with the above, with respect to ABLA and elsewhere, the Receiver requests that (1) the CHA provide it with information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City, and (2) the CHA not enter into any such agreements hereafter without the participation and written concurrence of the Receiver.

* * * * *

We would like to note our disagreement with your view that the Court's Orders are vague.

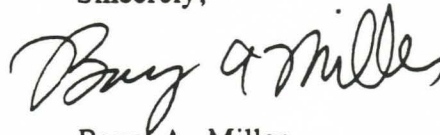
Nancy Eisenhauer
June 12, 1998
Page 5

All of these individual items raise the Receiver's concern that the CHA continues to be either indifferent or insensitive to its desegregation obligations under the 1969 Judgment Order, and the subsequent Court Orders implementing it, which should be guiding principles in the ABLA redevelopment.

The above is not a list of all problems that the Receiver has noted in its relationship with the CHA. A number of points raised in Mr. Levin's March 13, 1998 letter to Chief Judge Aspen have not yet been resolved. We think it is productive, however, to continue focusing on completing a successful SuperNOFA application, reserving discussion of other matters for a later date.

Thank you again for soliciting our concerns on these matters, and for agreeing in your letter to address these issues immediately.

Sincerely,

A handwritten signature in cursive script that reads "Barry A. Miller".

Barry A. Miller

cc: Jerome Butler
Daniel E. Levin/Valerie Jarrett
Alexander Polikoff
Michael Shakman

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
(ILLINOIS)

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June 16, 1998

By Fax & U.S. Mail

Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604

Re: Gautreaux v. CHA

Dear Barry:

I am in receipt of your letter, dated June 12, 1998, advising me of five pages worth of "problems or difficulties that the Receiver perceives in connection with the CHA's cooperation in connection with the preparation of the current HOPE VI application." (Ltr. at 1) I understand from your letter that the issues raised therein address only issues related to the 1998 HOPE VI or SuperNOFA application. (Ltr. at 5)

I was pleased to learn yesterday morning that on the afternoon of the day on which your letter was written, June 12, 1998 (but after your letter was written and faxed to me), the parties -- including Alex Polikoff and the receiver (through Valerie Jarrett) -- agreed to the "terms" of the 1998 HOPE VI application. Accordingly, I presume that the "problems and difficulties" that the receiver perceived and the substantive issues that troubled the receiver were rectified prior to the receiver's approval of the substance of the application.

One caveat is perhaps necessary. It is my understanding that at the approximately ten meetings that occurred in the past three weeks among the City, the ABLA LAC, plaintiffs' counsel, the CHA, and the receiver, the question of the receiver's administrative fee was not raised for group discussion and, accordingly,

Barry A. Miller, Esq.
Page 2

the question of the receiver's fee was not resolved by the parties on June 12, 1998. As an initial matter, we require some clarification as to the type of fee that the receiver is interested in pursuing. In your letter, you discuss the receiver's fee for "development" work and its "administrative" fee. (Ltr. at 3) Your letter also states that "[u]nder the Court's Orders, the Receiver is to perform the development work at ABLA." (Ltr. at 3)

Are you referring to development work that might be generated if the CHA's 1998 HOPE VI application is successful in obtaining funds for development at ABLA? It is my understanding (at least based on an initial review of the SuperNOFA) that the SuperNOFA requires the CHA to issue a request for proposal ("RFP") in order to contract with developers. I have been informed that the parties have agreed that the City should issue the RFP, in the event that HOPE VI funds are awarded.

In addition, it is my understanding that the SuperNOFA prohibits individuals who are involved in preparing a successful application from realizing a financial interest or benefit from the funds secured by that application. (See Conflict of Interest Section, p. 15579-80) I do not know the details of the corporate organization of Habitat, or whether the individuals involved in preparing the 1998 HOPE VI application will realize a financial interest or benefit, etc. from any 1998 HOPE VI funds that may be awarded. I raise the question as one that might merit further attention. The CHA would be interested in hearing the receiver's views on the SuperNOFA's RFP and conflict of interest provisions, and their applicability or inapplicability, as the case may be, in this context.

In any event, given that the receiver has concurred with the rest of the interested parties on the substance of the application and the procedure for preparing it, it appears that the application will go forward without resolving the issue of the percentage of the \$35 million to which the receiver *might* be entitled *if* the CHA's application is successful. It also does not seem necessary to determine at this stage the percentage of any administrative fee that may be paid to the various entities that may or may not ultimately work on the proposed project -- if it is funded. Are you requesting some amount of money for the receiver's work on the 1998 HOPE VI application? Is there some issue that you plan on raising with the court in the near future regarding the receiver's fee or percentage of any funds awarded to the CHA as a result of the 1998 HOPE VI application?

I am in receipt of another June 12, 1998, letter written by Philip Hickman of Habitat to Andrew Rodriguez of the CHA that raises the fee issue. Again, somewhat surprisingly, this four page letter concludes that "many fundamental issues and assumptions . . . are open to further research or validation . . . [m]uch time has been spent without them being adequately addressed" -- on the same date that the receiver represented to the other parties its agreement with the proposed scope and substance of the 1998 HOPE VI application. In any event, Phil Hickman's letter, unlike your letter, proposes that the 1998 HOPE VI application propose a 10% administrative fee. It is my understanding that the parties (i.e., the CHA, the City, the ABLA LAC, plaintiffs' counsel and the receiver) agreed to request approval of a 7% fee -- which fee was raised at the receiver's request from the approximate 4% fee initially proposed by the CHA. Does the receiver intend to hold up the 1998 HOPE VI application in order to insure an additional 3% of administrative fees from any HOPE VI award? (Please call if you require a copy of Phil Hickman's letter.)

Finally, your five page letter accusing the CHA of any number of things -- from being non-responsive (p.1) to segregationist (p.5) -- is troubling, particularly because it was written on the very day that the parties agreed to the terms of the 1998 HOPE VI application. Although the accusations contained in your letter merit, in actuality, little reply on a substantive level, I nevertheless am compelled to respond to some of them. With regard to the issue of the CHA's treatment of its residents and intentions to abide by court orders, you state that "[a]ll of these individual items [discussed in your letter] raise the Receiver's concern that the CHA continues to be either indifferent or insensitive to its desegregation obligations under the 1969 Judgment Order, and the subsequent Court Orders implementing it, which should be guiding principles in the ABLA redevelopment." (Ltr. at 5)

We see nothing in your letter that evidences any lack of cooperation, coordination, or anything else required of the CHA by the court's orders. For example, in terms of the provision of information, your letter requests two apparently irrelevant documents that were promised to the receiver "last week," as well as a set of documents that are being prepared in response to a FOIA request and a document request in a separate lawsuit against the CHA. In contrast, your letter fails to mention the approximately ten meetings that took place in the past three weeks, including a special briefing convened for the receiver on the CHA's viability plans (including the Near West Development Initiative) -- at all of which information was provided and questions were answered. I presume that the information that was provided was sufficient -- given that the receiver consented to the terms of the

proposed 1998 HOPE VI application. We do not read Judge Aspen's orders as authorizing the receiver either to make unilateral demands on the CHA for apparently irrelevant information, or to force the CHA to jump through administrative hoops.

More importantly, and with regard to "desegregation," what part of the CHA's proposed HOPE VI application - approved by tenants, plaintiffs' counsel, the City, and the receiver - is discriminatory and/or insensitive to race and desegregation goals? The proposal approved is substantially the same as the proposal initially offered by the CHA to the City and the ABLA LAC prior to the court-ordered involvement of the receiver. How do the receiver's requests for information and fees, the items included in the letter, advance the goals of desegregation and tenant choice? These are the questions that the CHA has been asking since September of 1997. Has the receiver consented to an application that it will later claim is in violation of court orders?

Your charges of indifference and insensitivity to desegregation goals and court orders on the part of the CHA are serious charges which neither the ABLA LAC nor Alex have raised with the CHA -- both parties who participated in the recent meetings and approved the proposed HOPE VI application. We request that you advise the CHA immediately and specifically as to how the proposed application violates court orders or the Constitution. If you cannot, then we ask you to suggest to the receiver that the effect of such errant accusations on the overall success of the CHA's HOPE VI and other projects is destructive.

Your charges of "non-responsiveness" and chicanery on the part of the CHA are inaccurate, to say the least. (See, e.g., Ltr at 1, 3) The record of meetings and the exchange of information is clear. (See my letters to you of May 26, 1998, and June 9, 1998) Your statement that "at present, the CHA won't even let the Receiver see the application it is preparing" is puzzling, and your report of Phil Hickman's conversation regarding the application with Jane Hornstein does not comport with her recollection in any way. Sharon Im spoke with Karen Cady on Friday, June 12, 1998 (before receipt of your letter), and informed her that the CHA would forward a copy of the draft application to the receiver as soon as certain agreed-upon edits were made. The draft application was forwarded to the receiver that afternoon.

Jane does not recall discussing the pending appeal with Phil in connection with the drafting of the application, but instead remembers mentioning

the appeal in connection with Phil's queries to Jane about the receiver's fee. In that regard, Jane expressed her opinion, with which I agree, that the issue of the receiver's fee is premature and not related to the preparation and filing of the 1998 HOPE VI application. The statement that "the CHA didn't feel it had to comply" may well be Phil's words, but they were not Jane Hornstein's and they do not reflect either Jane's or the CHA's understanding of the CHA's obligations. In any event, and as to further work on the preparation of the 1998 HOPE VI application, it is my understanding that the parties agreed to a procedure for preparing the application on June 9, 1998, approximately three days before your letter was written.

Your description of the CHA's activities with regard to the financing structure is also at odds with the CHA's description. (See, e.g., Ltr at 4) The CHA did not "unilaterally change the numbers to support its proposal for a financing scheme." Instead, the CHA attended a finance committee meeting on June 8, 1998, at which Jane Hornstein presented a model for financing. The other representatives of the finance committee, with the exception of Phil Hickman, agreed with Jane's model. The committee agreed that Jane should apply the model to each phase of the development, and that Phil should prepare an alternative model for discussion at the next meeting. Jane's model resulted in an estimate that the CHA would require \$46,000 to build each unit of HOPE VI-funded housing. Phil's model, presented to the committee on two handwritten pages, resulted in an estimate that the CHA would require approximately \$86,000 to build each unit, decreasing by one-half the total number of units.

Despite the fact that Phil had asked to present his proposal to the group as a whole on June 9, 1998, he failed to do so. At that meeting, the group as a whole approved of the proposed model presented by the CHA; however, the group requested some refinements. The requested refinements involved the issues raised at paragraphs 2-8 of Phil Hickman's June 12, 1998, letter. Apparently, Phil did not receive the information requested in his letter of June 12, 1998, because he left the June 10, 1998, meeting before it was adjourned, and before the issues raised in his letter were discussed by the committee. It is my understanding that Andy Rodriguez intends to draft a response to Phil's letter of June 12, 1998 - to describe for Phil the discussions and information that Phil missed on June 10, 1998. However, if Dan and Valerie believe that the issues have been adequately addressed, the CHA would be happy to forgo that exercise.

In addition, your letter's description of the receiver's role in HOPE VI is incorrect. (See, e.g., Ltr at 2-4) While Judge Aspen's orders with regard to

the role of the receiver in HOPE VI are conflicting and vague, at the very least they expressly state that the receiver does not have sole authority over HOPE VI in Chicago nor sole authority to prepare the 1998 HOPE VI application. (See, e.g., Order of May 21, 1998, denying plaintiffs' motion for further relief as moot) Instead, Judge Aspen ordered the CHA to cooperate with the receiver and coordinate the 1998 application with the receiver. The CHA has done so -- to the extent that it understands those terms. "Cooperation" and "coordination" neither imply that the CHA must comply with all of the receiver's unilateral demands for information, nor that each party has some assigned "responsibility under the Court Orders." (See, e.g., Ltr at 3)

Your letter also suggests a fundamental misunderstanding on the part of the receiver as to the roles of the receiver and the tenants, respectively, in the HOPE VI process. The tenants' approval of the CHA's HOPE VI plan is a necessity. You state that the receiver is "sensitive to the importance of communication with tenants as part of the planning process." (Ltr at 4) The CHA believes that the tenants are entitled to something more than "sensitivity" to "communication." They are entitled to a decision-making role in the HOPE VI process. In contrast, it is the receiver that is entitled to communication, coordination, and cooperation -- not decision-making or veto power over the HOPE VI process.

The CHA does not intend to provide the receiver with "information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City," nor does the CHA intend to refrain from entering into any such agreements "hereafter without the participation and written concurrence of the Receiver." (Ltr at 4) The CHA will provide information to the receiver regarding agreements made and proposed with regard to HOPE VI projects and any other projects that involve the construction of new housing. However, as you know, it is undisputed that the court's orders neither govern the CHA's rehabilitation activities with regard to housing that existed prior to the Injunction (see, e.g., Plaintiffs' Response to Motion To Clarify at 3), nor that the receiver has any role to play in HOPE VI projects that involve activities other than the development of "new" housing (see, e.g., Order of May 22, 1998, denying CHA's Motion To Stay).

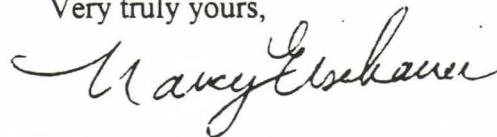
Finally, the CHA will provide the remaining information requested in your letter at pages 1-2 -- a photocopy of the 1997 HOPE VI application, a copy of the CHA's agreement with the ABLA LAC, and the information responsive to the receiver's FOIA request and discovery requests in the *Horner* litigation. Jerome Butler informed me that his staff is collecting and preparing the information, and

Barry A. Miller, Esq.
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will continue to collect the information with the intention of forwarding it to the receiver, if the receiver still requires the information. In addition, and for your information – the MOA that you refer to at page two of your letter has not been executed. I believe that Jerome intends to provide you with more details on that subject at the same time that he forwards the additional information to you.

We would be interested in learning of any other "problems that the Receiver has noted in its relationship with the CHA," to the extent that they are relevant to the court's orders, as properly construed. Please feel free to write or call either me or Susan (312-407-0750) if you wish to raise any issues that merit the CHA's attention in connection with this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Nancy Eisenhower".

Nancy S. Eisenhower

CC Daniel E. Levin/Valerie Jarrett
Alexander Polikoff
Michael Shakman

CABRINI-GREEN LOCAL ADVISORY COUNCIL, Plaintiff, v. CHICAGO HOUSING AUTHORITY
and JOSEPH SHULDINER, Defendants.

No. 96 c 6949

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

1997 U.S. Dist. LEXIS 625

January 21, 1997, Decided

January 22, 1997, DOCKETED

DISPOSITION: [*1] Defendants' motion to dismiss plaintiff's complaint granted in part and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint dismissed with prejudice.

COUNSEL: For CABRINI-GREEN LOCAL ADVISORY COUNCIL, plaintiff: Richard M. Wheelock, Legal Assistance Foundation of Chicago, Chicago, IL. Ira Rheingold, Legal Assistance Foundation of Chicago, Chicago, IL. John Warren Whitcomb, Legal Assistance Foundation of Chicago, Chicago, IL. Brenda L. Grauer, Legal Assistance Foundation of Chicago, Chicago, IL.

For CHICAGO HOUSING AUTHORITY, THE, CHA, an Illinois municipal corporation, JOSEPH SHULDINER, in his official capacity as executive director of the CHA, defendants: Thomas Edward Johnson, Anne Megan Davis, Leslie Ann Jones, Johnson, Jones, Snelling & Gilbert, Chicago, IL.

JUDGES: David H. Coar, U.S. District Judge

OPINIONBY: David H. Coar

OPINION: MEMORANDUM OPINION AND ORDER

Defendants Chicago Housing Authority and its Executive Director Joseph Shuldiner (collectively, "CHA" or "defendants") have moved to dismiss plaintiff Cabrini-Green Local Advisory Council's ("LAC" or "plaintiff") twenty-two-count complaint seeking declaratory and injunctive relief. For the following reasons, defendants' [*2] motion is granted in part and denied in part.

I. Allegations of the Complaint

A. Cabrini-Green Housing Development and the Parties

The Cabrini-Green public housing development in Chicago, Illinois ("Cabrini-Green"), is a family public housing development containing approximately 3606 dwelling units and housing some 6000 residents. Virtually all of the families residing in Cabrini-Green are "very low income," a term that is defined by the U.S. Department of Housing and Urban Development ("HUD") to mean 0% to 50% of the median area income. (Compl., PP 32-33). In addition, 94% of the heads of households at Cabrini-Green are African-American, 63% of the residents are female, and 56% of the residents are younger than nineteen years of age. (Id. P 34).

Plaintiff LAC is a tenant organization that represents the tenants of Cabrini-Green. Membership in LAC is composed of lessees and other authorized residents of Cabrini-Green. LAC has the power to act for and on behalf of the residents of Cabrini-Green and to take steps to effect changes in rules, regulations, practices, and policies on behalf of the residents. LAC also has the power to enter into contracts on behalf [*3] of the residents. (Compl., P 12).

Defendant Chicago Housing Authority is an Illinois municipal corporation that administers federally subsidized and assisted low-income housing. (Compl., P 17). Defendant Joseph Shuldiner is the Executive Director of the Chicago Housing Authority and is charged with establishing and administering the Authority's policies. (Id. P 18)

B. Initial HOPE VI Application and the LAC-CHA

Agreements

On May 5, 1993, CHA filed an application with HUD under the HOPE VI Urban Revitalization Demonstration Program ("HOPE VI") for \$ 50 million to revitalize Cabrini-Green. The application called for the demolition of three residential buildings with 660 dwelling units and the renovation of another. The plan also provided for one-to-one replacement of each dwelling unit to be demolished, either by constructing new units or by providing "Section 8" certificates to those displaced by the demolition. (Compl., PP 3, 36).-

On May 28, 1993, CHA and LAC entered into a memorandum of agreement that provided, among other things, that "residents impacted by the rehabilitation and demolition . . . will be provided relocation opportunities within the general planning [*4] area [of the Cabrini-Green development]," (Compl. 38(b)), and that CHA would meet with LAC "for the purpose of developing a 'master-plan'" for Cabrini-Green, (id. 38(d)). LAC alleges that this agreement remains in full force and effect and is a contract between LAC and CHA. (Id. P 38).

On November 19, 1993, HUD approved CHA's HOPE VI grant application. Disbursement of funds, however, was conditioned upon CHA's submission of an approvable demolition application and replacement housing plan. (Compl., P 40). On March 1, 1995, HUD approved CHA's request to demolish the building at 1117-1119 N. Cleveland, provided that the HOPE VI grant would fund 72 of the 262 replacement units. (Id. P 42). On March 13, 1995, CHA, through its Chairman, Vincent Lane, agreed in writing with LAC (1) that the residents of 1150-60 N. Sedgwick would not be relocated and that the building would not be demolished until replacement housing was built and (2) that 1158 N. Cleveland would be vacated for rehabilitation. (Id. P 43). On March 15, 1995, CHA submitted to HUD the "HOPE VI Revised Plan to Revitalize Cabrini-Green" ("Revised Plan"), which included a replacement housing plan. The Revised [*5] Plan provided for one-to-one replacement of dwelling units. (Id. P 44). In a letter dated May 15, 1995, HUD refused to either approve or deny the Revised Plan. (Id. P 45). On June 23, 1995, HUD approved CHA's demolition application for 1157-59 N. Cleveland and 1150-60 N. Sedgwick. HUD's approval for these demolitions was based in part on CHA's proposal to replace the units in those buildings on a one-for-one basis. (Id. P 48). Later in 1995, CHA demolished 1117-19 N. Cleveland and 1157-59 N. Cleveland. (Id. P 49).

In October 1995, CHA issued a "Request for Proposals -- Step Two and Developer's Packet For The Planning, Design & Development of Mixed

Income Housing For The Cabrini HOPE VI Urban Revitalization Demonstration Project" ("RFP"). The purpose of the RFP was to assist CHA in developing a replacement housing plan for the 660 units scheduled to be demolished. (Compl., P 51). In November 1995, the City of Chicago ("City") submitted to HUD its 1995 Consolidated Plan/Action Plan ("Consolidated Plan"). That plan presents the City's community development priorities and strategies. Local governments receiving HUD funds are required to submit or update such a plan annually. [*6] (Id. P 52). n1

n1 The City's Consolidated Plan provides that the City will:

(1) Serve the Full Range of Constituencies among Low- and Moderate-income Populations

Coordinate affordable housing activities with new CHA initiatives to improve public housing and the quality of life for low-income public housing residents by creating stable communities that not only provide decent shelter but also social and economic opportunities for residents. . . .

(2) Promote Community Revitalization and Stability through a Range of Development Activities.

Place primary emphasis on the preservation of affordable housing units and rehabilitation of existing housing stock. . . .

(3) Provide for Special Needs Populations.

Increase the supply and availability of resources to address the needs of Chicago's homeless population. . . .

(Compl., P 53).

C. Development of the CHA Plan

In January 1996, CHA created the HOPE VI Development Screening Committee, an advisory committee whose purpose [*7] it was to make recommendations to CHA regarding development proposals submitted pursuant to the RFP. Four Cabrini-Green residents were appointed by plaintiff to serve on this committee. (Compl., P 54). However, plaintiff alleges that between March 1996 and June 1996, CHA and the City held a series of closed-door meetings to create their own plan for the redevelopment of Cabrini-Green. Plaintiff was excluded from these meetings. (Id. P 56). The meetings between CHA and the City culminated in a joint press conference held on June 27, 1996, in which a new plan for the redevelopment of Cabrini-Green was announced ("CHA Plan" or "Plan"). Under the Plan, CHA will demolish eight buildings totaling 1324 units, rather than just the three buildings with 660 units called for under the original HOPE VI application. (Id. P 57). The CHA

Plan does not require one-for-one replacement of demolished units for very low-income residents. In fact, the Plan call for only 300-325 such units to be built, a net loss of approximately 1000 very low-income dwelling units. (Id. P 58).

Plaintiff alleges that the CHA Plan will have a disproportionate impact on African-Americans, women, and children [*8] due to the fact that all of the 675 families that have either been displaced or will be displaced from the eight buildings designated for demolition under the CHA Plan are considered "low income." (Compl. PP 60, 62, 89). In addition, LAC alleges that the building designated for renovation under the original HOPE VI application is now slated for demolition. In reliance on CHA's promise to renovate this building, the families residing in that building moved out. (Id. PP 63-64). Finally, plaintiff alleges that CHA has violated its promise to build replacement housing prior to vacating and demolishing 1150-60 N. Sedgwick. (Id. PP 68-69).

D. Injury to LAC and its Members

As a result of defendants' actions, LAC alleges that it has suffered injury because it has been denied participation in the planning process leading up to the CHA Plan. (Compl., P 73(a)). LAC also alleges that it has been forced to divert resources from its other organizational purposes in order to discover and discuss the CHA Plan, to advocate against the Plan, to monitor defendants' implementation of the Plan, to inform its members about the Plan, and to initiate this lawsuit. (Id. P 73(b)). Plaintiff [*9] also alleges that many of its members will suffer irreparable injury due to the destruction of their community. Particularly, plaintiff alleges that LAC members will be denied eligibility to reside in replacement housing at Cabrini-Green. (Id. P 74). Further, LAC members have been injured because the CHA Plan was developed without the consultation and participation of LAC members, as required by HOPE VI, Section 18 of the U.S. Housing Act of 1937 (codified at 42 U.S.C. § 1437p), and the May 28, 1993 agreement between the parties. (Compl., P 75).

E. LAC's Complaint

LAC filed a twenty-two count complaint for declaratory and injunctive relief. Counts 1-4 are brought under Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. In those counts, plaintiff alleges that the CHA Plan will have a disproportionate impact upon African-Americans, women, and children. (Compl., PP 80-83). Count 5 is brought under Title VI of the Civil Rights Act of 1964 and alleges that the CHA Plan will have a disproportionately adverse im-

pact upon African-Americans. (Id. P 84). Counts 6-10 are brought under 42 U.S.C. § 1983 and HOPE VI, 42 U.S.C. § 1437i, note. [*10] Count 6 seeks to enforce the "revitalization" provisions of HOPE VI. (Compl., P 85). Counts 7 and 8 seek to enforce the requirement in the HOPE VI statute that all plans developed under HOPE VI be consistent with the City's Consolidated Plan. (Id. PP 86-87). Counts 9 and 10 seek to enforce statutory provisions that, when read together, "require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the maximum extent practicable." (See id. P 88). Counts 11 and 12 are brought under 42 U.S.C. § 1983 and Section 18 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437p. In Count 11, plaintiff alleges that the defendants have failed to "meaningfully consult" with plaintiff in developing the CHA Plan, in violation of Section 18 and the HOPE VI grant requirements. (Compl., P 90). Count 12 alleges that one of the buildings scheduled for demolition is not obsolete and that a reasonable program of modifications is feasible to return it to "useful life." Plaintiff thus alleges that the building's demolition violates Section 18, which governs the demolition of public housing. (Id. P 91). Count 13 alleges that the CHA Plan violates [*11] Section 24 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437(e)(2), because the Plan creates a local preference whereby 300-325 replacement public housing units will be available for families making 50-80% of median area income without first holding one or more public hearings to obtain the views of low-income tenants. Plaintiff alleges in Count 14 that defendants have violated the Uniform Relocation Act, 42 U.S.C. § 4625(c), and regulations promulgated thereunder. In particular, plaintiff alleges that defendants have (1) failed to adequately assess the needs and preferences of displaced families; (2) failed to give displaced families reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings that are not located in areas of African-American concentration; and (3) failed to provide displaced families comparable replacement housing. (Compl., P 93).

Plaintiff has also brought eight state law claims. Count 15 alleges that the CHA Plan exceeds the powers conferred upon CHA by the Illinois Housing Authorities Act, 310 ILCS 10/2. (Compl., P 94). Counts 16-21 allege various breaches of the agreements between CHA and LAC. (Id. P 95-100). Finally, Count [*12] 22 alleges that the families living at 1158 N. Cleveland detrimentally relied on CHA's promise to rehabilitate that structure when they moved out. Plaintiff therefore claims that defendants are estopped from demolishing 1158 N. Cleveland. (Id. P 101).

Defendants have moved to dismiss all of the counts

in plaintiff's complaint that challenge the legality of the CHA Plan because those counts are not ripe for adjudication. In addition, defendants have moved to dismiss other counts because plaintiff has sued on its own behalf and lacks standing to assert the claims of its individual members. Defendants also argue that plaintiff's state law claims must be dismissed because the court lacks jurisdiction to enter relief against a local government agency based on state law claims. Furthermore, defendants contend that plaintiff has failed to state a cause of action for many of the federal and state counts. n2

n2 Plaintiff also filed a motion for a preliminary injunction on November 8, 1996, asking the court to enjoin: (1) the demolition of 1158 N. Cleveland, including an order upon CHA to withdraw the demolition application that CHA recently submitted to HUD; (2) the demolition of 1150-60 N. Sedgwick prior to the construction of replacement housing; and (3) the unlawful relocation of the residents from 1150-60 N. Sedgwick. On December 19, 1996, the court held a hearing on that motion. The only issue considered by the court at that time was the request to enjoin the relocation of the residents from 1150-60 N. Sedgwick. On December 20, 1996, the court declined to issue an injunction prohibiting that relocation.

[*13]

II. Standards

A motion to dismiss pursuant to Rule 12(b)(6) does not test whether the plaintiff will prevail on the merits but instead whether the claimant has properly stated a claim. See *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L. Ed. 2d 90 (1974). The court may dismiss a complaint for failure to state a claim under Rule 12(b)(6) only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 59 (1984); see also *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). The court must accept as true all well-pleaded allegations and draw all reasonable inferences in favor of the plaintiff. *Antonelli v. Sheahan*, 81 F.3d 1422, 1427 (7th Cir. 1996). However, the court need not strain to find favorable inferences which are not apparent on the face of the complaint. *Coates v. Illinois St. Bd. of Educ.*, 559 F.2d 445, 447 (7th Cir. 1977). Similarly, the court is not required to accept legal conclusions either alleged or inferred from pleaded [*14] facts. *Northern Trust Co. v. Peters*, 69 F.3d 123, 129 (7th Cir. 1995)

(citing *Nelson v. Monroe Reg'l Med. Ctr.*, 925 F.2d 1555, 1559 (7th Cir.), cert. denied, 502 U.S. 903, 112 S. Ct. 285, 116 L. Ed. 2d 236 (1991)). Finally, the complaint need not specify the correct legal theory nor point to the right statute to survive a Rule 12(b) motion to dismiss, provided that "relief is possible under any set of facts that could be established consistent with the allegations." *Bartholet v. Reishauer A.G.*, 953 F.2d 1073, 1078 (7th Cir. 1992). The complaint must, however, state either direct or inferential allegations concerning all material elements necessary for recovery under the chosen legal theory. See *Glatt v. Chicago Park Dist.*, 847 F. Supp. 101, 103 (N.D. Ill. 1994).

III. Discussion

CHA has moved to dismiss LAC's claims on a number of grounds. The court will consider each of these arguments in turn.

A. Ripeness of Claims

CHA first contention in its motion to dismiss is that there is "no concrete, fully developed and final CHA Plan . . . which has ever been submitted to HUD for approval, a necessary precondition for CHA expenditure [*15] of HOPE VI funds." (Def. Mem., at 12). Rather, CHA argues that there has simply been a press conference announcing a "skeletal outline" of a potential plan and that the court should therefore not prematurely adjudicate the legality of a plan that is only a possibility. CHA has therefore moved to dismiss plaintiff's claims in Counts 1-13, 15-17, and 20 that challenge the CHA Plan on the ground that the court lacks subject matter jurisdiction because the claims are not yet ripe.

The ripeness doctrine has both a constitutional component based on Article III "case or controversy" concepts and a prudential component based on the discretionary power of the court to refuse review for policy reasons. In its most elemental form, the doctrine of ripeness is invoked to determine whether a particular dispute has developed to a point that merits decision. "The central concern [of the ripeness doctrine] is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." 13A Wright, Miller & Cooper, Federal Practice & Procedure: Civil 2d § 3532, at 112 (1984). The Supreme Court has noted that ripeness turns upon "the [*16] fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 201, 103 S. Ct. 1713, 1720-21, 75 L. Ed. 2d 752 (1983).

There is some merit to CHA's contention that the CHA Plan is not "final" and thus not ripe for review. No

HOPE VI funds will be dispersed until the plan is submitted and approved by HUD. Nor may CHA actually raze any buildings without HUD approval. However, "the label an agency attaches to its action is not determinative." *Continental Air Lines v. CAB*, 173 U.S. App. D.C. 1, 522 F.2d 107, 124 (D.C. Cir. 1974) (en banc). The fact that there are uncertain contingencies, such as what the plan ultimately submitted to and approved by HUD will look like, does not mean that there is no case or controversy before the court or that the plaintiff and the individuals that it represents will not be irreparably injured during the time that it takes those contingencies to become certain. Rather, the court must accept as true all well-pleaded allegations in the plaintiff's complaint. *Antonelli*, 81 F.3d at 1427. [*17]

Plaintiff alleges that, in developing and implementing the Plan, defendants have failed to consult with the residents of Cabrini-Green. (Compl., PP 56, 73(a)). This injury has already occurred and is not dependent upon HUD approval of a HOPE VI application. The complaint also alleges that defendant has adopted a plan that details steps to be taken in regard to the Cabrini-Green development. (See *id.* PP 57-61). Plaintiff alleges that defendants have begun implementing this meticulous plan by, for example, taking concrete steps to demolish a building that had been scheduled for rehabilitation under the previous plan. (*Id.* PP 63-66). While HUD has not yet approved this demolition, CHA's taking of steps in compliance with some new design when residents of that building have already moved out in reliance on CHA's promise to renovate the building makes the inevitability of demolition appear that much more likely to this court. Other courts have recognized the notion of "de facto demolition" of housing developments, see, e.g., *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, 824 F. Supp. 808, 817 (N.D. Ill. 1993) ("By their inaction defendants have . . . accomplished [*18] the constructive or de facto demolition of the Horner developments."); *Gomez v. Housing Auth. of City of El Paso*, 805 F. Supp. 1363, 1374-75 (W.D. Tex. 1992) (recognizing plaintiffs' right to sue for de facto demolition), and this court finds that the facts of the instant case support recognition of that notion here. Withholding court consideration of this case could cause significant hardship to plaintiff's members if housing becomes uninhabitable and unavailable through CHA's creation of vacant buildings coupled with its inaction in maintaining and securing those buildings. Beyond the notion that CHA may be implementing a de facto demolition is the fact that plaintiff has simply alleged that its members have already been injured by moving out of buildings in reliance on CHA's promise to provide replacement housing.

Defendants' effort to apply *Pacific Gas* to the facts of this case is not persuasive. *Pacific Gas* dealt with a legal challenge to two sections of a California statute that regulated nuclear power plants. The first section established an absolute moratorium on the construction of nuclear power plants. The Court found ripeness in [*19] regard to that section because it threatened impending injury. See *Pacific Gas*, 461 U.S. at 201, 103 S. Ct. at 1720-21 (stating that "one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough." (citations omitted)). The second section of the statute concerned a provision that required a state agency to decide on a case-by-case basis whether adequate storage existed for spent nuclear fuel before a nuclear power plant could be built. The Court found that the challenge to this section of the statute was not ripe because further administrative events were required to demonstrate whether there was a factual basis for the challenge. *Id.* at 203, 103 S. Ct. at 1721-22.

Despite CHA's efforts to demonstrate otherwise, plaintiff's arguments in this case are not "identical" to the rejected claim in *Pacific Gas*. Plaintiff's complaint fairly contains allegations that "administrative events" have already taken place that are in furtherance of the CHA Plan. The fact that the CHA Plan has not been submitted to or approved by HUD does not mean that the injury alleged is not imminent [*20] or has not already occurred. Furthermore, in other cases regarding public housing, courts have held that HUD approval is not a prerequisite to the determination of ripeness. For example, in *Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531 (11th Cir. 1994), the court found that a Fair Housing Act ("FHA") claim was ripe, even though HUD had not yet given final approval for site selection. The court noted that the plaintiffs had alleged that the process of site selection itself was flawed, because all of the sites ranked and submitted for approval were in racially impacted areas. The court found that if these allegations were true, the site selection process would have a segregative result -- in violation of the law -- regardless of HUD's decision. *Jackson*, 21 F.3d at 1541 & n.15. So too in this case. For example, plaintiff's complaint alleges that CHA's process for developing CHA has already violated consultative provisions in the law, and that the CHA Plan threatens imminent injury to federal or state rights or violates federal or state law. Thus, plaintiff need not wait for the Plan to be submitted to HUD for approval in order to bring this suit. See [*21] *Jackson*, 21 F.3d at 1541 n.15 ("HUD decisions need not be final where an injury is imminent."); accord *Sierra Club v. Morton*, 169 U.S. App. D.C. 20, 514 F.2d 856, 868-69 n.20, 880-82 (D.C. Cir. 1975) (holding

that claims that plans for development of coal resources had proceeded far enough to require environmental impact statement were ripe despite lack of formal, "final" agency action), reversed on other grounds, 427 U.S. 390, 96 S. Ct. 2718, 49 L. Ed. 2d 576 (1976) (not questioning ripeness determination of lower court).

Plaintiff has alleged that as a result of a series of secret meetings, CHA has agreed with the City on a "plan." Whether that plan is merely in outline or final form is not the crucial issue. Plaintiff has alleged that the necessary outcome of the process culminating in the "plan" is to deny it an opportunity to participate and will result, inevitably, in the violations alleged in the complaint. The allegations in plaintiff's complaint, if true, raise a justiciable case or controversy and entitle plaintiff to relief; therefore, defendants' motion to dismiss plaintiff's complaint on grounds of ripeness is denied.

B. Plaintiff's Standing [*22] to Sue

CHA's next contention is that the court lacks jurisdiction over Counts 1-5, 9, 10, 14, and 22 because LAC does not have standing to sue to bring the claims. In Counts 1-5, plaintiff alleges that the CHA Plan discriminates against African-Americans, women, and families with children. (Compl., PP 80-84). In Counts 9, 10, 14, and 22, plaintiff alleges that certain families did not receive their choice of replacement housing and have not received adequate assessments, reasonable opportunities for decent housing, or comparable replacement housing, or that those individuals detrimentally relied on CHA actions. (Compl., PP 88, 89, 93, 101). CHA argues that, because plaintiff has not identified any one of its members with independent standing to bring all of these claims, and because the determination of the validity of these claims requires a case-by-case factual inquiry of the particularities of each family, LAC lacks standing to bring the claims.

To support its argument, CHA cites to the Supreme Court's holdings in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (1977) and *United Food & Commercial [*23] Workers v. Brown Group, Inc.*,

U.S. , 134 L. Ed. 2d 758, 116 S. Ct. 1529 (1996), in which the Court identified a three-prong test to determine an association's standing to sue based on injury to its members. The elements of that test are as follows: (1) the association's members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested require participation in the lawsuit by individual members of the association. See *Hunt*,

432 U.S. at 343, 97 S. Ct. at 2441. By limiting representational standing in this way, the Court has ensured that both the constitutional and prudential restrictions on standing are applied to organizations as well as to individuals. The first prong of the test ensures that there has been some injury in fact to the party who appears in court. The second requirement establishes that the representative appearing is entitled to represent the injured party on a particular issue. The final requirement assures the court that allowing the parties to proceed in a representational capacity [*24] will not harm the individual interests allegedly protected by the representative. *MPIRG v. Selective Serv. Sys.*, 557 F. Supp. 925, 931 (D. Minn. 1983) (Alsop, J.).

CHA argues that the first prong of this test has not been satisfied in regard to Counts 1-5, 9, 10, 14, and 22 because LAC has sued only on behalf of itself and not as a representative acting on behalf of its members and has not identified even one member with standing to assert the claims. For example, CHA notes that, in Counts 1-5, plaintiff alleges that some LAC members will not receive some of the HOPE VI replacement units they desire but has not identified any LAC member who desires to receive a replacement unit and who will not be able to do so under the alleged plan. CHA also contends that LAC's claims also fail under the third prong of the Hunt test, because the court will have to make particularized determinations as to whether any individual family that is displaced by HOPE VI activities wants to return to Cabrini-Green and will be unable to do so under the CHA Plan; whether any individual family received its choice of replacement housing and received the full panoply of relocation benefits; [*25] or whether any individual family detrimentally relied on CHA actions when that family moved. The court will now apply CHA's two arguments to plaintiff's claims brought under the Fair Housing Act (Counts 1-4) and to its claims brought under other statutory provisions and under the theory of promissory estoppel (Counts 5, 9, 10, 14, and 22).

1. Counts 1-4

In determining whether LAC has standing to sue under Counts 1-4 of its complaint, the Supreme Court's decision in *United Food & Commercial Workers v. Brown Group*, U.S. , 116 S. Ct. 1529, 134 L. Ed. 2d 758, 64 U.S.L.W. 4330 (1996), is significant. In *Brown Group*, the Court noted that the third prong of the test set out in *Hunt* is a prudential impediment that Congress may abrogate. In *Brown Group*, this meant that a union could sue on behalf of its members for their monetary damages, since such action was authorized by the WARN Act. *Brown Group*, U.S. , 116 S. Ct. at 1532-

33. In an earlier case, the Supreme Court held that, in suits brought under the Fair Housing Act, courts lacked the authority to create prudential barriers to standing. *Havens Realty Corp. v. Coleman*, 455 [*26] U.S. 363, 372-74, 102 S. Ct. 1114, 1120-21, 71 L. Ed. 2d 214 (1982). Therefore, under Counts 1-4, brought pursuant to the Fair Housing Act, no prudential limits, such as determining the need for individual participation of LAC members, can be used to determine plaintiff's standing. The relevant issue is therefore whether plaintiff has alleged "distinct and palpable injuries" that can be traced to defendants' actions. *Id.* at 376, 102 S. Ct. at 1122.

Plaintiff alleges that it has been denied participation in the planning process that produced the CHA Plan and that it has been forced to divert its limited resources from other organizational purposes and goals and to direct these resources to discover and discuss with defendants the CHA Plan, to advocate against the CHA Plan, and to monitor implementation of the CHA Plan. (Compl., P 73). In *Havens Realty*, the Supreme Court held that the injury the organization alleged, namely, that the defendant's steering practices had frustrated the organization in its efforts to assist equal access to housing and had caused it to devote significant resources to identify and counteract the discrimination, was a sufficient allegation [*27] of injury for standing purposes. The Court found that these effects established a concrete and demonstrable injury that was "far more than simply a setback to the organization's abstract social interests." *Havens Realty*, 455 U.S. at 379 & n.20, 102 S. Ct. at 1124 & n.20; see also 13 Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction & Related Matters 2d § 3531.9, at 604 (1984) ("An organization can assert standing to protect against injury to its own organizational interests."). In this case, plaintiff alleges the same type of injury as that alleged by the organization in *Havens Realty*: "[it] has been forced to divert its limited resources from its other organizational purposes." (Compl., P 73(b)). The court finds that plaintiff has properly alleged an organizational injury, which is causally related to defendants' alleged activities. Because the court can redress this injury through the requested relief, plaintiff has standing to sue under Counts 1-4.

2. Counts 5, 9, 10, 14, and 22

The next question is whether plaintiff can satisfy the standing requirements under Counts 5, 9, 10, 14, and 22, which are not brought under the Fair [*28] Housing Act and thus require plaintiff to meet both the constitutional and the prudential requirements for standing. An association meets the prudential requirements for standing if (1) it has standing in its own right because it

alleges injury to itself or (2) it alleges that its members have been injured. *Warth v. Seldin*, 422 U.S. 490, 510-11, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975). As noted supra, plaintiff has properly alleged an organizational injury: it has been forced to divert its limited resources from its other organizational purposes and goals. Plaintiff thus meets the prudential requirements for standing in regard to Counts 5, 9, 10, 14, and 22. n3

n3 In addition to its allegations that it has suffered organizational injury, LAC has alleged harm to its members. (See Compl., PP 74-75). Hunt suggested that individual participation of an organization's members is not normally necessary (and thus the third prong of the Hunt test would be satisfied) when an association seeks only prospective or injunctive relief, as opposed to monetary damages. *Hunt*, 432 U.S. at 343, 97 S. Ct. at 2441; see also *United Steelworkers of Am. v. University of Alabama*, 599 F.2d 56, 59 (5th Cir. 1979) (holding that union had standing to seek declaratory and injunctive relief for benefit of itself and its individual members); cf. *Warth*, 422 U.S. at 515, 95 S. Ct. at 2213 ("If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured."). In this case, plaintiff is merely seeking declaratory and injunctive relief, suggesting that participation in the case by LAC members is not required.

[*29]

3. Must LAC Identify Individuals with Independent Standing?

CHA nevertheless contends that plaintiff's allegations of organizational injury are not enough to give it standing under Counts 1-5, 9, 10, 14, and 22 to assert the claims of its members. Even if it has standing to sue on behalf of itself, CHA suggests that LAC must still identify individuals having independent standing to assert the claims. CHA has cited cases in which courts found organizations to have standing, but in which individual members of those organizations were also identified and had independent standing. This court finds, however, those cases do not impose a requirement to identify individuals with independent standing to sue. Furthermore, CHA's efforts to distinguish the cases cited by plaintiff in its response to the motion to dismiss are not convincing. For example, *Chicano Police Officer's Association v. Stover*, 526 F.2d 431 (10th Cir. 1976), does not

stand for the proposition that an association must allege a specific type of injury in order to have standing. The fact that the association in that case gained standing because it demonstrated that, "in challenging barriers against employment[,] [*30] it might well enhance its membership and resources to attain its goals," *id.* at 431, does not mean that LAC can only have standing to assert the claims of its members if it alleges that its challenge to the CHA Plan will enhance its membership or resources. Rather, Chicano Police Officer's stands for the proposition that an association must simply allege some injury to itself and/or its members.

Nor does the Seventh Circuit's holding in *Minority Police Officers Association of South Bend v. City of South Bend*, 721 F.2d 197 (1983), contradict the holding of Chicano Police Officer's. In *Minority Police Officers*, the court found that individual police officers and the association that represented them did not have standing to challenge a city police force's hiring practices. However, the court based its decision regarding lack of standing on the fact that all of the individuals named as plaintiffs in the suit, as well as all of the members of the association, had already been hired. In the instant case, however, LAC is challenging a plan that allegedly discriminates against its members and that will deny its members replacement housing. [*31] Unlike the situation in *Minority Police Officers*, in which there was no possibility that the plaintiffs would be harmed by the defendant's actions, this case presents a situation in which LAC and its members are facing imminent injury.

Finally, the court notes that LAC has standing to assert the rights of its members. Courts have consistently held that, if the same activity injures both the interests of the organization as well as the interests of its members, the organization can assert the rights of its members. For example, in *Worth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975), the Court observed that "in attempting to secure relief from injury to itself the association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties." In this case, LAC is the recognized, duly elected tenant council for the residents of Cabrini-Green. (Compl., P 13). Neither HUD nor CHA may recognize a competing resident council once such a duly elected council has been established. See 24 C.F.R. § 964.18(a)(7) and (b)(iv). Plaintiff's purposes and powers are defined [*32] by federal law and its own charter. (See Compl., P 12; 24 C.F.R. § 964.100). In a very real sense, therefore, LAC represents the residents of Cabrini-Green and provides them with the voice through which they "express their collective views and protect their collective interests." *Hunt*, 432 U.S. at 345, 97 S. Ct. at 2442. Furthermore,

because plaintiff's membership is drawn from those who reside at Cabrini-Green, any change in the makeup of Cabrini-Green public housing necessarily affects LAC members' associational ties to that organization.

The allegations in plaintiff's complaint, if true, demonstrate that plaintiff has standing to challenge defendants' actions in developing the CHA Plan: plaintiff has alleged injury to itself and its members, it has met the constitutional and, where necessary, prudential requirements for standing, and it has standing to assert the rights of its members. Therefore, defendants' motion to dismiss plaintiff's complaint on grounds of standing is denied. n4

n4 The court reiterates that it may only dismiss this suit based on lack of standing if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon*, 467 U.S. at 73, 104 S. Ct. at 2232. The court's decision, therefore, is based on reasonable inferences that the plaintiff must prove at trial. The standing inquiry can be revisited at trial if it appears that facts necessary for standing are not supported by the evidence adduced at trial. See *Jackson*, 21 F.3d at 1536 n.5 (citing *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 116 n.31, 99 S. Ct. 1601, 1616 n.31, 60 L. Ed. 2d 66 (1979)).

[*33]

C. Jurisdiction over State Law Claims

CHA's next contention is that plaintiff's state law claims in Counts 15-22 must be dismissed because the court lacks jurisdiction to enter relief against the defendants on them, citing *Evans v. City of Chicago*, 10 F.3d 474, 481 (7th Cir.1993) (en banc), cert. denied, 128 L. Ed. 2d 460, 114 S. Ct. 1831 (1994). In *Evans*, the Seventh Circuit refused to enter an injunction against the City of Chicago for violating a consent decree in which the City of Chicago had agreed to abide by state law concerning the prompt payment of tort claims against municipal governments. *Id.* at 480. The plurality of the court in *Evans* indicated that the consent decree had to be set aside because a district court may not require a unit of state or local government to abide by a consent decree that does not serve any federal interest. The plurality opinion explained:

The [district] court must ensure that there is a substantial federal claim, not only when the decree is entered but also when it is enforced, and that the obligations imposed by the decree rest on this rule of federal law

rather than the bare consent [*34] of the officeholder.

...

Entry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law. Unless there is such a claim, the consent decree is no more than a contract, whose enforcement cannot be supported by the diversity jurisdiction and that has in court no more force than it would have outside of court.

Id. at 479-80. The court further stated that "litigants aggrieved by Chicago's failure to adhere to state law must take their claims to state court. The Constitution does not authorize federal judges to superintend state and local governments' compliance with their own laws." *Id.* at 481 (citations omitted).

It is not clear to this court that the Evans holding applies to the facts of the instant case. This case does not deal with the enforcement of a consent decree. Evans would not appear to apply to situations in which a court is simply asked to issue an injunction against a state or city governmental agency directing it to comply with state law or to comply with the terms of agreements it has made with other parties, especially [*35] when there are "substantial federal claims." Because there are such claims in this case, plaintiff argues that the court may exercise supplemental jurisdiction over Counts 15-22. The supplemental jurisdiction statute provides that, in any civil action in which the federal district court has original jurisdiction, court also has supplemental jurisdiction over all related claims that form part of the same case or controversy. See 28 U.S.C. § 1367(a); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S. Ct. 1130, 1138, 16 L. Ed. 2d 218 (1966). In this case, plaintiff's complaint contains several claims that are based solely upon federal law. (See Compl., Counts 1-14). The court has found that it has jurisdiction over those federal claims. (See *supra* Parts III.A and III.B). The court also finds that plaintiff's state law claims arise out of the same case or controversy as do its federal claims (i.e., events related to the development and implementation of the CHA Plan). In the past, courts have also found that supplemental jurisdiction may be exercised over state law claims against governmental defendants. See *Board of Educ. of Community High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.*, [*36] 940 F. Supp. 1321, 1327 (N.D. Ill. 1996) (noting that court had supplemental jurisdiction of state law claim against Illinois Department of Mental Health and Development Disabilities deriving from the same nucleus of operative fact as federal IDEA claim); *Contreras v. City of Chicago*, 920 F. Supp. 1370 (N.D. Ill. 1996) (not-

ing that court had discretion to exercise supplemental jurisdiction over claims that requested declaratory and injunctive relief and that only raised questions of state and municipal law); see also *Myers v. County of Lake, Ind.*, 30 F.3d 847 (7th Cir. 1994) (upholding district court's exercise of supplemental jurisdiction over plaintiff's state law negligence claim against county). This court therefore adopts the reasoning of those cases and concludes that it has discretion to exercise supplemental jurisdiction over plaintiff's state law claims.

