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

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

STATEMENT OF THE RECEIVER IN RESPONSE
TO PUTATIVE ABLA PLAINTIFFS' RENEWED MOTION TO INTERVENE

TABLE OF CONTENTS

TABLE OF CASES

I. INTRODUCTION

Daniel E. Levin and The Habitat Company LLC, as Receiver, file this Statement in response to the putative ABLA Plaintiffs' Motion to Intervene ("Intervention Motion") and their proposed Amended Complaint ("Comp.").

Sometimes a weak legal and factual position leads advocates to hyperbole. So it is with the intervention papers submitted by the "Concerned Residents of ABLA" ("CRA"), a group of current and former ABLA residents who disagree with the decision of their duly elected and appointed representatives – the ABLA Local Advisory Counsel ("LAC") and the Gautreaux plaintiffs – to support the redevelopment plan for ABLA. For example, in their Complaint they make the following charge, invoking the ghost of Plessy v. Ferguson:

> The present plan is a separate and unequal, arbitrary and capricious, irrational abuse of power. Fathered in secret, foisted on the Court, trumpeted as preliminary, and protected by a cabal, the ABLA Redevelopment Plan must finally and belatedly be subjected to appropriate and necessary judicial scrutiny in a contested proceeding.

Complaint ¶13. The rhetoric does not reflect reality. Neither does their unlikely theory that the *Gautreaux* plaintiffs, the LAC, CHA, the Receiver, and the City have embarked on a scheme to illegally perpetuate segregation and violate a host of housing statutes, and that HUD has countenanced violations of the statutes it is supposed to enforce.

As discussed below and as shown by the attached affidavits and public records:

- The plan is not "separate and unequal," "arbitrary" or "irrational," let alone an "abuse of power." It is a model HOPE VI project, designed to transform ABLA from a wholly racially segregated, isolated, crime-ridden community of poverty into a racially and economically integrated community woven into the surrounding neighborhoods. All of the property to be developed, both north and south of Roosevelt Road, will have virtually the same economic mix – about 33% public housing rental and for-sale, 27% affordable (rental and for-sale), and 40% market for-sale. And

contrary to allegations of the putative Complaint, the redevelopment of ABLA will not violate any fair housing law or other applicable legal requirement. CRA's legal arguments are premised on the alarmist refrain that "nearly 80%" of the housing units on the ABLA site will lie south of Roosevelt Road. See, e.g., Comp. ¶7. The alarm fades when one looks at a map and sees that 77% of the ABLA site lies south of Roosevelt; and it disappears when one looks at the development plan and sees that *identical* percentages of new public housing and market units will be developed north and south of Roosevelt, respectively. 72% of the new market and public housing units will be built south of Roosevelt, and 28% of each will be built north. See Section III below.

- The plan was not "fathered in secret." It was birthed through a highly public process, which included more than one hundred Working Group meetings, several meetings open to the general public (which CRA members attended), and public hearings in order to obtain required zoning approvals. The midwives of the plan included tenant representatives (the LAC and the *Gautreaux* plaintiffs) who are members of the Working Group, representatives of community groups, the Alderman, the City, CHA and the Receiver.

- The plan is not "protected by a cabal." The so-called "cabal" apparently is everyone except CRA, and includes the tenant leadership and the other stakeholders mentioned in the preceding paragraph. These stakeholders support the plan because it is a good one. To the extent the so-called "cabal" is trying to "protect" anything, it is to prevent any further delay in starting construction and producing the new public housing units that everyone, including CRA, wants.

The Receiver and the other parties who are allegedly members of the "cabal" – CHA and the *Gautreaux* plaintiffs – agree with CRA that the ABLA redevelopment plan should now "be subjected to appropriate and necessary judicial scrutiny," in the form of the hearing suggested by the Receiver in late 2000 (when the unripe first intervention motion was presented) and reflected in the Court's

order of September 25, 2000. For reasons discussed below and in the briefs being filed by CHA and the *Gautreaux* plaintiffs, the parties and the Receiver respectfully suggest the following procedure:

A. Intervention is not "appropriate and necessary," and should be denied. CRA has not satisfied the requirements for intervention, and it would be severely prejudicial and highly unjust if full blown litigation were to derail the ABLA redevelopment indefinitely and prevent the imminent construction of new public housing units, which is part of the remedy in this lawsuit for the original unlawful segregation of ABLA.

B. As this Court has done on several other occasions when it denied intervention to CHA residents or community groups who objected to proposed development of new public housing, the Court should consider CRA's Complaint (and any materials it wishes to file with its reply) as its objections, subject to the procedures and standards described below.

C. The standards should be akin to those approved in Isby v. Bayh, 75 F.3d 1191 (7th Cir. 1996). CRA proceeds on the erroneous premise that it is writing on a clean slate. Rather, the redevelopment plan reflects an agreement by the parties to this case concerning the remedy to be provided for the unconstitutional segregation that had existed at ABLA. CRA is challenging that settlement. Isby defines the standards that apply in this context. Regarding allegations that the plan is unlawful, "any illegality or unconstitutionality must appear as a legal certainty on the face of the agreement before a settlement can be rejected on this basis." Isby, 75 F.3d at 1197, quoting Armstrong v. Board of School Directors, 616 F.2d 305, 320 (7th Cir. 1980). The only other question is whether the plan is "fair, reasonable and adequate." Isby, 75 F.3d at 1196, 1198. The briefs of CHA and the *Gautreaux* plaintiffs demonstrate that the plan is not illegal, whether considered under the

Isby standard or fuller scrutiny. This brief addresses the fairness and reasonableness of the plan.

D. The hearing should be based on the written submissions of the parties, the Receiver and CRA. The parties and the Receiver believe the Isby factors can be evaluated on these submissions and without oral testimony. However, if the Court concludes otherwise, we will present oral testimony on any issues the Court might find warrant it.

This suggested procedure is entirely consistent with the Court's observations in an earlier context when it denied intervention to persons seeking to challenge the planned development of new public housing, see Gautreaux v. Kemp, 132 F.R.D. 193, 196 (N.D. Ill. 1990):

> [T]he petitioner merely invites the Court to substitute its judgment for the judgment of the CHA and the Receiver. It would be both unfeasible and highly inappropriate for the Court to review every decision made by these parties . . . . [W]e cannot second guess site decisions of the CHA and the Receiver which do not violate the consent decree.

These comments are even more apt today. Unlike 1990, when the Court was considering the placement of 101 public housing town homes on 11 scattered sites, see 132 F.R.D. at 194, the Court is now presented with an enormously more complicated plan for the redevelopment of an entire neighborhood with over 2,400 new housing units, including not only public housing, but also market, affordable and commercial uses, and a host of ancillary urban planning matters (infrastructure, parks, etc.) The Receiver, CHA, City, *Gautreaux* plaintiffs and LAC have devoted thousands of person-hours considering the details of the plan and eventually forging consensus among themselves. While no one is suggesting that the Court countenance a violation of the law or abdicate judicial oversight, we respectfully suggest that deference to the good faith efforts and judgments of the Court's Receiver and to the agreements among the various public officials and stakeholders is wholly proper and consistent with the Court's past practices.

II. THE "EXPECTED" HEARING

On September 25, 2000, when the Court denied CRA intervention on ripeness grounds, the Court stated: "Unless we are confronted with evidence that this [consultation with CRA] is not occurring, we will assume that the CRA will have the opportunity to present its opinions on the progress of the planning and development." The Court added: "Finally, once a development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene." 9/25/00 Order, Ex.D to Plfs.' Mem. in Support of Mot. to Intervene ("CRA Mem."). In this section, we explain the standards and procedures that we suggest applying at the "hearing on the merits of the plan." But first we provide a brief chronology of events occurring after entry of the September 25, 2000 order.

