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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
-vs-	) No. 66 C 1459	
CHICAGO HOUSING AUTHORITY, et al., Defendants.	Hon. Marvin E. Aspen	
CABRINI-GREEN LOCAL ADVISORY COUNCIL,	)	
Plaintifff,	)	
-VS-	) No. 96 C 6949	
CHICAGO HOUSING AUTHORITY, TERRY PETERSON, CITY OF CHICAGO and RICHARD DALEY, Defendants.	Hon. David Coar ) )	

# JOINT MOTION OF THE CHA AND THE CITY OF CHICAGO FOR MODIFICATION OF THE CONSENT DECREE

The CHA and City defendants, with the concurrence of Daniel E. Levin and The Habitat Company LLC, the <u>Gautreaux</u> Court's Receiver ("Receiver"), move that this Court modify paragraph VIII(B) of the August 30, 2000 Consent Decree to permit the private developers of North Town Park (led by Holsten Real Estate Development Corporation) to administer the social services programs and funding for North Town Park, after consultation with the Cabrini tenant local advisory council ("LAC").

This modification is necessary for the development to move forward. The developers will not be able to secure private financing for the North Town Park development if the Cabrini

LAC is given final authority over the social services programs and funding, including the private funding for social services. In support of their motion, the CHA and the City of Chicago, supported by the Receiver, state as follows:

#### The Consent Decree and Its Implementation

- 1. On August 30, 2000, this Court entered a Consent Decree (also approved, on September 13, 2000, by the <u>Gautreaux</u> Court), which provides a comprehensive plan for the redevelopment of the Cabrini Extension North. All of the remaining units in the eight Cabrini Extension North buildings are to be demolished. These dilapidated, high and mid-rise public housing buildings, in which very poor families are concentrated and isolated from the surrounding community, are to be replaced by a vibrant mixed-income community.
- 2. The Decree provides that the City and CHA, together with the Receiver, will oversee development of at least 700 new public housing units and 270 "affordable" units, as part of a series of developments that will bring 2,000 to 2,300 new units of low-density housing to the area. The income mix will be 50% market, 30% public housing and 20% affordable. The housing will be built and, for the most part, financed by private developers. Much of the housing is being and will be developed as part of the City's Near North Redevelopment Initiative ("NNRI"), which will also provide new commercial development, schools, a park, a new library and police station, and a community center for the area, as well as re-introduce the original street grid to make the area a real neighborhood.

<sup>&</sup>lt;sup>1</sup> The eight buildings that originally comprised Cabrini Extension North contained 1324 units (1285 of which were dwelling units). At the time of the Consent Decree, only 465 units were occupied.

- 3. Since entry of the Consent Decree in 2000, the redevelopment of Cabrini Extension North has proceeded smoothly, without need to involve the Court. To date:
- A. The City has worked with a private developer to complete a large new shopping center at the corner of Division and Clybourn, constructed a new police station near Division and Larrabee, a new Seward Park just south of Division at Orleans (with a complete renovation of the field house), a new elementary school, Jenner School, with another elementary school, the Byrd Academy, planned for construction, and a new public library on Division east of Orleans.
- B. Through a variety of projects that have resulted from the City's NNRI, a large number of Cabrini families are now living in new, high-quality, mixed-income housing that has been developed through public-private collaboration on sites throughout the Cabrini-Green community. In fact, one-hundred sixty-seven (167) public housing units have been completed.<sup>2</sup> Another eighty-seven (87) public housing units are now under construction.<sup>3</sup> In addition, numerous affordable and market units have been completed and occupied.
- C. In October of 2001, an RFP was issued for the CHA land south of Division (to be known as North Town Park). On November 19, 2002, a development group led by Holsten Real Estate Development Corporation was chosen to develop North Town Park. The Holsten team has planned two-hundred and four additional public housing units at this site.

<sup>&</sup>lt;sup>2</sup> These units are located as follows: seventy-nine at North Town Village; thirteen at Orchard Park; eighteen at Renaissance Place; sixteen at Old Town Square; sixteen at Homes of Mohawk North; five at the Mohawk infill site; and twenty at Old Town Village.

<sup>&</sup>lt;sup>3</sup> These are: sixteen units at the Domain Lofts development; twenty-five units at the River Village development; twenty units at Old Town Village East; and twenty-six units at Old Town Village West.

Another two-hundred eighty-nine (289) public housing units are in various stages of planning in locations scattered around the NNRI area.

