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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certified that he caused copies of the foregoing Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation to be delivered to:

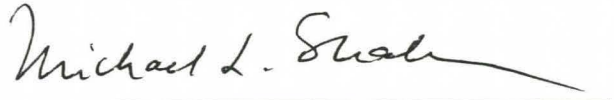
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Chicago, IL 60604

this 18th day of May, 1998.



Michael L. Shakman

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

DOROTHY GAUTREAUX, at al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY,

Defendant.

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66 C 1459

RECEIVER'S EMERGENCY MOTION FOR ENTRY
OF ORDER IMPLEMENTING CHA'S DUTY OF COOPERATION

Daniel E. Levin and The Habitat Company (collectively, the "Receiver") move the Court to enter an order directing defendant, the Chicago Housing Authority, to take the following steps:

A. Cooperate with the Receiver and other interested parties, including the City of Chicago, to file with the United States Department of Housing and Urban Development ("HUD") an application for funds under the HOPE VI program which includes development of new non-elderly public housing to be made available to CHA residents in conformity with remedial orders in this case.

B. In order to prepare such an application to HUD for HOPE VI funds, provide the information specifically requested by the Receiver in Daniel E. Levin's letter of May 5, 1998 to Joseph Shuldiner, Exhibit A hereto, and otherwise comply with Court orders, as described below.

This motion is submitted on an emergency basis because of the Receiver's belief that unless immediate action is taken the possibility of obtaining up to \$35 million in federal HOPE VI funds may be lost because of lack of cooperation by the CHA. The detailed and complicated application for such funds must be filed with HUD by June 29, 1998.

In support hereof, the Receiver states as follows:

Relevant Prior Orders

1. By order of August 14, 1987, Exhibit B hereto ("Receivership Order"), the Court appointed the Receiver to assume responsibility for the "scatter site program" which the Order defines 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). The Receivership Order provides, among other things, that the Receiver's responsibilities include:

. . . (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), [and] (iii) the relocation of occupants, when necessary

Receivership Order ¶ 2(a).

2. The Receiver views itself and the CHA as obligated by Article VIII of the judgment order in this case (304 F.Supp. at 741) to see to it that an application for funds that includes the development of non-elderly public housing units is submitted.

That order stated:

CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this

judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development

Since that Order was entered, the Receiver has been appointed to carry out the CHA's responsibilities with respect to the construction of new Dwelling Units. Those responsibilities include using its best efforts to increase the supply of Dwelling Units in conformity with the judgment order.

3. The Receivership Order also directs the CHA to cooperate with the Receiver:

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.

Receivership Order ¶ 7.

4. By Order of February 23, 1998, Exhibit C 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 C at 5.^{1/}

^{1/}

In the Receiver's letter to the Court of March 13, 1998 the Receiver has previously informed the Court of unsuccessful efforts to obtain cooperation from the CHA concerning the HOPE VI application process. In addition, on March 31, 1998 the Receiver filed the Affidavits of Daniel E. Levin, Valerie Jarrett, Philip A. Hickman, Barry A. Miller and a number of documents describing the course of dealing with the CHA related to HOPE VI over several years. Those documents, which are incorporated herein by reference, establish that (a) the CHA in 1995 agreed with the Receiver that the Receiver should develop HOPE VI non-elderly housing, (b) the CHA changed its
(continued...)

HUD's March 31, 1998 Notice of Fund Availability.

5. On March 31, 1998 HUD published in 63 Federal Register 15577-84, Exhibit D hereto, a Notice of Funding Availability ("SuperNOFA") for approximately \$141 million pursuant to the HOPE VI program. The SuperNOFA stated that applications for funding must be received by HUD no later than June 29, 1998. The funds available may be used for:

(3) Public housing development through the acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941. . . .

(5) Construction of replacement rental housing, both on-site and off-site, and community facilities . . .

6. The SuperNOFA also provides that a requirement for eligibility is that "a public housing development or portion of the development, must be severely distressed as to physical condition, location, or other factors making the development, in its current condition, unusable for housing purposes." 63 Fed. Reg. 15578. The

¹/(...continued)

position in late 1996, (c) the Receiver and the plaintiffs objected to the CHA's change of position and informed the CHA and the Court in 1997 of their view that such applications could only be filed with the participation of the Receiver, and (d) in September 1997 the CHA filed its motion seeking a determination to the contrary, which was denied in the Court's Order of February 23, 1998. In the course of this dispute HUD agreed with the Receiver's understanding that (absent a contrary court order changing the status quo) the Receiver is the only party authorized to develop non-elderly housing under the HOPE VI program.

See the pending Motion for Further Relief filed by the plaintiffs and supported by the Receiver.

SuperNOFA also permits applicants to seek waivers of non-statutory requirements. 63 Fed. Reg. at 15578.

7. Applicants may also request up to \$5,000 per household for human services programs addressed to quality of life issues and other social needs, and up to \$3,000 for relocation assistance. 63 Fed. Reg. at 15578. A public housing agency may submit one or two applications for HOPE VI funds, each to be reviewed separately, and both subject to a maximum grant for the two of \$35 million. 63 Fed Reg at 15579.

The Receiver's Efforts to Obtain
Cooperation from the CHA

8. After reviewing the SuperNOFA, the Receiver had discussions with representatives of the City of Chicago and was informed that the City would cooperate with the Receiver and the CHA in attempting to develop a common approach to the SuperNOFA application so as to maximize the benefit to the City and to CHA residents from the potential grant of up to \$35 million in HOPE VI funds, as well as to maximize the possibility that the Chicago application would be competitive in the nationwide competition for such funds.

9. On May 5, 1998 Daniel E. Levin wrote Joseph Shuldiner, Executive Director of the CHA, inviting Mr. Shuldiner to participate in a meeting with the Receiver and representatives of the City of Chicago "in the next few days" to discuss the Receiver's wish "to file a HOPE VI application jointly with the CHA that obtains as much of the \$35 million as possible for Chicago, and assures that new housing

developed with HOPE VI funds complies with the requirements of the Gautreaux case." Exhibit A at 1. The letter also attached a list of areas in which information from the CHA was sought because "in order to prepare and submit a HOPE VI application jointly with the CHA, there are several issues on which it would be helpful to have the CHA's views . . ."