A. Chronology of Events Following the Previous Denial of Intervention.

CRA appealed the September 25, 2000 denial of intervention. The appellees moved to dismiss the appeal for lack of appellate jurisdiction, and the Seventh Circuit took no action for well over a year. By May 2002, CRA, the *Gautreaux* parties and the Receiver agreed that the redevelopment plan was ripe for this Court's review. CRA Mem. at 3. CRA voluntarily dismissed the appeal in early June 2002 after negotiating an agreed order that CRA undertook to present to this Court shortly after dismissal of the appeal. The agreed order provided for CRA to submit a new intervention petition within 21 days, followed by a sixty-day negotiation period, and, failing agreement, a procedure to rule on intervention and CRA's objections. However, after dismissing the appeal, CRA did not seek leave to enter the agreed order and file its intervention petition. Almost a year passed until April 2003, when one of CRA's lawyers made a settlement proposal in

a letter, which led to face-to-face negotiation sessions during the summer. Meanwhile, the public planning process was proceeding apace, as described in Section III of this brief.

Impasse was later reached at a meeting held at the Receiver's office on August 27, 2003. After a few months had passed following the August impasse, it seemed that CRA might have abandoned their objections and claims, which are, for reasons explained elsewhere in the briefs being submitted, meritless. In any event, the Receiver and *Gautreaux* parties reasonably believed from September 2000 and thereafter that it was up to CRA, if it still had objections to a ripe plan, to initiate the hearing process contemplated by the Court by submitting their revised intervention motion. But CRA did not do so until May 14, 2004, the virtual eve of the closing of Phase I.

In the absence of formal, filed objections, it has not been the normal practice of the parties in this case to ask for a formal hearing. As this case has moved into the redevelopment remedial context, a pattern has emerged respecting most of the CHA redevelopment efforts: on written submissions the Receiver, CHA and the plaintiffs request approval of what is generally called a "Revitalization Plan" insofar as such a plan contemplates the development of public housing. Even though at that stage plans are always preliminary, absent objections and having received such approval, subsequent implementation steps (including finalizing the preliminary plan) have not heretofore been individually submitted to and approved by the Court. The Court is kept generally informed of ongoing developments by the Receiver's quarterly reports.

However, when specific objections have been made, either at the outset or in the course of implementation, the Court has given the objectors an opportunity to present their position in some fashion, even though formal intervention has usually been denied. The 1990 Edgewater situation, cited earlier, is an example, as was this Court's consideration of written submissions concerning the Cabrini LAC's efforts to persuade the Court to approve the 1998 proposed consent decree over the

Receiver's objections. See Order of September 28, 1999. In each instance, however, objections were brought before the Court by the objectors, not by the *Gautreaux* plaintiffs, CHA or the Receiver. The Court's September 25, 2000 order indicating its intention to hold a hearing on the ABLA plan was prompted by and intertwined with CRA's objections. If agreement were to be reached with CRA, or if CRA had concluded not to pursue intervention, it is unclear what any hearing would have been about, since there would have been no objections to frame the issues for the Court to decide and there would have been no reason to treat this situation differently from the more typical, objection-free, scenario. It was clear at the end of the discussions in August 2003 that the objectors were not entirely satisfied. It was not clear, however, that what separated the parties at that point was sufficient in CRA's view to justify the formal filing of objections. That was a decision only CRA could make. For eight months they chose to take no action, either by bringing their objections before the Court or by expressly advising the *Gautreaux* parties and the Receiver that they were going to initiate further litigation imminently or that they believed it was incumbent upon the *Gautreaux* parties to pursue the hearing. Under these circumstances, the initiative to act belonged with the objectors.

B. The Standards and Procedure for the Hearing.

1. The context in which the hearing is being held.

The procedural context of this case, as well as ABLA's history, are important. As the Court fully appreciates, providing a remedy for the unconstitutionally segregated housing built decades ago presents an enormous and complex challenge. For many reasons, the unconstitutional condition at the core of this case – segregated housing – could not be eliminated by simple judicial fiat, such as an order to displace tens of thousands of families by tearing down and replacing the housing. The remedial scheme in this case has instead more realistically and properly focused on a gradual remedy

implemented through the development of new and replacement public housing. Through its 1969 injunction (as modified), the Court has barred the exacerbation of the existing segregation by prohibiting new public housing in limited areas without matching units in general areas. The scattered site and *Gautreaux* Section 8 programs provided a partial class remedy by dispersing public housing tenants through the metropolitan area. Regarding the original unconstitutional condition – the existing high-rise islands of racial segregation and poverty – decay and obsolescence have led to their ultimate demolition. This in turn affords the opportunity to provide *Gautreaux* class remedies on-site on a scale not previously possible. The revitalizing order procedure has in appropriate cases permitted redevelopment on site in an economically integrated fashion, with the ultimate goal of resulting racial integration.

In overseeing these various remedies, as mentioned earlier, the Court has often looked to the judgment of the parties and the Receiver where they were in agreement. The issues necessarily go far beyond the legal ones raised by this case and beyond the practical abilities of the Court to manage, as they include a host of practical urban planning and development issues, not the least of which is the need to work with the broader community in which the public housing is to be built in order to defuse public hostility to such housing, the familiar "not-in-my-backyard" phenomenon.

The redevelopment of ABLA should be viewed in the foregoing historical and procedural context. ABLA provides a unique opportunity to provide a class remedy in the near future that could only have been viewed as a pipe-dream earlier in the case: replacement of a large, concentrated island of racially segregated public housing with public housing distributed within an economically and racially integrated neighborhood that is itself fully integrated with the rest of the City. As discussed below, the ABLA plan will provide such a remedy.

A plan this big and complex cannot please everybody. As described later, there has been opposition from some community groups who felt too much public housing was being developed. And while the elected tenant leadership and *Gautreaux* plaintiffs support the plan, CRA has marshaled some public housing residents who don't like it. Relying principally on academic opinions, they proceed as if this development were written on a clean slate, with unlimited resources. They believe they have better ideas than the unanimous views of the Receiver, the private developer, the City, CHA, HUD, the Gautreaux plaintiffs and the LAC about how to create a more perfect development, a vision they never really explain but that appears to consist of developing more public housing north of Roosevelt Road. CRA's proposed complaint and objections wrench the ABLA redevelopment plan from its procedural, historical and financial context.

2. The *Isby* standard should be applied to CRA's objections.

a. Our procedural posture.

A correct description of the procedural posture in which the objections arise is as follows. Until June 19, 1998, when the Court entered the agreed revitalizing order in connection with the CHA and Receiver's submission of the 1998 HOPE VI application, the development of new public housing at the ABLA site was enjoined. Such development is now permitted to proceed in a manner consistent with the June 1998 waiver, subject to any further orders of Court. The parties to this case, along with the Receiver, are now in agreement that the plan that has ripened since 1998 is fair, reasonable, appropriate and lawful, and that it provides not merely an adequate *Gautreaux* remedy for the ABLA site, but an example of how public housing should have been developed here in the first place, as an organic and integrated part of the larger community. CRA objects that the plan agreed to by the parties and the ABLA resident's elected representatives will perpetuate segregation by leaving a higher percentage of public housing units south of Roosevelt and by developing too few

public housing units north of Roosevelt. If and to the extent they are arguing that more public housing units should be developed than the 1,084 (new and rehabilitated) permitted by the 1998 order, they are objecting to the 1998 order itself. An issue before the Court is whether the 1998 order, which modified the 1969 injunction regarding ABLA, should be modified in any respect. A further issue is whether the plan agreed to by the parties regarding the distribution of units within the site is lawful and reasonable. The parties to this case and the Receiver agree that no modification of the 1998 order is warranted, and the redevelopment plan is wholly appropriate.