D. Five of the eight CHA Cabrini Extension North buildings have been demolished, a sixth is now vacant and only 125 families remain in the last two buildings.

#### North Town Park

- 4. Paragraph III(A) of the Consent Decree provides the Cabrini LAC with an opportunity to co-develop the CHA land on which redevelopment will take place. This land is where the Cabrini Extension North buildings sat----essentially bounded by Division on the north, Seward Park on the east, Larrabee on the west and Oak Street on the south. It is where the North Town Park development will occur.
- 5. Pursuant to the Decree, the Cabrini Working Group----composed of representatives of the City (Departments of Planning and Housing), the CHA, the Receiver, counsel for the Gautreaux plaintiffs, and the Cabrini LAC----prepared and the City issued an RFP for this site, seeking development teams, in October of 2001. After a rather intense competitive process, the Working Group selected a team headed by Holsten Real Estate Development Corporation ("Holsten") as the developer of this site. Holsten was selected in large part because of their successful development of North Town Village, another part of the Cabrini redevelopment, which was built on city and private land along Halsted, just northwest of Cabrini's Green Homes. The 261-unit North Town Village development combines 79 public housing units, with 52 affordable (12 for sale and 40 rental) and 130 market units (both for-sale and rental), and is the largest Cabrini redevelopment effort to date. The CHA board approved the Working Group's selection of Holsten on November 19, 2002.

- 6. Holsten, together with the Working Group and the Cabrini LAC, christened this site North Town Park and began putting together its plan. The project is enormous. The site covers eighteen acres, and will likely accommodate between 650 and 680 housing units.

  Construction will take five to six years, and include approximately 340 market units, 136 affordable units, and 204 public housing units. The development will include townhouses, row houses, and mid-rises, along with green space and play areas. The original street grid will be reestablished, along with substantial infrastructure improvements.
- 7. The total cost of the North Town Park project will be about \$180 million, of which over \$100 million must be raised from private investors:
  - A. The CHA/Receiver will provide only \$21.5 million in HOPE VI and other development funding.
  - B. The City is expected to commit about \$9.8 million in TIF funding, principally for site work, \$6 million in tax credits (combined CHA/IHDA tax credit allocation), and \$2 million in secondary financing (HOME funds). In addition, the City will install, at its expense, new streets, sewers and water lines across the site.
  - C. The Illinois Housing Development Authority and the Federal Home Loan Bank are expected to commit \$3.5 million in loans.

For the project to move forward, Holsten must raise the balance of the funds, in excess of \$100 million in private financing, through conventional construction loans, and tax credit financing.

8. A project of this scope is complex even when purely private and market-based.

But further complexities abound here: combining the mix of incomes, housing types and financing enhances both complexity and risk for the developer and for private financing sources.

These challenges are further complicated because Holsten's response to the RFP, consistent with

the Consent Decree, proposed to co-develop the property, in a partnership, with the Cabrini LAC.

This is the only public housing re-development underway in Chicago where the RFP required developers to propose entering into a partnership with CHA residents.

- 9. For more than a year, Holsten has worked hard to hammer out a partnership agreement with the Cabrini LAC. As a result of their negotiations, Holsten has agreed in principle to:
  - A. Make the Cabrini LAC, through its development entity, Cabrini-Green New Beginnings, a 1/3 general partner in all of the entities that will develop the new housing at North Town Park;
  - B. Provide the Cabrini LAC's development entity with 33% of the development entity's fees, profits from sales of for-sale housing, and other profits and cash flow from the project;
  - C. Provide the Cabrini LAC with \$50,000 in initial support from the development entity and an additional \$100,000 during the for-sale development phase;
  - D. Obtain the Cabrini LAC's agreement for the project's relocation plan, non-construction MBE/WBE hiring, its plan for the unit mix and its design of units;
  - E. Involve the Cabrini LAC in management activities and decisions, as well as training by Holsten so that Cabrini residents may assist with management activities;
  - F. Provide Cabrini residents with 50 construction-related jobs, 10-15 construction jobs at the North Town Park site, 10 property management jobs, and 140 additional private sector jobs, for which Cabrini residents may compete.

## The Social Services Stumbling Block

10. Holsten and the Cabrini LAC, however, have reached impasse on a single issue that has prevented them from finalizing their development partnership. Until this agreement is

finalized, the project at North Town Park cannot go forward. The issue involves the social services program and its funding for North Town Park.