10. The Receiver received no response to the May 5 letter. Accordingly, on May 15, 1998 one of the Receiver's attorneys wrote to Jerome Butler, the General Counsel of the CHA, requesting confirmation by 2 p.m. on Monday, May 18, 1998 that the CHA would provide cooperation to the Receiver in connection with the HOPE VI application as required by the Receivership Order. Exhibit E. To date the CHA has not responded to either letter.

Relief Sought

11. The Receivership Order clearly requires the CHA to "provide full cooperation and assistance to" the Receiver in carrying out the Receiver's responsibilities. Those responsibilities expressly include among other things "submission to HUD of applications for funding, development programs and other documents, . . . site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), [and] (iii) the relocation of occupants, when necessary . . ." -- all respecting development of new non-elderly public housing.

12. The Receiver's letter of May 5, 1998 sought such cooperation from the CHA, and identified five areas where specific information was sought:

i. Since HOPE VI focuses on "severely distressed public housing", we would appreciate knowing the developments that CHA believes fall into that category and those that it believes should be the subject of this HOPE VI application.

ii. Although site selection for replacement housing is the Receiver's responsibility under the August 14, 1987 Order, we would welcome the CHA's suggestions on where replacement housing should be located.

iii. Since tenant input is a component of HOPE VI, we would appreciate the CHA's suggestions on obtaining such input respecting the developments to be the subject of the application.

iv. As you know, HOPE VI allows up to \$5,000 per household for human service programs and up to \$3,000 for relocation assistance. The CHA, not the Receiver, would be responsible for administering these amounts. Similarly, HOPE VI allows applications for funding for community facilities. We would appreciate the CHA's indication of the amounts it suggests the joint application should seek in each of these areas, and the CHA's suggestions for how funds awarded in these areas can best be coordinated with funds awarded for housing development.

v. The SuperNOFA states that "PHAs may request . . . a waiver of HUD regulations (that are not statutory requirements) governing rent, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a development revitalized under this program." We would also appreciate knowing the CHA's views on what waivers, if any, it believes would be helpful and should be sought.

13. In order to plan for and submit a timely application for funds pursuant to the SuperNOFA, the foregoing information from the CHA is required immediately, and the CHA should be directed to provide it forthwith. In addition, the CHA should be required to meet with the Receiver and representatives of the City as and when needed to participate in the process of formulating an application pursuant to the SuperNOFA

and to provide any additional information and cooperation required in carrying out that process.

14. To the extent the application seeks funds for the development of new dwelling units, it is the responsibility of the Receiver under the Receivership Order. The CHA should be directed immediately to inform the Receiver of any plans it has made to file an application pursuant to the SuperNOFA, and of any modification in those plans or intentions. The CHA should be directed to file any such application seeking funds for the development of non-elderly dwelling units only if filed jointly the Receiver.^{2/}

15. To the extent the application seeks funds for social services or facilities, such matters are the responsibility of the CHA, provided that the CHA does not seek to carry out such activities in a manner that violates the CHA's responsibilities under the Receivership Order to cooperate with and assist the Receiver.

16. The Receiver regrets the necessity to file this application on an emergency basis. Because the period of time remaining prior to June 29 is very limited in relation to the scope of the planning and coordination required for submission of a well-conceived SuperNOFA application, immediate relief is required. The Receiver requests

^{2/}

As more fully described in the materials referred to in footnote 1, in connection with prior Hope VI applications for the development of non-elderly housing units, whenever the Receiver was aware of such an application by the CHA, the Receiver sought to work out by mutual agreement a mechanism for the Receiver to carry out the Receiver's responsibility under the Receivership Order, and was able to do so by functioning as "development manager" for the projects.

that an Order be entered as sought in paragraphs 13-15, and providing such other relief or instructions to the Receiver as the Court deems appropriate in the circumstances.

Respectfully submitted,
Daniel E. Levin
and The Habitat Company

By Michael L. Shakman
One of their attorneys

Dated: May 18, 1998

Michael L. Shakman
Barry A. Miller
Edward W. Feldman
Miller Shakman Hamilton Kurtzon & Schlifke
208 S. LaSalle Street, Room 1100
Chicago, Illinois 60604
312-363-3700

**THE HABITAT COMPANY**

May 5, 1998

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

Dear Joe:

As you know, the SuperNOFA was issued by HUD on March 31, 1998, and is due on June 29, 1998. Up to \$35 million may be awarded to a housing authority under this SuperNOFA. We think that it is important that we work together to submit a joint application so that these funds are awarded to Chicago.

The Court's Order of February 23, 1998, made clear that the remedial orders entered in Gautreaux apply to housing constructed with HOPE VI funds. Under the Order of August 14, 1987, the Receiver is responsible for applying for and developing all new CHA housing units funded by HUD. In conformity with our duty as Receiver, we wish to file a HOPE VI application jointly with the CHA that obtains as much of the \$35 million as possible for Chicago, and assures that new housing developed with the HOPE VI funds complies with the requirements of the Gautreaux case.

We would like to participate in a meeting with you and the City's representatives in the next few days at which we can discuss CHA's views on appropriate development proposals. We also want to hear the City's views as to how the SuperNOFA application fits with the City's revitalization plans. (We view it as part of our job to be sensitive to the City's overall housing revitalization strategies consistent with our responsibilities under Gautreaux and the CHA's needs.) In order to prepare and submit a HOPE VI application jointly with the CHA there are several issues on which it would be helpful to have the CHA's views, and on which we may have views of our own that we would like to discuss with you. To make a meeting more productive, we have listed several of those issues on the attached page, and will come to a meeting prepared to listen to your ideas and to discuss them.

Mr. Joseph Shuldiner

Page 2

May 5, 1998

We hope we can work together in a cooperative fashion with you and the City to make a successful application for Chicago.

Please let me know when we can get together.

Sincerely,

THE HABITAT COMPANY



Daniel E. Levin
Chairman

cc: Commissioner Julia Stasch
Forrest Claypool

HOPE VI ISSUES

1. Since HOPE VI focuses on "severely distressed public housing", we would appreciate knowing the developments that CHA believes fall into that category and those that it believes should be the subject of this HOPE VI application.