Accordingly, as a procedural matter, CRA's objections are like those in any class case, in which dissident class members or other third parties object to an agreement among the litigants to settle the case and/or provide a class remedy. In such cases, the Courts do not generally permit full-blown satellite litigation or discovery, but rather consider whether the parties' agreement is fair, reasonable, adequate and not unlawful. This is consistent with this Court's deferential approach in the 1990 Edgewater situation cited earlier.

Judge Rovner's opinion in Isby is instructive. While the procedural posture there differed somewhat (consideration of a comprehensive consent decree resolving the litigation, as opposed to a post-judgment agreement concerning modification of an injunction tailored to one site), the teachings apply here.

b. The two *Isby* issues: "certain illegality" and reasonableness.

Isby involved an omnibus challenge to prison conditions in an Indiana "supermax" prison. The parties, including the class representatives, agreed on a consent decree that would provide a remedial plan. Some class members objected that the plan did not provide enough relief. The Seventh Circuit affirmed the District Court's approval of the proposed settlement. Among other authority, the Court relied upon Armstrong v. Bd. of School Directors, 616 F.2d 305 (7th Cir. 1980),

in which the Court approved a school desegregation decree over objections from class members. Judge Rovner prescribed a deferential approach that we suggest should apply here to the Court's review of CRA's objections. Citing the strong policy favoring settlement over protracted litigation, Isby holds that the District Court's inquiry regarding the parties' agreement "is limited to the consideration of whether the proposed settlement is lawful, fair, reasonable, and adequate." 75 F.3d at 1197.

(1) Certain illegality.

Regarding the first Isby element, "lawfulness," the scope of review is narrow. Only clear illegality warrants rejection of an agreed solution. "'[T]he court must not decide unsettled legal questions; any illegality or unconstitutionality must appear as a ***legal certainty*** on the face of the agreement before a settlement can be rejected on this basis.'" Id. (emphasis added), quoting Armstrong, 616 F.2d at 320. For there to be a finding of "certain illegality" regarding any practice or condition permitted under a proposed settlement, "'prior judicial decisions must have found that practice to be illegal or unconstitutional as a general rule.'" Id. quoting Armstrong, 616 F.2d at 321. In upholding the settlement in Isby, Judge Rovner found that the objectors had failed to identify "any illegality appearing as a legal certainty on the face of the settlement." Id. at 1197.

The application of the "certain illegality" standard to CRA's particular objections is discussed in the briefs of the *Gautreaux* plaintiffs, CHA and HUD. The Receiver agrees with them that the ABLA redevelopment plan would pass even a plenary review of its lawfulness, let alone the highly deferential Isby test that the plan be not illegal to a "certainty." The Receiver will not comment further on this "certain illegality" factor in this brief, except for the following additional observation.

As shown in the *Gautreaux* plaintiffs' and HUD's briefs, the claims by CRA that the ABLA plan violates the law are wholly unfounded, and there are no "prior judicial decisions" supporting

a claim that the plan is unlawful. We add that there is a body of "prior judicial decisions," namely various revitalizing orders entered in this case, that undercuts CRA's objections. A kind of "common law" has evolved in this case, in which the Court has considered revitalizing orders in the context of individual sites and developments. The Court has approved revitalizing orders in several contexts (e.g., Horner, Madden-Wells, and Lakefront) even though such developments are likely to produce, in the short term, less economic and racial integration than is planned for ABLA. Indeed, regarding Horner, CRA's counsel represents the pertinent resident group and supported the entry of the revitalizing order despite the lower levels of integration that will likely be achieved at that site. Such agreed revitalizing orders were not "clearly illegal" at those sites, but were lawful remedies to achieve what was practicable, and such is the case at ABLA, where much more economic and racial integration is achievable. If the revitalizing orders at the other sites are not an unlawful "perpetuation of segregation" – and they are not – then *a fortiori*, the more integrative plan at ABLA is lawful.

(2) Reasonableness.

The remainder of this brief will principally address the second Isby factor, reasonableness. The issue is whether the agreed ABLA plan is "fair, reasonable and adequate." 75 F.3d at 1198. In the Isby context – consideration of a consent decree resolving the litigation prior to judgment – five factors are mentioned, some of which do not apply literally to our current post-judgment posture. Id. at 1199. Nonetheless, they provide a useful guide. In considering these factors, the Court should not focus on "individual components" of the plan, but view it in its "entirety in evaluating [its] fairness." Id. Moreover, the Court should "consider the facts 'in the light most favorable to the settlement.'" Id., quoting Armstrong, 616 F.2d at 315.

The first factor, "the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement," 75 F.3d at 1199, to the extent it applies here, strongly favors the agreed plan. As shown in the detailed factual report to follow this section, the plan will achieve substantial integration on the ABLA site, and it is extremely unlikely that the *Gautreaux* plaintiffs could achieve through litigation and judicial order more relief than will occur at ABLA under the plan.

The second Isby factor, "likely complexity, length and expense of litigation," id., to the extent it applies to our post-judgment remedial posture, also strongly favors the ABLA plan. To litigate fully the objections raised by CRA (if they were to be asserted by their class representatives, the *Gautreaux* plaintiffs), would cause protracted delay of months, while disrupting an imminent closing of the first phase and the delivery thereafter of relief to class members.

The third Isby factor, "an evaluation of the amount of opposition to settlement among affected parties," id., also tilts the scale toward approval of the agreed plan. CRA is a small group and it is leveling the only opposition. The duly elected tenant leadership of the LAC favors the plan, and the LAC defeated CRA's candidates in contested LAC elections in which the redevelopment plans were an issue. *JA. Ex.B (Veenstra Aff.)* ¶¶*23, 38;*[1/] *Statement to the Gautreaux Court on Behalf of the ABLA Local Advisory Council at 2-3.* The plan is also supported by the parties to this case, the Receiver, all relevant governmental officials (the City and HUD), and pertinent community organizations, and was formulated and refined through a multi-year, highly public process. *JA. Ex.B (Veenstra Aff.)* ¶*2.*

[1/] The citation format "*JA. Ex.__*" refers to the Joint Appendix of the Receiver, CHA and Gautreaux Plaintiffs, filed herewith.

The fourth Isby factor, "the opinion of competent counsel," 75 F.3d at 1199, 1200, also weighs strongly in favor of the plan. The Court is well familiar with the qualifications of *Gautreaux* class counsel who favor the plan, about which no more need be said, and there is "no reason in the record to suspect that the settlement is tainted by collusion." Id. at 1200.

Finally, the fifth Isby factor, "the stage of the proceedings and the amount of discovery completed at the time of settlement," id. at 1199, also favors the plan to the extent this factor pertains to our post-judgment context. The "stage of the proceedings" is that the case is 38 years old. There is no reason to require more formal legal proceedings in order to assure the fairness and adequacy of the plan. There is also no need for discovery. Class counsel have had the benefit of proceedings far more practical and economical than discovery in order to assess the fairness of the plan: they have had a seat at the planning table as part of the Working Group and have been intimately involved in the review of the selection of the Program Manager (Telesis) and the Master Developer (LR ABLA LLC), and of every planning decision.

In sum, the Isby factors uniformly and strongly support approval of the ABLA redevelopment plan. So that the Court can more fully review the reasonableness of the plan, particularly with regard to the first Isby factor, we now provide a historical summary of the ABLA process, a description of the plans for redevelopment, and the Receiver's opinions as to why the plan substantially exceeds the threshold of being "fair, reasonable and adequate."

