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, Executive Director,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: Counsel on attached service list

Please take notice that on December 7, 1998, the attached **Memorandum In Support Of The Cabrini-Green Local Advisory Council's Motion For A Limited Waiver Of The Injunction And Limited Modification Of The Receivership Order** was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a copy of which is herewith served upon you.

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Certificate of Service

I, Richard M. Wheelock, an attorney, certify that I caused to be hand delivered to the counsel on the attached service list a copy of **Memorandum In Support Of The Cabrini-Green Local Advisory Council's Motion For A Limited Waiver Of The Injunction And Limited Modification Of The Receivership Order** on December 8, 1998.

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MEMORANDUM IN SUPPORT OF THE CABRINI-GREEN LOCAL ADVISORY COUNCIL'S MOTION FOR A LIMITED WAIVER OF THE INJUNCTION AND LIMITED MODIFICATION OF THE RECEIVERSHIP ORDER

I. Introduction

The Cabrini-Green Local Advisory Council ("LAC") has filed a motion requesting that this Court enter an order granting: (1) a limited waiver to designate Cabrini Extension North as the Cabrini HOPE VI Revitalizing Area,[1] and (2) a modification of the receivership order to allow Corcoran Jennison Companies to serve as the development manager for the Revitalizing Area. The LAC's motion is an essential step in implementation of the proposed consent decree negotiated by the LAC, the CHA, and the City of Chicago in Cabrini-Green Local Advisory Council v. CHA, et al., 96 C 6949 (N.D. Ill.), which must also be approved by Judge Coar. The

[1] I.e., a waiver of the locational requirements in the governing injunction, Gautreaux v. CHA, 304 F. Supp. 736 (N.D. Ill.1969), and all subsequent modifications thereto.

proposed consent decree accomplishes two important goals: (1) the desegregation and deconcentration of public housing on the Near North Side of Chicago; and (2) the provision of badly needed affordable housing.[2]

II. History of Litigation

A. CHA's HOPE VI Application

The LAC represents all public housing residents of the Cabrini Homes, the Cabrini Extension, and the William Green Homes (collectively "Cabrini-Green") located on the Near North Side of Chicago. Cabrini-Green, which has over 3,500 public housing units, is owned and operated by the Chicago Housing Authority (the "CHA").

In October 1992, Congress created the Urban Revitalization Demonstration Program ("URD"), otherwise known as "HOPE VI," which provided grants of up to $50 million "to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects . . . ." Pub. L. 102-389, Title II, 106 Stat. 1579, reprinted at 42 U.S.C. §1437l, note. On May 5, 1993, the CHA filed an application with the U.S. Department of Housing and Urban Development ("HUD") under the HOPE VI Program for $50 million to revitalize the Cabrini-Green development. Plaintiff's Rule 12(N) Statement of

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[2] HUD's 1998 report, "Rental Housing Assistance - The Crisis Continues," states that 5.3 million very low-income families pay more than half of their income for rent. In addition, thousands of public housing units will be demolished and not replaced in Chicago alone as a result of the viability test imposed by Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act ("OCRA"), Pub. L. No. 104-134 (September 26, 1996). See Chicago Housing Authority OCRA Viability Assessment, May 1998. The proposed consent decree does its part in meeting this need for additional affordable housing.

Additional Facts ("Pl. Facts") at ¶20.[3] In its application, the CHA proposed the demolition of three buildings -- 1117-1119 N. Cleveland (262 units), 1150-1160 N. Sedgwick (262 units), and 1157-59 N. Cleveland (136 units) -- for a total loss of 660 units. Id. at ¶21. CHA proposed replacing the 660 units on a one-for-one basis with 493 newly constructed public housing units and 167 Section 8 certificates. Id. at ¶22. On November 19, 1993, HUD approved the CHA's HOPE VI grant application for $50 million.

Through early 1996, the CHA actively consulted and negotiated with the LAC with regard to proposed redevelopment plans for Cabrini-Green. Pl. Facts at ¶¶40-59. In particular, the CHA convened a screening committee, which included LAC representatives, to review Cabrini revitalization proposals submitted by private developers in response to a Request For Proposals issued in the fall of 1995. Id. at ¶52. The RFP invited developers to assemble additional non-CHA land, so that all 493 units of public housing could be built and still be part of a mixed-income community split roughly evenly between public and non-public housing. Id. at ¶¶47, 50. The screening committee concluded that none of the proposals would produce the 493 public housing units required under the RFP. Id. at ¶59.

B. City of Chicago And CHA Announce Near North Revitalizing Initiative

Between March 1996 and June 1996, the CHA and the City of Chicago (the "City") held a series of meetings to create a new and larger plan for the redevelopment of the Near North Side of Chicago, including the Cabrini-Green development. Pl. Facts at ¶61. The LAC was excluded from these meetings. On June 27, 1996, the CHA and the City announced the Near North

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[3] The LAC attaches hereto as Exhibit A a copy of its Rule 12(N) Statement of Additional Facts which was filed on April 3, 1998, in response to the City's and the CHA's Motions for Summary Judgment in Cabrini-Green LAC v. CHA, et al.

Redevelopment Initiative ("NNRI"), an ambitious plan to create a 2,300-unit, mixed-income community on the Near North Side of Chicago, bounded generally by the Chicago River on the west, Chicago Avenue on the south, Orleans Street on the east, and North Avenue on the north ("NNRI area"). See map of NNRI, area attached hereto as Exhibit B. The plan called for an income mix of 50% market housing rate, 20% affordable housing, and 30% public housing.

The NNRI provided for the demolition of all eight high-rises situated in Cabrini Extension North, a sub-development of Cabrini-Green, consisting of 1,324 public housing units. However, it proposed to provide only 300 to 325 replacement for displaced Cabrini families.

