

CITY EFFECTIVENESS IN INITIATING AND  
PLANNING URBAN DEVELOPMENT  
THE WELFARE ISLAND DEVELOPMENT

by

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## ABSTRACT

City Effectiveness in Initiating and  
Controlling Urban Development  
The Welfare Island Development

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Submitted to the Department of Urban Studies and Planning in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

Cities today are searching for better and more effective tools to use in shaping and controlling development. Historically, cities have played a passive role, usually allowing development to take place at the developer's initiative, rather than actively initiating, planning and pursuing development to meet its own perceived needs and goals. Only under urban renewal have serious attempts even been made by cities to plan and control large-scale development and for the most part these attempts have not been totally successful. This thesis challenges the traditional belief that cities cannot be successful in the initiation, planning and control of major large-scale development.

Based on this Welfare Island case study, it has been demonstrated that cities are indeed capable of taking on this new role, and with a good understanding of the development process and wise-decision-making, can achieve their development goals and objectives with a minimum risk and burden to themselves, a viable alternative to haphazard and uncoordinated development.

In order to determine if the City was indeed able to effectively plan and control the development of Welfare Island, several crucial decisions will be carefully examined. Only by looking at its ability to plan and control development through the decision-making process can a thorough understanding of the difficulties and constraints facing the City be truly appreciated. The first crucial decision to be examined was what to do with Welfare Island: a prerequisite decision entailing a determination by the City of its goals and objectives for the Island and the City as a whole. The next decision to be examined, once a determination of the program and plan were made, was to determine who should implement the plan; the selection of a developer to insure its accomplishment. The last two decisions, how to transfer the land to the developer, and under what terms the transfer should take place, including the roles and responsibilities of the City and developer during and after the development period, end the crucial decision-making that will guide the development's implementation.

Thesis Supervisors: Philip David, Visiting Professor  
Arthur Solomon, Associate Professor

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The preparation, and writing of this thesis has been a long and seemingly endless process that oftentimes looked as if it might never be finished. That I persevered throughout this process is in itself an achievement and for that

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CHAPTER I  
INTRODUCTION

Cities today are searching for ways in which they can be more effective in planning and controlling development. The desire for new approaches stems from frustrating and bitter experience in the past, and from the often sincere desire on the part of cities to achieve social as well as physical planning objectives. For too long city officials and planners have seemingly stood by while their cities have been divided and parceled out among developers. This passive approach has resulted in helter-skelter construction with minimal concern for the physical and social fabric of the city. <sup>1</sup>.

Instead of planning urban development, cities for the most part have concentrated their efforts in their traditional area of responsibility: planning their public facility infrastructure (streets and roads, water and sewer, schools and libraries, hospitals, fire and police, etc.). Although they have been able to achieve some semblance of planned growth in this area (for often the provision of roads, water, sewer and other facilities are prerequisites for development), their activities hardly justify the appellation, "planning". The placement of such infrastructure oftentimes is determined by developer plans rather than by predetermined city timetables and strategies, and regardless of the importance of infrastructure control, in order to fully achieve the type of social and physical changes in the environment that may better reflect the desires and needs of the city, more effective control over plans for large-scale urban development seems necessary. <sup>2</sup>.

CITY'S PASSIVE ROLE

City officials, planners and urbanists have worked under the pall of general public belief that although their mandate was to control development, they lacked the sophistication and expertise to plan for and actually implement it. The public became used to seeing futuristic proposals that stressed social goals and innovative hardware shelved after appropriate media fanfare. It was accepted as common knowledge that the planners could only plan utopian dreams and could easily be manipulated by the developers who controlled what actually went up. Whether because they lacked confidence in their ability to plan and control development, because their past experience had been so negative, or because they felt hamstrung by legal and institutional constraints, cities generally have been subservient to developer initiatives, often rejecting, modifying, or approving plans, but little else. The actual plans, timing and site locations were more often determined by the developer's marketing and financing considerations than by the city's perceived needs or constraints, and at times, the city may have even felt pressured to change local ordinances if necessary to accommodate development proposals rather than lose out on potential tax revenue, additional employment or needed housing, commerce and industry. As a result of concessions such as these, the feeling was prevalent that if left to the city and its planners, there would be no development, or poor development at best. 3.