11. Paragraph VIII(B) of the Consent Decree provides that:

Using an instrument developed in conjunction with the Working Group, the LAC shall survey displaced and current Cabrini-Green residents. Based on the result of the survey, the LAC shall determine the scope of additional community and supportive services. The LAC will then identify and prepare a scope and budget for the activities it intends to perform on behalf of Cabrini-Green residents. The LAC shall administer or contract out all Community and Supportive services. Funds for such services will come from the Community and Supportive Services portion of the HOPE VI budget or the project budget for development on CHA land.

- 12. The Cabrini LAC has taken the position that this paragraph vests it with control over the entire social services program and budget for North Town Park. However, because most of the HOPE VI social service funds have already been spent, most of the money the Cabrini LAC seeks to control will come from private development funds. This has resulted in a big problem: Holsten has learned that no lender or financing source will extend financing to North Town Park, including financing for social services, if the residents retain control of the social services program and budget.
- 13. As part of the development process, Holsten has sought funding for North Town
  Park from construction lenders, equity investors and tax credit syndicators. While no formal loan
  applications can be presented until there is a partnership agreement finalized with the Cabrini
  LAC, Holsten has met with prospective financiers, provided them with materials on the project

<sup>&</sup>lt;sup>4</sup> In a June 27, 2003 letter, counsel for the Cabrini LAC suggested that the LAC and Holsten jointly operate the social services program, but all decisions would have to be unanimous, thus guaranteeing LAC control.

and conducted informal discussions about their interest in providing financing. These financiers include but are not limited to: Bank One, which provided construction financing for the for-sale homes at North Town Village; Alliant Capital Ltd., which provided equity investment at the Hilliard Homes (another CHA development that Holsten is redeveloping); Fannie Mae, a major equity investor in affordable housing projects; and Apollo Housing Capital, LLC, the tax credit syndicator for North Town Village. Each of these financing sources, as well as others, has indicated to Holsten that it would not fund a project where the residents retained control of the social services budget and programs. Rather, each insists that the managing general partner, who is at risk on the project, maintain control over social services and other management functions. These lenders and financing sources recognize that a comprehensive social services program is critical to the success of North Town Park, given the ambitious mix of incomes involved, and therefore critical to preserving their investment in the project. The affidavit of Peter Holsten, the president of Holsten, attaches letters from these financing sources, explaining their position. The affidavit is attached hereto as Exhibit A.

14. The social services programs involved here are not small ones. They are significant and important to the success of the redevelopment. At North Town Village, a development that is only 40% as big as North Town Park, the Holsten team spends approximately \$10,000 per month on an ongoing basis for its social services program, called the Human Capital Development campaign. Holsten spent \$25,000 per month during the first seven months of the program while North Town Village residents were moving in and had the greatest need. Under this program, a "needs assessment" is performed on each resident with appropriate counseling and referrals for needs identified. Such services may include: daycare referrals,

employment assistance including attempted placement and training, utility bill assistance, counseling referrals for children, GED and advanced educational training, and substance abuse counseling referrals. In addition to the foregoing services, the program also coordinates social events for residents of the development to promote community interaction. Most significantly, Holsten created 80 jobs for Cabrini residents from its North Town Village Development.

Orientation programs are held quarterly to encourage established families to get to know and assist new ones. Program staff also participate in broader community organizations to represent residents in the concerns of the area in which they live and to advocate for improvements in parks, schools, and municipal services. Based on the cost of the North Town Village program (\$225,000 for the first year of operation and \$120,000 annually for a development with 79 public housing units), the cost of the community and social services program for the considerably larger North Town Park development (204 public housing units) would exceed \$350,000 for the first year and be nearly \$200,000 annually thereafter.

- administration of the social services program at North Town Park. Holsten will consult with the Cabrini LAC about the nature and scope of the social services program, as well as the providers to be hired, utilizing the LAC's survey of current and former Cabrini residents, and otherwise involving the LAC. Holsten already cooperates broadly with the LAC on many significant aspects of the project, including the screening and selection committee reviewing potential new tenants.
- 16. The bottom line issue with respect to the social services program, however, is control. Unless ultimate responsibility remains with Holsten, it will not be possible to privately

finance the North Town Park development. Without private finance, there will be no North Town Park development.

#### The Provisions of Paragraph VIII(B) May and Should Be Modified

17. Paragraph XII of the Consent Decree provides, in relevant part, that:

[T]he Court shall retain jurisdiction over this matter for the purpose of enabling any party to the litigation to apply to the Court for such further orders as may be necessary or appropriate for the construction, implementation, or enforcement of this consent decree.