III. THE PAST, PRESENT AND FUTURE AT ABLA: WHY THE PLAN IS REASONABLE.

The following factual report is based upon the Affidavits and other materials included in the Joint Appendix, particularly the affidavits of Valerie B. Jarrett on behalf of the Receiver, Tim Veenstra on behalf of CHA, Jack Markowski (Commissioner of the City's Department of Housing)

on behalf of the City, and Steve Porras on behalf of the developer, LR ABLA LLC. In summary, these materials establish that:

(i) Once a completely segregated, poverty- and crime-ridden enclave, ABLA as it was known will cease to exist under the redevelopment plan, and will become "Roosevelt Square," an economically and racially integrated community in which public housing units (totaling about 37% of the total units on the site), will no longer be isolated from the surrounding community.

(ii) The process by which the plan was developed and refined was highly public and is the result of thousands of person-hours. It reflects the collective judgment and input, and enjoys the support of, the parties, the Receiver, the LAC, development professionals, the City and HUD.

(iii) Increasing the number of public housing units presents an unacceptable risk to the financing plan. Because there are not enough public funds to develop the planned 755 new public housing units, the market units must generate profits to help make up the shortfall. Increasing the number of public housing units both increases the shortfall and risks lowering the sale prices and profits that the market units will generate. They also will decrease the funds available for social services and spread such funds across a larger population to which the funds are targeted.

(iv) The objections of some professors, attached as exhibits to CRA's proposed Complaint, are irrelevant and do not warrant any finding that the plan is unreasonable or unfair. At best they represent opinions of academics uninvolved in the planning process. But they do not render the collective judgment of the Receiver and everyone else unreasonable under Isby; and to the extent they advocate building more public housing units, they provide no explanation or solution concerning how to pay for them.

A. Site Overview.

ABLA Homes is comprised of six contiguous developments on the Near West Side that straddle Roosevelt Road. *See JA. Ex.F (1998 HOPE VI Application excerpts) at 1.* Originally consisting of about 3,500 public housing units, as of June 1998 it was occupied by approximately 1,500 very low-income families. *Id.*

ABLA is a classic example of the failed social policy that gave rise to this lawsuit and that the Court's remedies are designed to address. The development was a racially and economically segregated enclave isolated from the broader community. The buildings were dilapidated. The residents were virtually all very poor (most earning much less than 50% of area median income) and African-American. Crime was high. Details are set forth in the excerpts from the 1998 Hope VI Application. *JA. Ex.F; see also JA. Ex.B (Veenstra Aff.) ¶3; Ex.C (Markowski Aff.) ¶3.*

B. HOPE VI Applications and Awards.

In 1997 HUD awarded CHA a $24 million HOPE VI grant to develop new housing on the Brooks Extension Site (not the Brooks Homes discussed below). *JA. Ex.B (Veenstra Aff.) ¶11.* After CHA's 1997 HOPE VI application was denied, in 1998 CHA prepared a new HOPE VI application for $35 million for the development of new public housing at ABLA. The application was submitted at the end of June.[2/] HUD approved the grant a few months later, and permitted the 1998 grant to be merged with the 1996 grant for preparation of a comprehensive plan. A total of $59 million in HOPE VI funds has been awarded, of which about $49 million are available to develop new public housing. *Id. ¶¶7, 16-22.*

2/ As this was the era in which the CHA's management was in conflict with the Receiver over control of the development process, the Receiver was only able to submit comments on the application and had less input and control over the application than would have been the case had it been involved from the outset.

From the outset, the goal was to replace ABLA's concentration of racially segregated poverty with a vibrant economically and racially integrated community. The 1998 HOPE VI application proposed "a true income mix," resulting in 2,895 on-site new and rehabilitated units. The on-site units would consist of 1,084 units available to tenants earning 0-35% of area median income ("a.m.i.");[3/] 845 "affordable"rental and for-sale units; and 966 "market" for-sale units for families earning in excess of 120% of a.m.i. *JA. Ex.F at 1, 20-22.*

The goal of the proposed income targets was then and remains now to "ensure[] deconcentration of low-income families while also recognizing the need to maintain affordable housing in the neighborhood. The proposed income mix provides not only a healthy mix for a sustainable community but also aims to provide opportunities for public housing residents. The concentration of low income housing will be lessened in two significant ways: one, by integrating the proposed site into the revitalizing activities of the surrounding neighborhood, and, two by increasing employment opportunities for the existing resident population and increasing existing incomes." *Id. at 25-26.* The 1998 Application was supported by Deverra Beverly, an ABLA resident who serves as the elected President of the ABLA LAC. Her support was "conditioned upon the LAC's ongoing participation in all redevelopment activities." *Id. Ex.F-1.* This ongoing participation has occurred via the ABLA Working Group, as discussed below.

[3/] These units were then planned to consist of 352 units completely rehabilitated at the Brooks Homes and 732 new public housing units. As described below, the rehabilitation of the Brooks Homes was funded from CHA's comprehensive grant program, and had no involvement of the Receiver. Ultimately, CHA rehabilitated 329 units at the Brooks Homes. 755 public housing units (totaling 1,084 units), are now planned to be developed and distributed uniformly through the remainder of the ABLA site.

C. The June 19, 1998 Revitalization Order.

In connection with the submission of the 1998 Application, CHA, the Receiver and the *Gautreaux* plaintiffs filed a Joint Motion for an Agreed Order Designating ABLA Revitalizing Area and Authorizing Development of Public Housing Units Therein. See CRA Mem. Ex.A. The Joint Motion sought the revitalization designation based upon the income mix proposed in the 1998 Application, including the proposal that "public housing units will comprise no more than approximately 37.5 percent of a total of approximately 2,895 residential units within the Revitalizing Area and will be dispersed geographically throughout the Revitalizing Area, thereby creating opportunities for economically integrated, and over the longer term the possibility of racially integrated, housing for plaintiff class families." Id. ¶2. The Joint Motion summarized the proposed financing then contemplated for the new housing and the development activities in the surrounding area, id. ¶¶4-5, and represented to the Court that "a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made for the area." Id. ¶6.

On June 19, 1998, the Court granted the Joint Motion, entering an Order designating the ABLA Revitalizing Area. See CRA Mem. Ex.B. The June 19, 1998 Order authorized the Receiver, "[s]ubject to such terms and conditions as are specified by further orders of the Court," to develop "such number of new public housing units within the Revitalizing Area as will result in public housing units comprising approximately 1,084 of a total of approximately 2,895 residential units" within the Area. Id. ¶2.

D. The Working Group and Resident Participation.

On May 21, 1999 a Working Group was formalized pursuant to a signed Memorandum of Understanding. *JA. Ex.G.* Members of the Working Group include representatives of CHA, the City of Chicago's Departments of Housing and of Planning and Development, the Receiver, the

Gautreaux plaintiffs, and the ABLA LAC. This Working Group was formed "to meet on a regular basis in order to collectively make decisions regarding the [ABLA redevelopment] Project." Pursuant to this Memorandum, the ABLA tenants, through their elected leadership "will participate in the decision-making process as fully as possible." Over one hundred meetings of the Working Group have occurred since its formation, providing its participants – including the LAC and the *Gautreaux* plaintiffs – extraordinary involvement in and knowledge of the planning process. These meetings are described in greater detail below and in the Jarrett and Veenstra affidavits in the Joint Appendix.

E. The Retention of Telesis and the Resulting Development of a Master Plan Based on Extensive Public Participation That Included CRA.