Even where city planning initiatives in development were expected such as in the subsidized housing program, actual practice contradicted expectations. The structure of the program encouraged developers to acquire and control sites at their discretion and then apply for subsidized mortgage financing under either the federal, state or sometimes city programs, (as in New York City's case). Under the federal and state programs, as long as no city approvals were necessary (in other words the project conformed to municipal zoning and building codes), cities had no voice in the planning, location, or timing of the development. Only under the city subsidy program was there any degree of control, and even then, for the most part developers merely brought sites to the city for routine approval. Although the city might try to steer development along preconceived guidelines, this policy was not always successful (e.g. the principle of the city's not funding projects in areas where private conventionally-financed fully taxpaying development was feasible. This policy failed as rising construction costs and private lender and developer resistance made it untenable).<sup>4</sup>

Cities have tried, however, despite mixed results, to change the typical developer/city relationship by using a variety of programs, methods and techniques designed to give the city greater control. Although some of these "tools" have been utilized with some degree of effectiveness, they have not provided

cities with the kind of active control over planning development necessary to achieve far-reaching social and physical change. A brief look at some of the more commonly known tools and programs will demonstrate this and will underscore cities' needs for more effective methods.

### REGULATORY TECHNIQUES

#### Building Code

Under the powerful building code control, cities were entrusted with setting minimum standards for regulating the fitness of building plans and construction. <sup>5</sup> This control, however, related only to physical adequacy in terms of promoting health and fire prevention objectives, to the standardization (recently, using performance criteria) of building materials, and to the regulation and creation of minimum standards for construction. The building code was never intended to control actual development, although the harshness or leniency of a code in regard to materials, construction techniques and standards did considerably raise or lower construction costs in given areas relative to surrounding localities, thus indirectly controlling development by making construction so prohibitively costly as to keep development out of certain communities, or so lenient in others that developers were encouraged to build there. Building codes, however, played no role in determining the developer's actual plans and had no major effect on large-scale city social and physical planning objectives. Thus, whatever control cities

may have achieved over large-scale development through the use of building codes was again of a passive rather than an active nature.

### Zoning

The zoning ordinance or code, first widely introduced in the 1920's, is the most common land-use control in the United States and is cited as one of the most effective tools utilized by cities. Besides regulating height, setbacks, frontage, and side and rear-yard requirements (in other words attempting to insure the uniformity of a neighborhood), zoning also generally places limits upon permitted uses and densities (such as the number of certain sized apartments per acre, or standard lot sizes). Aware of zoning constraints of a given area, the developer can then determine plans for his property accordingly. If his plans conform to the locality's zoning, however, or even if they fall far below the zoning maximum permitted and possibly envisaged by the municipality, there is no need for approval, since in most large cities, as long as proposed plans are within the maximum allowances they are examined and approved almost routinely by the city's plan examination unit of the local Department of Buildings, with the Planning Department not even involved in the process. Only if the developer desires to vary in some way from the set maximum must he apply to the City Planning Commission or Zoning Board for a change in the zoning code. <sup>6</sup>. This procedure on the

surface seems to guarantee the city some measure of control over a proposed development. But even this semblance of city control is not always effective since the Board of Standards and Appeals (the developer's next recourse) may override the Planning Commission by waiving some zoning requirement on the basis of various criteria (initially including only physical site constraints, such as unsuitable lot shapes, and only later expanded to include such considerations as economic hardship.) Thus the city's zoning control over proposed development is limited in most instances, with the city able to intervene only when a zoning regulation maximum not minimum is being challenged, and even then, not always successfully.

The city's passive role of "kid-glove intervention" in merely adopting planning and zoning standards and not assuming more forceful control of development stems partially from the artful legal balance between zoning and eminent domain.<sup>7</sup> While zoning has been upheld as a proper use by a locality of its police power (a residual power of the government to pass laws in the interest of the general public's health, safety and welfare), its use must scrupulously avoid any hint of confiscatory or capricious application which courts may interpret as a taking, (or use of eminent domain, a city power which requires compensation be paid to the property owner affected). Thus, a careful line must be drawn to avoid trespass upon the Fifth



Amendment guarantee that no private property can be taken for public use without just compensation and without due process. This careful legal balance together with a prevailing national prairie psychology (described as a "real antagonism toward anyone who presumes to limit a man's right to do as he pleases on his own property") has effectively limited city planning and has made cities dependent upon developer initiatives. <sup>8</sup>.

#### Planned Unit Development and Incentive Zoning

Cities have sometimes had success, not so much in planning development but in controlling development to achieve planning objectives. Planned unit development zoning for large-scale development and innovative incentive zoning begun in New York City are two well publicized programs that have enabled cities to achieve a degree of developer compliance (in allowing the city to examine and review their proposed development plans) by using the carrot of increasing density. <sup>9</sup>.

