

THE DISPOSITION PROBLEM IN URBAN RENEWAL

LYMAN BROWNFIELD*

I

NEED FOR EQUILIBRIUM BETWEEN STARTS AND SALES

The culmination of an urban renewal project is the improvement of the project real estate. This is true whether the improvement be renovation of existing structures, the simple replacement of old structures or vacant land with new construction, or the basic redevelopment of an entire area, including streets, utilities, and public services. Immediately preceding in the chain of events is the sale of the property by the Local Public Agency (LPA).

Generally speaking, everything which has happened up until this point is of dubious public benefit unless it is followed by redevelopment. Filled-in low lands,¹ extinguished underground fires,² and the like, stand apart from the usual clearance project in which, up until the time property is sold to a private redeveloper, the net result has been to dislocate families and businesses, scatter church parishes and neighborhood groups, remove property from the tax rolls, and leave in the wake of these accomplishments gutted buildings and rubble-strewn lots. If urban renewal stopped here, it would have few proponents.³

With this background one might think that urban renewal would be regarded as an assembly line, the beginning being labeled "Preliminary Planning" and the end "Disposition." If automobiles were passing along such an assembly line, there would necessarily be a direct, absolute, and constant relationship between the speed with which material entered or traveled along any portion of the line and the speed at which the product came out at the end marked "Disposition." The urban renewal program is more elastic, but the degree of the relationship that must exist on a national level between disposition and the earlier phases of the urban renewal program, and the implications of this relationship, have to a surprising extent been overlooked and misunderstood.

* A.B. 1934, Mount Union College; LL.B. 1937, Duke University. General Counsel, Housing and Home Finance Agency.

¹ Eastwick Project, Philadelphia, Pa., R-42.

² West Side Mine Fire, Carbondale, Pa., R-15.

³ In speaking of the urban redevelopment projects in Minneapolis, Minn., R. Kenneth Peterson, Mayor of Minneapolis, stated, on July 29, 1959: "However, our emphasis in this program is upon the development portion. When the site acquisition and clearance have been completed, there still remains the problem of site disposition, to be followed by rebuilding. It is this stage of the urban renewal program which we are anticipating with excitement. Until we reach this stage, what we are accomplishing is destruction. What we destroy, we plan to replace with something much better, but I believe Minneapolis will be best served if we do not carry forward a program for tearing down part of our city faster than we can execute the companion program of rebuilding." *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on the President's Message Disapproving S. 57, 86th Cong., 1st Sess. 448 (1959).*

One of the principal determinants of the speed of the program is the amount of money which Congress, the states, and the local political subdivisions can and will make available for it. A ten-year, \$6 billion program has been pressed upon Congress as the minimum program which will serve the country's interests,⁴ the figure being supported by answers to questionnaires mailed to municipal administrations throughout the country asking them how much money they could spend on urban renewal if they had it, and by estimates as to how much money the cities failing to answer the questionnaires would have said they needed if they had answered.⁵

It is inferable from reading the questionnaire and from studying the information submitted to the Congress that to a considerable extent, this figure represents a direct translation of desired urban renewal projects into dollars. It does not seem to represent the results of a study of the capabilities of the cities to handle all of the aspects of the urban renewal projects that this money would support. An urban renewal program of this size would require additional planning, engineering, appraising, negotiating, title examination, litigation, relocation, and disposition. Presumably all those who compiled this report recognized the existence of these various necessary parts of urban renewal, but it appears that, as serious limiting factors on the speed of urban renewal, they were for the most part either ignored or the solution of the problems they presented taken for granted.

In recognition of the need for more trained personnel in the present program, let alone one double the present size, it has been suggested that the federal government subsidize the training of technical personnel.⁶ Because of the need for relocation housing and for relocation assistance to businesses displaced by the renewal process, various federal subsidies and other assistance have been sought through proposed legislation affecting the operations of the Public Housing Administration (PHA),⁷ the Urban Renewal Administration (URA),⁸ the Federal Housing Administration (FHA)⁹ and the Federal National Mortgage Association (FNMA)¹⁰—and which would cover public housing, middle-income housing,¹¹ cooperative housing, relocation housing, housing for the elderly, and housing that would probably

⁴ S. 3509, 86th Cong., 2d Sess. (1960) (introduced by Senator Clark).

⁵ *Summary of the Results of the 1960 Urban Renewal Survey Conducted by the American Municipal Association and the United States Conference of Mayors*, which was submitted by Richardson Dilworth, Mayor of Philadelphia, Pa., President of the United States Conference of Mayors, to the Subcommittee on Housing of the Senate Committee on Banking and Currency, May 17, 1960. See *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency* 86th Cong., 2d Sess. 386-88 (1960) [hereinafter cited as *1960 Senate Hearings*].

⁶ S. 3509, 86th Cong., 2d Sess. (1960) (this suggestion also contained in a statement made by the American Institute of Planners to the National Housing Conference, May 18, 1960).

⁷ S. 3509, 86th Cong., 2d Sess. (1960).

⁸ S. 3042 (to increase relocation payments to \$500 in the case of an individual or family and \$5,000 in the case of a business); S. 3509; H.R. 12152; and H.R. 12603, all 86th Cong., 2d Sess. (1960).

⁹ S. 3042, S. 3509, S. 3512, H.R. 12153, H.R. 12603, 86th Cong., 2d Sess. (1960).

¹⁰ S. 3509, S. 3512, H.R. 12174, H.R. 12153, H.R. 12603, 86th Cong., 2d Sess. (1960).

¹¹ S. 1342, 86th Cong., 2d Sess. (1960) (introduced by Senator Javits).

fall in other categories.¹² Such assistance has been successful to a degree which is substantial but which in some respects has disappointed almost everyone¹³ and in others has been considerably short of the objectives proposed by the more extreme advocates of the program.

Since the cities themselves might find it necessary or advisable to limit the extent of their contributions to the expense of the program, numerous efforts have been made to reduce either directly or by indirection the contribution of the localities to the cash requirements of urban renewal.¹⁴

There is nearly unanimous agreement on the importance of urban renewal as a basic effort to revitalize our cities; it is natural that this unanimity should diverge into numerous trains of thought as to who is responsible for it, just how big the program should ideally be, and the relative importance of this program and other demands upon our national resources. Those who would step up the rate of spending in the urban renewal program and take the risk that the other concomitant activities can be proportionately stepped-up to accommodate the increase, instead of vice versa, unquestionably are sincere in their belief that the urgent need for such a stepped-up program justifies these risks—to the extent that they concede there are such risks. For myself, I have a question, although not a firm opinion, as to whether the problems beginning with planning and ending with acquisition and clearance can be solved fast enough to accommodate a \$600 million program. In some fields, such as planning, the ability to speed up the work to accommodate a much larger program is more elastic than the ability to maintain quality.¹⁵ Difficult value judgments may be involved, and it may take years of experience to find out whether quality was sacrificed to accelerate the program, and, if it was, whether the sacrifice was worthwhile. On the other hand, with respect to relocation the program

¹² (a) Low-rent nonprofit private housing, provided for in H.R. 12152, 86th Cong., 2d Sess. (1960). (b) Small private rental housing units, provided for in H.R. 12153, H.R. 12603, 86th Cong., 2d Sess. (1960). (c) Nonprofit private rental housing units, provided for in H.R. 12603, 86th Cong., 2d Sess. (1960). (d) Regular rental housing, provided for in S. 3042, 86th Cong., 2d Sess. (1960). (e) Urban renewal housing of rental projects, provided for in S. 3042, and H.R. 12174, 86th Cong., 2d Sess. (1960).

¹³ One purpose of Federal National Mortgage Association (FNMA) purchase of mortgages in its Special Assistance operation is to interest the private money market in new types of mortgage loans. The failure of private lenders to purchase section 220 urban renewal mortgages in any volume still leaves the major financing in this field to FNMA.

¹⁴ "In its program resolution for 1960, NAHRO reaffirmed the need for an increase in the federal share of net project cost for renewal programs. We advocate changing the present two-thirds Federal, one-third local sharing formula to four-fifths Federal, one-fifth local." Statement of Charles L. Farris, President, National Association of Housing and Redevelopment Officials, May 12, 1960, in *1960 Senate Hearings* 256. "We also believe that the percentage of the Federal contribution should be increased. Our official position is that it should be 4 to 1, instead of 2 to 1. I personally think 3 to 1 would be a very fair figure. I mean, that is purely my personal position on it." Statement of Richardson Dilworth, Mayor of Philadelphia, Pa., President of the United States Conference of Mayors, May 17, 1960, in *1960 Senate Hearings* 392.

¹⁵ "I would rather do our job well with what we have, provided we can plan ahead so it is a continuing program. . . . You did not pass a housing bill last year, but we got along. I do suggest, however, that you pass one this year, because we cannot get along next year without one, and the amount becomes, in my opinion, secondary to the quality of legislation." Statement of Kenneth Peterson, in *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on the President's Message Disapproving S. 57*, 86th Cong., 1st Sess. 453 (1959).

has a certain built-in safeguard against an unproductive speed-up, since it is necessary for the LPA to satisfy the Administrator that relocation can be handled before the project can proceed.¹⁶

It may be that all of the elements of the urban renewal program can be accelerated immediately, tremendously and successfully. If not, it is nevertheless probably true that chronic inadequacies in certain areas of the program would leave damage in their wake but would not prevent the expenditure of billions of dollars by federal, state and local governments for urban renewal. On the other hand, inadequacies in the progress of selling urban renewal project land bear a different relationship to the speed of the urban renewal program than do the other elements I have mentioned and are more apt to affect the program directly, instead of affecting only the results which the program leaves behind.

Failure to sell urban renewal land is obvious, it is obvious immediately, and it is obvious to everyone, not just to the individual having a specific interest in the project. The basic thesis of this article is that lagging disposition can bring disenchantment with urban renewal and ultimately destroy the program, and that there must be an approximate equilibrium between the amount of money poured into the assembly line at one end to initiate projects and the rate at which urban renewal land is sold and developed from the other end of the line.

Obviously, this is a judgment based upon intangibles. Informed people can differ as to the validity of my conclusions, and no one can prove indisputably who is right. It seems clear that such differences of opinion do exist. The American Municipal Association (AMA) and the United States Conference of Mayors (USCM) made an estimate of urban renewal needs without giving any consideration to disposition progress as a limiting factor.¹⁷ Urban Renewal Commissioner David M. Walker, during two sessions of Congress, both before¹⁸ and after¹⁹ this AMA

¹⁶ Sec. 105(c) of the Housing Act of 1949, as amended, 68 Stat. 625 (1954), 42 U.S.C. § 1455(c) (1958):

"(c) There be a feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment."

¹⁷ See Summary of the Results of the 1960 Urban Renewal Survey, conducted by the American Municipal Association and the U.S. Conference of Mayors, May 17, 1960, in *1960 Senate Hearings* 386.

¹⁸ "We expect to be able to use all but a small part of the capital grant authority provided for the fiscal year ending June 30, 1960. The level of capital grant authority provided through fiscal 1961 should be adequate to sustain the ambitious and constructive program I have outlined." Statement of Commissioner David M. Walker, Feb. 17, 1960, in *1960 Senate Hearings* 89. Later on in his statement, Commissioner Walker said: "One of the things I hope to do in this program is to put it on a basis of ability to digest; and I suggest, Senator, that if we get it on this basis we will move a lot more rapidly toward this business of clearing our slums than we have in the past decade, with these millions of dollars dangling and in too many instances going unused." *Id.* at 97.

¹⁹ "I am even more convinced today that we will have an adequate supply of urban renewal money through fiscal 1961 than I was in February. If you would like, I will go over this in detail with you, Senator, and show you exactly what we believe is happening in this business.

"I might point out to you that the concern I just expressed as part of the reason why I am not too much interested in a billion-dollar program in 1961 is because—I think you and I will quickly agree—

and USCM estimate, has made several public statements indicating that the good of the program requires it to proceed no faster than the projects themselves can be digested, and the last stage of the digestion process is certainly disposition and redevelopment. Commissioner Walker is almost unanimously commended by Republicans and Democrats²⁰ alike for his work as Urban Renewal Commissioner; yet neither AMA, USCM, nor the National Association of Housing and Redevelopment Officials (NAHRO) has given any indication of viewing disposition as the stage of the assembly line which actually should control the size of the urban renewal program.

the relocation problem alone, and it is not the sole problem, would exclude from feasibility any billion-dollar program next year. But there are other reasons.

"However, I would like to get off the negative side and get on the positive side and talk to you a little bit about what moneys are available and what makes up the applications." Statement of Commissioner David M. Walker, May 9, 1960, *1960 Senate Hearings* 157.

And on May 27, 1960, Commissioner Walker made the following statement:

"Section 4(a) of S. 3509 would increase the urban renewal grant authorization by \$600 million on the date of the enactment of the bill, which would be in addition to the \$300 million already authorized to become available on July 1, 1960. This would mean that a total of \$900 million in new capital grant authority would be made available between now and the end of fiscal 1961. As I have indicated in my previous appearances before this Committee, it is unnecessary to burden the Federal budget for this amount of authority at this time. We expect to use almost all of the authority that has been provided and made available for the current year, but the \$300 million that will become available on July 1 will be sufficient, by all indications, to sustain a program geared to the maximum level of actual accomplishment through the coming fiscal year." *1960 Senate Hearings* 988.

²⁰ "Mr. Walker, I would like to congratulate you on what I think is a fine qualitative job of administration. I get reports from all over my State that you and your staff have been most cooperative, most helpful, that you have, as you say, been cutting red tape. The Urban Renewal Administration is one with which most of our communities are quite happy. I think a good part of that ought to be credited to my friend, David Walker." Statement of Senator Clark, Feb. 17, 1960, in *1960 Senate Hearings* 89.