In 1999, with the concurrence and input of the Working Group, the City issued an RFP for a Program Manager for the ABLA HOPE VI redevelopment. On November 19, 1999, the Working Group conducted a large meeting at ABLA, attended by 150-200 people. The president of CRA and her attorney were invited and attended. Each of the three RFP finalists made presentations. Everyone, including the CRA, was permitted to ask questions, and did. *JA. Ex.B (Veenstra) ¶28.*

In early 2000 the Working Group approved the selection of Telesis Corporation ("Telesis"), a nationally known planning firm, to serve as Program Manager. CRA did not object. Telesis's role was threefold: (a) it developed a very detailed development plan that outlined on a block-by-block basis the density, building types and designs for the new development; (b) it performed a detailed analysis of the available funding sources and prepared financial models designed to test the ability to finance the redevelopment with those sources; and (c) it conducted a resident needs assessment that it used to prepare a social services implementation plan. This process took nearly a year. *JA. Ex.A (Jarrett Aff.) ¶22; Ex.B (Veenstra Aff.) ¶¶24, 29.*

After a number of months of initial investigation, Telesis began meeting in earnest with the ABLA stakeholders in October of 2000. Telesis finalized its plan in July of 2001. During this ten-

month period, Telesis met with the full Working Group nineteen times. In addition to these meetings, Telesis met with and solicited input from many stakeholders individually. For example:

- Telesis met twenty-seven times with the ABLA LAC between October 10, 2000 and June 12, 2001.

- Telesis met twice with CRA representatives and the ABLA building representatives, to provide information and obtain feedback.

- Telesis used the Village Foundation to plan and conduct three, well-attended resident forums, to discuss ABLA resident concerns and preferences as part of the planning process. At these forums, Telesis focused on Entrepreneurship and Self-Employment, Leadership and Self-Esteem, Community Building, Education, and several other issues. CRA, as well as all other ABLA residents, were invited.

- Telesis conducted a formal survey of existing ABLA residents to ensure an even broader involvement of resident voices.

- Telesis also met with a host of other interested parties in the neighborhood, in addition to its many meetings with CHA, the Receiver and the City.

- Telesis held other community-wide meetings for everyone in the ABLA neighborhood, so that they could provide comments on the proposed Telesis plan. The first consisted of three separate design workshops—focusing on the physical design proposed for the site, as well as the location and nature of schools, parks and the street grid. A second meeting allowed for comment on every aspect of the plan. CRA and its attorneys were invited to these meetings and attended.

JA Ex.B (Veenstra Aff.) ¶¶35-37; Ex.A (Jarrett Aff.) ¶22.

F. The Selection of LR ABLA LLC as Master Developer and LR's Solicitation of Input from Public Housing Residents and the Broader Community.

The plan that Telesis produced provided the baseline documents that were incorporated into the RFP that resulted in the ultimate procurement of LR ABLA LLC as the Master Developer in December 2002. LR undertook an extensive outreach program in order to finalize and build consensus for the Telesis plan. In 2003 alone, LR conducted ninety-six meetings with the various ABLA stakeholders to refine the plan, consider objections and build support for the venture. A list of all of these meetings, including the date and the parties involved is attached to the Veenstra

Affidavit. *JA. Ex.B (Veenstra Aff.) ¶¶41-43 & attached Ex.B-4.* These meetings with the public resulted in several refinements of the plan. *Id. ¶44.*

The ABLA LAC and its president, Ms. Beverly, met regularly with LR and with the Working Group to resolve issues. The ABLA LAC held a monthly meeting open to any resident at ABLA to keep them abreast of developments and solicit their input. CRA representatives were at most of these meetings. *Id. ¶41.*

LR's efforts met some resistance. While CRA appears to want more public housing units, there are community groups who want fewer. Community opposition stalled zoning approval for a period during the latter half of 2003. In addition, the Receiver, the CHA, the City and *Gautreaux* Plaintiffs rejected demands from one community group, University Village Association, to reduce density and thereby reduce the number of public housing units, as well as proposals by St. Ignatius College Preparatory School and the Archdiocese of Chicago to divert land to other purposes, which would have had the effect of reducing the number of public housing units. *Id. ¶47; Ex.A (Jarrett Aff.) ¶¶24-28.*

G. The Financing Plan Developed by LR

A critical question from the outset was how to pay for the contemplated 755 new public housing units. This is a question that CRA and its supporting academics ignore. LR was selected in part because it proposed an innovative solution, but it is one with risks that CRA's objections, if accepted, would exacerbate.

This question of how to pay for the public housing units has been of paramount concern to the Receiver. The HOPE VI development dollars will fall far short of what is needed to build the planned 755 public housing units, let alone the unspecified greater number sought by CRA. When the 1998 HOPE VI application was submitted, CHA assumed that about $75,000 per public housing

unit would be spent from the HOPE VI funds, and that the units could be developed at an average of $120,000 each. Both the escalation of costs since 1998 and the Receiver's experience with other redevelopment projects in the City have taught that these cost assumptions are wrong. In order to develop quality public housing units, particularly ones with architectural features making them externally attractive and indistinguishable from non-public housing units, it will cost much more than $120,000 to develop each unit and more than $75,000 of HOPE VI funds are needed per unit. *JA. Ex.A (Jarrett Aff.) ¶12.*

In its financial modeling, Telesis identified the financial problem but did not propose a clear solution. The subsequent RFP for a master developer disclosed that there were insufficient public funds to develop the minimum of 755 public housing units contemplated for the development. It asked prospective developers to identify the number of units that could be developed with available resources and to solve the financing problem identified by Telesis. LR's financing concept addressed this shortfall. It relies on the ability to sell market rate units at prices that the desirable location of the development should be able to generate, which in turn is expected to generate profits that can be applied to the shortfall. *Id. ¶13; Ex.D (Porras Aff.) ¶5.*

The market rate component of the plan is therefore much more than simply balancing numbers in an income mix chart, or trying to define a mix that achieves an economic and racial integration objective. The future development of public housing units is tied to the sale and pricing of the market rate units. The market rate buyers will be, in effect, providing the funds to build new public housing units. Increases in the number or percentage of very low income rental units anywhere in the project imperil the financing scheme because it might harm the marketing potential of the market units. Any decrease in the number of market rate units would also upset the financing scheme. *JA. Ex.A (Jarrett Aff.) ¶¶14-15; Ex.D (Porras Aff.) ¶¶5-8.*

In the Receiver's judgment, LR's financing concept is already based upon optimistic assumptions about the profits that will be generated from the sale of the planned 966 market units. If either the absolute numbers of such units, or the prices and profits generated by such units, were to fall, the challenge of generating enough funds to complete the development of 755 public housing units would be exacerbated. Greater public subsidies from cash-strapped governmental entities would be required. *JA. Ex.A (Jarrett Aff.) ¶15.* HUD's brief describes sobering forecasts concerning the potential future unavailability of federal housing funds.

Accordingly, the Receiver's opinion is that the CRA would lose by winning. If they were to "win" by securing a judicial order requiring more public housing units they would depress the funding needed to build even the current number of units now planned. Additionally, as explained in the affidavit of Mr. Porras of LR, the unit mix is tied to the funds being used to underwrite critically important social service programs targeted to public housing residents. Increasing the relative number of public housing units negatively affects the funding for these programs as well. *JA. Ex.A (Jarrett Aff.) ¶15; Ex.D (Porras Aff.) ¶¶6-7.*

The Receiver believes it is unwise, and financially reckless, to plan for or commit to developing more than the 755 public housing units currently planned. It also would create expectations for public housing residents that are likely to be disappointed. *JA. Ex.A (Jarrett Aff.) ¶16.*

H. The Unit Mix and Integration that Will Be Provided.

Among the charges made by CRA is that Roosevelt Square would "perpetuate segregation," recreate racially isolated communities, and leave Roosevelt Road as a "Mason-Dixon line." The indisputable facts rebut this rhetoric. In fact, the buildings that LR will develop will be distributed uniformly north and south of Roosevelt Road in roughly equal density and consistent with a unit mix of about 31% public housing, 2% CHA for-sale, 27% affordable (rental and for-sale), and 40%

market for-sale. As the City's Commissioner of the Department of Housing put it (*JA. Ex.C (Markowski)* ¶*3*):

> The ABLA project is one of the most important development efforts underway in the City of Chicago. If LR Development can move forward with construction on the initial phase on July 1, 2004 and thereafter completes the entire six-phase plan for the ABLA redevelopment project, the near southwest side of the City will literally be transformed. The present ABLA neighborhood consists of isolated and dilapidated public housing developments. The residents of these developments are virtually one-hundred percent African-American and virtually one-hundred percent very low and very, very low-income households. Nearby, however, are well-established and growing institutions (the University of Illinois at Chicago, the Medical District, St. Ignatius and others) that have stimulated recent commercial and market residential development. But the ABLA public housing development, however, has had little connection with the larger community in which it is located. The ABLA redevelopment plan will replace the isolated and dilapidated public housing units with brand new units, in sufficient numbers to accommodate all of the ABLA families presently on site or who have been on site since October 1, 1999 (when the City effectively took back control of the CHA), and add considerable numbers of affordable units as well. More importantly, however, these new public and affordable housing units will be integrated into the surrounding community, so that CHA residents can participate in the social and economic life of the neighborhood.