The planned unit development, for example, offers more liberal density provisions to a developer in return for his agreeing to develop a specified minimum area (thus encouraging private assemblage). The catch to receiving the additional density bonus is the submission of plans and entering into negotiations with the city, an optional process that many prospective developers would rather not undergo, even at the risk of reduced profits. While cities cannot force development to occur using this zoning mechanism, the prospective developer wishing to

avail himself of the increased density must come to the city, allowing the city to react more effectively with this tool than it might otherwise. Depending on the city's negotiating ability, it may be able to significantly influence the development plan, although its traditional posture has more often been one of retreat and compromise to insure a plan that would be acceptable to the developer. <sup>10.</sup>

Where these techniques have worked, clear development pressures were evident. The city has no control, however, over where those pressures may arise, nor over the timing, the actual sites, the sequence of development, or how much of the district ultimately will be redeveloped to match the planner's expectations. Again, the city assumes the passive role while the developer takes the initiative. Even with incentive zoning, developers still have the option (that may be realistically exercised) of ignoring city design review, etc., despite the loss of economic advantages, or the possibility of inflicting "damage" to the environment. <sup>11.</sup> Perhaps the greatest weakness then of incentive zoning is its dependence on shifting market forces that can render incentive zoning impotent, leaving an area only partially redeveloped and making planning for the remainder even more difficult.

Regardless of zoning's questionable effectiveness in regulating or controlling physical elements of a development, it does often indirectly determine the social composition of areas.

In fact, zoning has come under fire most recently from liberal planners and other critics as the prime basis for exclusionary practices, such as barring inner city blacks and the poor from more affluent suburbs. <sup>12</sup>. This control is especially potent where densities are so low as to price land and homes out of reach of certain income groups, or where government subsidies are insufficient or unavailable to counteract such devices as in some higher density areas. <sup>13</sup>. Thus, in this case, physical planning is indirectly a form of social planning, since it relates to the free market the social composition of a development. Even in those cases where private developers have incorporated social concerns into their development plans (as in Radburn in the Borough of Fair Lawn, New Jersey <sup>14</sup>. or where state supported development is built to permit lower middle class families to afford apartment housing in the city, the original social goals and concerns often become subverted.<sup>15</sup>. Physical planning, if linked to government housing programs, can be a form of social planning as well, sometimes leading to homogeneous environments in terms of income or social class, but generally not to heterogeneity or mixing of different groups. (If mixing within buildings occurs it is often low income with moderate, rarely with middle income groups, except in state programs, and almost never with upper middle income groups.<sup>16</sup>.)

There is little control over private development, even if social planning goals also coincide with the financial objectives of the developer. When economic facts are altered, or more

profitable opportunities present themselves, social goals often lose out. The notable exceptions to the rule are the examples of private philanthropic efforts in housing, such as the Lavanburg Foundation or the well known Phipps Houses that helped to coin the term "philanthropy and 5%", to demonstrate that housing for the poor was economically feasible.<sup>17</sup> Where economic return is not the chief determinant, often social objectives are possible.<sup>18</sup>

City involvement in trying to achieve social objectives directly has been more successful at least in one respect-- meeting the target group it was intended to reach through the public housing program. For under this program, regardless of its failures, the city's social goal of providing housing for the poor has been achieved. Public housing is an example of city efforts to achieve clear-cut objectives in both physical and social planning, although the success of the program in many ways has been questioned. Urban renewal is another well known program that has attempted to achieve physical and social planning objectives with similarly questionable results. These programs will be discussed briefly.

#### GOVERNMENTAL PROGRAMS

##### Public Housing

Although under the public housing program, cities planned, initiated and carried out public housing development on land

they owned or acquired, with or without the use of eminent domain, the city's activity in public housing began largely because the private developer abandoned this segment of the market and because of the Congressional conclusion that the private housing market generally could not provide decent housing at affordable levels for the urban poor. <sup>19</sup>. Thus, rather than serving as a model of city initiative and effectiveness in planning development, this city involvement in public housing was more representative of "negative" or last resort planning for society's disenfranchised, the poor, with the local city public housing authorities filling the void left in the market by a lack of developer initiative in this area. <sup>20</sup>.

While public housing may be a valid test of the city's development capability, it is certainly no measure of its ability to plan and develop livable environments, and if it is considered such a test, the city has certainly failed. The city's success in the actual building of public housing can be questioned as well (critics contend that New York City for example has not produced all the public housing it could, and has lost federal housing funds in the process), with its entrance into the public housing field more a response to considerable federal and state financial enticements than a product of its own initiative in the area. Even with these huge financial enticements to attract city participation,

however, many still have not and others were slow to get involved.