"Thank you, Mr. Walker. If it wouldn't hurt, I would like to put into the record a word of commendation from a Democrat for what I think is a good job done since you have been in the agency. It is pleasing to me to see a fellow come into the agency and really get down to trying to help the local housing authorities and urban redevelopment authorities. I want to commend you for your new manual and for the work you have been doing along that line." Statement of the Honorable Albert Rains, May 17, 1960, in *Hearings Before the Subcommittee on Housing of the House Committee on Banking and Currency*, 86th Cong., 2d Sess. 91 (1960) [hereinafter cited as *1960 House Hearings*]. Congressman Rains continued: "Too, I like the brief, pointed statement that you have made . . ." *Ibid*.

"Mr. Chairman, I would just like to add to what you said about Mr. Walker. He comes from the great city of Philadelphia and I don't think, even though he doesn't come from the section I represent, they could send anyone who has greater legislative or administrative experience. He has done a splendid job and I certainly say 'ditto' to your remarks about the statement he submitted here this morning." Statement by the Honorable William A. Barrett, May 17, 1960, in *1960 House Hearings* 91.

"First, I would like to talk about the urban renewal side. No one has greater respect for Dave Walker than I have. I think he is doing a splendid job, and I think that this is a compliment to Norman Mason in the selection of an individual such as that." Statement by Charles L. Farris, President, National Association of Housing and Redevelopment Officials, May 12, 1960, in *1960 Senate Hearings* 243-44.

"The Housing Act of 1959 was the salvation of that immediate crisis, and for this the city of East Orange and myself are thankful to Dave Walker, the Urban Renewal Commissioner. He cut through red tape that surrounded our application since it was filed in January of 1959.

"I would like to take this opportunity to publicly commend Mr. Walker on the excellent job he has done since becoming Commissioner. The lengthy and cumbersome administrative regulations have been revised and reduced. The required period for planning a project has been shortened and a more realistic independence of operation has been given to local public agencies. I hope he will continue his diligent efforts to simplify regulations and reduce administrative red tape." Statement of James W. Kelly, Jr., Mayor

This country has a tremendous amount of credit, commercial, industrial, and construction capacity. Rarely, except in time of war, is this capacity exhausted; yet it seems elementary that in a given space of time, the United States can absorb only so much urban renewal project land for redevelopment. Redevelopment involves, among other things, purchase of the land, arranging for the lease or resale of the improved property, the detailed architectural design of the improvements, the arrangement of financing, and the completion of construction, after which the tenants or purchasers move in.

Congress has made available through June 30, 1961, \$2 billion of capital grant funds for urban renewal projects.²¹ A projection of my own, based on experience through December 31, 1959, indicates that the amount of vacant real estate which will be available for sale as the result of this present authorization will exceed in value the \$2 billion federal contribution. Since much of this urban real estate is located in high-density areas, the value of construction in relation to the value of the property is fairly high, so that the resulting values from the urban renewal projects for which capital funds have already been authorized may reasonably be expected to total \$15 billion to \$25 billion.²² And, of course, nobody expects the program to stop here.

Of the \$2 billion or more of real estate which existing authorizations will ultimately make available for sale, approximately \$113 million had been sold as of June 30, 1960.²³ This still leaves approximately \$2 billion of real estate coming up for sale. Of course, these sales will take place over a period of several years, but the pace has been accelerating. The program is now over ten years old. If most of the land which will be made available from the present authorization cannot be sold for redevelopment within the next ten years, I am convinced that the present urban renewal program will be on its way out and that our cities will either have given up or will have turned to other avenues of salvation. Such an outcome would be tragic, the more so because it would be unnecessary, and I do not believe it will happen. Yet, in order to maintain a pace of disposition which I believe is necessary, which seems reasonable to me, and which may even seem modest to some, we shall have to sell twice as much project land during each of the next ten years as has been sold in the entire preceding ten years.

Since we are now talking about what is in essence private real estate development with a brief interval of governmental intervention, these figures hit the mind and

of East Orange, N. J., as a representative of the American Municipal Association and the New Jersey State League of Municipalities, May 23, 1960, in *1960 Senate Hearings* 720.

²¹ Sec. 103(b) of the Housing Act of 1949, as amended by § 405(1) of the Housing Act of 1959, 73 Stat. 672, 42 U.S.C.A. § 1453(b) (Supp. 1959).

²² According to information from the Urban Renewal Administration based upon calculations for 246 projects which were approved for contract as of Dec. 31, 1959, the amount of private investment, including the value of the land, is estimated at \$2,872,996,000 and the amount of federal grant totals \$512,520,000. This yields a ratio of \$5.61 of private investment to \$1 of federal grant, and examination of specific projects recently under way indicates this ratio will probably increase.

²³ As of June 30, 1960, a total of 2,368 acres have been disposed of for the sum of \$113,600,000.

the imagination with stupefying effect. Lest these figures accomplish an unwanted result by creating the suspicion that the task is impossible, it should be understood that the program had to begin in 1949 with planning, followed by acquisition and relocation; therefore, the first disposition did not occur until March 1952.²⁴ But, lest I lose the shock effect necessary to my thesis, let me add that the sales occurred in 146 projects in ninety-two cities in twenty-five states,²⁵ but did not include all of the project land in these projects. For example, disposition is not yet completed in the project from which the first urban renewal sale was made in 1952.²⁶ As of June 30, 1960, the urban renewal program had grown to include 779 projects in 455 cities in forty-five states,²⁷ and it is still growing.

When an urban renewal area becomes vacant, prior to clearance, it is a sorry sight. The buildings are gutted by vandals and become havens for criminals and incipient criminals. The areas become fire hazards. People still living in those areas suffer severely; and, somewhere along the line, the percentage of empty houses becomes more than the remaining residents can bear, and they are forced out, regardless of the burden placed upon them of such premature moving. After demolition some of the hazards are removed, but the rubble-strewn areas are unlovely and difficult to tend, and they are unproductive for the whole community to see.

It has been suggested that a lag in the disposition of urban renewal project land is a blessing in disguise, in that the community blessed with unsold land has a "land bank."²⁸ This concept will be discussed in more detail below. For the purpose of the point to be made here, I suggest that, at best, a land bank could absorb only a portion of the real estate the enormous urban renewal program will provide; and in any event the continued accumulation of property for later sale, whether under the name of land bank or something less euphemistic, may postpone but will ultimately intensify the problem. In the meantime, friends of urban renewal must consider whether the continued accumulation of large amounts of undeveloped project land will promote public acceptance of the urban renewal program. One piece of evidence which may be pertinent to a consideration of this question is the unhappiness which has developed in Congress with delay in redeveloping certain urban renewal project land in the District of Columbia. The congressional concern

²⁴ The first disposition took place in the Lake Meadows Project, Chicago, Ill., 6-1.

²⁵ Sales in 23 states and 2 jurisdictions (the District of Columbia and Puerto Rico).

²⁶ Only 3.94 acres have not as yet been disposed of in the Lake Meadows Project, Chicago, Ill., 6-1, which had a total of 101 acres. This disposition should be completed by the end of 1960. The first project to complete disposition was the Waverly Project, Baltimore, Md., 1-1, in which the first disposition sale took place in June 1953, and disposition of the total project acreage of 21.3 acres was completed in November 1955.

²⁷ The program is in 42 states and 3 jurisdictions (the District of Columbia, Puerto Rico, and the Virgin Islands).

²⁸ "Delays and land lying idle are inevitable if urban renewal is going to do what it should do in downtown areas. Projects involving great investments do not spring full-blown upon the scene in the average-size American community. Delay counseled by realistic appraisal of land potential is *worthwhile delay*. So, my thesis is have *worthwhile delay* introduced into urban renewal, particularly in central city areas." Statement made by Lawrence M. Cox, Executive Director, Norfolk Redevelopment and Housing Authority, Norfolk, Va., in an address to the American Society of Planning Officials, National Planning Conference, held at Miami Beach, Fla., on May 22-26, 1960.

was evidenced by the Rabaut bill,²⁹ whereby Congressman Rabaut (Democrat, Michigan) sought to forbid further urban renewal projects in the District of Columbia until development of existing projects was fifty per cent complete.

The thrill of designing and starting something usually has a greater appeal to human nature than the rather dull business of finishing the job. There will be a natural tendency among LPAs to be more interested in planning and beginning the next project than in finishing off the last one. Of course, this is not a point of concern with an LPA which is beginning its first project. On the other hand, there is an administrative solution when an LPA with two or more projects is inclined to neglect disposition in favor of the romance of planning and beginning a project. The ability of an LPA to dispose of existing projects certainly has a bearing upon the feasibility of subsequent projects, so that the wording of existing legislation affords administrative leeway to meet this problem as well as it can be met within the bounds of the pressures created by the size of the program.³⁰

There remains the question of how much money Congress shall pour into the urban renewal assembly line each year. If the money is made available, no one doubts that the cities will somehow find a way to ask for it. But before we make any substantial increase in annual authorizations, it would seem that someone should make a careful study of the amount of real estate which can be sold and developed over a given period of time. Since none of the organizations advocating greater spending has become interested in such a study, and since the bulk of the public funds involved come from the federal treasury and are disbursed through the Housing and Home Finance Agency, the federal treasury seems a likely source for the cost of this study and the HHFA seems a likely candidate to make the survey. The aims of this survey should be facts, not policy decisions, so that it should be made by technicians in the Executive Branch rather than by a joint committee of Congress. The survey would probably involve the use of the HHFA staff, but the Agency should also be in a position to utilize the resources of independent outside research agencies around the country.

One hundredth of one per cent (.01%) of the monies already authorized by the Congress for capital grant funds in the urban renewal program (in addition to which

²⁹ H.R. 8697, introduced by Congressman Rabaut (Democrat, Michigan) to the Eighty-sixth Congress on June 17, 1960, to amend the District of Columbia Redevelopment Act of 1945, as amended; passed by the House on June 27, 1960.

The bill was reported favorably by the Committee on the District of Columbia, which stated: "The Committee considers the provision prohibiting the designation of any new project area until all improvements have been completed on at least 50 per cent of the land in the Southwest area of the District to be imperative in view of the unjustifiable delay that has been experienced in that area to date." House Comm. on the District of Columbia, *Amending the District of Columbia Redevelopment Act of 1945 with Respect to the Requirements for Adoption of a Redevelopment Plan for a Project Area*, H.R. REP. No. 1911, 86th Cong., 2d Sess. 3 (1960).

³⁰ Sec. 103(c) of the Housing Act of 1949, as amended, 73 Stat. 672, 42 U.S.C.A. § 1453(c) (Supp. 1959), includes the following: ". . . financial assistance made available to any locality or local public agency upon submission and processing of proper application therefor shall not otherwise be restricted except on the basis of (1) urgency of need, and (2) feasibility, as determined by the Administrator."

substantial other monies have been spent for administration, planning grants, and so on) would probably provide a worthwhile report in this area.⁸¹

II

DISPOSITION UNBOUND

Left to its own devices, disposition never takes care of itself—as relocation almost always does to a certain extent. And like pregnancy—although, for example, unlike planning—there is no such thing as a partly sold parcel of real estate. Sooner or later urban renewal project land must be disposed of, and the LPA itself must do the job. Even if the proponents of sharply increased spending in the urban renewal program do not agree with my thesis that urban renewal starts should be regulated rather closely by urban renewal sales, or if they do not share misgivings about widespread acceptance of the land bank theory, certainly all can agree that sooner or later disposition must take place. The following table showing the increase annually in the total acreage of urban renewal land acquired but unsold demonstrates that the rate of disposition must be radically increased:

<i>Acreage</i>				
(Based Upon Completed Transactions in Projects Under Loan and Grant Contract)				
<i>Fiscal Year</i> (Ending June 30)	<i>Acquisition</i> <i>Completed</i>	<i>Disposition</i> <i>Completed</i>	<i>Accumulated</i> <i>During Year</i>	<i>Cumulative</i> <i>Inventory</i>
1950-1956 (cumulative figures)	1659	459	1200	1200
1957	665	187	478	1678
1958	865	464	401	2079
1959	1548	482	1066	3145
1960	3006	776	2230	5375
Total	7743	2368	5375	5375

⁸¹ The Budget of the United States Government for the Fiscal Year Ending June 30, 1960, which was received by Congress on Jan. 18, 1960, as *House Document No. 255*, contained, at page 275, provision for the sum of \$600,000 for housing investigation and research and analysis (pursuant to § 602 of the Housing Act of 1956, 71 Stat. 305, 12 U.S.C. § 1701d-3 (1958)).

Senator John Sparkman made the following statement at the Subcommittee Hearings of the Senate Committee on Appropriations, on May 23, 1960: "Mr. Chairman, my appearance before the Subcommittee today is to support the request of the Housing and Home Finance Agency for an appropriation of \$600,000 with which to undertake a program of housing studies and analyses. This research is intended to improve the information available with respect to housing need, supply, and demand—including basic information on home mortgage markets and home financing.

"In my opinion, the need for such housing studies is vital. The Federal Government's investment and contingent liability in all housing and related programs is over \$60 billion. Each year, the Congress and the executive branch of the Federal Government are called upon to make decisions which

To the extent that the rate of spending in this program is increased faster than land disposition, the volume of unsold, unlovely, and unproductive urban real estate in the hands of the LPAs will continue to increase. If it be conceded that disposition ultimately becomes necessary, then we are in accord that whatever steps are required to speed up disposition to the minimum level must be taken. What difference of opinion there is can relate only to the time. My thesis here is that the necessity must be recognized now and action taken immediately. But even if it is earlier than I think, the problem will be the same and the solution proposed here will be equally apt or inappropriate when we finally do feel the pressure of circumstances.

Of course, once we begin to prescribe action, there is again room for difference of opinion. I believe this program is so important that it must be made to work and that it is so big that it can work only if it is kept simple.