D. Plaintiff's Claims Under Fair Housing Act and Title VI of Civil Rights Act of 1964

CHA contends that Counts 1-4 of plaintiff's complaint fail to state a claim under § 3604(a) of the Fair Housing Act ("FHA") because those counts [*37] fail to allege that CHA has either (1) denied black residents replacement housing in a racially integrated neighborhood (Count 4), or (2) otherwise discriminated against them in the provision of housing because of their race, sex, or familial status (Counts 1-4). n5 CHA also contends that Count 5, brought under Title VI of the Civil Rights Act of 1964, should be dismissed for lack of standing.

n5 Section 3604(a) of the FHA states that it is unlawful

to refuse to sell or rent . . . or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(a).

1. Denying Black Residents Replacement Housing

LAC's complaint alleges that the CHA Plan provides for the demolition of several structures containing over 1300 units public housing units and that this will displace 675 very low-income Cabrini-Green families. Plaintiff also alleges that the CHA Plan for Cabrini-Green [*38] only provides for 300-325 very low-income replacement units. (Compl., PP 60, 62, 89). Thus, the face of plaintiff's complaint contains allegations that over 300 Cabrini-Green families will be denied replacement housing, the majority of whom are African-American. The complaint can also fairly be read to allege that, because the Cabrini residents will be denied housing in their newly revitalized neighborhood and because those residents have very low incomes, they will be forced to live in a non-racially integrated area. While plaintiff may not ultimately be able to prove that current LAC members will be moved into segregated neighborhoods

against their will, this court cannot say that plaintiff has not at this point adequately alleged a violation of the FHA in Count 5.

2. Sufficiency of Allegations of Discrimination

The court now turns to CHA's second argument as to why plaintiff's FHA counts fail to state a claim. CHA argues that plaintiff's allegations of disparate impact, unaccompanied by allegations that CHA acted with intent to discriminate, are insufficient to state a per se claim under the FHA. CHA bases this argument on the court's decision in *Metropolitan Housing [39] Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), in which the Seventh Circuit stated that there are four critical factors to be examined in determining whether conduct that produces discriminatory impact violates § 3604(a). Those factors are: (1) how strong the showing of discriminatory effect is; (2) whether there is some evidence of discriminatory intent; (3) what the defendant's interest is in taking the action complained of; and (4) whether the plaintiff seeks affirmative relief that would compel the defendant to provide housing for minority groups. *Id.* at 1290. CHA contends that LAC has failed to satisfy at least three of the four factors because (1) there is no allegation that defendants are acting with intent to discriminate; (2) defendants' interest is to improve Cabrini-Green housing and open it to a wider range of residents; and (3) plaintiff seeks to require defendants to take affirmative action to build or rehabilitate housing in Cabrini-Green, which represents a collateral attack on *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969).

The court initially notes that the four-factor test set [*40] out in *Arlington Heights* for determining whether conduct producing discriminatory impact but taken without discriminatory intent violates the FHA is more properly applied to a motion for summary judgment or by the factfinder at trial. Cf. *Arlington Heights*, 558 F.2d at 1290-93 (applying four factors to a record developed after trial); *Gomez v. Chody*, 867 F.2d 395 (7th Cir. 1989) (determining whether a genuine issue of triable fact existed in order to defeat motion for summary judgment). At the motion-to-dismiss stage of the proceedings, the more appropriate question is whether plaintiff's allegations of disparate impact are sufficient to establish a prima facie case under the FHA.

In any event, defendants are incorrect in their assertion that *Arlington Heights* and its progeny make clear that "some showing of discriminatory intent is required" to establish a Fair Housing Act violation. (See Def. Mem., at 22). Defendants' reliance on cases such as *Burrell v. City of Kankakee*, 815 F.2d 1127 (7th Cir. 1987) and *Gomez v. Chody*, 867 F.2d 395 (7th Cir. 1989), is

not persuasive. For example, the court in *Burrell* [*41] specifically stated that "a showing of discriminatory intent is not required under § 3604(a)." 815 F.2d at 1131. Likewise, *Gomez* is explicit that "discriminatory effect, without discriminatory intent, may constitute a violation of the [Fair Housing Act]." 867 F.2d at 402 (emphasis omitted). Thus, despite defendants' contention, plaintiff need not allege that defendants were acting with intent to discriminate to state a claim under § 3604(a). Cf. *Arlington Heights*, 558 F.2d at 1290 ("A strict focus on intent permits racial discrimination to go unpunished in the absence of evidence of overt bigotry. As overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find."). The court finds that plaintiff's allegations of discriminatory effects are enough to state a claim for relief under the FHA. n6

n6 CHA also argues that its interest in adopting the CHA Plan is to improve Cabrini-Green housing and open it to a wider range of residents, therefore suggesting that LAC has failed to state a claim for relief under the FHA. (See, e.g., Def. Reply, at 11-12). However, as stated previously, an argument based on one of the *Arlington Heights* factors is more properly considered at summary judgment or at trial. At this stage of the proceedings, such an argument cannot defeat the allegations in a well-pleaded complaint that properly state a claim for relief under the FHA.

Furthermore, the court rejects CHA's argument that allowing plaintiff to go forward with its FHA claims based in part on its allegations of discriminatory effect will necessarily mean "any housing strategy CHA proposes [for Cabrini-Green] will violate the FHA." (Def. Reply, at 11). This is not the case. At this stage of the proceedings, the issue is simply whether plaintiff has properly stated a claim. Plaintiff still has the burden to prove the alleged violations of the FHA.

[*42]

3. Standing to Sue Under Count 5

Defendants also argue that plaintiff does not have standing to sue under Count 5 of its complaint. In that count, plaintiff alleges that the CHA Plan will result in the net loss of 1000 public housing units, the impact of which will fall disproportionately on African-Americans, in violation of Title VI of the Civil Rights Act of 1964. n7 Defendants assert that plaintiff does not have standing to assert a claim under Title VI because it has failed to allege that it is injured by a reduction in dwelling units. In addition, defendants argue that plain-

tiff has failed to state a claim under Title VI because it has failed to allege that defendants are proposing the CHA Plan "on the ground of" race. Furthermore, defendants argue that while plaintiff may have an interest in this case as a representative of the residents of Cabrini-Green, the black residents of Cabrini-Green are "already well-represented by their class counsel in *Gautreaux v. Chicago Housing Authority*." See 304 F. Supp. 736 (N.D. Ill. 1969). Defendants have therefore requested that the court transfer this count to the judge of this court that is overseeing *Gautreaux* [*43]. The court will treat each of these arguments in turn.

n7 Title VI provides that:

No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.

First of all, the court notes that it has already addressed defendants' standing arguments in Part III.B. supra. Second, the court finds that plaintiff's complaint is sufficient to establish a prima facie case of discrimination under Title VI because it has alleged disparate impact. In *Guardians Association v. Civil Service Commission*, 463 U.S. 582, 584 n.2, 103 S. Ct. 3221, 3223, 77 L. Ed. 2d 866 (1983), the Supreme Court held that a plaintiff may use a theory of disparate impact to vindicate rights secured by agency regulations promulgated pursuant to Title VI and which incorporate an "effects" standard. See also [*44] *Gomez v. Illinois St. Bd. of Educ.*, 811 F.2d 1030, 1044-45 (7th Cir. 1987) (noting that disparate impact claim could be maintained under regulations promulgated pursuant to Title VI). Because HUD has promulgated such regulations, see 24 C.F.R. § 1.4(b)(2)(i) (barring recipients of HUD funds "from utilizing criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color or national origin" (emphasis added)), plaintiff has stated a claim under Title VI by alleging disparate impact.

Finally, the court finds that plaintiff's allegations in Count 5 cannot necessarily be read as a collateral attack on *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969). *Gautreaux* prohibits CHA from building housing in racially segregated communities without court approval. CHA notes that one element of the relief requested by LAC is the construction of replacement housing and argues that this claim for relief brings the case "squarely within the scope of

Gautreaux." (Def. Reply, at 15). The court disagrees. It is not clear that granting plaintiff's requested relief [*45] -- i.e., ordering CHA to specifically perform on its contractual agreements with LAC and its members -- will necessarily bring this case within the scope of *Gautreaux*. This conclusion is based on the fact that the agreement that plaintiff seeks to have enforced specifically states that the agreement is "subject to Federal Court guidelines under *Gautreaux*." (Compl., P 38). Any relief that this court directs must necessarily take this provision into account.

E. Do Plaintiff's Claims Rely upon Statutes that Create Enforceable Rights?

Defendants also argue that Count 6-12 of plaintiff's complaint do not rely upon statutes that create enforceable rights with the meaning of 42 U.S.C. § 1983, and that plaintiff has therefore failed to state a claim for each of those counts. In particular, defendants argue that the wording relied upon by the plaintiffs in those statutes is "too amorphous" to be judicially enforceable.

In *Suter v. Artist M.*, 503 U.S. 347, 357, 112 S. Ct. 1360, 1367, 118 L. Ed. 2d 1 (1992), the Supreme Court stated that, when determining whether enforceable rights are created by language in a statute, the court must perform a [*46] critical analysis of the statute and must particularly examine that which is required by the statute. The statute at issue in *Artist M.* provided that the State make "reasonable efforts" to reunite foster children with their biological families, but merely required that a plan detailing such reasonable efforts be submitted to and approved by the federal government. The Court found that, without further statutory or regulatory definition of "reasonable efforts," the plaintiffs could not bring an action under 42 U.S.C. § 1983 to enforce the provision. *Id.* at 363, 112 S. Ct. at 1370. The court will examine Counts 6-12 in turn to determine whether the statutory language upon which each of those counts relies provides an objective benchmark for the court to apply.

1. Count 6

Count 6 alleges that under the CHA Plan, 1000 units of very low-income public housing will be permanently lost and 50% of the displaced families will be ineligible for the newly constructed replacement housing. Plaintiff alleges that this violates HOPE VI, 42 U.S.C. § 1437l, note, and the Revitalization of Severely Distressed Public Housing Program, 42 U.S.C. § 1437(d)(2), which provide [*47] for grants for the "revitalization" of public housing communities, because the Plan would result in the dismantling and relocation, rather than the revitalization, of Cabrini-Green. (Compl., P 85). CHA

argues that neither Congress nor HUD have defined "revitalization," and that Congress has given no indication that it intended to create a private remedy for parties such as LAC.

HOPE VI provides for \$ 300 million to be used to "carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects." 42 U.S.C. § 1437l, note. Other provisions of HOPE VI state a desire to assist "troubled housing authorities" and "severely distressed projects." HOPE VI further provides that funded activities should include "capital costs of major reconstruction, rehabilitation and other physical improvements" and "capital costs of replacement units." It seems apparent, therefore, that while HOPE VI may not define "revitalization" as such, the language of the statute indicates what results Congress would not consider to be "revitalization." For example, HOPE VI funds could not be used for a project that simply [*48] obliterated a public housing development. In addition, some HOPE VI funds must be used to improve existing public housing structures. Furthermore, HOPE VI does not allow a public housing authority to turn its back on "severely distressed projects," such as Cabrini-Green. The court finds, therefore, that the language of HOPE VI gives the court sufficient guidance in determining whether the CHA Plan complies with that statute's "revitalization" requirements. n8

n8 CHA has also argued that Count 6 should be dismissed because the CHA Plan is not required to comply with 42 U.S.C. § 1437v(d)(2), as alleged by plaintiff. The court declines to decide whether a "revitalization" requirement exists in § 1437v(d)(2), because it finds that Count 6 states a claim based solely on a violation of HOPE VI.

2. Counts 7 and 8

Counts 7 and 8 allege that the net loss of 1000 public housing units (Count 7) and the fact that 50% of the newly constructed replacement housing will be unavailable to very low-income public housing residents [*49] (Count 8) are inconsistent with the City of Chicago's Consolidated Plan, see *supra* note 1, to preserve affordable public housing units and to improve the quality of life for very low-income public housing residents. As such, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437l, note, which requires that plans developed under HOPE VI be consistent with the Consolidated Plan. (Compl., PP 86-87). CHA argues that there is "no objective benchmark from which this

court could create its own scale to determine if the CHA Plan is inconsistent with the City's Consolidated Plan." (Def. Mem., at 31). CHA further argues that the City's Consolidated Plan cannot be used to create federal rights for the plaintiff and that HOPE VI's requirement of consistency with the Consolidated Plan is solely for the benefit of cities.

The court finds that the Consolidated Plan is even more explicit than the HOPE VI statute in defining what is required regarding the "revitalization" and "rehabilitation" of public housing. The Consolidated Plan is directly addressed to the needs of low- and moderate-income residents. It speaks of "creating stable communities." It explicitly associates [*50] "revitalization" with "preservation of affordable housing units and rehabilitation of existing housing stock." Thus, the court finds that the Consolidated Plan provides an appropriate benchmark by which to assess any HOPE VI-funded projects. The court further finds that HOPE VI's requirement of consistency with the Consolidated Plan does create enforceable rights on the part of LAC and its members. As plaintiff points out, Congress created HOPE VI

for the empowerment of residents of severely distressed and obsolete public housing. . . . For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked. . . . [HOPE VI] is a program that calls upon both the residents and political leaders of America's large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial centers.

S. Rep. No. 102-356, 102d Cong., 2d Sess. p.40 (1992). It would be inconsistent with the purposes of HOPE VI to allow a [*51] Consolidated Plan to be developed (with input from public housing residents), but then to allow a public housing authority to simply ignore that plan. Giving the residents of public housing projects enforceable rights against CHA to comply with the Consolidated Plan will further the purposes of HOPE VI.

3. Counts 9 and 10

In Counts 9 and 10, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437l, note, and 42 U.S.C. § 1437p(b)(2) which, when read together, require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the "maximum extent practicable." (Compl., PP 88-89). The court agrees with defendants that this

language is "too amorphous and vague" to be enforced by the court. Exactly what the "maximum extent" is would vary from case to case and would depend on what was "practicable" in a particular instance. It seems unlikely that Congress would leave this determination to courts without giving them greater guidance. Unlike the language that it used to flesh out the term "revitalization," Congress has done little to give courts direction as to how many replacement units should be built to replace [*52] those that will be demolished or exactly how much deference is to be given to resident "choice." For these reasons, the court finds that plaintiff does not have a cause of action to enforce the "maximum extent practicable" provisions of HOPE VI and § 1437p(b)(2). Counts 9 and 10 are dismissed.

4. Count 11

Count 11 of plaintiff's complaint alleges that 42 U.S.C. § 1437p(b)(1), providing that housing authorities must "meaningfully consult" with local advisory councils, and the language of the Notice of Fund Availability, providing that "residents be fully briefed and meaningfully involved," create federally enforceable rights. (See Compl., PP 90, 26).

As noted in *Concerned Tenants Association of Father Panik Village v. Pierce*, 685 F. Supp. 316, 320 (D. Conn. 1988), the creation of a right to consultation under § 1437p is clear. The court in that case discussed *Edwards v. District of Columbia*, 261 U.S. App. D.C. 163, 821 F.2d 651 (D.C. Cir.1987), in which § 1437p was found not to have created an enforceable right that might be violated by a de facto demolition. Congress promptly amended § 1437p by adding § 1437p(d), which now reads:

A public [*53] housing agency shall not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining the approval of the Secretary and satisfying the conditions [regarding tenant consultation] specified in subsection [b]. . . .

42 U.S.C.A. § 1437p(d) (pocket part). When adding this provision, Congress stated:

This provision is intended to correct an erroneous interpretation of the existing statute by the United States Court of Appeals for the D.C. Circuit in *Edwards v. District of Columbia* and shall be fully enforceable by tenants of and applicants for the housing that is threatened.

H.R. Conf. Rep. No. 426, 100th Cong., 1st Sess.

172 (1987), reprinted in, U.S. Code Cong. & Admin. News pp.3317, 3458. The Congressional disagreement with the Edwards court, and the reference to enforceability, manifest intent to create a private right of action. Furthermore, the obvious purpose of the statute is to benefit low-income tenants; therefore, permitting a private right to enforce it is consistent with the purpose of the statute. See *Wright v. Roanoke Redev. & Hous. Auth.* [*54], 479 U.S. 418, 430, 107 S. Ct. 766, 773, 93 L. Ed. 2d 781 (1987); see also, *Cannon v. University of Chicago*, 441 U.S. 677, 703, 99 S. Ct. 1946, 1961, 60 L. Ed. 2d 560 (1979).

Because § 1437p provides a federal right enforceable by tenants, plaintiff may enforce its provisions under 42 U.S.C. § 1983. See *Maine v. Thiboutot*, 448 U.S. 1, 4, 100 S. Ct. 2502, 2504, 65 L. Ed. 2d 555 (1980) (Section 1983 encompasses claims based purely on federal statutory law); *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, 780 F. Supp. 511, 513-15 (N.D. Ill. 1991); *Concerned Tenants*, 685 F. Supp. at 318-21. n9

n9 CHA contends that there is no requirement that plans for disbursement of HOPE VI funds comply with the tenant consultation provisions found in 42 U.S.C. § 1437p. The court rejects this argument. HOPE VI cannot be read in a vacuum. Section 1437p specifically deals with the demolition of public housing. It is clear to the court that if HOPE VI funds are to be used to demolish public housing, then the plan submitted pursuant to HOPE VI must also comply with the tenant consultation provisions of § 1437p.

[*55]

5. Count 12

Plaintiff alleges in Count 12 that CHA's plan to demolish 1158 N. Cleveland violates 42 U.S.C. § 1437p(a)(1), which governs the demolition of public housing and states a desire to preserve housing with a "useful life." Plaintiff alleges that the building is neither obsolete nor is its demolition necessary to assure the useful life of the remaining portion of Cabrini-Green. (Compl., P 91). As with the "maximum extent practicable" language in Counts 9 and 10, the court finds that Congress has given little direction as to what factors should be considered in determining a public housing project's "useful life." However, even beyond the difficulties in applying this standard to the facts of the instant case, the court notes that § 1437p(a)(1) merely states a "desire" that housing with a useful life be preserved and does not create a requirement that such housing be preserved. For these reasons, the court finds that Count 12 should be dis-

missed.

F. Implied Cause of Action for Violation of Illinois Housing Authorities Act

Defendant also moves to dismiss plaintiff's claim under the Illinois Housing Authorities Act, 310 ILCS 10/2 (Count 15). In that count, plaintiff [*56] alleges that the CHA Plan will result in the net loss of 1000 public housing units and thus exceeds the powers conferred upon the CHA by the Act "to relieve the shortage of decent, safe, affordable, and sanitary dwellings." 310 ILCS 10/2. Defendant contends that this count should be dismissed because there is no implied cause of action under Illinois law for violations of such "vague and ambiguous statutory language." (Def. Mem., at 38).

The Illinois Housing Authorities Act contains no express provision conferring upon individuals a cause of action to enforce the provisions of the statute. And while it is true that Illinois courts routinely find implied private rights of action in statutes, such private rights of action are commonly found in statutes that also provide for specific criminal or administrative penalties. See, e.g., *Rodgers v. St. Mary's Hosp. of Decatur*, 149 Ill. 2d 302, 309, 597 N.E.2d 616, 619-20, 173 Ill. Dec. 642 (1992); *Corgan v. Muehling*, 143 Ill. 2d 296, 315, 574 N.E.2d 602, 610, 158 Ill. Dec. 489 (1991); *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 391, 432 N.E.2d 849, 854-55, 59 Ill. Dec. 905 (1982); *Kelsay [*57] v. Motorola, Inc.*, 74 Ill. 2d 172, 185, 384 N.E.2d 353, 358-59, 23 Ill. Dec. 559 (1978). Though the Illinois Housing Authorities Act is not such a statute, finding an implied private right of action is not foreclosed.

In *Sawyer*, 89 Ill. 2d at 391, 432 N.E.2d at 854-55, the court set out the elements of a test that has subsequently been used by Illinois courts to determine whether there is an implied right of action under a statute. Such an implied right of action has been found when the following circumstances exist:

1. The plaintiff is a member of the class of persons for whose benefit the statute was enacted;
2. The plaintiff's injury is one which the statute was designed to prevent;
3. A private right of action is consistent with the underlying purpose of the statute; and
4. A private right of action is necessary to effectuate the purposes of the act.

See id.

First of all, the court notes that no Illinois court has found an implied private right of action under the Act. While this is not dispositive of the issue of whether such a right of action does indeed exist, consideration of the third and fourth factors set out [*58] in *Sawyer* counsels against finding a private right of action. In regard to the third factor, the court finds that the Illinois Housing Authorities Act was not enacted in order to regulate housing authorities, but to create them and to vest them with powers to address housing problems. The court finds that a private right of action would be inconsistent with this underlying purpose. In addition, the general mandate of the Illinois Housing Authorities Act does not provide the court with enough guidance as to how the Act's provisions should be enforced. For similar reasons, the court finds that the fourth element of the *Sawyer* test is not satisfied. The Illinois General Assembly, by enacting the Act, has taken on the responsibility of monitoring housing authorities in the execution of their general powers; thus, a private right of action is not necessary to effectuate the purposes of the act. Count 15 of plaintiff's complaint is dismissed.

G. Contract Claims

CHA also moves to dismiss Counts 16-21. CHA argues that LAC is not a party to the March 13, 1995 agreement that is the basis of Counts 16, 17, 19, and 20 and therefore has no right to enforce [*59] the document. Furthermore, CHA contends that LAC has failed to allege facts that show that either the March 13, 1995 agreement or the May 28, 1993 agreement are enforceable for the following reasons: (1) conditions precedent to both alleged agreements did not occur (i.e., HUD failed to approve the original CHA Plan) and the agreements therefore were impossible to perform; (2) Vincent Lane lacked authority to bind CHA; and (3) the March 13, 1995 agreement is not a contract because its terms are unascertainable.

LAC's complaint, however, contains allegations sufficient to state a claim for breach of contract. First, LAC has alleged that it is a party to both the May 28, 1993 and the March 13, 1995 agreements and that those agreements are enforceable. (See Compl., PP 38, 43 (stating that "CHA and plaintiff entered into a Memorandum of Agreement" and that "CHA, through its Chairman, Vincent Lane, agreed in writing with the plaintiff")). Second, the pleadings in this case do not establish that the agreements were impossible to perform because of conditions precedent that did not occur. Finally, the court finds that the terms of the March 13, 1995 agreement are not unascertainable. [*60] Evidence may be

produced during discovery or trial that fleshes out any ambiguity in that document.

H. Promissory Estoppel Claim

In Count 22, plaintiff alleges that some families moved out of 1158 N. Cleveland in detrimental reliance on CHA's promise to rehabilitate that building. (Compl., P 101). Defendants argue that this promissory estoppel claim must be dismissed because it fails to establish an unambiguous promise to families that they could return to 1158 N. Cleveland after it was rehabilitated. The court finds, however, that plaintiff's has adequately pled such a promise. Plaintiff relies on the fact that the original HOPE VI application provided for the rehabilitation of 1158 N. Cleveland. Furthermore, plaintiff's allege that the March 15, 1995 agreement between LAC and CHA called for such rehabilitation. Moreover, at

this stage of the proceedings, the court cannot say that CHA's promise was not directed to the individual tenant families. For these reasons, the court finds that plaintiff has properly stated a promissory estoppel claim.

IV. Conclusion

WHEREFORE, for the foregoing reasons, defendants' motion to dismiss plaintiff's complaint is granted in part [*61] and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint are dismissed with prejudice.

ENTER:

David H. Coar

U.S. District Judge

Dated: January 21, 1997

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

CABRINI-GREEN LOCAL ADVISORY
COUNCIL,

Plaintiff,

v.

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

No. 96 C 6949

Chicago, Illinois

November 18, 1996

9:15 a.m.

Preliminary Injunction
(Motion)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID H. COAR

APPEARANCES:

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TRACEY D. McCULLOUGH, CSR, RPR
Official Court Reporter
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1 demolition application from HUD.

2 So those are the three we feel without preliminary
3 relief that would preserve the status quo ante to bring us
4 back to the point in time when CHA stopped its good faith
5 negotiations with the residents, which in our estimation
6 occurred back in February or March of this year.

7 MR. JOHNSON: Might I respond, Judge?

8 THE COURT: Yes, sir.

9 MR. JOHNSON: Let me say a couple of things. Number
10 one, there are in our judgment very profound legal issues or
11 legal problems with the complaint that's been filed. Much of
12 the complaint is predicated upon an effort to enforce these
13 quote, unquote agreements, which we believe is not a matter
14 over which the federal court has jurisdiction.

15 There are a plethora of federal claims advanced I
16 think in an effort to bring these quote, unquote agreements
17 before the Court. We believe that there is a proper motion
18 to dismiss on all of those federal claims, and we are happy
19 to present those arguments to Your Honor.

20 But let's leave aside for one moment the sort of
21 legal deficiency of -- although let me say one other thing
22 too. The matter of public housing redevelopment in Chicago
23 is a very large and a very complicated matter. There are
24 other -- there's other litigation that bears upon this, not
25 the least of which is the Gertreaux injunctions, which have

1 much to do with what happens at Cabrini and much to do with
2 any race claim like the one that's asserted here.

3 But let's leave aside for one moment the legal
4 objections that we would have to their complaint. I have had
5 an opportunity to talk to Mr. Wheelock both late Friday and
6 earlier this morning, and it does appear that there are three
7 matters that their preliminary injunction motion addresses.
8 The first is as they indicate consultation. Again, I'm going
9 to set aside legally what our obligation is there because
10 there's much to be said.

11 But just focusing on what the alleged emergency is,
12 I spoke with Mr. Shuldiner on Friday night, and it is his
13 position that he has met with the LAC regularly about the
14 developments at Cabrini and stands ready to continue meeting
15 with the LAC about what is happening at Cabrini. He advised
16 me that he had met with them as recently as early October, I
17 believe he said, or late September on these very plans.

18 One of the difficulties on the consultation is that
19 the LAC is very much, as is their right, very much wedded to
20 the earliest plans on Cabrini. And when Mr. Shuldiner meets
21 with them, he receives from them the statement that they must
22 go back to the original plan, and that's it. There is a bit
23 of an impasse. That plan was submitted to HUD and was not
24 acceptable to HUD, not acceptable to the city. We believe it
25 is also not acceptable to the Gertreaux plaintiffs.

1 There are many parties to any Cabrini redevelopment,
2 and no individual party can sit out at one end of the
3 spectrum and say this must be the plan. The CHA can't do
4 that. The residents can't do that. It's going to be a
5 collective effort by lots of people, most of whom are not
6 before the Court.

7 But on the narrow question of consultation, Mr.
8 Shuldiner meet with them a month ago. He's had many meetings
9 with the LAC. He told me to apprise the Court and represent
10 to the Court that he is happy to meet with them at any point
11 about the Cabrini plans. That's consultation.

12 The second quote, unquote emergency is the
13 demolition of 1158 North Cleveland. That is a 65-unit
14 building. It is empty. There is a demolition application
15 that has been submitted to HUD. HUD has not approved that
16 demolition application. And nothing could happen until HUD
17 approves it. Even if HUD approves it, the mechanics of
18 actually conducting the demolition takes some time, as we
19 would have to let a contract to the wrecking company. And it
20 is -- that itself takes some time.

21 So again I'm authorized by Mr. Shuldiner to say that
22 in the time it would take for us to resolve this preliminary
23 injunction motion there is no threat of any demolition of
24 that building. We are many steps away from that.

25 The third issue relates to 1150 to 1160 North

1 MR. JOHNSON: Right. We've got to bid it.

2 THE COURT: And I'm not sure what other steps
3 you're talking about.

4 MR. WHEELOCK: Well, what counsel referred to.
5 Well, as counsel stated, if HUD comes back and wants further
6 information, you know, we are asking to stop that process.

7 THE COURT: To stop what process? Stop the HUD
8 process?

9 MR. WHEELOCK: No, not to stop the HUD process.
10 Stop CHA's implementation of a plan that violates, you know,
11 agreements reached with the LAC.

12 MR. JOHNSON: Okay. But just so --

13 THE COURT: Wait. I'm not going to go that far.
14 It seems to me that we're talking at cross purposes. The
15 1158 building, can we get some assurance that the 1158
16 building -- I will give you a hearing in December -- that the
17 1158 building will not be demolished before December?

18 MR. JOHNSON: That's my representation.

19 THE COURT: Before that hearing.

20 MR. JOHNSON: Absolutely. 100 percent. And the
21 reason we're doing that just so the record is clear is we
22 couldn't take it down if HUD approved it tomorrow. We
23 couldn't take it down that fast.

24 THE COURT: Just for my education, other than
25 Gertreaux what other litigation is going on?

1 MR. JOHNSON: The Gertreaux case is the main --
2 there was an earlier lawsuit filed by other Cabrini residents
3 related to participation in the planning process for Cabrini
4 and also raising some of the same claims as here. And that
5 lawsuit was before Judge Andersen called the Bradford case.
6 That case has now been nonsuited by those plaintiffs. I
7 don't believe there's any current intersection between that
8 case and this, so --

9 THE COURT: Which judge has the Gertreaux case?

10 MR. JOHNSON: Judge Aspen has Gertreaux. And, of
11 course, Your Honor knows that in Gertreaux we have a race
12 discrimination judgment against us that amongst many other
13 things would preclude building in the Cabrini area, just as
14 it has precluded building over at Horner. But we then have
15 gone in Gertreaux and sought waivers of that injunction based
16 on specific showings to Judge Aspen that the building will be
17 taking place in a revitalizing community. Otherwise the
18 Gertreaux injunction would prohibit all redevelopment at
19 Cabrini.

20 We then have to work with counsel for the residents,
21 the class in Gertreaux, Mr. Polikoff. And so in our mind
22 there is a tremendous intersection between this case and
23 Gertreaux in the sense that here we have race claims being
24 made against us for, you know, redevelopment plans, which
25 before they can take place must be reviewed by a different

1 judge of this district in the context of a race
2 discrimination judgment against CHA.

3 We do not want to have a situation where we have two
4 judges looking essentially at the same set of questions. And
5 so that will be part of our presentation to Your Honor, but
6 only part.

7 MR. WHEELLOCK: To make clear, you know, the --

8 MR. JOHNSON: Can I add one other thing? I'm sorry
9 about that.

10 MR. WHEELLOCK: Sure. Sure.

11 MR. JOHNSON: The other thing is we have a lot of
12 concern here that this case is brought by the LAC. It's not
13 brought by the residents of any particular building. It is
14 not brought on behalf of all the Cabrini residents. And,
15 therefore, we are loathed to get into a situation where we
16 make agreements or have judgments entered that don't really
17 bind people who are at Cabrini, particularly when we do have
18 a class case over at Gertreaux that we have to deal with.

19 So as I say, the redevelopment of public housing and
20 in particular Cabrini is a complicated matter, and it has
21 lots of players, only two of which are before Your Honor in
22 this case.

23 MR. WHEELLOCK: Your Honor, I just want to kind of
24 clarify again that this case is not -- is about process. And
25 it is true in terms of the Gertreaux court will ultimately

1 have to sign off on any final revitalization plan that's
2 developed among the parties, but our point here in this suit
3 is that we want to be one of the parties that are at the
4 table that develops that plan to be presented.

5 Also to make clear, that the Local Advisory Council
6 represents all the residents of Cabrini-Green. It represents
7 the interests of those residents. And we will be having
8 testimony of particular residents at 1150-1160 North Sedgwick
9 and the other buildings in question to deal with the concern
10 that was raised, you know, what do the residents of those
11 buildings actually want.

12 MR. JOHNSON: Just to be clear, okay, no
13 redevelopment at Cabrini can take place without a waiver,
14 which is a contested proceeding in the Gertreaux court, where
15 all of the residents of the Housing Authority are represented
16 by counsel. We don't want to have deal with two counsel who
17 have different views of what is proper for the residents.
18 That is a big concern of Your Honor -- I'm sorry, of
19 ourselves. I'll leave it at that for right now.

20 What I would propose is that we have sort of a
21 schedule, which Mr. Wheelock and I have begun to work on,
22 where we do get an opportunity to sort of present our side of
23 the story to Your Honor on the preliminary injunction
24 questions, and then we work together to try to narrow how
25 much is really in dispute so that we can serve Your Honor's

* * * * *

C E R T I F I C A T E

I hereby certify that the foregoing is a true and
correct transcript of the aforesaid matter.

Gracey McCullough
Official Court Reporter

11/25/96
Date

MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

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759-7231

July 29, 1998

BY FAX AND MESSENGER

Jerome Butler
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Re: Cabrini-Green Development

Dear Jerome:

I am writing to follow up my phone call to you this afternoon on behalf of the Receiver in the Gautreaux case.

Today's *Chicago Tribune* reports that the CHA has entered into an agreement with tenants at Cabrini-Green concerning development. On June 12, 1998, I wrote Nancy Eisenhower, one of the CHA's attorneys, and formally requested that:

- (1) the CHA provide it with information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City, and (2)
- the CHA not enter into any such agreements hereafter without the participation and written concurrence of the Receiver.

Neither portion of that request has been honored, although on June 16 Ms. Eisenhower wrote that the CHA would provide information regarding agreements made and proposed with respect to HOPE VI projects and other new housing. Despite that promise, no such material with respect to Cabrini-Green has been produced.

When we spoke this afternoon, you told me that you were not sure you would provide me with a copy of the agreement before it was filed in court. You asked me the Receiver's position,

Jerome Butler

July 29, 1998

Page 2

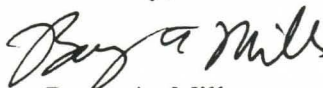
and I said the Receiver was concerned that the process by which the agreement had been entered may have violated the Gautreaux Court's Orders, but that the Receiver had not formed an opinion on the merits of the agreement (not having seen it). You asked if we would assure you that we would take no action if you provided a copy of the agreement, until you had sought Judge Coar's approval, and then subsequently sought Chief Judge Aspen's approval. I said that we could not agree to such a request, and reserved the right to raise the matter with the Court.

Please provide us immediately a copy of any agreement at Cabrini-Green, whether in draft or final form. Also, please provide a history of this negotiation, and an explanation for whatever basis the CHA has for having completely excluded the Receiver from any agreement with respect to development, in view of the Receiver's exclusive authority under the 1987 Receivership Order for the development of non-elderly housing. In addition, we renew our request that you provide us with information about all agreements the CHA has made, or is considering making, with tenants concerning rehabilitation or redevelopment, anywhere in the City.

While the Receiver is very concerned about compliance with the Gautreaux Court's orders in the process of negotiating whatever agreement has been reached, it has an open mind as to the substance of any agreement. The Receiver wishes to have the information described above so that it can develop its own views and report those views to Chief Judge Aspen.

Of course, all rights are reserved.

Sincerely,


Barry A. Miller

cc: Daniel Levin (by fax)
Alexander Polikoff (by fax)
Michael Shakman

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

3 DOROTHY GAUTREAUX, et al.,) Docket No. 66 C 1459
4 Plaintiffs,)
5 v.) Chicago, Illinois
6 CHICAGO HOUSING AUTHORITY,) July 30, 1998
7 Defendant.) 2:05 o'clock p.m.

8 TRANSCRIPT OF PROCEEDINGS - MOTION
9 BEFORE THE HONORABLE MARVIN E. ASPEN

10 APPEARANCES:

11 For the Plaintiffs: BUSINESS AND PROFESSIONAL PEOPLE
12 FOR THE PUBLIC INTEREST, by
13 MR. ALEXANDER POLIKOFF
(17 East Monroe Street
Suite 212
Chicago, Illinois 60603)

14 For the Receiver: MILLER SHAKMAN HAMILTON KURTZON
15 & SCHLIFKE, by
16 MR. MICHAEL L. SHAKMAN
MR. BARRY A. MILLER
17 MR. EDWARD W. FELDMAN
(208 South LaSalle Street
Suite 1100
Chicago, Illinois 60604)

18 For the CHA: SKADDEN ARPS SLATE MEAGHER &
19 FLOM, by
20 MS. SUSAN GETZENDANNER
(333 West Wacker Drive
Chicago, Illinois 60606)

21 For the City of Chicago: CITY OF CHICAGO LAW DEPARTMENT, by
22 MS. JULIA E. GETZELS
23 Director of Programs & Policy
(511 City Hall
Chicago, Illinois 60602)

1 APPEARANCES: (Continued)

2 COURT REPORTER:

MS. MARY M. GALLAGHER
(219 South Dearborn Street
Room 2524A
Chicago, Illinois 60604)
(312) 663-0049

5 ALSO PRESENT:

MR. TOM JOHNSON
MR. RICHARD M. WHEELLOCK

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

2 MR. SHAKMAN: Good afternoon, Judge. Michael Shakman
3 and Barry Miller for the receiver.

4 This is the receiver's emergency motion for entry of
5 an order with regard to the CHA in compliance with the 1987
6 receivership order and various 1998 Hope VI orders. I should
7 point out at the outset that we had attempted to simply work
8 out a standby arrangement with counsel for the CHA, as on
9 page 2, so we would not have to present this as an emergency
10 matter. And to brief it, we were informed -- Mr. Miller had
11 this conversation; I did not. We were informed that CHA felt a
12 wish to proceed with the submission to Judge Coar in the
13 Cabrini case with the agreement that is apparently structured
14 with the Cabrini plaintiffs. And, therefore, we are not
15 prepared to enter into that kind of provision.

16 So what we are asking at this point is that -- I guess
17 I need to back up a step and state, as our papers do, that the
18 problem the receiver perceives at this point is apparently CHA
19 has gone ahead over our prior written objections to them and
20 are both negotiating and finalizing that agreement providing
21 for very extensive redevelopment procedures with respect to the
22 Cabrini-Green development, without permitting the receiver to
23 participate. In particular, without informing the receiver
24 even though we have been informed by counsel for CHA when we
25 raised this issue in a letter to them in June, that they were

1 to advise us of plans and proposed plans -- I should correct
2 that -- agreements and proposed agreements with the tenants
3 relating to creation of housing.

4 So the bottom line is that the receiver has been left
5 out of the area of responsibility that is exclusive the
6 receiver, the new housing development, when confronted by HUD.
7 And the consequence is that we can't say whether the proposed
8 redevelopment program is a good one or bad one because until
9 counsel for the CHA handed me a copy of the proposed agreement
10 a few minutes after 2:00 o'clock this afternoon, we had not
11 seen it or been a party to this in its negotiation or
12 development.

13 Earlier today I had caused to be delivered to the
14 Court our motion. I don't know if you have had a chance to
15 read it.

16 THE COURT: I have.

17 MR. SHAKMAN: I would like leave to file it now with
18 the exhibits. We didn't have the exhibits and I thought we'd
19 get it to the Court anyway.

20 THE COURT: Thank you.

21 MR. SHAKMAN: So what we are asking for at this point
22 is the Court not break any new ground, simply enforce its
23 existing orders by directing that the CHA not engage in any
24 further unilateral non-elderly housing development activities
25 without either the involvement of the receiver or prior

1 approval of the Court, that it turn over to the CHA all the
2 Hope VI non-elderly housing development that it's engaged in,
3 that it disclose all information about what it's doing, and
4 that specifically with respect to Cabrini that no further steps
5 be taken including presenting the proposed -- proposed
6 settlement agreement to Judge Coar for approval until the
7 receiver has had a chance to consider it and analyze it and
8 come to a conclusion as to whether it does or does not
9 effectively promote desegregation orders of this Court, the
10 receiver's responsibility as it relates to new housing.

11 I want to emphasize that we are not in a position --
12 the receiver is not in a position to express a point of view on
13 the merits of the redevelopment proposal that's embodied in the
14 settlement agreement. And that's because we have been left
15 out. It may well be that it's an appropriate redevelopment
16 agreement.

17 There are questions that are raised by it, but those
18 questions are questions we would hope to and are entitled to
19 have an opportunity to examine and consider.

20 Thank you.

21 THE COURT: Okay. Response?

22 MS. GETZENDANNER: Your Honor, I did not get the
23 motion until a few minutes after 2:00 myself. I have not read
24 it or any of the exhibits. I don't see what the emergency is
25 other than your Honor is going out of town. So in that

1 respect, if you'd like to set a briefing schedule today that
2 would be fine.

3 THE COURT: The only other emergency would be if
4 Judge Coar were going to take some action.

5 MS. GETZENDANNER: Your Honor, the consent decree
6 specifically provides that it must be approved by your Honor.
7 It's a specific requirement of the contract. The procedure we
8 went through in Horner was that Judge Zagel approved it first,
9 and then we brought it over to you. The same contemplated
10 scheme was going on there.

11 Judge Coar -- it is his case. It is a consent decree.
12 The parties have been working on this for five years. They are
13 very pleased to have a deal to present to Judge Coar. So we
14 would present it to Judge Coar and then go on and bring it to
15 you. So that's what I would suggest.

16 And plaintiffs' counsel in Judge Coar's case is here
17 as well as the CHA's lawyer, Tom Johnson. And that's their
18 desire to just present it to --

19 THE COURT: You are the CHA's lawyer.

20 MS. GETZENDANNER: Pardon?

21 THE COURT: You are the CHA's lawyer, are you not?

22 MS. GETZENDANNER: In this case, not in --

23 THE COURT: Not in the other case.

24 MS. GETZENDANNER: No.

25 THE COURT: Okay.

1 MS. GETZENDANNER: If you have any questions of them,
2 that would be --

3 THE COURT: I don't have any questions, but I am
4 certainly interested in hearing anything they feel I ought to
5 know, either of you.

6 MR. JOHNSON: Judge, if I might, just so your Honor
7 knows, Tom Johnson. I represent the CHA in Cabrini. I also
8 represent them in the Horner litigation.

9 When the case was filed in 1996, we did make a motion
10 before Judge Coar both to dismiss the case or in the
11 alternative to consolidate it with the Gautreaux litigation.
12 We always prefer to deal with one lawyer for the tenant as
13 opposed to two. But we have learned to live with that
14 situation in Horner, and Judge Coar denied our motion and said
15 he was going to preside over the Cabrini case. The case did
16 continue on.

17 The -- we do believe that we have an agreement that is
18 worked out not just with the LAC, the Cabrini leadership, but
19 also with the City, who's a party to that case. And the decree
20 expressly states that nothing would go forward. The decree is
21 not effective until your Honor reviews it. We had fully
22 intended to do just what we did in Horner, which is as I
23 understand what Mr. Polikoff had asked for as well, come up
24 with something concrete and then to present to your Honor with
25 whatever motions were appropriate. I don't know if Mr.

1 Wheelock wants to add anything further to that.

2 MR. WHEELLOCK: I'd just like to introduce myself. My
3 name is Richard M. Wheelock, counsel for the plaintiff,
4 Cabrini-Green's local advisory council, which is a residents
5 organization that represents all the residents of
6 Cabrini-Green, 30 some odd member council.

7 Mr. Johnson said that we have been engaged in
8 negotiations with both the City and CHA, intense negotiations,
9 over the last few months. And no one thought it could be done,
10 but we have reached an agreement. And as it's already been
11 stated -- I'm just repeating what you already heard -- the
12 intention was always, it's embodied in the consent decree, to
13 have Judge Coar first to approve it, in which the consent
14 decree provides that your Honor -- it's contingent upon your
15 approval.

16 So, you know, I would join in the request that we set
17 up a briefing schedule right now for that purpose. But there
18 is no need to enter any order regarding our presentation of the
19 consent decree to Judge Coar.

20 THE COURT: I will let you have the last word. I
21 think there are a couple other people who want to say
22 something.

23 MS. GETZELS: Your Honor, good afternoon. Julia
24 Getzels standing in for Andy Mine, on behalf of the City of
25 Chicago.

1 I just want to state for the record that the City also
2 believes that the settlement -- the consent decree adequately
3 provides the procedure for your Honor to review. That was the
4 parties' intention and remains the parties' intention.

5 THE COURT: Thank you.

6 Mr. Polikoff.

7 MR. POLIKOFF: Just one word, your Honor, maybe it
8 will be two.

9 Mr. Johnson refers to the example of the precedence,
10 if you will, of the Horner negotiation. Things worked out
11 ultimately amply at Horner but not without pain and suffering
12 and extended negotiations that were awkward and difficult and
13 unfortunately cast the plaintiffs and the receiver in the rolls
14 of opposing tenants because a deal was presented after the fact
15 that had already been approved by Judge Zagel. And then we
16 were necessarily and understandably in the position of being a
17 nay sayer and of trying to upset an apple cart that was rolling
18 along, an awkward posture that, even though it worked out
19 happily in that instance, as your Honor knows, was difficult,
20 was time consuming and unnecessary.

21 More to the point, the receivership agreement doesn't
22 say that the receiver should be given an opportunity to review
23 and express comments on agreements that the CHA has negotiated
24 respecting the development of non-elderly public housing. The
25 receivership agreement quite differently than that says that

1 the power to do the negotiation is withdrawn from CHA and given
2 to the receiver.

3 The party sitting at the table that's negotiating what
4 may well be a beautiful agreement should have included -- the
5 parties -- should have included the receiver, not to say that
6 the CHA should have been excluded. But the receivership
7 agreement unquestionably transfers the power of negotiation, as
8 well as lots of other powers, to the receiver. And it seems to
9 me impossible to contend that notwithstanding the subject-to
10 clause that counsel refers to, that that provision of the
11 receivership agreement has been violated in this instance.

12 I would urge on behalf of the plaintiffs, given the
13 example of Horner and given the example now of Cabrini, that
14 the receiver and the plaintiffs no longer be subjected to the
15 posture that CHA and its executive director clearly wants to
16 put them in in the public eye and in the legal context, of
17 having to come in at the eleventh hour and to express comments
18 which inevitably are taken as negative about a deal that CHA
19 intended to negotiate. And we should be relieved because of
20 the express language of the receivership order from being put
21 in that position, not only with respect to the current Cabrini
22 situation so that it should not go to Judge Coar before the
23 receiver's roll has been recognized, but for the future as
24 well.

25 THE COURT: Mr. Shakman.

1 MR. SHAKMAN: Thank you, Judge. I am sure when Mr.
2 Polikoff referred to the receivership agreement, he was
3 referring to the receivership order.

4 MR. POLIKOFF: Order, excuse me.

5 MR. SHAKMAN: I am sensitive to the fact that I am
6 here as the lawyer for your receiver. And if you wish the
7 receiver to be bypassed in this process, that's your call. And
8 we would not argue with that call. But I do want to under-
9 score what Mr. Polikoff said.

10 The issue as presented by counsel for the CHA and
11 counsel for the plaintiffs in the Cabrini case is a
12 misstatement of the issue. The issue is not whether or not
13 that agreement is one that should be submitted to Judge Coar at
14 some point. The issue is one of whether the CHA and the
15 parties, who knew of the receiver and the power this Court has
16 given the receiver, should have been negotiating independently
17 of the receiver and really contrary, I must underscore this,
18 contrary to the representation in writing by counsel to the CHA
19 in the June 12 letter that we quote on page 12 of our motion,
20 which said that they would advise us -- they would, quote,
21 provide information to the receiver regarding agreements made
22 and proposed with respect to Hope VI projects and any other
23 projects that involve construction of the housing, end of
24 quote.

25 I emphasize that because had we known -- had they done

1 what that letter said they would do, they would have told us of
2 this proposed agreement before we read about it yesterday
3 morning in the Tribune. And then we would have had at least
4 the opportunity to participate in -- to the extent of learning
5 about it and being able to comment on it and perhaps, if there
6 were aspects of it that we thought we could improve by making
7 suggestions that the parties could find acceptable, we would
8 have had that opportunity.

9 But what we have here instead is really a wholesale
10 disregard of this Court's orders entrusting the development
11 responsibility to the receiver, an intentional disregard of
12 those orders, and a direct violation not only of those orders
13 but of the written undertaking to us in the June 12 letter from
14 counsel for the CHA.