The public housing program, however, with all its imperfections, did offer cities a chance to plan and control development. Many cities did fulfill their mandate to build housing for low income residents,<sup>21</sup> although never in the numbers needed or anticipated or in the original form intended. Many cities found that they could never rise above the program's inherent limitations and consequently could not control the creation of livable environments.<sup>22</sup> The program, more than anything else, has provided fodder for the widespread disbelief in the city's ability to plan large-scale development, and has had the effect of frightening some cities from wielding their development capabilities in ways more consistent with their social and physical planning objectives.

### Urban Renewal

Perhaps urban renewal is the only program in which cities did play an active role in formulating and facilitating multi-use development plans, although as in the public housing program, it was always under federal and/or state tutelage, with huge financial enticements to encourage city participation. Despite these lures, the urban renewal program often had disastrous impact upon cities, many times resulting in severe social and economic dislocations as well as in destruction of neighborhoods, while producing only questionable economic benefits.<sup>23</sup>

The record of city redevelopment authorities in terms of having their own plans implemented as the program initially intended, has generally been only partially successful. Harold Kaplan clearly documents in his work on urban renewal that the redevelopers controlled actual development and that redevelopment plans by and large were not carried out as the city had originally formulated. <sup>24</sup>. Not only was the physical program of the redevelopment authority altered, but developers rather than the city were able to control by indirection the social mix, as only the choicest sites were developed for high income housing with the worst sites relegated for public housing. <sup>25</sup>.

Aside from the minimal control cities had over urban renewal plans, experience has also proven the program to be an expensive and lengthy one as well. Rarely were the initial plans able to meet or given the chance to meet the acid real world test of economic viability, developer interest and political acceptability. Even if the plans survived initial feasibility studies and were implemented, the time span from conceptualization to completion of development took years--the average urban renewal project taking over twelve years to complete.

Even in the "successful" urban renewal areas, the cities generally folded in, if not at Washington's request then to developer pressures, sometimes making great concessions in plan concept in order to entice and keep developers. Many were unsuccessful at attracting developers at all and even if they did,

experienced long planning and development delays. For whatever reason, cities rarely seized initiatives and dealt effectively with the development community in seeing through their plans.

The experience of the urban renewal program of the 1950's and 60's with its concomitant dislocation and social upheaval has had a chilling effect upon the public's confidence in cities' abilities to carry off urban development. Whether or not one agrees with the benefits derived from urban renewal, substantial human costs incurred cannot be qualified, and it is difficult to determine any policy useful cost-benefit analysis. Nevertheless, the weight of evidence seems to indicate that the benefits to some extent have been illusory.

However disquieting it may be for urban policy makers, they must come to the conclusion that cities have been ineffective in initiating and planning development. In some instances, their ineffectiveness has been due to the passive role they have assumed in the development process, while in others where they have ventured into promoting, facilitating and actually undertaking development (as in the public housing and urban renewal programs), the results have also been far from satisfactory, despite significant federal and/or state financial incentives.

By allowing development to occur at outside initiatives for the most part, cities have lost numerous chances to actively initiate, plan and pursue development in accordance with their own perceived goals and needs. Regardless of what those goals and



needs are, whether they be to improve the lot of the urban poor, reverse urban decline and the flight of the middle class, better coordinate new development with the city's comprehensive plan, or even improve the city's attractiveness, they all ultimately lead to the creation of a better livable environment for the city's present and future inhabitants. If cities are to begin achieving some of their goals, they cannot afford to remain passive and impotent in the face of developer initiatives. If cities want to be more effective in planning and controlling development, they must, in addition to sharpening their existing tools, develop new and better techniques and approaches. They must take a more active role in initiating and facilitating development consonant with the city's interests (more so now given changing federal priorities), and strive to overcome legal, political and development constraints that have historically hobbled them.

Perhaps the negative experiences cities have already had in development are reason enough for cities to take a sober hard look before jumping headlong into any policies that would require their more active participation. City involvement has become synonymous with long drawn out planning and development periods and all too often with unsuccessful plans. As the city considers new approaches, it must carefully assess the feasible limits of its role. Not having expertise or knowledge of the development process, and unable to assume the financial and entrepreneurial risks and burdens involved, cities are reluctant to undertake

development themselves and may only consider doing so as a last resort. To do so, however, would mean supplanting the successful entrepreneurial developers that have proven their abilities and willingness to assume the risks and burdens of their role. It is the city's role and responsibility on the other hand, to maximize benefits to the city in terms of achieving its own goals and objectives, rather than allowing developers to proceed at their own initiative and possibly contrary to the city's best interests.