The real estate, which must be sold, will be competing for buyers with the vast volume of real estate sold each year in the private market, the great bulk of which does not actually have to be sold. The competing private sellers will almost never exact restrictions other than those, such as zoning, to which the use of all urban real estate is customarily subjected, and they will have great flexibility in their power and willingness to enter into financial and other arrangements necessary to accommodate the purchasers.

Every limitation or restriction more stringent than those customarily found in the market place which the LPA imposes upon urban renewal real estate will make it less desirable to the purchaser and will reflect itself in the price, the speed of sale, whether the property sells or not, the soundness and ability of the purchaser, and the quality of the redevelopment.

Such limitations and restrictions hinder the redevelopment phase of urban renewal for an additional reason, which is self-evident and which arises out of the nature of man when he is compounded with any bureaucracy, public or private.

Once rules have been developed for the restrictive activity of an LPA, two unintended results are usually produced. First, rules have a tendency to become goals in and of themselves rather than remaining a means to achieve the goals for which they were developed. To the extent that a rule attains vitality of its own, it tends to obscure the real purpose for which the rule was created.

Secondly, a bureaucracy, though the bulk of its activities are efficiently carried on to completion, almost always tends to operate well within the limits of discretion per-

directly affect the soundness of these investments and liabilities. Necessarily, these decisions not only affect the soundness of the Federal Government's investment, but have a direct effect upon the Nation's economic stability.

"Unfortunately, many of these decisions must be made on the basis of surmise or calculated guess, without the benefit of facts, statistics, or information to support the conclusions reached. How often, during the past 10 years, have I heard the Administrator of the HHFA, or the heads of constituent agencies, answer questions by the members of the Banking and Currency Committee—'We do not have any figures, we have no idea,' or 'the best available information is from data compiled 10 years ago.'" *Hearings Before the Subcommittee of the Senate Committee on Appropriations on H.R. 11776, 86th Cong., 2d Sess. 560 (1960).*

mitted by the rules, and as a result action is restricted to a greater extent than originally intended and speed is retarded where not intended at all.

Speaking generally, this observation is neither new nor advanced. The difficulty in preventing an organization from strangling on its own red tape is popularly recognized. And yet when the reference is changed from general to specific, human nature seems more inclined to ignore the problem rather than to do something about it. To relate this discussion to urban renewal, it is necessary and highly practical to recognize that in any program so big and complex every unnecessary control will impede action materially.

URA concurrence is presently required for the sale of project land. As long as federal funds constitute a major part of the cash investment in urban renewal land, this requirement is wise and is unlikely to be changed. The veto power thus provided should be and is used primarily to insure compliance with statutory requirements as to the use of project land and its selling price. One practical expression of the federal interest in disposition has taken the shape of a recommended form for use in the sale of project land.³²

The federal government also shares the interest of the LPA that project land should be sold as quickly as is consistent with attainment of the urban renewal objectives. In addition to other losses which accrue when such real estate remains unsold, the city and the federal government share in the (standard one-third, two-thirds proportion) increase in net project cost which results from the interest which accumulates on the temporary loan and the payments made to the city in lieu of taxes.³³ Both the federal government and the city lose money every day there is unnecessary delay in disposition.

The 1957 Guide Form³⁴ is too long, too complicated, and too one-sided to promote the sale of urban renewal land with the speed and flexibility necessary to the long-range success of the program. Strong representations to this effect have come from almost every attitude of interest in the program—federal, local, and private.³⁵

³² HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL ADMINISTRATION, GUIDE FORM OF CONTRACT FOR DISPOSITION OF LAND FOR PRIVATE REDEVELOPMENT, FORM H-6209, (1957) [hereinafter cited as 1957 GUIDE FORM H-6209].

³³ Sec. 110(e), (f), Housing Act of 1949, as amended, 71 Stat. 300, 42 U.S.C. § 1460 (1958).

³⁴ 1957 GUIDE FORM H-6209.

³⁵ Meeting of the Regional Counsel of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

See also Memorandum from Edward H. Coulter, Chief, Urban Renewal Section, Legal Division, FHA, to A. M. Prothro, Deputy General Counsel, Federal Housing Administration, in connection with Land Disposition Contract, Urban Renewal, which contains the following: "That document constitutes a contract between the Local Agency and the Redeveloper; and the [Federal Housing] Commissioner's interest at all in the contract is to be assured that it contains no covenants that adversely affect title, or that are in conflict with the Commissioner's rights of regulation or control, or that could result in impairment of the mortgage lien. The fact that the covenants of the Disposition Contract 'carry over' into the deed, whether or not they are expressly incorporated therein, and the failure to follow the approved form of Disposition Contract, make it imperative, under present procedures, that all such contracts be closely and intensively reviewed to assure that they do not contain these objections. This calls for the expenditure of much time and effort that could be avoided. The immensity of the task may be somewhat illustrated by the statement that, while the approved form consists of 13 letter-size printed pages, the majority of the submitted forms consist of 50 to 75 legal-size typed pages. It is imperative, therefore, that some action be taken to correct the existing situation."

URA presently has under consideration a simplified guide form contract for the disposition of land. Its adoption would (1) increase the number of those redevelopers willing to accept the 1957 form of contract by many others who up to this time have been discouraged by stringent disposition requirements; (2) permit nation-wide uniform use of a simplified form; (3) speed up disposition of project real estate; and (4) avoid unnecessary discrimination against redevelopers and inconsistencies in projects throughout the country—a natural result of the haggling process in which an LPA begins negotiations with a very stringent contract and moves toward simplification and relaxation of requirements according to the resistance of the individual redeveloper and the attitude toward detailed control of the federal and local personnel involved in the individual sale.

Appended to this article is a simplified form of disposition contract which I recommend in place of the one adopted in 1957. This is the form under consideration by URA. The following discussion relates to some of the specific provisions wherein the 1957 form and the form presently under consideration vary.

III

SIMPLIFYING THE DISPOSITION PROCESS

A. Urban Renewal Plan

The urban renewal plan, previously termed the "redevelopment plan,"³⁶ by identifying the objectives and means and manner of accomplishing redevelopment provides the basis and frame of reference for each urban renewal project. Because it is the plan for the local community, a public hearing is held, at which time the citizens of the community are given ample opportunity to express their views fully.

The URA has eliminated a great deal of the detail that had originally been required in an urban renewal plan,³⁷ so that at present the plan need only include a description of the project area and provisions of acquisition, clearance, relocation, rehabilitation, conservation, redevelopment, land uses, building requirements, and redevelopers' obligations,³⁸ all of which should be presented in a brief and concise form.

In addition to specifying the duration of the plan, adequate provision should be made for amendment of the plan and enforcement of restrictions and controls. The plan should also contain provisions to the effect that property-owners within the project area, as well as the LPA or other public authority designated by the governing body of the city, have the right to enforce the control standards for the project area.

³⁶ Sec. 110(b) of the Housing Act of 1949, which provided for a "Redevelopment Plan," was amended by § 311 of the Housing Act of 1954, to provide for an "Urban Renewal Plan." 68 Stat. 626, 42 U.S.C. § 1460(b) (1958).

³⁷ HOUSING AND HOME FINANCE AGENCY, SLUM CLEARANCE AND URBAN REDEVELOPMENT PROGRAM, MANUAL OF POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES pt. 2, ch. 5, § 2 (1955).

³⁸ HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL ADMINISTRATION, URBAN RENEWAL MANUAL, POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES pt. 10, ch. 3, § 2 (1960) [hereinafter cited as URBAN RENEWAL MANUAL].

B. Use and Price Restrictions

Title I requires that urban renewal project land be sold for use in accordance with an urban renewal plan; a further requirement is that the property be sold at not less than its fair value for the prescribed use.³⁹ Skillful administration on the federal side of the program is sometimes required to reconcile these two statutory requirements as they are interpreted by the LPAs.

The statement is frequently made that urban renewal project land is sold at a "write down." This misconception no doubt contributes, even among those who work in the program, to the persistence of efforts to use the urban renewal program to subsidize forms of organization and activity which the local community and the LPA favor and approve. The federal subsidy contained in urban renewal legislation is to the local community, and it is paid with respect to the cost of assembling the property and, for a clearance project, of clearing existing structures. However, nowhere in the federal urban renewal law is there any indication that the land in any instance would be sold thereafter at less than its fair value—in which case the price differential from the land's fair value constitutes a subsidy of the purchaser by the LPA in its disposition. On the contrary, as previously pointed out, the statute requires that the land be sold for its full fair value for its use in accordance with the urban renewal plan.

Many suggestions and some attempts have been made to limit the income to be derived from the property in the guise of limiting the use. Limitations of use are older than zoning and in certain cases are now recognized as proper subjects of governmental control. There is a growing trend toward the definition of uses in terms of control standards, such as volume of air pollution, stream pollution, noise emission, and so on. I know of nothing that indicates that the income of the owner or tenant or the rent that he pays can be defined as a use. Thus, the limitation to residential purposes relates to use; an added limitation as to the rent to be paid by tenants does not relate to use, but rather to price.

The legislative history of section 107,⁴⁰ which relates to the sale of project land for use as low-rent public housing, supports this interpretation of the statute. This section, as it existed prior to the Housing Act of 1959, provided for the price at which land was to be sold for federally-assisted public housing.⁴¹ In effect a subsidy to public housing is allowed as a result of the 1959 Act, which amended this section to provide that the price to the public housing agency shall be the value of the land to a

³⁹ Sec. 110(c)(4) of the Housing Act of 1949, as amended, provides that an Urban Renewal project may include "disposition of any property acquired in the urban renewal area . . . at its fair value for uses in accordance with the urban renewal plan." 71 Stat. 300, 42 U.S.C. § 1460(c)(4) (1958).

⁴⁰ Sec. 107, Housing Act of 1949, as amended, 68 Stat. 626, 42 U.S.C. § 1457 (1958), is sometimes referred to as the section relating to "payment for land used for low-rent public housing."

⁴¹ Sec. 107 of the Housing Act of 1949, *supra* note 40, originally read as follows: "If the land for low-rent housing project assisted under the United States Housing Act of 1937, as amended, is made available from a project assisted under this title, payment equal to the fair value of the land for the uses specified in accordance with the redevelopment plan shall be made therefor by the public housing agency undertaking the housing project, and such amount shall be included as part of the development cost of the low-rent housing project." 63 Stat. 419, 42 U.S.C. § 1457 (1958).

private redeveloper who wished to construct on its land housing with the same characteristics as the low-rent housing that the local housing authority wishes to construct.⁴² Congress carefully avoided making the criterion relate to rent. The criterion here is expressly made the physical characteristics of the housing to be erected.⁴³ In this case the result is to provide a subsidy, but the income standard is avoided as a direct test. Further, state or locally-assisted housing having the same general characteristics as the federal program is included in the subsidy provision. The fact that it was considered necessary specifically to include such housing in the statute in order to make the provision applicable to it establishes the intention of Congress not to extend the "write down" provision to other forms of limited income housing not mentioned in the statute.

Sometimes the plan calls for a use which very obviously has implicit price restrictions. For example, there are no standards for determining the value of land to be used as a public park; and, in fact, land so used has no commercial value whatsoever. Some uses specified in an urban renewal plan in effect deprive the land of any real value for sale purposes. For example, the valuation of land which is to be used for public purposes is determined by an appraisal based upon the best alternate use.⁴⁴ The alternate use should be the best use to which the land could be put consistent with the general aims of the urban renewal plan.

An LPA wishing to manipulate the price for the benefit of the purchasing public body or other purchaser may seek to designate an alternate use which is not realistic and which is chosen because of the low value it would give to the real estate rather than because it is the highest use consistent with the plan. In such circumstance the URA will refuse to acquiesce in a land disposition based upon such an appraisal.

The original emphasis in the urban renewal program on the reuse of project land for residential purposes is indicated by the limitations which were imposed

⁴² Sec. 107 of the Housing Act of 1949, as amended by § 411 of the Housing Act of 1959, 73 Stat. 674, 42 U.S.C.A. § 1457 (Supp. 1959) reads as follows:

"When it appears in the public interest that land to be acquired as part of an urban renewal project should be used in whole or in part as a site for a low-rent housing project assisted under the United States Housing Act of 1937, as amended, or under a state or local program found by the Administrator to have the same general purposes as the federal program under such Act, the site shall be made available to the public housing agency undertaking the low-rent housing project at a price equal to the fair value of land to a private redeveloper who wants to buy a site in the community for private rental housing with physical characteristics similar to those of the proposed low-rent housing project, and such amount shall be included as part of the development cost of such low-rent housing projects. . . ."

⁴³ URBAN RENEWAL MANUAL pt. 14, ch. 3, § 3: "If none of the land comprising the site was acquired by the LPA before September 23, 1959, the fair value shall be determined in accordance with the following definition:

"The fair value of a site for a low-rent public housing project means the maximum price that would be paid for the site by a well-informed private redeveloper who wants to buy a site in the community for private rental housing with physical characteristics similar to the proposed low-rent housing project and who acts intelligently and without necessity in buying a site for such use."

⁴⁴ URBAN RENEWAL MANUAL pt. 14, ch. 1, § 1 provides that when land is to be devoted to a public or nonprofit institutional use, the fair value of the land shall be based on its value for the most suitable alternative private use or uses for the land.

by Title I on nonresidential project uses.⁴⁵ It has become evident that for the success of an urban renewal project nonresidential blight must be eliminated along with slums and that land must be converted to its best logical use. Consequently, assistance has been increased for nonresidential project uses and there has been considerable de-emphasis on housing in specific project areas, in favor of the community-wide approach.⁴⁶ Assistance for nonresidential project uses has been expanded by reducing requirements and by increasing the percentage of urban renewal funds available for predominantly nonresidential projects.⁴⁷

C. Declaration of Restrictions

Immediately involved in the sale of project land are the contract and the deed. Some of the documents less directly related, such as those concerned with bidding and qualification, are discussed elsewhere.