15 Now, in that context, if the Court chooses to defer
16 the matter to Judge Coar, and then if we have objections we
17 would present them to your Honor I presume in due course, as I
18 said to begin with, that is your call and not the receiver's
19 call. But it is our duty to say, as Mr. Polikoff has said,
20 that that really turns the whole process of receiver
21 responsibility on its head, and it undoes, in effect, the
22 Court's purpose for having a receiver to conduct the new
23 housing development in CHA, which is to make sure that, as you
24 said in your February 23rd order, that primary intention goes
25 to desegregation obligations that are out of this already long,

1 protracted litigation.

2 So we would ask the Court either to indicate that
3 there should be no further development of this proposal before
4 Judge Coar until we have had an opportunity to do what we
5 should have been permitted to do in the first place or instruct
6 us otherwise. Thank you.

7 MS. GETZENDANNER: Judge, the issue I was addressing
8 was is there an emergency. And I don't believe there is an
9 emergency. I am not responding -- I had not responded to the
10 merits of the motion.

11 I can tell your Honor that our brief in the Seventh
12 Circuit is due on August 12. We are fully occupied working on
13 that brief. That's the last brief, so we would expect the case
14 set for argument in September or October. They are pretty
15 quick about turning argument around. That's in part the whole
16 issue that Mr. Shakman is just raising.

17 But do you want a discussion of the merits of this
18 motion?

19 THE COURT: Well --

20 MS. GETZENDANNER: I haven't read it.

21 THE COURT: Well, you may not have read it, and I
22 certainly will give you an opportunity to do so. Let me
23 suggest this. Why don't you have a seat, Ms. Getzendanner.

24 MS. GETZENDANNER: Sure.

25 THE COURT: I want to be fair to all sides. Obviously

1 I don't want to rule on the motion as such if you have not had
2 a chance to read it because having read it, perhaps you might
3 be able to do what I would have hoped would have been done a
4 long time ago; that is, for the CHA and the receiver to sit
5 down and understand your respective obligations under the
6 Gautreaux decree and work in good faith.

7 You know, I am distressed that issues like this keep
8 arising. It seems to me that it's not a matter of form over
9 substance. There is an important principle involved and that
10 principle is that if the receiver has been appointed, the
11 receiver has been given authority, that authority has been
12 clarified, if the CHA has an order, a recent order, clarifying
13 that authority, that order is still the law of the case. And
14 the CHA, particularly as a governmental body, really should
15 feel obligated to follow the law as it exists. And there is
16 some question as to whether it has.

17 Now, you may say the bottom line doesn't matter
18 because the bottom line is that if the receiver is going to
19 have to look at the agreement because I have to approve it,
20 obviously before I approve it I would give the receiver that
21 opportunity. But I think Mr. Polikoff fairly states the
22 posture of this case, both in terms of fairness in dealing with
23 everyone and also with the unwanted political social
24 implications of a violation of this decree; that is, when there
25 is a done deal and somebody who is supposed to participate in

1 that deal is not involved in the deal, but later comes in and
2 attempts to undo the deal, that puts all the parties in a very
3 different posture than the posture that they are intended to be
4 as to their rolls as defined by the decree and the orders under
5 the decree. So it's not simply form over substance.

6 What I'm going to do is, first of all, give you seven
7 days to respond to this motion. I will give the receiver three
8 days to reply. I know there are other parties in this case.
9 If you align yourself in this issue with the plaintiff, feel
10 free to opt in on the plaintiffs' briefing schedule. If you
11 align yourself on the side of the receiver on this motion, feel
12 free to opt in on the briefing schedule on the side of the
13 receiver.

14 In the meantime, what happens as far as Judge Coar is
15 concerned? As far as Judge Coar is concerned, I am going to
16 issue a temporary restraining order, as far as the parties are
17 concerned, not to bring any proposed settlement to Judge Coar
18 until I have ruled on the motion itself. I hope that the
19 parties will sit down and work together, as I have suggested
20 many times before.

21 I have no reason not to take the receiver at face
22 value when the receiver tells me that the receiver is not a nay
23 sayer and has no preconceived notion to attempt to throw a
24 monkey wrench in the deal but just wants to participate, as the
25 receiver is entitled under the law.

1 So it's really my hope that everybody will do what I
2 had wanted them to do right in the beginning and work together
3 toward the same ends. I think everybody in this case has the
4 right motivation in the sense that they want to do what is best
5 for the community involved. It's a shame when people do have
6 the same mind set that they cannot work together under the
7 structure that exists.

 Now, you may not like the structure, but that's fait
 mplis. The decree is what it is, and the relationship with
10 t... es is what it is, and the receiver has been appointed,
11 and the CHA may feel that we don't need a receiver. That's an
12 entirely different issue. That issue can be brought to a head
13 very directly if the CHA wants to do it. But you can't decide
14 that the receiver, in the view of the plaintiffs, is some
15 superfluous entity in these proceedings and, therefore, can be
16 ignored or thwarted because the Court's order just does not
17 permit that.

18 So I will enter the temporary restraining order as I
19 have indicated. If the parties want to get together and work
20 on an agreed draft order to reflect that, you can present that
21 to me. In the meantime, I will rule quickly after the motion
22 is completely briefed and grant further relief or extended
23 relief if necessary.

24 Again, let me say, I do all of this very, very
25 reluctantly because I do think that it serves everybody if the

1 parties work together and try to resolve it the way they are
2 supposed to. I hate to see -- as much as I like to see lawyers
3 have lots of business and do well, I hate to see all the
4 attorneys' fees in this case that the public is going to pay
5 for in some way or another when the parties really are not
6 philosophically at loggerheads on any substantive issue but
7 simply in a what I perceive as a mini turf war.

8 That will be the order, and I will sign the draft
9 order.

10 MS. GETZENDANNER: And the order is entering a
11 briefing schedule and TRO.

12 THE COURT: Yes.

13 MR. SHAKMAN: I misunderstood Ms. Getzendanner's
14 comments. It is -- the order is to enter a briefing schedule
15 and to grant a TRO precluding the presentation of this matter
16 to Judge Coar.

17 THE COURT: Yes, as I have said. My court reporter
18 will read it back to anybody who can't understand it. Thank
19 you very much.

20 One second. As long as we are here, there is a motion
21 by Stuart M. Nagel. I suppose he is not here?

22 MR. FELDMAN: He is not.

23 THE COURT: Is that the Stuart M. Nagel who was in my
24 law school class and went on to become a political science
25 professor at University of Illinois?

1 MR. FELDMAN: I don't think so, Judge. For the
2 record, Edward Feldman for the receiver.

3 That was a motion for leave to file a \$59,000 breach
4 of contract.

5 THE COURT: You have no objection?

6 MR. FELDMAN: We have no objection.

7 THE COURT: That motion will be allowed.

8 MR. FELDMAN: The claim -- limited to the claim that's
9 alleged in that complaint.

10 THE COURT: Thank you very much.

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

13 CERTIFICATE

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

17

18

Mary M. Gallagher

7.31.98

19

Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

Date

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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	7/30/1998
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Receiver's emergency motion for entry of order directing CHA to comply with 1987 Receivership Order and 1998 Hope VI Orders.

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion is taken under advisement. Defendants and those ^{aligned} signed with the defendants position shall file a response to the motion by the close of business on 8/6/98. The Receiver and parties ^{aligned} signed with the position shall file a reply by the close of business on 8/10/98. Joint submissions will be welcomed. We also enjoin the defendants from presenting any proposed consent decree to Judge Coar until we have ruled on the Receiver's emergency motion.
- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.		number of notices	Document Number
		date docketed	
		docketing deputy initials	
		7/30/1998	
		date mailed notice	
GL	courtroom deputy's initials	GL	
		Date/time received in central Clerk's Office	mailing deputy initials

ORDER

The emergency motion presented in open court today by the Receiver is taken under advisement. Defendants and those aligned with the Defendants' position shall file a response to the motion by the close of business on August 6, 1998. The Receiver and parties aligned with the position shall file a reply by the close of business on August 10, 1998. Joint submissions will be welcomed.

We also enjoin the Defendants (and their officers, agents, servants, employees, and attorneys as well as those persons in active concert with them who receive actual notice of this order) from presenting any proposed consent decree to Judge Coar until we have ruled on the Receiver's emergency motion. (We referred to this injunction today in open court as a "temporary restraining order," an inappropriate label given that the Defendants had notice of the injunction application and participated in the hearing which led to our granting it.) This is necessary due to the issues raised by the Receiver's emergency motion, which complains that the CHA held development discussions (culminating in a proposed consent decree to be presented to Judge Coar) with residents of the Cabrini Green housing project in violation of the receivership order in this case. If the Receiver's emergency motion has merit, allowing the CHA to proceed before Judge Coar would place the Receiver in the awkward position of responding to the CHA's plan after the fact, rather than, as the Receiver argues that the receivership order mandates, being a party to those negotiations in the first place. A copy of this order will be sent to Judge Coar.

In the meantime, we again urge the parties to confer with one another and to attempt to resolve their differences amicably and cooperatively, which avoids the need for emergency motions and repetitive court involvement. Such motions are of course occasionally necessary, but they are quickly becoming the norm and not the exception in this case.

It is so ordered.



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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY and	)	
Joseph Shuldiner, its Executive Director,	)	
	)	
Defendants.	)	

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO RECEIVER'S EMERGENCY MOTION**

The Receiver's Emergency Motion For Entry of Order Directing CHA to Comply with 1987 Receivership Order and 1998 HOPE VI Orders, filed July 30, 1998 (the "Motion") seeks an injunction against the CHA, as this Court recognized in its minute order of July 30, 1998, wherein it enjoined rather than temporarily restrained the CHA from proceeding before Judge Coar.

I. The Motion Should Be Denied

A. Receiver Lacks Standing To Seek An Injunction

The Receiver is seeking a specific set of mandates from the Court to enforce against the CHA. However, the Receiver is not a party in this case and it is not entitled to seek injunctive relief against the CHA. "A receiver only has those rights and powers to sue as the person or entity whose property is in receivership." (Moore's Fed. Prac. 3d § 66.08[1][c]) A receiver only has standing to bring a cause of action if the legal interests of the entity the receiver

is representing were harmed. (*Id.*) Here, the entity represented by the Receiver is the CHA, which has not consented to be sued. The Receiver has not been appointed to sue the CHA.

The Receiver has only those duties that are expressly identified in the order appointing the Receiver. The Receiver is an officer--an extension--of the Court, responsible solely to the Court. (Moore's Fed. Prac. 3d § 66.03[2]). The duties of a receiver can be expanded only by further court order. The CHA and the Receiver have different views regarding the nature and extent of the Receiver's duties and responsibilities. The Motion is seeking additional duties, but in an improper form. Instead of seeking an injunction against the CHA, the Receiver could and should ask the Court to clarify its duties and responsibilities so that neither the Receiver nor the CHA is required to interpret prior orders of the Court. The Receiver has no standing to seek a mandatory injunction. Accordingly, the Motion should be denied.

B. The Prerequisites For An Injunction Are Not Pled

The Receiver has failed to plead the basic prerequisites for an injunction: that the Receiver will suffer irreparable harm without the injunctive relief; that the balance of the harms is in its favor and against the CHA; and that there are adequate grounds that it is entitled to a permanent mandatory injunction against a local governmental unit.

C. The Balancing of Harms Favors the CHA

The relief sought by the Receiver is extraordinary. The Receiver wants the Court to order the CHA to turn over control of all HOPE VI non-elderly housing development to the Receiver, including operating and financial control. This means the receiver would control the \$59 million recently awarded the CHA for the Cabrini-Green revitalization plans, the \$35 million

for which the CHA recently applied in its 1998 HOPE VI ABLA Application, and all of the Horner funds.

The Receiver has a substantial financial interest in the relief it seeks. The Receiver likely will seek, as it has already sought in connection with the ABLA HOPE VI application, both an "administrative fee" and a "development fee."¹ Assuming a 7% total Receiver fee, the Receiver would seek more than \$6 million for just the Cabrini-Green and ALBA projects.

The HOPE VI funds would be spent unnecessarily on administrative work performed by the Receiver that the CHA is fully competent and able to provide. The CHA and the plaintiffs are irreparably harmed to the extent that any HOPE VI funds are diverted to the Receiver. The CHA is also entitled to present evidence as to the Receiver's lack of experience in dealing with issues beyond the construction of housing, as well as the potential harm to the CHA and the plaintiffs should the Receiver obtain any of the relief it seeks.

II. The CHA Is Entitled to an Evidentiary Hearing

If the Motion goes forward, the CHA is entitled to and requests an evidentiary hearing.

¹ Receiver's Motion, Ex. J. at p. 3, ¶ 3. As a result of the Receiver's fee proposals concerning ABLA, the CHA and the other parties to the ABLA HOPE VI application agreed to seek a 7% administrative fee, which is 3% higher than the fee initially proposed by the CHA when the CHA alone would be entitled to an administrative fee. Receiver's Motion, Ex. K at pp. 2-3. The Receiver originally proposed a 10% administrative fee. Id. The Receiver asserts that it would be entitled to a development fee to be determined by the Court. See Letter from Barry Miller to Nancy Eisenhauer (June 23, 1998) at p.2 (attached hereto as Exhibit 1).

A. The Receiver Is Seeking A Contempt Order

The Receiver is essentially seeking a finding of contempt and further relief based on such a finding. The CHA is entitled to the same procedural and substantive rights and protections in defending the Motion that it has in defending a rule to show cause, including a full evidentiary hearing.

B. The Receiver's Factual Allegations Have Never Been Proved

The Motion alleges that the "CHA has disobeyed the Receivership Order and has not accepted the Court's February 23 and May 19 Orders, and continues to act unilaterally with respect to HOPE VI housing development." Receiver's Motion, ¶ 56. These allegations, many of which are conclusory, are based on self-serving letters that contain the Receiver's view of certain facts, which the Motion asserts are true and correct. The Receiver repeats allegations made by the plaintiffs in their Motion for Further Relief (Receiver's Motion, Ex. D), and by the Receiver in its March 10, 1998, letter to the Court (Receiver's Motion, Ex. C) and its Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation filed May 18, 1998.²

² The Court granted the Receiver's Emergency Motion entirely based on its interpretation of the Receivership Order. The May 19th Order stated:

HOPE VI is a "non-elderly public housing development program[] . . . authorized during the pendency" of the Gautreaux litigation, and it therefore fits entirely within the Receiver's jurisdiction.

The Court made no factual findings. Although the Court stated at oral argument on the Motion that "I find that Mr. Shuldiner has thus far indicated that he would rather contest every aspect of the relationship between the Receiver rather than attempt to cooperate," the Court made that statement based on disputed facts without an evidentiary hearing and without providing the CHA any opportunity to respond to the merits of the allegations, and the Court did not make such a finding in the May 19th Order.

The Court has never considered the merits of any of those allegations. Yet they are repeated in the Motion as gospel.

The only opportunity the CHA has had to respond to these allegations was in its memorandum in opposition to the plaintiffs' Motion for Further Relief. That response made clear that the CHA disputed the plaintiffs' allegations, which were largely based on the Receiver's March 10 letter to the Court. The CHA demanded an evidentiary hearing. However, the Motion for Further Relief was denied as moot without any resolution of the factual allegations. The CHA is entitled to expedited discovery and an evidentiary hearing on the merits of the Receiver's allegations and the Receiver's entitlement to an injunction.

In fact, on telephone notice, the receiver raced into this Court with an emergency motion charging the CHA with having "unilaterally" settled Cabrini-Green LAC v. CHA, 96 C 6949. The receiver claims it was "kept in the dark about negotiations concerning redevelopment of almost a thousand units of public housing." (Motion, ¶ 6). Characterizing the CHA's actions as a surreptitious end run around the Court and its officer, the receiver then seeks sweeping relief aimed at halting all of CHA's HOPE VI activities. The receiver's allegations do not accurately describe or reflect the events that transpired in the Cabrini case.

In defending the Cabrini litigation and arriving at a proposed consent decree that is expressly subject to the approval by the Gautreaux Court, the CHA followed precisely the same course that it took back in 1995 when it defended and arrived at a proposed consent decree in the Henry Horner Mothers Guild v. CHA and HUD, 91 C 33316 litigation pending before Judge Zagel. Even though the same 1987 receivership Order was in place back in 1995, neither the Receiver nor counsel for the Gautreaux plaintiffs ever sought relief from this Court to restrain

the CHA from following this course. Nor did they object in the hearings before this Court as to how the matter was handled. CHA therefore reasonably took precisely the same tack when confronted with the Cabrini litigation. Neither in Horner nor in Cabrini did the CHA make a "unilateral" deal and exclude the Receiver. CHA was careful to explain to all parties in both cases, and to the Judges presiding over both cases, that any settlement would be submitted for review and approval by the Gautreaux court.

The receiver says CHA should have brought it to the Cabrini table earlier but, in light of the Horner experience, how could CHA have known to do so? The receiver and counsel for the Gautreaux plaintiffs knew all about the Cabrini litigation from its inception and never once did the receiver or Mr. Polikoff ever suggest (to CHA or this Court) that the Receiver should have joined the CHA in defending or seeking to resolve the case. In particular:

1. Newspapers covered the Cabrini litigation long before the proposed settlement was reached – there was substantial coverage of the filing of the complaint, the preliminary injunction hearing, and the settlement negotiations.

2. CHA counsel in the Cabrini litigation sent Mr. Polikoff a copy of the complaint and discussed with him CHA's initial position, expressed in CHA's brief supporting its motion to dismiss, that "Because the risk of inconsistent ruling (in the Gautreaux and the Cabrini litigation) is exceedingly high . . . the Court should consider transferring the case to Judge Aspen or convening a conference between Judge Aspen, the tenants' lawyers in Gautreaux and the parties here, to discuss the relationship between the cases." Judge Coar rejected this suggestion as well as all of CHA's efforts to dismiss or otherwise consolidate this matter with the Gautreaux litigation.

3. During the Cabrini litigation, the receiver's representative (Valerie Jarrett and Lee Reid) were both deposed and represented at their depositions by the Miller Shakman firm.

4. On November 6, 1997, CHA met with counsel for the Gautreaux plaintiffs to discuss the need for a revitalizing order to cover the near north area in which the Cabrini redevelopment was to take place. CHA's HOPE VI plan for the Cabrini neighborhood, submitted and then already provisionally approved by HUD, was fully shared with Mr. Polikoff. And, in fact, this Court then entered a revitalizing order for part of the near north area. The order makes it clear that the Receiver and Mr. Polikoff were well aware of the CHA's efforts to resolve the Cabrini litigation.

5. Throughout this litigation, the Cabrini plaintiffs' counsel had continuing contact with the receiver and Mr. Polikoff in which they apprized both of the ongoing efforts to resolve the case. See Affidavits of Richard Weelock and Brenda Grauer.

Despite all of this, neither the receiver nor counsel for the Gautreaux plaintiffs ever suggest to the CHA (or to this Court) that the CHA should respond to the Cabrini litigation in a manner differently than CHA had responded to the Horner litigation. Indeed, when it became apparent that the receiver was taking the position that it had sweeping authority over all HOPE VI programs, it was CHA and not the Receiver that brought this issue to the attention of this Court. While the Court found that the Injunction covered HOPE VI monies in February of 1998, even the Receiver seems to concede that the Court did not deal with the issue of the Receiver's role until May 19, 1998. The proposed Cabrini settlement was completed by that time. The settlement discussion began in earnest in September of 1997, under guidelines

approved by Judge Coar, and the parties reported an agreement in principle to Magistrate Palmeyer on May 1, 1998. See attached Affidavit of Richard Wheelock.

III. The CHA's Duty of Cooperation Needs Clarification

The CHA accepts the Court's orders, has always intended to comply with those orders, and believes that it is in compliance. However, there are legitimate disagreements between the Receiver and the CHA regarding CHA's duty to cooperate with the Receiver.

A. The Duty of Cooperation Is Unclear

The duty to cooperate is derived from the Receivership Order and the May 19, 1998, order that granted the Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation. Paragraph 7 of the Receivership Order provides as follows:

CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents and files relating to the scattered site program.

The Receiver's May 18, 1998, emergency motion sought an order from the Court that the CHA cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project. The May 19th order granting the motion held:

1. The Receiver has "all powers of CHA" with regard to the HOPE VI public housing development programs necessary and incident to the development and administration of such programs.
2. The CHA is obligated to cooperate with the Receiver and to provide the Receiver with the information it needs.
3. The CHA is obligated to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

This order did not define the CHA's "duty of cooperation" beyond stating that it includes providing the Receiver with "the information it needs." Nor did it define how the CHA was to discharge its duty to "coordinate." The Order read:

Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

(Receiver's Motion, Ex. F)

The CHA moved to stay that order, in part because it was over broad and vague. The Court's first response to the Motion to Stay was in its May 21, 1998 Order denying plaintiffs' motion for further relief as moot:

We do not wish to be misunderstood; our [May 19] order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states.

(May 21, 1998, order attached as Exhibit 2) The Court denied the Motion to Stay in its order of May 22, 1998. (May 22, 1998 order attached as Exhibit 3) The Court explained that the May 19th order "merely stated that the Receiver would have to be involved (i.e. that the Receiver and the CHA would have to cooperate) in preparing" the 1998 HOPE VI application. The nature and extent of the Receiver's and the CHA's involvement was not described. There has been no other articulation of what is required of the CHA.³

³ The plaintiffs and the CHA have both sought clarification of the CHA's duty to cooperate with the Receiver. The plaintiffs Motion for Further Relief sought six specific mandates against the CHA to define its duty of cooperation. (Receiver's Motion, Ex. D)

The lack of clarity of the Court's orders is seen in the Receiver's and the CHA's perception of whether the duty of cooperation was satisfied in connection with the 1998 HOPE VI application. Based on the Court's orders, the CHA, the City of Chicago and the Receiver had at least 10 meetings concerning the 1998 HOPE VI application and eventually agreed on the content of that application. The CHA believed, and so informed the Receiver's counsel, that it had fulfilled its duty of cooperation. (Receiver's Motion, Ex. K) However, after signing off on the application, on July 10, 1998 the Receiver wrote to the Court and complained that the CHA did not fulfill its duty of cooperation and coordination. (Receiver's Motion, Ex. H) The correspondence between counsel for the CHA and the Receiver shows the extent and source of the disagreements. (Receiver's Motion, Exs. J and K) There are vast differences in the parties' perceptions of what the duty of cooperation requires of the CHA, notwithstanding the Court's May 19, May 21 and May 22 orders.

When the Receiver had all of the CHA's powers regarding housing development, the duty to cooperate needs less definition. When the housing development is a part of a HOPE VI plan, both the Receiver and the CHA have duties, and the new housing is just one of many elements of the plan.

B. The CHA's Duty of Cooperation Is Not Judicially Enforceable

The often stated applicable legal principle is set forth in Clark v. Coye, 60 F.3d 600, 604 (9th Cir. 1995):

When the Department is expected to conform its behavior to the injunction or face a contempt sanction, that injunction must be clear enough on its face to give the Department notice that the behavior is forbidden. The class plaintiffs, in seeking to enforce the injunction, must show that the injunction clearly forbids a certain type of conduct. That is why Federal Rule of Civil Procedure 65(d) "requires the language of injunctions to be

reasonably clear so that ordinary persons will know *precisely what action is proscribed*," and why "all ambiguities are resolved in favor of the person subject to the injunction."

(Emphasis in original; citations omitted)

What constitutes "cooperation" depends on the eye of the beholder. The duty to cooperate is capable of many different interpretations and different people will have different ideas as to what conduct is adequate to satisfy such a duty. Without standards that define for the CHA what is required or prohibited, the duty of cooperation is not enforceable through the Court's power of contempt. Original Great American Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd., 970 F.2d 273, 276 (7th Cir. 1992).

IV. There Are No Clear Orders Defining the Receiver's Authority Regarding HOPE VI Programs That Inform the CHA Of Its Obligations

The Motion also makes clear that there is a disagreement as to the Receiver's responsibilities in connection with the Cabrini-Green consent decree. As a result, the Receiver believes that the CHA has disobeyed the Court's orders. The CHA believes that it is in compliance with the Court's orders.⁴ The Receiver's responsibilities need clarification.

⁴ The CHA had committed to provide the Receiver with information regarding proposals for agreements between the CHA and any tenants' organization. (Motion at ¶ 31, citing Exhibit K) Information about the various consent decree drafts was not provided to the Receiver. However, the Receiver was aware of the negotiations. (See Affidavit of Richard Wheelock, plaintiff's counsel in the Cabrini case, attached hereto) Further, on May 1, 1998, the parties reached an agreement in principle to settle the case, subject to drafting an agreement and seeking necessary court approval. See Judge Palmayer's May 1, 1998, minute order, a copy of which is attached to the Affidavit of Richard Wheelock as Exhibit B). The negotiations were treated as confidential by the parties in the Cabrini case because the consent of the LAC must be obtained before public disclosure of an agreement in principle. Nevertheless, the CHA did not fulfill its commitment to provide information to the Receiver about the consent decree negotiations.

A. The February 23, 1998 Order

The February 23, 1998, ruling was: "We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements." In reaching this conclusion, the Court conducted an analysis of whether there were locational requirements in HOPE VI that were in conflict with the locational requirements of the Injunction. The Court concluded: "We see no incompatibility between the HOPE VI program and the judgment order." The Court's focus was on the locational requirements of the Injunction. Based on the order, the Receiver is to enforce the locational requirements of the Injunction. No other requirements have been described.

B. The Receivership Order

The Receivership Order provides that the Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including the following:

1. submit to HUD applications for funding, development programs and other documents;
2. select the sites and acquire the sites for the scattered site program, including setting policies respecting the location of sites and buildings to be acquired;
3. relocate occupants, when necessary;
4. construct and rehabilitate dwelling units;
5. design and provide specifications for the construction and rehabilitation of dwelling units; and
6. negotiate and execute any contracts or other documents necessary or appropriate to implement the scattered site program.

These duties were straightforward when dealing with the scattered site program that was in existence at the time of the Receivership Order. The Receiver could identify a site in the General Area on which it could build the maximum number of units permitted under the Injunction. It could design and provide specifications for the construction of those units. It could relocate occupants of buildings it acquired, but there would be no need to relocate existing public housing residents when the Receiver was making new units available for the first time. It could seek and obtain funding from HUD. This formidable task was made easy by virtue of the HUD consent decree that obligated HUD to provide funds for 7100 units of housing. The Receiver was not required to make policies regarding site location and buildings to be acquired. The policies, for example, had already been clearly set out in the Injunction, such as location and density.

C. The Receivership Order In Part Conflicts With HOPE VI

There has never been an analysis of whether the duties assigned to the Receiver in the Receivership Order conflict with the statutory requirements of HOPE VI because the applicability of the Receivership Order to HOPE VI was determined in the May 19, 1998 order granting the Receiver's May 18, 1998, Emergency Motion without permitting the CHA an opportunity to respond in writing. Literally, the issues have never been considered by the Court.

When the Receiver's duties set forth in the Receivership Order are examined in light of the requirements of the HOPE VI statute, they are much less clear. Again, that is because new housing is one element of a complex plan that must be negotiated with the City and the Local Advisory Council. At least one important duty cannot be performed by the Receiver

because of the requirements of the HOPE VI statute. Others are ambiguous and it is not determinable from the Receivership Order whether they apply to a HOPE VI program.

Most importantly, the Receiver will not be the developer of the project that will design, provide specifications for and construct new public housing built with HOPE VI funds. The Receiver's powers cannot be greater than the CHA's powers. Since the CHA is not the developer, the Receiver cannot be the developer.⁵ Therefore, the CHA should have no duty to cooperate with the Receiver in its exercise of its duty to design, provide specifications for, and construct new public housing. If the Receiver is not the developer, a serious question arises. All of the Receiver's duties are incident to its being the developer of public housing. Do these duties have any meaning when the Receiver is not the developer?

Other duties of the Receiver under the Receivership Order are ambiguous on their face when applied to HOPE VI plans. For example, the Receiver is obligated to "relocate occupants, when necessary." This may mean that the Receiver is obligated to relocate public housing residents who are displaced due to the demolition of high-rise housing projects. It is likely, however, that the Receiver's duty to relocate occupants is related to the Receiver's duty to decide which buildings to acquire. It is highly doubtful that the Receiver has the CHA's powers and responsibilities to relocate the large number of public housing residents who have been or will be displaced by the demolition activities of the CHA. The Receiver has no qualifications or

⁵ There is a role for a "development manager," but that role is also not performed by the CHA. Moreover, the parties agreed to use McCormack Baron, a highly regarded national developer of low income housing projects, as the development manager. Again, the CHA intended to present a motion to this Court seeking both to waive the Injunction's locational restrictions and to modify the Receivership Order after receiving approval from Judge Coar.

experience to undertake such a massive task. It would appear, but not certain, that this duty of the Receiver is not applicable to a HOPE VI project.

D. Orders of May 19, 21 and 22 Did Not Clarify Receiver's Duties

In the Court's order of May 19, 1998, the Court stated:

On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we see no reason to treat HOPE VI funds differently for purposes of the order appointing the Receiver. . . HOPE VI is a "non-elderly public housing development program. . . authorized during the pendency" of the Gautreaux litigation, and it therefore fits entirely within the Receiver's jurisdiction.

Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

The Court also stated that

the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the Gautreaux judgment order. . . .

(Receiver's Motion, Ex. F). The Court did not identify the requirements of the Gautreaux Injunction according to which the Receiver should measure the CHA's HOPE VI proposal meets.

The only requirement specifically referred to by the Court was in the February 23 order, which held that the locational requirements of the Injunction must be met. Nowhere did the Court state what decisions or activities in a HOPE VI plan are ultimately the Receiver's responsibility.

On May 21, 1998, the Court clarified that the May 19th Order did not give "sole authority to the Receiver for HOPE VI in Chicago" or "sole authority to prepare Chicago's 1998 HOPE VI application." On May 22, 1998, the Court stated that the

[May 19th] order did not "turn over all of the CHA's powers and responsibility for the 1998 HOPE VI application to the Receiver." . . . It merely stated that the Receiver would have to be involved (i.e. that the Receiver and the CHA would have to cooperate) in preparing the application. . . . (Of course, if the 1998 HOPE VI application will not request funds for the development of new housing, the Receiver would not need to be involved with it.)

These orders clarified that only those powers of the CHA that are incident to the development and administration of the new public housing in a HOPE VI program have been transferred to the Receiver. The CHA's duty to cooperate with the Receiver was quite different when the Receiver had all of the CHA's powers incident to build public housing. There were no divisions of responsibility. Now there is a sharing of responsibility. The orders did not clarify what is required of the CHA when the CHA and the Receiver share responsibility for various aspects of a HOPE VI project. The May orders did not clarify which, if any, of the responsibilities specifically identified in the Receivership Order remained the responsibilities of the Receiver in a HOPE VI project in which the Receiver is not the developer. The orders did not clarify the Receiver's responsibilities with regard to existing HOPE VI projects such as Cabrini-Green.

The Court did state in the May 19, 1998, order that "if the CHA is permitted to submit a HOPE VI application without the Receiver's input, that application may violate the Gautreaux requirements and cause further unnecessary delay in the desegregation of Chicago public housing." This indicates that the Court believes that the Receiver has some duty to make sure that the HOPE VI application does not violate Gautreaux requirements. However, those requirements are not identified. Presumably the reference is to the locational requirements of the Injunction since no other requirement had been identified by the Court. Certainly, there is no

order appointing the Receiver to assure that the HOPE VI application in whole or in part complies with any other Gautreaux requirement, such as Article VIII.

V. The Receiver Cannot Enforce the CHA's Duty To Pursue Desegregation

The Injunction states generally that the CHA has a duty to further the desegregation goals of the Injunction. However, the Receiver has not been appointed to enforce the CHA's compliance with that duty and the duty is not judicially enforceable.

A. The Receiver Is Relying On CHA's Duty to Pursue Desegregation

The Receiver asserts that it will: (1) make sure that "any agreement negotiated by the CHA" gives "adequate weight to the CHA's desegregation obligations under this Court's Order," and makes no "compromises that limit desegregation opportunities that would otherwise be available;" (2) "implement the Court's important desegregation remedies;" and (3) assure that Cabrini-Green is developed "in a manner that effectuates the desegregation remedy in this case."⁶ (Paragraphs 45, 46 and 58 of the Motion, respectively) The Receiver clearly believes it is entitled to assure that the totality of the plan, which goes far beyond building new public housing units, meets with its approval. There is no order that provides this duty to the Receiver.

⁶ The Receiver clearly is not focusing on the specific desegregation remedy in this case, which is the requirement that the CHA build one unit of public housing in the General Area for each unit of public housing that it builds in the Limited Area. It has been known from the beginning of the Cabrini-Green planning that compliance with the locational requirements of the Injunction was impossible. The Cabrini-Green revitalization plans call for all new construction to be sited within the HOPE VI Planning Area (the geographical area bounded by Chicago Avenue on the south, Wells Street on the east, North Avenue on the north and the Chicago River on the west). The revitalization plans do not effectuate the specific desegregation remedy in this case. In fact, the plan is diametrically opposed to the locational requirements of the Injunction.

The Receiver must be relying on, and seeking to enforce, the CHA's duty to pursue desegregation under Article VIII of the 1969 Injunction, which provides as follows:

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

The Court relied on Article VIII of the Injunction to support the Court's statement in its February 25, 1998, order that "the CHA is duty-bound to vigorously pursue desegregation opportunities."

The Receiver's reliance on Article VIII expands its duties well beyond those to which it was appointed. This is clear from the letter dated July 23, 1998, from Michael Shakman to Carole Wilson, Associate General Counsel of HUD (attached as Exhibit 4), in which it was asserted that the Receiver has a substantial role in numerous aspects of a proposed Memorandum of Agreement Among The Illinois State Historic Preservation Officer, U.S. Department of Housing and Urban Development, The City of Chicago, Illinois and The Advisory Council on Historic Preservation for The ABLA Redevelopment Project (the "Agreement"). The Receiver asserted as a reason for its role in the Agreement that the "selection criteria for the proposal ultimately will have to include maximizing the potential for remedial benefits to the plaintiff class in the Gautreaux litigation," that the CHA is obligated in its rehabilitation activities "to be sensitive to and to further the desegregation goals of the Gautreaux orders;" and that

the Receiver is entitled to be consulted by the CHA regarding decisions related to rehabilitation of any historic property in the Project Area so that the Receiver may evaluate the impact of rehabilitation (its location, timing, type of housing result-

ing, etc.) on the overall realization of desegregation objectives in implementation of the Project.⁷

(Emphasis added).

The Receiver has no responsibility under any order entered in this case to exercise authority over any activity of the CHA based on the Receiver's interpretation of whether the activity furthers the desegregation objectives of Gautreaux. The Receiver has not been appointed by the Court to enforce the CHA's compliance with such a duty or to judge whether HOPE VI funded projects, which are governed by federal statute and regulation, violate a duty to vigorously pursue desegregation.

B. The Duty To Pursue Desegregation Is Not Judicially Enforceable

The CHA agrees that it is duty-bound to pursue desegregation. The CHA believes that it fulfills this duty and that its activities in implementing HOPE VI programs is consistent with that duty.⁸ However, the duty is not judicially enforceable. Article VIII is vague and does not sufficiently inform the CHA of what actions are enjoined or required to be performed in

⁷ The Receiver has no duties regarding the CHA's rehabilitation activities. Moreover, the Receiver was not appointed, and has no duty, to maximize remedial benefits to the Gautreaux class of plaintiffs, to assure that the CHA's rehabilitation activities comply with its obligations to further the desegregation goals of the Injunction, or to evaluate the impact on the overall realization of desegregation objectives, of the CHA's rehabilitation activities, or any other activity, in implementing a HOPE VI project.

⁸ So long as the CHA complies with the statutory requirements of HOPE VI, there can be no doubt that the CHA is complying with the Fair Housing Act and the Civil Rights Act. As this Court recognized in its February 23, 1998, order, "Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing...." (February Order at 4) Under these circumstances, it would be totally unnecessary to appoint a Receiver to judge whether the CHA's HOPE VI activities fulfill its duty to seek desegregation.

order to comply with the duty to pursue desegregation. It is a particularly vague command in connection with HOPE VI programs and is not enforceable by the power of contempt.

Desegregation is only one of HOPE VI's congressional goals. Other goals include the restoration of neighborhoods that contain some of the worst public housing in the country, ending the social and economic isolation of such neighborhoods, creation of mixed-income replacement housing, and a true partnership between the public housing authority, its residents and the local government in trying to achieve these goals.

Article VIII provides no standards for determining whether in a program such as HOPE VI the CHA is satisfying its duty to desegregate. The Receiver's opinion that a HOPE VI plan does not adequately pursue desegregation may, and likely would, be different from the CHA's view of whether desegregation, one among many goals that the plan seeks to accomplish, has been adequately pursued. The Receiver can only enforce orders of the Court that are judicially enforceable.

VI. The CHA's Powers and Authority to Negotiate And Execute The Consent Decree Have Not Been Transferred to the Receiver

The Receiver takes the position that only it had the authority to negotiate and execute the consent decree in the Cabrini-Green litigation because the Receivership Order transferred all powers of the CHA necessary and incident to the development and administration of the Cabrini-Green housing project, specifically including negotiating and executing any contract necessary or appropriate to implement the program, and the consent decree is such a contract.

The CHA's position is that it could negotiate and enter into the consent decree without consulting or seeking the approval of the Receiver because the CHA's power and authority to defend and resolve pending litigation, and its power and authority to decide to seek a waiver of the requirements of the Injunction in order to resolve litigation, have not been transferred to the Receiver under any order of this Court. Nor does the Receiver have the authority to negotiate an agreement that involves aspects of the Cabrini revitalization plan that are not within the Receiver's responsibilities.

A. Power to Defend Litigation Has Not Been Transferred

The Cabrini-Green litigation involves the design and implementation of the Near North Redevelopment Initiative ("NNRI") as well as the HOPE VI revitalization plans for Cabrini-Green. The plaintiff is the Cabrini-Green Local Advisory Council ("LAC"), the duly elected representatives of residents of the Cabrini-Green public housing project. The LAC alleged that the NNRI, including the CHA's HOPE VI plan, displaced Cabrini-Green residents and reduced the supply of affordable housing units at Cabrini, thereby resulting in a discriminatory impact upon African Americans, women and children. The LAC asserted that the CHA had violated the Fair Housing Act, Title VI of the Civil Rights Act, the HOPE VI statute, the City's consolidated Plan required under the HOPE VI statute, and the Memorandum of Agreement between the CHA and the LAC.

The parties to the Cabrini-Green litigation have treated the litigation as separate and distinct from Gautreaux, and Judge Coar has considered the litigation unrelated to Gautreaux, but always on the understanding that any final order entered in the case would be subject to the approval of the Gautreaux Court. From the outset of the litigation, it was under-

stood that the claims and goals of the Cabrini LAC conflicted with the Gautreaux desegregation remedy. The Cabrini-Green public housing residents were demanding their right to remain in their neighborhood. The goal of the litigation was to have sufficient replacements housing for displaced residents constructed in the Cabrini Planning Area.

The Receiver is not a party to the Cabrini litigation, has never sought to become a party, and had not previously asserted any responsibility for the defense of that litigation. Nor had the Receiver previously asserted that the CHA has no power or authority to defend or resolve that litigation. However, the Receiver has been aware of the Cabrini litigation and at one time the Receiver attributed its lack of activity at Cabrini on the fact that there was litigation that was holding up the project. See Affidavit of Daniel E. Levin, filed with this Court on March 31, 1998, ¶ 21. In fact, the Receiver has also been aware of the negotiations among the City, the CHA and the LAC to resolve the Cabrini litigation. Affidavit of Wheelock; Affidavit of Grauer.

The consent decree balances the CHA's obligation to demolish public housing and provide replacement housing (on site, off site, Section 8 certificates or existing scattered housing) and the right of the displaced residents to remain in their community. Demolition, the location and number of replacement housing units, and the criteria for the selection of residents to live in the replacement units, were entwined in the dispute that was the subject of the litigation. One issue could not be negotiated without the others. All had to be resolved through the same solution.

Given the broad claims alleged against the CHA, the scope of the consent decree (it would resolve the CHA's liability under the NRRI and its Memorandum of Agreement with

the LAC), the integrated issues being negotiated, and the Receiver's limited authority to negotiate contracts regarding new public housing (and not demolition or tenant eligibility), the CHA reasonably believed that it had the power to defend and resolve the litigation. If that were not the case, then the CHA's exposure under the LAC's claims would be controlled by the Receiver.

Moreover, if the Receiver was empowered to negotiate the consent decree, the Receiver would be dictating the demolition policies and other activities that are covered by the consent decree that are clearly outside the Receiver's jurisdiction. There is no order transferring to the Receiver the CHA's power and authority regarding demolition and tenant selection to resolve litigation such as the Cabrini-Green case.

B. The CHA's Power And Authority To Seek A Waiver Of The Injunction Has Not Been Transferred to the Receiver

The CHA is bound by the Injunction and other court orders, but like any litigant it is entitled to seek a waiver of the requirements of the Injunction, and a modification of the Receivership Order. The CHA decided to settle the Cabrini litigation by agreeing to a plan that would not be effective unless and until the Gautreaux Court waived the requirements of the Injunction. That was the decision made by the CHA—to seek a waiver of the Injunction and to make receipt of that waiver a condition subsequent to the consent decree.

The CHA was entitled to decide that the litigation should be resolved by agreeing to a plan that provided for no units to be built in the General Area and to seek a waiver of the requirements of the Injunction. The LAC's constitutional and federal claims against the CHA are based on the claim that the Cabrini-Green residents are entitled to remain in their community in replacement housing. These claims and the LAC's goal directly conflict with the locational

requirements of the Gautreaux Injunction. The CHA was not required to negotiate an agreement that achieved the maximum number of units that would be built in the General Area, or that maximized the benefits to the Gautreaux class of plaintiffs, or that vigorously pursued desegregation, as a condition to applying for a waiver of the Injunction.

1. There Is No Order Compelling the CHA to Seek a Waiver Before Finalizing Plan For Which the Waiver Is Sought

The Receiver wants to negotiate the plan for which the waiver will be sought. The plaintiffs want to approve the plan before it is finally agreed to by all of the parties whose agreement is necessary (the LAC and the City of Chicago) and well before it is presented to the Court for a waiver. There is no order of the Court that defines the CHA's responsibilities when seeking a waiver. No order holds that the CHA must propose a waiver of the Injunction before preparing the plan for which the waiver will be sought. The CHA is entitled to first develop the plan and obtain the necessary agreement of the LAC and the City for the plan for which the waiver will be sought.⁹ A court order would be necessary to entitle plaintiffs (1) to compel the CHA to seek a waiver before agreeing to a plan that is subject to obtaining a waiver, and (2) to negotiate the terms and contours of the plan before the plan is submitted to the Court for a waiver of the Injunction.

⁹ In the past, waivers have been negotiated with the plaintiffs before the plan for which a waiver is sought is presented to the Court. The CHA used this approach when public housing was being built with HUD funds that had been dedicated to satisfying HUD's consent decree obligation in Gautreaux and the plaintiffs agreed that those funds could be used in "revitalizing areas," which was specifically allowed by the HUD consent decree. There is no court order binding the CHA to this process.

2. The Receiver Has No Authority To Negotiate A Plan for which a Waiver Will Be Sought

The Receiver's authority is to build new public housing in compliance with the locational requirements of the Injunction. The Court has never addressed the issue of the responsibilities of the Receiver (or the plaintiffs) when a waiver of the requirements of the Injunction is sought by the CHA, or what the Receiver's or the plaintiffs' role is in the waiver process. Clearly, the Receiver was not appointed to make recommendations to the Court in the event the CHA seeks a waiver. The Receiver has not been appointed to examine, approve or evaluate a public housing plan for which a waiver of the Injunction will be sought. The Receiver has not been appointed to negotiate the terms of a waiver of the locational requirements of the Injunction.

If the Receiver had the responsibility for negotiating the consent decree, the Receiver would not begin, as the CHA began, on the premise that the CHA would seek a waiver of the requirements of the Injunction. The Receiver, by the nature of its appointment, would seek to enforce the locational requirements of the Injunction, and, when that proved impossible, to maximize the number of units that will be built in the General Area, and, when that proved impossible, to negotiate a plan that meets the Receiver's concept of an acceptable substitute for building in the General Area. The Receiver necessarily would be exercising its judgment, without any defining standards, as to what compromise "maximizes the desegregation goal" of the Injunction. Receiver's Motion at ¶¶ 45, 46, 58. The Receiver has not been appointed to exercise such judgment or to negotiate a plan that compromises the requirements of the Injunction.

C. The Receiver Has No Exclusive Right To Negotiate And Execute The Consent Decree

The consent decree is not a contract which the Receiver has exclusive authority to negotiate and execute. The consent decree deals with matters over which the Receiver has no authority, specifically demolition of high-rise projects and the criteria for residents who will reside in replacement housing. There has been no transfer of the CHA's power and authority to negotiate and execute contracts that necessarily deal with subjects in which both the CHA and the Receiver have varied responsibilities. The Receiver has no power and authority to negotiate and execute a contract that involves the CHA's exercise of its power and authority, regardless of the fact that the contract is incident to the development of public housing.¹⁰ That is a subject that must be addressed in the order appointing the Receiver.

¹⁰ The Receiver's authority to negotiate and execute contracts incident to the development of public housing made sense when the Receiver had all of the CHA's powers and responsibilities for the development of public housing. The Receivership Order did not contemplate the situation where the CHA has substantial power and authority over an entire development project except for the one component of that project that involves new public housing. There was no consideration in the order appointing the Receiver regarding the respective rights and obligations of the CHA and the Receiver.

CONCLUSION

For the reasons stated above, the Motion should be denied for lack of standing. If the Motion goes forward the CHA is entitled to an evidentiary hearing. There are legitimate disagreements between the CHA and the Receiver that require further clarification of the Court's orders regarding the duties and responsibilities of the Receiver in HOPE VI projects. The CHA's duty of cooperation and coordination owed to the Receiver, and the CHA's duty to pursue desegregation, are unclear and not judicially enforceable.

Date: August 6, 1998
Chicago, Illinois

Jerome M. Butler
General Counsel
Chicago Housing Authority

Respectfully submitted,



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CO-OWNER
DAVID J. HARRIS
MAURICE ROSENFIELD
WRITTEN BY: [illegible]

June 23, 1998

VIA FACSIMILE & U.S. MAIL

Ms. Nancy Eisenhower
Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606-1285

Re: Gautreaux v. CHA

Dear Nancy:

This letter responds in part to your letter of June 16, 1998 concerning my letter of June 12. We were disappointed both by the inaccuracies in your letter and by the letter's tone. Because of the importance of completing a strong HOPE VI application by June 29, we will not take my client's time by preparing a response to every one of your points now. Suffice it to say that the Receiver disagrees with several of the points you raise, but sees little purpose in starting what would become a protracted exchange of letters. The Receiver prefers to focus at present on producing a competitive HOPE VI application and complying with its duties to the Gautreaux Court. The Receiver hopes to be able to support the application, but its doing so should not be taken as agreement with all of the provisions in the application, as there are several with which the Receiver disagrees.

A few of the points you made require a response now. The second paragraph of your letter incorrectly states that the parties, including the Gautreaux plaintiffs and the Receiver have "agreed to the 'terms' of the 1998 HOPE VI application." This factual error echoes throughout the letter. Over the past several weeks, there have been numerous meetings among CHA, Habitat and the City, which have focused primarily on the income mix, which is one of several important components of this application. There have also been separate working group meetings discussing financing structure and social service delivery. While agreement was reached on the critical issue of the proposed income mix, as confirmed by Shannon DeWith's Memo of June 12, 1998, it is not correct that overall agreement was reached as to the "terms" or the "substance" of the HOPE VI application. Nor could such an agreement have been reached, since the draft application was not shared with the Receiver until early last week, after the phone call confirmed by Ms. DeWith's memo.

Ms. Nancy Eisenhower

June 23, 1998

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In addition, it is not correct that agreement was reached as to the administrative fee to be shown in the application (whether paid to CHA or to the Receiver). Habitat's fee is ultimately controlled by the Court. I spoke today with Jerome Butler, and we agreed that the application will so reflect.

The draft application provided last week underscores part of the problem, which is foreshadowed by your letter's reference to an RFP process for the selection of a developer. That RFP process does not and should not replace Habitat's role as Receiver and its duties concerning the development of new, non-elderly construction. If an RFP process is used, both the City and the Receiver would be involved.

The draft application omits any reference to the role of the Receiver in the development of new CHA non-elderly construction. We hope that omission, combined with your letter, does not imply that the CHA intends to disregard the terms of the 1987 Receivership Order and the recent orders of Judge Aspen as well. We received yesterday proposed language from Jerome Butler concerning this concept. I have discussed with him modifying the language to make it consistent with the terms of the Receivership Order and he asked us to send him alternative language later today.