2. Although site selection for replacement housing is the Receiver's responsibility under the August 14, 1987 Order, we would welcome the CHA's suggestions on where replacement housing should be located.

3. Since tenant input is a component of HOPE VI, we would appreciate the CHA's suggestions on obtaining such input respecting the developments to be the subject of the application.

4. As you know, HOPE VI allows up to \$5,000 per household for human service programs and up to \$3,000 for relocation assistance. The CHA, not the Receiver, would be responsible for administering these amounts. Similarly, HOPE VI allows applications for funding for community facilities. We would appreciate the CHA's indication of the amounts it suggests the joint application should seek in each of these areas, and the CHA's suggestions for how funds awarded in these areas can best be coordinated with funds awarded for housing development.

5. The SuperNOFA states that "PHAs may request . . . a waiver of HUD regulations (that are not statutory requirements) governing rent, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a development revitalized under this program." We would also appreciate knowing the CHA's views on what waivers, if any, it believes would be helpful and should be sought.

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. 66 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. 7460.8, 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.)	No. 66 C 1459
)	
CHICAGO HOUSING AUTHORITY,)	
)	
Defendant.)	

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 80% 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 all (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. § 1473f). 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 de segregated 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 replacement construction 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. 102-350, 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

Funding Availability for Revitalization of Severely Distressed Public Housing (HOPE VI Revitalization)

Program Description: Approximately \$416 million is available in funding for the Revitalization of Severely Distressed Public Housing (the "HOPE VI Revitalization Program"), as provided in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998. The continued funding of the HOPE VI Program is to enable revitalization and transformation of the physical site of severely distressed public housing developments and the social dynamics of life for low-income residents at that site, or in any off-site replacement housing.

Application Due Date: Applications must be received at HUD Headquarters on or before 12:00 pm, Eastern time on June 29, 1998, at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application of submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications: One copy of the completed application must be received at HUD Headquarters, 451 Seventh Street, SW, Room 4138, Washington, DC 20410, Attention: Deputy Assistant Secretary for Public Housing Investments. In addition, two copies of the completed application also must be received at the appropriate HUD Field Office HUB.

For Application Kits, Further Information, Technical Assistance:

For Application Kits. A copy of the application kit will be mailed to every eligible PHA. Application kits and any supplementary information also may be obtained by contacting the SuperNOFA Information Center at 1-800-HUD-8929. Persons with hearing or speech impairments may call the Center's TTY number at 1-800-483-2209. The application kit also will be available on the Internet through the HUD web site at <http://www.HUD.gov>. When requesting an application kit, please refer to HOPE VI and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you may call Mr. Milan Ozdinec, Director, Office of Urban Revitalization, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4142, Washington, DC 20410; telephone (202) 401-8812 (this is not a toll free number). Persons with hearing or speech impairments may

access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8399.

I. Additional Information

(A) Authority

The funding for HOPE VI Revitalization grants under this SuperNOFA is provided by the FY 1998 HUD Appropriations Act under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

(B) Purpose

The purpose of the HOPE VI Program is to enable revitalization and transformation of the physical site of severely distressed public housing developments and the social dynamics of life for low-income residents at that site, or in any off-site replacement housing. The HOPE VI Revitalization Program provides for grants to public housing agencies to assist in:

(1) The demolition of severely distressed public housing projects or portions of these projects;

(2) The revitalization (where appropriate) of sites (including remaining public housing units) on which such projects are located;

(3) The provision of replacement housing which will avoid or lessen concentration of very low-income families;

(4) Tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937;

(5) Assisting tenants displaced by demolition.

The FY 1998 HOPE VI appropriation also provides for grant funds to be used for the demolition of severely distressed elderly public housing projects and the replacement, where appropriate, and revitalization of the elderly public housing as new communities for the elderly designed to meet the special needs and physical requirements of the elderly.

(C) Amount Allocated

(1) **Revitalization grants.** Approximately \$416 million of the FY 1998 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants.

(2) **Elderly Housing grants.** In accordance with the FY 1998 HUD Appropriations Act, \$26 million of the HOPE VI appropriation has been allocated to fund projects proposing demolition of severely distressed elderly public housing projects and the replacement, where appropriate, and revitalization of the elderly public housing as new communities for the elderly designed to meet the special

needs and physical requirements of the elderly.

(a) Targeted developments may be either:

(i) Housing designated for the elderly, persons with disabilities, or mixed-populations, in accordance with section 7 of the U.S. Housing Act of 1937; or

(ii) Projects of a PHA designated as elderly by HUD in accordance with requirements in effect prior to enactment of the Housing and Community Development Act of 1992.

(iii) A PHA may, after revitalization, designate the targeted development through a HUD-Approved allocation plan.

(b) Applications targeting elderly developments will be rated in a separate competition, and will be ranked only with other elderly applications.

(c) Of the \$26 million made available for elderly housing, the FY 1998 HUD Appropriation Act included up to \$10 million for Heritage House in Kansas City, Missouri. HUD awarded \$6,570,500 to Heritage House under the FY 1997 HOPE VI NOFA, therefore the full \$10 million will not be needed. After funding the needs of Heritage House, the balance of the \$10 million set-aside will be made available for Elderly Housing grants eligible for funding under this SuperNOFA.

(3) **HOPE VI Demolition-Only Grants.** Up to \$60 million in HOPE VI funds will be made available for the demolition of obsolete public housing without revitalization. Those funds will be distributed through a separate NOFA.

(4) **Section 8.** Up to \$91 million (approximately 10,000 units) has been allocated for Section 8 tenant-based certificates and vouchers for public housing relocation or public housing replacement (including units selected for the HOPE VI Program). The Section 8 funds will be allocated by HUD after HUD approval of the applicant's demolition/disposition application or distressed public housing conversion plan submitted in lieu of a demolition/disposition application in conformance with the statutory requirements for the mandatory conversion of distressed public housing units as required by section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. These section 8 funds will be distributed through a separate notice.

(D) Eligible Applicants

PHAs that own public housing units are eligible to apply. Indian Housing Authorities are not eligible to apply.

(E) Eligible Activities and Program Authority

Eligible activities are those eligible under sections 5 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f, 1437l) (1937 Act). Revitalization activities using HOPE VI funds must be for public housing developments. Accordingly, certain activities under the revitalization plan are subject to statutory requirements applicable to public housing developments under the U.S. Housing Act of 1937 (the 1937 Act), other statutes, and the ACC. Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed developments.