Of course, the urban renewal plan itself is involved, since the land use restrictions

⁴⁵ Sec. 110(c) of the Housing Act of 1949, 63 Stat. 420, read as follows:

"(c) 'Project' may include (i) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses. . . ."

Sec. 110(c)(6) of the Housing Act of 1949, as amended by § 302(b)(1) of the Housing Act of 1956, 70 Stat. 1098, read as follows:

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential area under the urban renewal plan therefor: Provided, That, where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title."

⁴⁶ Sec. 110(c) of the Housing Act of 1949, as amended by § 413 of the Housing Act of 1959, 73 Stat. 675, 42 U.S.C.A. § 1460(c)(6) (Supp. 1959), reads as follows:

"... Provided, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project . . ."

⁴⁷ Sec. 110(c) of the Housing Act of 1949, as amended, presently provides that an urban renewal project may include undertakings and activities as follows:

"... (1) Acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community . . ."

Sec. 110(c) of the Housing Act of 1949, as amended by § 413 of the Housing Act of 1959, 73 Stat. 675, 42 U.S.C.A. § 1460(c) (Supp. 1959), provides that

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: Provided, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project: Provided, further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."

are set forth in it. There has been a considerable deviation from uniformity in the methods of working the land use restrictions that are contained in the plan into the other disposition documents. In some states the urban renewal plan has been recorded as a real estate document. In others it has been filed in various places.

Urban renewal plans have varied considerably in length and detail. When a plan is recorded and when the other disposition documents, particularly the deed, refer to the provisions of the plan, a burden is being prepared for title examiners who review title documents on this property ten, twenty, or thirty years from now. A lawyer who may have had little experience with urban renewal will be called upon to examine an entire urban renewal plan in order to reach his own conclusion as to the identity and meaning of the portions of the plan which affect the title.

As one means of avoiding future trouble, it has been suggested that the provisions of the urban renewal plan that run with the land should be excerpted from the plan and recorded in the form of a declaration executed with the formality of a deed. This would have the double advantage of introducing simplicity in the states where otherwise the entire plan itself would have been recorded and of getting something of record in those states where the urban renewal plan is not entitled to record and has not been recorded.

One objection to this suggestion is that some plans are poorly drawn and scatter pertinent provisions throughout the plan, so that making an excerpt to be recorded would be difficult. The obvious answer is that if this is difficult now for a lawyer familiar with both the urban renewal program and the specific project in question, the burden in later years to a lawyer who would probably have less familiarity with the specific project and who might even be unfamiliar with the program generally would be almost impossible. The Urban Renewal Administration has an obligation to do what it can to promote simplicity and merchantability of urban renewal project land in future years. As a matter of uniform practice URA should encourage, if not require, the recording of a declaration of land uses which would consist of the pertinent excerpts from the urban renewal plan executed in an instrument of such formality as will entitle it to record. A suggested form of such declaration is appended to this article.

The purpose of the urban renewal plan is to define the land uses. Neither the deed nor the disposition contract should be used to embellish or correct the plan, but they should provide for adherence to the uses defined in the plan in the briefest form which will be effective. A recorded declaration of land uses which can be succinctly incorporated by reference will simplify the establishment of restrictions and will reduce the possibility of variance, either accidental or deliberate, between the uses provided in the plan and in the land disposition documents.

D. Sales Preferences

A question which has been and probably will continue to be the subject of active scrutiny relates to preferences to certain persons in the disposition of project land.

The one which evokes the most sympathy would give a preference to displaced businesses. The requirement of such a preference has found its way into some state laws.⁴⁸ Legislation to accomplish this purpose has been introduced in Congress but has made little progress,⁴⁹ partly but probably not entirely because of adverse reports on the proposal from HHFA. The practical difficulties which so far have prevented these provisions and proposals from having significance seem insurmountable. For one thing, the businesses in question are displaced early in the urban renewal process, and if they have not re-established themselves elsewhere by the time redevelopment is completed several years later, it is unlikely that they would have either the interest or the ability to return to the area, or that it would be feasible for them to do so. Even if they were to come in at the earliest possible stage of the urban renewal program, it would be an unusual set of circumstances that would permit a business to re-establish itself in the project area without a suspension of business long enough to ruin most businesses. It was generally considered by HHFA regional counsel that if a preference procedure were adopted which effectively accorded displaced businesses a preference for location in or as a developer of the project area, such preferences would not be used for the purpose of relocating in the area, but would become an item of trade.⁵⁰

Such a preference is frustrated more effectively by another fact of urban renewal life. Very seldom can the exact same property be sold to a displaced business consistent with the urban renewal plan. Usually the plan calls for a use that requires the marshalling of contiguous parcels and an arrangement of improvements that will not permit reconstruction of the same type of improvement on the same property as before or for the same purposes for which the property was previously used. On the other hand, if the preferences extended beyond the specific property which the displaced business occupied before, there is no way to adjudicate between the claims of many displaced businesses. The consensus of counsel who have been working with the program was that any effort to enforce such a preference would so depress

⁴⁸ Hawaii, California, Texas, and Puerto Rico are some of the states and jurisdictions which provide for a type of preference to displaced persons and businesses.

⁴⁹ Amendment introduced by Representative Powell of New York, 95 CONG. REC. 8549 (1949), which read as follows:

"... to give preference in the selection of tenants for the dwelling units built in the project area to families displaced therefrom because of clearance and redevelopment activity, who desire to live in such dwelling units and who will be able to pay rents or prices charged other families for comparable dwelling units built as part of the same redevelopment."

This was approved by the House by a vote of 199 to 41, but was later rejected by the conferees; see *Conference Report to Accompany S. 1070, Housing Act of 1949*, H.R. REP. No. 975, 81st Cong., 1st Sess. 36 (1949), as follows:

"The House amendment contained a provision that the contracts for financial aid made for slum clearance in communities for development and redevelopment purposes should require that preference in the selection of tenants for dwelling units built in the project area be given to families displaced therefrom because of clearance and redevelopment activity when such families desire to live in such units, and are able to pay rents or prices charged to other families for comparable dwelling units built as part of the same development. Neither the Senate bill nor the conference substitute contains a similar provision."

⁵⁰ This aspect was pointed out at the Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

both the interest in and the value of urban renewal project land that the incentives will be to plan away from such preferences rather than for them.⁵¹

Another type of limited preference is the one expressed in a New York City statute permitting an LPA to negotiate with a prospective redeveloper for assistance in making the redevelopment plan, and in consideration for this assistance giving the redeveloper the right to match the highest bid when the property is put up for sale.⁵² Whether under this procedure there will be any real competition in bidding remains to be seen. The New York Regional Office has some hope that other redevelopers will not be discouraged from bidding by the fact that the favored redeveloper can always match the highest bid and be the successful bidder.

In other areas which do not have a statute, agreements have been negotiated whereby the redeveloper agrees to assist the LPA in developing its plan with the understanding that he will be given an opportunity to negotiate with the LPA.⁵³ Although such a "Memorandum of Understanding" may make no legal requirements upon the LPA, it is evident that the LPA may consequently have a strong moral urge to see that the interested redeveloper is successful.

E. Selling Techniques

Of the two principal techniques which are used in the sale of urban renewal project land, information supplied by HHFA Regional Offices indicates that in 350 sales transactions by LPAs, seventy-eight were by competitive bidding procedure⁵⁴ and 272 were by negotiated sale.⁵⁵

⁵¹ *Ibid.*

⁵² N.Y. MUNIC. LAW § 72-k, subd. 2, in addition to other requirements, provides that real property in substandard and unsanitary areas "... shall be so sold, leased or disposed of to any person, firm or corporation who (1) agrees to pay the minimum price or rental fixed by the municipal corporation for such property, and to participate in the planning for such property without payment or reimbursement therefor from the municipal corporation, (2) thereafter participates in such planning in a manner satisfactory to the municipal corporation, and (3) matches any bid higher than said minimum price or rental. . . ."

⁵³ This provision was included in a "Memorandum of Understanding" entered into between the District of Columbia Redevelopment Land Agency, Washington, D.C., and Webb & Knapp, Inc.

⁵⁴ Competitive bidding procedures include auction sales, open bidding, closed bidding, and matched biddings.

HHFA Regional Offices	No. of Transactions Reported	
	Negotiated Sale	Competitive Bidding Procedures
Region I	67	38
Region II	66	19
Region III	110	14
Region IV	11	6
Region VI	2	1
Region VII	16	
<i>Total</i>	272	78

Preliminary to competitive bidding, most LPAs have required that a bidder must prequalify by making an initial bid of at least the appraised value of the property, by depositing in cash or other securities a percentage of such appraised value, and by agreeing that if he is the successful bidder, he will execute the form contract attached to the bidding documents. The majority of the Regional Counsel are of the opinion that prequalification is unnecessary, as well as undesirable, in many instances, due to the fact that it limits the scope of bidders and defeats the main purpose of competitive bidding.⁵⁶

Unqualified state statutory requirement of competitive bidding⁵⁷ causes a real problem in circumstances where competitive bidding is not feasible. When adherence to the form of competitive bidding does not fit the circumstances, after the auction, the LPA is forced to achieve its necessary objectives by renegotiating parts of the contract.

The technique of selling property varies in each case depending upon such elements as the size of the property, the market, and the use for which the property is to be sold.⁵⁸ Whenever the circumstances indicate that competitive bidding is suitable, LPAs should employ this technique because competition will invariably step up the sales price and in public opinion may be considered more equitable. However, rigid requirements which provide solely for competitive bidding should be eliminated.

F. Security for Performance

The 1957 Guide Form⁵⁹ and contemporary *Urban Renewal Manual* provisions⁶⁰ require security for two types of performance, the purchase of the property and completion of the improvements.

A deposit by the purchaser, at the time the contract for the purchase of land is executed, to be held as security for completion of the transaction, is sound business and in accordance with almost universal practice. The deposit of money or delivery of a bond to assure improvement of the property after the purchaser has paid for it is as new to the real estate field as the urban renewal program itself.

The security for completion of redevelopment originated because of the LPA's unquestionable interest in the completion of the improvements in accordance with the limits established by the Urban Renewal Plan. It is pertinent to reconsider in the light of experience since 1957 what the benefits are of such a deposit or bond, and whether the burden of such a requirement upon the redeveloper might constitute a drag upon the program sufficient to cancel out or exceed any benefits which might accrue.

⁵⁶ Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

⁵⁷ In addition to competitive bidding, other state statutory requirements may provide for such items as public hearing and publication as prerequisites to sale of urban renewal project land.

⁵⁸ URBAN RENEWAL MANUAL pt. 14, ch. 3, § 1 offers a guide for the selection of methods of disposal of land for project redevelopment.

⁵⁹ 1957 GUIDE FORM H-6209.

⁶⁰ URBAN RENEWAL MANUAL pt. 14, ch. 2, § 3.

This is an area in which judgment cannot be precise. If there is a deposit, it is usually is an amount equal to five per cent but never more than ten per cent of the purchase price of the project land. When it is considered that the improvements which the redeveloper is required to place on the land will cost between five and ten times the purchase price of the land, it will be seen that the security deposit will at most equal about two per cent of the cost of the performance which it is intended to secure and in many cases will be approximately one-half of one per cent of such cost.

This deposit is too small to be significant as security for payment of damages for breach of the disposition contract, and, in any event, since accomplishment of the redevelopment plan is the only achievement of significance to the LPA, the deposit to secure performance can be judged only in relation to its tendency to attain or discourage this result.

Even at its best, the urban renewal program will never permit the redeveloper to get in and get out as fast and with as small an investment as will be possible in many other fields of real estate development. Neither the program in general nor a specific urban renewal project will benefit from a provision which materially increases the capital requirements of redevelopers. A cash security deposit in the amount we are discussing here would in most cases equal from ten to fifty per cent of the cash operating requirements of the redeveloper after he had purchased the land and had embarked upon the construction. Even if the disparity between the great burden to the redeveloper and the small benefit to the LPA is not as clear-cut and as enormous as it appears to me, the conclusion seems inescapable that the net effect of such a requirement is far more of a drag on the program than it is a benefit. If redevelopers are qualified by the use of reasonably sound judgment, soundly conceived projects should weather the vicissitudes of redevelopment without resort to such a deposit; and if difficulties arise because a project has been undertaken which is not sound, the redeveloper should be the last person to be penalized.

An alternative to the use of a cash deposit has been a performance bond. Such bonds have not in practice been uniform, although the *Manual*⁶¹ as it exists at the time of writing is clear enough to provide the basis for uniform practice. However, as has been the case with the other provisions in the Guide Form which have differed materially from established custom, practice over the country has not been uniform. Redevelopers have been treated differently according to the part of the country involved and the persistence in maintaining an objection. In amount, cash deposits have varied more than bonds, although both have varied. Bond

⁶¹ *Id.* pt. 14, ch. 2, § 3, at p. 4, where provision is made for the redeveloper entering into a satisfactory contract for the construction of improvements and furnishing the LPA with "... a satisfactory faithful-performance surety bond. The penal amount of the bond shall be not less than 10 per cent of the contract for the construction of the improvements, with the construction contractor as principal and the redeveloper, the lender, and the LPA as obligees."

The section also provides that "A surety bond shall be required to be from a company listed in the current U.S. Treasury Department Circular 570, and within the underwriting limits specified for the company in the Circular." *Id.* at p. 3.

provisions have varied from strict compliance with the *Manual* to a complicated form which really chases its tail in an ever decreasing concentric circle and finally disappears. The existing provision may be satisfied by a bond similar to that which would be required by any careful mortgage lender and which would be required by the FHA if insured construction advances were involved. The overwhelming majority of counsel from the Regional HHFA offices, the URA, and HHFA General Counsel offices who attended a Washington review of the disposition process⁶² were of the opinion that the net result of abandoning the provisions of security for performance would be a benefit to the program.