C. Cabrini-Green LAC Files Suit

The NNRI, as originally announced, did not provide a sufficient number of replacement public housing eligible units, nor did it provide statutorily mandated tenant participation. Consequently, the LAC filed suit against the CHA (and later the City), challenging the plan. The LAC alleged that the NNRI 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.

In September 1997, the LAC, the CHA, and the City of Chicago, began intensive negotiations which lasted through the summer of 1998. Those negotiations led to a proposed consent decree which resolved all the issues in the litigation. A copy of the proposed consent decree is attached hereto as Exhibit C. Entry of the proposed consent decree was contingent upon this Court's approval, and the approval of Judge Coar.

D. Meetings with the Habitat Company

Efforts to present the proposed consent decree to Judge Coar and this Court were halted when the Gautreaux Receiver, Daniel Levin and the Habitat Company, moved this Court for an order directing the CHA to comply with the 1987 Receivership Order and with subsequent orders relating to the HOPE VI program. This Court invited all interested parties (including the LAC) to respond to the Receiver's motion, which they did. On August 12, 1998, this Court enjoined the CHA from presenting the proposed consent decree to Judge Coar until Habitat (which exercises CHA's responsibilities in the construction of all new, non-elderly public housing) had the opportunity to review and comment on the proposed consent decree.

Since then the Cabrini-Green LAC has met on ten (10) separate occasions and exchanged information with counsel for Habitat and the plaintiff class in Gautreaux. The parties have not been able to reach agreement. See November 18, 1998 and November 20, 1998 letters from Habitat's counsel, including enclosures, to this Court. During the last meeting that occurred on November 23, 1998, there was some movement toward possible informal resolution. However, no concrete proposal has been agreed to, although the parties intend to continue meeting towards that end.

III. Proposed Consent Decree

The proposed consent decree provides for the demolition of 1,324 public housing units and the creation of a 2,300-unit, mixed-income community, as provided in the NNRI announced by the City and the CHA in June 1996. The overall plan for a mixed-income community, consisting of 50% market rate housing, 20% affordable housing, and 30% public housing, is not changed.[4] Exhibit C, pp. 8, 17-18. The proposed consent decree provides for more replacement housing (700 public housing units overall within the NNRI area) for displaced residents and for greater resident involvement in the decisions affecting the replacement housing to bo built on CHA land. Id. at 5, 7-8, 19.

A. Demolition

Under the proposed consent decree, all the high-rises (1117-1119 N. Cleveland, 1157-59 N. Cleveland, 1158 N. Cleveland, 1150-1160 N. Sedgwick, 1159-1161 N. Larrabee, 1015-1017 N. Larrabee, 1121 N. Larrabee, and 500-502 W. Oak) in the Cabrini Extension North site will be demolished. Id. at 4-7. Cabrini Extension North is generally bordered by Division Street on the north, Larrabee Street on the west, Oak Street on the south and Orleans Street on the east. See Exhibit B (parcels F and G). It is the Cabrini Extension North site that the LAC is requesting be designated as the Cabrini HOPE VI Revitalizing Area (or "Revitalizing Area"); it takes up roughly the southern half of the NNRI area.

The demolition of the Cabrini HOPE VI Revitalizing Area buildings will occur in two phases. In Phase I, 1158 N. Cleveland, 1150-1160 N. Sedgwick, and 500-502 W. Oak will be demolished as soon as the parties execute and this Court and Judge Coar approve the proposed consent decree. Exhibit C, pp. 5-6. In Phase II, the remaining high-rises in the Cabrini HOPE VI Revitalizing Area will be demolished once the following conditions are met:

1. 300 public housing units are under construction in the NNRI Area;

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[4] Thus, the terms in general (number of units, income mix, and densities for the various parcels) are the same as those announced by the CHA and the City in June 1996, and refined through a "charrette" process in December 1996 in which Habitat participated. Habitat never objected to those terms.

2. CHA identifies and secures sufficient funds for the construction of an additional 400 public housing units in the NNRI Area;

3. The sites for the additional 400 public housing units have been identified and secured; and

4. A Request for Proposals ("RFP") has been issued and a proposal selected for all of the units to be built in the Cabrini HOPE VI Revitalizing Area.

Id. at 6.

B. Construction of New Mixed-Income Housing in the Cabrini HOPE VI Revitalizing Area

The proposed consent decree provides for the construction of 923 units of mixed-income housing in the Cabrini HOPE VI Revitalizing Area. Id. at 8. The income mix for the Revitalizing Area will be similar to the mix proposed for the remainder of the NNRI area: 49% market rate housing (451 units), 21% affordable housing (195 units), and 30% public housing (277 units). Id. The affordable units will be targeted toward families making 40% of median income ($23,800 for a family of four). Id. In the remainder of the NNRI Area, new housing will be 50% market rate, 30% public housing, and 20% affordable housing. Id. at 17-18. The affordable units on these City parcels will be a combination of (1) rental units affordable to families making less than 80% of median income,[5] and (2) for-sale units affordable to families making 80% to 120% of median income. Id. at 18.

C. Resident Participation

The LAC (or its affiliated development entity) will work with a private developer on all the units to be constructed in the Cabrini HOPE VI Revitalizing Area. Id. at 7. The LAC will

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[5] The affordable rental units will most likely be funded with Low Income Tax Credits which require rents to be affordable to families making no more than 60% of area median income.

have a 51% ownership interest in the general partnership. Id. The RFP issued for the development of the Cabrini HOPE VI Revitalizing Area will require that the LAC participate in developers' fees and profits, the selection of property managers and construction contractors, the planning of the development, and the development of resident and other programs. Id. The precise degree of LAC participation will be determined in the bidding process, with the developer who maximizes LAC participation in these areas receiving additional points in the scoring of the bids. Id. The successful developer will be chosen by a committee composed of three LAC appointees and three CHA appointees. Id.