With the urban renewal and housing programs now halted, cities are faced with perhaps the greatest challenge they have ever encountered in this sphere. No longer able to rely on federal and state financial enticements, cities will not only have to deploy already scarce resources into the area of housing and related services, but at the same time they will also have to develop greater expertise and more effective control over urban development than they were able to do in the past even with outside financial assistance (as evidenced in the preceding brief review)--for cities must somehow continue to rebuild and while rebuilding is taking place, cities must plan and control the rebuilding effort if they are to achieve social and physical planning objectives.

The thrust of this thesis is not to suggest a wide range of alternatives to the traditional methods and tools that have been utilized by cities towards this end, but rather to suggest that cities can change the perception of their role in development and can develop the ability not only to conceptualize and

prepare development plans, but also to facilitate and see that development is carried out according to those plans, with minimal risk and financial burden to themselves. In order to examine this thesis, the case study method has been utilized; an example of one city's deliberate attempt to initiate and plan development is the focus of this investigation. Given the already-stated importance of cities' efforts to control urban development, and given their unsuccessful track record in this area, any notable effort to reverse this traditional ineffectiveness is worthy of attention and thorough examination.

#### The Welfare Island Development

The development of Welfare Island, an isolated and weed-infested strip of land in the middle of New York's East River is a major new town-in-town undertaking. The fact that the development plan arrived at for this Island new town is extremely ambitious in terms of its physical and social objectives and that this new community is being built in the center of one of the world's great metropolitan areas, makes Welfare Island one of the most unique and difficult new town undertakings anywhere.

Most importantly, however, Welfare Island seems to be an example of a development conceptualized, planned and facilitated by New York City. Although the Island has been under City ownership for well over a century, its history has been one of neglect and underutilization; this despite the fact that New York

is one of the densest and most populous of cities and most certainly could have utilized any available land for development. The Island's physical closeness yet isolated access preserved this anachronism. Only when mass transit plans to the Island were developed in the 1960's did serious consideration of large-scale development for the Island reach fruition. Once the city had made the decision to develop the Island, however, it was intent on doing so in a manner that would allow it to initiate and carry out its own plans and objectives with minimum risk and burden to itself. The fact that the development is even off the ground and is proceeding according to the city's envisioned plans, already sets it apart from many of the city's previous unsuccessful attempts at planning and controlling development. For this reason, Welfare Island may be an example of a city overcoming its past ineffectiveness while trying to exploit development opportunities in order to achieve the city's perceived goals and objectives, and if so may serve as an important model. For if such a complex project can be successfully orchestrated by New York City, other cities may similarly succeed.

The chapters that follow will describe and analyze the conceptualization and planning stages of development on Welfare Island, with the main question being whether the City of New York was indeed effective in planning and controlling the early phases of the development, and whether its own perceived goals

and objectives were achieved in the process. (Because the development is still incomplete, this study will not attempt to look beyond the land transfer and development negotiations that preceded the actual beginning of construction.) Several crucial decisions will also be carefully examined in this context in order to determine how well the City understood and utilized the development process to its own advantage.

The seven major decisions are: 1) the decision to develop Welfare Island; 2) the identification of the City's goals and objectives-prerequisites for (1); 3) the determination of how best to implement "the decision to develop"--the creation of a "blue-ribbon" committee; 4) the determination of the program and plan; 5) selection of a developer; 6) best means for land disposition; and 7) determination of the roles and responsibilities of the City and developer during and after the development period--the terms of the land transfer. Each one of these crucial decisions was a step in the development process leading towards the achievement of the City's goals and objectives.

Welfare Island takes on general importance as many cities have similarly underutilized land within their boundaries. Cities desirous of achieving social and physical planning objectives have a responsibility to salvage whatever developable land is left before the land is developed by private interests

as has been done in the past in an uncoordinated fashion, often meeting their short term financial interests but not necessarily the city's. Welfare Island demonstrates a city planning responsiveness to what may be the last frontiers of urban growth, the underutilized land often found within metropolitan areas, bypassed for sundry reasons, but now once again rediscovered (through changes in transit patterns or other improvements suddenly making forgotten land desirable). These important new land resources mark perhaps the last major opportunity for cities to demonstrate their abilities to achieve social and physical planning objectives on a fairly large scale. Cities can initiate these developments along the lines they desire, or as in the past, private developers can seize these opportunities for private gain generally without regard to public goals and objectives.