G. Escape Clause

The 1957 Guide Form⁶³ and the one endorsed here⁶⁴ both include provisions permitting the redeveloper to escape the obligation if he cannot obtain reasonably satisfactory financing. This is a provision not uncommon in times of tight money in private contracts, particularly in the case of residential real estate. It is unusual in the case of vacant land and in connection with the sale of real estate owned by political subdivisions.

One reason why this provision is seldom encountered in private transactions involving vacant land is because of the prevalence of options under such situations. Frequently an investor who intends a multifamily residential, a commercial, or an industrial use for real estate knows prior to purchase the use to which he intends to put the land and has his financing arrangements made. In the case of multifamily residential construction, where FHA valuations of land and construction are vital to a project, the redeveloper or investor protects himself during his FHA negotiations by an option.

The urban renewal redeveloper needs some protection even more than the investor in a private transaction. His contract carries restrictions as to use and limitations as to time not imposed upon the purchaser of vacant real estate in a private transaction, and in the event some of his calculations go wrong he is not in the same position to sell the real estate as he would be if he had bought it from a private owner. Since it has not been considered feasible in this program for the LPA to give an option to a redeveloper, the only answer to the redeveloper's problem that has been found to date is to insert in the disposition agreement an escape clause which admittedly is subject to abuse if a redeveloper so chooses. It would be a rare situation when a redeveloper would be unable to arrange not to obtain financing if he so desired. But, if a redeveloper chooses to escape from his contract for reasons other than financing, even though he then gives financing as his basis for withdrawing, the LPA is in no different circumstances than it would have been had it given an option. The LPA should be alert to prevent dilatory action on the part of a re-

⁶² Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

⁶³ 1957 GUIDE FORM H-6209.

⁶⁴ See *Proposed Guide Form of Contract for Land Disposition*, which is appended to this article.

developer which might in effect permit him to deal in urban renewal futures. A redeveloper who does not appear to be sincere or who is handicapped by problems of his own unrelated to the quality of the project land and of the proposed redevelopment should be forced to act or withdraw, rather than be permitted to stall for time in the hope that the passage of time will cast at his feet an opportunity to profit from the bare fact that he has the contract.

It has been suggested by URA Commissioner David M. Walker that in order to weed out redevelopers who might be dilatory in redevelopment, the LPAs should carefully check the past performance of the proposed redeveloper. Before disposition, it would not be unwise for the LPA to require the redeveloper to submit a qualifying document which would list all urban renewal projects which the proposed redeveloper has completed or undertaken, or for which he was then negotiating or bidding. The performance record of the redeveloper would be a useful barometer which could easily be checked by the LPA and in many instances prevent undue delays in redevelopment.^{64a}

Of course, there is a need to bring many new redevelopers into the program. Therefore, the "past performance" criterion should not be applied in a way that would discriminate against those contractors who had not previously done any urban renewal work. On the other hand, for those who do have a "record"—whether good or bad—there is clear importance for the LPA to enter into and apply its disposition contract with full knowledge thereof.

H. Form of Deed and Disposition

The Guide Form of Contract for Disposition of Land for Private Redevelopment, initiated in 1957⁶⁵ for the use of LPAs in contracting for the disposal of project real estate, provides for the use of quitclaim deeds, although there is no objection to the use of a warranty deed. By local law many LPAs are unable to give a warranty deed, and as long as such provisions exist in local law, of course, they will control. However, the use of quitclaim deeds does not appeal to the real estate developer. His reactions to this vary in different parts of the country, extending from an absolute refusal to accept such a deed in some areas to mere lack of enthusiasm in other parts of the country. In any case, since there is no place where the use of a quitclaim deed is standard real estate practice, the conclusion seems inescapable that the market place will somehow, somewhere, in the course of the transaction, exact its price for this deviation from custom.

The interposition of a quitclaim deed into a chain of title deprives the purchaser of the benefit of warranties by predecessors in title and prevents the conveyance to the purchaser of after-acquired titles by predecessors in the chain through the vehicle of estoppel.⁶⁶ It has been suggested that conveyance of after-acquired title by estoppel

^{64a} This information should be reflected by the Redeveloper's Statement for Public Disclosure and the Redeveloper's Statement of Qualification and Financial Responsibility.

⁶⁵ 1957 GUIDE FORM H-6209.

⁶⁶ 5A GEORGE W. THOMPSON, REAL PROPERTY § 2704, at 1079, 1081 (1946).

is a source of trouble in states where case law or recording statutes do not adequately prevent injustice in certain situations. This may be true, but if there is a defect in the basic real estate law of a jurisdiction, it should be corrected by statute and not here and there by the urban renewal program.

Indeed, the uniformity of disposition phases of urban renewal on a national basis and the adherence of urban renewal disposition practices to those of the private market place would suggest that where an objective of urban renewal itself is not contravened, it would be desirable that state statutes be amended to permit LPAs to give warranty deeds. A beginning can be made by suggesting to LPAs that the standard form of conveyance be by general warranty deed, with special warranty or quitclaim being used only when the less limited type of instrument cannot legally be used.⁶⁷

In addition to disposition of urban renewal project land by conveyance of deed, Title I also permits the leasing of such land.⁶⁸ In order to make it feasible for an LPA to lease project land and still be able to obtain federal financing, Congress authorized loans to the LPAs for a period up to forty years.⁶⁹ This type of long-term loan is to be distinguished from the more temporary loan used to finance an urban renewal project through acquisition and disposition where the disposition is to be handled by sale. To date only one of these long-term loans has been made and closed out in connection with the leasing of urban renewal lands.⁷⁰ Today disposition by leasing is at an early stage of development and has been the subject of extensive consideration and discussion by federal, municipal, and private groups. For this reason, the various aspects of disposition by leasing will be treated in a special article to appear in the second part of this symposium on *Urban Renewal*.

I. Reverters

The basic tool proposed by the 1957 Guide Form⁷¹ to compel performance by the redeveloper was a reverter with right of re-entry reserved to the LPA. This provision has evoked reactions varying with the part of the country and the redeveloper involved.

Some redevelopers and their mortgagees have accepted the reverter provision with relative equanimity. At the other extreme, some Regional Offices report that, as a general proposition, it has been impossible to promote the sale of project land subject to the proposed reverter, with the result that one Regional Office has made no

⁶⁷ The *Proposed Guide Form of Contract for Land Disposition*, which is appended to this article, provides for conveyance by general warranty deed.

⁶⁸ Sec. 110(c)(4), Housing Act of 1949, as amended, reads as follows:

"(4) disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan." 73 Stat. 675, 42 U.S.C.A. § 1460(c)(4) (Supp. 1959).

⁶⁹ Sec. 102(a) of the Housing Act of 1949, as amended, 73 Stat. 671, 42 U.S.C.A. § 1452(a) (Supp. 1959).

⁷⁰ The definitive loan was made for the Lower Hill Project, 7-1, Pittsburgh, Pa., which involved a lease for a municipal public auditorium, from the Redevelopment Authority of Pittsburgh to the Public Auditorium Authority of Pittsburgh.

⁷¹ 1957 GUIDE FORM H-6209.

effort to popularize the reverter with LPAs and prospective redevelopers. Between these extremes is a Regional Office which has been putting the reverter forward in the first negotiation but makes no effort to insist on the reverter when the redeveloper or the prospective mortgagee demurs. Obviously, the response to the reverter provision has been far from uniform.

The reverter seems to have been relatively more acceptable in the New York Region, with the Chicago office finding the second highest degree of acceptability. However, in Massachusetts, a state in which redevelopers have had to accustom themselves to more complications than have existed in most others, counsel for a redeveloper submitted to the Regional Office a forceful analysis of the disadvantages of such a reverter as a barrier to sound financing.⁷²

The case for the reverter is that (1) it will last only until completion of the redevelopment, (2) the reverter recognizes the lien of the mortgage, and (3) it will not affect the redeveloper unless he defaults in his contractual obligations. The trouble with this argument is that it does not recognize the infinite variety of factual situations which can give rise to sincere differences of opinion. Even though it is undoubtedly realistic to recognize the possibility in such a tremendous program that insincerity may raise its Janus head, the use of such a powerful and unequivocal weapon as a reverter so tips the scales in advance of a dispute as to suggest (to borrow slightly from Thurman Arnold) faith in the essential malevolence of redevelopers and the essential right-mindedness of LPAs.

The purposes and the express language of federal urban renewal legislation contemplate that local authorities will effectively require redevelopment in accordance with an urban renewal plan.⁷³ It is necessary that the LPA secure compliance with these requirements by provisions in the disposition documents. The only alternative to a reverter which would allow sufficient specific control to be retained over the project land so as to satisfy the requirements of the statute is a covenant to reconvey.

Objection to the covenant to reconvey, which is subject to specific enforcement, has been based on the fact that it is not a summary remedy.⁷⁴ In the case of a real dispute a suit to enforce reconveyance can be the subject of protracted litigation. Even in a case where it is obvious that the redeveloper has no defense at all, it is

⁷² Information concerning attitudes toward reverter and acceptance was obtained from the proceedings of the Regional Counsel Meeting of the Housing and Home Finance Agency in Washington, D.C., on July 25 and 26, 1960: information included in a letter dated July 18, 1960 from Rackemann, Sawyer & Brewster, Counsellors at Law, Boston, Mass., to Henry Zimmerman, Regional Counsel, Region I, Housing and Home Finance Agency, in connection with the Rogers Project, 7-2, Cambridge, Mass.

⁷³ Sec. 105(b) of the Housing Act of 1949, as amended, 73 Stat. 673, 42 U.S.C.A. § 1455(b) (Supp. 1959).

⁷⁴ 9 THOMPSON, *op. cit. supra*, note 66, § 4733, at 310, in speaking of an agreement to convey, states that "... a positive act by the grantee is necessary to reconvey to the grantor where there has been a contract to reconvey." 4 *id.* § 2186 provides that in a possibility of a reverter, "... the estate reverts at once upon the occurrence of the event by which it is limited."

feared that he might attempt delaying litigation solely for the purpose of extorting from the LPA some financial concession.

From the public point of view there is never any completely satisfactory solution to any dispute which has reached the litigation stage. Either party, of course, would in almost every case be completely satisfied if he could obtain summarily the results which he hopes to obtain by reason of legal action. Any lawyer who has engaged in litigation to which Government is a party knows what a difficult adversary the Government is. In addition to the fact that the urban renewal program does not present a need for unbalancing this situation even further in favor of the LPA by means of a reverter, lawyers representing clients who deal with the Government are able to discern the disadvantages to which their clients will be put. The inevitable result is that in the long run, some redevelopers will either stay out or get out of the program and those who do participate will in some way openly require or quietly maneuver a *quid pro quo* for the disadvantage.

Actually, people who are clearly wrong rarely engage in substantial litigation, particularly when the adversary is a unit of government. In the case of urban renewal, this should be particularly true because the wrong-minded redeveloper would be fighting city hall over a project in which the whole community has a visible interest.

In any event, it would seem that the possibilities of litigation in the local urban renewal programs have somewhat different implications than the supporters of the reverter clause may believe. I doubt if there is any Anglo-American jurisdiction where it is impossible for an owner of property subject to a reverter to litigate the validity of a re-entry pursuant to a reverter clause. Furthermore, the sensitivity of mortgagees and title companies to litigation concerning title is such that, during the pendency of any such litigation, it would be extremely unusual if an LPA which had repossessed title by re-entry under a reverter clause could sell the land to another redeveloper who could finance the development. The use of a reverter clause instead of a covenant to reconvey will not, therefore, obviate the delaying litigation which it is intended to prevent. What it does pose is a sword of Damocles over the head of a redeveloper, who in the case of a dispute differs with an LPA at his own risk. The risk will, of course, vary from jurisdiction to jurisdiction and from fact situation to fact situation. In practically all litigation one party is seeking to change the status quo, while the other seeks to retain it. If the rights of an LPA are sought to be enforced under a covenant to reconvey, the LPA is seeking to change the status quo and the redeveloper is resisting. If the LPA successfully re-enters and the redeveloper thereafter institutes litigation, the redeveloper is seeking to change the status quo and the LPA is resisting. The LPA's burden of litigating a covenant to reconvey is, therefore, greater than if it were defending in a case initiated by a reverter, and this is so both as to the burden of going forward and the risk of nonpersuasion, which can be heavy in an equity case. The party bearing the burden is also on the disadvantageous end of such equitable maxims as the "clean hands" doctrine. The final disadvantage is that if

the redeveloper has been wrong, reverter is final,⁷⁵ whereas if the court adjudicates him wrong in connection with an obligation to reconvey, it would be an unusual case in which a redeveloper who could make a showing of sincerity would not be given an opportunity to perform his contractual obligations as then interpreted by the court. It is obvious that in the case of a dispute a redeveloper whose land was subject to a reverter clause would feel a very strong compulsion to follow the dictates of the LPA in the course of redevelopment, regardless of what he considers his rights to be.

If the project has been well conceived, well planned, and well publicized by the LPA, the redeveloper, in the event of a dispute, will not only be fighting the agency in the courts, but will also be fighting a well-informed community. This fact is accentuated by many elements, including (1) the natural advantage which government has in litigation, (2) the redeveloper will be paying his own attorney's fees while the LPA can charge the attorney's fees to project costs (two-thirds payable by the federal government), and (3) during the pendency of litigation the redeveloper will be bearing other burdens and suffering the loss of prospective benefits. The redeveloper is placed under sufficient handicap without giving the LPA the additional advantages, and placing upon a redeveloper the positive disadvantages, of a reverter.