In the remainder of the NNRI area, the LAC will have one representative on each committee set up to select developers through the RFP process, and the LAC will not serve as a co-developer. Id. at 19.

D. Development Manager

A development manager will assist the CHA and the LAC in designing and issuing the RFP for the Cabrini HOPE VI Revitalizing Area, reviewing and scoring responses to the RFP, and overseeing the implementation of the redevelopment plan. Id. at 8.

1. The proposed consent decree identifies McCormack Baron & Associates – a national expert in the field of mixed-income communities, HOPE VI developments, and joint partnerships with public housing residents – to serve as the development manager for the Cabrini HOPE VI Revitalizing Area. McCormack Baron has now indicated that it no longer wishes to serve as the development manager, but instead may wish to be one of the developers to bid once the RFP is issued.

2. The LAC has met with Joseph Corcoran, the chairman of Corcoran Jennison Companies, which has developed a number of mixed-income communities on public housing sites, including Harbor Point in Boston. Corcoran Jennison has indicated its interest in serving as the development manager. Corcoran Jennison Companies, like McCormack Baron, is a developer of national reputation specializing in mixed-income communities,

HOPE VI developments, and joint partnerships with public housing residents. A fuller description of its portfolio and the resident partnerships is provided below in Section VI.D.

The proposed consent decree does not in any way suggest the elimination of the Habitat Company as the Gautreaux Receiver; nor does it propose to limit the Receiver's authority and responsibility to insure racial and/or economic integration under the orders issued in the Gautreaux litigation. The consent decree assumes that the Receiver will monitor implementation of the HOPE VI grant with respect to these issues, report any concerns for the Court's review, and, where necessary, take appropriate action. The LAC does not view Corcoran's role as development manager and Habitat's continued responsibilities as Receiver as inconsistent or incompatible.[6]

IV. Designation of Cabrini Extension North as the Cabrini HOPE VI Revitalizing Area

The LAC requests that the Cabrini HOPE VI Revitalizing Area be designated a revitalizing area under the terms of Gautreaux. The Cabrini HOPE VI Revitalizing Area encompasses nearly all of Census Tract 808, except for blocks 111-113. Census Tract 808 is currently a limited area in that its population is more than 30% African-American. However, implementation of the proposed consent decree, which includes the demolition of every public housing unit within its borders, will transform this area into a vibrant, mixed-income community (as described above), which will be both racially and economically diverse. In addition to the construction of 923 new mixed-income housing units, the area will have two new elementary

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[6] Habitat has a similar role with respect to the public housing to be built on non-CHA land within the NNRI area.

schools and an enclosed swimming pool, built at an estimated total cost of $25 million. The Chicago Park District will expand and make significant improvements to Seward Park, which is also located within the Revitalizing Area.

Moreover, the areas immediately surrounding the Cabrini HOPE VI Revitalizing Area have recently seen a surge in both economic and residential housing development. In November 1997, the CHA and the Gautreaux plaintiffs filed a joint motion to have the area just north of the Cabrini HOPE VI Revitalizing Area designated a "revitalizing area" under Gautreaux and to authorize the acquisition of 250 public housing units therein. A copy of the November 1997 joint motion and supporting memorandum are attached hereto as Exhibit D. A copy of this Court's order granting the motion is attached hereto as Exhibit E. The Near North Revitalizing Area is bounded by Halsted Street on the west, North Avenue on the North, Sedgwick Street on the east, and Division Street on the South; it excludes the Green Homes. See Exhibit B.

Initiatives to revitalize the area to the north of the Cabrini HOPE VI Revitalizing Area include a $1.5 million City project to widen and resurface Division Street between Clybourn Avenue and Orleans Street. Approximately 100 feet away, on the north side of Division, developers have completed a $6.5 million, 145,000 square foot shopping center, anchored by a Dominick's supermarket. On the other side of the shopping center, the City has completed construction of a $4 million parent-child center. To provide infrastructure for these massive projects, the City is also investing $7.5 million in sewer and water improvement projects; $2.25 million in sidewalk, gutter, and curb reconstruction; and $750,000 in streetscaping projects. The City is also subsidizing the construction of a $12 million senior housing development, Evergreen II, nearby. See NNRI Fall 1998 update, including map, attached as Exhibit C to the LAC's motion.

On the eastern edge of the NNRI area, the City recently completed a new $5 million branch of the Chicago Public Library at Division and Orleans. On the western edge, the City is constructing a new $15 million police headquarters for the 18th District. Directly to the west of the Cabrini HOPE VI Revitalizing Area, on Goose Island, a new Federal Express facility has brought 330 jobs to the area, including 100 jobs reserved for community residents. Also on Goose Island, a new Republic Windows and Doors manufacturing plant brought an additional 200-300 permanent jobs to the area. Additionally, a Crate & Barrel superstore was recently completed at the intersection of North and Clybourn Avenues.

Residential housing development is also strong. In General Area Census Tract 803, which abuts the Cabrini HOPE VI Revitalizing Area to the northeast, a luxury condominium development called Old Town Square is under construction. The development will contain 113 units, 28 of which are to be reserved for public housing families. In Census Tract 804, abutting the Revitalizing Area to the north, a boom in upscale housing is also taking place: Cleveland Courts is a new residential development consisting of 57 town homes priced between $187,000 and $346,000; and Mohawk North is a 92-unit residential development comprised of condominiums, town homes, and detached single-family homes, 16 of which are reserved for public housing families. <u>See</u> Exhibit D (Affidavit of Andrew Rodriguez, Director of the Redevelopment Division of the Chicago Housing Authority at ¶ 5, attached to memorandum). In Census Tract 805, abutting the northwest corner of the Cabrini HOPE VI Revitalizing Area, more housing development is under way. The Orchard Park development, currently under construction, will consist of 54 town homes, 13 of which will be reserved for public housing families. The first 10 of the market rate units sold at prices ranging from $160,000 to $210,000. The City recently accepted the bid of Holsten Real Estate Development Corporation to build mixed-income housing on a 7-acre site known as Halsted North. Holsten's plan provides for the development of 271 residential units, 82 of which will be for public housing families. Also within Census Tract 805 are the William Green Homes, a 1,058 unit Cabrini-Green housing project, which was recently rehabilitated and placed under private management with a resident management corporation.