Even if such a project is not applicable to some cities, or if for instance they are unable to aggregate sufficient quantity or quality of land for urban development, the approach utilized and the practical lessons learned can nevertheless be useful when applied to planning and development problems elsewhere. The Welfare Island development provides a case study demonstrating how the development planning process operates, thus facilitating a better understanding of this process by cities and their planners. As an understanding of urban renewal was important to cities in the 1950's and 1960's, the

understanding of how to utilize and leverage strategically located and usable land to achieve city goals and objectives may become the challenge of the 1970's.

One major purpose of this research is to focus in on how the new breed of development planner must operate if he is to take on new development initiatives and achieve his goals and objectives. How can he utilize his planning tools more effectively; increase his understanding of the roles and needs of other parties involved (public or private developer and lender), an essential component in implementing successful development and in increasing his bargaining effectiveness; and finally, how can he understand and utilize leverage points to the fullest as bargaining chips and as a means of achieving identifiable objectives?

For planners by and large have not been trained to understand development. A new type of planner able to operate effectively in the world of development is necessary.

...the planner must be a professional of a totally new breed. He must be a development planner. He must see the big picture and anticipate the year 2050...He must see the region and the city as a whole, but he must be able to produce, not land use, but development plans. He must understand fully the preconditions necessary for successful development, its economic and technical requirements and its political context. Above all, he must have a highly developed sense of priorities as they affect the welfare of people...26.

For if planners can understand the development process in its fluid financial and market sense, this understanding will increase their effective control over their traditional tools as well, and they will be able to have far more leverage in achieving urban policy goals.

The Welfare Island planning development process demonstrates a much more aggressive and assertive posture on the part of the public sector. Should the Welfare Island plan be carried out fully, it would mark a major demonstration of the advantages of public sector intervention in large-scale development through the leverage and bargaining position achieved by public ownership of strategically located land. It also would demonstrate the advantages of utilizing public development corporations as development instrumentalities, thus reducing risk for the city substantially while at the same time providing responsiveness to urban concerns. The role of public developers is sure to increase: they will assist cities in achieving often common objectives leading to a better livable urban environment for all the city's residents; while at the same time filling the void left by the private developer unwilling to share with cities the risk of development without certainty of project success.

If private developers are to play a major role and achieve their own financial objectives, they will have to be more sensitive to the concerns of cities and their planners; they must respond to city or town needs or face their plans being



disapproved or losing out to more amenable competition. If the achievement of social objectives is possible, then this city initiative may also serve as a catalyst, encouraging the private sector to develop land elsewhere in a fashion both socially and physically desirable from the city's viewpoint.

The consequent creation of a better planned and controlled city growth pattern may also lead to renewed investor confidence and increasingly more development activity along desired lines. Overcoming doubts as to the city's long range economic and physical vitality may have the added benefit of encouraging new construction in areas of the city that might not otherwise have been developed. This catalytic approach displays a sophistication and pragmatism that urbanists must possess in order to move cities towards meeting today's fiscal and political imperatives.

CHAPTER II

WELFARE ISLAND COMES OF AGE

Welfare Island has been called by some the most underutilized island and possibly the most expensive wasteland in the world.<sup>1</sup> Only two miles long and 800 feet wide (at the widest point), this long sliver of land sits in the middle of the East River 800 feet from Manhattan and only 600 feet from Queens, helping to support the mammoth Queensboro Bridge. The Island has spectacular views of Manhattan's posh East Side skyline, extending in length from the United Nations to fashionable Beekman and Sutton Places and to Gracie Mansion further north. Yet despite its locational advantages, Welfare Island, with its long history as a repository for society's outcasts, has been in a bucolic state of disrepair, decline and isolation for many years. Weed-infested and dotted with decaying buildings of a previous era, the Island has almost the air of a ghost-town, with the exception of the two functioning hospitals for the chronically ill at either end and the fire training school (that literally sparks to life every so often as the City's newest batch of firemen spring into action to extinguish simulated blazes, often to the surprise of motorists on the nearby East River Drive), all of which occupy only fifty-seven of the Island's 147 acres.

Prior to the current development scheme, this island, in the midst of one of the densest and most populous cities in the world, was only marginally utilized. Ownership changed hands a number of times over several hundred years, with the Island initially used as a farm and later as a country estate.<sup>2</sup> After 1828, however, when New York City finally purchased the Island, then known as the Blackwell Estate, almshouses, correctional institutions, chronic care hospitals, and rare disease treatment and research facilities came to be its primary tenants. In fact, realizing its obligation to provide such institutions, New York bought the Island especially for that purpose, as it seemed an ideal location in which to keep social outcasts--whether prisoners, lunatics, paupers, lepers or tuberculars--away from the mainstream of society.