J. Antispeculation

The purpose of Title I is redevelopment, rehabilitation, and conservation of appropriate urban areas—not stimulation of trading in downtown real estate. What happens after completion of the urban renewal activity is irrelevant, but while clearance land is still undeveloped the URA and the LPAs must direct the disposition program toward the redevelopment of the land rather than speculation in undeveloped land. Accordingly, provisions against resale by a redeveloper prior to completion of the improvements were included in the 1957 Guide Form⁷⁶ and were further endorsed in the *Manual*.⁷⁷

It is not surprising, however, that situations have developed in which it is beneficial to the redeveloper and at least not harmful to the urban renewal program for the redeveloper to sell a part of the property before it has been redeveloped. In order to avoid any possible element of speculation, the practice in such situations has hitherto been to require the redeveloper to make the sale without profit to himself. Since the opportunity to sell at a profit may very well have resulted from the enterprise and creative thinking of the redeveloper as well as the energy and capital expenditure which he proposes to make in completing redevelopment of the portion which he plans to retain, refusal to permit him to take his profit on a partial sale can be a bitter pill to swallow.

⁷⁵ 4 THOMPSON, *op. cit. supra* note 66, § 2186 provides that in a reverter "... the estate reverts at once upon the occurrence of the event by which it is limited."

⁷⁶ 1957 GUIDE FORM H-6209.

⁷⁷ URBAN RENEWAL MANUAL pt. 14, ch. 1, § 1, at 3.

The intention of Title I is also to insure redevelopment and to discourage redevelopers who would rather deal in urban renewal futures than in construction.⁷⁸ There is nothing wrong with the redeveloper making a profit on a part of the project land, provided that his transaction does not interfere with realization of the purposes described. Indeed, there may well be circumstances in which it has been advantageous to the LPA for the redeveloper to sell a tract of land which the redeveloper can advantageously split. If he is permitted freely to sell a part of the area, smaller tracts will be made available for redevelopment by local people, who were not in a position to bid on the larger tract, and at the same time this will assist redevelopment by adding the resources of another redeveloper to those of the original redeveloper and returning to the latter a portion of the capital that he paid out in order to make the purchase.

If a redeveloper were permitted to sell one per cent of the project land, no one would think of accusing him of undertaking the obligation to redevelop the ninety-nine per cent in order to speculate in the one per cent, especially if the disposition contract did not relieve him of responsibility for the one per cent even after sale. On the other hand, if he were permitted to sell ninety-nine per cent of the project land freely, even though he had to retain one per cent and responsibility for the other ninety-nine per cent, it is not difficult to foresee the possibility of land speculation entering into the program. Somewhere between these two extremes there is a line on one side of which speculation lurks. Just where this line is, only experience can tell. As a beginning, it seems reasonable that no one would buy and assume primary responsibility for redeveloping seventy-five per cent of a project area in order to sell twenty-five per cent. In view of the advantages that would accrue to the program from the introduction of some freedom in this area, it would seem reasonable to amend the regulations and the Guide Form in order to permit an unrestricted disposition of up to twenty-five per cent in area of the project land, subject, of course, to all of the restrictions in the original contract and deed and without releasing the original redeveloper of contractual responsibility for performance in accordance with the original disposition documents. A provision to this effect has been included in the suggested form of disposition contract which is appended to this article. Experience will in time tell whether this percentage can or should be enlarged or reduced.

K. Post Disposition Developments

The disposition documents usually include provisions, both express and implied, which may call for a change in price or alter performance of the contractual obligations of the parties in the event of certain developments occurring after the delivery. Wherever possible, the parties should anticipate developments which will justify a change in the position of the parties, and when such developments do occur it is entirely proper for either party or both to follow up his contract advantage.

⁷⁸ Sec. 105(b) of the Housing Act of 1949, as amended, 73 Stat. 673, 42 U.S.C.A. § 1455(b) (Supp. 1959).

For example, the uses specified in the plan and referred to in the contract and deed have great influence on the price. If the plan is amended to permit a more intensified use of the property by the redeveloper and such use is one which in the first instance would have rendered the property significantly more valuable, the change in use will be accompanied by a renegotiated price giving the LPA the benefit of the additional value created by the change in use.

If the effect of the changed or intensified use upon value is either debatable or insignificant, there seems little reason to re-examine the sales price. It is generally agreed as a legal proposition that once redevelopment has been completed it is difficult to rationalize a renegotiation of sales price because of an intensified or changed use. However, the fact that the urban renewal plan itself extends in time far beyond the completion of the redevelopment gives rise to a point of view that the LPA should be able to renegotiate the purchase price throughout the life of the plan. In terms of dollars and cents, the value of such an ability to renegotiate seems small in comparison to the dampening effect which a restriction has upon our traditional freedom in dealing with real estate, subject only to the control of use which is necessary to protect the right of the public. The official concern for renegotiation of price lessens the farther south and farther west one travels from the North Atlantic states.⁷⁹

Another problem arises in connection with use of the property between the date of acquisition and the completion of redevelopment. Such interim use has become a sensitive subject in some areas where it seemed that redevelopment was being delayed because of the financial success of interim uses such as parking.

When the land use provisions in the urban renewal plan are not broad enough to include a specific interim or temporary use, it is probably illegal to use the property for such purposes without amending the plan. Deep concern has been expressed that attractive interim uses may delay redevelopment, and consequently some Regional Offices are of the opinion that in order to avoid possible delay in redevelopment, interim uses should be strictly forbidden.⁸⁰ However, the policy which has been followed by URA is expressed in the general feeling of the Regional Offices that, if the interim use is minor, if it does not visibly delay redevelopment, and if it is not objectionable to surrounding property owners, the Regional Office will try to adjust sympathetically to the interim use and will not require any participation in the income unless it is substantial. As a precaution to prevent undue delay, provision should be made for termination of the allowed interim use upon short notice.

There have been some instances in which the LPA in such matters as architectural design and construction materials has increased its demands upon the redeveloper after the bargain has been struck. The redeveloper is particularly susceptible to

⁷⁹ Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

⁸⁰ *Ibid.*

such pressure when the disposition is in the form of a lease rather than a sale. Obviously, this should be avoided.

If the scope of uses in an area is not broad enough and the need for, or the possibility of, change in use can be foreseen in the immediate future, it may be beneficial to make provision in the plan for alternate use of the property. For example, if in a public use area which designates a highway or school, no commitment has been received from the highway department or school board at the time of execution of the plan, the LPA should provide for an appropriate alternate use, thereby avoiding the necessity of amending the plan. This procedure would thereby eliminate another problem that often arises subsequent to disposition.

IV

THE LAND BANK CONCEPT

Proposals for the establishment through the urban renewal program of "land banks" in our metropolitan areas are being advanced by some of those active in the program. Lawrence M. Cox, Executive Director of the Norfolk Redevelopment and Housing Authority, made such a proposal in an unrecorded speech in the spring of this year, and shortly afterwards, at the conference held by the American Society of Planning Officials (ASPO),⁸¹ again made the proposal in a speech which was given written distribution. The annual conference of NAHRO held in Detroit in October included in the program a discussion of "The Need to Establish a 'Land Bank.'"⁸² The proposal has been the subject of discussion on other occasions.

Mr. Cox directs his proposal principally toward downtown areas. He is concerned lest the necessity for programming completion of a project in five to eight years after it passes the planning stage and enters execution will result in wasteful, extravagant, hurried, and piecemeal development inadequate for the city's future. In order to develop cleared downtown land to its greatest potential, he counsels delay where it is not feasible to develop central city land immediately to its full potential. During the delay, a "land bank" would take title, pending ultimate sale. The proceeds upon sale, after payment of the purchase price of the land and of carrying charges, would be returned to the federal and local governments on a two-thirds, one-third basis.

Obviously, this is a proposal made in all seriousness. Equally obviously, so far as the proposal has developed to date, it is not a scheme to promote and subsidize from the federal treasury permanent public ownership of downtown real estate. And while it may have immediate value for rationalizing a solution to rare situations in which an LPA may find itself with property it cannot sell, the proposal is not advanced as a distress program, but rather as a long-term program.

The major premise of this proposal is the necessity for time in which to pierce

⁸¹ American Society of Planning Officials, National Planning Conference, held at Miami Beach, Fla., on May 22-26, 1960.

⁸² The subject was subsumed under a general discussion entitled "Bold Thought a 'Must' for the Future of Urban Renewal."

the veil of the future and make plans consonant with the revelation. Technical skills relating to land use design have today reached the point where it matters little whether the land has been cleared in advance of planning, so that existing improvements need not be demolished before replacement planning can proceed. On the other hand, if there is a central city area of any size in the United States where the buildings contribute nothing to the tax rolls, it is unique. Usually in the central city areas, even those structures bad enough to be the subject of a clearance project contribute significantly to local tax revenues. The demolition of these structures not only takes the value off of the tax roll, but also burdens the tax structure with payment of the city's share of the clearance cost, together with interest on money borrowed in order to accomplish this. Although the city is not completely indemnified for its loss of tax revenue, as part of the urban renewal program, the city receives a federal contribution for the land itself, which is being removed from the tax rolls.⁸³

Analyzed in terms of planning future land use, the prudent course of action for the city is to plan first and undertake the execution of the urban renewal project only when it is apparent that the land can be advantageously put to use immediately upon completion of clearance. Therefore, the only situation which would justify creation of a "land bank" would be the one in which the project area was so bad that the city would be better off without it, even if nothing arose in its place.

Whatever may be said in the ordinary course of an urban renewal project about the public purpose to be served by clearing slum areas, even in the course of those which have been the subject of litigation there is inescapably present at every stage of consideration the fundamental intention to redevelop. If all construction in the United States were to stop tomorrow, it can be seriously questioned whether any significant amount of slums would hereafter be demolished.

Of course, the "land bank" proposal contemplates ultimate redevelopment. However, the very nature of the proposal prevents basing it upon any specific time limit for redevelopment. When we consider that eight years is regarded as a relatively short period, it is not unreasonable to suppose a delay in redevelopment of from fifteen to twenty-five years. Considering the increasing rate at which modern technology renders material things obsolete,⁸⁴ there must be many areas presently undergoing demolition where massive rehabilitation and enforcement of housing codes would be preferable to a delay of fifteen to twenty-five years in redevelopment.

The withdrawal from the redevelopment market of any substantial amount of cleared downtown real estate would certainly have many incidental but far-reaching

⁸³ Sec. 110(e) of the Housing Act of 1949, as amended, 73 Stat. 675, 42 U.S.C.A. § 1460(e) (Supp. 1959).

⁸⁴ Nixon, *Our Resolve is Running Strong*, Life, Aug. 29, 1960, p. 87. In describing the speed at which "our technology is surging ahead . . .," Vice President Nixon stated: ". . . [E]ven the most sophisticated predictions can go sadly awry. For example, a report to the National Resources Committee in 1937 tried to anticipate 'the kinds of new inventions which may affect living and working conditions in America in the next . . . 25 years'—or by 1962. In this report, most of the major technological developments between 1937 and now were completely unforeseen—despite the fact that many of the nation's then leading scientists and engineers had been consulted in its preparation." *Id.* at 92.

effects difficult to anticipate. If circumstances presently dictate the clearance of downtown land and its use for parks, parking lots or other purposes not requiring structures, such uses may very well support an urban renewal project that will be considered executed when the new uses have been achieved. The "land bank" proposal is directed to properties not intended for any such planned use, but simply to be held unused or for interim uses pending determination of the proper future use. The lives and businesses of all who border on the "land bank" property would be immediately affected. The withholding of this land from development would in itself force other processes and activities in other directions. Surface transportation lines, which suffer enough when one side of a route is "dead," would suffer even more severely the effects of such clearance in central city areas.

If the cleared land can be put to immediate use, but in the judgment of some the use is not adequate, it can be legitimately asked whether there will ever be agreement as to the adequacy of a use proposed for land once taken out of circulation. Every residential custom builder knows that there never comes a time when the owner's wife cannot improve on the plans for her house. It makes no difference how many years an architect has reworked the plans; if Mr. and Mrs. Owner do not take off for the Bahamas during the interval between groundbreaking and landscaping, the plans will continue to be reworked until the interior decorator finally rings the bell on changes.

In a world where human curiosity is exceeded only by the vast fund of human ignorance, changes in our technology and our mode of urban living will make it difficult for planners looking for the ultimate to find a stopping point, while on the other hand, they will make the process of urban renewal an endless cycle for those things even the wisest of us build.

If this analysis is sound, the possibilities for use of the "land bank" scheme are limited. The proposals to date seem to start with cleared land, rather than with the area as it stands prior to urban renewal. If the proposal has any merit, it would seem to be only in those situations where at the time a program is started, circumstances justify the consequences of clearing a downtown area for no purpose at all other than to hold it for a future still unplanned use.

V

FHA ACQUIESCENCE

The 1957 Guide Form was cleared by FHA before it was approved and published. It is reasonable to assume that any future Guide Form published by the Urban Renewal Administration will be cleared by FHA beforehand. The proposed form of disposition contract published as an appendix to this article has been reviewed informally with FHA officials, and there is little doubt that it would be more enthusiastically received than the existing form, were it adopted.

Even though FHA has reviewed the 1957 Guide Form and will review any form of proposed disposition contract submitted by a proposed redeveloper in good faith,

the position of FHA in the disposition process has not been completely understood. The misunderstanding has even extended to some of the FHA offices.

There is no legal requirement that FHA approve the disposition contract. However, since FHA mortgage insurance will probably be needed in any residential project of consequence, no well advised redeveloper will sign a contract for the purchase of urban renewal project land which will put him in a position where he cannot obtain FHA mortgage insurance. Since urban renewal disposition documents contain controls on the ownership and use of the land not found in the usual real estate situation with which FHA is accustomed to deal, this means that as a practical matter FHA must approve of the disposition contract before a redeveloper will sign it.