Additionally, the Cabrini HOPE VI Revitalizing Area is bordered to the east and north by General Area census tracts which are among the wealthiest in the entire city. In 1990, homeowners in Census Tracts 715-719, 802, and 803 had average incomes of over $100,000. The mean home value in these census tracts exceeded $300,000. These neighborhoods also support vibrant retail and entertainment opportunities. See Exhibit D (memorandum at II(C)).

Finally, the Cabrini HOPE VI Revitalizing Area is in close proximity to a job-rich area. Dr. Siim Sööt, associate director of the Urban Transportation Center at the University of Illinois at Chicago and president of the Illinois Universities Transportation Research Consortium, prepared an expert report for the LAC as part of the its litigation against the CHA and the City, a copy of which is attached hereto as Exhibit F. Dr. Sööt analyzed the location of entry-level jobs in the Chicago Metropolitan area. He found that the greatest concentration of those jobs is not -- as many planners have assumed -- in the suburbs, where growth in general has been high. Instead, those jobs are concentrated in the City, with the greatest number in the Chicago Central Business District, close to Cabrini-Green.

V. The Proposed Consent Decree Will Further The Deconcentration and Desegregation Goals Of The Gautreaux Injunction Order

The implementation of the proposed consent decree will result in the substantial deconcentration of public housing – from 1,324 units down to 277 units – in the Cabrini Hope VI Revitalizing Area. The public housing units will represent no more than 30% of the units built back on site. The remaining units will be market rate units (49% of the total) and affordable units (21% of the total) targeted toward working families. Moreover, the provision of market rate and affordable housing in an area in which housing demand is already strong, and in which a massive array of public and private improvements is already underway, will attract families of all races and economic levels.[7]

VI. The Redevelopment Plan In The Proposed Consent Decree Is Economically Viable

The proposed plan for the Cabrini HOPE VI Revitalizing area is economically viable. It is modeled on numerous other mixed-income communities that have been developed around the nation, featuring comparable percentages of units for public housing and comparable joint partnerships with those residents. Private developers, lenders, and investors, from Chicago and elsewhere, have expressed an interest in participating in such a redevelopment effort. This is based on the well-founded expectation that moderate and upper income families will be attracted by the proposed development.[8] The economic viability of the plan is further bolstered by the

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[7] As of June 11, 1997, 64 of the 76 new market rate units (84%) at Mohawk North had been sold to white families. See Exhibit D (Rodriguez Affidavit, ¶ 5.D).

[8] As described above, market rate housing continues to boom in this area despite the presence of public housing. Market rate housing is similarly being built in close proximity to other public housing developments, such as the new housing being constructed on S. Clark Street,

strong development team the residents have assembled.

A. Comparable Mixed-Income Communities Have Been Created Around The Nation

1. Resident Partnership In Ownership and Management

Several successful mixed-income communities have been developed and managed through joint partnerships with public housing residents, including:

Harbor Point (Boston, MA) is a nationally renown, 1,283-unit, mixed-income community, where 31% of the units are set aside for low-income families. See Exhibit G. At Harbor Point, the residents and the developer, Corcoran Jennison Companies, are co-general partners and have an equal say on all decisions, including those relating to design, construction, and management. A description of the partnership agreement is attached hereto as Exhibit H.

Allequippa Terrace (Pittsburgh, PA) is an 802-unit, mixed-income community. Allequippa is a joint partnership between the private developer, Corcoran Jennison Companies, and the public housing residents. Residents have a 50% interest as a co-general partner, with shared decision-making in such areas as design, construction and management. The income-mix of Allequippa is described in Section VI.A.2 below.

George L. Vaughn Residences at Murphy Park (St. Louis, MO), a mixed-income community, is a joint partnership between McCormack Baron &Associates and the public housing residents. The income-mix of Murphy Park is described in Section VI.A.2. below.

King's Lynne (Lynn, MA) is a 441-unit, mixed-income development completed in 1979. It is is a 50/50 joint partnership between Corcoran Jennison Companies and the public housing residents. See Corcoran October 28, 1998 letter, attached as Exhibit I. The income-mix of King's Lynne is described in Section VI.A.2. below.

Quaker Meadows (Lynn, MA) is a 204-unit, mixed-income development completed in 1982. It is a 50/50 joint partnership between Corcoran Jennison Companies and the public housing residents. Id.

Success in resident ownership and management also has been demonstrated both locally

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immediately north of the Hilliard Homes and the housing being built near the developments that run along the State Street Corridor (Ickes Homes, Stateway Gardens, and Robert Taylor Homes).

and nationally. Low-income residents in other federally subsidized buildings here in Chicago have demonstrated the capacity to own and manage their own housing. Under the Low Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. §§ 4101 et seq.), HUD has approved seven sales of multifamily buildings to low-income residents in Illinois, including: Carmen-Marine Apartments (300 units); West Park Place (69 units); 707 W. Waveland (220 units); 820 W. Belle Plaine Apartments (270 units); DeKalb Plaza (150 units); Northwest Towers (150 units); Kenmore Plaza (324 units); and Cambridge Manor (312 units).[9]

At Cabrini-Green alone, four resident management corporations ("RMCs") have been established: the William Green Homes RMC, the Cabrini Extension RMC, the Cabrini Row Houses RMC, and the 1230 N. Burling RMC. These RMCs have improved management operations after years of CHA neglect.