The planned income mix and geographic distribution of the new units to be developed by LR is summarized in two charts included in the Joint Appendix as Exhibits A-1 and A-2. Exhibit A-1 shows on a block-by-block basis the number and mix of units that are planned in each phase north of Roosevelt compared to those planned south of Roosevelt. Exhibit A-2 shows the same information as the previous chart, but organized in chronological order according to the six phases of the redevelopment. These Exhibits illustrate the following:

a. 2,441 total new units will be developed. 755 (30.9%) will be public housing units, 335 will be affordable rental units (13.7%), 335 will be affordable for-sale units (13.7%), 50 will be CHA for-sale units (2.0%), and 966 will be market for-sale units (39.6%).

b. There are 79 acres on which the new housing will be developed, 22.8 of which are north of Roosevelt (28.9%) and 56.1 of which are south of Roosevelt (71.1%). (Slight discrepancies are due to rounding.)

c. 28% of the public housing units will be developed north of Roosevelt. The same percentage, 28%, of the market units will be developed north of Roosevelt.

d. 72% of the public housing units will be developed south of Roosevelt. The same percentage, 72%, of the market units will be developed south of Roosevelt.

e. 666 units, 27.3% of the total, will lie north of Roosevelt, while 1775 units, 72.7% of the total, will lie south of Roosevelt.

f. The density of the new housing developed on each side of Roosevelt is roughly the same – 29.2 units per acre north of Roosevelt and 31.6 units per acre south of Roosevelt. This slight discrepancy results from the following factors: (i) the slightly lower density north of Roosevelt results from the number of small blocks, the presence of retail buildings on Taylor Street, and a larger number of town homes, in keeping with the surrounding neighborhood character; and (ii) the slightly higher density south of Roosevelt results from the fact that five of the eight blocks fronting directly on Roosevelt are on the south side of the Street, and the plan provides for larger buildings on Roosevelt. Roosevelt supports larger building types, in both mass and height, to counterbalance the width of the street. These larger buildings include rental building prototypes of 9- and 14-units, and for-sale condominium building prototypes of 27- and 46- units. These higher density buildings are an appropriate design response to the character of Roosevelt Road, and permit the development to achieve the overall number of units while maintaining the traditional Chicago-neighborhood character of the side streets, which contain lower density town homes and 2- and 3-flat rental and for-sale buildings.

g. Each phase will include development north and south of Roosevelt.

JA. Ex.A (Jarrett Aff.) ¶¶30-33.

Phase I, which is scheduled to close before the July 1, 2004 commencement of construction, is illustrative of the plan. Exhibit A-3 is a chart that shows the planned distribution north and south of Roosevelt Road to be developed in Phase I. A total of 415 units are planned, of which 125 (30.1%) are public housing, 56 (13.5%) are affordable rental, 67 (16.1%) are affordable for-sale, 7 (1.7%) are CHA for-sale, and 160 (38.6%) are market for-sale. There will be a higher percentage of public housing and a lower percentage of market housing in Phase I north of Roosevelt as compared to south of Roosevelt. North of Roosevelt, 31.8% of the units will be public housing

compared to 29.0% south of Roosevelt. As for market housing, 37.6% of the units will be built north of Roosevelt as compared to 39.2% south of Roosevelt. *Id.* ¶*34*.

To give the Court a better idea of what Roosevelt Square will look like, we have also submitted as Exhibit D-1 a computer-generated animation prepared by LR (provided both on CD-ROM and in VHS), which depicts a virtual tour of the Phase I streetscape. This virtual tour has been shown at public meetings held by LR and has been on its website since August 2003. It vividly illustrates the restoration of an attractive traditional Chicago streetscape of town homes, three-flats and courtyard buildings, laid out in the traditional street grid. None of the buildings stands out as a "public housing" building. *JA. Ex.D (Porras Aff.)* ¶¶*15-18 & Ex.D-1*.

Regarding income mix, the planned mix at ABLA tilts more generously toward public and affordable housing than does the planned mix approved by this Court as part of the consent decree that resolved the Cabrini LAC litigation. That decree provided for 50% market rate housing, 20% affordable, and 30% public housing. Roosevelt Square decreases the share of market rate housing to below 40% of the new housing and increases the share of affordable housing. When the rehabilitated Brooks Homes are included, the total number of public housing units at ABLA will be approximately 37%. *JA. Ex.A (Jarrett Aff.)* ¶*35*.

The foregoing facts rebut CRA's objection that a higher percentage of public housing units will lie south of Roosevelt. For example, quoting a report by Professor Roberta Feldman, they note that "over 80% of the new and rehabbed public housing units at ABLA will be concentrated south of Roosevelt Road." CRA Mem. at 9. This is a misleading statement. **77.7%** of the ABLA site lies south of Roosevelt. As noted above, there is much more developable acreage south of Roosevelt, so of course there will be substantially more public housing south of Roosevelt. There will also be substantially more market housing south of Roosevelt. New public housing and market rate units

will be developed in *identical* percentages north and south of Roosevelt – 28% north and 72% south. What brings the total number of public housing units south of Roosevelt over 80% is an existing site condition, the renovated units at the Robert Brooks Homes, a site reality described below. *JA. Ex.A (Jarrett Aff.) ¶36.*

I. The Rehabilitation of the Robert Brooks Homes.

1. CHA's reasons for renovating Brooks.

Because CRA complains about the fact that CHA's renovation of the Robert Brooks Homes during the 1990's results in 329 units of public housing that is remaining at ABLA, it is important to explain the history leading to the renovation and its resulting impact, which is set forth in the affidavit of CHA's Mr. Veenstra.

By the mid-1990's the conditions at ABLA's various buildings were deplorable. There were hundreds of building code violations. The Circuit Court of Cook County fined CHA hundreds of thousands of dollars for these violations, despite the expenditure of $14.2 million in CHA capital funds during 1996 alone. Eventually, the Circuit Court required CHA to vacate many buildings at ABLA. *JA. Ex.B (Veenstra Aff.) ¶13.*

While many ABLA residents who were relocated accepted Section 8 certificates, some residents wanted to remain at ABLA. The ABLA LAC urged the CHA to rehabilitate a portion of ABLA, so that residents who did not want to leave ABLA could remain while planning for the new ABLA mixed-income community continued. In 1995 and 1996, at the urging and with the full concurrence of the ABLA LAC, the CHA began work on an interim rehabilitation plan for the Brooks Homes and the high-rise at 1440 W. 13th Street. The primary purpose of this plan was to house those families being relocated from the Brooks Extension, and the most dangerous buildings in the Addams Homes, the Abbott Homes and Brooks itself. *Id. ¶14.*