Phil Hickman and Valerie Jarrett are continuing to try to resolve outstanding issues with appropriate CHA personnel. We remain optimistic that agreement can be reached ultimately on specifics for the ABLA redevelopment. However, as noted above, the mere fact that an application is submitted should not be deemed to be a statement that the Receiver agrees with every provision in the application (which the CHA has prepared virtually unilaterally) or with the less than fully cooperative process the CHA has followed during the time-pressured weeks leading up to the June 29 due date. The Receiver's overriding objective is to get a competitive application submitted. Since the application is a broad conceptual work, many of the details can be resolved later if the grant is awarded.

With respect to your points concerning the production of documents requested by the Receiver, we will not in this letter debate the merits of your arguments, with which we disagree. We appreciate that Jerome Butler has made documents available for inspection yesterday. (We note, however, that certain documents concerning the Brooks Extension were not present in the CHA offices, and we will need to follow up with Jerome.) To the extent, if any, that you have withheld a document we have requested based upon your belief that it falls outside of CHA's "cooperation" duties as set forth in Judge Aspen's Orders, please consider each such request to have been made pursuant to FOIA and please produce each such document as soon as practicable. That we have to make such a request, however, is disappointing to say the least. It was also disappointing and inappropriate that the CHA has refused Habitat's request for a floppy disk with the text of the draft application. Governmental agencies are typically more cooperative even with strangers. Especially

MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

Ms. Nancy Eisenhower

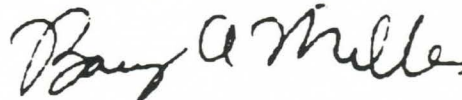
June 23, 1998

Page 3

given Judge Aspen's Orders, the Receiver should not have to resort to FOIA and the CHA should be producing the requested documents without the fuss you are raising.

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Barry A. Miller".

Barry A. Miller

cc: Jerome Butler
Alexander Polikoff
Daniel E. Levin/Valerie Jarrett/Philip C. Hickman

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/21/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Plaintiffs' motion for further relief is denied as moot.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.		4	Document Number
	No notices required.		number of notices	
✓	Notices mailed by judge's staff.		date docketed	
	Notified counsel by telephone.		docketing deputy initials	
	Docketing to mail notices.		5/21/1998	
	Mail AO 450 form.		date mailed notice	
	Copy to judge/magistrate judge.		GL	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

ORDER

Now before us is the plaintiffs' "Motion for Further Relief." In it they register their concerns with the CHA's conduct vis-à-vis the Receiver and ask that we enter a detailed order directing the CHA to take certain steps to rectify the situation.

We do not believe that such an order will be necessary. In an order issued on May 19, in response to an emergency motion from the Receiver, we wrote that "we [have previously] held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver." Accordingly, we held that the parts of the HOPE VI program discussed in our opinion of February 23 "fit[] entirely within the Receiver's jurisdiction." (We do not wish to be misunderstood; our order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states. See CHA's Emergency Mot. to Stay Order Pending Appeal at ¶¶ 13, 14, 27.) Many of the problems detailed in the plaintiffs' motion concern the CHA's HOPE VI-related activity, and those problems were addressed by our prior order.

To the extent that the plaintiffs' motion raises issues unrelated to the Receiver's role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court's attention if it so chooses.

It is so ordered.

A handwritten signature in black ink, appearing to be "JMS", is written in the center of the page.

ORDER

Now before us is the CHA's "Emergency Motion to Stay Order of May 19, 1998, Pending Appeal." In that order we held that the terms of the receivership order in this case clearly encompassed construction paid for by HOPE VI dollars and that the CHA was duty-bound to cooperate with the Receiver on HOPE VI matters, specifically the CHA's 1998 HOPE VI application, insofar as those matters fell within the Receiver's delegated duties.

We first observe that the CHA's motion rests at least in part on untenable overreadings of our May 19 order. That order did not "turn over all of the CHA's powers and responsibility for the 1998 HOPE VI application to the Receiver." CHA's Mot. ¶ 13; see also *id.* ¶ 14. It merely stated that the Receiver would have to be involved (i.e. that the Receiver and the CHA would have to cooperate) in preparing the application in light of the fact that the receivership order gave the Receiver "all powers of CHA" with regard to the development and administration of "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. (Of course, if the 1998 HOPE VI application will not request funds for the development of new housing, the Receiver would not need to be involved with it.) We do not believe that this order may fairly be characterized as a new "mandatory injunction," CHA's Mot. ¶ 13, since it does nothing more than reaffirm that the receivership order means what it already says. Also, the CHA's position that we committed an error by not making factual findings, see CHA's Mot. at pp. 5-7, has the situation in reverse: only if we modified or terminated the receivership order (and the CHA has repeatedly threatened to make a motion to that effect but has not yet made one) would factual findings be necessary.

We do not believe that the traditional four "stay" factors favor the CHA. See *Thomas v. City of Evanston*, 636 F. Supp. 587, 590 (N.D. Ill. 1986) (Aspen, J.). First, we doubt that the CHA will win its appeal. It has never offered any argument as to how the plain language of the receivership order could be interpreted to give the Receiver no role in HOPE VI-funded development, and we are aware of none. The CHA's only hope of achieving that outcome is to move for a modification (or termination) of the receivership order, but it has not made such a motion, it has not presented any evidence justifying such a motion, and a modification of the receivership order is not before the appellate court. Second, we doubt that the CHA will suffer irreparable injury if we do not issue a stay. The Receiver and the plaintiffs, responding to the CHA's motion, presented substantial, credible evidence that the CHA's prior HOPE VI applications acknowledged the role of the Receiver and of the *Gautreaux* requirements in proposed HOPE VI development projects. Also, the HUD representative present at the February oral argument stated that from HUD's perspective compliance with the *Gautreaux* requirements was a "non-issue," so we do not credit the CHA's claim that it will not be able to prepare a competitive HOPE VI application if the Receiver is involved. Third, a stay may harm the plaintiffs, for if the CHA is permitted to submit a HOPE VI application without the Receiver's input, that application may violate the *Gautreaux* requirements and cause further unnecessary delay in the desegregation of Chicago public housing. Fourth, a stay would not be consistent with the public interest. We know of no possible justification for the presumption offered by the CHA on this issue -- that since it is a public agency, its interests are the public's interests, for under this logic the original segregation of Chicago public housing was in the public interest. The public's interest is in the speedy desegregation and modernization of its public housing, and nothing in the CHA's motion convinces us that our order is inconsistent with these goals.

Accordingly, the CHA's motion for a stay pending appeal is denied. It is so ordered.



MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

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DAVID J. BRUMBY
MAURICE ROSENFIELD

WHILEN'S DIRECT LINE

July 23, 1998

By Fax

Carole Wilson
Associate General Counsel
U.S. Department of Housing and Urban Development
Washington D.C., 20410-0500

Dear Carole:

I'm writing to respond to your call yesterday asking for the Receiver's comments concerning the proposed Memorandum of Agreement Among The Illinois State Historic Preservation Officer, U.S. Department of Housing and Urban Development, The City of Chicago, Illinois and The Advisory Council on Historic Preservation for The ABLA Redevelopment Project ("Agreement"), which you faxed to me yesterday. Here are our comments:

1. The "Project" is defined as the ABLA Redevelopment Project. Agreement at 1. Marketing of the Project is described starting at page 4 in a manner that makes no mention of the Receiver's role and is not, therefore, accurate. All references in paragraph 11 to preparation of a RFP, developing a distribution list, an advertising plan, implementing the RFP process, and selection of a development proposal need to include reference to the Receiver as a participant with the CHA and the City of Chicago. In addition, selection criteria for the proposal ultimately accepted will have to include maximizing the potential for remedial benefits to the plaintiff class in the Gautreaux litigation.

2. Rehabilitation of existing portions of the Project Area is discussed in Section III on page 5 of the Agreement. Rehabilitation is not a Receiver responsibility under the Receivership Order in Gautreaux, but the CHA is obligated in all its activities, including rehabilitation, to be sensitive to and to further the desegregation goals of the Gautreaux orders. Accordingly, the Receiver is entitled to be consulted by CHA regarding decisions related to rehabilitation of any historic property in the Area of the Project Area so that the Receiver may evaluate the impact of rehabilitation (its location, timing, type of housing resulting, etc.) on the overall realization of desegregation objectives in implementation of the Project. The Agreement should recognize that such consultation will occur.

3. On-site new construction, discussed on pages 5-6 of the Agreement, clearly involves areas of Receiver responsibility. The Receiver should be listed as a party to the process

Letter of July 23, 1998 -- page 2.

described there, since the Agreement purports to impose obligations to make new construction adjacent to retained historic buildings "compatible" with the historic buildings. The same comments apply to Section V of the Agreement, at 6-7, dealing with Off-Site and Scattered Site Replacement Housing.

4. The final paragraph of Section V seems to go further than necessary for the purposes of an agreement dealing with historic preservation by requiring that replacement housing be located in the Near West side neighborhood "to the extent feasible and consistent with the Gautreaux" case. While it is likely that this will be the outcome, we see no reason to include such a provision in the Agreement, or to create a preference for such a locational approach when wider distribution of replacement housing may more effectively further desegregation objectives of Gautreaux.

5. Section XII provides a dispute resolution procedure involving HUD. To the extent the Receiver's responsibilities are implicated in any future disputes, the Agreement should reflect that the Receiver should be consulted and afforded an opportunity to express its views. The same comment applies to Section XIV dealing with "Coordination of Reviews".

The Receiver has asked me to emphasize that it does not anticipate that the changes in the Agreement proposed above will significantly change the overall handling of any historic preservation issues presented by the ABLA Project. But the Receiver believes it is important that the Agreement accurately reflect the Receiver's role and insure, by doing so, that when the Receiver's responsibilities are implicated, it is consulted in advance and afforded an opportunity to comment and have its comments considered, or in any area where its decisions control as a matter of law, to have that right recognized.

Please feel free to call if you have any questions.

Sincerely,



Michael L. Shakman

cc: Daniel E. Levin
Valeie B. Jarrett
Jerome M. Butler
Commissioner David Doig
Alexander Polikoff

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday, August 6, 1998, I caused a copy of the foregoing DEFENDANTS' MEMORANDUM IN OPPOSITION TO RECEIVER'S EMERGENCY MOTION to be served by hand delivery and facsimile (without exhibits) on counsel listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower

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

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

NOTICE OF FILING

TO: Alexander Polikoff, Esq.	Michael L. Shakman, Esq.
BUSINESS AND PROFESSIONAL	Barry A. Miller, Esq.
PEOPLE FOR THE PUBLIC	MILLER, SHAKMAN, HAMILTON,
INTEREST	KURTZON & SCHLIFKE
17 E. Monroe Street, Suite 212	208 South LaSalle Street, Suite 1100
Chicago, Illinois 60603	Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Thursday, August 6, 1998, we filed with the clerk of the District Court for the Northern District of Illinois, AFFIDAVIT OF RICHARD WHEELLOCK, a copy of which are attached hereto and served upon you.

Dated: August 6, 1998
Chicago, Illinois



Nancy Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700
Counsel for Defendants
CHICAGO HOUSING AUTHORITY

AFFIDAVIT

I, Richard M. Wheelock, on oath, state that this affidavit is made on my personal knowledge, and, if sworn as a witness at trial, I could competently testify to the following facts:

1. I am the Housing Supervisory Attorney at the Legal Assistance Foundation of Chicago ("LAFC"), a legal aid program that provides civil legal services for the indigent in the City of Chicago.

2. LAFC represents the Cabrini-Green Local Advisory Council (LAC), a tenant organization that represents all families residing at the Cabrini-Green development.

3. The membership of the LAC is composed of lessees and authorized residents 18 years of age or older residing in the Cabrini-Green development. The LAC board is composed of elected representatives from each residential building in Cabrini-Green. Further, the officers of the LAC have been directly elected by the residents of Cabrini-Green in development-wide secret ballot voting.

4. By federal regulation, the CHA must recognize the LAC, being a duly elected resident council, as the sole representative of the residents of Cabrini-Green. See 24 C.F.R. § 964.18(a)(1).

5. In June 1996 the CHA and the City of Chicago announced the Near North Redevelopment Initiative ("NNRI"), which included, among other things, the demolition of 1324 public housing units at Cabrini-Green.

6. In October 1996, the LAC filed suit in federal court (Cabrini-Green Local Advisory Council v. Chicago Housing

Authority, et al., 96 C 6949 ("Cabrini-Green LAC") against the Chicago Housing Authority challenging the NNRI as violative of federal, state, and local law. The case was assigned to Judge Coar. In March 1997, the LAC amended its complaint to name the City and Mayor Daley as additional defendants.

7. I am lead counsel for the LAC in Cabrini-Green LAC.

8. On September 15, 1997, all parties appeared before Judge Coar on a Joint Motion For Limited Modification Of Discovery Schedule To Permit All Parties To Engage In A Structured Settlement Process ("Joint Motion"), a copy of which is attached hereto as Exhibit A.

9. Attached to the Joint Motion was an agreement executed by all parties providing for a formal settlement process to achieve an amicable resolution of Cabrini-Green LAC.

10. That agreement set forth the topics to be negotiated, including (a) the economic mix of households in the replacement housing units built as part of the Hope VI Plan and the Near North Redevelopment Initiative; (b) the provision of job training and employment opportunities to Cabrini-Green residents as part of the Hope VI Plan and the Near North Redevelopment Initiative; (c) the relocation process for Cabrini-Green residents who will be dislocated as a result of the demolition or rehabilitation of Cabrini-Green buildings as part of the Hope VI Plan and/or the Near North Redevelopment Initiative; (d) the right of dislocated residents to return to the revitalized community (including selection, screening, and transitional training, if any) as part

of the Hope VI Plan and the Near North Redevelopment Initiative; (e) the number of buildings to be demolished, as well as the sequence and timing of demolition of Cabrini-Green buildings as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (f) the number and type of replacement public housing units to be built in the revitalized community as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (g) the fate of those Cabrini-Green units not included in the HOPE VI Plan or the Near North Development Initiative; and (h) the consultation process during the implementation of the HOPE VI Plan and the Near North Redevelopment Initiative. The agreement also addressed the information to be exchanged and the conditions under which the settlement meetings would be held. Finally, the agreement included a confidentiality provision that the parties would treat the substance of the discussions as confidential and would not, except by mutual agreement, make statements to the public concerning anything said during any of the sessions. See Section F.6. of Agreement (attached to Joint Motion (Exhibit A)).

11. Judge Coar granted the Joint Motion.

12. The parties met pursuant to this agreement on the following dates: September 22, 1997; September 23, 1997; October 1, 1997; October 3, 1997; December 1, 1997; and December 8, 1997. The meetings included representatives from the LAC, the City of Chicago and CHA, including their counsel. All meetings were transcribed.

13. Subsequently, Magistrate Judge Pallmeyer offered to serve as a mediator, and so thereafter the parties met for settlement discussions in her court room on or about the following dates: February 19, 1998; April 15, 1998; and May 1, 1998.

14. On May 1, 1998, the parties reached an agreement in principle to settle the case, subject to drafting an agreement and seeking necessary court approval. See Judge Pallmeyer's May 1, 1998 minute order, a copy of which is attached hereto as Exhibit B.

15. On July 7, 1998 representatives of the LAC and the CHA, including their counsel, met at the offices of the CHA to conclude final details of the agreements reached between the CHA and the LAC.

16. Throughout the entire settlement negotiation process it was always understood by the LAC that the proposed consent decree was contingent upon review and approval by Judge Aspen and the Court's receiver, The Habitat Co., pursuant to the decrees entered in Gautreaux, et al. v. CHA, 66 C 1459.

17. The proposed consent decree specifically provides that the consent decree shall not be effective, unless it is approved by the Gautreaux Court.

18. The parties anticipated that The Habitat Co. would have ample opportunity to review and comment upon the proposed consent decree after Judge Coar's approval.

19. The Habitat Co. was well aware of the ongoing settlement negotiations between the City, the CHA and the LAC, but made no demand upon the LAC prior to July 31, 1998 to be included in those discussions. See Brenda Grauer affidavit.

20. At no time prior to July 31, 1998 did the Habitat Co. communicate to the LAC its position that the CHA had no authority to negotiate with the LAC.

21. During a meeting with Alex Polikoff, Gautreaux plaintiffs' counsel, on or about September 29, 1997, I mentioned to him that settlement negotiations were ongoing between the CHA, the City and the LAC. The LAC received no demand from Mr. Polikoff prior to July 31, 1998 that he or The Habitat Co. be included in those negotiations.

22. From May 5, 1998 through July 16, 1998 the parties exchanged no fewer than 13 written drafts relating to the agreements reached among the parties. On or about July 21, 1998 Andy Mine, assistant corporation counsel for the City of Chicago, by telephone signed off on a final draft of the proposed consent decree delivered to him on July 16, 1998. On or about July 24, 1998 Thomas Johnson by telephone signed off on the same draft delivered to him on July 16, 1998.

23. On July 28, 1998, the LAC unanimously approved the proposed consent decree.

24. On August 4, 1998, counsel for the LAC and the City appeared before Magistrate Pallmayer for a status report. Counsel for the LAC and the City represented that all parties had

signed off on the proposed consent decree, but that Judge Aspen had issued a temporary restraining order prohibiting its presentation to Judge Coar.


Richard M. Wheelock

Subscribed and sworn
to me on August 6, 1998


NOTARY PUBLIC



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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,

Plaintiff,

-vs-

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER,

Defendants.

96 C 6949

Hon. David H. Coar

Magistrate Judge
Rebecca R. Pallmeyer

NOTICE OF MOTION

To: Richard M. Wheelock
Legal Assistance Foundation
of Chicago
343 S. Dearborn Street
Suite 700
Chicago, IL 60604

Andrew Mine
Asst. Corporation Counsel
30 N. LaSalle Street
Suite 900
Chicago, IL 60602

PLEASE TAKE NOTICE that on September 11, 1997, at 9:15 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable David H. Coar, or any judge sitting in his stead, in the courtroom usually occupied by him in the United States District Courthouse, 219 S. Dearborn Street, Chicago, IL, and then and there present the attached JOINT MOTION FOR LIMITED MODIFICATION OF DISCOVERY SCHEDULE TO PERMIT ALL PARTIES TO ENGAGE IN A STRUCTURED SETTLEMENT PROCESS.

Leslie A. Jones
One of the Attorneys for Defendants

Thomas E. Johnson
Leslie Ann Jones
Anne Megan Davis
JOHNSON, JONES, SNELLING, GILBERT & DAVIS
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
(312) 578-8100

CERTIFICATE OF SERVICE

LESLIE ANN JONES, an attorney, hereby certifies that a copy of the foregoing NOTICE OF MOTION and the attached JOINT MOTION was served upon the party listed above by hand delivery on September 9, 1997.

Leslie A. Jones
LESLIE ANN JONES

EXHIBIT

A

SSA 172

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,

Plaintiff,

-vs-

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, CITY OF CHICAGO,
RICHARD M. DALEY,

Defendants.

96 C 6949

Hon. David H. Coar

Magistrate Judge
Rebecca R. Pallmeyer

JOINT MOTION FOR LIMITED MODIFICATION OF DISCOVERY SCHEDULE TO
PERMIT ALL PARTIES TO ENGAGE IN A STRUCTURED SETTLEMENT PROCESS

Plaintiff Cabrini-Green Local Advisory Council ("LAC"),
Defendants Chicago Housing Authority and Joseph Shuldiner
(collectively the "CHA Defendants") and Defendants City of Chicago
and Richard M. Daley (collectively the "City Defendants") jointly
move for a limited modification of the discovery schedule to permit
all parties to engage in a structured settlement process to which
all parties have agreed. This structured settlement process will
commence September 15, 1997 and end October 10, 1997, will concern
all issues in this lawsuit, and involve both the principals and
their attorneys. A copy of the Agreement setting forth the details
of the process is attached hereto as Exhibit A. In order to devote
their full resources to this settlement process, the parties
jointly request that the Court modify the discovery schedule so
that the existing deadline for dispositive motions and the trial
date are maintained, but the deadlines for depositions are
extended.

In support of this motion, the parties further state as follows:

1. Plaintiff filed this action on October 27, 1996 against the CHA Defendants only. In an Amended Complaint, filed April 2, 1997, plaintiff also sued the City defendants. The CHA Defendants, City defendants and the LAC desire to enter into a meaningful settlement process about the issues raised in the Amended Complaint in the hope of avoiding the uncertainty, expense and delay of further litigation and resolving all claims raised in the litigation by entry into a consent decree.

2. By its order of April 8, 1997, the Court set a discovery schedule. A copy of this Order is attached hereto as Exhibit B. Under the Order, as pertinent here, the deadline for all document and non-expert deposition discovery is set for October 1, 1997; expert depositions must be completed by January 1, 1998; and rebuttal expert depositions must occur before March 1, 1998. Dispositive motions are due February 1, 1998. The case is set for trial on June 15, 1998.

3. Over the past months, plaintiff and defendants have exchanged more than 20,000 documents and two lengthy depositions of CHA officials have occurred. Some document production issues remain, but most have been successfully resolved by the parties, with the aid of Magistrate Judge Pallmeyer. Currently, twenty-two depositions are set for the month of September.

4. The parties had extensive discussions concerning the logistics of a structured settlement process which would include

consideration of all issues between the parties. These discussions have reached fruition in an agreed process in which the parties would engage in an intensive series of meetings over thirty days, recorded by a court reporter, at which all matters would be aired and an agreement on all remaining issues would be sought. All parties agree that the sooner these meetings commence, the greater the likelihood of significant progress in reaching an agreement on the substantive disputes between them.

5. All parties agree that they are unable to both satisfactorily conduct over twenty-two depositions during September and devote the necessary resources to the settlement process. All parties also agree that, in the event the parties are unable to resolve their disputes, maintaining the existing discovery schedule with respect to dispositive motions and trial is important for a prompt resolution of this case so that the redevelopment of Cabrini-Green can proceed.

6. Accordingly, the parties move that the Court modify the discovery schedule so that: 1) the deadline for document production and non-expert witness depositions is extended to December 15, 1997; 2) the deadline for expert witness disclosure is extended to January 1, 1998; 3) the deadline for expert witness depositions is extended to February 1, 1998; 4) the deadline for rebuttal expert witness disclosure is extended to March 1, 1998; and 5) the deadline for rebuttal expert witness depositions is extended to April 1, 1998. There is no need to modify either the original date

for dispositive motions, pretrial order, pretrial conference, or trial.

Leslie A. Jones
One of the Attorneys for Defendants

Thomas E. Johnson
Leslie Ann Jones
Anne Megan Davis
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(312) 744-7220

Attorney for Defendant City of Chicago

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,)

Plaintiff,)

v.)

No. 96 C 6949

Hon. David H. Coar

CHICAGO HOUSING AUTHORITY)

("CHA"), an Illinois Municipal)
Corporation; JOSEPH SHULDINER,)

In His Official Capacity As)
Executive Director of the CHA;)

CITY OF CHICAGO, an Illinois)

Municipal Corporation; and)

RICHARD M. DALEY, In His)
Official Capacity As Mayor of)
the City of Chicago,)

Defendants.)

Complaint for
Declaratory and
Injunctive Relief

AGREEMENT

Plaintiff Cabrini-Green Local Advisory Council ("LAC"), Defendants Chicago Housing Authority ("CHA") and Joseph Shuldiner (collectively "CHA Defendants"), and Defendants City of Chicago and Richard M. Daley (collectively "City Defendants"), by their respective attorneys, hereby agree as follows:

A. Definitions

In this Agreement, the following terms shall have the following meanings:

1. "LAC" means the plaintiff Cabrini-Green Local Advisory Council;
2. "CHA" means defendant Chicago Housing Authority, an Illinois Municipal

Corporation, created and existing under the Housing Authorities Act, 310 ILCS 10/1 et. seq.

3. "Shuldiner" means defendant Joseph Shuldiner, the Executive Director of the CHA.
4. "CHA Defendants" means collectively CHA and Shuldiner.
5. "City" means defendant City of Chicago, a municipal corporation created and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et. seq.
6. "City Defendants" means City and the defendant Richard M. Daley, Mayor, collectively.
7. "Amended Complaint" refers to the Amended Complaint filed by plaintiff on April 2, 1997.
8. "Cabrini-Green" means the public housing development consisting of Cabrini Homes, Cabrini Extension, and Green Homes.
9. "Hope VI" means the Urban Revitalization Program, PUB. L. 102-389, Title II, 106 Stat. 1579, reprinted at 42 U.S.C. §12571, note.
10. "Near North Redevelopment Initiative" or "NNRI" means all activities related to the City's initiative in revitalizing the Near North community which includes Cabrini Green.
11. "HUD" means the United States Department of Housing and Urban Development.
12. "Lawsuit" means the above-captioned action.

B. Conditions Leading to this Agreement

1. The lawsuit involves the revitalization of Cabrini-Green. All of the parties agree that Cabrini-Green is in need of significant change to improve the viability of that community, and all of the parties recognize the importance of proceeding toward the common goal expeditiously and with a minimum of rancor and distraction.

2. Plaintiff commenced this lawsuit complaining, inter alia, that the CHA Defendants had not adequately consulted or negotiated with it in developing a revitalization plan for Cabrini-Green. These claims are set forth, as against the CHA Defendants, in Counts IX and XII of the Amended Complaint. Plaintiff's Amended Complaint also raises a number of other claims against the CHA Defendants and/or the City Defendants concerning the effect of the current revitalization plan on the residents of Cabrini-Green.

3. There are eight aspects of the current revitalization plan for Cabrini-Green about which plaintiff, through its attorneys, has requested settlement negotiations. These are (a) the economic mix of households in the replacement housing units built as part of the Hope VI Plan and the Near North Redevelopment Initiative; (b) the provision of job training and employment opportunities to Cabrini-Green residents as part of the Hope VI Plan and the Near North Redevelopment Initiative; (c) the relocation process for Cabrini-Green residents who will be dislocated as a result of the demolition or rehabilitation of Cabrini-Green buildings as part of the Hope VI Plan and/or the Near North Redevelopment Initiative; (d) the right of dislocated residents to return to the revitalized community (including selection, screening, and transitional training, if any) as part of the Hope VI Plan and the Near North Redevelopment Initiative; (e) the number of buildings to be demolished, as well as the sequence and timing of demolition of Cabrini-Green buildings as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (f) the number and type of replacement public housing units to be built in the revitalized community as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (g) the fate of those Cabrini-Green units not included in the HOPE VI Plan or the Near North

Development Initiative; and (h) the consultation process during the implementation of the HOPE VI Plan and the Near North Redevelopment Initiative.

4. The parties disagree as to the extent to which the LAC has had, and/or has availed itself of, opportunities for consultation, and as to the form and nature of a productive mechanism for sharing information and consulting about the revitalization of Cabrini-Green.

5. The CHA Defendants and City Defendants, and the LAC desire to enter into a meaningful settlement process about the eight issues set forth in paragraph B.3 above, in the hope of avoiding the uncertainty, expense, and delay of further litigation and resolving all claims raised in the litigation by entry into a Consent Decree.

6. The City Defendants, while not sued with respect to the "consultation" and "negotiation" claims set forth in Counts IX and XII of the Amended Complaint, nevertheless have an interest in participating in meaningful consultation with the parties, as well as in avoiding the uncertainty, expense, and delay of unnecessary litigation, including additional paper discovery and a substantial number of depositions.

C. Information

1. In order for the parties to be adequately informed about the affected population of Cabrini-Green residents for purposes of the settlement process, no later than seven days prior to the first settlement meeting, the CHA Defendants shall provide to the other parties the best information it has concerning the following matters:

a. the current number of families living in all 23 high-rises at Cabrini-Green and the total number of vacancies in these buildings;

b. the location, by category of housing, of families relocated from 1150-60 North Sedgewick, 1158 North Cleveland, 1117 North Cleveland, and 1157-59 North Cleveland;

c. currently available, anticipated, or possible sources of funds for the redevelopment of Cabrini-Green;

d. all available data and reports concerning the viability of Cabrini-Green compiled in accordance with §202 of the Omnibus Rescission and Appropriation Act of 1996 and HUD's Notice, Assessment of the Revitalization Potential of Certain Public Housing Required by law, 61 Fed. Reg. 50,532 (Sept. 26, 1996) and Standards A-E thereof; and

e. all other discovery sought in plaintiff's previously filed written discovery requests, as agreed following the parties' Local Rule 12(k) conferences.

2. The LAC and City Defendants shall similarly produce information responsive to the outstanding discovery on them, respectively, as agreed following the parties' Local Rule 12(k) conferences.

3. The City Defendants shall produce information responsive to paragraph C.1.c above, no later than seven days prior to the first settlement meeting.

4. The City Defendants and the CHA Defendants shall produce any and all information used as the basis for the percentages of public housing proposed in the NNRI no later than seven days prior to the first settlement meeting.

D. Settlement process

1. Commencing September 15, 1997, the parties and their respective lawyers and consultants shall commence a series of six meetings at a neutral and accessible location with multiple rooms available for the parties' private use.

2. All discussions during these common meetings shall be recorded by a court reporter.

3. These six days of meetings shall take place in three two-day sessions, with approximately seven days between each session. The first day of each session shall address topics (a)-(d), as identified in paragraph B.3 above. The second day of each session shall address topics (e)-(h), as identified in paragraph B.3 above. Each topic shall be allocated approximately 2 hours per session, one half hour being allocated to each set of parties, and a final half-hour for common discussion. The topics to be discussed during each day of the sessions, the time spent on each topic, and the duration of the meetings may be modified subject to the agreement of the parties.

4. The parties recognize that the topical divisions described in paragraph B.3 and D.3. above are not absolute, inasmuch as each topic necessarily implicates some of the other topics (e.g., opportunities for increased employment affects the economic mix of tenants). Thus, the parties acknowledge that there will be some overlap among the topics.

5. In order to facilitate meaningful dialogue during the course of the settlement negotiation, each set of parties (the LAC, the CHA Defendants, and the City Defendants) shall each have a maximum of four participants, exclusive of the lawyers of record in the litigation, in the room at any one time, with the understanding that this numerical limitation shall be flexible and may be waived if the presence of additional persons is necessary to proceeding efficiently with any particular aspect of the process.

6. In order to provide focus to the oral discussions, each set of parties shall exchange with the other set of parties, two days prior to the commencement of each two-day session, written Statements of Position outlining their current position with respect to each of the issues

on the table. Each set of parties shall also indicate, along with its Statement of Position, who it expects its participants to be for each upcoming session.

7. The discussions shall not be formal presentations of evidence, but any party may elect to present its position through one or more of the following methods or formats:

- a. witness statements;
- b. documentary materials;
- c. oral and/or written statements by counsel;
- d. any other reasonable mode of presenting information within the topical and time constraints set forth above.

8. Within ten days of the conclusion of this six-meeting process, the defendants shall prepare and circulate a report summarizing, for each topic, the agreements reached and the disagreements that remain. The plaintiff shall have ten days to circulate to defendants a response to the defendants' report.

9. The parties may, by agreement, provide for extension of this settlement process as appropriate. The parties may, by agreement, moreover, provide for ongoing settlement discussions with respect to any one or more of the eight issues set forth in paragraph B.3. above, and may provide for a modified format for such continued negotiations.

E. Stay of Proceedings

Based on the foregoing, the parties agree to stay all lawsuit proceedings from September 15, 1997 through October 10, 1997, and an extension of the discovery deadline to December 15, 1997, the disclosure of experts to January 1, 1998, the deadline for expert witness depositions to February 1, 1998, the deadline for rebuttal expert witness disclosure to March 1, 1998, and the

deadline for rebuttal expert witness depositions to April 1, 1998, subject to the agreement of the Court.

F. Miscellaneous Provisions

1. This Agreement shall not be construed as an admission by the defendants that they have violated any legal duty owed to the LAC or any other person or entity;

2. The headings, captions and arrangements used in this Agreement are for convenience only, and shall not be deemed to limit, amplify, or modify any terms or affect any meanings;

3. The terms of this Agreement constitute the entire understanding of the parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall have any legal relevance to the construction of this Agreement.

4. Failure of any party to this Agreement, during the course of the settlement process set forth above, to come to a substantive resolution concerning any issue set forth in paragraph B.3 above, despite best efforts, shall not constitute violation of the Agreement.

5. The parties may enter into an agreement with respect to any of the specific topics set forth in paragraph B.3 above, prior to the conclusion of the full settlement process.

6. The parties agree that, to help ensure candid and free airing of the issues on the table during the course of these sessions, the parties will treat the substance of the discussions as confidential and will not, except by mutual agreement, make statements to the public concerning anything said during any of the sessions, nor disseminate to the public the transcripts of the proceedings. This assurance of confidentiality is not meant to limit or affect the ability of the

parties to make reference to the discussions in court proceedings to the extent allowed in paragraph F.7.

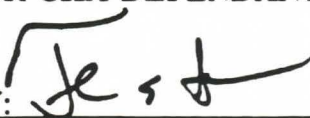
7. Except for information exchanged as set forth in paragraph C, above, no information communicated in the process of these settlement discussions shall be used as evidence in the lawsuit, save to the extent it is relevant and probative with respect to plaintiff's claims relating to alleged lack of meaningful consultation or alleged lack of ability to participate in the process of planning the Cabrini-Green redevelopment. Such relevant and probative evidence shall not include any substantive communications made during the settlement discussions, but may include, among other things, (a) this agreement, (b) the topics addressed during the settlement discussions, (c) the participants, (d) the meeting dates, (e) the length of meetings, (f) the location of meetings, (g) neutral, non-argumentative summaries of the positions taken by the parties at the end of each daily session (as orally articulated by the lawyers before the court reporter with the parties excused), and (h) any additional items to which the parties may stipulate.

FOR PLAINTIFF

BY: 

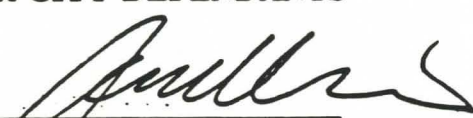
Richard M. Wheelock
Attorney for Plaintiff

FOR CHA DEFENDANTS

BY: 

Thomas E. Johnson
Attorney for the CHA Defendants

FOR CITY DEFENDANTS

BY: 

Andrew Mine
Attorney for the City Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michael W. Dobbins
CLERK

Office of the Clerk

Thomas Edward Johnson
Johnson, Jones, Snelling & Gilbert
36 South Wabash Street
Suite 1310
Chicago, IL 60603

Case Number: 1:96-cv-06949

Title: Cabrini-Green Local v. CHA

Assigned Judge: Honorable David H. Coar

MINUTE ORDER of 4/8/97 by Hon. David H. Coar : Pretrial conference set to 5/29/98 at 3:00 p.m. Trial set to 6/15/98 at 10:00 a.m. Rule 16(b) scheduling conference held. Rule 26(a)(1) disclosures by 5/1/97. Amendments or joinder of parties on or before 6/1/97. Fact discovery cut-off 10/1/97. Disclosures of experts by 11/1/97. The parties will be permitted three (3) experts per side, however the court reserves the right to limit defendants' experts. Expert discovery to close on 1/1/98. The parties may depose the other side's expert any time prior to 1/1/98. The parties to disclose any rebuttal expert any time prior to 2/1/98. The parties have until 3/1/98 to depose the opposing party's rebuttal expert. Dispositive motions to be filed on or before due 2/1/98. Final pretrial order to be submitted 5/29/98. All discovery to be referred to Magistrate Judge. For the reasons stated on the record, the court will not get involved in mediation, but the parties may pursue. Mailed notice

This docket entry was made by the Clerk on April 10, 1997

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

SSA 186

Exhibit B

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge If Other than Assigned Judge	Rebecca R. Pallmeyer
CASE NUMBER	96 C 6949	DATE	5/1/98
CASE TITLE	Cabrini-Green Local vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ☒ [Other docket entry] Settlement conference convened. Parties reach agreement in principle to settle case, subject to drafting agreement and seeking necessary court approval. Parties expect to present draft agreement to court on or before May 8, 1998. All dates now set for briefing of summary judgment stand. Defendant's motion to bar expert testimony by professor Siim Soot (Doc. No. 123-1 & 2) is stricken without prejudice.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☒ Copy to judge/magistrate judge.	courtroom deputy's initials Date/time received in central Clerk's Office	8 + 7 notices number of notices date docketed docketing deputy initials 5/4/98 date mailed notice mailing deputy initials	Document Number
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EXHIBIT

B

SSA 187

CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday,
August 6, 1998, I caused a copy of the foregoing AFFIDAVIT OF RICHARD
WHEELOCK to be served by hand delivery and facsimile (without exhibits) on counsel
listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower

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

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

NOTICE OF FILING

TO: Alexander Polikoff, Esq. BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST 17 E. Monroe Street, Suite 212 Chicago, Illinois 60603	Michael L. Shakman, Esq. Barry A. Miller, Esq. MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE 208 South LaSalle Street, Suite 1100 Chicago, Illinois 60604
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PLEASE TAKE NOTICE that on Thursday, August 6, 1998, we filed with the clerk of the District Court for the Northern District of Illinois, AFFIDAVIT OF BRENDA GRAUER a copy of which are attached hereto and served upon you.

Dated: August 6, 1998
Chicago, Illinois



Nancy Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive, Suite 2100
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CHICAGO HOUSING AUTHORITY

AFFIDAVIT OF BRENDA L. GRAUER

I, BRENDA L. GRAUER, being duly sworn, depose and state as follows:

1. I am a staff attorney at the Legal Assistance Foundation of Chicago. I have been employed there since January 5, 1995. I am one of the attorneys representing the Cabrini-Green Local Advisory Council in Cabrini-Green LAC v. CHA et al., 96 C 6949.

2. During the course of the litigation, I took the deposition of Valarie Jarrett, the Executive Vice-President of The Habitat Company. The deposition began on or about November 11, 1997 and was continued and concluded on December 15, 1997. The deposition was conducted at the offices of the Legal Assistance Foundation of Chicago located at 111 W. Jackson, Suite #300, Chicago, Illinois.

3. On December 15, 1997, Ms. Jarrett, her counsel, Edward Feldman, and myself were seated in the LAFC conference room awaiting the arrival of counsel for the CHA and City of Chicago. While we were waiting, Ms. Jarrett explained that she was under the impression that the lawsuit had settled. I explained to her that while the parties were conducting settlement negotiations nothing had, as yet, been resolved.

4. Ms. Jarrett further inquired as to the reason for the delay in settling the case. I told her that the Cabrini LAC and CHA had reached agreement on most issues but that negotiations with the City seemed to be at an impasse.

5. At that point Ms. Jarrett told me to, "let her know if there was anything she could do."



BRENDA L. GRAUER

Subscribed and sworn to before me

this 6th day of August, 1998.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Thursday,
August 6, 1998, I caused a copy of the foregoing AFFIDAVIT OF BRENDA
GRAUER to be served by hand delivery and facsimile (without exhibits) on counsel
listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Michael L. Shakman, Esq.
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Nancy S. Eisenhower

The Horner “precedent” is simply no justification for what the CHA has attempted to do in the Cabrini redevelopment process. As set forth in Alexander Polikoff’s Affidavit submitted with plaintiffs’ brief, both the Receiver and plaintiffs were brought to the Horner negotiating table nearly six months before a final deal was struck and presented to the Courts. And even then, Mr. Polikoff objected that he and the Receiver had been informed too late and put in the position of naysayers, even though no final deal had yet been reached. The Horner process provided more opportunity for the Receiver’s involvement, but was itself flawed, because many commitments had already been made by CHA to the resident group, some of which the Receiver and the plaintiffs objected to because they were excessive and too rigid – as subsequent events have proven.

Confusion. CHA professes confusion, despite clear and repeated orders of the Court. CHA first claimed it needed clarification last September concerning whether HOPE VI activities must be consistent with the 1969 Judgment Order and subsequent revitalizing principles. On February 23, 1998 the Court ruled that the clear language of the Judgment Order applied to HOPE VI. The CHA claims this clear ruling generated new doubts. It has contended in subsequent briefs and in oral argument that CHA was unclear under the Court’s February 23 ruling whether the 1987 Receivership Order applied to HOPE VI. The CHA resolved its purported confusion by (i) saying on March 10 it would go ahead with development despite the Court Order, daring the Receiver to “try and stop me,” (ii) excluding the Receiver from the preparation of a HOPE VI application due June 29, 1998, and (iii) failing to answer letters in early May from the Receiver and its counsel. This led to the plaintiffs’ motion for further relief of March 18, 1998 and the Receiver’s Motion of May 18, 1998, resulting in the Court’s clear oral admonitions to CHA on May 19, see Rec. Mot. Ex.E and the Court’s orders of May 19, 21 and 22. Now the CHA finds those orders also fraught with ambiguity. It goes further and claims that the desegregation obligations in the 1969 Judgment Order are ambiguous – and unenforceable. CHA Br. 17-21.

CHA identifies a total of six orders it finds ambiguous. However, CHA does not claim any uncertainty over its June 16, 1998 written promise to advise the Receiver of proposed agreements with tenants, see Rec. Mot. Ex.K, a promise the CHA now admits it broke, CHA Br. 12 n.4, which led to the Receiver learning of the proposed Cabrini Agreement from the newspaper on July 29, 1998.

This Court's orders have been clear and precise. The 1987 Receivership Order clearly transferred authority from the CHA to the Receiver to negotiate and to make agreements concerning the development of new, non-elderly CHA housing. From 1987 until well into the 1990's the CHA had no difficulty understanding that Order.^{1/} Yet over the past year the CHA has basically disregarded the Receivership Order, conducted such negotiations concerning Cabrini and purported to make an agreement that is plainly within the Receiver's responsibility under the Order. If CHA thought the Order ambiguous, it was incumbent upon it to seek clarification in advance and permission to negotiate. It was not free to adopt its own interpretation, negotiate and make promises to CHA tenants when it had no right to do so, and then ask for ratification after the fact. See pp. 18-19 below.

The CHA has, in fact, understood this Court's orders and simply ignored them, as evidenced by Mr. Shuldiner's statements of March 10, which have never been denied. At the March 10 meeting Mr. Shuldiner told the Receiver that "he did not agree with your [the Court's] February 23 Order, that he opposed the Receivership, and that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals." Rec. Mot. ¶6. Those statements evidence a disregard of Court Orders, not confusion.

^{1/} As the Court found on May 19: "everyone else involved in this litigation through the years, other than Mr. Shuldiner, has had no problem getting along with the Receiver." 5/19 Tr. 7, Rec. Mot. Ex.E.

But the CHA's intent, whether it has been acting in good faith or bad faith, is irrelevant to the question of what should be done now with respect to the redevelopment of Cabrini, and other projects that CHA may now be pursuing unilaterally. The fact remains that the CHA has violated the Court's clear orders. The relief requested by the Receiver in its Motion should be granted to ensure that CHA's purported confusion does not lead to further violations of Court orders.

I. THE CHA'S TIMELINESS AND HORNER ARGUMENTS ARE INCORRECT AND IRRELEVANT.

A. To the Extent Horner Events Are Relevant, the "Precedent" Supports the Receiver's Emergency Motion.

CHA attempts to justify its behavior by citing the procedure allegedly followed for approving the Horner consent decree in 1995. CHA claims that (i) the procedure it has followed in Cabrini is the same, and (ii) neither the Receiver nor the Gautreaux plaintiffs objected to the Horner procedure. Thus, argues CHA, "how could CHA have known" that anyone would object to its actions? CHA Br. 2. (This argument, of course, conflicts with another CHA argument – that it intended to seek an order removing the Receiver entirely from the Cabrini redevelopment process. CHA Br. 24-25.) The CHA's argument is wrong legally and factually.

1. The CHA was obligated to obey the Receivership Order regardless of what occurred with respect to Horner.

CHA knew that it was obligated to bring the Receiver in as soon as new housing development became part of the proposed settlement: the Receivership Order unequivocally assigned to the Receiver negotiating authority for the development for new non-elderly housing. Rec. Mot. Ex.A ¶2(b). The CHA was obligated to obey that Order regardless of what had transpired with Horner. And the Receiver reminded the CHA of that duty repeatedly, and expressly objected to the CHA making agreements with tenants that involved new housing development. See 6/12/98 letter, Rec. Mot. Ex.J, at 4, quoted in Rec. Mot. ¶30.

2. Horner was different because the Receiver and plaintiffs were included earlier in the process.

The Polikoff Affidavit submitted by the Gautreaux plaintiffs (with their reply) recites important facts establishing that the CHA's "Horner precedent" is no support for the CHA's actions at Cabrini. The Horner plaintiffs and CHA did negotiate unilaterally for a time, but brought the Receiver and Gautreaux plaintiffs into the process before a final deal was struck. After being brought to the table, nearly six months of further negotiations ensued and the draft decree was changed – and the Receiver believes somewhat improved – because of Gautreaux input.^{2/} As presented to the Court in March 1995 the Horner agreement provided that the Receiver would perform the development functions, and thus it was consistent with the Receivership Order. Then, after the initial agreement was approved by both this Court and Judge Zagel upon recommendation of all of the parties, including the Receiver and the Gautreaux plaintiffs, several more months of negotiations ensued, leading to the Amended Decree that was approved and remains in place. See Polikoff Aff't. Had the Horner precedent, however flawed, been followed at Cabrini, the Receiver would have been brought in months ago, and would not have learned from the *Chicago Tribune* that a final deal had been struck and the parties were poised to bring the deal to Judge Coar.

3. Even at Horner the Receiver was included too late, and the Gautreaux plaintiffs objected.

The CHA's statement – that neither the Receiver nor Gautreaux plaintiffs objected "in hearings before this Court as to how the matter was handled," CHA Br. 2 (our emphasis) – is misleading. For there were objections made to CHA outside of Court. As the Polikoff Affidavit states, Mr. Polikoff objected strenuously to CHA about not being brought into that negotiating process sooner. He pointed out that this put him in the difficult position of being a "naysayer," as

^{2/} There was pressure at the time to limit changes to the Agreement in the belief that delay might result in losing federal funding.

Mr. Polikoff told the Court on July 30. (A copy of the July 30 transcript is attached hereto as Exhibit A.) Thus, contrary to CHA's brief, CHA knew that its actions in Horner were inconsistent with its Gautreaux obligations and that those actions were objected to by the Receiver and plaintiffs.

In sum, the Horner experience supports the Receiver's current position. No final agreement was presented to either Court without the Receiver's active participation. The proposed Horner Decree recognized and incorporated the proper function of the Receiver.^{3/} And Mr. Polikoff had objected to not being brought in sooner.

B. The Receiver and Plaintiffs Came To This Court Promptly
After Learning That the Cabrini Negotiations Concerned
Matters Subject To the Receivership Order.

CHA relies heavily on the fact that the Receiver was aware of the existence of the Cabrini lawsuit and of settlement negotiations. CHA Br. 2-4 & Grauer/Wheelock Aff'ts. CHA seems to suggest that this knowledge required the Receiver to take action, and that CHA is somehow excused from its affirmative obligations to have included the Receiver. The CHA's analysis is again both factually and legally flawed.

1. The Receiver did not know that the substance of the
negotiations concerned a plan for development of new public housing.

While the Receiver knew about the existence of the lawsuit and of settlement negotiations, it did not know (and CHA does not contend otherwise) about the substance of the negotiations or, more importantly, about the fact that negotiations had included details of new housing development. See 8/10/98 Jarrett Aff't ¶¶30-32, Ex.B hereto. Indeed, as CHA emphasizes, the negotiations were subject to a Confidentiality Order. No party informed the Receiver of the substance of the negotiations. CHA should have requested that the Receiver be brought to the table as soon as new

^{3/} The proposed Cabrini Decree excludes the Receiver entirely, as it purports to designate a developer from St. Louis as "development manager." A copy of the proposed Cabrini Decree is attached hereto as Exhibit C.

housing development matters were being discussed. If that required a modification of the Confidentiality Order, it was CHA's obligation to ask Judge Coar to do so. It was not the Receiver's responsibility, having been improperly excluded, to have to play detective to figure out what was going on.

2. Settlement of the Cabrini lawsuit did not necessarily have to include matters within the Receiver's jurisdiction.

It was neither evident to the Receiver nor necessary that the Cabrini lawsuit settlement negotiations included new housing development matters within the Receiver's jurisdiction. Much of the Cabrini lawsuit concerned matters outside the receivership, particularly tenant objections to demolition and to CHA's alleged failure appropriately to consult with tenants. The Cabrini plaintiffs did not seek a mandatory injunction compelling implementation of a specific development proposal.^{4/} The case could have been resolved, for example, either in Court or by settlement, with an injunction against demolition until tenants were adequately consulted and a plan was negotiated consistent with governing law. The Receiver could properly have been brought in at that point.