For example, when the William Green Homes RMC took over in July 1997, all seven buildings in the Green Homes were in building court and had a backlog of 4,000 work orders. As a result of the RMC's hard work, none of the buildings is in court now and the backlog of work orders has been reduced to 1,700. The RMC realized a savings of over $500,000 in operating expenses, then used those funds to make improvements to all seven buildings. This work included putting in new landscaping, painting the building lobbies and entrances, cleaning out all the sewer lines, and repairing the domestic water pumps. In addition, the Green Homes RMC has drastically improved rent collections, having receiving a HUD grade of A in that area for the last three months. Finally, the RMC has worked with the CHA to rehabilitate 52 units which are now

[9] Habitat was the general partner of the partnerships that sold Kenmore Plaza and Cambridge Manor to residents.

all leased. See affidavit of Wylodine Hampton, attached hereto as Exhibit J.

2. Comparable Income Mixes

The proposed consent decree provides that, of the 923 units to be built on CHA land, 49% will be market rate, 21% will be affordable (Low Income Tax Credit) units for families earning 40% of area median income ($23,800 per year for a family of four),[10] and 30% will be public housing units, of which half will be reserved for working families.[11] This income mix contains a larger market rate component than mixed-income developments in other parts of the country that include both public housing and market rate housing. Some notable examples include:[12]

> Allequippa Terrace: Seven hundred (700) units will be newly constructed and 102 will be rehabilitated on-site. Of the 802 total units, 35% will be market rate, 2% will be affordable tax credit units, and 63% will be public housing units. Of the public housing units 1/3 will be for families earning 25% or less of area median income, 1/3 for families 26-40% of area median income, and 1/3 for families earning 41- 60% of area median income.[13]

> George L. Vaughn Residences at Murphy Park: In the first phase, there are 160 units, of which 93 (58%) are public housing, 25 (16%) are affordable tax credit units, and 42 (26%) are market rate units.

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[10] A 1997 General Accounting Office study of the tax credit program found that the average income of households residing in tax credit units was 37% of the area median income. "Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program," Chapter Report, March 28, 1997, GAO/GGD/RCED-97-55, Table 2.1.

[11] Families displaced from the Cabrini-Green buildings that are to be demolished will have the right to return to the new units regardless of whether they have an employed member of the household. Proposed Consent Decree, Exhibit C (p. 9).

[12] See Exhibit K for more detailed descriptions of the developments listed below..

[13] Statistics provided to Richard M. Wheelock, counsel for the LAC, on November 30, 1998 by Michael Polite, the Alleguippa Terrace site manager for Beacon/Corcoran Jennison Companies.

Techwood/Clark Howell Homes, Atlanta, Georgia: In this 900-unit, mixed-income community, 40% of the units will be reserved for public housing residents; 20% will be available to low-income families with incomes of 60% or less of area median income; and the remaining 40% of the units will be available to market-rate families.

Montpelier's Choice, Baltimore, Maryland: In a 39-unit building in Baltimore, 13 units have been set aside for families eligible for public housing, 13 units for tenants with incomes at or below 60 percent of area median income, and 13 for market-rate residents.

Holly Park, Seattle, Washington: The new development will consist of (a) 800 rental units, of which 400 will be public housing units, 360 will be tax credit units, and 40 will be unrestricted units; and (b) 400 home ownership units, of which 100 will be affordable for families earning less than 50% of area median income and 300 will be market rate homes.

Darst-Webbe, St. Louis, Missouri: This 525-unit redevelopment will create a mixed income community with 200 public housing units (38%), 220 low-income housing tax credit units (42%), and 105 market-rate units (20%).

St. Thomas, New Orleans, Louisiana: 575 new, mixed-income town home units will be constructed on-site. Of those 575 new town homes, 30% will be reserved for very low income families (earning less than 30% of area median income), 20% for families earning 30%-50% of area median income, and 50% for families with incomes above 50% of area median income.

Robert S. Jervay Place, Wilmington, N.C.: 100 new homes will be built back on-site. Of the new homes, 60 will be for families earning 50% or less of area median income, 15 will be funded with tax credits for families earning 50% of area median income, and 25 will be for families earning 60% or more of area median income.

Pico Aliso Development, Los Angeles, CA: The new mixed-income community plan calls for 421 new units: 280 public housing units, 81 single-family homes (72 for-sale and 9 lease-to-purchase), and 60 senior units.

Southfield Village, Stamford, CT: The revitalized development will have 330 new units, including 160 public housing units, 15 homeownership units, and 155 market-rate rental units.

King's Lynne: Completed in 1979, this 441-unit, mixed-income community is 1/3 low income, 1/3 moderate income, and 1/3 market rate. See Exhibit I.

B. Qualified Private Developers Will Bid

Private developers are eager to undertake the redevelopment plan for the Cabrini HOPE VI Revitalizing Area. The residents, the CHA, and the City are confident that high quality, experienced developers will submit proposals pursuant to the proposed terms of the consent decree.

Joseph Corcoran, Chairman of Corcoran Jennison Companies (the developer of Harbor Point in Boston, MA), had the opportunity in October 1998 to meet members of the Cabrini-Green LAC. His firm is presently involved in four HOPE VI projects, including Allequippa Terrace in Pittsburgh which is, like Harbor Point, a 50/50 partnership with the residents. See Corcoran letter, dated September 23, 1998, and portfolio, attached hereto as Exhibit L. Corcoran states that "[h]aving walked the site, spent the day with the resident leadership, and reviewed the proposed consent decree negotiated by the residents, the CHA, and the City of Chicago, I am confident that the plan proposed for the redevelopment of the CHA parcels is sound and quite viable." See Corcoran letter, dated October 29, 1998, attached hereto as Exhibit I.