In order to satisfy any particular statutory requirement, a Grantee may take measures as described in implementing regulations, or upon request to HUD for a different approach, as otherwise approved in writing by HUD. As of the date of publication of this SuperNOFA, the provisions of section 14(q) of the U.S. Housing Act of 1937, as amended by section 201 of the FY 1996 HUD Appropriation Act, including provisions in sections 14(q)(2), (3), and (4) of the U.S. Housing Act of 1937 concerning mixed-income development, have not been extended to cover FY 1998 HOPE VI or section 14 Modernization Funding.)

The recipient must conduct the following activities, which may be undertaken with HOPE VI grant funds, in accordance with the cited program requirements or otherwise with HUD's written approval, consistent with the 1998 Appropriations Act and this SuperNOFA. Activities which may be funded with HOPE VI grant funds include but are not limited to:

- (1) Total or partial demolition of buildings, in accordance with 24 CFR part 970;
- (2) Disposition of property, in accordance with 24 CFR part 970;
- (3) Public housing development through the acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941;
- (4) Major rehabilitation and other physical improvements of housing and community facilities primarily intended to facilitate the delivery of self-sufficiency, economic development, or other supportive service opportunities for residents of the targeted development, in accordance with 24 CFR 968.112(b), (d), (e), and (g)-(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d);
- (5) Construction of replacement rental housing, both on-site and off-site, and

community facilities primarily intended to facilitate the delivery of self-sufficiency, economic development, or other supportive service opportunities for residents of the targeted development and off-site replacement housing, in accordance with 24 CFR part 941, including mixed-finance development in accordance with subpart F;

(6) Homeownership units will be deemed Replacement Units only as specified in the Urban Revitalization heading of the 1993 Appropriations Act (Pub.L. 102-389; approved October 6, 1992); that is, if they meet the statutory requirements of the Section 5(h) Program (42 U.S.C. 1437c(h)); the HOPE II program (42 U.S.C. 12871-80; Pub. L. 101-625, secs. 421-31; 104 Stat. 4079, 4162-72); the HOPE III program (42 U.S.C. 12891-98; Pub.L. 101-625, secs. 441-48; 104 Stat. 4079, 4172-80); or are made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah Program.

(7) Management improvements;

(8) Administration, planning, and technical assistance;

(9) Programs designed to help residents gain employment and attain self-sufficiency;

(10) Programs designed to meet the special needs and physical requirements of the elderly and/or disabled and enable the elderly and/or disabled to live where one chooses with dignity, control, and independence.

(11) Relocation, conducted in accordance with 24 CFR 970.5 (demolition) or 24 CFR 968.108 (rehabilitation), as appropriate.

(F) Waivers

PHAs may request, for the revitalized development, a waiver of HUD regulations (that are not statutory requirements) governing rents, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a development revitalized under this program.

(G) Limitations on Use of Funds

No funds awarded for the HOPE VI Revitalization Program under this SuperNOFA shall be used for any purpose that is *not* provided for under the: FY 1998 HUD Appropriations Act; United States Housing Act of 1937; the Appropriations Acts for the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies, for the Fiscal Years 1993, 1994, 1995, and 1997; and the Omnibus Consolidated Rescissions

and Appropriations Act of 1996. Additionally, no funds awarded for the HOPE VI Program under this SuperNOFA shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgements.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Severely Distressed

In order to be eligible for HOPE VI funding, a public housing development, or portion of the development, must be severely distressed as to physical condition, location, or other factors, making the development, in its current condition, unusable for housing purposes. Major problems indicative of severe distress are:

(1) *Physical Condition:* structural deficiencies (e.g. settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (e.g., severe erosion or flooding).

(2) *Location:* physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review, which was previously conducted in accordance with 24 CFR part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use.

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property, such as significant numbers of families living in poverty, significant incidence of serious crime, high vacancy rate, high turnover rate, low rent collections, etc.

(B) Grant Limitations

The following grant amount limits apply to HOPE VI grants under this SuperNOFA. The grant amount shall be limited by the total amount determined by addition of paragraphs (1), (2), (3), and (4) below, as applicable.

(1) *Total Development Cost (TDC).* TDC is limited to the sum of:

(a) TDCs up to, but not to exceed 100% of, HUD's published TDC limits for the costs of demolition and new construction multiplied by the number of public housing Replacement Units; and/or

(b) 90% of such TDC limits multiplied by the number of public housing units to be substantially rehabilitated.

Total Development Cost (TDC) is limited by the HUD-published TDC Cost Tables, which are issued for each fiscal year for the building type and bedroom distribution for the public housing replacement units. Duplicative funding is prohibited for any replacement units previously funded by HOPE VI or other HUD funds. This requirement does not prohibit any non-HUD funds to be used to supplement HUD funds for any project cost. Disclosure of all prior HUD grant assistance is required for the targeted development. The only exception to this rule is that the receipt of Section 8 relocation assistance does not affect the eligibility of the applicant to receive subsequent HOPE VI Revitalization funding for replacement of the same units.

The Department has developed a new TDC policy and cost control which applies to 1998 grants. A HUD Notice and rule describing this policy will be issued in the near future.

(2) *Community and Supportive Services Programs.* Applicants may request up to \$5,000 per household for community and supportive services, including self-sufficiency programs, based on:

(a) The number of households in occupied units in the project to be revitalized at the time of application submission, and

(b) The estimated number of new households that are expected to occupy replacement units after revitalization; or

(3) *Services to Assist the Elderly.* Applicants may request up to \$5,000 per household for human services programs to address quality of life and other social needs, as opposed to self-sufficiency programs of family HOPE VI projects, rewarding innovative objectives and programs, particularly as related to aging in place and assisted living.

(4) *Relocation.* Applicants may request no more than \$3,000 per occupied unit at the time of HOPE VI application submission for relocation services and expenses.

(5) *Total Grant Amount.*

(a) *Revitalization Applications.*

(i) A PHA may submit one or two separate Revitalization applications. The total amount requested in one or both applications may not exceed \$35 million. If a PHA submits two applications, each application will be reviewed separately, subject to the grant limitation amounts above, and if both applications are selected, the total amount the applicant may receive may not exceed \$35 million.