If the Cabrini LAC is correct that Paragraph VIII(B) vests it with ultimate control over the social services program and budget at North Town Park, the developers will not be able to secure financing for the project and the project will not be built. The current stalemate cannot be permitted to continue.

18. As such, the CHA, the City and the Receiver jointly agree that the Court needs to modify Paragraph VIII(B) so that the developer of North Town Park retains ultimate control over the social services program and budget at North Town Park.

#### Modification of this Decree is Well Within the Court's Authority

- 19. Wholly apart from the specific provisions of paragraph XII of the Consent Decree, the Supreme Court and our Circuit repeatedly have recognized that institutional consent decrees like this one may be modified when unforseen obstacles preclude the defendants' compliance with the terms of the Decree.
- 20. The seminal case is <u>Rufo v. Inmates of Suffolk County Jail</u>, 502 U.S. 367 (1992), in which the Supreme Court established a "flexible standard" for the modification of a consent decree involving government bodies. <u>Id.</u>, at 393. There, the Court dealt with the obligation of a

county jail to provide single occupancy cells under the provisions of a consent decree which the county had entered with the plaintiffs. Double-celling of inmates continued to be a problem as the number of detainees increased over the years. The county moved the court for a modification of the consent decree requirements to permit double celling of inmates. The trial and appellate courts refused to allow a modification of this key provision of the consent decree. The <u>Rufo</u> Court vacated these lower court decisions and required that the trial court re-assess the motion.

21. The Rufo Court held that the modification provisions of Rule 60(b) apply to a consent decree. Id., at 378. It emphasized that: "There is . . . no dispute but that a sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen." Id., at 380, quoting Railway Employees v. Wright, 364 U.S. 642, 647 (1961). The Court noted that the upsurge in institutional reform litigation "has made the ability of a district court to modify a decree in response to changed circumstances all the more important." Id. The party seeking a modification of a consent decree bears the burden of establishing a significant change in circumstances warranting revision of the decree. Id., at 383. The significant change can be either in factual conditions or in law. Id., at 384. With respect to factual conditions warranting a modification, the Court stated:

Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous. . . . Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles, [citations omitted]; or when enforcement of the decree without modification would be detrimental to the public interest. [citation omitted].

<u>Id.</u>, at 384. In <u>Rufo</u>, the Court observed that even if the decree were construed as an undertaking by the plaintiffs to provide single cells for pretrial detainees, "to relieve [defendants] from that

promise based on changed conditions does not necessarily violate the basic purpose of the decree." <u>Id.</u>, at 387. Unlike <u>Rufo</u>, the modification sought here does not go to the heart of the Consent Decree. The City, CHA and Receiver still will transform Cabrini from a dilapidated, very poor area, into a mixed-income community; and they will still oversee development of 700 units of new public housing and 270 affordable units at Cabrini. The change only affects a relatively minor portion of the decree, and still guarantees the residents meaningful participation in the social services program.

- 22. Rufo's elements are plainly satisfied here. The condition imposed by the financiers regarding control over social service funds is an "unforeseen obstacle" that renders this portion of the Decree "unworkable." Moreover, enforcement of the Decree without the requested modification would surely "be detrimental to the public interest:" the heart of the redevelopment would lie in limbo indefinitely, injuring not only public housing residents but the entire community.
- 23. The public interest also requires this Court to defer to local government administrators who are primarily responsible for assessing and solving the problems of institutional reform. <u>Id.</u>, at 392. The <u>Rufo</u> Court noted that the District Court "should surely keep the public interest in mind in ruling on a request to modify based on a change in conditions making it substantially more onerous to abide by the decree." <u>Id.</u> Moreover, financial constraints "are a legitimate concern of government defendants in institutional reform litigation and therefore are appropriately considered in tailoring a consent decree modification." <u>Id.</u>, at 392-93.