Anthony J. Fusco, Jr., President of the Chicago Community Development Corporation ("CCDC"), finds that the redevelopment proposal for the Cabrini HOPE VI Revitalizing Area "is a viable plan that will make a significant contribution to the positive transformation of Cabrini-Green into a vibrant mixed income community." See CCDC letter, attached hereto as Exhibit M. CCDC was formed in 1988 and is a for-profit developer of affordable housing as well as a development consultant to resident councils and community based not-for-profit organizations. CCDC is the general partner of partnerships that own and operate 1,230 affordable rental apartments in Chicago. In each of these developments CCDC has partnered with a resident group or community based not-for-profit corporation in implementing the development plan for these properties. In addition, since 1993, CCDC has provided development consulting services to seven (7) resident councils that have purchased a 100% ownership interest in their HUD-assisted apartment complexes (1,645 apartments).

Peter Holsten, President of Holsten Real Estate Development Corporation, a local developer, has expressed interest in exploring co-development with the LAC, based on his review of the proposed consent decree and his prior dealings with the residents. A copy of his letter of support is attached hereto as Exhibit N. Holsten Real Estate Development Corporation was recently chosen by the City from a group of prominent Chicago area developers to construct a mixed-income development on the Halsted North parcel (described in Section IV above) which is located just north and west of the Cabrini HOPE VI Revitalizing Area, within the boundaries of the NNRI area.[14]

Elzie Higginbottom, the largest minority developer in the Chicago area, has also expressed his opinion that the development contemplated in the proposed consent decree is viable and that he would be interested in bidding to partner with the LAC. See Higginbottom letter attached hereto as Exhibit O. Mr. Higginbottom's firm, Eastlake Management and Development Corporation, has developed or manages over 5,000 apartments in the Chicago area.

Richard Baron, president of McCormack Baron & Associates, another developer with a national reputation for replacing distressed public housing with quality mixed-income developments, also finds that the redevelopment plan for the Revitalizing Area can be carried out

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[14] Other developers who bid to develop the Halsted North parcel included Dan McClean, Allison Davis, and RRG Development Inc.

successfully.[15] See McCormack Baron letter of support, attached hereto as Exhibit P.[16] McCormack Baron has extensive experience working with public authorities to redevelop existing public housing sites. With respect to HOPE VI, the firm has closed on five (5) mixed-income developments, including Techwood and the George L. Vaughn Residences at Murphy Park, described above in Section VI.A above.

Christine Oliver, president of Chicago Dwellings Association, another local developer of market-rate and affordable housing including Orchard Park, is likewise supportive of the plan before this Court. Appearing on the August 4, 1998 edition of Channel 11's Chicago Tonight, she stated that she believes the redevelopment plan for the Revitalizing Area will attract top rate developers who are committed to the future of public housing and our communities generally.

Chicago Rehab Network, a coalition of non-profit housing developers, finds the plan for the Cabrini HOPE VI Revitalizing Area viable and likely to attract a number of for-profit and non-profit developers. See Exhibit Q. Similarly, the development arm of the Chicago Metropolitan Baptist Association strongly supports the plan. See Exhibit R.

C. Equity Investors and Lenders Will Be Attracted

The active participation of the residents as provided under the proposed consent decree enhances the types of financing available for the redevelopment effort. For example, in each state and the City of Chicago a minimum of 10% of the annual tax credit authority must be used for projects involving non-profit organizations, such as the Cabrini-Green LAC. For the project to

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[15] McCormack Baron was one of finalists considered when this Court chose its Receiver in 1987.

[16] Mr. Baron does suggest in his letter that a lower density may be appropriate.

qualify, the non-profit must materially participate in the project, i.e., must be involved on a regular, continuous, and substantial basis in the development of the project and in the continued operation of the project. See 26 U.S.C. § 469(h). Leading tax credit syndicators, such the Chicago Equity Fund, pay top dollar for tax credits sold by projects in which non-profit organizations have significant participation.

The Chicago Equity Fund ("CEF"), a not-for-profit syndicator of Low Income Housing Tax Credits, has reviewed the proposed consent decree with respect to redevelopment in the Cabrini HOPE VI Revitalizing Area and states that it would be most interested in considering investment in this redevelopment should the developer ultimately selected to construct the housing wish to seek an investment from CEF. See copy of CEF letter, attached hereto as Exhibit S. CEF has raised over $175 million in private equity investment from over 60 corporate investors. These investments have resulted in the creation of 6,600 affordable housing units in metropolitan Chicago.

Lenders are attracted to the redevelopment opportunity as well. Developers Mortgage Corporation ("DMC"), a mortgage banking firm that has arranged $887 million in financing for 26,102 units in 148 housing developments since1979, has reviewed the proposed consent decree and states that it would most interested in working with the LAC and its development partner to assist in financing the 923 housing units in the Revitalizing Area. See DMC letter, attached hereto as Exhibit T. DMC has successfully financed developments with rents at levels projected in the consent decree and believes that the combination of public and private investment in and around the NNRI will attract private capital to support the proposed redevelopment plan.

D. Competent Development Team

The LAC has assembled an impressive development team to insure the economic success of the proposed plan for the Revitalizing Area. The LAC recommends that Corcoran Jennison Companies be allowed to serve as the development manager for the Revitalizing Area. Given its extensive experience in HOPE VI, mixed income redevelopment, and resident partnerships, this firm would be ideal to assist the parties in issuing the necessary RFP, reviewing and scoring the responses, selecting the developer, and implementing the plan.

Corcoran Jennison has an outstanding track record over a 20-year-period in successfully transforming distressed public housing projects into viable mixed-income communities. Corcoran Jennison is currently the developer, builder, and property manager of four major HOPE VI public housing revitalization projects in the United States: Allequippa Terrace (Pittsburgh, PA) (see description above in Section VI.A); Elm Haven Homes (New Haven, CT); Southfield Village (Stamford, CT); and Ellen Wilson Homes (Washington, D.C.). See Corcoran September 23, 1998 letter and Corcoran Jennison portfolio, Exhibit L. The firm has also completed five similar "turnaround projects" during its 25-year history, including Harbor Point, King's Lynne, and Quaker Meadows described in Section VI.A above, as well as the Villages at Montpelier (Laurel, MD, 520 units) and the Villages at Marley Station (Glen Burnie, MD, 750 units).