FHA has no interest in putting provisions of its own into the contract. The only interest that FHA has is in preventing imposition of limitations or controls that will prevent the redeveloper from economically developing the property or that, in the course of its dealings with the redeveloper, will prevent FHA from effectively imposing its own requirements (economic in purpose) on the redeveloper and the property. Confusion has resulted because some people have thought that FHA was interested in putting provisions in the disposition contract. FHA will work out its own contractual arrangement with the redeveloper and his mortgagee, provided that the restrictions and limitations in the disposition contract do not get in the way. Therefore, the shorter and less complicated the disposition contract, the sweeter it is to FHA.

It has been suggested that a revised and shorter Guide Form adopted with FHA approval and widely publicized would be most helpful in remedying the present situation. Use by LPAs and redevelopers of such a Guide Form would eliminate a great deal of the confusion, and FHA's approval for insurance would follow without delay.⁸³

VI

CONCLUSION

Many of the same redevelopers, contractors, and mortgagees are participating throughout the nation in some or all phases of redevelopment, and at least one and sometimes all of several governmental agencies—the Federal Housing Administration, the Federal National Mortgage Association, and the Public Housing Administration—are involved to some extent in almost every residential urban renewal redevelopment of any size. Indication of further involvements is reflected by the fact

⁸³ Memorandum from Edward H. Coulter, Chief, Urban Renewal Section, Legal Division, FHA, to A. M. Prothro, Deputy General Counsel, Federal Housing Administration, September 29, 1960. In addition to the material contained in this memorandum, Mr. Coulter further stated: "... that is, publicize FHA requirements as to what FHA will or will not approve, and then leave the responsibility of meeting those requirements with Local Agencies and Redevelopers, where it in fact belongs. If, at initial closing, the requirements are shown to have been satisfied, insurance will follow. If such showing has not been made, then insurance will be denied."

that the Small Business Administration is now being coaxed into the picture.⁸⁶ Thus, the disposition of urban renewal real estate is becoming an area of the law which might very well justify the attention of the Commissioners on Uniform Laws, to the end that a Uniform Code of Disposition of Urban Renewal Real Estate be considered by the legislatures of the various jurisdictions.

On the federal level it appears clear that substantial improvements and simplifications can be initiated in the disposition process—although any new form that may be developed for disposing of urban renewal project real estate will be no more the permanent answer to all problems than was the 1957 form.⁸⁷ The prompt adoption of a simplified guide form for disposition contracts will not only stimulate the disposition process all over the nation and help avoid future problems of over-inventory in vacant project lands; but it will also serve as the precedent for its own re-examination and revision when in the future the always-changing circumstances may require.

APPENDIX

PROPOSED GUIDE FORM CONTRACT FOR LAND DISPOSITION*

I. *Background and Definitions of the Agreement*

This agreement relates to the following:

(a) Parties:

1., herein sometimes called the "Agency."
2., herein sometimes called the "Redeveloper."

(b) Documents:

1. An Urban Renewal Plan and all amendments thereto, herein sometimes called the "Plan,"¹ which was approved by the City of, herein sometimes called "City," by² and adopted on the day of, 19.....

⁸⁶ House Comm. on Banking and Currency, *Housing Act of 1960*, H.R. REP. No. 1924, 86th Cong., 2d Sess. 46 (1960), indicates that § 802 of H.R. 12603 would amend § 7 of the Small Business Act to authorize the Small Business Administration to make loans to small business concerns which have been displaced from urban renewal areas in order to assist them in re-establishing their businesses in new locations.

⁸⁷ 1957 GUIDE FORM H-6209.

* This Agreement shall be altered to comply with conditions and requirements of state and local law, practice, and terminology.

¹ Include date and place of filing or recording of Plan.

² Cite Ordinance or Resolution which was adopted by the City.

2. Provisions of the Plan which specify the Land Use Provisions, Building Requirements, and Redeveloper's obligations, herein sometimes called the "Standards" which have been collected in an instrument, herein sometimes called "Declaration of Restrictions" which was recorded in³

(c) Real Estate:

1. The area which is being redeveloped and is designated in the Plan, herein sometimes called the "Project Area."

2. The description of the property to be purchased by the Redeveloper is contained in Exhibit A, which is attached hereto and made a part hereof, herein sometimes called the "Property."

(d) Selling Price:

1. \$....., herein sometimes called the "Price."

(e) Security Deposit:

1. \$....., herein sometimes called the "Deposit."

(f) Other Definitions:

1. Improvements: Improvements to be constructed upon the Property by the Redeveloper, herein sometimes called the "Improvements."

2. Deed: The instrument of conveyance of the Property, herein sometimes called the "Deed."

II. Main Body of the Agreement

A. In connection with the Deed, the Agency and the Redeveloper agree to the following:

1. Upon payment by the Redeveloper of the Price, which shall include the Deposit,⁴ the Agency will convey the Property by general warranty deed to the Redeveloper.⁵

a. The Deed shall contain agreements and covenants running with the land that the Redeveloper shall:

(1) Comply with the Standards and the Declaration of Restrictions for the duration of the Plan;⁶

³ Cite complete recording information, including date and place of filing. In the event that such a document has been filed and has been given another title, the appropriate title should be indicated in the reference. In addition to filing or recording the Plan, in order to avoid some title complications, it is desirable to abstract and file of record the provisions in the Plan in connection with land use, building requirements and other obligations of the Redeveloper.

⁴ If the Deposit is not included in the Price, this provision may be altered accordingly. It may be desirable to include the date on which the deposit was paid.

⁵ In order to protect the title to the property and maintain the chain of warranties, it is advisable and desirable to convey by general warranty deed. However, this provision should be altered in the event that state or local law does not authorize conveyance by general warranty deed, in which case conveyance may be by special warranty deed or quitclaim deed.

Specify any other instrument which may contain restrictions affecting the Property. Provision may be made for division of the Property into several parts or parcels so that there may be separate conveyances, separate mortgage financing, take downs in stages, etc.

⁶ It may be preferable to spell out the duration of the Plan in terms of years.

(2) Not effect or execute any covenant agreement, lease, conveyance, or other instrument restricting the sale, lease, or occupancy upon the basis of race, religion, color or national origin, which covenant shall not be limited as to time.

b. The provisions and covenants of this Agreement shall not be merged and shall survive delivery of the Deed.

B. The Agency agrees to the following:

1. The Agency will deliver the Deed and possession of the Property to the Redeveloper on the day of 19...., or on such earlier date as shall be mutually agreeable to the Redeveloper and the Agency.

2. The Agency shall prepare the Property for redevelopment in accordance with the Plan.⁷

3. After completion of construction of the Improvements in accordance with the Declaration of Restrictions, the Agency shall promptly furnish the Redeveloper with an appropriate certification of such completion. Completion of construction of the Improvements in accordance with the plans and specifications which have been approved by the agency under II(C)(2)(a) hereof shall be conclusive evidence of compliance by the Redeveloper.

4. In the event that the Redeveloper, after diligent efforts on his part, is unable to obtain mortgage financing for the Improvements on terms that would generally be considered satisfactory by builders and contractors, the Redeveloper, at

⁷ If the Plan does not sufficiently identify the extent of preparation of the Property for redevelopment, further provisions should be added. The following provisions which are suggested to indicate the type of requirements that may be considered in defining preparation of the Property, should be altered based upon the undertakings of the Agency and the Redeveloper.

Such preparation by the Agency may include:

a. The demolition and removal to grade of all existing buildings, structures, and obstructions on the Property, including the removal of any debris resulting from such demolition;

b. The removal (by the Agency or by appropriate public bodies or public utility companies) of all paving (including curbs and gutters), sidewalks, and utility lines, installations, facilities, and related equipment, within or on the Property which are to be eliminated or removed pursuant to the Plan;

c. Such filling and grading and leveling of the land (but not including top soil or landscaping) as shall be necessary to make it ready for construction of the Improvements to be made thereon by the Redeveloper (it being intended that such filling, grading, and leveling conform generally to the respective surface elevations of the land prior to the demolition of the buildings and structures thereon).

All expenses (including current taxes, if any) relating to buildings or structures demolished or to be demolished shall be borne by, and any income or salvage received from such buildings or structures shall belong to, the Agency.

d. The paving and improving (by the Agency itself or by the City) in accordance with the usual technical specifications and standards of the City, of such streets (including the installation of gutters, curbs, and catchbasins and the removal of trees and shrubs), and the street lighting and sidewalks in such public rights-of-way, as are to be provided pursuant to the Plan;

e. The installation and relocation (by the Agency itself or by appropriate public bodies or public utility companies) of such sewers, drains, water and gas distribution lines, and electric, telephone, and telegraph installations (exclusive in each case of house or building service lines), as are to be installed or relocated pursuant to the Plan; and

f. The vacating of present streets, alleys, other public rights-of-way, and plats, and the dedication of new streets, alleys, and other public rights-of-way, in the Project Area, and the rezoning of such Area, in accordance with the Plan: *Provided*, That the Redeveloper will, upon request by the Agency, subscribe to and join with the Agency in any petitions and proceedings required for such vacations, dedications, and rezoning.

his option, may terminate this Agreement and the Agency shall refund to the Redeveloper, without interest, all payments on account of the Price, including the Deposit.

C. The Redeveloper agrees to the following:

1. The Redeveloper shall pay the Price for the Property to the Agency and upon conveyance of the Property, the Redeveloper agrees to pay for the Federal Documentary Tax Stamps.

2. The Redeveloper shall construct the Improvements in accordance with the Standards and the Declaration of Restrictions.⁸

a. In order to verify that the Improvements will be in conformity with the Standards, the Redeveloper agrees to submit to the Agency within days for its approval, plans and specifications for the Improvements.⁹

b. The Redeveloper agrees to begin construction of the Improvements within from date of the Deed and to pursue construction of the Improvements with reasonable diligence and to complete said Improvements within from date of the Deed: *Provided*, however, that if the Federal Housing Administration has insured a mortgage to finance any of the Improvements, then the Improvements shall be completed within the time specified in the Building Loan Agreement approved by the Federal Housing Administration but that, in any event, the completion time shall be within four years from the date of execution of the Building Loan Agreement.

3. Prior to completion of the Improvements, the Agency shall have the right and the privilege of reasonable inspection of the books and records of the Redeveloper, including all information concerning the stockholders, their respective holdings, and the holdings of any other parties having beneficial interest in such stock.

D. The Agency and the Redeveloper do hereby agree to the following:

1. Prior to the completion of construction of the Improvements, except upon testate or intestate succession, there shall be no change totalling more than forty-nine per cent (49%)¹⁰ in the identity or proportionate interest of the original ownership of the Redeveloper Corporation by any means, without the prior approval of the Agency. The Redeveloper and the officers signing on its behalf represent that it has the authority of all of its stockholders to agree to this provision on their behalf.¹¹

2. Prior to completion of the construction of the Improvements, except upon

⁸ As provided under note 3 *supra*, other appropriate documents may be named.

⁹ The Agency should not concern itself with detailed plans and specifications except to the extent necessary to be assured that they are in conformity with the Standards.

¹⁰ It is important that control of the Corporation remain in a majority of the original stock interests. State law and the By-Laws of the Corporation should be checked carefully and this percentage figure should be altered and, if necessary, lowered to a figure which will prevent loss of control of the majority of the original stockholders of the Corporation.

For example, this figure should be lowered to thirty-three per cent (33%) in the event that the state law and the By-Laws of the Corporation provide for amendment by a two-thirds (⅔) vote of the stockholders.

¹¹ In case of stock listed on a national exchange, this entire paragraph should be omitted.

testate or intestate succession, there shall be no transfer, assignment, conveyance, or lease (or contract or agreement of same) that shall aggregate more than twenty-five per. cent (25%) of the total surface area of the Property, without the prior written approval of the Agency, and that any such transfer, assignment, conveyance, or lease (or contract or agreement of same) shall be made subject to all of the terms and provisions of this Agreement,¹² and the Redeveloper shall also remain liable and shall not be released from his obligations under this Agreement.

This provision shall not prevent the Redeveloper from mortgaging the Property in order to obtain financing necessary for making the Improvements pursuant to this Agreement.

3. Any and all taxes duly assessed against the Property,¹³ including but not limited to Real Estate taxes, shall be apportioned between the Agency and the Redeveloper, as of the date of conveyance, unless otherwise provided.¹⁴

4. The Agency, the Redeveloper, and their authorized representatives shall have access to the Property at reasonable times to carry out the purposes of this Agreement.

5. Unless otherwise provided, in the event of any default or breach of this Agreement, the aggrieved party shall furnish written notice to the party in default. In the event that the default or breach shall not be cured or remedied within days,¹⁵ the aggrieved party shall have the option to:

a. Institute proceedings, at law or in equity, to cure or remedy such default or breach.

b. In the event that the aggrieved party is the Agency, and:

(1) Such default or breach occurs prior to conveyance of the Property to the Redeveloper, then any rights of the Redeveloper in this Agreement may be terminated by the Agency, and the Agency may apply the Deposit on account of any damage suffered.

(2) Such default or breach occurs subsequent to conveyance of any of the Property to the Redeveloper, and prior to completion of the Improvements, the Redeveloper, within days of written notice by the Agency, shall reconvey the Property to the Agency by general warranty deed,¹⁶ without charge or expense to the Agency, and the land and any Improvements thereon, free and clear of all liens and incumbrances, except liens or incumbrances resulting from bona fide financing of the construction of the Improvements and from mechanics' or materialmen's liens resulting from such construction.

¹² State and local law may require the written approval of the Agency in all cases. The more stringent statutory provision will control.

¹³ Whether the reference is to tax liens, tax assessments, or other language will depend upon local law and custom.