#### The Welfare Island Development

Suddenly in 1969, after more than 140 years of City ownership, the Island has become the site of full-scale activity and development. A unique new town is being built, a town offering New York City much-needed housing and open space, and more importantly, transforming the Island's 147 acres from an underutilized isolated island of specialized institutions to a town which will eventually house 5000 families of all economic strata. These families will

potentially be part of a unique living alternative in the heart of New York City, that is, if all goes according to the plans of its sponsor, the Welfare Island Development Corporation, a subsidiary of New York's innovative State Urban Development Corporation. The Roosevelt Island new community, as it has recently been renamed, (previously known as Welfare or Blackwell's Island, as well as a host of lesser known names<sup>3</sup>) is an attempt to create a prototype for urban living in New York. The design plan, influenced strongly by site constraints and making the most of the Island's elongated shape and spectacular views of Manhattan and the river, concentrates development along one main spine, Main Street, and allows for large open spaces, exotic parks and the preservation of historic landmarks. Two pre-existing functioning institutions are being retained as links to the past: Bird S. Coler and Goldwater Memorial Hospitals, at opposite ends of the Island.

The Island development plan is unique in that it will attempt to provide innovative solutions to every sphere of urban life. This ambition is demonstrated in many areas, one of the most prominent being the new town's commitment to mass transit, translated into a strict limitation on the use of automobiles on the Island and substitution of a mini-transit system which will shuttle residents to and from the motorgate parking areas to be located at

the foot of the bridge connecting the Island to Queens. To meet the anticipated social and educational needs of future residents, the development plans call for a dispersed school system throughout the Island as well as for a network of day care centers. Perhaps most innovative of all, however, is the proposed economic integration of different income groups that will live in close proximity on the Island. Roosevelt Island is not intended as a new community for the rich alone, but rather as an economically integrated development of various income strata with possibilities of social and economic mixing left open. The total success of this unconventional development hinges as much on the acceptability of many of these innovations, especially the restrictive means of transport and economic mixing scheme, as on exogenous factors such as timely completion of the subway and/or other suitable transport from Manhattan.

That a new community is going up in New York City is in itself remarkable. But even more remarkable is the fact that this new community is being built on underutilized almost vacant land in the midst of the most populous metropolis in North America, a city where land is the scarcest of commodities and at a premium if it can be found at all. Furthermore, the first 2000 units of housing are going up just opposite the stellar heights of the United Nations and only 700 feet away from the most fashionable

and plush residential neighborhoods in the world, New York's Upper East Side, with land values in excess of \$200 a square foot.<sup>4</sup> In a city literally bursting at its seams for lebensraum, it is hard to imagine how this or any other land so close to Manhattan and such a potential candidate for meeting any of the City's urgent needs (i.e., housing, commercial or industrial uses) was not developed earlier. For unlike traditional urban redevelopment of the 1950's and 1960's, this new development, so close to the throbbing metropolis, is not removing people or businesses, not destroying family life or ethnic and neighborhood ties. The poor are not being thrown out in order to make room for the rich, as in other renewal areas where renewal moved relentlessly to bring back the middle classes and reverse the tide of "creeping urban blight". The development of this island has never been faced with the advance hostility that has traditionally hindered the political acceptability of redevelopment and consequently, the provision of decent and safe housing as contemplated under the Housing Act of 1949 and by the legislative intent of Title I.

To understand why this land was not fully utilized earlier and why it was suddenly considered ripe for current development, it is important to look at the four major factors that were responsible for this historic marginality of use, and conversely, how these factors have changed in such a way that the City has finally decided to make the Island

live up to its full potential.

The Island's previous underutilization cannot be easily explained. There was certainly no lack of development entrepreneurs, sufficient capital, financing, or an adequate market, as can readily be attested to by the level of development in the surrounding areas. Likewise, although size and shape are significant constraints for any development, especially so for Welfare Island which is rather small and awkwardly shaped, these physical characteristics have not deterred the Island from being used successfully for numerous purposes in the past.

The four factors that played a prominent role in the Island's previous underutilization are: 1) pattern of growth, 2) institutional character, 3) access, and to a lesser extent, 4) political climate. These factors have all been instrumental in successively deterring and abetting the the Island's transformation.