(ii) Notwithstanding the fact that a PHA may submit one or two Revitalization applications, each individual application may include a request for funds for only one public housing development. Developments that are contiguous, immediately adjacent to one another, or within four city blocks from each other will be considered one development for the purposes of the HOPE VI Program under this SuperNOFA. There is no minimum or maximum number of housing units for which funds may be requested in a single application.

(b) *Elderly Housing Grant Applications.*

(i) A PHA may submit only one application under the Elderly Housing grant requesting no more than \$5 million.

(ii) A PHA may not submit an application for an Elderly Housing grant that targets the same units targeted in a Revitalization application.

(iii) Each application will be evaluated independently and must be viable regardless of whether a PHA applies for funds under the Revitalization grant.

(C) *Public Meeting*

The application must include a certification that at least one public meeting was held to notify residents and community members of the proposed activities described in the application. The meeting must be held after the publication date of this SuperNOFA. Issues that must be covered in the public meeting include:

- (a) The extent of proposed demolition;
- (b) Relocation issues; and
- (c) Other revitalization activities.

(D) *Replacement Units*

(1) Rental units will be deemed Replacement Units and qualify for operating subsidy only if they are to be placed under Annual Contributions Contract and operated as Public Housing.

(2) Homeownership units will be deemed Replacement Units only as specified in the Urban Revitalization heading of the 1993 Appropriations Act (Pub. L. 102-389; approved October 6, 1992); that is, if they meet the statutory requirements of the Section 5(h) program (42 U.S.C. 1437c(h)); the HOPE II program (42 U.S.C. 12871-80; Pub. L. 101-625, secs. 421-31; 104 Stat. 4079, 4162-72); the HOPE III program (42 U.S.C. 12891-98; Pub. L. 101-625, secs. 441-48; 104 Stat. 4079, 4172-80); or are made available through housing opportunity programs of construction or operational rehabilitation of homes

meeting essentially the same eligibility requirements as the Nehemiah program.

(3) HOPE VI funds may not directly support mixed-finance units which are not themselves to be placed under ACC or be sold as homeownership units as specified above.

(E) *Section 3 Economic Opportunities*

Please see Section II(E) of the General Section of this SuperNOFA. The requirements of Section 3 are applicable to HOPE VI.

(F) *Flood Insurance*

In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HUD will not approve applications for grants providing financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of approval of the application.

(G) *Coastal Barrier Resources Act*

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

(H) *OMB Circulars*

Please see Section II(H) of the General Section of this SuperNOFA.

(I) *Conflict of Interest*

(1) In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official and who exercises or has exercised any functions or responsibilities with respect to activities assisted by HOPE VI funds, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom her or she has family or business ties, during his or her tenure or for one year thereafter.

(2) HUD may grant an exception to the exclusion in paragraph (1) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the program and the effective and efficient administration of the revitalization activities. HUD will consider an exception only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made, and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD will consider the cumulative effect of the following factors, as applicable:

(a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the revitalization program that would otherwise not be available;

(b) Whether an opportunity was provided for open competitive bidding or negotiation;

(c) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity, and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;

(d) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(e) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (1) of this section;

(f) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and

(g) Any other relevant considerations.

(J) Labor Standards

Where HOPE VI funds provide assistance with respect to low-income housing that will be subject to a contract for assistance under the U.S. Housing Act of 1937, Davis-Bacon or HUD-determined wage rates apply to development or operation of the housing to the extent required under section 12 of the Act. Under section 12, the wage rate requirements do not apply to individuals who: perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not

otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with the revitalization program, labor standards requirements apply to the extent required by such other Federal programs, on portions of the development that are not subject to Davis-Bacon rates under the Act.

(K) Lead-Based Paint Testing and Abatement

Any property assisted under the HOPE VI Program is covered by the Lead-Based Paint Poisoning Prevention Act (24 U.S.C. 4821 *et seq.*) and is therefore subject to 24 CFR part 35; 24 CFR part 965, subpart H; and 24 CFR 968.110(k).

(L) Building Standards

All activities that include construction, rehabilitation, lead-based paint removal, and related activities:

(1) Must meet or exceed local building codes; and

(2) Must comply with the 1992 Model Energy Code issued by the Council of American Building Officials.

(M) Program Income

Where a plan contemplates the receipt of program-related income prior to grant closeout (e.g., from sale of homeownership Replacement Units, or the disposition of improved land), such income must be reflected in the HOPE VI budget and used for program purposes.

III. Application Selection Process

(A) Threshold Criteria for Funding Consideration

(1) The applicant must be an eligible Public Housing Agency.

(2) The targeted public housing development or portion thereof must be severely distressed, as defined in Section II(A) of this HOPE VI Program section of the SuperNOFA.

(3) The application must include all required forms, certifications and assurances, properly signed and executed, after any period provided for the curing of deficiencies consistent with section V below.

(4) Applications that propose new construction of replacement housing must comply with the requirements of section 6(h) of the 1937 Act by submitting the information described in either paragraphs (a) or (b) of this section:

(a) A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or acquisition and rehabilitation in the same neighborhood

(including estimated costs of lead-based paint testing and abatement), or

(b) A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or acquisition and rehabilitation.

(B) Application Rating Factors

The factors for rating and ranking applications and the maximum points for each factor, are provided below. The maximum number of points for each application is 102. This includes two EZ/EC bonus points, as described in the General Section of this SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In order to ensure that revitalization efforts take place without delays attributable to administration and management, applications that demonstrate the highest degree of capability to implement revitalization in an expeditious manner upon grant award will be awarded the most points under this rating factor.

The rating of the "applicant" or the "applicant's organization and staff," unless otherwise specified, will include any sub-contractors, consultants, subrecipients, and members of consortia which are firmly committed to the project.

In rating this factor, HUD will consider the extent to which:

(1) The applicant and/or its proposed partners, including the overall proposed project director and staff, the day-to-day program manager, consultants, and contractors, have knowledge and recent, successful experience in planning, implementing, adapting, and managing:

(a) Revitalization activities;

(b) Self-sufficiency programs;

(c) Supportive services for the elderly, if applicable;

(d) Other programs similar in scope or nature to the proposed activities.