- 24. The Seventh Circuit has applied <u>Rufo</u> to modify consent decrees in similar circumstances. <u>See Alliance to End Repression v. City of Chicago</u>, 237 F.3d 799 (7th Cir. 2001) (court orders sweeping changes in a consent decree limiting police powers in investigating subversive activities); <u>People Who Care v Rockford Board of Education</u> 246 F3d 1073 (7th Cir. 2001) (terminating the provisions of a consent decree); <u>Protectoseal v Barancik</u> 23 F3d 1184 (7th Cir. 1994) (extending <u>Rufo</u> to the modification of commercial, as opposed to institutional litigation).
- 25. Based on <u>Rufo</u>, and the Seventh Circuit law applying the <u>Rufo</u> standard, the defendants here are entitled to the modification they seek, as the private investors' unanticipated rejection of the social services provision has placed the entire North Town Park development at risk.
- 26. The proposed modification also satisfies <u>Rufo</u>'s requirement that a proposed modification be suitably and narrowly tailored to address the unforseen problem that has emerged, 502 U.S. at 393. Only one paragraph is being changed, and the change is tailored to the one issue giving rise to the problem. The rest of the Decree, and the heart of the relief provided to the plaintiffs, remains intact.
  - 27. The Receiver supports the requested modification.

## Good Faith Efforts To Resolve This Issue Short of Litigation

28. Holsten and the Cabrini LAC worked for months trying to resolve this dispute. The CHA and other members of the Working Group met with both parties in an effort to resolve the issue so that North Town Park can go forward. When the parties agreed they were at an impasse, the CHA, City and Receiver drafted the present motion. On December 19, 2003, a draft copy of

the motion was sent to counsel for the Cabrini LAC. The Cabrini LAC asked the CHA, City and Receiver not to file the motion so that the LAC could consider the entire development agreement, including this issue, and take one final vote on the complete proposal. The LAC asked for a month in which to do this, and the movants agreed not to file their motion until January 15, 2004. On January 15, 2004, the Cabrini LAC met to consider the development agreement and social services issue, but did not vote upon it. The Cabrini LAC asked for additional time to consider the issue and the movants agreed not to file their motion for an additional week. The Cabrini LAC met again on January 22, 2004, but again did not vote upon the development agreement or the social services issue. As this issue has stalled the North Town Park development for months, the parties have no choice but to turn to the Court for its assistance.

WHEREFORE, the defendants respectfully request that the Court modify Paragraph VIII(B) of the Consent Decree to permit the developer of North Town Park to have ultimate control over the social services program and budget at North Town Park.

Respectfully submitted,

One of the Attorneys for Defendants

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

DOROTHY GAL	JTREAUX, et al., ) Plaintiffs, )	
	-vs-	No. 66 C 1459
CHICAGO HOU	SING AUTHORITY, et al., ) Defendants.	Hon. Marvin E. Asper
CABRINI-GREEN LOCAL ADVISORY ) COUNCIL, )		
COUNCIL,	Plaintifff,	
	-vs- )	No. 96 C 6949
	SING AUTHORITY, ) SON, CITY OF CHICAGO ALEY, ) Defendants. )	Hon. David Coar )

#### DECLARATION OF PETER HOLSTEN

The undersigned, Peter Holsten, certifies as follows:

- 1. I am the president of Holsten Real Estate Development Corporation ("Holsten"), an Illinois corporation that is responsible for the development and management of the North Town Park portion of the Cabrini redevelopment project undertaken by the Chicago Housing Authority.
- 2. Part of Holsten's responsibility is to secure financing for this development from private lenders and other financing sources. We must secure over \$100 million in private financing for the North Town Park project.



- 3. As explained below, I have learned that Holsten will be unable to secure private financing for the North Town Park project because the private lenders and financing sources are unwilling to loan money to the North Town Park project if the community and social services funds for the development and their administration will be under the control of the Cabrini Local Advisory Council ("LAC").
- 4. I have met with prospective lenders and suppliers of capital for the project, provided them with materials on the project and conducted informal discussions about their interest in providing financing. They uniformly insist that the managing general partner, who is at risk on the project, maintain control over social services and other management functions. These lenders have indicated that a comprehensive and well-managed social services program is critical to the success of North Town Park, given the ambitious mix of incomes involved, and therefore critical to preserving their investment in the project. They have stated they are unwilling to have the tenant organization manage the funds they commit to the project, or have ultimate authority over those funds.
- 5. Attached to this affidavit are letters from four major entities who finance various aspects of low-income housing, including CHA mixed-income housing in Chicago. In these letters, these financing sources express their positions on the question of whether they would participate if Holsten does not control social service budgets and programs. I talked to many other institutions as well, and their position was the same.
- 6. The social services programs involved are significant and important to the success of the redevelopment. At North Town Village, a development that is only 40% as big as North Town Park, Holsten spends approximately \$10,000 per month on an ongoing basis for its social