3. The Receiver timely advised the Court and the parties of its proper role.

CHA incorrectly states that the Receiver did not complain about being excluded until it filed its motion on July 30. CHA Br. 2. But the CHA knew full well that the Receivership Order vested new housing development authority in the Receiver, and that the Receiver had repeatedly asserted such authority with respect to Cabrini and elsewhere. Consider the following undisputed facts:

^{4/} The Cabrini LAC's amended complaint seeks the following injunctive relief: (1) enjoining the CHA from implementing a City/CHA housing plan by relocating the residents of 1150-1160 N. Sedgwick and 1158 N. Cleveland, demolishing 1150-1160 N. Sedgwick before the construction of replacement housing, or demolishing 1158 N. Cleveland, 1015-1017 N. Larrabee, 1121 N. Larrabee, 1159-1161 N. Larrabee, or 500-502 N. Oak streets; (2) enjoining the CHA from failing to negotiate or consult with the LAC in planning and implementing Cabrini-Green revitalization; (3) ordering specific performance of a 1993 Memorandum of Agreement and a March 13, 1995 Agreement (neither of which sets out specific new housing development plans); and (4) enjoining the issuance of an RFP to private developers in connection with the prior City/CHA plan. See Ex.G hereto.

- The Receiver notified this Court of the dispute concerning HOPE VI development authority in an in-chambers meeting with the parties in July 1997, and there was a flurry of correspondence on the subject during the same period. See 3/31/98 Miller Aff't ¶¶6-12 & letters attached thereto; 3/31/98 Levin Aff't ¶¶25-35 & letters attached thereto.

- When Habitat employees were subpoenaed for depositions in 1997, Barry Miller, one of the attorneys for the Receiver, spoke with Thomas Johnson, who represents CHA in the Cabrini action, and discussed the background of the suit. Mr. Miller stated that the Receiver believed it was entitled to conduct all development at Cabrini, and had been doing so until excluded by CHA. Mr. Miller added that he understood CHA was currently taking the position that Habitat did not have that authority, and that the authority was disputed between CHA and the Receiver. 8/10/98 Miller Aff't ¶28, Ex.D hereto.

- When Valerie Jarrett of Habitat was deposed in November 1997, she was questioned about the Receiver's role at Cabrini and testified that (a) "Judge Aspen has appointed Habitat and Daniel Levin as the receiver for the nonelderly public housing developed by public housing that is developed in the city," Jarrett Dep. 7, Ex.H hereto, (b) that Habitat had previously functioned as "development manager" at Cabrini "in our capacity as receiver," id. 48, (c) that Habitat performed that role "[b]ecause we are the receiver for the Housing Authority," id. 48-49, and (d) that "CHA doesn't get to select the development manager" because "Judge Aspen appointed . . . the receiver." Id. 49. These statements put all parties to that case on actual notice that the Receiver was responsible for new, non-elderly CHA housing development. (The non-CHA parties already had constructive notice of the 1987 Receivership Order.)^{5/}

- The Receiver's Statement filed in December 1997 concerning the CHA's motion to clarify the Injunction with respect to HOPE VI clearly stated the Receiver's position that HOPE VI housing development activities are subject to the Receivership.

- This Court's February 23 Order made clear that HOPE VI housing development was subject to the Court's desegregation remedies.

^{5/} Although the non-CHA parties had notice of the Receiver's role and position, the primary responsibility for bringing the Receiver to the negotiating table was that of the CHA. The CHA's failure to do so was unfair to the Cabrini plaintiffs and to the City, who are now experiencing unfortunate delay due to the CHA's failure to discharge its obligations.

- Mr. Shuldiner's statements on March 10, 1998 that he was going to develop Cabrini in partnership with the tenants regardless of the Gautreaux orders and that the Receiver should "try to stop him," see Rec. Mot. Ex.C at 1, was the first notice to the Receiver that the CHA was negotiating over new housing development to settle Cabrini. Jarrett Aff't ¶30, Ex.B hereto. The Receiver's response was immediate. It wrote the Court three days later asking for instructions, and plaintiffs filed their motion for further relief five days after that. The plaintiffs specifically asked for, inter alia, an order directing CHA to cease negotiating unilaterally with or making commitments to tenants concerning new non-elderly housing development. Rec. Mot. at 5 ¶8. Several portions of the uncontradicted affidavits submitted by the Receiver discussed in detail the CHA's improper attempts to usurp development authority at Cabrini. See, e.g., 3/31/98 Hickman Aff't ¶¶18-53.

- The Court's orders of May 19, 21 and 22, as well as its statements in Court on May 19, should have again made clear to CHA that the Receivership Order was in effect, that it means what it says, that cooperation with the Receiver was required, and that the Receivership embraced new non-elderly housing development under HOPE VI. Those orders primarily concerned the pending ABLA application, but the Court's reaffirmation of the Receivership Order and its application to HOPE VI clearly covered Cabrini.

- The Receiver asked CHA in writing on June 12 for copies of all agreements or draft agreements between CHA and tenants. CHA promised to give the Receiver such documents, a promise CHA now admits it breached, CHA Br. 12 n.4.

- The Seventh Circuit denied the CHA's stay motions on May 29, which left this Court's orders as the binding law of the case indefinitely. See, e.g., Sassower v. American Bar Association, 33 F.3d 733, 735 (7th Cir. 1994) ("Until stayed or set aside on appeal, an injunction must be obeyed").

Given this detailed history, the CHA cannot credibly complain about lack of diligence by the Receiver or plaintiffs, or lack of notice concerning the Receiver's position concerning the scope of the Receivership Order. And if the CHA had fulfilled its June 16 promise to inform the Receiver of the proposed Cabrini agreement, the Receiver would have been able to bring this issue to the Court sooner.

C. The Alleged Lack of Timeliness Does Not Excuse
CHA From Its Duty to Have Obedied This Court's Orders in the First Instance.

Even if CHA's timeliness argument had factual merit, and it does not, CHA has no right to make it. CHA cites no law, and we are aware of none, holding that a party may be excused from disobeying a Court order simply because one of the other parties did not complain to the Court about the violation in a timely fashion. And CHA's timeliness argument is focused on the past. It provides no answer to CHA's obligations to comply on a going-forward basis.

CHA's argument is in the nature of laches, since it alleges that it relied to its detriment on alleged inaction by other parties. But absent "compelling circumstances," laches is unavailable against a governmental body. See, e.g., Van Milligan v. Fire & Police Comm'rs, 158 Ill. 2d 85, 90-91, 630 N.E.2d 830, 833 (1994). By virtue of being a court-appointed officer charged with carrying out certain of the duties of CHA, the Receiver is entitled to invoke this rule. Moreover, a "delay may be excused upon a showing that the party asserting the defense [of laches] substantially contributed to the delay through concealment, misrepresentation, unfilled promises, or any other inequitable conduct." City of Reading v. Austin, 816 F. Supp. 351, 367 (E.D. Pa. 1993). That is exactly the case here, as CHA contributed to the delay by, for example, not informing the Receiver of the substance of the negotiations, despite being asked to do so, and by admittedly violating the promise set forth in CHA counsel's letter of June 16, 1998. See also Pfeiffer v. CIA, 60 F.3d 861, 865 (D.C. Cir. 1995) (one with unclean hands may not assert defense of laches).

D. The Receiver Has Standing to Bring the Pending Motion,
and this Court Has Broad and Inherent Power To Enforce Its Prior Orders.

The Court should reject the CHA's argument that the Receiver does not have standing or authority to seek relief from the Court against CHA. The CHA argues that the Receivership Order

and subsequent orders did not vest the Receiver with such a right. The simplest answer is that this Court expressly directed the Receiver to bring future motions like this in its Order of May 21.^{6/}

The Receiver had both the authority and the duty to bring its motion even without that direction from the Court. The Receivership Order makes that plain. See Order at 7 ¶9 (Order does not preclude “Receiver . . . from asserting any claims against . . . any other party hereto for any matter in connection with the scattered site program or otherwise”); id. at 8 ¶12 (“Court retains jurisdiction of this matter for all purposes, including enforcement”). None of the authority cited by CHA addresses the pertinent issue: Does a receiver have the authority to ask for assistance from the Court appointing it when the entity in receivership is violating the receivership order and interfering with the receiver’s exercise of its court-appointed duties? Of course it does. The Receiver has duties to report to the Court and a duty to ask for assistance. Any other rule would emasculate the ability of a receiver to carry out the job the Court appointed it to perform, and would invite mischief from the party in receivership. This Court has extremely broad authority concerning administration of its receivership,^{7/} and enforcing compliance with its previous orders. See Receivership Order at 1 (this Court “exercise[s] its inherent power to effectuate its own orders and to so appoint said receiver”); Waffenschmidt v. McKay, 763 F.2d 711, 716 (5th Cir. 1985) (“Courts possess the inherent authority

^{6/} After ruling that the Court’s May 19 Order reaffirming the CHA’s duty to cooperate in the preparation of the ABLA HOPE VI application rendered plaintiffs’ motion for further relief moot, the Court held: “To the extent that the plaintiffs’ motion raises issues unrelated to the Receiver’s role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court’s attention if it so chooses.” May 21 Order.

^{7/} A “district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad”; similarly, “a district judge simply cannot effectively and successfully supervise a receivership and protect the interest of its beneficiaries absent broad discretionary power.” SEC v. Hardy, 803 F.2d 1034, 1037-38 (9th Cir. 1986). Accord 13 Moore’s Federal Practice §§66.06[4][a], 66.07[2]-[3] (3d Ed. 1998).

to enforce their own injunctive decrees”); National Law Center on Homelessness & Poverty v. United States Veterans Admin., 765 F. Supp. 1 (D.D.C. 1991), aff’d, 964 F.2d 1210 (D.C. Cir. 1992).^{8/}

E. No Evidentiary Hearing is Required.

CHA has no right to an evidentiary hearing concerning the Receiver’s Motion, and there is no reason for the Court to conduct one. Notably absent from CHA’s brief is any suggestion as to what material facts are in dispute. There are none.

The Receiver’s Motion raises three general issues: (1) What are the requirements of the Court’s prior orders; (2) Has the CHA violated those Orders by negotiating the terms in the proposed Cabrini consent decree concerning new, non-elderly housing development or by engaging in other housing development activities; (3) If so, what is to be done to correct the violation and prevent similar violations in the future? No hearing is required to resolve these questions.

No evidence is required as to the Court’s prior orders. They are clear on their face. This Court requires no extrinsic evidence to know what it meant in entering the orders. Cf. Harris v. Rivera Cruz, 20 F.3d 507, 511 (1st Cir. 1994) (“[a] judgment unambiguous on its face is construed as a writing without resort to extrinsic evidence”).

^{8/} The National Law Center Court stated, 765 F. Supp. at 6:

A court has the authority to issue further orders to enforce its prior injunction. *Hutto v. Finney*, 437 U.S. 678, 687, 98 S.Ct. 2565, 2571-72, 57 L.E.2d 522 (1978). In making such a decision, a court may take into account the compliance with the court’s previous orders and the need for a further order to prevent “inadequate compliance” in the future. *Id.* As with the initial injunction, however, an order granting further injunctive relief must also be “narrowly tailored to remedy the specific harm shown.” *Aviation Consumer Action Project v. Washburn*, 535 F.2d 101, 108 (D.C. Cir. 1976).

The relief requested in the Receiver’s Motion derives from the Court’s prior Orders and is narrowly tailored to remedy the CHA’s violations of the Court’s orders.

No evidence is required as to CHA's violations of the Court's orders. While CHA disputes the meaning of those orders and whether it knowingly violated those orders, there is no material dispute as to what the CHA did. Its actions are not in dispute. Its intent is immaterial to the pending Motion. Whether it violated the Court's orders innocently, negligently, recklessly or intentionally, it violated the Orders. The CHA's actions are set forth in the various affidavits cited in the Receiver's Motion and have never been contradicted by the CHA. The most important fact is the CHA's negotiation of and agreement to terms in the proposed Cabrini decree concerning new housing development. The CHA admits doing that. Either that violates the Receivership Order and other orders or it does not. No evidentiary hearing is required to make that determination.^{2/}

Finally, no hearing is required for the Court to decide what relief is appropriate to enforce the Receivership Order, and CHA identifies no disputed factual questions on this issue either.

This is not a contempt proceeding, civil or criminal. The Receiver only seeks relief that will allow it to effectuate the Receivership Order and that will prevent further violations. But even in the context of contempt proceedings there is no right to an evidentiary hearing when there is no dispute of material fact. See D. Patrick, Inc. v. Ford Motor Co., 8 F.3d 455, 459 (7th Cir. 1993) (internal citation omitted):

because the contempt proceeding is concerned solely with whether or not the respondent's conduct violates a prior court order, the parties cannot reasonably expect to litigate to the same extent that they might in a new and independent civil action.

...

The district court therefore acted reasonably in cutting to the chase. "Once it becomes clear that additional proceedings are pointless, the court should bring the case to a close."

^{2/} The CHA cites a disagreement between it and the Receiver over whether the CHA provided sufficient cooperation to the Receiver in connection with the June 1998 HOPE VI application regarding ABLA. CHA Br. 10. The CHA also claims that it reached agreement with the Receiver on the "content" of that application, id., a contention the Receiver disagrees with. See CHA Br. Ex.1 at 1 (6/23/98 Miller letter). But these facts are not material to deciding the Receiver's motion.

See also Rolex Watch U.S.A., Inc. v. Crowley, 74 F.3d 716, 721 (6th Cir. 1996) (“undenied accusations and uncontroverted affidavits generally may support a contempt adjudication”).

F. Since the Relief Being Sought Is Ancillary to The Court’s Prior Orders, the Standards For New Injunctive Relief are Irrelevant;
In Any Event, Those Standards Are Easily Met Here.

The Receiver’s Motion does not break new ground. It does not seek to have this Court “turn over control of all HOPE VI non-elderly housing development,” CHA Br. 5. That was already done in the Receivership Order. The Receiver seeks four categories of relief, Rec. Mot. at 1-2, and each one is firmly grounded in this Court’s Receivership Order and its four rulings of February 23, May 19, 21 and 22, 1998. Since the Receiver is only asking the Court to effectuate its prior Orders, it need not relitigate whether the prior rulings meet the elements for injunctive relief. To the contrary, the CHA once again “has the situation in reverse.” May 22 Order. The Receivership Order is the law of the case. It would be the CHA’s burden to meet the standards for modification of that Order if it were ever to make such a Motion. Until then it must comply with the Order, and the pending Motion merely seeks to enforce compliance. In any event, those standards for injunctive relief are easily met here.

1. The relief is tailored to and grounded in the Court’s prior Orders.

The Receiver first asks that the Court order CHA to “cease all further unilateral non-elderly housing development activities without prior approval of the Court.” Rec. Mot. at 1 ¶(1). This request is grounded in (i) the Receivership Order’s definition of the “scattered site program” as including “all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency” of this case, and (ii) paragraph 2 of the Receivership Order, which gives the Receiver “all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program including,” inter alia, site selection and acquisition, submission to HUD of applications for funding and development

programs, construction and rehabilitation of dwelling units and the design and specifications therefor, and negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program. The Receiver's Motion sets forth undisputed facts showing that the CHA has been conducting just these activities at Cabrini and elsewhere – activities that are the Receiver's responsibility under the Receivership Order. The Receiver's Motion asks that CHA be ordered to stop engaging in activities delegated to the Receiver and therefore stop violating the Order. Treating such a motion as a new proceeding for injunctive relief is unwarranted.

The Receiver's second request for relief – that “CHA turn over control of all HOPE VI non-elderly housing development to the Receiver (including but not limited to operating and financial control),” Rec. Mot. at 1 ¶(2) – is grounded again in the provisions of the Receivership Order that already give the Receiver this authority. While the CHA contends that the Order does not embrace HOPE VI, CHA Br. 14-15, the Court's four rulings in February and May rejected that contention and the rulings are the law of the case. New housing development under HOPE VI is under the jurisdiction of the Receiver.

The third request for relief – that the CHA disclose to the Receiver information about its activities, including agreements it has made or has been negotiating with tenants or others concerning new housing development – is also grounded in the provisions of the Receivership Order giving the Receiver this authority and in the CHA's duty to cooperate set forth in paragraph 7 of the Order. That paragraph already requires CHA to give the Receiver “full access to all information, records, documents, files relating to the scattered site program.” The third request for relief does no more than implement terms of the Receivership Order.

The fourth category of relief – that CHA be enjoined from taking steps to implement agreements with tenants (including Cabrini) concerning the development of non-elderly public housing without advance written consent of the Receiver or the Court – is grounded, again, in the

facts that (i) the Receivership Order transferred such authority to the Receiver and (ii) CHA has been engaging in such steps in violation of the Order.

2. The criteria for injunctive relief are easily met.

CHA identifies only one area in which the criteria for injunctive relief are allegedly not met – the balance of harms. CHA Br. 5-6. It implies that the Receiver is motivated by an interest in earning a large fee, that such funds will be “diverted” to the Receiver, and it contends that the Receiver lacks experience “in dealing with issues beyond the construction of housing.”

A few clarifications are in order with respect to the Receiver’s fee. First, the fee is always subject to the review and approval of this Court. Second, the Receiver certainly wants to be paid a reasonable fee for its services, but it is not bringing this Motion to gain fees. Third, the proposed Cabrini agreement provides for hiring a private development manager other than the Receiver, who presumably would not work without a fee. Fourth, the Receiver will not perform the construction, as the Court knows; there would be an extensive RFP and competitive bidding process for selecting contractors.

As for the Receiver’s alleged lack of “experience,” the Receiver does not propose to engage in matters other than the development of housing as set forth in the Receivership Order. The Receiver’s experience in such matters is extensive. That experience includes the scattered site housing developed throughout Chicago, the large redevelopment presently occurring at Horner, as well as many thousands of market-rate and subsidized units developed and managed by The Habitat Company. In addition, the CHA has contracted with Habitat (in prior, more cooperative times) for Habitat to manage several CHA properties in its non-Receiver capacity, and Habitat continues to manage those properties today.

The CHA ignores other relevant factors concerning injunctive relief, several of which the Court noted in its May 12 and 22 Orders denying CHA's stay motions:

Third, a stay may harm the plaintiffs, for if the CHA is permitted to submit a HOPE VI application without the Receiver's input, that application may violate the Gautreaux requirements and cause further unnecessary delay in the desegregation of Chicago public housing. Fourth, a stay would not be consistent with the public interest. . . . The public's interest is in the speedy desegregation and modernization of its public housing, and nothing in the CHA's motion convinces us that our order is inconsistent with these goals.

May 22 Order. See also May 12 Order (plaintiffs "have waited decades for the desegregation of public housing"). These same policies apply with respect to Cabrini. Moreover, the public has an interest in ending disobedience by public officials of Court orders. The relief requested by the Receiver would vindicate the public's interest in compliance with court orders:

Courts do not sit for the idle ceremony of making orders and pronouncing judgments, the enforcement of which may be flouted, obstructed, and violated with impunity, with no power in the tribunal to punish the offender. [Federal] courts, equally with those of the state, are possessed of ample power to protect the administration of justice from being thus hampered or interfered with.

Waffenschmidt, 763 F.2d at 716 (internal quotation omitted).

II. THIS COURT'S ORDERS ARE CLEAR. CHA'S
NEGOTIATION OF THE PROPOSED CABRINI
AGREEMENT VIOLATED THOSE ORDERS.

Much of CHA's Brief is devoted to arguments over how the Court's prior orders are allegedly ambiguous and require further clarification. As CHA portrays it, the Court has planted a thicket of ambiguity, and the three Orders of May 19, 21 and 22, only made the ambiguity worse. CHA identifies the following alleged problems: (i) the duty of cooperation is unclear and unenforceable, CHA Br. 8-11; (ii) the Receiver's authority concerning HOPE VI is unclear, CHA Br. 11-13; (iii) the Receivership Order conflicts with HOPE VI, CHA Br. 14-15; (iv) the Court's Orders of May 19, 21 and 22 did not clarify matters sufficiently, CHA Br. 15-17; and (v) the

Receiver has no duty or power to exercise discretion to desegregate public housing, and the duty to desegregate is “not judicially enforceable,” CHA Br. 17-21. Each of these contentions is wrong, and several of them have already been rejected by the Court and these rulings are the law of the case.

At the outset, the Court should reject the notion that its orders are ambiguous merely because CHA says so or because CHA and the Receiver have disagreed about them. “What the injunction actually says -- not what the parties think it ought to have said -- controls subsequent proceedings in contempt.” Scandia Down Corp. v. Euroquilt, Inc., 772 F.2d 1423, 1432 (7th Cir. 1985). Cf. Emergency Medical Care, Inc. v. Marion Memorial Hosp., 94 F.3d 1059, 1061 (7th Cir. 1996) (“the fact that the parties disagree over the precise meaning of a contractual provision does not render the contract ambiguous”); Community Heating & Plumbing Co. v. Kelso, 987 F.2d 1575, 1579 (Fed. Cir. 1993) (same).

A. CHA Has Violated Clear Terms of the Receivership Order.

When one strips away CHA’s rhetoric and reviews the Receivership Order, the simplicity of the present dispute is very simple. As described above, the Receivership Order transferred to the Receiver a broad array of powers concerning CHA’s non-elderly housing development. Those powers included matters such as site selection, design, and “negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program.” Order at 3. By negotiating, and making promises to the Cabrini LAC concerning the redevelopment of Cabrini housing, CHA was acting in violation of the Receivership Order. The proposed decree itself is irrebuttable evidence of the violation.

As noted above, it is no answer that CHA planned to seek a waiver from this Court after-the-fact. CHA Br. 24-25. The Court vested such negotiation authority in the Receiver. Once the Cabrini negotiations turned to housing development matters (as opposed to matters of demolition, consultation or social programs), CHA was obligated (i) to inform the other parties that it had no

authority to negotiate those issues, and (ii) either bring the Receiver to the table or seek an immediate waiver or modification of the Receivership Order. CHA cites no authority supporting what it did: violate the Receivership Order for months by engaging in negotiation of issues subject to the Receivership Order, and then ask for the Court's blessing afterward.^{10/}

It is also not correct to suggest that the Receiver is claiming an exclusive power to defend the Cabrini litigation and negotiate the proposed decree. CHA Br. 21-22. That is obviously not the Receiver's position. As noted above, the Cabrini lawsuit involved several matters outside the scope of the Receivership, and the CHA was a proper defendant. It had every right to defend the action vigorously and to negotiate terms of a settlement. The Complaint itself did not seek mandatory relief concerning new housing development, and it was certainly a possibility that the CHA could have settled the lawsuit without exercising the Receiver's authority. But CHA's right to negotiate was limited to those terms about which it had the authority to negotiate. Once the talks turned to matters within the scope of the Receivership, the CHA had no authority to negotiate or make promises. See cases cited in Rec. Mot. ¶50. See also Perkins v. Chicago Heights, 47 F.3d 212, 214 (7th Cir. 1995) (vacating consent decree "[b]ecause the parties to the consent decree lacked the authority to assent to it"); Dunn v. Carey, 808 F.2d 555, 559-60 (7th Cir. 1986) (validity of decree "depends on the parties' authority to give assent").

B. The Duty To Cooperate Is Enforceable.

We of course agree with CHA that injunctions should be clear. CHA Br. 11. But the broadness of the duty of cooperation set forth in the Receivership Order does not render that duty unclear or unenforceable, nor does it excuse CHA's violations of that duty.

^{10/} Moreover, the CHA's contention that the Cabrini agreement preceded this Court's May Orders is contrary to the Wheelock Affidavit it submits. Mr. Wheelock, one of the Cabrini LAC's attorneys, states that 13 drafts of the agreement were exchanged between May 5 and July 16. Wheelock Aff't ¶22.

First, the Receivership Order says more than “cooperate,” though as discussed, below, even that term alone is sufficiently definite to be enforced. It provides in paragraph 7 for “full cooperation and assistance,” it prohibits interference with the Receiver, and it mandates “providing full access to all information, records, documents, files relating to the scattered site program.” Contrary to CHA Br. 11, “cooperation” does not “depend on the eye of the beholder.” Under any view of paragraph 7, the following actions by CHA violated its duty to cooperate: (i) failing to include the Receiver in the Cabrini negotiations; (ii) breaching the promise in CHA counsel’s June 16 letter to “provide information to the receiver regarding agreements made and proposed with regard to HOPE VI projects and any other projects that involve the construction of new housing,” Rec. Mot. Ex.K at 6; (iii) refusing in that same letter to provide the Receiver with information about agreements with tenants anywhere in the city regarding rehabilitation or redevelopment, *id.*; (iv) refusing to produce to the Receiver the CHA’s prior HOPE VI applications until being compelled to do so by this Court on May 20, 1998; (v) refusing to provide the Receiver a copy of the proposed Decree without preconditions, *see* Rec. Mot. ¶39 & Ex.N; and (vi) making the statements and threats on March 10, 1998 that are set forth in Mr. Levin’s March 13, 1998 letter to the Court.^{11/}

Second, the duty to cooperate is so ubiquitous in the law that it is implied in every contract as part of the duty of good faith; a breach of that duty may be remedied:

The duty to cooperate clause in the parties' sales agency contract presents a fitting example of a contract term in which further detail is impractical and the expectation interests therein can be protected only by imposing and enforcing an implied duty of good faith and fair dealing. The parties could hardly address in their contract every instance requiring cooperation and what each would be expected to do in each circumstance. Realistically, the parties expressed their general desire to cooperate realizing the mutual success of the sales contract depended on it.

^{11/} We have set forth only these matters as they relate to Cabrini. Other violations have occurred with respect to other developments, as set forth in the Affidavits previously submitted by the Receiver.

Weiberg v. Resthaven, 1991 U.S. Dist. LEXIS 12387 (D. Kan. Aug. 28, 1991).

Finally, there is good reason for the duty to cooperate to be painted in general terms and with a broad brush, because requiring more specificity would create loopholes and invite evasion. In discussing Rule 65(d)'s requirement of specificity, the Seventh Circuit has held:

[T]he Rule does not require the impossible. There is a limit to what words can convey. The more specific the order, the more opportunities for evasion ("loopholes"). There are millions of possible logos to which Euroquilt could have turned. Any effort to identify and prohibit one million of them would have left another million or more subject to dispute.

The operative words in the preliminary injunction -- "any colorable imitation" of a particular logo -- are words of legal art. Euroquilt does not propose a formulation that would have given it better notice. "Colorable imitation" leaves a lot to the imagination, but Rule 65(d) does not require a torrent of words when more words would not produce more enlightenment about what is forbidden. When the difficulty stems from the inability of words to describe the variousness of experience, the court may prefer brief imprecise standards to prolix imprecise standards. The right to seek clarification or modification of the injunction provides assurance, if any be sought, that proposed conduct is not proscribed. Euroquilt did not seek modification or clarification from the district court; it did not ask for assurances that the third or fourth logos are permitted, even though Scandia's objection to the second logo put Euroquilt on notice that Scandia would almost certainly object to the third. Euroquilt has only itself to blame for its current predicament.

Scandia Down, 772 F.2d at 1431-32 (emphasis added). These words aptly describe the current situation.^{12/}

^{12/} The CHA mistakenly cites Original Great American Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd., 970 F.2d 273, 276 (7th Cir. 1992). There the Court did not hold that "the duty of cooperation is not enforceable through the power of contempt." CHA Br. 11. It merely discussed the fact that an injunction that requires monitoring can pose difficulties for the Court.

C. The Relationship Between HOPE VI and the
Receivership Order Is The Law of the Case, and
The Court's Three May Orders Are Clear.

1. Law of the case.

The CHA rehashes several arguments that were resolved by the Court's four rulings in February and May. For example, it reads the February 23 Order as limited to "the locational requirements of the Injunction," claiming that the intersection between HOPE VI and the Receivership Order is unclear. CHA Br. 12-13. But the 1987 Receivership Order answered those questions, as this Court confirmed in its May 19-22 Orders. The CHA ignores this Court's use, with CHA's consent, of the "revitalizing area" designation on several occasions. Similarly, in the four Orders of February and May the Court rejected the notion that the Receivership Order somehow conflicts with the HOPE VI statute, CHA Br. 14-15. These rulings are the law of the case, and should not be relitigated.

The CHA falsely accuses the Court of not giving CHA an opportunity to respond to the Receiver's May 18 motion in writing, and it incorrectly suggests that the "applicability of the Receivership Order to HOPE VI" has "never been considered by the Court." CHA Br. 14. As for CHA's process point, CHA admitted at the May 19 hearing that the Receiver's Motion raised the same issues as plaintiffs' March 18 motion for further relief, which had already been fully briefed. May 19 Tr. at 3-4 & 6, Rec. Mot. Ex.E. As for the substance point, the applicability of the Receivership Order to HOPE VI was squarely decided on May 19. The Court rejected CHA's contention that the "February 23 Order did not directly address the Receiver's status with regard to the HOPE VI program." The Court found that status was "obvious," and held that HOPE VI housing development matters "fit[] entirely within the Receiver's jurisdiction." It is hard imagine how the Court could have been clearer than that.

CHA also argues that because it has designated another development manager in the proposed decree, “the Receiver will not be the developer of the project that will design, provide specifications for and construct new public housing built with HOPE VI funds,” and that since “CHA is not the developer, the Receiver cannot be the developer.” CHA Br. 14. The CHA concludes that it “therefore” has “no duty to cooperate with the Receiver.” Id. Suffice it to say that the Receivership Order appoints the Receiver as CHA’s developer for new housing. The CHA does not get to choose the developer; the Court does. CHA cannot rewrite that Order by purporting to delegate the developer duties to a third party. It had no power to make the delegation.

2. The three May Orders.

The CHA claims confusion because (i) the May 19 Order did not “state what decisions or activities in a HOPE VI plan are ultimately the Receiver’s responsibility,” (ii) the May 21 Order says that the May 19 Order did not give “sole authority to the Receiver for HOPE VI in Chicago,” and (iii) the Court’s orders purportedly provide for “a sharing of responsibility” without setting out what is required when CHA and the Receiver “share responsibility for various aspects of a HOPE VI project.” CHA Br. 16.

Unilaterally freezing the Receiver out of the Cabrini process was not a good way to resolve the purported confusion. And the Court’s orders are simply not confusing. By indicating that the CHA and the Receiver share HOPE VI responsibilities and therefore must share information and cooperate in the preparation of a joint application, the Court was not changing the Receivership Order or assigning overlapping jurisdiction to the parties. The Court merely recognized that HOPE VI involves matters within the Receiver’s jurisdiction (housing development, site selection, etc.) and matters within the CHA’s jurisdiction (demolition, social programs, etc.). A HOPE VI application

seeking funds for activities within each party's jurisdiction would need coordination. In addition, through good faith dialogue the parties could make suggestions to each other even about matters within the other's jurisdiction.

CHA's additional contention – that the “May orders did not clarify which, if any of the responsibilities specifically identified in the Receivership Order remained the responsibilities of the Receiver in a HOPE VI project in which the Receiver is not the developer,” CHA Br. 16-17 -- repeats the CHA's false assumption that it was free to negotiate and create a project that excludes the Receiver as developer without prior permission of the Court. See above at 18-19, 21. The May Orders assume that the Receiver remains the Receiver. There is no basis for CHA to criticize the Court for failing to tell CHA what it is to do when CHA unilaterally decides to implement a project without the Receiver and without Court permission.

D. The CHA's Duty to Desegregate Is Enforceable,
and the Receiver Is Charged With Exercising
CHA's Duty Pursuant to the Receivership Order.

The CHA cannot have literally meant it when it argues “the duty to pursue desegregation is not judicially enforceable.” CHA Br. 20. That statement flies in the face of decades of jurisprudence dating back to Brown v. Bd. of Education, 349 U.S. 294 (1955), which imposes just such a sweeping duty as a matter of law on a party, like CHA, that was held to have engaged in de jure segregation. And such a duty exists regardless of what Article VIII of the Judgment Order provides. Where a state or local agency has maintained a *de jure* system of segregation, it must take necessary steps to eliminate “all vestiges of state imposed segregation,” and if “the State has not discharged that duty, it remains in violation of the Fourteenth Amendment.” Parents for Quality Education v. Indiana, 977 F.2d 1207, 1210 (7th Cir. 1992), quoting Milliken v. Bradley, 433 U.S. 267, 289-90 (1977), and United States v. Fordice, 505 U.S. 717, 727 (1992). A district court has wide discretion to fashion remedies to correct unlawful intentional racial discrimination, see Milliken, 433 U.S. at 280-81

(1977); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15-16 (1971), and, as noted above, inherent authority to enforce compliance with its own orders.

Presumably, CHA was saying something narrower, i.e., that the general command to desegregate in Article VIII of the Injunction is “vague . . . in connection with HOPE VI programs and is not enforceable by the power of contempt.” CHA Br. 20. But the command is not vague, for the same reasons that the duty to cooperate is not vague. See above at 19-21. The real issue may be that the duty to desegregate conflicts with Mr. Shuldiner’s views expressed in his statements on March 10 that “he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to ‘try to stop him.’” Rec. Mot. Ex.C at 1.

In addition, the CHA ignores the role of the Court in enforcing the duty to desegregate. This case, like any desegregation case, evolves over time as conditions change and new programs are developed. As new funding becomes available and new construction can be done, Article VIII, as well as the locational restrictions of the Injunction (or the revitalizing area concept), ensures (i) that the parties implement the programs with desegregation firmly in mind, (ii) report regularly to the Court about what has been done, and (iii) seek specific approval or guidance from the Court as needed.

Finally, CHA wrongly criticizes the Receiver for asserting that its duties include giving weight to and implementing the Court’s desegregation remedies. CHA Br. 17-18. But that is the reason for the Receivership. The Receiver was appointed in 1987 because the CHA had failed for eighteen years to do exactly that. The Receiver was given all of the power of CHA to develop new, non-elderly housing. Just as the CHA had discretion to exercise in fulfilling its duty to desegregate under the Judgment Order, so the Receiver inherited that discretion when it was appointed. No one

can seriously argue that the Receiver was appointed to be an automaton that merely looks at census tracts, selects sites in the General Area and develops housing there. This is confirmed by paragraph 2 of the Order, which provides that “all powers of CHA” includes “Making all determinations governing the scattered site program in compliance with prior and future orders of this Court,” including “site selection and acquisition (including policies respecting the location of sites and buildings to be acquired” (emphasis added). To the extent that a matter is within the purview of the Receivership Order, the Receiver has been assigned and must fulfill the Article VIII duties that the CHA had previously failed to fulfill.^{13/}

III. THE RECEIVER’S APPROACH TO THE PROPOSED AGREEMENT.

If the CHA had involved the Receiver when Cabrini settlement discussions reached the stage of considering the numbers, locations and conditions relating to the development of new non-elderly housing, the Receiver would have provided its views and would now be in a position either to recommend the resulting plan or suggest modifications. Despite the prior lack of cooperation and information, since July 30 the Receiver has met with counsel and representatives of the parties, has begun to evaluate the present proposal (which calls for the development of over 2,000 units of housing divided equally between assisted and market-rate units), and has requested additional information. See Ex. C hereto (the proposal) and Ex. E hereto (a request for additional information). Further meetings are scheduled. See LAC Br. 8.

While the Receiver wishes to advise the Court of its views as soon as practicable, at present the Receiver needs to gain a fuller understanding of the Agreement’s complicated terms. In addition, the proposal could serve as a precedent for other HOPE VI development projects, and deserves

^{13/} Contrary to CHA Br. 18, this is not an “expansion” of the Receiver’s duties, and the Receiver is not reaching its tentacles “far beyond building new public housing units.” The Receiver’s oversight is limited to non-elderly housing development activities, as set forth in the Receivership Order.

careful analysis for this reason as well. The Receiver does not believe that an adequate evaluation of the merits and feasibility of the proposal and preparation of any recommended changes can be done in a few days or even a few weeks. The Receiver, therefore, suggests that it pursue its investigation and analysis of the proposal, file a report with the Court on September 10 (which may be an interim evaluation) and that the Court schedule a date for a status session with the parties shortly thereafter. In the meantime, the Receiver suggests that the injunction entered on July 30 remain in effect, and that the CHA not be permitted to proceed with the settlement, unless the Receiver and the other parties agree on resolution of those issues related to development that fall within the Receiver's responsibility.

In evaluating the proposal and in deciding whether to recommend changes, the Receiver intends to apply guidelines that include the following, which it understands to fall within its duties under the Court's prior orders:

1. The Cabrini redevelopment plan, including all aspects of timing, financing and design, should maximize the opportunities for economically and racially integrated housing for members of the plaintiff class, including those members now residing in the Cabrini-Green development, in conjunction with construction of otherwise-assisted and market rate units.
2. Assisted housing (whether occupied by CHA residents or persons eligible for "affordable" non-market rate housing) should be geographically integrated with market-rate units and indistinguishable in design, maintenance and management standards from market-rate housing, to the maximum extent possible.
3. The participation of residents should be supported, in a manner consistent with maximizing the number of replacement housing units to be constructed and achieving the goals of the program, and must be sensitive to arrangements with residents in other HOPE VI projects in which Gautreaux and City planning issues are involved.

4. To further these goals the following should be analyzed as appropriate: layout of the development area, availability of cultural, educational and commercial facilities, infrastructure, standards of design and proposed density, formulation and implementation of the RFP process, phasing of construction and occupancy of units, financing and other features to attract highly-qualified developers, along with procedures to implement resident input and appropriate involvement in the development process.^{14/}

As part of this process, the Receiver intends to continue to try to cooperate with the CHA, and to seek the CHA's input. Following this Court's comments of July 30, Daniel E. Levin wrote Mr. Shuldiner and requested a meeting to discuss cooperation in all areas between the CHA and the Receiver. A copy of the letter is attached as Exhibit F hereto. Unfortunately, the CHA has not responded.

The Receiver intends to carry out the analysis, review and, if appropriate, participate in negotiations to modify the proposal as necessary to achieve the objectives listed above as quickly as possible – consistent with the size and complexity of the project. Any further instructions from the Court would be welcome.

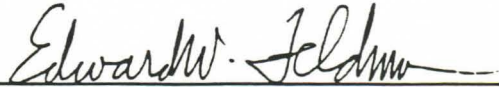
Conclusion

The Receiver requests that the Court grant the relief requested in the Receiver's Motion, or provide such other instructions as the Court deems appropriate.

^{14/} Many of the issues addressed in the Receiver's analysis will also be relevant to the Court's determination of whether to grant a Revitalizing Area designation that will be necessary to permit the Cabrini-Green redevelopment program to proceed under the Judgment Order.

Respectfully submitted;

Date: August 10, 1998

A handwritten signature in dark ink, appearing to read "Edward W. Feldman", is written over a horizontal line.

One of the Counsel for Daniel E. Levin and
The Habitat Company, as Receiver Pursuant
to the Court's Order of August 14, 1987

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SSA 221

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on August 10, 1998 he served copies of the *Receiver's Reply to CHA's Memorandum in Opposition to Receiver's Emergency Motion* on the parties listed below by causing true and correct copies to be delivered to them via messenger delivery at their respective addresses as indicated below:

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Dated: August 10, 1998


Edward W. Feldman

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

3 DOROTHY GAUTREAU, et al.,) Docket No. 66 C 1459
4)
5)
6) Chicago, Illinois
7 CHICAGO HOUSING AUTHORITY,) July 30, 1998
8) 2:05 o'clock p.m.
9)
10) Defendant.)

11 TRANSCRIPT OF PROCEEDINGS - MOTION
12 BEFORE THE HONORABLE MARVIN E. ASPEN

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15 FOR THE PUBLIC INTEREST, by
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2 COURT REPORTER:

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(312) 663-0049

5 ALSO PRESENT:

MR. TOM JOHNSON
MR. RICHARD M. WHEELOCK

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

2 MR. SHAKMAN: Good afternoon, Judge. Michael Shakman
3 and Barry Miller for the receiver.

4 This is the receiver's emergency motion for entry of
5 an order with regard to the CHA in compliance with the 1987
6 receivership order and various 1998 Hope VI orders. I should
7 point out at the outset that we had attempted to simply work
8 out a standby arrangement with counsel for the CHA, as on
9 page 2, so we would not have to present this as an emergency
10 matter. And to brief it, we were informed -- Mr. Miller had
11 this conversation; I did not. We were informed that CHA felt a
12 wish to proceed with the submission to Judge Coar in the
13 Cabrini case with the agreement that is apparently structured
14 with the Cabrini plaintiffs. And, therefore, we are not
15 prepared to enter into that kind of provision.

16 So what we are asking at this point is that -- I guess
17 I need to back up a step and state, as our papers do, that the
18 problem the receiver perceives at this point is apparently CHA
19 has gone ahead over our prior written objections to them and
20 are both negotiating and finalizing that agreement providing
21 for very extensive redevelopment procedures with respect to the
22 Cabrini-Green development, without permitting the receiver to
23 participate. In particular, without informing the receiver
24 even though we have been informed by counsel for CHA when we
25 raised this issue in a letter to them in June, that they were

1 to advise us of plans and proposed plans -- I should correct
2 that -- agreements and proposed agreements with the tenants
3 relating to creation of housing.

4 So the bottom line is that the receiver has been left
5 out of the area of responsibility that is exclusive the
6 receiver, the new housing development, when confronted by HUD.
7 And the consequence is that we can't say whether the proposed
8 redevelopment program is a good one or bad one because until
9 counsel for the CHA handed me a copy of the proposed agreement
10 a few minutes after 2:00 o'clock this afternoon, we had not
11 seen it or been a party to this in its negotiation or
12 development.

13 Earlier today I had caused to be delivered to the
14 Court our motion. I don't know if you have had a chance to
15 read it.

16 THE COURT: I have.

17 MR. SHAKMAN: I would like leave to file it now with
18 the exhibits. We didn't have the exhibits and I thought we'd
19 get it to the Court anyway.

20 THE COURT: Thank you.

21 MR. SHAKMAN: So what we are asking for at this point
22 is the Court not break any new ground, simply enforce its
23 existing orders by directing that the CHA not engage in any
24 further unilateral non-elderly housing development activities
25 without either the involvement of the receiver or prior

1 approval of the Court, that it turn over to the CHA all the
2 Hope VI non-elderly housing development that it's engaged in,
3 that it disclose all information about what it's doing, and
4 that specifically with respect to Cabrini that no further steps
5 be taken including presenting the proposed -- proposed
6 settlement agreement to Judge Coar for approval until the
7 receiver has had a chance to consider it and analyze it and
8 come to a conclusion as to whether it does or does not
9 effectively promote desegregation orders of this Court, the
10 receiver's responsibility as it relates to new housing.

11 I want to emphasize that we are not in a position --
12 the receiver is not in a position to express a point of view on
13 the merits of the redevelopment proposal that's embodied in the
14 settlement agreement. And that's because we have been left
15 out. It may well be that it's an appropriate redevelopment
16 agreement.

17 There are questions that are raised by it, but those
18 questions are questions we would hope to and are entitled to
19 have an opportunity to examine and consider.

20 Thank you.

21 THE COURT: Okay. Response?

22 MS. GETZENDANNER: Your Honor, I did not get the
23 motion until a few minutes after 2:00 myself. I have not read
24 it or any of the exhibits. I don't see what the emergency is
25 other than your Honor is going out of town. So in that

1 respect, if you'd like to set a briefing schedule today that
2 would be fine.

3 THE COURT: The only other emergency would be if
4 Judge Coar were going to take some action.

5 MS. GETZENDANNER: Your Honor, the consent decree
6 specifically provides that it must be approved by your Honor.
7 It's a specific requirement of the contract. The procedure we
8 went through in Horner was that Judge Zagel approved it first,
9 and then we brought it over to you. The same contemplated
10 scheme was going on there.

11 Judge Coar -- it is his case. It is a consent decree.
12 The parties have been working on this for five years. They are
13 very pleased to have a deal to present to Judge Coar. So we
14 would present it to Judge Coar and then go on and bring it to
15 you. So that's what I would suggest.

16 And plaintiffs' counsel in Judge Coar's case is here
17 as well as the CHA's lawyer, Tom Johnson. And that's their
18 desire to just present it to --

19 THE COURT: You are the CHA's lawyer.

20 MS. GETZENDANNER: Pardon?

21 THE COURT: You are the CHA's lawyer, are you not?

22 MS. GETZENDANNER: In this case, not in --

23 THE COURT: Not in the other case.

24 MS. GETZENDANNER: No.

25 THE COURT: Okay.

1 MS. GETZENDANNER: If you have any questions of them,
2 that would be --

3 THE COURT: I don't have any questions, but I am
4 certainly interested in hearing anything they feel I ought to
5 know, either of you.

6 MR. JOHNSON: Judge, if I might, just so your Honor
7 knows, Tom Johnson. I represent the CHA in Cabrini. I also
8 represent them in the Horner litigation.

9 When the case was filed in 1996, we did make a motion
10 before Judge Coar both to dismiss the case or in the
11 alternative to consolidate it with the Gautreaux litigation.
12 We always prefer to deal with one lawyer for the tenant as
13 opposed to two. But we have learned to live with that
14 situation in Horner, and Judge Coar denied our motion and said
15 he was going to preside over the Cabrini case. The case did
16 continue on.

17 The -- we do believe that we have an agreement that is
18 worked out not just with the LAC, the Cabrini leadership, but
19 also with the City, who's a party to that case. And the decree
20 expressly states that nothing would go forward. The decree is
21 not effective until your Honor reviews it. We had fully
22 intended to do just what we did in Horner, which is as I
23 understand what Mr. Polikoff had asked for as well, come up
24 with something concrete and then to present to your Honor with
25 whatever motions were appropriate. I don't know if Mr.

1 Wheelock wants to add anything further to that.

2 MR. WHEELLOCK: I'd just like to introduce myself. My
3 name is Richard M. Wheelock, counsel for the plaintiff,
4 Cabrini-Green's local advisory council, which is a residents
5 organization that represents all the residents of
6 Cabrini-Green, 30 some odd member council.

7 Mr. Johnson said that we have been engaged in
8 negotiations with both the City and CHA, intense negotiations,
9 over the last few months. And no one thought it could be done,
10 but we have reached an agreement. And as it's already been
11 stated -- I'm just repeating what you already heard -- the
12 intention was always, it's embodied in the consent decree, to
13 have Judge Coar first to approve it, in which the consent
14 decree provides that your Honor -- it's contingent upon your
15 approval.

16 So, you know, I would join in the request that we set
17 up a briefing schedule right now for that purpose. But there
18 is no need to enter any order regarding our presentation of the
19 consent decree to Judge Coar.

20 THE COURT: I will let you have the last word. I
21 think there are a couple other people who want to say
22 something.

23 MS. GETZELS: Your Honor, good afternoon. Julia
24 Getzels standing in for Andy Mine, on behalf of the City of
25 Chicago.

1 I just want to state for the record that the City also
2 believes that the settlement -- the consent decree adequately
3 provides the procedure for your Honor to review. That was the
4 parties' intention and remains the parties' intention.

5 THE COURT: Thank you.

6 Mr. Polikoff.

7 MR. POLIKOFF: Just one word, your Honor, maybe it
8 will be two.

9 Mr. Johnson refers to the example of the precedence,
10 if you will, of the Horner negotiation. Things worked out
11 ultimately amply at Horner but not without pain and suffering
12 and extended negotiations that were awkward and difficult and
13 unfortunately cast the plaintiffs and the receiver in the rolls
14 of opposing tenants because a deal was presented after the fact
15 that had already been approved by Judge Zagel. And then we
16 were necessarily and understandably in the position of being a
17 nay sayer and of trying to upset an apple cart that was rolling
18 along, an awkward posture that, even though it worked out
19 happily in that instance, as your Honor knows, was difficult,
20 was time consuming and unnecessary.

21 More to the point, the receivership agreement doesn't
22 say that the receiver should be given an opportunity to review
23 and express comments on agreements that the CHA has negotiated
24 respecting the development of non-elderly public housing. The
25 receivership agreement quite differently than that says that

1 the power to do the negotiation is withdrawn from CHA and given
2 to the receiver.

3 The party sitting at the table that's negotiating what
4 may well be a beautiful agreement should have included -- the
5 parties -- should have included the receiver, not to say that
6 the CHA should have been excluded. But the receivership
7 agreement unquestionably transfers the power of negotiation, as
8 well as lots of other powers, to the receiver. And it seems to
9 me impossible to contend that notwithstanding the subject-to
10 clause that counsel refers to, that that provision of the
11 receivership agreement has been violated in this instance.

12 I would urge on behalf of the plaintiffs, given the
13 example of Horner and given the example now of Cabrini, that
14 the receiver and the plaintiffs no longer be subjected to the
15 posture that CHA and its executive director clearly wants to
16 put them in in the public eye and in the legal context, of
17 having to come in at the eleventh hour and to express comments
18 which inevitably are taken as negative about a deal that CHA
19 intended to negotiate. And we should be relieved because of
20 the express language of the receivership order from being put
21 in that position, not only with respect to the current Cabrini
22 situation so that it should not go to Judge Coar before the
23 receiver's roll has been recognized, but for the future as
24 well.

25 THE COURT: Mr. Shakman.

1 MR. SHAKMAN: Thank you, Judge. I am sure when Mr.
2 Polikoff referred to the receivership agreement, he was
3 referring to the receivership order.

4 MR. POLIKOFF: Order, excuse me.

5 MR. SHAKMAN: I am sensitive to the fact that I am
6 here as the lawyer for your receiver. And if you wish the
7 receiver to be bypassed in this process, that's your call. And
8 we would not argue with that call. But I do want to under-
9 score what Mr. Polikoff said.