HUD does not require that the applicant have its program manager and/or developer selected prior to submission of the application, although the PHA may elect to do so. Rather, the PHA must demonstrate its capacity or its ability to identify needs in its current staffing to successfully implement its program, and/or describe in detail its proposed method for securing a program manager and/or development partner to implement the plan.

(2) The applicant has adequate experience in management and marketing. The applicant has thoroughly evaluated the obstacles that prevented good management, as well as other problems that contributed to the obsolescence of the targeted development, and the new management plan will protect against such obstacles and problems and will improve the efficiency and economy of management. PHAs may propose private management or self-management, but in the latter case *must* demonstrate its capacity to self-manage; or

(3) The applicant has sufficient personnel or will be able to procure partners quickly to implement the revitalization plan in a timely and effective fashion immediately after grant award;

(4) The applicant proposes an appropriate balance of oversight and autonomy in its use of partners and/or contractors;

(5) The applicant has satisfactory managerial experience with resident initiatives;

(6) If the applicant received HOPE VI funding in previous years, HUD will evaluate its ability to demonstrate progress through its expenditure rate and achievement of program objectives.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area.

In rating this factor, HUD will consider:

(1) The extent to which the applicant has documented a critical level of need for the proposed activities at the targeted development. Documentation of need must demonstrate that:

(a) There is a significant level of physical deterioration of buildings and sites, as supported by information and data which shows the extent of physical problems at the site such as major structural deficiencies, electrical systems under code, poor site conditions, leaking roofs, deteriorated infrastructure, high levels of deferred maintenance, number of units that do not meet Housing Quality Standards, levels of lead based paint, and other factors;

(i) The level of distress at the site is urgent and threatens to become imminently greater without immediate intervention;

(ii) The PHA lacks the funds to revitalize the development to provide decent, safe, and sanitary housing at the site;

(b) The level of physical distress in the surrounding community is extreme and contributes to the obsolescence of the site, as evidenced by information and data addressing such factors as housing density, housing deterioration, and lack of adequate infrastructure or utilities;

(c) The community as a whole has a demonstrated level of social distress, as evidenced by indicators such as significant incidence of criminal activity, a high vacancy rate, high rates of housing turnover, truancy, and unemployment, low rates of rent collections, graduation, and other objective, measurable indicators;

(d) The distress at the site was caused or exacerbated by obsolescence, not factors within the applicant's control;

(2) The extent to which the level of need for the proposed activity and the urgency in meeting the need are documented with statistics and analyses contained in a data source(s) that is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(3) The PHA agrees that they are subject to the provisions found at 24 CFR part 971 and that they are required to submit a conversion plan, i.e., a plan for removal of the distressed development from the public housing inventory, in accordance with the requirements at 24 CFR 971.7(b).

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed revitalization plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. In rating this factor, HUD will consider the extent to which:

(25 Points for Subfactors (1) through (7))

(1) There is a demonstrated considerable market for the revitalized and/or replacement units of the type and size proposed;

(2) The purposes and goals of the program for which funding is requested, will be achieved within an appropriate and reasonable timeframe and program activities will result in measurable accomplishments consistent with the purposes of the program.

(3) The cost estimates of program activities:

(a) Are financially sustainable over the long run;

(b) Are developed through the use of technically competent methodologies

(c) Represent a cost-effective plan for designing, organizing and carrying out the proposed activities;

(d) Are reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area;

(e) Are projected to be within HUD TDC and Community and Supportive Service limits;

(f) Are reasonable relative to the cost of providing section 8 tenant-based assistance.

(4) The information and strategies described are coherent and internally consistent.

(5) The proposal will lessen concentration of low-income residents and create desegregation opportunities:

(a) The physical design of the proposed housing will significantly reduce the isolation of low-income residents and/or significantly promote mixed-income communities in well-functioning neighborhoods;

(b) Access to municipal services, job information, mentoring opportunities, transportation, and educational facilities will be increased;

(c) Operational and management principles will promote economic and social diversity;

(d) Intensive counseling will be provided to section 8 certificate or voucher holders to find housing in non-poor areas and prepare these residents for self-sufficiency;

(6) The revitalization plan proposes innovative approaches to public housing transformation.

(a) Applicants are encouraged to design forward-thinking programs that incorporate the most current sound research on planning, implementation, financing, partnerships, management, and operation of public housing and self-sufficiency and educational programs. Conventional approaches should be reserved for HUD's formula-based capital programs.

(b) Applications should have the potential to yield innovative strategies or "best practices" that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. HUD will assess the transferability of results in terms of model programs or lessons learned from the work performed under the award. Applicants will be required to prepare an analysis of best practices as part of their reports to HUD that may be used by HUD to inform others who may be interested in learning from the experiences gained from the work performed under awards funded through this SuperNOFA.

(7) The design of the revitalized development demonstrates an achievable effort to blend into and enrich the urban landscape;

(10 Points for Subfactors (8) through (11))

(8) Applications for Elderly Housing grants:

(a) Will create new communities for the elderly and disabled designed to meet the special needs and physical requirements of the elderly and disabled. Applicants' elderly program strategies complement their overall HOPE VI revitalization strategy.

(b) Address the issues of transportation, access to health care, security, and affordability with innovative approaches.

(c) Propose demonstration programs based on recent research and program innovations. Applicants are free, however, to propose programs that address elderly and disabled needs in the manner most appropriate for their locality.

(d) Include provisions for sustainability beyond the proposed program period.

~~(10 points for Subfactors (9) through (11))~~

(9) Applications targeted toward families propose opportunities for self-sufficiency, particularly for persons enrolled in welfare-to-work programs. The self-sufficiency plan:

(a) Demonstrates objectives that are results-oriented, with measurable goals and outcomes;

(b) Demonstrates consistency with state and local welfare reform goals;

(c) Is financially and programmatically sustainable over the long run;

(d) Is well integrated with the development process;

(e) Proposes a program that is of an appropriate scale, type, and variety of services to meet the needs of residents;

(f) Proposes resident training, self-motivation, employment, and education;

(g) Includes opportunities for economic and retail development at or near the public housing site, as appropriate.