2. The renovated housing at Brooks.

The Brooks Homes originally consisted of 89 two-story buildings, with 835 units. CHA agreed to undertake renovation of Brooks because it consisted entirely of low-rise units, and had the most potential to be redeveloped effectively (both as an architectural matter and in terms of the buildings' systems). In 1997, the CHA began tearing down 45 of the buildings and saved the remaining 44. CHA then commenced a $45 million renovation converting these 44 buildings (with 329 units) into rehabilitated low-rise apartments. By May of 1998, 132 units were complete. The remaining 220 units were finished by the beginning of 2000. Those CHA families originally at Brooks, as well as those relocated from the Brooks Extension or the Addams Homes (who wanted to stay at ABLA) were relocated to these newly revamped units. They are all currently public housing units, as CHA concluded they are needed to limit the dislocation of ABLA residents during the redevelopment process. *Id.* ¶*15.*

CRA pejoratively and repeatedly characterizes the Brooks rowhouses as "barracks-style." In fact, photographs depict a more attractive development than CRA would lead the Court to believe. *JA. Ex.A (Jarrett Aff.)* ¶*40 & Ex.A-4.*

3. The presence of renovated Brooks does not render the plan unlawful or unreasonable.

CRA's principal objection seems to be based upon the continuing presence of Brooks. When CRA states that more public housing is "concentrated" south of Roosevelt than north, it is Brooks they are referring to. But there was no decision to "concentrate" public housing south of Roosevelt. As noted above, as far as new units are concerned, there is no difference north versus south, and the public housing buildings will be distributed throughout the new development with no concentration of public housing. What CRA calls a "concentration" is nothing more that the decision to renovate Brooks and the absence of a present intention by CHA to demolish and replace the recently

renovated units. Nevertheless, the 329 Brooks units will remain, at least in the short term, 100% public housing.

The presence of 329 public housing units (which probably will continue to be inhabited by a nearly 100% African-American population) in the midst of the development is not ideal and has presented planning challenges. Viewed solely from a Gautreaux perspective, the Receiver agrees that it is undesirable to leave intact a group of predominantly very-low income units tenanted by an African American population in one area of the redevelopment. Were it writing on a clean slate with adequate resources, the Receiver would recommend the demolition of Brooks and its replacement with mixed income housing essentially identical to the 2,441 units of housing being developed by LR elsewhere in Roosevelt Square. But doing so is not practical at this time. *JA. Ex.A (Jarrett Aff.) ¶41.*

As described above, the presence of the rehabilitated Brooks Homes is a result of historical circumstance and exigency – the dangerous decay of many buildings at ABLA and a need to quickly provide decent housing on-site to ameliorate dislocation. The demolition and replacement of Brooks at this juncture would require funds that are not presently available. Moreover, it would eliminate renovated housing stock that is currently adequate, and it would require the relocation and disruption of 329 families. In addition, the rehabilitation and maintenance of Brooks was a matter that the LAC has strongly supported. *Id. ¶42.*

The Receiver must develop housing in the real world, based on existing conditions and available funds, not in an idealized world. Brooks is an existing condition that is not practicable to change at present. In addition, it should be noted that CRA's desire to increase the number of public housing units at ABLA conflicts with its stated desire to reduce segregation. Any increase would exacerbate rather than solve the challenges to integration posed by the presence of Brooks. If the

achievement of perfect racial integration were an absolute imperative, the remedy would be to *decrease* the number of public housing residents at Brooks and attempt to convert the units to affordable or market units. The size of the Brooks units, however, renders such a plan difficult from a development perspective, and it does not appear that CRA is advocating such a result. *Id.* ¶*43.*

In light of the considerable amount of investment and work that has been done to rehabilitate Brooks and the lack of available funds to demolish Brooks and rebuild on its site, the Receiver believes that the most practical long-term approach is to create the new mixed-income development surrounding the rehabbed Brooks Homes, as currently planned. This development will be linked to Brooks through the design of its streets. Brooks residents will have full access to Roosevelt Square's amenities, such as the new Fosco Park Field House and Community Center, and access to HOPE VI funded social service and job training programs. Thus, proceeding with the plan will substantially diminish the isolation of Brooks, if not its uniform public housing character. *Id.* ¶*44.*

Should problems related to the concentration of poverty at Brooks threaten the viability of the new ABLA development, the Receiver would advocate decreasing the concentration of poverty at Brooks rather than increasing the concentrations of very-low income families in other parts of the development. We are hopeful that this will not prove to be necessary. As the development proceeds, it might be possible later, after the passing of a substantial portion of the useful life of the rehabilitation and if funding becomes available, to replace Brooks with a mixed-income development fully commensurate with the surrounding housing being developed by LR. *Id.*

The Receiver respectfully submits that the foregoing more than adequately supports Isby's reasonableness requirement regarding the continuing presence of Brooks in the context of the overall development, its history and its financial constraints. Moreover, CRA's approach is wrong. By focusing unduly on Brooks they run afoul of Isby's dictate not to "focus on individual components,"

but instead to view all plan components in their "entirety in evaluating their fairness." 75 F.3d at 1199. Indeed, Brooks is not fairly viewed as part of the "plan" and is not even properly before the Court. It is an existing site condition. The plan concerns how to develop new housing on the site in light of this existing condition. The plan is plainly a fair and reasonable means of proceeding. All that remains is whether the development plan with Brooks in place is "clearly unlawful." It is not, and this issue is discussed in CHA's and HUD's respective briefs.

IV. RECEIVER'S COMMENTS ON CRA'S ACADEMIC EXHIBITS

CRA's proposed Complaint attaches four reports from academics who think the plan should be different. At the outset, it should be noted that these professorial potshots are irrelevant. Nothing in them supports an Isby-type objection that the plan is either clearly unlawful or otherwise unreasonable, or, like the Edgewater example cited above at 4, presents any reason for "the Court to substitute its judgment for the judgment of the CHA and the Receiver."

That CRA has found some professors who find things they dislike about aspects of the redeveloped ABLA site is hardly surprising. For example, finding an architect who disagrees with the preliminary drawings of some of the buildings is both wholly unremarkable and irrelevant to the Isby questions. And to the extent that the academics object to the fact that public housing will remain at renovated Brooks, they are not offering any insight or workable solutions but are merely identifying an obvious site condition well-known to the Working Group and public officials.

In a redevelopment this large and complex, reasonable minds might differ about aspects of the plan. But nothing in the reports warrants a departure from the unanimous informed judgment of the Receiver, the parties, the LAC, the City and HUD that the plan is appropriate and should proceed. The objections are not sufficient to disturb that judgment, particularly at this late date.

Moreover, the academic opinions are irrelevant because none of them accounts for constraints in the real world. Most significant are: (i) how to pay for any increase in the number of public housing units, a critical fact CRA and the academics completely ignore; (ii) the interplay between the need to have market units generate profit to contribute to the development of public housing units in later phases; (iii) the need, previously emphasized by the Court, to communicate with and accept input from the larger community in order to facilitate the acceptance of public housing residents in the redeveloped community, and the fact that this has already occurred; and (iv) the fact that the developer is undertaking enormous financial risk and is soliciting millions of dollars of private investment, so that appropriate deference must be given to the developer's judgment in order for anything to get built.

In light of the foregoing factual report and the Joint Appendix, it is unnecessary to comment further on the particular objections in the reports, because even if any of them are assumed "reasonable," they do not support rejection of the plan under Isby. Nevertheless, the Receiver offers the Court a few comments, some of which concern matters in which the reports are relying on stale or incomplete data. If the Court desires further comment on these reports, the Receiver would be happy to provide it.