services program, called the Human Capital Development campaign. Holsten spent \$25,000 per month during the first seven months of the program while North Town Village residents were moving in and had the greatest need. Under this program, a "needs assessment" is performed on each resident with appropriate counseling and referrals for needs identified. Such services may include: daycare referrals, employment assistance including attempted placement and training, utility bill assistance, counseling referrals for children, GED and advanced educational training, and substance abuse counseling referrals. In addition to the foregoing services, the program also coordinates social events for residents of the development to promote community interaction. Most significantly, Holsten created 80 jobs for Cabrini residents from its North Town Village Development. Orientation programs are held quarterly to encourage established families to get to know and assist new ones. Program staff also participate in broader community organizations to represent residents in the concerns of the area in which they live and to advocate for improvements in parks, schools, and municipal services. Based on the cost of the North Town Village program (\$225,000 for the first year of operation and \$120,000 annually for a development with 79 public housing units), the cost of the community and social services program for the considerably larger North Town Park development (204 public housing units) would exceed \$350,000 for the first year and be nearly \$200,000 annually thereafter.

15. Holsten fully intends to include the Cabrini LAC in the development and administration of the social services program at North Town Park. Holsten will consult with the Cabrini LAC about the nature and scope of the social services program, as well as the providers to be hired, utilizing the LAC's survey of current and former Cabrini residents, and otherwise involving the LAC. Holsten already cooperates broadly with the LAC on many significant

aspects of the project, including the screening and selection committee reviewing potential new tenants.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: Dec 23, 2003.

OFFICIAL SEAL
THOMAS E JOHNSON

Peter Holsten



November 5, 2003

Mr. Carl Byrd Development Director Chicago Housing Authority 626 W. Jackson Chicago, IL

RE: Holsten Real Estate Development Corporation

North Town Park

Dear Mr. Byrd:

Bank One has maintained a relationship with Peter Holsten and Holsten Real Estate Development Corporation since 1985. During this time, we have become familiar with many of Holsten Development's real estate projects. Most recently, Bank One provided financing for the "for sale" phase of the mixed income development called North Town Village. With all Holsten projects, I have been impressed with the devotion that Peter Holsten and his employees have in not only providing decent affordable housing for individuals, but also assisting those who need help with preparing themselves to obtain a job or enable them to live a better life.

Regarding property management, Holsten Real Estate manages many difficult projects in Chicago. Holsten has strict guidelines under which potential renters become building residents. This criteria has resulted in successful building residences with low vacancy rates and satisfied tenants. I have complete confidence in Holsten to successfully manage a mixed income development. This is already evidenced with Holsten's management of North Town Village. With this development, Holsten has been successful and worked hard to 1) locate tenants for this development, 2) find jobs for some of the residents, 3) integrate all of the residents into this development, and 4) develop individual self-sufficiency plans and work with families to execute the plans.

Mr. Carl Byrd November 5, 2003 Page Two

If Bank One were to provide financing for North Town Park, we would expect property management and resident services to be provided by Holsten .

In summary, Holsten has demonstrated during many years that it is able to successfully manage challenging residential buildings as well as mixed income developments. It has assisted numerous residents with its social services which has enabled these residents to improve their lives. I have confidence in Holsten's abilities to continue its successful efforts in these areas in the future.

If I can be of further assistance in this matter, please call me at (312) 325-5045.

Sincerely,

Jack D. Bernhard First Vice President



November 5, 2003

Ms. Linda Brace Holsten Real Estate Development Corporation 1333 North Kingsbury Suite 305 Chicago, IL 60622

RE: North Town Park

Chicago, Illinois

Dear Linda:

Per our recent conversations regarding the North Town Park development, I would like to reiterate some of my concerns regarding qualifications of property management for such a complex affordable housing development as North Town Park.

Alliant Capital has invested over \$2 billion in affordable housing developments, such as Hilliard Homes in Chicago. As you are aware, Alliant's role is to provide equity from major investors which is a primary source of funding for North Town Park and most other major affordable housing developments. The investors which Alliant represents are limited partners in those projects for 15 years. It is Alliant's role to underwrite projects which will be successful on behalf of the investors it represents.