(h) Provides commitments by service providers to provide services and/or funding;

(i) Demonstrates that relationships have been forged with local Boards of Education, institutions of higher learning, non-profit or for-profit educational institutions and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of children of PHA residents from birth through higher education;

(j) Identifies employers and potential employment opportunities for residents who complete community and supportive service training; and

(k) Demonstrates an effective use of technology.

(10) Residents and members of the communities to be affected by the proposed activities have had and will continue to have full and meaningful involvement in the planning and implementation of the revitalization effort:

(a) In addition to meeting the requirement for at least one public meeting to inform residents and members of the surrounding community of the revitalization plan as presented in the application submitted to HUD, the PHA has provided meaningful opportunities for participation to residents and members of the surrounding community of the meeting(s) through:

(i) Clear information about the application;

(ii) Prominent posting of information about the application and scheduled meetings in locations likely to attract notice; and

(iii) Posting of the information in adequate time to allow participants to plan to attend meetings.

(b) Residents and non-resident members of the surrounding community:

(i) Have had the opportunity to participate in the shaping of the application;

(ii) Support the activities proposed in the submitted application;

(iii) Will have opportunities for continued involvement and participation as program activities proceed.

(11) The proposed operation and management principles will accomplish all of the following goals:

(a) Achieve efficient and effective property management and maintenance through private or PHA management;

(b) Lead to a range of incomes in the targeted development including substantial numbers of working residents through effective self-sufficiency programs;

(c) Reward work and promote family stability through positive incentives such as income disregards and ceiling rents. PHAs may establish ceiling rents and may institute earned income disregards for FY 1998;

(d) Provide greater safety and security by:

(i) Instituting tough screening requirements;

(ii) Enforcing tough lease and eviction provisions;

(iii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with local law enforcement agencies and local United States Attorneys and program policy efforts such as "One Strike and You're Out," the "Officer Next Door" initiative, or Department of Justice "Weed and Seed" programs;

(iv) Promoting healthy homes, i.e., improving the safety and security of residents through anti-crime measures and the installation of physical security or design enhancements.

(e) Promote economic and demographic diversity through a system of local preferences; and

(f) Encourage self-sufficiency by including lease requirements that promote resident involvement in the tenants association, community service, self-sufficiency, and transition from public housing.

(12) (5 Points) The Revitalization Plan will affirmatively further fair housing by actively ensuring that marketing, locations of housing, and structural accessibility of housing will encourage natural integration and discourage inappropriate concentrations of minorities in undesirable neighborhoods.

(a) Developments constructed or rehabilitated with HOPE VI funds must meet the accessibility requirements contained in various civil rights statutes

and regulations, and may receive points under this factor if they meet the visitability standards adopted by the Department that apply to those units not otherwise covered by the accessibility requirements.

(b) PHAs are encouraged to promote greater opportunities for housing choice by making at least 5% of for-sale units accessible to individuals with mobility disabilities and 2% of for-sale units accessible to individuals who have visual or hearing disabilities.

(c) Innovative designs are encouraged, particularly with respect to for-sale house configurations, which simultaneously meet accessibility requirements and achieve marketability for non-disabled households.

(d) Program activities should aid a broad diversity of eligible residents, including those that have been traditionally underserved. Efforts to increase community awareness in a culturally sensitive manner through education and outreach will also be evaluated, if applicable.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure additional resources for the proposed activities which can be combined with HUD's program resources to achieve program purposes. Resources include in-kind contributions such as staff or supplies; grants, loans, and other financing; or other types of contributions to the program activities. This factor emphasizes the importance of a PHA not just seeking endorsements and vendor relationships with others, but actively enlisting other stakeholders who are vested in the revitalization effort, including public and private non-profit and for-profit entities with experience in the development and/or management of low- and moderate-income housing, those that are skilled in the delivery of services to residents of public housing, educational institutions, foundations, banks, and other organizations. HUD will evaluate the strength of commitment articulated in letters of support.

If a PHA is also a redevelopment agency or otherwise has citywide responsibilities, HUD will consider the city's redevelopment or other functional area to be a separate partner with which the housing authority function is partnering, where appropriate.

In rating this factor, HUD will consider the extent to which:

(1) The PHA has initiated strong partnerships with entities that will provide significant, *firm* funding and other commitments if HOPE VI funds are awarded. Applicants must provide

evidence of leveraging and partnerships by including in the application letters of firm commitments, memoranda of understanding, agreements to participate, or letters of support if firm commitments cannot be secured. All such documentation must include the organization's name, proposed level of commitment, and proposed responsibilities as they relate to the revitalization plan. The commitment must be signed by an official of the organization legally authorized to make commitments on behalf of the organization.

(2) The infusion of HOPE VI dollars will leverage additional resources after grant award, including municipal funds, charitable contributions, private debt and equity, and other partnerships which may not have a dollar value but are critical to the successful transformation of the development and the lives of its residents.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In rating this factor, HUD will consider the extent to which the applicant demonstrates that it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described;

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(i) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan;

(ii) Civil rights organizations;

(iii) Local Area Agency on Aging, if applicable;

(iv) Local agency serving persons with disabilities, if applicable;

(v) Local Weed and Seed task force, if the targeted development is located in a designated Weed and Seed area; and

(vi) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(vii) Local law enforcement agencies and the local United States Attorney.

(C) Application Evaluation.

Awards under this HOPE VI Program section of the SuperNOFA will be made through a selection process that will award grants to the most meritorious applications.

(1) Revitalization Applications.

(a) HUD will preliminarily review, rate and rank each eligible application on the basis of the evaluation factors set forth in Section III(B) of this HOPE VI Program section of the SuperNOFA, above, excluding Factor 3(8), which is specific to applications proposing revitalization of elderly housing.

(b) A final review panel will assess each of the applications advanced to final review and will assign the final scores. The final review panel will review the scores of all applications:

(i) Whose preliminary score is above a base score established by HUD. HUD intends to set the base scores so that applications requesting a total of approximately \$900 million are advanced to the final review stage.

(ii) That proposed revitalization activities at sites for which HOPE VI revitalization implementation applications were submitted to HUD in the FY 1997 HOPE VI revitalization competition but were not selected for funding.

(c) HUD will select for funding the most highly-rated eligible applications up to available funding, except that HUD, in its discretion, may choose to select a lower-rated approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications selected under this HOPE VI Program section of the SuperNOFA.