10 The issue as presented by counsel for the CHA and
11 counsel for the plaintiffs in the Cabrini case is a
12 misstatement of the issue. The issue is not whether or not
13 that agreement is one that should be submitted to Judge Coar at
14 some point. The issue is one of whether the CHA and the
15 parties, who knew of the receiver and the power this Court has
16 given the receiver, should have been negotiating independently
17 of the receiver and really contrary, I must underscore this,
18 contrary to the representation in writing by counsel to the CHA
19 in the June 12 letter that we quote on page 12 of our motion,
20 which said that they would advise us -- they would, quote,
21 provide information to the receiver regarding agreements made
22 and proposed with respect to Hope VI projects and any other
23 projects that involve construction of the housing, end of
24 quote.

25 I emphasize that because had we known -- had they done

1 what that letter said they would do, they would have told us of
2 this proposed agreement before we read about it yesterday
3 morning in the Tribune. And then we would have had at least
4 the opportunity to participate in -- to the extent of learning
5 about it and being able to comment on it and perhaps, if there
6 were aspects of it that we thought we could improve by making
7 suggestions that the parties could find acceptable, we would
8 have had that opportunity.

9 But what we have here instead is really a wholesale
10 disregard of this Court's orders entrusting the development
11 responsibility to the receiver, an intentional disregard of
12 those orders, and a direct violation not only of those orders
13 but of the written undertaking to us in the June 12 letter from
14 counsel for the CHA.

15 Now, in that context, if the Court chooses to defer
16 the matter to Judge Coar, and then if we have objections we
17 would present them to your Honor I presume in due course, as I
18 said to begin with, that is your call and not the receiver's
19 call. But it is our duty to say, as Mr. Polikoff has said,
20 that that really turns the whole process of receiver
21 responsibility on its head, and it undoes, in effect, the
22 Court's purpose for having a receiver to conduct the new
23 housing development in CHA, which is to make sure that, as you
24 said in your February 23rd order, that primary intention goes
25 to desegregation obligations that are out of this already long,

1 protracted litigation.

2 So we would ask the Court either to indicate that
3 there should be no further development of this proposal before
4 Judge Coar until we have had an opportunity to do what we
5 should have been permitted to do in the first place or instruct
6 us otherwise. Thank you.

7 MS. GETZENDANNER: Judge, the issue I was addressing
8 was is there an emergency. And I don't believe there is an
9 emergency. I am not responding -- I had not responded to the
10 merits of the motion.

11 I can tell your Honor that our brief in the Seventh
12 Circuit is due on August 12. We are fully occupied working on
13 that brief. That's the last brief, so we would expect the case
14 set for argument in September or October. They are pretty
15 quick about turning argument around. That's in part the whole
16 issue that Mr. Shakman is just raising.

17 But do you want a discussion of the merits of this
18 motion?

19 THE COURT: Well --

20 MS. GETZENDANNER: I haven't read it.

21 THE COURT: Well, you may not have read it, and I
22 certainly will give you an opportunity to do so. Let me
23 suggest this. Why don't you have a seat, Ms. Getzendanner.

24 MS. GETZENDANNER: Sure.

25 THE COURT: I want to be fair to all sides. Obviously

1 I don't want to rule on the motion as such if you have not had
2 a chance to read it because having read it, perhaps you might
3 be able to do what I would have hoped would have been done a
4 long time ago; that is, for the CHA and the receiver to sit
5 down and understand your respective obligations under the
6 Gautreaux decree and work in good faith.

7 You know, I am distressed that issues like this keep
8 arising. It seems to me that it's not a matter of form over
9 substance. There is an important principle involved and that
10 principle is that if the receiver has been appointed, the
11 receiver has been given authority, that authority has been
12 clarified, if the CHA has an order, a recent order, clarifying
13 that authority, that order is still the law of the case. And
14 the CHA, particularly as a governmental body, really should
15 feel obligated to follow the law as it exists. And there is
16 some question as to whether it has.

17 Now, you may say the bottom line doesn't matter
18 because the bottom line is that if the receiver is going to
19 have to look at the agreement because I have to approve it,
20 obviously before I approve it I would give the receiver that
21 opportunity. But I think Mr. Polikoff fairly states the
22 posture of this case, both in terms of fairness in dealing with
23 everyone and also with the unwanted political social
24 implications of a violation of this decree; that is, when there
25 is a done deal and somebody who is supposed to participate in

1 that deal is not involved in the deal, but later comes in and
2 attempts to undo the deal, that puts all the parties in a very
3 different posture than the posture that they are intended to be
4 as to their rolls as defined by the decree and the orders under
5 the decree. So it's not simply form over substance.

6 What I'm going to do is, first of all, give you seven
7 days to respond to this motion. I will give the receiver three
8 days to reply. I know there are other parties in this case.
9 If you align yourself in this issue with the plaintiff, feel
10 free to opt in on the plaintiffs' briefing schedule. If you
11 align yourself on the side of the receiver on this motion, feel
12 free to opt in on the briefing schedule on the side of the
13 receiver.

14 In the meantime, what happens as far as Judge Coar is
15 concerned? As far as Judge Coar is concerned, I am going to
16 issue a temporary restraining order, as far as the parties are
17 concerned, not to bring any proposed settlement to Judge Coar
18 until I have ruled on the motion itself. I hope that the
19 parties will sit down and work together, as I have suggested
20 many times before.

21 I have no reason not to take the receiver at face
22 value when the receiver tells me that the receiver is not a nay
23 sayer and has no preconceived notion to attempt to throw a
24 monkey wrench in the deal but just wants to participate, as the
25 receiver is entitled under the law.

1 So it's really my hope that everybody will do what I
2 had wanted them to do right in the beginning and work together
3 toward the same ends. I think everybody in this case has the
4 right motivation in the sense that they want to do what is best
5 for the community involved. It's a shame when people do have
6 the same mind set that they cannot work together under the
7 structure that exists.

8 Now, you may not like the structure, but that's fait
9 accomplis. The decree is what it is, and the relationship with
10 the parties is what it is, and the receiver has been appointed,
11 and the CHA may feel that we don't need a receiver. That's an
12 entirely different issue. That issue can be brought to a head
13 very directly if the CHA wants to do it. But you can't decide
14 that the receiver, in the view of the plaintiffs, is some
15 superfluous entity in these proceedings and, therefore, can be
16 ignored or thwarted because the Court's order just does not
17 permit that.

18 So I will enter the temporary restraining order as I
19 have indicated. If the parties want to get together and work
20 on an agreed draft order to reflect that, you can present that
21 to me. In the meantime, I will rule quickly after the motion
22 is completely briefed and grant further relief or extended
23 relief if necessary.

24 Again, let me say, I do all of this very, very
25 reluctantly because I do think that it serves everybody if the

1 parties work together and try to resolve it the way they are
2 supposed to. I hate to see -- as much as I like to see lawyers
3 have lots of business and do well, I hate to see all the
4 attorneys' fees in this case that the public is going to pay
5 for in some way or another when the parties really are not
6 philosophically at loggerheads on any substantive issue but
7 simply in a what I perceive as a mini turf war.

8 That will be the order, and I will sign the draft
9 order.

10 MS. GETZENDANNER: And the order is entering a
11 briefing schedule and TRO.

12 THE COURT: Yes.

13 MR. SHAKMAN: I misunderstood Ms. Getzendanner's
14 comments. It is -- the order is to enter a briefing schedule
15 and to grant a TRO precluding the presentation of this matter
16 to Judge Coar.

17 THE COURT: Yes, as I have said. My court reporter
18 will read it back to anybody who can't understand it. Thank
19 you very much.

20 One second. As long as we are here, there is a motion
21 by Stuart M. Nagel. I suppose he is not here?

22 MR. FELDMAN: He is not.

23 THE COURT: Is that the Stuart M. Nagel who was in my
24 law school class and went on to become a political science
25 professor at University of Illinois?

1 MR. FELDMAN: I don't think so, Judge. For the
2 record, Edward Feldman for the receiver.

3 That was a motion for leave to file a \$59,000 breach
4 of contract.

5 THE COURT: You have no objection?

6 MR. FELDMAN: We have no objection.

7 THE COURT: That motion will be allowed.

8 MR. FELDMAN: The claim -- limited to the claim that's
9 alleged in that complaint.

10 THE COURT: Thank you very much.

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

13 CERTIFICATE

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

17

18

19 _____
20 Official Court Reporter
21 U.S. District Court
22 Northern District of Illinois
23 Eastern Division

Date

24

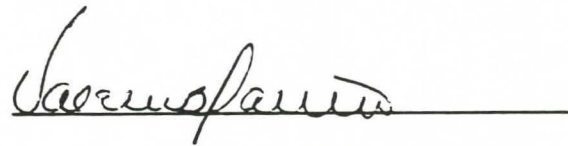
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aware that CHA had offered some sort of arrangement related to development to Cabrini-Green residents by virtue of a statement made by Joseph Shuldiner, the Executive Director of CHA, at a meeting with Daniel E. Levin, me and others on March 10, 1998. Mr. Shuldiner's statement is described in Mr. Levin's letter to the Court of March 13, 1998, which I understand has previously been filed in this case. Mr. Shuldiner did not refer to the offer as part of settlement discussions of the Cabrini LAC Lawsuit.

31. Prior to Mr. Shuldiner's statement on March 10, 1998, I was not aware of any negotiations between the CHA and the plaintiffs in the Cabrini LAC Lawsuit that involved areas that were the Receiver's responsibility under the Receivership Order. And based on my awareness that the Cabrini LAC Lawsuit involved claims that fell outside the Receiver's responsibility under the Receivership Order (such as claims related to demolition and failure of CHA to consult with residents) my awareness that there had been settlement negotiations between the parties to that lawsuit, did not cause me to think that the CHA was negotiating over issues that were the Receiver's responsibility.

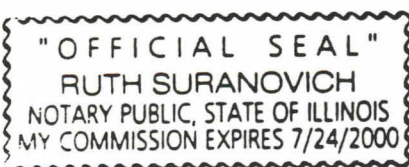
32. I first learned that a settlement had been reached between the CHA and the plaintiffs in the Cabrini-Green Lawsuit, on July 29, 1998 when I read a report of the settlement in the Chicago Tribune.

33. The foregoing matters are true of my own personal knowledge.



Valerie B. Jarrett

Subscribed and sworn to before me
this 10th day of August, 1998


Notary Public

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,	)	
	)	
Plaintiff,	)	
	)	96 C 6949
-vs-	)	
	)	Hon. David H. Coar
CHICAGO HOUSING AUTHORITY and	)	
JOSEPH SHULDINER, CITY OF CHICAGO,	)	Magistrate Judge
RICHARD M. DALEY,	)	Rebecca R. Pallmeyer
	)	
Defendants.	)	

CONSENT DECREE

Plaintiff CABRINI-GREEN LOCAL ADVISORY COUNCIL (the "LAC"); JOSEPH SHULDINER and the CHICAGO HOUSING AUTHORITY (the "CHA" or "the CHA defendants"); and RICHARD M. DALEY, and the CITY OF CHICAGO (the "City" or "the City defendants"), hereby agree to the entry of this Consent Decree in order to obtain a full and final settlement of all claims alleged in this case or that could have been alleged herein with respect to the design and implementation of the Near North Redevelopment Initiative ("NNRI") and HOPE VI revitalization plans for Cabrini-Green, either by the LAC or by the residents of Cabrini-Green, who are members of and represented by the LAC.

The LAC brought this case alleging that the NNRI, including CHA's HOPE VI plan, displaced Cabrini-Green residents and reduced the supply of affordable housing units at Cabrini, thereby resulting in a discriminatory impact upon African Americans, women and children. As such, the LAC asserted that the CHA defendants had violated the Fair Housing Act, 42 U.S.C. § 3604(a) and (b);

Title VI of the Civil Rights Act, 42 U.S.C. § 2000d; the HOPE VI Statute, 42 U.S.C. § 1437l, note and 42 U.S.C. 1437v(d)(2); the City's Consolidated Plan required under the HOPE VI Statute; the Uniform Relocation Act, 42 U.S.C. § 4625(c)(1) and (3) and various implementing regulations; and previous Memoranda of Agreement the CHA executed with the LAC. Finally, the LAC asserted that the CHA defendants had excluded the residents of Cabrini-Green from the planning process that gave rise to the NNRI and consequently violated Sections 18 and 24 of the United States Housing Act, 42 U.S.C. §§ 1437p(b)(1) and 1437v(d)(2); as well as their contractual obligations to the residents under a May 28, 1993 Memorandum of Agreement between the LAC and CHA.

The LAC further claimed that the City defendants' NNRI violated the Fair Housing Act, 42 U.S.C. § 3604(a) and (b); Title VI of the Civil Rights Act, 42 U.S.C. § 2000d; the Housing and Community Development Act, 42 U.S.C. §§ 5304(b)(2), 5304(d)(2)(A)(i) and (iv), and 5309(a); and the Community Development Block Grant agreement between HUD and the City.

Plaintiff's complaint and amended complaint sought declaratory and injunctive relief prohibiting the defendants from implementing the NNRI and CHA's HOPE VI plans.

Since the initiation of the lawsuit, both the CHA defendants and the City defendants have denied that any Cabrini-Green resident would be displaced as a result of the NNRI and CHA's HOPE VI plans for the community. They have not only denied any and all liability in the case, but insisted that unless the NNRI and HOPE VI plans

were implemented, all public housing would disappear from the Cabrini-Green neighborhood as a result of federal laws already adopted and the pace of development around Cabrini-Green. The CHA and City defendants state that the NNRI and HOPE VI initiative at Cabrini-Green were designed to preserve public housing at Cabrini-Green; foster a mixed-income and integrated neighborhood; radically improve the schools, parks, police protection, and public facilities in the neighborhood; and spark economic development, including jobs for Cabrini-Green residents. The defendants deny that the LAC or Cabrini-Green residents were ever excluded from the planning process at Cabrini-Green.

After extensive discussion between the parties and counsel, and a full review of the substantial record compiled in this case, the LAC has determined it is in the best interests of the LAC and the Cabrini-Green residents it represents to settle this case on the terms set forth herein, given the risks and uncertainties of further litigation. The LAC, elected by the residents of Cabrini-Green, enters into this consent decree as the representative of all families that now live at the Cabrini-Green development or have lived there since January 1, 1993. Members of the LAC include building presidents elected by the residents of each building in the Cabrini-Green development. Further, the officers of the LAC have been directly elected by the residents of Cabrini-Green in development-wide secret ballot voting. Since the announcement of the NNRI in June 1996, the LAC has held various resident meetings to discuss the initiation and progress of this litigation and to

solicit feedback from the residents of Cabrini-Green, including the residents who comprise the boards of the resident management corporations for 1230 N. Burling, the Green Homes, the Cabrini Rowhouses, and the Cabrini Extension. Prior to execution of this consent decree, the LAC reviewed and approved this consent decree on July 28, 1998.

The CHA and City defendants continue to deny all of the claims asserted but consider it desirable to settle this litigation on the conditions set forth below in order to avoid the risks, expense and burden of protracted litigation. Indeed, by entry of this Consent Decree, the LAC, the CHA and the City seek to end their differences amicably and work together to make the NNRI and the HOPE VI initiative at Cabrini-Green a real success, both for Cabrini-Green's residents and the others who will live, work and invest in the neighborhood.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

The LAC-CHA Provisions

I. Demolition and Replacement Units

A. The LAC agrees to the demolition of the remaining six buildings that comprise the Cabrini Extension North, including 1158 N. Cleveland, 1150-1160 N. Sedgwick, 1159-1161 N. Larrabee, 1015-1017 N. Larrabee, 1121 N. Larrabee, and 500-502 W. Oak. The CHA agrees to provide for the funding and construction of at least 895 public housing eligible units to be sited in the HOPE VI Planning Area, i.e., units affordable to families making less than 80% of

the Chicago Metropolitan Area Median Income ("a.m.i."). For purposes of this decree, the HOPE VI Planning Area is that geographical area bounded by Chicago Avenue on the south, Wells Street on the east, North Avenue on the north, and the Chicago River on the west. These units shall include (1) 700 public housing units (units with rents set at 30% of the family's income, with no minimum income requirements) and (2) 195 additional units on CHA land affordable for families earning 40% or less of a.m.i. CHA funding for these units will come from existing HOPE VI and public housing development monies, internal subsidies generated by the development of CHA land, Tax Incremental Financing ("TIF") proceeds (if available), possible future HOPE VI awards, or such other sources of funding as available. These units shall be in addition to any replacement units provided for under any plans for the revitalization of the Green Homes and the Cabrini Extension South. As reflected in Section VII below, the City of Chicago has made the additional commitment that (1) 75 units with flat rents affordable to residents earning 80% or less of a.m.i., (2) 20% of the units at Evergreen II, and (3) 30% of all Single Residency Occupancy ("SRO") hotels and senior units to be built as part of the NNRI, will be made available to CHA for displaced Cabrini-Green families.

B. The demolition of the Cabrini Extension North buildings shall occur in two phases. In Phase I, 1158 N. Cleveland, 1150-1160 N. Sedgwick, and 500-502 W. Oak shall be demolished once this consent decree becomes effective and the U.S. Department of Housing

("HUD") has indicated in writing that it approves of the changes in the CHA's HOPE VI revitalization plan required by the terms of this decree. No further demolition shall occur until the following conditions are met, unless otherwise waived by both the LAC and the CHA:

1. Three hundred (300) public housing units are under construction in the HOPE VI Planning Area;
2. CHA identifies and secures sufficient funds for the construction of an additional four hundred (400) public housing units in the HOPE VI Planning Area;
3. The sites for the additional four hundred (400) public housing units have been identified and secured; and
4. The request for proposal referred to in Section III(C)&(D) has been issued and a proposal or proposals selected for all of the units to be built on CHA land.

Until these conditions have been satisfied, the CHA shall maintain the occupied apartments and common areas of the buildings at 1159-1161 N. Larrabee, 1015-1017 N. Larrabee and 1121 N. Larrabee ("the Larrabee buildings") in decent, safe and habitable condition. Within sixty (60) days of the effective date of this consent decree, the LAC and the CHA shall conduct a survey of the units and common areas in these buildings to identify any building code violations, and shall then agree upon a reasonable timetable, not to exceed one (1) year within which to repair these violations. If it is dangerous or cost-prohibitive to keep these buildings occupied, CHA may vacate these buildings or consolidate residents within the buildings but only after good-faith negotiation with the LAC. If a joint CHA-LAC decision cannot be reached, the matter will be resolved by the Court. CHA shall take no action to vacate

or consolidate residents in these buildings until such resolution by the Court.

C. CHA shall issue a request(s) for proposals ("CHA RFP") for the Division/Hudson South site and the Larrabee South site, as described in CHA's HOPE VI revitalization plan, dated June 30, 1997 (relevant portions of which are attached hereto as Exhibit A), but as modified by the 1998 Intergovernmental Land Transfer Agreement between the Board of Education and the CHA (transferring the land on Exhibit B-1 from the CHA to the Board of Education and transferring the land on Exhibit B-2 from the Board of Education to CHA). The CHA RFP will require that the LAC (or its affiliated development entity) be the co-general partner for the development of all units on these sites with a 51% interest in the ownership of the general partnership. The RFP shall further provide that the LAC shall participate in developers' fees and profits (provided it uses such fees and profits for not-for-profit purposes), the selection of property managers and construction contractors, the planning of the development, as well as the development of resident and other programs; however, the extent of the LAC's participation shall be negotiated with the successful developer and shall be set forth in the "Rights and Responsibilities" section of the partnership agreement. The RFP shall provide that the developer who maximizes LAC participation in these areas shall receive additional points in the competitive process. A committee composed of an equal number of LAC appointees and CHA appointees shall be created to select the successful proposal or proposals from those submitted in response

to the RFP. The RFP shall reserve the right to reject all proposals should the panel members determine that the RFP has not produced an acceptable proposal. If all proposals are rejected, the LAC and the CHA shall renegotiate the terms of a second RFP, but the second or any subsequent RFP shall continue to require that the LAC will serve as co-developer of the units. McCormack Baron & Associates shall serve as CHA's development manager in connection with the issuance of the CHA RFP and subsequent development of units on property identified in the CHA RFP.

D. The CHA RFP shall require that approximately 923 units shall be built on the CHA property described in I(C) above. Of these 923 units, at least 472 units will be public housing eligible, consisting of (1) at least 277 public housing units, and (2) at least 195 units that will be affordable for families making 40% of a.m.i., i.e., families earning 40% of a.m.i. will not be required to pay more than 30% of their monthly income toward their housing costs. The majority of units built on this CHA property shall be public housing eligible.

1. 195 units The parties fully expect that the CHA RFP described in Paragraph I(C) above will produce a proposal sufficient to ensure affordability of these 195 units for those earning 40% of a.m.i., so that no CHA subsidy will be required. The RFP, however, will permit developers to propose a CHA subsidy as part of their financing plan. Nonetheless, those proposals not relying upon any CHA subsidy shall be given the highest rating (insofar as this aspect of the proposal is concerned) and those

proposing CHA subsidies shall receive the lowest rating. Should a majority of the RFP review committee determine that the best proposal is one that relies upon CHA subsidy, CHA will provide the subsidy necessary. The LAC may establish for families residing in these units a hardship fund from the LAC's development monies which will provide temporary financial assistance for families unable to meet their housing costs due to loss of income.

2. 277 units One-half of the 277 public housing units shall be reserved for families that have at least one household member working 30 hours per week, including work through Earnfare, Work First, or any REDI program where the household member is paid wages for his or her work. Notwithstanding the above, any displaced Cabrini family (as defined in Section III below) shall be eligible for the new public housing units even if they are not employed. The remaining one half of these units shall have no work requirement.

E. With respect to all other public housing units built as part of the NNRI, i.e., those public housing units not developed on CHA land, one half of those units shall be reserved for working families as defined above.

F. In connection with development on CHA property, the LAC shall participate in the creation of all requests for proposals, solicitations for bids, bid packages, and development, construction, and other contracts relating, either directly or indirectly, to the expenditure of funds identified in paragraph 1(A), for the purpose of insuring that:

1. All bids are evaluated with community benefit as a significant criterion;
2. Minority and Women Business Enterprise goals consistent with HUD and CHA policy are achieved;
3. Goals are set for minority employment, especially the employment of Cabrini-Green residents, in all phases of the NNRI; and
4. To the greatest extent possible, contractors will be required to train and employ Cabrini-Green residents.

II. Relocation

A. Families relocated from the buildings at Cabrini-Extension North ("relocated families") shall be given the following relocation options: 1) within the HOPE VI Planning Area, a rehabilitated unit in the Cabrini-Green development that complies with HUD's Housing Quality Standards and applicable building code requirements; 2) within the HOPE VI Planning Area, a new replacement housing unit (whether a public housing unit or one of the additional 195 additional units) constructed under Section I(A), in accordance with Section III below; 3) a Section 8 certificate or voucher together with mobility assistance, or 4) a scattered site unit to the extent such a unit is not claimed by a Horner family pursuant to the consent decree entered in Henry Horner Mothers Guild, et al. v. Chicago Housing Authority, et al., 91 C 3316 and orders entered in Gautreaux, et al. v. CHA, 66 C 1459. Relocation options (2) and (4) shall be considered permanent relocation choices. Relocation options (1) and (3) shall be considered temporary relocation choices until such time as the family has been offered and refused a suitable public housing unit under option (2). All relocation efforts (whether temporary or

permanent) shall be completed in conformity with the Uniform Relocation Act and the HOPE VI Relocation Manual, dated March 26, 1996. A family's housing choice shall be honored to the extent that it qualifies for such a unit and to the extent that its first choice is available. Where two or more similarly-situated families seek the same unit, CHA shall conduct a lottery to determine which family will receive that unit. With families who choose Section 8 as their relocation choice, the CHA's obligations under this section shall continue for forty-two months from the date of relocation or until such time that as the family has moved into a permanent housing choice, whichever is sooner.

B. CHA must maintain no less than yearly regular written contact with temporarily relocated families. CHA must provide to the LAC monthly access to its updated database for relocated families.

III. Priorities for Replacement Units

A. Families displaced from the Cabrini Extension North buildings (1015-1017 N. Larrabee, 1121 N. Larrabee, 1159-1161 N. Larrabee, 500-502 W. Oak, 1117-1119 N. Cleveland, 1157-1159 N. Cleveland, 1150-1160 N. Sedgwick, and 1158 N. Cleveland) shall have the right and first priority to move into the 895 replacement public housing eligible units to be constructed under Section I(A) of this decree. Displaced families shall be defined as all families who resided in the Cabrini Extension North buildings as of January 1, 1993, except for leaseholders:

1. who were evicted from these buildings pursuant to court order, prior to their relocation to the new units developed;
2. who abandoned or voluntarily left their units prior to relocation to a newly developed unit and did not move to another CHA unit or a subsidized unit within the HOPE VI Planning Area or accept a temporary Section 8 certificate or voucher;
3. who were relocated to a scattered site unit;
4. who prior to relocation to a newly developed unit (but after relocation to a subsidized unit within the HOPE VI Planning Area, or a temporary Section 8 placement, if the displaced person resided at 1150-60 N. Sedgwick or 1158 N. Cleveland):
 - a. were convicted of any criminal activity that threatened the health, safety, or right to peaceful enjoyment of the CHA's public housing premises by other residents, or any drug-related criminal activity on or off the premises; or
 - b. had a household member, guest, or visitor while under the leaseholder's control, convicted of any criminal activity that threatened the health, safety or right to peaceful enjoyment of the CHA's public housing premises by other residents, or any drug-related criminal activity on or off the premises. This exclusion shall not apply where the leaseholder agrees to exclude the offending person from the household.

B. The CHA agrees to meet with the LAC to jointly prepare the list of all current and former leaseholders of Cabrini-Extension North since January 1, 1993. This list shall contain the following information: the name, address, and bedroom-size requirements of all displaced families. The parties agree to meet on a regular basis to update the list. The CHA and the LAC agree to keep this information confidential.

C. The CHA shall submit the leaseholder list to its Occupancy Department for its review. The Occupancy Department

shall notify the LAC in writing whether the leaseholders on the list satisfy the eligibility criteria for displaced families, as defined above. If the Occupancy Department determines that the criteria are not met, CHA shall provide the LAC with all appropriate documentation supporting this determination.

D. Where a family satisfies the eligibility criteria for replacement housing but the CHA wishes to defer providing such housing to the resident due to poor housekeeping, the pendency of a criminal case involving disqualifying felonies or misdemeanors, rent arrears, inability to establish utility service, or other good cause, the CHA shall notify the LAC in writing and shall provide all appropriate documentation supporting the request for deferral.

E. If the parties are unable to reach agreement regarding eligibility or deferrals, they shall jointly petition the Court for resolution of the matter, and the CHA shall preserve a like-size, newly developed unit for the family until the Court rules. In all other cases, the CHA shall be free to process the displaced families and provide them replacement housing pursuant to the terms of this decree.

F. The CHA and the LAC shall jointly conduct a lottery of all displaced families by bedroom size to create a priority-housing list from which families will be selected for the 895 replacement public housing eligible units. Under this paragraph, first priority shall be given to families displaced from 1150-1160 N. Sedgwick and 1158 N. Cleveland; second priority shall be given to

families from 500-502 W. Oak; and third priority to families displaced from the Larrabee buildings.

G. Current Cabrini-Green families (other than displaced families as defined above) shall have the right after displaced families to move into the replacement public housing eligible units constructed under this decree, except for leaseholders who are disqualified for any of the reasons set forth in III(A) above. Of these non-displaced families, first priority will go to Cabrini Extension families, and second priority will be for families from the balance of Cabrini. Third priority will be for families residing in other CHA developments, and fourth priority will be for those on CHA's general waiting list.

H. The CHA shall contact in writing all current Cabrini-Green leaseholders, asking whether they wish to be included in a lottery for replacement public housing eligible units. The CHA and the LAC shall jointly conduct a lottery of all leaseholders who answered in the affirmative to create a second priority-housing list for the replacement public housing eligible units. If the parties cannot reach agreement regarding eligibility or deferral of a leaseholder, the parties shall follow the same procedures described in Section III(B)-(E) above for the selection of displaced families.

IV. Job Training and Employment Opportunities

A. The CHA shall insure that all RFPs and contracts issued for CHA property or any other property developed under the NNRI in connection with the expenditure of HUD funds, including HOPE VI and

public housing development funds, shall comply with Section 3 (12 U.S.C. § 1701v and implementing regulations) and the policies set forth in CHA's "Technical Assistance Section 3 for Contractors and Chicago Housing Authority Staff." Notwithstanding the foregoing, this paragraph shall not expand in any way the obligations imposed on CHA under Section 3.

B. Every contract bid or response to RFPs issued for CHA property or any other property developed under the NNRI must include a plan for employment and training of CHA residents. A major factor in ranking such bids and responses will be the extent to which they include plans that maximize resident employment and training.

C. The CHA shall make reasonable efforts to provide employment opportunities to every displaced family so that the family may qualify for those public housing units which have been reserved for working families.

V. Resident Participation in the NNRI

A. The CHA agrees to negotiate in good faith with the LAC regarding the design and implementation of the NNRI, including the HOPE VI Revitalization Plan. "Good faith" includes meeting and negotiating with the LAC prior to reaching preliminary or final agreements with other parties, including the City, which will impact upon the design and implementation of the NNRI. The CHA agrees to make all reasonable efforts to convene monthly meetings of LAC and City of Chicago representatives, unless waived by the parties, for the purpose of monitoring and reviewing development

activities in connection with the NNRI, including the preparation and issuance of RFPs, changes in the design of the NNRI, the selection of developers, the creation of jobs and the provision of employment training for Cabrini-Green residents, the status of construction activities, and the provision of social services.

B. The CHA shall actively involve and include the LAC in the CHA's decision-making process respecting any proposed disposition of CHA property that is currently identified in whole or in part for replacement housing under the NNRI (as described in CHA's HOPE VI revitalization plan, dated June 30, 1997) in conformity with 24 C.F.R. Part 964. In addition, prior to any disposition, such property must first be offered to the LAC for purchase in conformity with 24 C.F.R. § 970.13. In any event, the CHA shall not dispose of any such property unless it receives in return replacement property within the HOPE VI Planning Area that will accommodate the same number of units as planned for the property that is the subject of disposition.

C. The CHA agrees to provide the LAC \$400,000 in funds, as originally budgeted in the May 1993 HOPE VI application and the June 1997 HOPE VI Revitalization Plan, for technical assistance (TA), including but not limited to architectural services, engineering services, real estate development consultation, and legal consultation. Said grant shall be reduced by no more than \$129,353 (funds spent to date). The CHA agrees to guarantee the payment for all services rendered by the LAC's TA consultants within the above budget. Any contracts entered into by the LAC for

TA services shall be in accordance with all applicable HUD and CHA procurement regulations and policies. CHA further agrees that the LAC may use this grant to pay all of the LAC's costs in this litigation.

VI. Social Services and Community Service

A. HOPE VI funds allocated for social services and community service, such as the Tenant Patrol Program, the Victim Assistance program, tenant-owned businesses generated by these funds, and other such programs, shall be spent to benefit Cabrini-Green Extension residents only. These funds shall be used to employ whenever possible Cabrini-Green residents who are qualified for jobs generated by the social services and community service program. At a minimum, the expenditure of these HOPE VI funds shall be subject to the employment and training requirements of Section 3 and its applicable hiring goals for public housing residents.

B. Cabrini Textiles shall be operated for the benefit of Cabrini-Green residents. Any funds generated by this enterprise, in excess of those required for the operation of the business, shall be reinvested into the Cabrini-Green community as decided by the LAC.

The LAC-City Provisions

VII. Development on Non-CHA City Land

A. All RFPs issued on non-CHA property identified in CHA's HOPE VI revitalization plan, dated June 30, 1997 for development during the course of the NNRI shall provide that 50% of the units

shall be market rate, 20% shall be affordable (as defined in Section VII(B) below), and 30% of the units shall be public housing. The public housing units shall be allocated according to the applicable language of Sections I(D) and (E) and III set forth above.

B. All RFPs issued on non-CHA property identified in CHA's HOPE VI revitalization plan, dated June 30, 1997 for development during the course of the NNRI shall provide that affordable housing units may be (a) affordable rental units (defined as affordable to families earning no more than 80% of a.m.i.), or (b) affordable for-sale units (defined as affordable to families earning no more than 120% of a.m.i. Proposals that contain a component of affordable rental units will be specifically encouraged. Responses that feature affordable units distributed among and affordable to the widest range of income levels will be most favorably considered. Proposals must demonstrate that the affordable units will remain affordable well into the future. Highest considerations will be given to proposals that identify a workable and specific long-term strategy to maintain affordability for both rental and for-sale units.

C. The City shall guarantee that 75 of the affordable units created during the course of the NNRI, excluding those developed on CHA property, will be rental units for families making less than 80% of a.m.i.

D. Displaced Cabrini-Green families, as defined in Section III(A) above, who are otherwise eligible for the affordable units,

shall have a first preference for the 75 affordable rental units. Other Cabrini-Green families, who are otherwise eligible for the affordable units, shall have second preference for these units. These units shall be allocated to families according to the procedures set forth in III(B)-(H) above.

E. Displaced Cabrini-Green families, as defined in Section III(A) above, who are otherwise eligible, shall have first preference for 20% of the units at Evergreen II and 30% of the units at all future SRO and senior developments built within the TIF district created as part of the NNRI. Other Cabrini-Green families, who are otherwise eligible, shall have second preference. These units shall be allocated to families according to the procedures set forth in III(B)-(H) above.

F. The City shall make available sufficient land for the construction of 366 public housing units in the NNRI area, excluding the 57 units at Orchard Park, Old Town Square and Mohawk North. The City believes that this commitment, in conjunction with the planned residential development on CHA land, will provide sufficient housing to accommodate all dislocated Cabrini-Green residents who want to remain in the area during and after redevelopment.

G. The LAC shall be entitled to appoint one person to the RFP Review Committee created to review all RFPs issued for non-CHA land and developer responses thereto.

H. The City has designated the area covered by the NNRI a TIF district. The City shall commit TIF dollars in the following

order of priority: (1) infrastructure needs within the TIF district (e.g., streets, sidewalks, and sewers), including the remaining portions of Cabrini-Extension South, Green Homes, and the Cabrini Rowhouses; (2) employment training for low-income residents within the TIF district, including but not limited to Cabrini-Green residents. The City agrees to include the rehabilitation of remaining Cabrini-Green buildings in the next tier of eligible costs. The City will give priority to CHA applications to use such funds for rehabilitation costs for remaining Cabrini-Green buildings.

I. The City will hire, from a short list of five qualified candidates whose qualifications have been provided to it by the LAC, an individual who will serve the function of a "resident employment specialist" who will work under the auspices of the City's CARE Center, but be assigned to the LAC, to implement the local employment and job-training aspects of the NNRI and to facilitate the employment prospects of Cabrini-Green residents. The resident employment specialist shall work out of the LAC office.

J. All RFPs issued for non-CHA property shall provide that proposals must feature a community-based hiring and training plan which concretely and comprehensively describes measures to ensure maximum reasonable opportunities for both (a) immediate employment and (b) longer-term job-training for residents of the Near North TIF District, with particular attention to the needs of those residents who have previously experienced inadequate employment

opportunities and development of job-related skills, including residents of public and other subsidized housing and people with disabilities. Respondents shall be strongly encouraged to propose creative measures toward the goal of increasing employment and training opportunities for the area residents described above. Most favorable consideration will be given to proposals that set forth a community-based hiring and training plan that is detailed, is well thought out, and provides for a broad mix of strategies for maximizing employment and training opportunities for community residents. Such a community-based hiring and training plan shall be in conjunction with and in accordance with other applicable federal, state, and local laws.

K. The City agrees to meaningfully consult with the LAC regarding the design and implementation of the NNRI as follows: The City agrees to attend and participate in monthly meetings of the LAC and CHA, unless waived by the parties, for the purpose of monitoring and reviewing development activities in connection with the NNRI, including the preparation and issuance of RFPs, changes in the design of the NNRI, the selection of developers, the creation of jobs and the provision of employment training for Cabrini-Green residents, the status of construction activities, and the provision of social services.

Miscellaneous Provisions

VIII. The CHA defendants and the City defendants, upon plaintiff's written request and without cost, shall provide to the plaintiff or make available to plaintiff for copying all documents

and other written materials relating to the implementation of this consent decree, other than privileged documents.

IX. This consent decree shall not be effective, unless it is approved both by this Court and by the Gautreaux Court. Furthermore, upon motion of either the LAC or the CHA this consent decree may be vacated in the event that HUD disapproves in writing in whole or in part the changes in the CHA's HOPE VI revitalization plan required under the terms of this consent decree.

X. The Court shall retain jurisdiction over this matter for the purpose of enabling any party to the litigation to apply to the Court for such further orders as may be necessary or appropriate for the construction, implementation, or enforcement of this decree.

XI. It is understood and agreed that all understandings and agreements previously reached between the parties hereto regarding the NNRI and the HOPE VI revitalization plans for Cabrini-Green are merged in this consent decree, which alone fully and completely expresses their agreement.

XII. Each party shall bear its own attorneys' fees and costs.

Richard Wheelock
Legal Assistance Foundation
111 W. Jackson Blvd., 3d Fl.
Chicago, IL 60604

Counsel for Plaintiff

Jerome Butler
General Counsel
Chicago Housing Authority
200 W. Adams St., Suite 2100
Chicago, IL 60606

Counsel for CHA Defendants

Brian Crowe
Corporation Counsel
City of Chicago
Room 500, City Hall
121 N. LaSalle St.
Chicago, IL 60601

By: Andrew S. Mine
Asst. Corporation Counsel

Counsel for City Defendants

ENTER:

David H. Coar
United States District Judge

Date: _____

F) Division/Hudson South (On-site development)

Location:	Cabrini-Green, on Division between Clybourn and Cleveland
Land Ownership:	CHA
Acreage:	7.4 acres
Proposed Density:	56.5 units/acre
RFP Date:	4 th Quarter, 1997
Total Units:	projected: 418; actual: TBD
PH Units:	projected: 133; actual: TBD
Unit Type:	TBD

Description: The first parcel of Cabrini land to be redeveloped is roughly identical to the HOPE VI planning area proposed in CHA's original application; it differs only in that 1158 N. Cleveland will be demolished rather than rehabilitated under the current plan. This land is the site of 1150-60 N. Sedgwick, 1158 N. Cleveland and 1157-59 N. Cleveland. A portion of the CHA-owned land, the former site of 1117-19 N. Cleveland, will be transferred to the school board for the construction of the new elementary school. At present all four of these buildings have been vacated. 1117-19 N. Cleveland was approved for demolition in March, 1995. HUD also authorized the demolition of 1157-59 N. Cleveland and 1150-60 N. Sedgwick in June, 1995. 1117-19 and 1157-59 N. Cleveland were demolished in the fourth quarter, 1995. CHA is currently awaiting approval of its demolition application for 1158 N. Cleveland.

In order to make the land available for development and to issue the RFP, the CHA must demolish 1150-60 N. Sedgwick and 1158 N. Cleveland. At present the Court has directed the CHA to seek Court approval before demolishing 1150-60 N. Sedgwick. The CHA is especially concerned about the danger and expense of leaving the vacant property standing. Vandals enter vacant units on a regular basis creating grave danger for Cabrini residents. As noted, CHA is awaiting a favorable response from HUD to its demolition application for 1158 N. Cleveland. The demolition of 1158 N. Cleveland is being contested in Court by the LAC.

The CHA will seek Court approval to demolish 1150-60 N. Sedgwick. Should the Court grant the motion, the demolition could be completed in the fourth quarter of 1997. Similarly, following HUD's approval, the CHA will petition the Court to permit the demolition of 1158 N. Cleveland. Provided the CHA prevails in that petition, the building could be demolished only three months later. Thus, under optimal circumstances, the CHA would be able to issue the RFP some time in the second quarter of 1998 with a selection made in the third quarter and a final agreement by the fourth quarter of 1998. Construction would begin in the first quarter, 1999 and units being turned over in the fourth quarter 1999. This schedule, again, depends on the approval of the Court.

The recommendation of the Charrette team as well as the market analyst was that an elevator mid-rise rental property be developed on the CHA-owned parcel with commercial facilities on the ground floors, due to its location in a high traffic area near the Town Center, the new school, and the new expanded park. The actual development configuration and density will be contingent on the results of the RFP issued by the CHA, which will speak only to the minimum densities and income mix.

PHASE II

G) Larrabee South (On-site development)

Location:	Cabrini Extension; north of Oak, east of Larrabee; south of Division
Land Ownership:	CHA
Acreage:	9.1
Proposed Density:	55.5 units/acre
Projected RFP Date:	4 th Quarter, 1999
Total Units:	Projected: 505; actual: TBD
PH Units:	Projected: 153; actual: TBD
Unit Type:	TBD

Description: This second parcel of CHA-owned land is currently the site of four additional high-rise buildings. These buildings will be demolished to make the

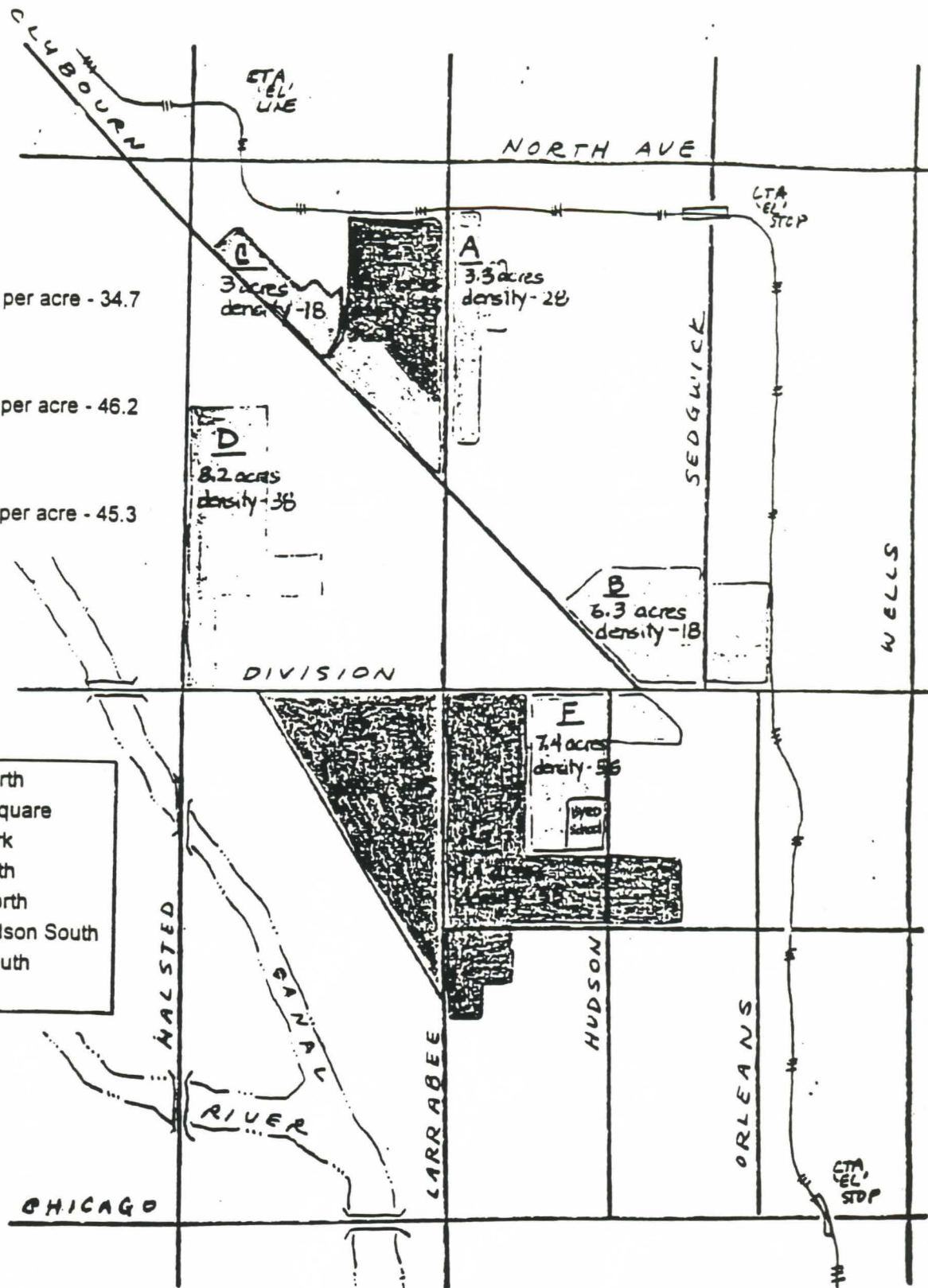
land available for mixed income development: 1159-61 N. Larrabee, 1017-19 N. Larrabee, 1121 N. Larrabee, and 500-502 W. Oak.

The CHA has made the commitment to the LAC and the residents of Cabrini-Green that demolition from this second phase of buildings will not take place until 300 replacement units are under construction in the first phase. Relocation will be ongoing. Assuming the success of the City's proposed phasing, the CHA will plan to begin demolishing units in 3rd Quarter, 1999, which would make the land available for construction in the 1st Quarter, 2000.

The CHA will follow the same procedure for this second phase as with the first, namely that an RFP will be issued. To expedite the development process, the CHA will issue the RFPs immediately upon vacating the buildings but prior to the completion of demolition.