Because Cabrini-Green will set the tone for other public housing redevelopment projects in Chicago and around the country, it is critical to have a development manager with expertise in the multifaceted aspects of this plan, including resident co-development. Corcoran Jennison has such expertise.

In addition, the Chicago Community Development Corporation (CCDC), led by Anthony

J. Fusco, Jr. and Daniel Burke, has expressed a strong interest in serving as the LAC's technical assistance consultant. See Exhibit M. CCDC is a general partner for project partnerships which own and operate over 1230 units of affordable housing; since 1993, it has assisted seven (7) resident councils in purchasing HUD-assisted multifamily buildings. CCDC also has extensive experience in developing innovative financing plans, using Low Income Housing Tax Credits and other public and private resources to develop affordable housing.

Finally, the LAC leaders, in their own right, are experienced managers of public housing. As discussed above, four resident management corporations currently exist at Cabrini-Green and have done much to turn around conditions attributable to years of institutional neglect and mismanagement.

E. Response to Habitat's Concerns[17]

Over the course of the past four months, Habitat, counsel for the Gautreaux plaintiffs, counsel for the LAC, various resident leaders and consultants, and other interested parties have met repeatedly to address Habitat's concerns about the proposed consent decree. Two things have become clear as a result of those meetings. First, it is unlikely that there will be a negotiated solution. While all parties have worked hard and in good faith, the areas of disagreement seem to shift, rather than narrow. The longer the negotiation process continues, the likelier it is that this historic opportunity will slip away -- the long-unspent federal funds may be withdrawn, the prospect of additional federal funding is put at risk, historically low interest rates may evaporate,

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[17] Habitat, through its counsel, has provided this Court with two cover letters, dated November 18, 1998 and November 20, 1998, and various documents, setting forth some of its concerns regarding the proposed consent decree. Habitat's formal response to the LAC's motion is not due until December 21, 1998.

developers who are interested in bidding may pursue other development opportunities, and development on the rest of the NNRI land may be impeded. Thus, we need the Court's help to reach closure.

Second, it appears that Habitat has evaluated the proposed consent decree from the point of view of a policy maker, urban planner, or developer writing on a clean slate. The issues before the Court are whether the proposed plan meets Gautreaux's goals and is viable, not whether other plans, never negotiated by the parties, might yield a higher economic return. Further, any evaluation must consider the legislative purpose of HOPE VI, which is to maximize tenant participation in the redevelopment of public housing communities.

With those concerns in mind, we turn to the specific issues that Habitat has identified.

1. Resident involvement.

The proposed consent decree provides that the LAC should have a 51% ownership interest in the entity formed to develop housing on the site of the demolished Cabrini-Green high-rises. (Exhibit C, p. 7). It also makes clear that the 51% ownership interest does not translate into absolute control over any aspect of the development process. Instead, the proposed consent decree provides that each bidder must describe the degree and kind of resident participation it is prepared to offer, and higher degrees of resident participation will receive additional points in the bid-scoring process. Id. Thus, the proposed consent decree leaves it up to bidders themselves to decide how much resident participation, in which areas, is practical. Habitat identifies no reason why its hypothetical view of the appropriate limits on resident participation is preferable to the views of developers who actually are willing to build the replacement housing.[18]

Habitat also appears to believe that the LAC will choose a developer out of a narrow self-interest in obtaining the most immediate financial benefit. There are three responses to this concern. First, the residents have deep and abiding ties to their community, and want to preserve and improve it not only for themselves, but for their children and grandchildren. Second, when the residents have been given the means to exercise control, they have done so responsibly. The track record of the RMCs is proof of their abilities. Third, the committee to write the RFP for the development of the Cabrini HOPE VI Revitalization Area, and to select the successful bidder, is divided equally between LAC appointees and CHA appointees. Thus, neither side can write an RFP that fails to score the bids on other criteria, in addition to the resident participation criteria. And neither side can select a developer unilaterally.[19]

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[18] Habitat expresses concern that resident participation may deter potential developers from bidding. After Habitat told us that its concerns were based on conversations with specific developers, we asked Habitat to identify them. (See Richard Wheelock's November 25, 1998 letter to Barry Miller, attached hereto as Exhibit U.) Mr. Miller's colleague, Edward Feldman, responded that the developers do not want to make their names public. This is unacceptable. It is possible that some or all of the developers Habitat has met with are motivated to criticize the LAC's plan because it interferes with their own plans for the redevelopment of Cabrini-Green. The LAC has identified a number of developers, local and national, who are willing to speak out publicly and who say they are not deterred by resident participation. See Section VI.B. above.

Moreover, to the extent that Habitat points to negotiations over the terms of resident participation at Harbor Point (Habitat's November 20, 1998 Statement at 4-5), that reliance simply confirms the approach taken by the proposed consent decree – namely, to let these issues be resolved by the RFP and bid selection process, not by fixing terms in a vacuum.

[19] Habitat treats the equal division of seats on the RFP committee as giving a "veto" power to the LAC. In fact, it simply eliminates the possibility that either side can achieve any objective for purely self-interested reasons.

Habitat also apparently objects to the CHA's having any seats on the RFP committee, on the grounds that Habitat exercises the CHA's functions in the construction of new, non-elderly

Although Habitat claims to support "tenant participation in the redevelopment process," it has never said specifically what degree of participation Habitat has would support. Nor is the lack of clarity resolved by Habitat's proposal to give the LAC an increased say (along with other community groups) in the redevelopment of other, non-CHA parcels in the NNRI area. The fact of the matter is that the LAC and the CHA had no authority to decide how seats would be allocated on the RFP committees for those other sites, and the City was not willing to give the LAC more than one seat. It is not helpful, to the parties or to this Court, to criticize the proposed consent decree for failing to extract from the City concessions that the City was unwilling to give.