A key component of a successful affordable housing development is property management and resident services. Managing affordable housing is in itself a difficult task. Beyond this, North Town Park has a funding structure, which necessitates accurate and timely federal reporting, and is a mixed-income development. Given this, I cannot overstate the sophistication and experience necessary of a management company in order to make North Town Park an ongoing success. We view Holsten Management as an organization which Alliant would deem qualified as it has a demonstrated successful track record with the federal reporting necessary for Alliant's investors to receive its return on their investment, with managing the income and ownership types represented in the development, and with resident services adequately addressing the needs of low-income occupants in bringing them to self sufficiency.

Alliant Capital would like to continue its valuable business relationship with Holsten Real Estate Development Corporation. We are extremely impressed with the management of your North Town Village development, also located in Chicago. Here, it is evident that Holsten has successfully integrated a variety of incomes, in addition to providing social service programs for many of its residents. In order to participate on future deals, such as North Town Park, Alliant Capital must be comfortable with the

proposed property management. We expect that property management and resident services would be provided in a similar fashion to that of North Town Village, with Holsten in charge. Strong property management and resident services are determining factors in Alliant's involvement in every deal that we consider.

Alliant Capital hopes to be a part of future deals with Holsten Real Estate Development Corporation, including perhaps, North Town Park. Should you wish to discuss this matter at greater length, please feel free to contact me at (614)473-8682.

Sincerely,

Scott L. Kotick

Executive Vice President



November 10, 2003

Ms. Linda Brace Holsten Real Estate Development Corporation 1333 North Kingsbury, Suite 305 Chicago, IL 60622

Dear Linda:

Thank you for all the information you shared with us with regard to the new development at North Town Park! It looks like quite an undertaking and the American Communities Fund would be pleased to consider a financial investment with Holsten and the LAC as it seeks to revitalize the community.

As I know you are aware, projects of this size require considerable experience and capital. As promised, I have attached The American Communities Fund investment parameters for this type of development. Since Holsten is proposing a co-general partnership with the LAC, the American Communities Fund would not only evaluate the partnership as a whole, but each of its partners individually. Please insure that your proposal is clear about the following:

- Which member of the team is providing financial guarantees (i.e. cost-overrun and payment guarantees and include a full-set of financials will be required for this team member)
- Which member of the team is providing social programming services and how that is fully integrated with property management. In our mutually positive experience at North Town Village, Fannie Mae got comfortable with Holsten's ability to successfully integrate households of mixed incomes and diverse social backgrounds. As we learned however, it is important that property management and social programming be controlled by the same entity. This provides a means to effectively control the overall plan, its execution and budget.
- Which member of the team is providing property management services. It is this entity that we will look to for a successful track record in this specific type of development. We will need to have a list of properties the entity is currently managing, the operating budget for each and the current rent roll and vacancy report. Successful property management experience will be key to our decision-making process.

Please contact me if you should have further questions at 312-368-7174.

Sincerely,

Cindy M Holler

Regional Director for Community Development

## Fannie Mae American Communities Fund Equity Investments

Investing with partners to support housing in neighborhoods

The Fannie Mae American Communities Fund sm(ACF ®) invests debt or equity in housing developments that support neighborhoods and community revitalization efforts. The ACF does this through investment with partners using a variety of funding/investment tools that can help lenders, governmental entities, developers and nonprofit housing partners achieve their affordable housing goals.

**ACF Equity Investments** 

The ACF is a source of equity dollars for nonprofit and for-profit housing developers. The ACF targets equity investments that can

- Increase homeownership and rental opportunities among low, moderate, and middle-income families; and
- Revitalize neighborhoods.

ACF equity can provide housing developers with several benefits:

- A single source of equity. ACF typically is the sole institutional investor for our development partners, allowing the developer to focus on completing the development instead of sourcing and negotiating multiple equity commitments.
- Knowledge and experience investing in housing developments. The ACF has in-depth knowledge and experience structuring housing development investments that may involve a myriad of public and private capital sources, affordability restrictions, and other unique aspects. ACF's focus on housing development transactions differentiates us from other sources of equity capital.
- Risk management and return leverage. Equity investments in development projects have inherent risks that cannot be completely mitigated. Through investment partnerships with the ACF, housing developers can reduce the amount of at risk capital necessary to close the transaction while simultaneously leveraging their investment returns.