- ☐ PHASE I
31.9 acres total
average density per acre - 34.7
- ☒ PHASE II
15.9 acres total
average density per acre - 46.2
- ☒ PHASE III
11.7 acres total
average density per acre - 45.3

- A: Mohawk North
B: Old Town Square
C: Orchard Park
D: Halsted North
E: Larrabee North
F: Division/Hudson South
G: Larrabee South
H: Spanjer



Draft Near North Redevelopment Initiative

City of Chicago - Richard M. Daley, Mayor

JUN/1997; Goody, Clancy & Associates; Susan Fayde & Associates; The Architects Enterprise; Globaltraders Engineering Corp.; Kathleen L. Diddnot

EXHIBIT NO. 1:

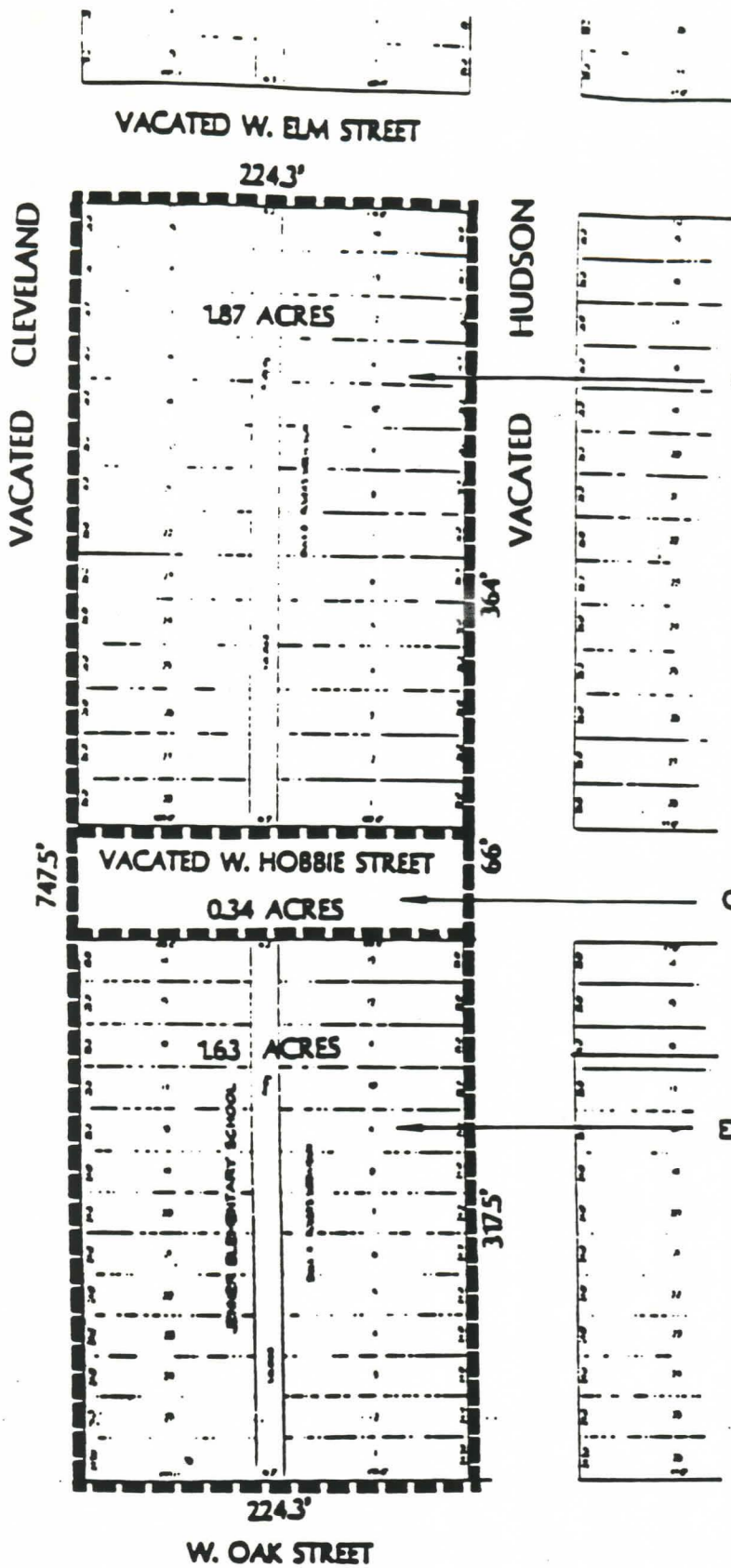
Property for one of two new elementary schools: A 224.3' x 430' (2.21 acres) rectangular parcel directly north of Jenner Elementary School bordered by Cleveland Ave. (west), Elm St. (north), Hudson Ave. (east) and Hobbie St. (south); in exchange for the following parcels totaling 2.46 acres and adjacent to the Cabrini Green development which shall be acquired by the Public Building Commission of Chicago (PBCC) and conveyed to the Chicago Housing Authority (CHA):

- A. A 225' x 125' (.63 acre) rectangular parcel bordered by Cleveland Ave. (west), Cabrini Row Houses (north), Hudson Ave. (east) and Chicago Ave. (south).**
 - B. A 170' x 120' (.46 acre) rectangular parcel bordered by Cambridge St. (west), Cabrini Row Houses (north), Cleveland Ave. (east) and Chicago Ave. (south).**
 - C. A 125' x 300' (.86 acre) rectangular parcel bordered by Larrabee St. (west), Oak St. (north), vacant lot/Cabrini Row Houses (east) and a privately owned lot (south).**
 - D. A 125' x 180' (.51 acre) rectangular parcel bordered by site C above (west), Oak St. (north), Cambridge St. (east) and Walton St. (south).**
-

SSA 270

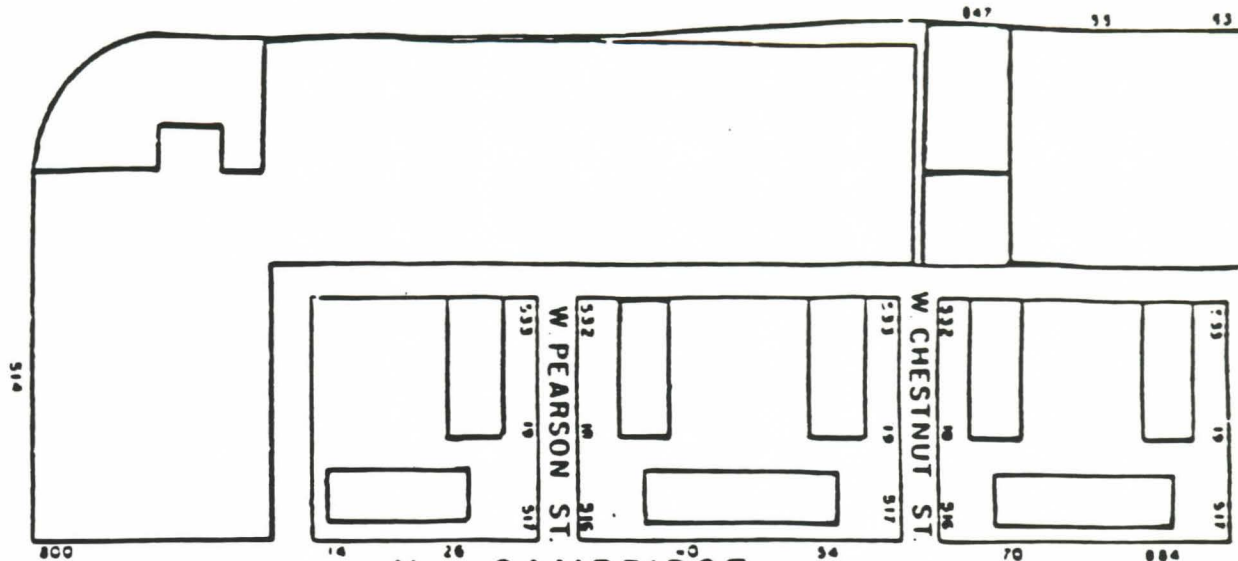
EXHIBIT

B-1

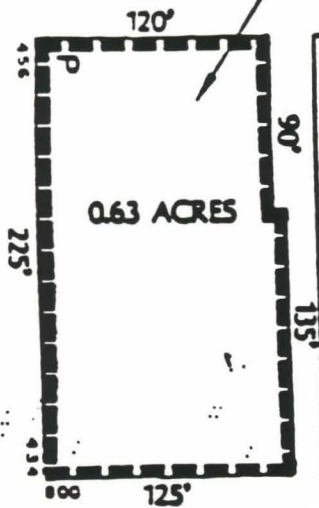
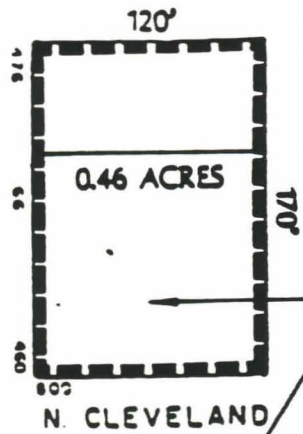


N. LARRABEE

W. CHICAGO AV.



N. CAMBRIDGE



PROPERTY TO BE ACQUIRED BY P.B.C.
AND CONVEYED TO C.H.A.

N. HUDSON

SSA 272

CITY OF CHICAGO
MAYOR RICHARD M. DALEY

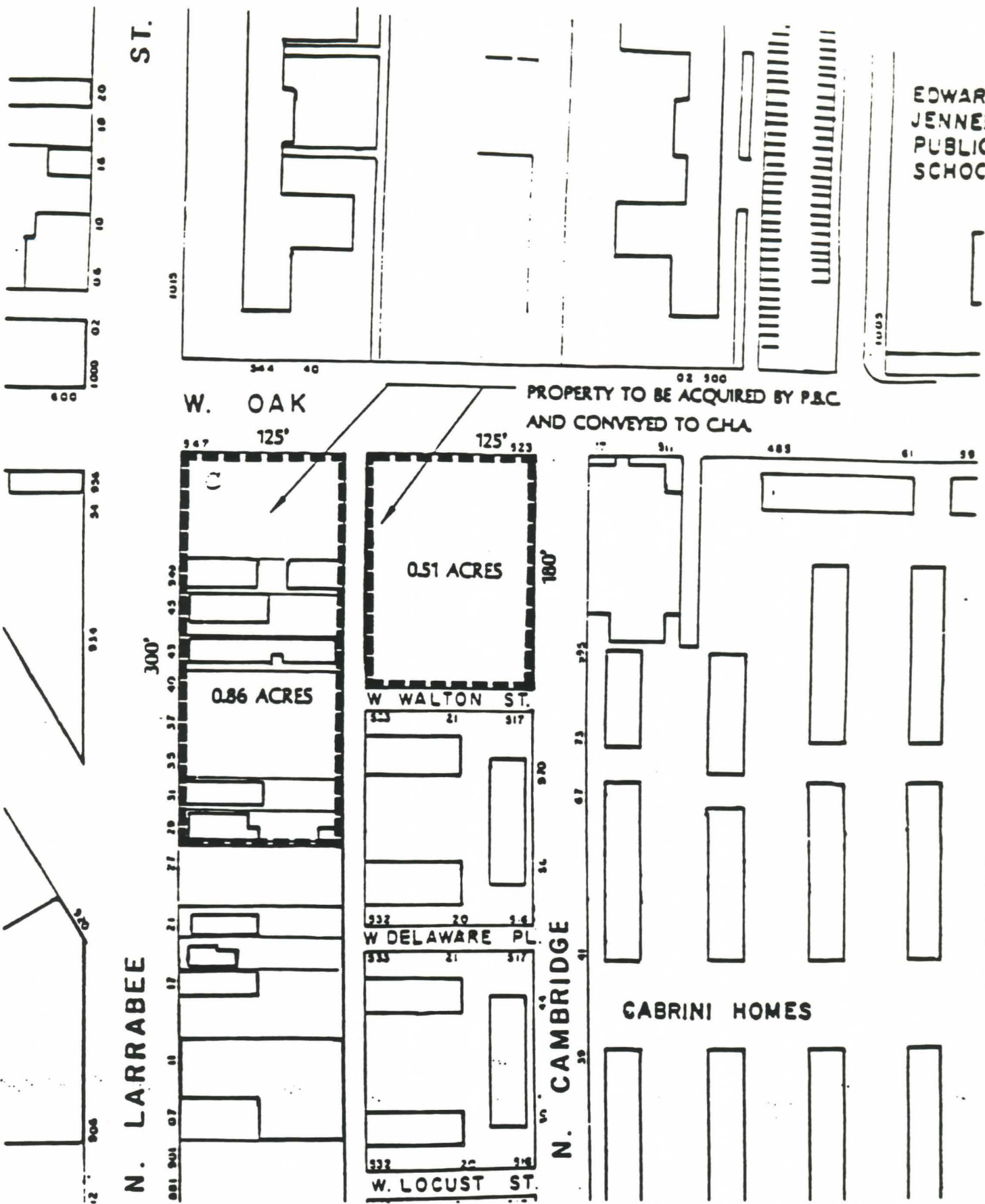
EXHIBIT

B-2

NOTE: ALL DIMENSIONS SHOWN ARE
APPROXIMATE TO BE VERIFIED BY SURVEY



ASK - 2
DECEMBER 1961



CITY OF CHICAGO
MAYOR RICHARD M. DALEY

PROPERTY MAP
NOTE: ALL DIMENSIONS SHOWN ARE
APPROXIMATE, TO BE VERIFIED BY SURVEY



ASK - 1
DECEMBER 16,

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

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
Joseph Shuldluer, its Executive Director

Defendants.

No. 66 C 1459

Chief Judge Marvin E. Aspen

AFFIDAVIT OF HARRY A. MILLER

Barry A. Miller, having been sworn upon oath, states as follows:

24. I have previously provided an affidavit in this case, dated March 31, 1998, numbered through paragraph 23. To avoid confusion, this affidavit commences with paragraph 24.

25. I am an attorney licensed to practice law in Illinois, a member of the bar of this Court and one of the attorneys for the Receiver in this lawsuit.

26. My previous affidavit describes a number of conversations I had with attorneys for the Chicago Housing Authority in 1997. In several of those conversations I objected to the CHA's efforts to exclude the Receiver from the new, non-elderly housing development process. I wrote a number of letters to CHA's attorneys on the subject, copies of which are attached to my prior affidavit.

27. In addition, at some point in 1997 the plaintiffs in the lawsuit brought by the Cabrini Local Advisory Council (Cabrini-Green Local Advisory Council v. CHA, No 96 C 6949, (N.D. Ill.)), sought to depose representatives of the Receiver. As a result, I was involved in conversations in 1997 with Thomas Johnson, CHA's attorney in that lawsuit, concerning the depositions and background to the lawsuit.

28. I told Mr. Johnson that the Receiver believed it was entitled to conduct all new, non-elderly housing development as part of the Cabrini-Green redevelopment process, and had

been doing so until excluded by CHA. I also said that I understood that CHA was taking the position that the Receiver did not have that authority, and that the issue was disputed between CHA and the Receiver.

29. The foregoing matters are true of my own personal knowledge. In accordance with 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on August 10, 1998.

Barry A. Miller
Barry A. Miller

MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

ATTORNEYS AND COUNSELORS

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OF COUNSEL
DAVID J. KRUPP
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WRITERS DIRECT LINE

August 6, 1998

By Facsimile

Richard M. Wheelock
Legal Assistance Foundation
343 S. Dearborn Street
Suite 700
Chicago, IL 60604

Thomas E. Johnson
Johnson Jones Snelling Gilbert & Davis
36 S. Wabash Avenue
Suite 1310
Chicago, IL 60603

Re: Cabrini-Green Proposal

Dear Richard and Tom:

On behalf of the Receiver in the Gautreaux case, I am writing to request additional information concerning matters related to the proposed Cabrini redevelopment agreement ("Proposal"). I would appreciate you providing the following information and any documents that refer to or deal with the following:

1. Any studies, analyses or discussions that describe or reflect the density per acre (or other unit) of housing to be constructed under the Proposal.
2. Any studies, analyses or discussions that describe or project the type of housing to be constructed (such as town houses, midrises, other) on each of the parcels that are part of the Proposal.
3. Any studies, analyses or discussions that describe or project the sequence in which each parcel will be developed, including the order in which market rate and non-market rate housing will be developed.
4. Any studies, analyses or discussions of procedures proposed to generate market rate tenants or buyers in the area.
5. A listing of other housing developments (public or private) at which tenant ownership has been successfully employed. Several examples were mentioned in our meeting

Messrs. Wheelock and Johnson
August 6, 1998
Page 2

yesterday by Bertha Gilkey and Edward Moses. We would appreciate having the exact names and locations of those developments, and the names of parties we can contact to learn more about the nature of the resident ownership interests; we also request copies of any development or partnership agreement you might have for such developments, and any information or documents describing the marketing history of the developments, their physical character and the economic and/or racial integration accomplished.

6. All communications between (i) either CHA or Cabrini-Green residents' representatives and (ii) HUD relating to the Proposal or to the CHA's revitalization plan for the area, including but not limited to all approvals or conditional approvals thereof.

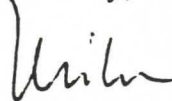
7. All information and any documents describing or reflecting any review of the Proposal performed by any developer; the identify of any developer who has expressed interest in participating; and the proposed terms thereof.

8. Copies of all transcriptions of settlement meetings that led to the Proposal.

Please let me know when we can expect to receive the information and documents requested.

We look forward to further productive discussions with you both.

Sincerely,



Michael L. Shakman

MLS:ra

cc: Robert D. Whitfield



THE HABITAT COMPANY

August 3, 1998

Via Fax (312) 791-4601

Joseph Shuldiner
Executive Director
Chicago Housing Authority
626 W. Jackson Blvd.
Chicago, Illinois 60661

Dear Joe:

As you know, the CHA has negotiated an agreement with a tenants organization at the Cabrini housing development providing for the construction of new housing units without the involvement of the Receiver. As you also know, this violates the August 14, 1987 Receivership Order. On July 30, 1998 Judge Aspen entered an order barring the CHA and others acting with knowledge of his order from submitting the Cabrini agreement to Judge Coar for approval. Judge Aspen also once again urged the parties to confer to attempt to resolve their differences.

We would appreciate you advising us who at the CHA is authorized to meet with us to discuss the Cabrini proposal so that we may have the discussion Judge Aspen urged.

In addition, the CHA's practice of negotiating without the participation of the Receiver and attempting to present us with a fait accompli, should and must stop. As we have said before, the Receiver is eager to meet with the CHA and others, including tenant organizations, to discuss redevelopment plans and procedures. This mode of behavior by CHA, which complies with its legal obligations, will avoid unnecessary court proceedings that expend funds on lawyers that are better spent on housing.

To avoid any doubt, I want to reiterate our pending request to CHA. First, please advise us immediately and in writing if there are any other agreements, proposed agreements or discussions with tenants or tenants organizations relating to the development of new, non-elderly housing. This includes but is not limited to the Taylor and Darrow developments. If such agreements exist, either in final form or as proposals, please provide us with copies. If the negotiations have not been reduced to writing, please provide us with a statement of the proposed terms. Second, please discontinue all such negotiations unless the Receiver is afforded an

Joseph Shuldiner
Executive Director
Chicago Housing Authority
August 3, 1998
Page -2-

opportunity to participate.

I wish to add that we remain willing to engage in open-minded and constructive discussions.

Sincerely,

THE HABITAT COMPANY



Daniel E. Levin,
Chairman

DL\jm

CC: Alexander Polikoff, Esq.

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

FILED

APR 3 1997

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

CABRINI-GREEN LOCAL ADVISORY
COUNCIL,

Plaintiff,

v.

CHICAGO HOUSING AUTHORITY
("CHA"), an Illinois Municipal
Corporation; JOSEPH SHULDINER,
In His Official Capacity As
Executive Director of the CHA;
CITY OF CHICAGO, an Illinois
Municipal Corporation; and
RICHARD M. DALEY, In His
Official Capacity As Mayor of
the City of Chicago,

Defendants.

DOCKETED

APR 03 1997

No. 96 C 6949

The Honorable David H. Coar

Complaint For Declaratory
and Injunctive Relief

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. This is a civil rights action brought by the Cabrini-Green Local Advisory Council ("LAC") which represents all public housing residents of Cabrini Homes, Cabrini Extension and Green Homes (collectively referred to herein as "Cabrini-Green" or the "Cabrini-Green development") located on the north side of Chicago. Cabrini-Green is owned by defendant Chicago Housing Authority ("CHA") and is operated by defendant CHA and defendant Joseph Shuldiner, the CHA's Executive Director (collectively, "the CHA defendants" or "the CHA").

2. The complaint alleges that the CHA has worked with defendant City of Chicago ("City") and defendant Richard M. Daley

displaced by the plan far exceeds that number. Therefore, the new plan breaches the CDBG grant contract between the City and HUD which incorporates the HCDA's statutory obligations set forth at 42 U.S.C. § 5304(d)(2)(A)(i) & (iv) requiring that the displaced families be relocated to comparable replacement housing within the same community.

127. The breach of the CDBG grant contract set forth above is material and is the proximate cause of injury to the plaintiff.

X. RELIEF REQUESTED WITH RESPECT TO THE CHA DEFENDANTS

WHEREFORE, plaintiffs pray that this Court:

A. Declare that the actions and omissions of the CHA defendants, as set forth in Counts I - XVIII, violate Title VIII, Title VI, HOPE VI, Sections 18 and 24 of the Act, and the URA, as well as contractual agreements entered into between the parties;

B. Enter a preliminary and permanent injunction:

1. Enjoining the defendants from implementing the new plan, including any and all efforts to:

- a. relocate the residents of 1150-1160 N. Sedgwick and 1158 N. Cleveland in violation of the URA;
- b. demolish 1150-1160 N. Sedgwick prior to the construction of replacement housing; and
- c. demolish 1158 N. Cleveland, 1015-1017 N. Larrabee, 1121 N. Larrabee, 1159-1161 N. Larrabee, and 500-502 N. Oak.

2. Enjoining the defendants from failing to negotiate and consult with the plaintiff in planning and implementing the revitalization of the Cabrini-Green development.

3. Ordering the defendants to specifically perform on its contractual agreements with plaintiff as described in ¶ 46 & 51, supra; including the defendants' promise to rehabilitate 1158 N. Cleveland and the community center.

4. Enjoining the issuance of a request for proposal to private developers in connection with the new plan.

C. Enter an order that the plaintiff shall not be required to post bond as security for the issuance of a temporary restraining order or preliminary injunction; and

D. Grant plaintiff such further relief as this Court deems just and proper.

XI. RELIEF REQUESTED WITH RESPECT TO THE CITY DEFENDANTS

WHEREFORE, plaintiffs pray that this Court:

A. Declare that the actions and omissions of the City defendants as set forth in Counts I-V, XIX-XXVIII, violate Title VIII, Title VI, and Title I of the HCDA, as well as the CDBG grant contract between the City and HUD;

B. Enter a preliminary and permanent injunction enjoining the expenditure of any CDBG funds on the new plan;

C. Enter a preliminary and permanent injunction enjoining the defendants from implementing the new plan, including any and all efforts to:

1 UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

3 CABRINI-GREEN LOCAL ADVISORY)
4 COUNCIL,)

5 Plaintiff,)

6 vs.)

No. 96 C 6949

7 CHICAGO HOUSING AUTHORITY and)
8 JOSEPH SHULDINER, CITY OF)
9 CHICAGO, RICHARD M. DALEY,)

10 Defendants.)

11 Volume I - Pages - 1 - 102

12 Deposition of VALERIE JARRETT,
13 called as a witness herein, pursuant to the
14 applicable provisions of the District Courts of
15 the United States and the rules of the Supreme
16 Court thereof, before Patricia A. Armstrong,
17 C.S.R., R.P.R., a Notary Public in and for the
18 County of DuPage, State of Illinois, taken on
19 November 11, 1997, at 1:30 P.M., at the Legal
20 Assistance Foundation of Chicago, 111 West Jackson
21 Boulevard, Chicago, Illinois.

22 PRESENT:

23 LEGAL ASSISTANCE FOUNDATION OF CHICAGO, by
24 MS. BRENDA L. GRAUER,
111 West Jackson Boulevard
Chicago, Illinois 60604-35021
appeared on behalf of Plaintiff;

JOHNSON, JONES, SNELLING, GILBERT & DAVIS,
by
MS. LESLIE ANN JONES,
36 South Wabash Avenue, Suite 1310
Chicago, Illinois 606032
appeared on behalf of Defendant Chicago
Housing Authority;

SSA 283

1 A. Everything from reviewing the urban
2 design and planning issues regarding where
3 replacement housing is to be built to reviewing
4 qualifications for both contractors, developers,
5 architects for the building of the housing,
6 overseeing the construction and transfer the
7 properties built to the housing authority.

8 Q. What is Habitat's overall role with
9 respect to the receivership program?

10 A. Judge Aspen has appointed Habitat and
11 Daniel Levin as the receiver for the nonelderly
12 public housing developed by public housing that is
13 developed in the city.

14 MR. FELDMAN: Let me just belatedly
15 interpose the objection to the extent the question
16 called for a legal conclusion. The witness was
17 testifying to her understanding.

18 BY MS. GRAUER:

19 Q. You have testified it is your
20 understanding of Habitat's role as receiver;
21 correct?

22 A. Yes.

23 Q. Mr. Jarrett, have you been deposed
24 before?

SSA 284

1 understanding between Mr. Eisendrath and Mr. Levin
2 regarding Habitat becoming the development manager
3 for Cabrini-Green; is that correct?

4 A. That is what the letter says.

5 Q. Is that your understanding of what
6 the letter says?

7 A. That is my understanding of what the
8 letter says.

9 Q. You are aware that Habitat was in
10 November of 1995 development manager for the
11 Cabrini-Green development program?

12 MR. FELDMAN: I just want to object to the
13 extent it calls for a legal conclusion. You can
14 testify if you had an understanding at that time
15 of Habitat's role.

16 BY MS. GRAUER:

17 Q. Ms. Jarrett, did you have an
18 understanding that Habitat was the development
19 manager for the Cabrini-Green development in
20 November of 1995?

21 A. In our capacity as receiver, yes.

22 Q. Do you know how Habitat was selected
23 as development manager?

24 A. Because we are the receiver for the

SSA 285

1 Housing Authority.

2 Q. Do you know whether any other
3 companies were considered in selecting the
4 development manager for Cabrini-Green?

5 A. Selected by whom?

6 Q. Selected by CHA.

7 A. CHA doesn't get to select the
8 development manager.

9 Q. Who did select the development
10 manager?

11 MS. JONES: Objection; foundation.

12 MR. FELDMAN: Same objection. It calls for
13 a legal conclusion. I object on that basis.

14 MS. GRAUER: You can answer the question.

15 BY MS. GRAUER:

16 Q. Who was selected as development
17 manager?

18 A. Well, it is my understanding that
19 Judge Aspen appointed Daniel Levin and the Habitat
20 company as the receiver for the Housing Authority.

21 Q. To your knowledge was there ever any
22 contract between CHA and Habitat?

23 MS. JONES: I will object to the extent it
24 requires a statement of a legal opinion, and a

SSA 286

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

RECEIVED
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BY HAND

AUG 2 1993

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM

66 C 1459

Hon. Marvin E. Aspen

**PLAINTIFFS' REPLY IN SUPPORT OF
RECEIVER'S EMERGENCY MOTION**

The Gautreaux plaintiffs support the Receiver's emergency motion. To avoid repetition, the plaintiffs adopt the Receiver's reply memorandum, but wish, however, to emphasize the following few points:

1. CHA claims (pp. 2, 4) that it followed the same course in negotiating the Cabrini settlement as it did in settling the Horner lawsuit, and that this course of conduct was "reasonable". In fact, CHA's conduct in this regard was neither the same as in the Horner suit, nor was it reasonable.

With respect to Horner, the parties to the Horner litigation approached the Gautreaux plaintiffs to discuss the proposed settlement in September, 1994 (Polikoff Aff. ¶3), before presenting the decree to Judge Zagel. The terms of the final decree were then negotiated for nearly 6 months

before being approved by both the Horner and Gautreaux courts (Polikoff Aff. at ¶¶5,6). Negotiations continued for another 5 months before both courts approved the final, "amended consent decree" (Polikoff Aff. at ¶¶8,9).¹

During these negotiations, the plaintiffs made clear their objection to the procedure that CHA and the Horner plaintiffs had followed in negotiating without the participation of the Receiver and the plaintiffs a proposed settlement that involved the development of new non-elderly public housing. (Polikoff Aff. at ¶4).

Thus, what CHA should have gleaned from the Horner experience, and what the plaintiffs were entitled to presume CHA had learned, was that it should have invited the Gautreaux plaintiffs and the Receiver to the table as soon as issues related to the development of replacement housing were placed on the table for negotiation. Unfortunately, the CHA seems to have gone in exactly the opposite direction, for here, were it not for this Court's injunction, the parties to the Cabrini litigation intended to present a settlement to Judge Coar for his approval before even informing the Gautreaux plaintiffs of its

¹ For a variety of reasons, including that the parties have learned much from the Horner experience, the plaintiffs do not suggest that resolution of the Gautreaux aspects of the Cabrini settlement should take anywhere near as long as the Horner settlement. It is likely, however, not to be merely a matter of days or even a few weeks.

contents or involving the Receiver in the discussions relating to replacement housing.

Another significant difference between the Horner situation and Cabrini is that the consent decree entered in the Horner case named as the development manager the Receiver-CMHDC joint venture approved by this Court. The proposed Cabrini settlement names an entity not approved by this Court, without first seeking any modification of existing court orders to do so.

The Gautreaux plaintiffs regret that the CHA failed to learn from the Horner experience, and failed to bring the plaintiffs and the Receiver into the negotiations until even later than was done in the Horner litigation. It is the residents, the plaintiffs in both cases, who will suffer the greatest negative consequences of the delay that must now necessarily ensue while the proposal is responsibly reviewed and any outstanding Gautreaux issues resolved.

2. CHA's memorandum makes numerous claims about what the Receivership Order does or does not authorize the Receiver to do, and what its purpose is. There is little mystery to the Receivership Order: it transfers to the Receiver CHA's obligation to develop housing in order to implement the desegregation remedy contained in the judgment order. Thus, the Receivership Order gives the Receiver broad duties respecting development of dwelling units, including "[m]aking all determinations governing the scattered site program in compliance with prior and future

orders of this Court, including without limitation" submission of applications for funding, development programs, etc.; site selection, including "policies respecting the location of sites and buildings to be acquired"; and the design and specifications for the construction of dwelling units. (Receivership Order, ¶2.) The Receiver also has the right to apply to the Court for waivers or modifications of applicable laws in order to carry out the court's orders. (Receivership Order, ¶3.) These broad duties, including that of determining policies related to site selection and the development of design and specifications for dwelling units, necessarily entail the exercise of judgment, which must be gauged by the overall requirements that the Receiver administer the program "effectively and expeditiously" to the end that the Receivership will assist the court in effectuating its own orders. (Receivership Order, p.1 and ¶1.) In determining whether sites are appropriate for building dwelling units, the Receiver must necessarily determine whether locating dwelling units at those sites meets the desegregation objectives of the judgment order.

3. CHA claims (p. 24) that it is entitled to seek a "waiver" of the requirements of the judgment order and a modification of the Receivership Order. (Of course, it has done neither with respect to Cabrini-Green, although it has, throughout the recent period of litigation, constantly

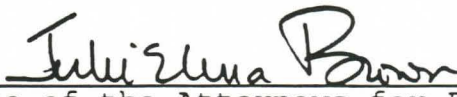
threatened to move to modify the Receivership Order. That CHA could do so is not particularly relevant here since it has not.) Should the CHA seek such orders, the Receiver is clearly entitled, as the Court's agent, to advise the Court of its views concerning whether or not such orders would further the desegregation remedies embodied in the judgment order.²

4. The plaintiffs concur with the request for time to analyze the proposed consent decree, and with the request for a status session with the Court. The plaintiffs also concur with the request that the injunction remain in place in the meantime. It is in the interests of all of the parties (in both cases) that this review be done as expeditiously as possible so that any outstanding Gautreaux related issues may be addressed as quickly as possible and the long-delayed revitalization of the Cabrini-Green neighborhood may get seriously underway. To that end counsel for the Gautreaux plaintiffs have already met with the Cabrini plaintiffs and their counsel, have arranged to review documents related to the Cabrini settlement, and have

² In the past, several orders supplementing the terms of the judgment order and authorizing the Receiver to build units in revitalizing areas have been entered on motion of the plaintiffs or joint motions with CHA. Whether CHA may unilaterally seek to supplement or modify requirements of the judgment order over which the Receiver has authority (such as site selection) has not been addressed.

set an additional meeting date (with an understanding that others will follow) to discuss the details of the agreement.

Respectfully submitted,


One of the Attorneys for Plaintiffs

August 10, 1998

Alexander Polikoff
Julie Elena Brown
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570; fax: 312/641-5454

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

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

AFFIDAVIT OF ALEXANDER POLIKOFF

I, Alexander Polikoff, being duly sworn, say:

1. I am one of the attorneys of record for the plaintiffs in Gautreaux, et al. v. Chicago Housing Authority, et al., Civil Action No. 66 C 1459, in the U. S. District Court for the Northern District of Illinois, Eastern Division. Since the inception of the litigation I have been in responsible charge of the case for the plaintiffs.

Horner Litigation

2. My recorded time records reflect that on September 26, 1994, I attended a meeting at the O'Hare Hilton Hotel at the invitation of Vincent Lane with CHA and "Horner people."

3. Subsequent to September 26, 1994, and through March 9, 1995, my records show considerable time on numerous dates respecting the "Horner consent decree" (entry of 12/12/94), the "Horner draft decree" (entry of 12/16/94), and the like,

reflecting a series of meetings and discussions concerning the provisions of the proposed Horner consent decree at which the Receiver, Julie Brown, another of the Gautreaux plaintiffs' attorneys, and I negotiated such provisions with CHA and the Horner plaintiffs from the "Gautreaux perspective."

4. During the meeting at the O'Hare Hilton Hotel on September 26, 1994, or in meetings with CHA and its attorneys, Tom Johnson and George Galland, shortly thereafter, and on numerous following occasions, I objected to the procedure that CHA and the Horner plaintiffs had followed in negotiating, without the participation of the Receiver and the Gautreaux plaintiffs, a proposed agreement respecting settlement of the Horner litigation that involved the development of new non-elderly public housing.

5. On March 9, 1995, following a hearing held on that date at which the parties to both the Horner and this case presented to this Court a copy of a proposed consent decree in the Horner litigation, this Court entered an order approving specified provisions of the proposed consent decree, designating a "Horner Revitalizing Area" (HRA), and authorizing the joint venture between the Receiver and CHA's not-for-profit development affiliate to develop such number of public housing units within the HRA, subject to such conditions, as would be approved and specified by further order of this Court. A copy of such order of March 9, 1995, is attached hereto as Exhibit A.

6. On March 10, 1995, following this Court's order of the previous day, Judge Zagel conditionally approved the proposed

consent decree and on April 4, 1995, entered an "Order Approving Consent Decree." A copy of such order of April 4, 1995 is attached hereto as Exhibit B.

7. The consent decree approved by Judge Zagel on April 4, 1995 contains numerous references to the Receiver. For example, paragraph 8 (pp. 16-17) thereof provides:

"The CHA defendants themselves shall not construct or manage any of the units called for by Paragraph 2.C. of this decree. Where, pursuant to the August 14, 1987 court order in Gautreaux, et al. v. CHA, et al., 66 C 1459 and 66 C 1461, the Receiver is responsible for the development of this new housing, such development will be undertaken pursuant to an agreement to be executed between the Receiver and CHA's not-for-profit development affiliate, the Chicago Metropolitan Housing Development Corp. ("CMHDC"), where the Receiver shall have a controlling interest. The Receiver-CMHDC joint venture (hereafter "the development manager") shall supervise all development work."

8. The proposed consent decree submitted to this Court on March 9, 1995, and to Judge Zagel on March 10, 1995, did not finally resolve all of the outstanding questions raised by the parties to the negotiations held between September 26, 1994 and March 9, 1995, but constituted an agreed, interim step designed to forestall a feared "recapture," pursuant to federal legislation, of funds earmarked by HUD for the Horner settlement. Negotiations continued thereafter until on or about August 7, 1995, on which date the parties to this case and the Horner case executed a Settlement Agreement, which was approved by Judge Zagel on August 9, 1995. On August 14, 1995, this Court entered an order which constituted both the "further order" referred to in this Court's order of March 9, 1995 and the order referred to in paragraph 9 of the Settlement Agreement. A copy of such order

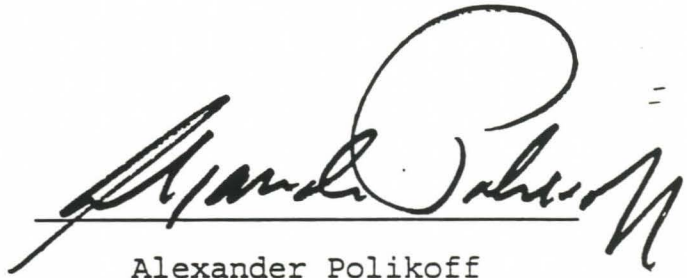
of August 14, 1995, to which the Settlement Agreement is attached as an exhibit, is attached hereto as Exhibit C.

9. In September 1995, Judge Zagel entered an order approving an amended consent decree in the Horner case which embodied the terms of the Settlement Agreement.

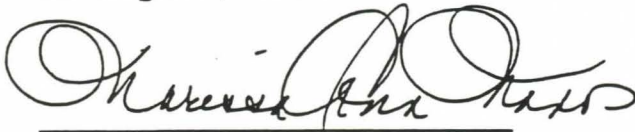
Cabrini Litigation

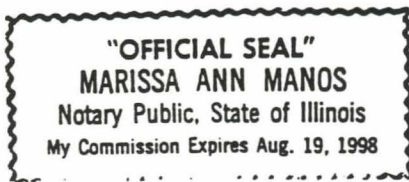
10. CHA counsel and I met several times to discuss a proposed revitalizing order relating to an area adjacent to CHA's Cabrini-Green development, and such an order was later entered by this Court on November 6, 1997. The discussions and the order did not "cover the near north area in which the Cabrini redevelopment was to take place" as stated in CHA's Memorandum in Opposition to Receiver's Emergency Motion filed on August 6, 1998 (page 3, par. 4). Rather, the order covers an area adjacent to Cabrini-Green but from which all Cabrini-Green buildings are excluded and within which the parties were and are agreed that replacement housing would be desirable. The order was particularly sought at the time in question because of the then pending request by the Receiver to HUD for approval of the acquisition of certain privately developed units in the so-called Mohawk North project. Before submission of the order to this Court, and with the knowledge and consent of CHA counsel, I called Richard Wheelock, attorney for the Cabrini plaintiffs, and ascertained that the Cabrini plaintiffs had no objection to the entry of the proposed order. At CHA's request the fact of entry of this order was not to be used by any party in litigation, and

plaintiffs have until now carefully refrained from mentioning it in litigation in this Court or in the Court of Appeals. At no time in these or any other discussions with CHA or Cabrini counsel was I advised that in any other respect the "efforts to resolve the Cabrini litigation" (id.) had reached the point at which the number, location or conditions applicable to the development of new non-elderly public housing were being discussed.


Alexander Polikoff

Subscribed and Sworn to
before me this 7th day
of August, 1998.


Notary Public



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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
	)	
Defendants.	)	

O R D E R

This matter coming on to be heard on the presentations of the parties, and the Court having heard the same, it is hereby ordered:

1. The Court hereby designates as the Horner Revitalizing Area ("HRA") that portion of the City of Chicago that lies between Damen Avenue on the East, Western Avenue on the West, Lake Street on the North, and the Eisenhower Expressway on the South.

2. Notwithstanding any other order in this cause, the joint venture between the Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority ("CHA"), and Chicago Metropolitan Housing Development Authority, CHA's not-for-profit development affiliate, may arrange for the development of such number of public housing units within the HRA, subject to such conditions, as may be approved and specified by further order of

the Court.

3. The Court has examined and now hereby approves
Paragraphs 2.C, 8, 14 and 15 of the proposed Consent Decree in
Henry Horner Mothers Guild v. CHA, 91 C 3316 (USDC N.D. Ill).

ENTER



March 9, 1995

Alexander Polikoff
Julie Elena Brown
Business and Professional People
For the Public Interest
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570

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

HENRY HORNER MOTHERS GUILD, et al.,

Plaintiffs,

-vs-

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

No. 91 C 3316

Hon. James B. Zagel

ORDER APPROVING CONSENT DECREE

This cause comes on to be heard on the agreed motion of the parties to finally approve the Consent Decree conditionally approved by this Court on March 10, 1995. The Court, being fully advised in the premises, makes the following findings of fact and conclusions of law:

1. On March 10, 1995, this Court conditionally approved the Consent Decree herein pursuant to Fed.R.Civ.P. 23(e), subject to any showing to this Court why they should not be so approved.

2. On or before March 17, 1995, defendants Chicago Housing Authority ("CHA") and Vincent Lane (the "CHA defendants") served upon each class member the Notice of Proposed Settlement ("Notice") approved by this Court on March 10, 1995, as follows:

(a) One copy of the Notice was mailed via first class mail to each Horner principal leaseholder residing at the Henry Horner development.

(b) One copy of the Notice was hand delivered to each Horner principal leaseholder residing at the Henry Horner development either by personal service or by placing the Notice

under the principal leaseholders' door. The CHA defendants were accompanied by a representative of plaintiffs during distribution.

(c) One copy of the Notice was posted in the lobby of each Horner building, in the social room at 1850 W. Monroe, Chicago, Illinois, in the Horner Local Advisory Council Office at 1936 W. Washington Street, Chicago, Illinois, and in the CHA Management Office at 1834 W. Washington Street, Chicago, Illinois.

(d) One copy of the Notice was mailed via first class mail to each applicant on CHA's active waiting list for public housing and to any applicant who has indicated a preference for residing in the Henry Horner development.

3. Pursuant to the Notice, members of the plaintiff class were given until March 31, 1995 to file with H. Stuart Cunningham, Clerk of Court, United States District Court for the Northern District of Illinois, Eastern Division, any objections to the Consent Decree.

4. The Court, having considered the one written objection filed with the Clerk of Court, is of the opinion that the Consent Decree represents a fair resolution of the competing interests of the plaintiff class and the defendants. The Court concludes that the settlement is fair, reasonable and adequate. The Consent Decree accordingly will be approved.

IT IS THEREFORE ORDERED:

A. The Consent Decree conditionally approved on March 10, 1995 is hereby finally approved pursuant to Fed.R.Civ.P. 23(e) as fair, reasonable and adequate.

B. The Consent Decree, which is attached hereto as Exhibit A, is incorporated herein by reference.

C. The defendants and their successors in office, their agents, employees, and all persons acting in concert with them shall abide by and implement the Consent Decree.

ENTER:

James B. Zagel
United States District Judge
James B. Zagel

DATED: 4 April 1995

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

RECEIVED

AUG 14 1995

Judge Marvin E. Aspen
U.S. District Court

DOROTHY GAUTREAUX, et al.,)
)
) Plaintiffs,)
)
) v.) 66 C 1459
) 66 C 1460
)
 CHICAGO HOUSING AUTHORITY and)
 HENRY CISNEROS, Secretary of) (Consolidated)
 Department of Housing and Urban)
 Development,)
)
 Defendants.)

O R D E R

This matter came on to be heard on the motion of plaintiffs, pursuant to this Court's order of March 9, 1995, which authorized public housing units to be provided within the Horner Revitalizing Area ("HRA") subject to a further order of Court specifying the number of such units and the conditions relating thereto, and which approved certain paragraphs of a proposed consent decree in Henry Horner Mothers Guild v. CHA and HUD, 91 C 3316 (USDC N.D. Ill.) ("Horner litigation"); and

The Court having heard the presentation of plaintiffs in support of their proposed further order, including advice of a Settlement Agreement in the Horner litigation, signed August 7, 1995; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the HRA respecting the appropriate number of public housing units to be

provided therein and the conditions to be made applicable thereto, and that they join in plaintiffs' motion, believing that the further order proposed by plaintiffs embodies both an appropriate number and appropriate conditions as contemplated by this Court's order of March 9, 1995; and

The Court having heard the presentations of the defendants, U. S. Department of Housing and Urban Development ("HUD") and Chicago Housing Authority ("CHA") with respect to said proposed further order; and

The Court being cognizant that the principle remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracts other than the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the HRA if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

(1) In the event the five buildings owned by CHA at 2111, 2145, 2029 and 2051 West Lake Street, and at 124 North Hoyne Street, containing 466 dwelling units in the aggregate, are

demolished, the Receiver shall be free to provide within the HRA, through new construction and/or acquisition with rehabilitation, 466 replacement dwelling units, provided, however, that one-half of such replacement dwelling units are occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and that such units are geographically distributed approximately evenly among replacement dwelling units, and provided further that in accordance with paragraphs 2(a) and 2(c) of a Settlement Agreement in the Horner litigation signed August 7, 1995, and subsequently approved by the Court in that litigation, of which this Court has been advised and a copy of which has been attached hereto and is hereby incorporated by reference, the parties shall be free to seek a modification of such number of replacement dwelling units to be provided within the HRA;

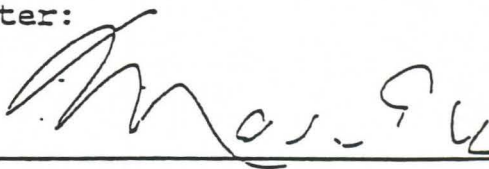
(2) Plaintiffs shall be free to allocate up to \$20 million of the fiscal year 1995 "set-aside" available to them under the Consent Decree approved by this Court in 66 C 1460 to aid in implementing paragraph (1) of this Order, and the Receiver may build and CHA may provide on a priority basis to families who reside in the CHA developments known as Henry Horner Extension, Henry Horner Homes and Henry Horner Annex ("Horner residents"), scattered site units pursuant to paragraph (3)(b) of this Order, provided that scattered site units furnished to residents of the Henry Horner Extension shall be made available without reimbursement therefor from funding supplied under the Consent

Decree in the Horner litigation; and

(3) The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified (a) to afford Horner residents a priority to be housed in one-half of the replacement dwelling units in the HRA as to which the income requirement specified in paragraph (1) of this Order does not apply, and to provide for occupancy of the other half of such replacement dwelling units by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and (b) to afford Horner residents who elect scattered site units in Phase I of the Horner Revitalization Program a priority to be housed in one-half of future scattered site units to be provided by the Receiver elsewhere than in the HRA, all upon presentation of appropriate orders therefor.

Enter:

August 14, 1995



Judge

SETTLEMENT AGREEMENT - August 4, 1995

1. The Horner plaintiffs agree to the demolition of 466 units at the two Horner Extension highrises (2111 W. Lake and 2145 W. Lake) and the three Horner Extension midrises (2029 W. Lake, 2051 W. Lake and 124 N. Hoyne). Demolition of the two Extension highrises shall commence upon approval of this Agreement by Judge Zagel on August 7, 1995, provided however that demolition shall not interfere with the heating plant for 124 N. Hoyne and 2051 W. Lake, and shall not be completed until after the tenants currently residing at 124 N. Hoyne and 2051 W. Lake are relocated pursuant to Paragraph 4 below. Demolition of the 124 N. Hoyne property will occur immediately after the current residents of 124 N. Hoyne have been relocated pursuant to Paragraph 4 below. Demolition of the other two Extension midrises shall occur once CHA has clear title to the land, construction contracts have been let, building permits secured and construction has begun on 203 or more units (see Paragraph 2(c) below) to be occupied by very low income Horner residents on the sites of 2111 W. Lake, 2145 W. Lake and 124 N. Hoyne ("Superblock B") and on sites in other areas of the Horner Revitalization Area.

2. (a) CHA agrees to provide 466 units of replacement housing to be occupied by very low-income Horner residents residing at 2051 W. Lake, 124 N. Hoyne, 2245 W. Lake, 2215 W. Lake, the Annex (if they permanently choose to leave), 1847 W. Lake, 141 W. Wolcott, and as many tenants as are feasible residing at 120 N. Hermitage/111 N. Wood. The location of these units, and the type of units (Section 8, scattered-site or near west side) shall be

determined in accordance with the already completed vote of the Extension residents, and in accordance with a vote by 267 additional residents of the Homes and Annex from the previously mentioned buildings, which vote shall occur within one hundred twenty (120) days of the date this Agreement is incorporated into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below. At least 233 of these very low-income units shall be located in the Horner Revitalization Area. If more than 50% of the Homes/Annex residents elect near west side replacement housing, the parties will negotiate as provided in Paragraph 2 (c) below respecting the accommodation of additional Horner families in the Horner Revitalization Area. The parties understand that 233 or more units for working families (i.e., low income public housing families with incomes between 50% and 80% of area median income) also shall be included in the Horner Revitalization Area, subject to further negotiations by the parties after review of income and other data relating to working families already living in the Horner Revitalization area. The parties further understand that pursuant to an order to be entered in the Gautreaux case on August 14, 1995, 50% of all scattered-site units ready for occupancy will be made available to Horner residents who elect scattered-site units in Phase I of the Horner Revitalization Program.

(b) Funding for the 699 public housing units to be provided, assuming the Homes/Annex residents choose near west side and non-near west side replacement housing choices in the same proportions as the Extension residents, shall be provided as

follows:

- (1) 466 units in the Horner Revitalization Area, consisting of 233 very low income units to be paid for by \$25 million in HUD development funding, and 233 low income units to be paid for by \$20 million in new Gautreaux dollars and \$5 million in CHA Comprehensive Grant funding;
- (2) 233 units of additional very low-income units, to be paid for with \$8.3 million in Gautreaux dollars, \$5 million in HUD development funding, and \$9.4 million in CHA Comprehensive Grant funding, reduced however by any Section 8 units selected by Horner residents.

(c) If more than 50% of the Homes/Annex residents elect near west side replacement housing, CHA and the Gautreaux plaintiffs shall provide sufficient replacement housing for very low income Horner residents, and the parties shall negotiate the manner of providing such housing, either through additional funding for very low income and working family units, revisions to the one-for-one rule as between very low income Horner residents and low-income working families, expansion of the Horner Revitalization Area or other suitable means, all as agreed to by the Horner plaintiffs. Should additional funds be necessary, HUD will consider any application from CHA for any discretionary HUD funding that could be provided.

3. (a) CHA agrees that the Annex residents shall vote on whether they wish to remain at a rehabilitated Annex, or move to replacement housing (either on the near west side or in Section 8 or scattered-site locations). If 50% or more of the current Annex residents vote to remain at the Annex, the Annex will be rehabilitated. If less than 50% of the current Annex residents

vote to remain at the Annex, the Annex will be demolished. The vote will take place by secret ballot ninety (90) days after this Agreement is incorporated into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below. The vote will follow two presentations on the options:

- (1) up to a 45-minute presentation by two persons from Walsh Construction\VOA, using renderings, plans, elevations, a scale model and, a model apartment, pertaining to how a rehabilitated Annex would look. The Horner Residents Committee (HRC) shall be free to work with Walsh/VOA in connection with the development of this presentation and these plans;
- (2) up to a 45-minute presentation by two persons from CHA/HUD/Habitat, using renderings, plans, elevations, and other information, pertaining to scattered sites, near west side replacement options, and Section 8 housing; CHA/HUD/Habitat may also offer Annex residents one bus tour to one existing scattered site building, as agreed to by the HRC. The HRC shall be free to work with CHA/HUD/Habitat in connection with the development of this presentation and these plans.

Effective on the date this Agreement is signed, CHA shall communicate with the Annex residents only as their landlord, and CHA/HUD/Habitat/Walsh/VOA, their agents, employees and all persons acting in concert with them shall not contact any Horner Annex resident regarding any matter related to the vote. However, the CHA and the HRC will distribute the ballots and count the votes. CHA shall allow a representative of the HRC to have access to the model apartment at all times. CHA shall provide all necessary measures to prevent the vandalism of the model apartment, including use of a steel door and steel mesh screen and other materials similar to that which Construction Management is using to secure

other areas of Horner. In the event of vandalism of the model apartment, no vote shall be taken until the model apartment has been restored to its original condition and all tenants wishing to view the model apartment have done so. Additional ground rules for such presentations shall be agreed upon in advance by all parties, just as they were when the Extension residents voted.