Two of the reports, Complaint Exs. C and F, discuss a redevelopment area substantially larger than that available for redevelopment. The Patricia Wright report (Ex.C), discusses nine census tracks, but only two of them are areas in which the parties have any control. The report from Edward Goetz (Ex. F) assumes a redevelopment area of a one-mile radius around the actual ABLA redevelopment site, which is larger than the area actually available. Both believe that more public housing units can be built. But both fail to recognize the limited acreage available for the actual construction of public housing units, and both provide no explanation of how to pay for them or

attract a competent developer willing to take the risk of building them. Compounding the problem, Goetz relies on stale 2000 census data concerning the neighboring area south of Roosevelt, which has seen substantial revitalizing development since 2000. *See JA. Ex.A (Jarrett Aff.)* ¶*48.*

The Wright and Goetz reports also complain about the racial imbalance caused by the presence of the renovated Brooks Homes. Their analysis, however, establishes only that racial balance throughout the entire actual ABLA Redevelopment site can be achieved only by demolishing Brooks, which is financially impracticable and presently infeasible for reasons discussed above. Neither report offers a practical solution or any argument as to why the judgment of the Receiver and everyone else to proceed as planned is unlawful or unreasonable under the circumstances. The professors are opining about what is ideal, and ignore real world constraints, particularly financial ones.

The Wright and Goetz reports also object that the division of public housing units south and north of Roosevelt Road is uneven. This point is also treated earlier. Both analyses ignore the highly relevant fact that most of the land available for redevelopment at the site is located south of Roosevelt Road, and that 77.7% of the total acreage lies south of Roosevelt. The remainder of the discrepancy results from the Brooks renovation. Further, these studies ignore the efforts by the developer and the City of Chicago to ameliorate the spatial separation of the north and south of Roosevelt Road portions by a variety of architectural and land use adjustments. *See JA. Ex.A (Jarrett Aff.)* ¶¶*33f & 38; Ex.D-1 (digital animation of Phase I).*

The report from the economists of Chicago Partners (Comp. Ex. G) similarly provides no basis to block the redevelopment plan. Chicago Partners speculates, based on economic assumptions and authoritative-looking graphs, that a different density range, public housing requirement, and design and ancillary characteristics in the RFP for master developer might have yielded a different

redevelopment plan. But even if correct, their speculation provides no basis for arguing that the RFP standards, which were based on the detailed planning and public participation overseen by Telesis, were clearly unlawful or otherwise unreasonable. Indeed, the density range in the RFP was important to integrate the development into the surrounding community, as it is consistent with surrounding densities. *JA. Ex.A (Jarrett Aff.)* ¶*39.* Chicago Partners does not say what density range or housing mix should have been selected. Nor, critically, do they explain how a different mix would result in a plan by a competent developer that could generate sufficient funds to build the currently unfunded number of public housing units.

The report from CRA's architectural professor, Roberta Feldman (Comp. Ex.D), presents an opinion with which the Receiver and other planners simply disagree, and she offers no evidence that their judgment is unreasonable. In her view, Roosevelt is an "ecological barrier," so that the areas North and South of Roosevelt, particularly the income mix, should be calculated separately. Id. at 1. As noted above, however, LR's plan – supported unanimously by the parties, City and other stakeholders – is to break down that barrier. At most this is an irrelevant difference of professional planning opinion. Whether Roosevelt should be treated as an unchangeable barrier is of no legal concern.

She too notes the Brooks issue, id. at 2, and, straying outside her putative expertise as a professor of architecture to venture an opinion on "equity," she declares that to make the mix of public housing units "equitable and comparable" on both sides of Roosevelt, "the percent of public housing units on the north side must be increased." She is right as a matter of simple arithmetic (although equality could be achieved by eliminating public housing units south of Roosevelt as well). But arithmetic equality is not a legal requirement, as CHA's brief demonstrates. Neither is strict equality required as a matter of "reasonableness," particularly in light of the financing structure

described earlier and the already-significant shortfall in funding for the 755 public housing units. Like the others, Ms. Feldman is opining in the abstract, pronouncing preferences unconstrained by important real-world issues like how to pay for them.

Ms. Feldman correctly observes regarding Phase I that the buildings containing rental units (public housing and affordable) are separate from buildings containing market units. Comp. Ex.D at 2. This is a result of the fact that all of the market units are for sale, not rental. The 50 CHA home ownership units will be placed with market units in for-sale buildings. From a development perspective, it is more practicable to have this rental/for-sale building-by-building separation, and it will also, it is hoped, support the higher profits from sales of the market units that are needed to contribute to the shortfall to pay for the public housing units. The buildings themselves, whether rental or for-sale, are interspersed through the development and are not identifiable as "public housing" or "rental" versus condo. *JA. Ex.A (Jarrett Aff.)* ¶*46.* In any event, there is no legal requirement to situate rental units within buildings containing market for-sale units, nor any basis to claim that the current planned distribution is unreasonable.

Finally, Ms. Feldman quibbles about what she contends are "bland and boxy" designs for certain rental buildings shown in LR's Phase I renderings. Comp. Ex.D at 3. Such matters of taste are legally irrelevant, but in any event, her opinion relies on inaccurate and incomplete information. First, there are five main building types contained in Phase I. These types in turn have several variations that yield a total of 22 different building varieties, which are evenly divided among 11 for-sale building prototypes and 11 rental building prototypes. Second, her examples are outdated. She cites plans from August 20, 2003, even though the final Master Site Plan of October 20, 2003 has been in use and distribution since that time. Moreover, one building she identifies with distinctive features is the only one of its style to be built in the entire six-phase development. Situated at the

corner of Blue Island Avenue and Roosevelt Road at the extreme east end of the development (on the south side of Roosevelt), it represents a signature "gateway" building to the rest of the development. It is therefore not representative of for-sale buildings in general, nor of any general plan to make the for-sale buildings architecturally distinct from the rental buildings. Ms. Feldman's comparison of two buildings on Taylor is irrelevant since one of the two no longer exists, as shown in the October 20, 2003 Master Site Plan. *JA. Ex.A (Jarrett Aff.)* ¶*47.*

V. CONCLUSION

For the foregoing reasons, the Receiver respectfully suggests that the Court deny the Intervention Motion; find that the agreed plan for the ABLA site is fair, reasonable, adequate and lawful; overrule CRA's objections to the plan; and grant such other relief as the Court deems just and proper.

Respectfully submitted,

THE RECEIVER,

DATE: June 3, 2004

By: _____
One of its attorneys

Michael L. Shakman
Edward W. Feldman
Miller Shakman & Hamilton
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604
(312) 263-3700

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on June 3, 2004 he served copies of **Statement of the Receiver in Response to Putative ABLA Plaintiffs' Renewed Motion to Intervene** on the parties listed below by causing true and correct copies of the same to be delivered by messenger delivered to the following parties:

William P. Wilen
NATIONAL CENTER ON POVERTY LAW, INC.
111 N. Wabash Av.
Suite 500.
Chicago, IL 60602

Alexander Polikoff
Eloise Paul Lawrence
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
25 E. Washington Blvd., Suite 1515
Chicago, IL 60602

Thomas E. Johnson
JOHNSON, JONES, SNELLING, GILBERT & DAVIS
36 S. Wabash Av.
Suite 1310
Chicago, IL 60603

Linda A. Wawzenski
Assistant U.S. Attorney & Deputy Chief
Civil Division - Illinois, Eastern Division
OFFICE OF THE UNITED STATES ATTORNEY
219 S. Dearborn St, 5th Fl
Chicago, Illinois 60604

Harold C. Hirshman
Robert B. Millner
SONNENSCHEIN, NATH & ROSENTHAL
Sears Tower, Suite 8000
233 S. Wacker Drive
Chicago, IL 60606

Clyde E. Murphy
Sharon K. Legenza
CHICAGO LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW, INC.
100 N. LaSalle St., Suite 600
Chicago, IL 60602

Gail A. Niemann
Office of the General Counsel
CHICAGO HOUSING AUTHORITY
200 W. Adams St., Suite 2100
Chicago, IL 60606

Dated: June 3, 2004

Edward W. Feldman