¹⁴ It may be necessary and desirable to itemize and apportion other costs and expenses such as special assessments, title insurance, state transfer tax, recording fees, etc. on the basis of state and local law or custom.

¹⁵ Specify appropriate time limitation.

¹⁶ In order to protect the title to the Property and maintain the chain of warranties, it is advisable to convey by general warranty deed. However, if conveyance from the Agency to the Redeveloper was not by general warranty deed, it may be desirable to provide that reconveyance from the Redeveloper to the Agency shall be by the same type of deed as such original conveyance.

(a) In the event that the Agency reacquires title to any of the Property the Agency shall use reasonable efforts to dispose of the Property and any Improvements in accordance with the Plan. Upon resale, the Agency shall retain sufficient proceeds to cover expenditures, including liquidation of liens, made by the Agency in connection with the management and resale of the Property. The balance then remaining shall be paid to the Redeveloper only to the extent of the sums paid by the Redeveloper for the Price of the Property and construction of the Improvements, deducting therefrom any gains and income which the Redeveloper has realized or may realize. Any balance remaining after such payment to the Redeveloper shall be retained by the Agency.

c. In the event that the aggrieved party is the Redeveloper and such default or breach occurs prior to conveyance of the Property to the Redeveloper, then this Agreement may be cancelled and terminated and in this event, the Redeveloper shall be entitled to a return of all payments on account of Price including the Deposit and neither the Agency nor the Redeveloper shall have any further rights against or liability to the other under this Agreement.

6. In the event of enforced delay due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to Acts of God, or of the public enemy, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes, neither the Agency nor the Redeveloper shall be considered in breach of or in default of this Agreement, and the performance dates specified in this Agreement may be extended for the period of the enforced delay; *Provided*, That the party seeking such extension shall, within days after the beginning of such enforced delay, have furnished written notice to the other party.

7. The exercise of any right or remedy provided for in this Agreement shall not preclude the exercise of any other rights or remedies provided for under this Agreement.

8. Any notice or communication provided for under this Agreement shall be sufficient if made by registered mail:

- a. To the Redeveloper at
- b. To the Agency at

9. Each and every reference to parties named in this Agreement shall also refer to and include all assigns, transferees, and successors in interest of such parties as if they were described in this Agreement.

10. All of the provisions, covenants, conditions, and obligations of this Agreement shall be binding upon and shall extend to all of the successors, assigns, transferees, and any mortgagees to the extent of their right, title, and interest in the Property, who may succeed to the interest of the Redeveloper of all or any part of the right, title, and interest of the parties to this Agreement, unless otherwise provided

IN WITNESS WHEREOF this Agreement has been duly executed in
originals on the day of, 19....¹⁷

(SEAL)

Attest:

By:

(SEAL)

Attest:

By:

SUGGESTED FORM OF DECLARATION OF RESTRICTIONS

..... Project

City of

(herein sometimes called the "Agency")

..... day of, 19....²

- I. The following land use provisions, building requirements, and redevelopers' obligations have been excerpted from an Urban Renewal Plan,

.....³
which was approved by the City of
by⁴ adopted on the
day of, 19....

- II. *Area to which Applicable.* The following controls and regulations shall apply to the area which is being redeveloped, herein sometimes called the "Project Area," which is described as follows:⁵

¹⁷ The Agreement should be properly acknowledged.

³ Indicate appropriate name of the Local Public Agency.

² Date should coincide with date of approval of the Urban Renewal Plan.

³ Include date and place of filing or recording of Plan.

⁴ Cite Ordinance or Resolution which was adopted by the City.

⁵ Describe Project Area by street and other boundaries. If this is not feasible, then describe Project Area by metes and bounds. If the Land Use Map can be recorded with the Declaration of Restrictions, then you may want to add language to the following effect: "as indicated on the Land Use Map which is identified as Exhibit 1, which is attached hereto and made a part hereof."

III. *How the Land is to be Used.*

- A. Each area, herein sometimes called "Use Area," identified on the Land Use Map, which is⁶ may be used for the purposes and in the manner indicated on the Land Use Map and as provided in this Declaration.
- B. The following controls and regulations shall apply to the use and development of the land and improvements for the Project Area.
- C. No building or structure shall be erected, reconstructed, enlarged, moved, altered, or improved for any use other than that which is permitted in the applicable designated Use Area, nor shall any building or structure be erected, reconstructed, enlarged, moved, altered, or improved in such a manner as to violate any of the regulations and controls specified herein.

IV. *Regulations and Controls Applying to Specific Use Area.*

Each Use Area shall be used only for the following uses specified for each area and shall conform to the following applicable requirements:

- A. Two-Family Residential Use Areas.
 1. Use Regulations. A building or premises shall be used only for the following purposes:
 - (a) One-family dwellings.
 - (b) Two-family dwellings.
 - (c) Municipal recreational facilities for the above uses.
 2. Area Regulations
 - (a) Minimum lot area required shall be sq. ft.
 - (b) Minimum permitted lot dimensions shall be feet in width and feet in depth.
 - (c) Minimum yard dimensions shall be as follows:
 - (1) Front yard ft.
 - (2) Rear yard ft.
 - (3) Side yards ft. each.
 - (d) No building shall cover more than % of the area of the lot.
 3. Height Regulations.

The maximum permitted building height shall be stories having a height of not more than feet.
- B. Multifamily Residential Area.⁷
 1. Use Regulations.

A building or premises shall be used only for the following purposes:

 - (a) Apartment or apartment hotel.⁸

⁶ If the Land Use Map cannot be recorded with the Declaration of Restrictions, it should be filed with the Map Records. Indicate whether the Land Use Map is attached to the Declaration of Restrictions or appropriate recording information in the Map Records, including date and place of recordation.

⁷ It may be preferable to designate this Use Area as High-Rise Apartments.

⁸ It may be desirable to designate Multiple-Dwelling.

- (b) Church or Temple.
- (c) The of a multistory building may be used for accessory uses primarily for the convenience of the tenants, including but not limited to recreation rooms, nursery schools, day-care centers.
- 2. Parking Regulations.

Off-street parking of not less than sq. ft. per space, exclusive of adequate access shall be provided within each parcel as follows:

 - (a) Residential use area— parking spaces for dwelling units.
 - (b) Church use area— parking space for each seats in the main auditorium.
- 3. Height Regulations.

The maximum permitted building height shall be stories having a maximum height of feet.
- 4. Area Regulations.
 - (a) Principal buildings shall not cover more than% of the lot.
 - (b) Every lot shall have a minimum frontage of ft.
 - (c) The minimum part dimensions shall be as follows:
 - (1) Front yard ft.
 - (2) Rear yard ft.
 - (3) Side yards ft. each.
- 5. Density Regulations.

The maximum permissible dwelling units per net acre shall not exceed
- 6. Residential Floor Area Regulations.

A building shall have the following minimum floor area for each unit, exclusive of hall and service area:

One-bedroom apartment— sq. ft.*
- 7. Recreational Area Regulations.

For each dwelling unit with an area in excess of sq. ft., there shall be provided an outdoor recreation space with an area of not less than sq. ft.

C. Commercial Area.

1. Use Regulations.

A building or premises shall be used only for the following purposes:

- (a) Retail store, including incidental manufacturing or processing of goods or products for retail sale on the premises only;
- (b) Personal and business service facility, including but not limited to barber shop, beauty shop, photographer, tailor shop;
- (c) Theatre and private club;

*Indicate appropriate square footage requirements for the various type and size of apartment units.

- (d) Food service facility, including but not limited to restaurant, bakery;
 - (e) Office, including but not limited to business, professional, clinic, bank, public utility or government use;
 - (f) Storage garage for vehicles and goods;
 - (g) Accessory building or use customarily incident to the above uses;
 - (h) Gasoline service station, subject to the following regulations:
 - (1) The storage of material, stock, equipment, and auto repairs and servicing shall be permitted only within an enclosed building;
 - (2) Gas pumps shall be located a minimum of feet from any street line and a minimum of feet from any property line (other than the street line);
 - (3) No outdoor display of vehicle parts and used and dismantled vehicles shall be allowed.
2. **Parking and Loading Regulations.**
- (a) Off-street parking of not less than sq. ft. per space, exclusive of adequate access, shall be provided for each sq. ft. of ground floor area, as follows:
 - (1) Office use—one parking space for each sq. ft. of floor area,
 - (2) All other uses—one parking space for each sq. ft. of floor area.
 - (b) Off-street truck loading facilities—one loading space, of not less than sq. ft., for each sq. ft. of gross floor area.
3. **Height Regulations.**
- No building shall exceed stories or feet in height.
4. **Area Regulations**
- (a) No building or group of buildings shall cover more than% of the area of any such lot.
 - (b) The minimum required yard dimensions shall be as follows:
 - (1) Front yard
 - (2) Rear yard—no requirement, except that there shall be a minimum required space of feet if the lot abuts or adjoins residential property.
 - (3) Two side yards—one on each side of the building, having a combined width of not less than feet, provided that one side yard shall be not less than feet in width.
5. **Sign Regulations.**
- (a) Signs shall be permitted only under the following regulations:
 - (1) Signs applied to the wall of any building fronting on a street shall not have an area in square feet which is greater than twice the frontage of the building in lineal feet, nor shall such sign project more than inches from the wall.

- (b) No billboard and nonaccessory signs shall be permitted and the sign may only advertise activities conducted, goods or services sold on the premises.
- (c) No sign shall project over the building lot line.
- (d) No sign shall be illuminated unless the source of light is steady and shielded.
- (e) No sign shall be greater than feet above the level of the curb.

D. Industrial Area.

1. Use Regulations.

A building or premises shall be used only for the following purposes:

- (a) Any manufacturing, processing, warehousing, wholesaling, or distributor activity, which is not objectionable to the adjacent property because of the emission of dust, odors, smoke, gas, or noise.
- (b) Repair shop.
- (c) Truck terminal.
- (d) Retail store or food service establishment, primarily serving the industrial area.
- (e) Gasoline service station.

2. Parking and Loading Regulations.

- (a) Off-street parking of not less than sq. ft. per space, exclusive of adequate access, shall be provided as follows:
 - (1) Storage establishments—one space for each sq. ft. of gross building floor area.
 - (2) All other uses—one space for each sq. ft. of gross building floor area on the lot.
- (b) Off-street truck loading facilities—one loading space, of not less than sq. ft. for each sq. ft. of gross floor area.

3. Height Regulations.

No building shall exceed stories or feet in height.

4. Area Regulations.

- (a) No building or group of buildings shall cover more than % of the area of any such lot.
- (b) Minimum required yard dimensions shall be as follows:
 - (1) Front yard feet.
 - (2) Rear yard and side yards—no requirement except that there shall be a minimum required space of feet if the lot abuts or adjoins residential property or a street bordering residential property.

5. Other Regulations.

- (a) All uses including storage of material and equipment shall be carried on in fully enclosed buildings.
- (b) Only oil, gas, or electricity shall be used as fuel.
- (c) No smoke, gas, dust, fumes, odors, radiation, or any other atmospheric or water pollutant shall be disseminated beyond
- (d) Uses which constitute a fire explosion or other physical hazard or which would cause the discharge of harmful waste shall be prohibited.
- (e) If a lot abuts or adjoins residential property or a street bordering residential property¹⁰ at least feet in height shall be¹¹ to screen off the industrial property.

E. Institutional and Public Use Areas.

1. Use Regulations.

A building or premises shall be used only for the following purposes:

- (a) Schools and colleges, both public and private.
- (b) Parks, playgrounds and accessory uses.
- (c) Other public and semi-public uses.

2. Area Regulations.

- (a) No building or group of buildings shall cover more than% of the area of any such lot.
- (b) The minimum required yard dimensions shall be as follows:
 - (1) Front yard sq. ft.
 - (2) Rear yard and side yards—no requirement except that there shall be a minimum required space of feet if the lot abuts or adjoins residential property.

3. Parking and Loading Regulations.

Adequate off-street parking and loading facilities shall be provided.

4. Alternate Use Regulations.

In the event that any parcel of land designated for Institutional and Public Use shall not be used in such fashion or such use is abandoned prior to the expiration of the period of use specified under section VI hereof, then that parcel of land shall be subject to the regulations and controls applying to the Use Area in which it is located.¹²

V. Nondiscrimination.

Neither the original purchaser nor lessee nor any successor in interest of any of the Project Area shall effect or execute any covenant, agreement, lease,

¹⁰ It may be desirable to provide for a masonry wall, shrubs, evergreen trees, etc.

¹¹ Indicate whether the appropriate screening is to be constructed, planted, maintained, etc.

¹² For example, a parcel of land which is situated within a Commercial Use Area shall be subject to the regulations and controls applicable to a Commercial Use Area which are contained in section IV(C) of the Declaration of Restrictions.

conveyance, or other instrument restricting the sale, lease, occupancy, or use of any such property upon the basis of race, religion, color, or national origin.

VI. Duration.

This instrument shall be in force and effect and the restrictions herein shall be enforceable against the property in the Project Area until, at which time said restrictions shall automatically terminate.¹³

VII. Enforcement.

The Agency shall be a beneficiary of all the restrictions, regulations, and controls in this Declaration and shall be entitled to represent and act on behalf of the City and community in enforcing the restrictions, regulations, and controls provided for herein.

VIII. Amendment.

The provisions of this instrument may be modified or changed only by formal written amendment duly approved and adopted by¹⁴ or by any Public Authority duly designated by the governing body of the City to act in such capacity.¹⁵

¹³ The applicable period of time should coincide with the provision in the Urban Renewal Plan. It may be desirable to indicate the duration by the date of expiration rather than the length of time.

¹⁴ Indicate appropriate name of the Local Public Agency.

¹⁵ Provision may be included in the Urban Renewal Plan that in the event that an Amendment to the Plan will adversely affect any property within the Project Area, the written consent of the owner of such property shall also be required.