(b) Prior to incorporating this Agreement into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below: (1) CHA shall negotiate a pre-vote budget and sign a contract with Walsh/VOA for the presentation described in Paragraph 3(a)(1) above; and (2) CHA shall negotiate with the HRC and Walsh/VOA a budget for the rehabilitation of the Annex. If the Annex is to be rehabilitated, CHA agrees to reserve sufficient Comprehensive Grant monies to complete such rehabilitation, but the per unit costs of such rehabilitation must be within 110% of TDC limits for rehabilitation. Rehabilitation shall occur with the residents in place at the Annex. If the Annex is rehabilitated, every Annex resident who elects to stay at the facility shall be granted the right to do so, provided there are sufficient units. If there are more Annex residents who wish to stay than there are available units, a lottery shall be utilized to determine which residents shall be permitted to stay. The balance of the units, if any, shall be rented to working families. As current Annex residents vacate the building, they shall be replaced first, by Annex residents who elected to stay but were unable to do so due to lack

of available units, and second, by working families until, over time, a 50-50 split is achieved as between very low-income and working families.

(c) If the Annex is to be demolished, its residents will be afforded the right to occupy the replacement housing they elect, as part of the vote set forth under Paragraph 2(a) hereof. No demolition of the Annex shall occur until 109 units of replacement housing, in addition to the replacement housing provided for in Paragraph 2 (a) above, have been provided to Horner residents. However, CHA will not be required to reserve sufficient funds for this replacement housing in excess of the amount provided for in Paragraph 3(b) above.

4. The residents at 124 N. Hoyne and 2051 W. Lake will be relocated prior to November 1, 1995, provided that plaintiffs may seek an extension of this date from Judge Zagel for good cause shown. Those who have elected scattered-site and Section 8 units (and for whom such units are available) will be afforded the right to obtain those units as soon as possible. The remaining families shall be afforded temporary relocation into repaired-vacant units at the Horner Extension or Horner Homes, temporary Section 8 units which may be used in either "general" or "limited" areas, HUD single-family and multifamily homes, hotels/motels leased to the CHA or private apartments leased to the CHA. CHA relocation counsellors, together with HRC representatives, shall meet with each family to discuss and arrange for relocation. The relocation process shall commence after approval of this Agreement by Judge

Zagel on August 7, 1995. All moving expenses, including utility and security deposits, connection fees and reconnection fees, shall be paid by CHA from Comprehensive Grant or other appropriate funds. Additional ground rules for the relocation shall be agreed to by the plaintiffs and CHA prior to the approval of the revised Horner consent decree by Judge Zagel as provided in Paragraph 9.

5. CHA agrees to set aside a minimum of \$5.0 million in Comprehensive Grant funding for interim repairs in the next year to the Homes, Extension and Annex, excluding any repairs necessary to provide temporary relocation housing pursuant to Paragraph 4 above. The use of the \$5.0 million and any amounts in excess thereof shall be negotiated by plaintiffs and CHA pursuant to Paragraphs 6, 9, and 12 of the Horner Consent Decree.

6. CHA agrees to supply the Section 8 certificates utilized in Phase I which may be used in "general" or "limited" areas in the City, subject to agreement by the Horner and Gautreaux plaintiffs, CHA and HUD, provided however that the Horner plaintiffs may petition Judge Aspen if the Horner and Gautreaux plaintiffs are unable to agree.

7. CHA agrees to increase the amount for consultant fees in Paragraph 16 of the Consent Decree to \$150,000 annually, provided reasonable invoices are submitted.

8. Where necessary to accommodate family housing needs, CHA and the Horner plaintiffs may agree to allow household members with children of their own to convert to principal leaseholder status and thereby obtain their own Horner Housing Certificate, provided

that the Horner plaintiffs may petition Judge Zagel to authorize such conversions if CHA and the Horner plaintiffs are unable to agree.

9. The Gautreaux plaintiffs agree to all of the above. The Gautreaux plaintiffs further agree that they shall not raise any Gautreaux issue relating to the Horner Annex, if the Annex residents vote to rehabilitate it, including any issue relating to the resulting tenant income mix. Except where otherwise provided herein this Agreement shall not go into effect until the parties agree on appropriate language incorporating the Agreement into the current Horner Consent Decree, Judge Zagel has approved the revised Horner decree after notice to the class and a fairness hearing in the Horner case, and Judge Aspen has entered an appropriate further order in the Gautreaux case pursuant to his order of March 9, 1995, which order shall make appropriate reference, as agreed to by CHA, HUD, the Horner and Gautreaux plaintiffs, to Paragraphs 2(a) and 2(c) of this Agreement. Notice shall be provided only to current residents of Horner.

10. CHA, HUD and the Horner plaintiffs agree that no further changes to Phase I of the Horner Revitalization Plan or to this Agreement will be made without the consent of the parties.

11. HUD will, subject to acceptable submissions by CHA:

(a) approve allocation of the 1995 HUD development funding and CHA Comprehensive Grant funding as provided in Paragraph 2(b)(1) and (2) above;

(b) approve the allocation of additional HUD development

funding, if any is provided, and any CHA Comprehensive Grant funding, as provided in Paragraph 2(c) above;

(c) approve, if necessary, the Annex pre-vote funding as provided in Paragraph 3(b)(1) above, and approve the Annex rehabilitation funding as provided in Paragraph 3(b)(2) above;

(d) approve all relocation funding as provided in Paragraph 4 above;

(e) approve allocation of CHA Comprehensive Grant funding as provided in Paragraph 5 above;

(f) approve allocation of the Section 8 funding as provided in Paragraph 6 above; and

(g) approve allocation of the consultant fees as provided in Paragraph 7 above.

Dated: August 7, 1995

William P. Wilen
WILLIAM P. WILEN, for the
Hornez plaintiffs

Alexander Polikoff
ALEXANDER POLIKOFF, for the
Gautreaux plaintiffs

Thomas E. Johnson
THOMAS E. JOHNSON, for the
Chicago Housing Authority

Linda A. Wawzenski
LINDA A. WAWZENSKI, for HUD

Nelson A. Diaz
NELSON A. DIAZ, for HUD

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	Hon. Marvin Aspen
Defendant.	)	

**STATEMENT OF POSITION OF CITY OF CHICAGO WITH
RESPECT TO RECEIVER'S JULY 30, 1998, EMERGENCY MOTION**

The City of Chicago ("City"), a defendant in the action of Cabrini Green Local Advisory Council v. Chicago Housing Authority, et al., No. 96 C 6949, ("Cabrini Green LAC") presently pending in the United States District Court for the Northern District of Illinois before Judge David Coar, respectfully submits this Statement of Position in response to this Court's July 30, 1998, Order arising out of the Receiver's Motion dated the same day.

1. The City was named as a defendant in the Cabrini Green LAC lawsuit by an Amended Complaint filed April 1997. (The original complaint had named as defendants the Chicago Housing Authority ("CHA") and its director.) The Amended Complaint alleges a series of claims relating to the Near North Redevelopment Initiative ("NNRI"), a proposed plan for redevelopment of a portion of the Near North side of Chicago in which the Cabrini-Green public housing development is located. One of the principal aspects of the NNRI is the development of mixed-income housing on certain parcels of land.

2. The case was vigorously litigated and a trial date was set for June 1998. Starting in September 1997 and proceeding through December 1997, the parties and their trial

attorneys participated in a structured set of sessions (transcribed by court reporter but designated to remain confidential) to attempt to resolve the lawsuit. Settlement discussions continued thereafter, including several sessions before Executive Magistrate Judge Rebecca Pallmeyer, in early- to mid-1998.

3. It appears that the Cabrini-Green development necessarily implicates the Gautreaux judgment order. Moreover, the City understood throughout the settlement discussions that any effective settlement would require review and approval of its terms (a) by the Corporation Counsel, (b) by the Receiver, and (c) by the Court.

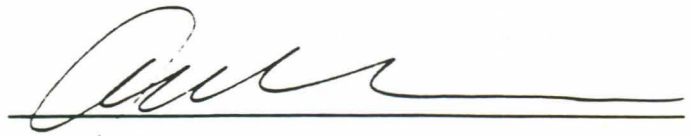
4. The general parameters of a possible settlement were arrived at by the parties and their trial counsel by July 1998.

5. After reviewing the Receiver's Emergency Motion, which articulates the extent to which the Receiver believes its powers and duties may be implicated by the terms of the proposed settlement agreement, the City believes that further Orders of Court are required. Thus, it is the City's position that the proper course of action is to review the terms of the proposed settlement agreement in the Cabrini Green LAC litigation with the Receiver and this Court and that any agreement reached with the participation of the Receiver be reviewed and approved by the Corporation Counsel and the Court.

Respectfully submitted,

BRIAN L. CROWE
Corporation Counsel for the City of Chicago

BY:

A handwritten signature in dark ink, appearing to read 'A. Mine', is written over a horizontal line.

ANDREW S. MINE

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CERTIFICATE OF SERVICE

I, ROBERT D. WHITFIELD, an attorney, hereby certify that I caused copies of the foregoing Notice of Filing and **REVISED MEMORANDUM ON BEHALF OF PLAINTIFF CABRINI-GREEN LOCAL ADVISORY COUNCIL IN CIVIL ACTION NO. 96 C 6949, SUBMITTED BY LEAVE OF COURT** to be served upon the persons listed in the Notice of Filing Service List, by hand delivery and/or U.S. Mail on Friday, August 7, 1998 before 5:00 p.m.



RECEIVED
AUG 07 1998
MICHAEL W. ROBBINS
CLERK, U.S. DISTRICT COURT
CASE NO. 66-10000-1

NOW COMES the Plaintiff in civil action No. 96 C 6949, Cabrini-Green Local Advisory Council v. Chicago Housing Authority and Joseph Shuldiner, and, by leave of this Court, submits the following Memorandum of Law requesting approval to submit, for review and approval by Judge Coar, a proposed Consent Decree in Case No. 96 C 6949. Plaintiff Cabrini-Green Local Advisory Council (hereinafter, Cabrini LAC) is represented by Robert D. Whitfield and Stanley L. Hill for the limited and special purpose of filing this Memorandum of Law in the Dorothy Gautreaux, et al. v. Chicago Housing Authority, suit pending before the Court.

I. BACKGROUND
A. Plaintiff Cabrini LAC

The Cabrini LAC is a public housing tenant organization that represents the tenants of Cabrini-Green, a large family public housing development owned and operated by the Chicago Housing Authority. Membership in the Cabrini-Green LAC is composed of all leaseholders and residents of the Cabrini-Green development. The role of the Cabrini LAC is to improve the quality of life for Cabrini-Green residents, and to participate in self-help initiatives to enable residents to create positive living environments for families living in the development. 24 CFR 964.100

The Cabrini LAC is required to comply with regulations issued by the U.S. Department of Housing and Urban Development (HUD); which includes having a democratically elected governing board (24 CFR 964.115(c)), and the adoption of written procedures governing the election or recall of the governing board. (24 CFR 964.115 (b)). The Cabrini LAC is authorized to be involved and participate in the overall policy development and directions of public housing operations directed at, or affecting, Cabrini-Green (24 CFR 964.135); and to form partnerships with outside organizations that are complementary to the duties and responsibilities of the Cabrini LAC. (24 CFR 964.117). The involvement of the Cabrini LAC in the HOPE VI Consent Decree is clearly authorized and encouraged by HUD's Regulations; and by guidelines governing the HOPE VI program.

B. The Chicago Housing Authority

The Chicago Housing Authority is the second or third largest public housing authority (PHA) in the country operating over 40,000 family and senior housing units, and over 14,000 Section 8 Certificates and Vouchers. The Chicago Housing Authority (hereinafter CHA)

ordinarily operates as a municipal corporation established pursuant to State law. The Illinois Housing Authorities Act, 310 ILCS 10/2, provides for the creation of the CHA by the appointment and approval of ten (10) commissioners, and further mandates that three (3) of the commissioners must be residents of the CHA. (310 ILCS 10/3). The CHA, from June, 1995 to the present, has not had a board of commissioners appointed and approved under State law, and has operated and functioned under the direction and control of HUD.

C. HOPE VI Program

The HOPE VI program was created by Congress in 1993. HOPE stands for Homeownership and Opportunity for People Everywhere. The HOPE Grants Programs were designed to permit residents of public housing authorities, PHAs and local governments to design and implement homeownership programs.

HOPE VI was designed and targeted for the empowerment of residents of severely distressed developments. This is stated in the legislative history for the HOPE VI Grants Program, and in the language contained in the 1993 HOPE VI Notice of Fund Availability (NOFA). The language refers to a program where residents and political leaders join together to develop strategies to transform distressed areas into residential and commercial centers. (S. Rep. No. 102-356, 102d Cong., 2d Sess. p. 40 (1992)). The March 29, 1993 NOFA specifically requires that residents be fully involved in developing, implementing, and monitoring the HOPE VI program. (Federal Register, Volume 58, No. 58, page 16593)

D. Cabrini LAC Litigation

The Cabrini LAC initiated litigation against the CHA in 1996 charging violations of Title VI of the 1964 Civil Rights Act, Title VIII of the 1968 Fair Housing Act; and violations of 42 U.S.C. 1983, the U.S. Housing Act, and the Uniform Relocation Act. This litigation before Judge Coar also includes claims that the CHA denied the residents participation in the planning process. Judge Coar issued a Memorandum Opinion on January 21, 1997 denying, in part, CHA's Motion To Dismiss. Judge Coar's opinion held that the Cabrini LAC is the recognized representative for the tenants of Cabrini-Green, and have authority to represent them and express the tenants' views on matters related to the HOPE VI grant. The opinion also indicated that any relief granted would be subject to the guidelines set forth under Gautreaux. Negotiations between the parties (the Cabrini-Green LAC, CHA, and the City of Chicago) subsequently resulted in a tentative settlement in principle. This was referenced in a May 1, 1998 Minute Order issued by Judge Coar stating that the "Parties reach agreement in principle to settle case, subject to drafting agreement and seeking necessary court approval." The proposed consent decree was then prepared, and was ready for submittal at the time the Gautreaux Receiver filed the instant emergency motion for a Temporary Restraining Order (TRO).

II. POSITION OF THE CABRINI LAC

The position and views of the Cabrini LAC are quite simple. The Cabrini LAC, representing the residents of Cabrini-Green, wishes to execute the proposed Consent Decree, and begin the long awaited, and often delayed, revitalization of their community.

The Cabrini LAC is therefore requesting that the Court allow submission of a proposed Consent Decree to Judge Coar for his review and/or approval, subject, of course, to the requirements of the Gautreaux Order, and this Court's review and decision. The preliminary review by Judge Coar is suggested because of the numerous non-Gautreaux issues involved in the litigation. These issues (demolition, tenant relocation, tenant participation, etc.) are not before the Gautreaux Court, and have already been discussed at length in the Cabrini litigation. The decree can then be forwarded for comment and recommendation by the Gautreaux plaintiffs, and the Receiver. This is consistent with the language already in the decree making it subject to Gautreaux requirements.

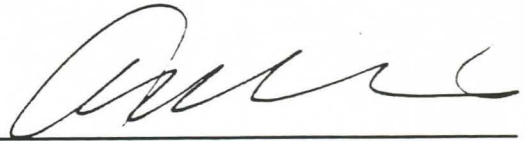
Cabrini-Green, located on the near north side of Chicago, has always been nationally known as an example of all that was wrong with the majority of the public housing in many urban areas. These ills included excessive density, excessive crime rates and drug activity, shootings on a daily basis, extreme poverty, lack of employment opportunities or quality education, and a very high percentage of female heads of households. Over ninety-nine per cent (99%) of the residents are black. Cabrini-Green has approximately three thousand (3,000) units many of which are vacant, or too dilapidated to occupy, making it the second largest development in the city, and one of the largest in the country. Cabrini-Green was the development that triggered the "sweeps" instituted by CHA several years ago after Dantrell Davis, a young teenager, was shot by a sniper on his way to school. Recently, the Board of Education considered closing a public school located within the development because of the continued dangers from the constant shooting by rival gangs. If ever a public housing development fits exactly the type of distressed area Congress had in mind, Cabrini certainly does.

However, the demonstrated will and industry of the Cabrini-Green tenants in the face of these problems make it even more of a priority to make progress on this grant program. The Cabrini-Green tenants, over the past two years, have had the following economic and business successes and milestones:

- The 1230 North Burling Resident Management Corporation (RMC) manages one of the buildings at Cabrini-Green (1236 North Burling) and has been featured on 60 Minutes and 48 hours as a success story.
- Universal Laundries established an on-site laundry facility in a 50/50 joint venture with Cabrini tenants.
- William Green Homes (part of the Cabrini-Green) executed a joint management agreement with a private management company training the Green Homes RMC to eventually manage all units (953) at Green Homes.
- As of September 5, 1998, all units at Cabrini-Green, almost 3000 units, will be managed by tenant RMC's.
- The Green Homes RMC, during its two years of management of the 953 units at Williams Greens Homes, has reduced the backlog of workorders from over 4,000 to 150; and have corrected code violations to the extent that all seven Green Homes buildings have been moved out of code violations Court over the last eighteen months.

CERTIFICATE OF SERVICE

I, Andrew S. Mine, an attorney, certify that this 10th day of August, 1998, I caused to be served by hand delivery before 5:00 p.m., on the persons listed on the attached Service List, the foregoing **Notice of Filing and Statement of Position of City of Chicago With Respect to Receiver's July 30, 1998, Emergency Motion.**



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

DOROTHY GAUTREAUX, ET AL.,)
)
Plaintiffs,)
)
v.)
)
CHICAGO HOUSING AUTHORITY,)
)
Defendants.)

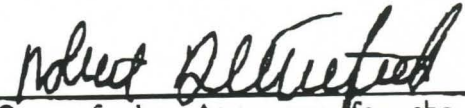
CASE NO. 66 C 1459

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE, that on Friday, August 7, 1998, I caused to be filed with the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, the attached REVISED MEMORANDUM ON BEHALF OF PLAINTIFF CABRINI-GREEN LOCAL ADVISORY COUNCIL IN CIVIL ACTION NO. 96 C 6949, SUBMITTED BY LEAVE OF COURT, a copy of which is attached hereto and served upon you.

Dated: August 7, 1998


One of the Attorneys for the Plaintiff,
CABRINI-GREEN LOCAL ADVISORY
COUNCIL, in Civil Action No. 96 C 6948

Robert D. Whitfield
10 South LaSalle Street
Suite 1301
Chicago, Illinois 60603-1002
(312) 917-8888

These are only a few examples of the initiative and capacity for self-sufficiency already demonstrated by Cabrini residents, making the Cabrini complex an even more attractive candidate for a grant to revitalize their community.

Additionally, the proximity of the Gold Coast, and affluent neighborhoods, also makes Cabrini-Green an ideal choice for a revitalization strategy. The tenants have desperately sought this opportunity and negotiated, argued, and fought with CHA officials for years to achieve this goal, long before HOPE VI was enacted. The Cabrini LAC executed an agreement with CHA in May, 1993, and continued meeting with CHA officials up through March, 1995, when another agreement was executed concerning demolition and replacement housing in certain buildings.

HUD took over CHA in June, 1995 and the Cabrini LAC again went through more meetings with the new HUD/CHA management team. When these negotiations failed to produce an agreement on issues previously approved by CHA, the Cabrini-Green LAC was again forced to fight for the right to participate in the revitalization of their community, and subsequently filed the litigation now before Judge Coar. This brief background illustrates the continuing frustration of the residents in fighting to achieve an agreement, only to see new "parties" emerge, and a new struggle ensue. The residents fear that if the proposed Consent Decree is not executed soon, they will once again have to start over with new negotiations.

Further, the Cabrini LAC has only recently become aware of what appears to be a bitter battle between CHA and the Gauvreau Receiver, and is greatly concerned that the conflict between the two will hamper, and perhaps preclude, an agreement being reached compatible with all parties. This would then result in resumption of the litigation before Judge Coar, and further

delay the revitalization — with the real possibility that the HOPE VI Grant (because of HUD funding deadlines) may be lost to Cabrini and CHA forever.

The Cabrini LAC has no desire to interject itself into any conflict in the Gautreaux case, and has always bargained in good faith with officials from CHA/HUD, and the City of Chicago. Neither the Cabrini LAC, or its representative were aware of the Receiver's contention that CHA/HUD officials had no authority to discuss or negotiate a proposed agreement in the Cabrini litigation. (See Affidavits attached as Exhibit One and Two.) It would appear that Magistrate Judge Pallmeyer, and City of Chicago officials were also unaware of this since they all participated in the lengthy negotiations resulting in the proposed Consent Decree.

The Cabrini LAC was always aware that any agreement would be subject to the requirements of the Gautreaux Order. It was never the intent of the LAC to circumvent or bypass the Receiver, or the requirements set forth in the Gautreaux Order.

The Cabrini LAC and its representatives have arranged to meet with the Gautreaux plaintiff's representatives on Friday, August 7, 1998; and is also attempting to meet with the Receiver and his representatives sometime next week. These meetings are to discuss the proposed Consent Decree, and ascertain whether there are any issues or concerns which would preclude moving forward, subject to the approval of Judge Coar and this Court.

The Cabrini LAC feels these meetings are also necessary to discuss the substantial differences between the development programs completed by the Receiver under the 1987 Gautreaux Order and the HOPE VI revitalization program contemplated for Cabrini-Green. None of the development programs previously completed by the Receiver involved demolition and/or the relocation of public housing tenants. There was also no program role or involvement by

public housing tenants. The HOPE VI program, by contrast involves substantial and on going tenant participation, during the planning, implementation and monitoring phases. it also involves demolition, relocation, and replacement issues, all of which involve substantive resident participation, and the applicability of other Federal laws (eg. the Uniform Relocation Act).

III. CONCLUSION

The Cabrini LAC recognizes that it is not a party to the Gautreaux litigation and that other substantive issues and concerns will also be considered by this Court in its decision whether the proposed Consent Decree can be executed. However, the LAC fervently hopes the Court will consider the position set forth herein, and if possible, allow a few representatives from the Cabrini LAC to address the Court prior to the rendering of a decision. This request is to allow the tenants to speak directly to the Court and articulate the urgent and desperate needs of the Cabrini-Green community, and the importance of resolving this matter as quickly as possible.

Respectfully submitted,

By: 
One of the Attorneys for the Cabrini
Local Advisory Council

Robert D. Whitfield
10 South LaSalle Street
Suite 1301
Chicago, Illinois 60603-1002
(312) 917-8888

AFFIDAVIT

I, Richard M. Wheelock, on oath, state that this affidavit is made on my personal knowledge, and, if sworn as a witness at trial, I could competently testify to the following facts:

1. I am the Housing Supervisory Attorney at the Legal Assistance Foundation of Chicago ("LAFC"), a legal aid program that provides civil legal services for the indigent in the City of Chicago.

2. LAFC represents the Cabrini-Green Local Advisory Council (LAC), a tenant organization that represents all families residing at the Cabrini-Green development.

3. The membership of the LAC is composed of lessees and authorized residents 18 years of age or older residing in the Cabrini-Green development. The LAC board is composed of elected representatives from each residential building in Cabrini-Green. Further, the officers of the LAC have been directly elected by the residents of Cabrini-Green in development-wide secret ballot voting.

4. By federal regulation, the CHA must recognize the LAC, being a duly elected resident council, as the sole representative of the residents of Cabrini-Green. See 24 C.F.R. § 964.18(a)(1).

5. In June 1996 the CHA and the City of Chicago announced the Near North Redevelopment Initiative ("NNRI"), which included, among other things, the demolition of 1324 public housing units at Cabrini-Green.

6. In October 1996, the LAC filed suit in federal court (Cabrini-Green Local Advisory Council v. Chicago Housing

EXHIBIT

ONE

SSA 331

Authority, et al., 96 C 6949 ("Cabrini-Green LAC") against the Chicago Housing Authority challenging the NNRI as violative of federal, state, and local law. The case was assigned to Judge Coar. In March 1997, the LAC amended its complaint to name the City and Mayor Daley as additional defendants.

7. I am lead counsel for the LAC in Cabrini-Green LAC.

8. On September 15, 1997, all parties appeared before Judge Coar on a Joint Motion For Limited Modification Of Discovery Schedule To Permit All Parties To Engage In A Structured Settlement Process ("Joint Motion"), a copy of which is attached hereto as Exhibit A.

9. Attached to the Joint Motion was an agreement executed by all parties providing for a formal settlement process to achieve an amicable resolution of Cabrini-Green LAC.

10. That agreement set forth the topics to be negotiated, including (a) the economic mix of households in the replacement housing units built as part of the Hope VI Plan and the Near North Redevelopment Initiative; (b) the provision of job training and employment opportunities to Cabrini-Green residents as part of the Hope VI Plan and the Near North Redevelopment Initiative; (c) the relocation process for Cabrini-Green residents who will be dislocated as a result of the demolition or rehabilitation of Cabrini-Green buildings as part of the Hope VI Plan and/or the Near North Redevelopment Initiative; (d) the right of dislocated residents to return to the revitalized community (including selection, screening, and transitional training, if any) as part

of the HOPE VI Plan and the Near North Redevelopment Initiative; (e) the number of buildings to be demolished, as well as the sequence and timing of demolition of Cabrini-Green buildings as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (f) the number and type of replacement public housing units to be built in the revitalized community as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (g) the fate of those Cabrini-Green units not included in the HOPE VI Plan or the Near North Development Initiative; and (h) the consultation process during the implementation of the HOPE VI Plan and the Near North Redevelopment Initiative. The agreement also addressed the information to be exchanged and the conditions under which the settlement meetings would be held. Finally, the agreement included a confidentiality provision that the parties would treat the substance of the discussions as confidential and would not, except by mutual agreement, make statements to the public concerning anything said during any of the sessions. See Section F.6. of Agreement (attached to Joint Motion (Exhibit A)).

11. Judge Coar granted the Joint Motion.

12. The parties met pursuant to this agreement on the following dates: September 22, 1997; September 23, 1997; October 1, 1997; October 3, 1997; December 1, 1997; and December 8, 1997. The meetings included representatives from the LAC, the City of Chicago and CHA, including their counsel. All meetings were transcribed.

13. Subsequently, Magistrate Judge Pallmeyer offered to serve as a mediator, and so thereafter the parties met for settlement discussions in her court room on or about the following dates: February 19, 1998; April 15, 1998; and May 1, 1998.

14. On May 1, 1998, the parties reached an agreement in principle to settle the case, subject to drafting an agreement and seeking necessary court approval. See Judge Pallmeyer's May 1, 1998 minute order, a copy of which is attached hereto as Exhibit B.

15. On July 7, 1998 representatives of the LAC and the CHA, including their counsel, met at the offices of the CHA to conclude final details of the agreements reached between the CHA and the LAC.

16. Throughout the entire settlement negotiation process it was always understood by the LAC that the proposed consent decree was contingent upon review and approval by Judge Aspen and the Court's receiver, The Habitat Co., pursuant to the decrees entered in Gautreaux, et al. v. CHA, 66 C 1459.

17. The proposed consent decree specifically provides that the consent decree shall not be effective, unless it is approved by the Gautreaux Court.

18. The parties anticipated that The Habitat Co. would have ample opportunity to review and comment upon the proposed consent decree after Judge Coar's approval.

19. The Habitat Co. was well aware of the ongoing settlement negotiations between the City, the CHA and the LAC, but made no demand upon the LAC prior to July 31, 1998 to be included in those discussions. See Brenda Grauer affidavit.

20. At no time prior to July 31, 1998 did the Habitat Co. communicate to the LAC its position that the CHA had no authority to negotiate with the LAC.

21. During a meeting with Alex Polikoff, Gautreaux plaintiffs' counsel, on or about September 29, 1997, I mentioned to him that settlement negotiations were ongoing between the CHA, the City and the LAC. The LAC received no demand from Mr. Polikoff prior to July 31, 1998 that he or The Habitat Co. be included in those negotiations.

22. From May 5, 1998 through July 16, 1998 the parties exchanged no fewer than 13 written drafts relating to the agreements reached among the parties. On or about July 21, 1998 Andy Mine, assistant corporation counsel for the City of Chicago, by telephone signed off on a final draft of the proposed consent decree delivered to him on July 16, 1998. On or about July 24, 1998 Thomas Johnson by telephone signed off on the same draft delivered to him on July 16, 1998.

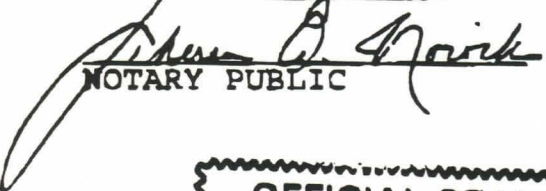
23. On July 28, 1998, the LAC unanimously approved the proposed consent decree.

24. On August 4, 1998, counsel for the LAC and the City appeared before Magistrate Pallmayer for a status report. Counsel for the LAC and the City represented that all parties had

signed off on the proposed consent decree, but that Judge Aspen had issued a temporary restraining order prohibiting its presentation to Judge Coar.


Richard M. Wheelock

Subscribed and sworn
to me on August 6, 1998


NOTARY PUBLIC



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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,

Plaintiff,

-vs-

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER,

Defendants.

96 C 6949

Hon. David H. Coar

Magistrate Judge
Rebecca R. Pallmeyer

NOTICE OF MOTION

To: Richard M. Wheelock
Legal Assistance Foundation
of Chicago
343 S. Dearborn Street
Suite 700
Chicago, IL 60604

Andrew Mine
Asst. Corporation Counsel
30 N. LaSalle Street
Suite 900
Chicago, IL 60602

PLEASE TAKE NOTICE that on September 11, 1997, at 9:15 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable David H. Coar, or any judge sitting in his stead, in the courtroom usually occupied by him in the United States District Courthouse, 219 S. Dearborn Street, Chicago, IL, and then and there present the attached JOINT MOTION FOR LIMITED MODIFICATION OF DISCOVERY SCHEDULE TO PERMIT ALL PARTIES TO ENGAGE IN A STRUCTURED SETTLEMENT PROCESS.

Leslie Ann Jones
One of the Attorneys for Defendants

Thomas E. Johnson
Leslie Ann Jones
Anne Megan Davis
JOHNSON, JONES, SNELLING, GILBERT & DAVIS
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
(312) 578-8100

CERTIFICATE OF SERVICE

LESLIE ANN JONES, an attorney, hereby certifies that a copy of the foregoing NOTICE OF MOTION and the attached JOINT MOTION was served upon the party listed above by hand delivery on September 9, 1997.

Leslie Ann Jones
LESLIE ANN JONES

EXHIBIT

A

SSA 337

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,

Plaintiff,

-vs-

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, CITY OF CHICAGO,
RICHARD M. DALEY,

Defendants.

96 C 6949

Hon. David H. Coar

Magistrate Judge
Rebecca R. Pallmeyer

JOINT MOTION FOR LIMITED MODIFICATION OF DISCOVERY SCHEDULE TO
PERMIT ALL PARTIES TO ENGAGE IN A STRUCTURED SETTLEMENT PROCESS

Plaintiff Cabrini-Green Local Advisory Council ("LAC"),
Defendants Chicago Housing Authority and Joseph Shuldiner
(collectively the "CHA Defendants") and Defendants City of Chicago
and Richard M. Daley (collectively the "City Defendants") jointly
move for a limited modification of the discovery schedule to permit
all parties to engage in a structured settlement process to which
all parties have agreed. This structured settlement process will
commence September 15, 1997 and end October 10, 1997, will concern
all issues in this lawsuit, and involve both the principals and
their attorneys. A copy of the Agreement setting forth the details
of the process is attached hereto as Exhibit A. In order to devote
their full resources to this settlement process, the parties
jointly request that the Court modify the discovery schedule so
that the existing deadline for dispositive motions and the trial
date are maintained, but the deadlines for depositions are
extended.

consideration of all issues between the parties. These discussions have reached fruition in an agreed process in which the parties would engage in an intensive series of meetings over thirty days, recorded by a court reporter, at which all matters would be aired and an agreement on all remaining issues would be sought. All parties agree that the sooner these meetings commence, the greater the likelihood of significant progress in reaching an agreement on the substantive disputes between them.

5. All parties agree that they are unable to both satisfactorily conduct over twenty-two depositions during September and devote the necessary resources to the settlement process. All parties also agree that, in the event the parties are unable to resolve their disputes, maintaining the existing discovery schedule with respect to dispositive motions and trial is important for a prompt resolution of this case so that the redevelopment of Cabrini-Green can proceed.

6. Accordingly, the parties move that the Court modify the discovery schedule so that: 1) the deadline for document production and non-expert witness depositions is extended to December 15, 1997; 2) the deadline for expert witness disclosure is extended to January 1, 1998; 3) the deadline for expert witness depositions is extended to February 1, 1998; 4) the deadline for rebuttal expert witness disclosure is extended to March 1, 1998; and 5) the deadline for rebuttal expert witness depositions is extended to April 1, 1998. There is no need to modify either the original date

for dispositive motions, pretrial order, pretrial conference, or trial.

Leslie A. Jones
One of the Attorneys for Defendants

Thomas E. Johnson
Leslie Ann Jones
Anne Megan Davis
JOHNSON, JONES, SNELLING,
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Attorneys for the CHA Defendants

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Attorney for Plaintiff

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Litigation Division
30 N. LaSalle St., Suite 900
Chicago, IL 60602
(312) 744-7220

Attorney for Defendant City of Chicago

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,)

Plaintiff,)

v.)

CHICAGO HOUSING AUTHORITY
("CHA"), an Illinois Municipal
Corporation; JOSEPH SHULDINER,
In His Official Capacity As
Executive Director of the CHA;
CITY OF CHICAGO, an Illinois
Municipal Corporation; and
RICHARD M. DALEY, In His
Official Capacity As Mayor of
the City of Chicago,)

Defendants.)

No. 96 C 6949

Hon. David H. Coar

Complaint for
Declaratory and
Injunctive Relief

AGREEMENT

Plaintiff Cabrini-Green Local Advisory Council ("LAC"), Defendants Chicago Housing Authority ("CHA") and Joseph Shuldiner (collectively "CHA Defendants"), and Defendants City of Chicago and Richard M. Daley (collectively "City Defendants"), by their respective attorneys, hereby agree as follows:

A. Definitions

In this Agreement, the following terms shall have the following meanings:

1. "LAC" means the plaintiff Cabrini-Green Local Advisory Council;
2. "CHA" means defendant Chicago Housing Authority, an Illinois Municipal

Corporation, created and existing under the Housing Authorities Act, 310 ILCS 10/1 et. seq.

3. "Shuldiner" means defendant Joseph Shuldiner, the Executive Director of the CHA.
4. "CHA Defendants" means collectively CHA and Shuldiner.
5. "City" means defendant City of Chicago, a municipal corporation created and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et. seq.
6. "City Defendants" means City and the defendant Richard M. Daley, Mayor, collectively.
7. "Amended Complaint" refers to the Amended Complaint filed by plaintiff on April 2, 1997.
8. "Cabrini-Green" means the public housing development consisting of Cabrini Homes, Cabrini Extension, and Green Homes.
9. "Hope VI" means the Urban Revitalization Program, PUB. L. 102-389, Title II, 106 Stat. 1579, reprinted at 42 U.S.C. §12571, note.
10. "Near North Redevelopment Initiative" or "NNRI" means all activities related to the City's initiative in revitalizing the Near North community which includes Cabrini Green.
11. "HUD" means the United States Department of Housing and Urban Development.
12. "Lawsuit" means the above-captioned action.

B. Conditions Leading to this Agreement

1. The lawsuit involves the revitalization of Cabrini-Green. All of the parties agree that Cabrini-Green is in need of significant change to improve the viability of that community, and all of the parties recognize the importance of proceeding toward the common goal expeditiously and with a minimum of rancor and distraction.

2. Plaintiff commenced this lawsuit complaining, inter alia, that the CHA Defendants had not adequately consulted or negotiated with it in developing a revitalization plan for Cabrini-Green. These claims are set forth, as against the CHA Defendants, in Counts IX and XII of the Amended Complaint. Plaintiff's Amended Complaint also raises a number of other claims against the CHA Defendants and/or the City Defendants concerning the effect of the current revitalization plan on the residents of Cabrini-Green.

3. There are eight aspects of the current revitalization plan for Cabrini-Green about which plaintiff, through its attorneys, has requested settlement negotiations. These are (a) the economic mix of households in the replacement housing units built as part of the Hope VI Plan and the Near North Redevelopment Initiative; (b) the provision of job training and employment opportunities to Cabrini-Green residents as part of the Hope VI Plan and the Near North Redevelopment Initiative; (c) the relocation process for Cabrini-Green residents who will be dislocated as a result of the demolition or rehabilitation of Cabrini-Green buildings as part of the Hope VI Plan and/or the Near North Redevelopment Initiative; (d) the right of dislocated residents to return to the revitalized community (including selection, screening, and transitional training, if any) as part of the Hope VI Plan and the Near North Redevelopment Initiative; (e) the number of buildings to be demolished, as well as the sequence and timing of demolition of Cabrini-Green buildings as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (f) the number and type of replacement public housing units to be built in the revitalized community as part of the HOPE VI Plan and the Near North Redevelopment Initiative; (g) the fate of those Cabrini-Green units not included in the HOPE VI Plan or the Near North

Development Initiative; and (h) the consultation process during the implementation of the HOPE VI Plan and the Near North Redevelopment Initiative.

4. The parties disagree as to the extent to which the LAC has had, and/or has availed itself of, opportunities for consultation, and as to the form and nature of a productive mechanism for sharing information and consulting about the revitalization of Cabrini-Green.

5. The CHA Defendants and City Defendants, and the LAC desire to enter into a meaningful settlement process about the eight issues set forth in paragraph B.3 above, in the hope of avoiding the uncertainty, expense, and delay of further litigation and resolving all claims raised in the litigation by entry into a Consent Decree.

6. The City Defendants, while not sued with respect to the "consultation" and "negotiation" claims set forth in Counts IX and XII of the Amended Complaint, nevertheless have an interest in participating in meaningful consultation with the parties, as well as in avoiding the uncertainty, expense, and delay of unnecessary litigation, including additional paper discovery and a substantial number of depositions.

C. Information

1. In order for the parties to be adequately informed about the affected population of Cabrini-Green residents for purposes of the settlement process, no later than seven days prior to the first settlement meeting, the CHA Defendants shall provide to the other parties the best information it has concerning the following matters:

a. the current number of families living in all 23 high-rises at Cabrini-Green and the total number of vacancies in these buildings;

- b. the location, by category of housing, of families relocated from 1150-60 North Sedgewick, 1158 North Cleveland, 1117 North Cleveland, and 1157-59 North Cleveland;
- c. currently available, anticipated, or possible sources of funds for the redevelopment of Cabrini-Green;
- d. all available data and reports concerning the viability of Cabrini-Green compiled in accordance with §202 of the Omnibus Rescission and Appropriation Act of 1996 and HUD's Notice, Assessment of the Revitalization Potential of Certain Public Housing Required by law, 61 Fed. Reg. 50,532 (Sept. 26, 1996) and Standards A-E thereof; and
- e. all other discovery sought in plaintiff's previously filed written discovery requests, as agreed following the parties' Local Rule 12(k) conferences.

2. The LAC and City Defendants shall similarly produce information responsive to the outstanding discovery on them, respectively, as agreed following the parties' Local Rule 12(k) conferences.

3. The City Defendants shall produce information responsive to paragraph C.1.c above, no later than seven days prior to the first settlement meeting.

4. The City Defendants and the CHA Defendants shall produce any and all information used as the basis for the percentages of public housing proposed in the NNRI no later than seven days prior to the first settlement meeting.

D. Settlement process

1. Commencing September 15, 1997, the parties and their respective lawyers and consultants shall commence a series of six meetings at a neutral and accessible location with multiple rooms available for the parties' private use.

2. All discussions during these common meetings shall be recorded by a court reporter.

3. These six days of meetings shall take place in three two-day sessions, with approximately seven days between each session. The first day of each session shall address topics (a)-(d), as identified in paragraph B.3 above. The second day of each session shall address topics (e)-(h), as identified in paragraph B.3 above. Each topic shall be allocated approximately 2 hours per session, one half hour being allocated to each set of parties, and a final half-hour for common discussion. The topics to be discussed during each day of the sessions, the time spent on each topic, and the duration of the meetings may be modified subject to the agreement of the parties.

4. The parties recognize that the topical divisions described in paragraph B.3 and D.3. above are not absolute, inasmuch as each topic necessarily implicates some of the other topics (e.g., opportunities for increased employment affects the economic mix of tenants). Thus, the parties acknowledge that there will be some overlap among the topics.

5. In order to facilitate meaningful dialogue during the course of the settlement negotiation, each set of parties (the LAC, the CHA Defendants, and the City Defendants) shall each have a maximum of four participants, exclusive of the lawyers of record in the litigation, in the room at any one time, with the understanding that this numerical limitation shall be flexible and may be waived if the presence of additional persons is necessary to proceeding efficiently with any particular aspect of the process.

6. In order to provide focus to the oral discussions, each set of parties shall exchange with the other set of parties, two days prior to the commencement of each two-day session, written Statements of Position outlining their current position with respect to each of the issues

on the table. Each set of parties shall also indicate, along with its Statement of Position, who it expects its participants to be for each upcoming session.

7. The discussions shall not be formal presentations of evidence, but any party may elect to present its position through one or more of the following methods or formats:

- a. witness statements;
- b. documentary materials;
- c. oral and/or written statements by counsel;
- d. any other reasonable mode of presenting information within the topical and time constraints set forth above.

8. Within ten days of the conclusion of this six-meeting process, the defendants shall prepare and circulate a report summarizing, for each topic, the agreements reached and the disagreements that remain. The plaintiff shall have ten days to circulate to defendants a response to the defendants' report.

9. The parties may, by agreement, provide for extension of this settlement process as appropriate. The parties may, by agreement, moreover, provide for ongoing settlement discussions with respect to any one or more of the eight issues set forth in paragraph B.3. above, and may provide for a modified format for such continued negotiations.

E. Stay of Proceedings

Based on the foregoing, the parties agree to stay all lawsuit proceedings from September 15, 1997 through October 10, 1997, and an extension of the discovery deadline to December 15, 1997, the disclosure of experts to January 1, 1998, the deadline for expert witness depositions to February 1, 1998, the deadline for rebuttal expert witness disclosure to March 1, 1998, and the

deadline for rebuttal expert witness depositions to April 1, 1998, subject to the agreement of the Court.

F. Miscellaneous Provisions

1. This Agreement shall not be construed as an admission by the defendants that they have violated any legal duty owed to the LAC or any other person or entity;
2. The headings, captions and arrangements used in this Agreement are for convenience only, and shall not be deemed to limit, amplify, or modify any terms or affect any meanings;
3. The terms of this Agreement constitute the entire understanding of the parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall have any legal relevance to the construction of this Agreement.
4. Failure of any party to this Agreement, during the course of the settlement process set forth above, to come to a substantive resolution concerning any issue set forth in paragraph B.3 above, despite best efforts, shall not constitute violation of the Agreement.
5. The parties may enter into an agreement with respect to any of the specific topics set forth in paragraph B.3 above, prior to the conclusion of the full settlement process.
6. The parties agree that, to help ensure candid and free airing of the issues on the table during the course of these sessions, the parties will treat the substance of the discussions as confidential and will not, except by mutual agreement, make statements to the public concerning anything said during any of the sessions, nor disseminate to the public the transcripts of the proceedings. This assurance of confidentiality is not meant to limit or affect the ability of the

parties to make reference to the discussions in court proceedings to the extent allowed in paragraph F.7.

7. Except for information exchanged as set forth in paragraph C, above, no information communicated in the process of these settlement discussions shall be used as evidence in the lawsuit, save to the extent it is relevant and probative with respect to plaintiff's claims relating to alleged lack of meaningful consultation or alleged lack of ability to participate in the process of planning the Cabrini-Green redevelopment. Such relevant and probative evidence shall not include any substantive communications made during the settlement discussions, but may include, among other things, (a) this agreement, (b) the topics addressed during the settlement discussions, (c) the participants, (d) the meeting dates, (e) the length of meetings, (f) the location of meetings, (g) neutral, non-argumentative summaries of the positions taken by the parties at the end of each daily session (as orally articulated by the lawyers before the court reporter with the parties excused), and (h) any additional items to which the parties may stipulate.

FOR PLAINTIFF

BY: 

Richard M. Wheelock
Attorney for Plaintiff

FOR CHA DEFENDANTS

BY: 

Thomas E. Johnson
Attorney for the CHA Defendants

FOR CITY DEFENDANTS

BY: 

Andrew Mine
Attorney for the City Defendants

Thomas Edward Johnson
Johnson, Jones, Snelling & Gilbert
36 South Wabash Street
Suite 1310
Chicago, IL 60603

Case Number: 1:96-cv-06949

Title: Cabrini-Green Local v. CHA

Signed Judge: Honorable David H. Coar

MINUTE ORDER of 4/8/97 by Hon. David H. Coar : Pretrial conference set to 5/29/98 at 3:00 p.m. Trial set to 6/15/98 at 10:00 a.m. Rule 16(b) scheduling conference held. Rule 16(a)(1) disclosures by 5/1/97. Amendments or joinder of parties on or before 6/1/97. Fact discovery cut-off 6/1/97. Disclosures of experts by 11/1/97. The parties may be permitted three (3) experts per side, however the court reserves the right to limit defendants' experts. Expert discovery to close on 1/1/98. The parties may depose the other side's expert any time prior to 1/1/98. The parties to disclose any rebuttal expert any time prior to 1/1/98. The parties have until 3/1/98 to depose the opposing party's rebuttal expert. Dispositive motions to be filed on or before due 2/1/98. Final pretrial order to be submitted 5/29/98. All discovery to be referred to Magistrate Judge. For the reasons stated on the record, the court will not get involved in mediation, but the parties may pursue. Mailed notice

This docket entry was made by the Clerk on April 10, 1997

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

SSA 350

Exhibit B

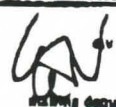
Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other than Assigned Judge	Rebecca R. Pallmeyer
CASE NUMBER	96 C 6949	DATE	5/1/98
CASE TITLE	Cabrini-Green Local vs. CHA		

(In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.)

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Settlement conference convened. Parties reach agreement in principle to settle case, subject to drafting agreement and seeking necessary court approval. Parties expect to present draft agreement to court on or before May 8, 1998. All dates now set for briefing of summary judgment stand. Defendant's motion to bar expert testimony by professor Siim Soot (Doc. No. 123-1 & 2) is stricken without prejudice.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☒ Copy to judge/magistrate judge.	courtroom deputy's initials 	Date/time received in central Clerk's Office	8 + 7 judge number of notices	Document Number
			date docketed	
			docketing deputy initials	
			5/4/98 date mailed notice	
			 docketing deputy initials	

EXHIBIT

D

SSA 351

AFFIDAVIT OF BRENDA L. GRAUER

I, BRENDA L. GRAUER, being duly sworn, depose and state as follows:

1. I am a staff attorney at the Legal Assistance Foundation of Chicago. I have been employed there since January 5, 1995. I am one of the attorneys representing the Cabrini-Green Local Advisory Council in Cabrini-Green LAC v. CHA et al., 96 C 6949.

2. During the course of the litigation, I took the deposition of Valarie Jarrett, the Executive Vice-President of The Habitat Company. The deposition began on or about November 11, 1997 and was continued and concluded on December 15, 1997. The deposition was conducted at the offices of the Legal Assistance Foundation of Chicago located at 111 W. Jackson, Suite #300, Chicago, Illinois.

3. On December 15, 1997, Ms. Jarrett, her counsel, Edward Feldman, and myself were seated in the LAFC conference room awaiting the arrival of counsel for the CHA and City of Chicago. While we were waiting, Ms. Jarrett explained that she was under the impression that the lawsuit had settled. I explained to her that while the parties were conducting settlement negotiations nothing had, as yet, been resolved.

4. Ms. Jarrett further inquired as to the reason for the delay in settling the case. I told her that the Cabrini LAC and CHA had reached agreement on most issues but that negotiations with the City seemed to be at an impasse.



SSA 352

5. At that point Ms. Jarrett told me to, "let her know if there was anything she could do."

Brenda L. Grauer
BRENDA L. GRAUER

Subscribed and sworn to before me

this 6th day of August, 1998.

Sharon Knight
NOTARY PUBLIC

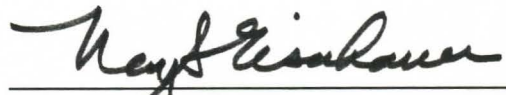


CERTIFICATE OF SERVICE

I, Nancy Eisenhower, an attorney, hereby certify that on Tuesday, September 15, 1998, I caused a copy of the foregoing SUPPLEMENTAL APPENDIX TO BRIEF OF DEFENDANTS-APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145, to be served by hand delivery on counsel listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604



Nancy S. Eisenhower