2. Affordable Housing

Habitat objects that the affordable housing units to be built on the CHA land, which were acceptable to the CHA and the City, have rents that are "probably too low." These units are intended to be affordable for families making 40% of area median income, with rents set using the common "rule of thumb" that families should expect to pay 30% of their income for rent. Habitat prefers the levels set for affordable housing on the non-CHA land – where the rental units will be for families earning up to 80% of area median income, and the for-sale units for families earning up to 120% of area median income.

Habitat's objections fail to take account of several critical facts. First, the affordable rental units on non-CHA land are overwhelmingly likely to be tax credit units, which by law must

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public housing. Habitat does not say whether it would object to the equal division of the committee if it held the CHA's seats.

Finally, Habitat also objects to the proposed consent decree's provisions for an independent development manager. Habitat does not say whether it believes Habitat should <u>both</u> sit on the RFP committee <u>and</u> serve as development manager.

be offered to families earning not more than 60% of area median income. See 26 U.S.C. § 42(g). Moreover, developers are much likelier to build rental units (for which tax credits are available) than for-sale units (for which the funds to make home ownership affordable for families at 80% to 120% of area median income are much more limited).[20] Thus, the real question is whether the tax credit units on CHA land are so different from the tax credit units on non-CHA land as to make the proposed consent decree unworkable.

Habitat suggests that the affordable tax-credit units on CHA land may require additional subsidies. But both the City (Habitat November 20, 1998 statement, p. 8) and the CHA (proposed consent decree, Exhibit C (p. 9)) have agreed to provide the necessary subsidies. Moreover, rents for families at 40% of area median income are likely to attract tax credits from the Illinois Housing Development Authority which in 1997 made 43% of its tax credits available for families with incomes at or below 40%. Section 8 certificate holders may also qualify for those units, but because of the other subsidy sources available, developers will not need to accept Section 8 certificate holders to keep the units afloat. In light of all these factors, the financial viability of the tax-credit units is not open to legitimate question.[21]

Moreover, rents at the 40% level attracts a wide range of working poor families of all races, whose need for housing is critical. By setting the tax credit rents at the 40% level, the

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[20] On the Halsted North site, the developer whose proposal has been accepted intends to build 43 affordable tax credit units and 11 affordable for-sale units.

[21] CCDC does not share Habitat's opinion that setting tax credit rents at 40% of area median income threatens the economic viability of the development. The proposed rental levels will enhance a developer's opportunity for obtaining tax credits in a highly competitive process because public agencies that award tax credits grant preference to projects that achieve lower rents to broaden their affordability. See Exhibit M (CCDC letter at 2).

marketability of these units is improved and the need to rent to Section 8 certificate holders is correspondingly reduced. See Exhibit M (CCDC letter, p. 2). The benefit of providing housing for these working poor families is plain: they bridge the gap, both racially and economically, between public housing and market-rate housing.

Finally, Habitat suggests that the affordable tax credit units on CHA land will (in some unspecified way) hurt the prices for market rate units. Habitat does not explain how that would happen, other than to say that "because of the proximity to Cabrini-Green, rental or sale prices for the market rate housing on the CHA site may have to be substantially lower than in other nearby market rate property in order to attract market rate residents." (Habitat November 20. 1998 Statement at 8.) If what Habitat means is that market rate units close to the William Green Homes and the Cabrini Row Houses (which are not to be demolished under the NNRI) will sell for less than market rate units further away from the old public housing buildings that remain, that may very well be true. But the issue is not whether the proposed consent decree, or the NNRI as a whole, will allow developers to maximize their profits on market rate housing, or create Gold Coast prices in the area -- but whether the consent decree, like the NNRI as a whole, will produce the desired range of public, subsidized, and unsubsidized housing needed to attract a racially and economically diverse group of residents.

3. Density

Habitat objects to the proposed consent decree because it calls for 44 units/acre on CHA land. (Habitat November 20, 1998 Statement at 9.) Habitat thinks the City should provide enough land to reduce the density to 30 units/acre. Id. at 10. This is another example where Habitat appears to be taking the position of a policy maker, or an urban planner, writing on a clean slate. The CHA, the LAC, and even Habitat, have long pushed the City to make more land available in the NNRI area. The lack of additional land was what caused the first HOPE VI replacement housing plan to founder in 1995, when the LAC, the CHA, and Habitat were working together to evaluate bids. Criticizing the proposed consent decree because it did not obtain concessions that have long been unattainable seems like an exercise in futility.

The more legitimate question is whether the proposed consent decree provides for densities on the CHA land that are significantly different from the densities contemplated elsewhere in the NNRI. It does not. Mohawk North, a mixed-income development which lies just north of the CHA land and was privately developed, has 43 units/acre. The contract for Halsted North, a mixed-income community which will be developed under the NNRI by Peter Holsten, calls for 39 units/acre. The overall plan for the NNRI developed by the City and the CHA, after a charrette process that Habitat itself initiated, calls for 60 or more units/acre along Division Street and 35 to 45 units for land immediately south. To fault the proposed consent decree because it calls for comparable densities is unfair.

Habitat's proposed solution to the density problem is also problematic. Habitat proposes to redistribute 296 units (50% market rate, 20% affordable, and 30% public housing) off CHA land and onto other (as yet unavailable) parcels. Directing housing off the CHA land is premised on the faulty assumption that the CHA land is inherently inferior to other parcels in the NNRI..

VII. Conclusion

For the foregoing reasons, the LAC requests that its motion for a limited waiver of the Gautreaux injunction and a limited modification of the receivership order be granted in order to permit the entry of the proposed consent decree.

Respectfully submitted,

One of LAC's Attorneys

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