(2) Elderly Housing Grant Applications.

(a) HUD will preliminarily review, rate and rank each eligible application on the basis of the evaluation factors set forth in Section III(B), above, excluding Factor 3(9), which is specific to applications proposing revitalization of family housing.

(b) A final review panel will assess each application and will assign the final scores;

(c) HUD will select for funding the most highly-rated eligible applications up to available funding.

D) Notification of Funding Decisions.

(1) In accordance with the HUD Reform Act, HUD may not notify applicants as to whether or not they have been selected to participate until the announcement of the selection of all recipients for this HOPE VI Program under this SuperNOFA. HUD will provide written notification to all applicants.

(2) HUD's notification of award to a selected applicant will constitute a preliminary approval by HUD subject to:

(a) The completion of a subsidy layering review pursuant to 24 CFR 941.10(b);

(b) The execution by HUD and the recipient of a Grant Agreement; and

(c) A HUD environmental review. Selection for participation (preliminary approval) does not constitute approval of the proposed site. Each preliminarily-selected PHA must assist HUD in complying with environmental review procedures, conducted by HUD in accordance with 24 CFR part 50. The PHA may not acquire, rehabilitate, convert, lease, repair, or construct a property, or commit HUD or local funds to these activities, until written approval is received from the appropriate HUD Environmental Clearance Officer in its area, certifying that the proposed activities have been approved and the PHA is released from all environmental conditions. The results of the environmental review may require that proposed activities be modified or the proposed site rejected.

(E) Grant Agreement.

Because the HOPE VI Program does not have Federal regulations, upon selection for funding, HUD and the recipient will execute a Grant Agreement setting forth the amount of the grant and applicable rules, terms, and conditions, including sanctions for violation of the agreement. The Grant Agreement will set forth the precise schedules of the HOPE VI Program, provide program requirements, describe requirements for implementation of the revitalization plan, and provide any special conditions on the Grantee, as applicable. Among other things, the Grant Agreement will provide that the recipient agrees to:

(1) Carry out the program in accordance with the provisions of this

NOFA, applicable law, the approved application, and all other applicable requirements, including requirements for mixed finance development, and section 202 of OCRA;

(2) Comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner, including full cooperation with HUD's program oversight contractor;

(3) Assemble a team to implement the HOPE VI Program that has a strong management and development track record and has the capability to commence and carry out a quality HOPE VI program. If the Grantee fails to make this demonstration to the satisfaction of HUD and its program oversight manager, HUD will direct corrective actions as a condition of retaining the grant;

(4) Execute a construction contract within 18 months (or a period specified in the Grant Agreement). Failure to obligate funds will result in the enforcement of default remedies up to and including withdrawal of funding; and

(5) Establish interim performance goals and complete the physical component of the HOPE VI revitalization within 48 months of execution of the grant agreement. The Secretary shall enforce this requirement through default remedies up to and including withdrawal of funding that the PHA has not obligated. HUD will take into consideration those delays caused by factors beyond the control of the Grantee when enforcing these schedules; and

(6) Execute an ACC Amendment for Mixed-Finance development.

(F) Failure to Proceed

In the event that an applicant selected to receive HOPE VI funding does not proceed in a manner consistent with its application, HUD may withdraw any unobligated balances of funding and make this funding available, subject to applicable law, in HUD's discretion, to the next highest ranked applicant that was not selected for funding in the most recently conducted HOPE VI selection process or combined with funding under an upcoming competitive selection process. Failure to proceed with respect to obligated funds will be governed by the terms of the Grant

Agreement or ACC amendment, as applicable.

IV. Application Submission Requirements.

Each HOPE VI revitalization application must conform to the requirements of the HOPE VI Revitalization Application Kit, both in format and content. In addition to the forms, certifications and assurances required by Section II of the General Section of this SuperNOFA, each application must include the following, as directed by the application kit:

(A) A description of existing conditions that describes the extent of need for the program funds requested;

(B) Revitalization Plan which describes all revitalization activities to be funded in the application and details how the proposed work will be accomplished;

(C) For Revitalization applications, a description of plans for resident Self-Sufficiency Programs, including plans for resident consultation and documentation of resident involvement in the planning process;

(D) For Elderly Housing grant applications, a description of plans for resident services, including plans for resident consultation and documentation of resident involvement in the planning process;

(E) A proposed Management Plan which describes the capacity of the applicant and partners to carry out the plan, and proposed management principles which will be implemented to support revitalization efforts;

(F) Documentation of program financing and resources;

(G) A description of any capital funds received by the PHA within the past five years for improvement of the project, including but not limited to Modernization funding under section 14 and MROP funding.

(H) A program schedule.

(I) A certification that at least one public meeting was held to notify residents and community members of the proposed activities described in the application.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

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MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE

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DAVID J. KRUPP
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WRITER'S DIRECT LINE

May 15, 1998

By Facsimile

Jerome Butler, General Counsel
The Chicago Housing Authority
200 W. Adams
Chicago, IL 60606

Re: Gautreaux

Dear Jerome:

On May 5, 1998, Dan Levin wrote Joe Shuldiner inviting Joe to meet with Dan and representatives of the City of Chicago to pursue the process of preparing a joint application for HOPE VI funding to be submitted to HUD by the June 29 deadline under the outstanding SuperNOFA of March 31, 1998. Dan's letter also asked for input from the CHA on a number of points necessary or desirable for the preparation of an application. Dan has received no response.

The time available for formulating an application is rapidly dwindling. As Receiver, Dan wants to be certain that a well-conceived application is submitted to obtain for Chicago funds that are needed and that can be used to construct public housing to implement the remedial orders in the Gautreaux case.

Under the Order of August 14, 1987 the CHA is obligated to cooperate with the Receiver in fulfilling the Receiver's responsibilities, which includes applying for funds for the construction of new, non-elderly dwelling units. Accordingly, unless we receive confirmation in writing from the CHA by 2 p.m. Monday, May


Jerome Butler

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18, that the CHA will provide that cooperation immediately, we will have no choice but to present the issue of CHA's failure to cooperate to Judge Aspen.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael L. Shakman", with a stylized, cursive script.

Michael L. Shakman

MLS:ra

cc: Daniel Levin
Alex Polikoff