#### **ACF Equity Investment Parameters**

As an equity partner, ACF looks for the following key attributes in potential proposals:

- **Development Types**: ACF invests in residential housing developments and will entertain proposals for construction and renovation of for-sale, rental, and mixed-use developments.
- **Financially Strong Development Partner:** ACF partners with for-profit and nonprofit developers that demonstrate substantial financial capability and willingness to co-invest their own equity in the proposed development and provide adequate capital for potential project cost overruns.
- Experienced Development Partner: ACF looks for partners who have excellent track records in the type of proposed transaction. Partners should have a track record of 3-5 past projects of similar size and scope and significant market and property management experience. Property Management experience should be demonstrated by multiple sites with better than break-even operations and high occupancy rates.

- Market Feasibility: ACF requires strong underlying market fundamentals, which support the likelihood of successful development and evidence of local support of the development.
- Financial Feasibility: Each development project must demonstrate financial feasibility and produce a return that can be shared by the developer and ACF.

Chicago Office 200 W. Madison Street Suite 3450 Chicago, IL 60606-2400 312/263-5600 Fax: 312/263-6950



Regional Offices Charlotte, NC Cleveland, OH Arlington, VA

November 6, 2003

Mr. Peter M. Holsten Holsten Real Estate Development Corporation 1333 N. Kingsbury, Suite 305 Chicago, IL 60622

Re: North Town Park, Chicago, Illinois

As a syndicator of the Low Income Housing Tax Credit ("LIHTC"), Apollo Housing Capital invests institutional equity in the development of affordable housing nationwide. As the tax credit equity investor in North Town Village, Apollo brings specific knowledge and insight into the capital market requirements for financing public housing redevelopment at the site of the former Cabrini-Green public housing project. Because of the challenges posed by the social integration of former public housing residents into mixed-income communities, the capital markets place high importance on development team experience, especially a long and successful track record in property management, LIHTC compliance, and social service administration.

One of the primary capital risks in LIHTC housing is the need for the developments to be managed for program compliance and financial stability over at least a fifteen-year compliance period. As a limited partner, the equity investor relies on the general partner's ability to not only construct and lease the development on schedule, but to maintain the physical asset, control costs, attract and retain tenants from the appropriate target populations, manage accounts receivable and payable, and navigate a thicket of complex rules and regulations resulting from the layered financing structures typical of these developments. Indeed, the LIHTC investor typically requires long-term financial guarantees from the development partner to protect against these operating risks.

In the proposed mixed-income development, North Town Park, where the LAC is a partner, additional scrutiny is warranted of the abilities of the general partner and management agent to maintain waiting lists and program compliance for the various target populations, as well as to ensure a sense of community attractive to all of the residents. Holsten has demonstrated its track record of social services and community activities delivered by personnel skilled at bridging the cultural gaps that can exist between residents of vastly differing income levels and soliciting input from and communication among all of the various tenant populations. As such, we would require Holsten to be the responsible party in the execution and control of these critical areas.

In conclusion, the long-term viability of mixed-income public housing redevelopment is dependent on property management organizations that have the capacity and experience to handle the complex operating and financial management responsibilities of running an apartment project. This business capacity must be coupled specifically with experience in delivering social service programs and generally creating and maintaining a healthy environment among residents of vastly different incomes.

Sincerely,

John N. Varones

Senior Vice President

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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
-VS-	) No. 66 C 1459	
CHICAGO HOUSING AUTHORITY, et al., Defendants.	) Hon. Marvin E. Aspen	
CABRINI-GREEN LOCAL ADVISORY COUNCIL,		
Plaintifff, -vs-	) ) No. 96 C 6949	
CHICAGO HOUSING AUTHORITY, TERRY PETERSON, CITY OF CHICAGO and RICHARD DALEY, Defendants.	) Hon. David Coar ) )	

#### **NOTICE OF MOTION**

#### TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on **January 29, 2004, at 10:30 a.m**, or as soon as counsel may be heard, I shall appear before the Honorable Judge Aspen in the courtroom usually occupied by him, at the U.S. District Courthouse, 219 South Dearborn Street, Chicago, Illinois, and then and there present JOINT MOTION OF THE CHA AND THE CITY OF CHICAGO FOR MODIFICATION OF THE CONSENT DECREE.

One of the attorneys

#### CERTIFICATE OF SERVICE

Thomas E. Johnson, an attorney, hereby certifies that a copy of this Notice and attached Motion was served upon the parties on the attached Service List, by hand delivery on January 23, 2004.

Thomas E. Johnson

#### SERVICE LIST

Gautreaux, et al. v. CHA, et al., and Cabrini LAC v. CHA, et al., Case Nos. 66 C 1459 and 96 c 6949

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