#### GROWTH

Perhaps looking at the Island in the context of the growth of New York City itself is central in understanding why this island remained comparatively fallow for so many years, bypassed in the normal chain of development.

With a population of just under eight million, New York City is the most populous city in North America. People,



however, generally think of Manhattan when they think of New York, despite the fact that Manhattan with 1,600,000 people contains only one-fifth of the City's population on its 22.7 square miles. Welfare Island, on the other hand, while considered a part of Manhattan's area, constitutes only a scant one-quarter square mile (or 147 acres), with ninety acres unused entirely prior to current construction. Its population of 3,400 was composed primarily of hospital patients, comprising a density of only twenty-three persons per acre for the entire island; this compared to a density of 110 persons per acre for Manhattan as a whole. An extrapolation of Manhattan's density to the Island would set the Island's population at a little over 16,000, while a comparison of the Island to the employment population of the Central Business District alone would bring it closer to 60,000 people.

Prior to the City's purchase of Welfare Island in 1828, there was little or no pressure for its development. The main segment of the City's population was located below Canal Street, with the area to the north (including Welfare Island) still primarily agricultural. When private entrepreneurial activity did begin to move in all directions from the core of Manhattan, (especially after 1860 when the advent of steam ferry and rail transport moved development northeastward in the direction of Welfare Island), the Island was already identified with institutional uses and with the City itself as the owner of the land.<sup>5</sup> These two factors

precluded private entrepreneurial activity from the Island even when development pressures reached the northern area, perhaps helping to explain how development skipped over Welfare Island eastward, at least in the early stages of New York City's growth.

#### INSTITUTIONAL CHARACTER

Even into the 1900's, Welfare Island was strongly associated with institutional uses of one kind or another (hence the name, Welfare). The City had purchased it initially to fulfill certain institutional needs and as those needs changed over the years from charitable to correctional and finally to medical ones, so did the nature of the institutions found on the Island--the City's ad hoc response to the needs it perceived at the moment. City uses became firmly entrenched, seemingly even solidified as the years went by, and the Island began to achieve the almost self-fulfilling prophecy of being suitable only for institutional use. The continual needs of the City and consequent changing uses of the Island created a momentum and force that seemed to stamp the Island with an almost irreversible character (whether or not this was the City's intent) and to preclude any serious contemplation of other uses. Only when the many hospitals on the Island began to relocate to the "mainland" leaving the Island in a state of disrepair and abandonment, did the Lindsay Administration seriously begin to

review alternative development options for the Island.

### ACCESS

The problem of access to Welfare Island has played a major role in its delayed development. The usefulness of any location is of course determined by numerous factors, but generally, accessibility is the one factor that all high intensive use locations have in common. The greater the access, the higher the correlation there seems to be with more intensive development.<sup>6</sup> The problem of accessibility is even more acute for an island, having limited means of approach.

Until 1956, when the Welfare Island bridge from Queens was completed, boat and ferry were the major means of access, although in 1918 an elevator storehouse connecting the Island to the Queensboro Bridge (also known as the 59th Street Bridge) helped to lessen dependency on water transportation. Rapid transit, the umbilical cord tying all of New York City together, was never extended to Welfare Island, despite the presence beneath it of two tunnels carrying four subway lines. Access shafts and station provision for Welfare Island were ruled out, primarily because construction costs would have been excessive and because it was considered undesirable and unsafe to build stations on grades steeper than one percent.<sup>7</sup> (The two tunnels are at 4.2 and 1.8 percent, respectively.) In addition, it was the feeling of traffic planners that the lines had all the capacity they

could handle during peak hours without the added capacity a new subway stop would bring. As long as the Island continued to have poor access characteristics, however, no major development could take place.<sup>8</sup>

With the rise in the poshness of the East Side's First Avenue area in the 1950's<sup>9</sup> and its resultant extraordinary land values, the City and private individuals began to give thought to the possibility of extending East Side land values to this slice of land, Welfare Island, administratively considered a part of Manhattan. Numerous proposals were developed in the 1950's and 1960's, but only with the decision to provide rapid transportation did the Island actually become feasible for development. On February 16, 1965, the City's Transit Authority announced plans to construct a subway station on Welfare Island as part of a new \$28 million subway tunnel from 63rd Street in Manhattan to Long Island City, Queens (designed to take pressure off already overloaded transit lines), a move that would put Welfare Island within ten minutes access time to mid-town, access superior to that of the outer-boroughs and even to some parts of Manhattan.

The announcement of plans to construct a station was made amid a backdrop of numerous development proposals for the Island and intensified interest by City officials. The subway announcement, however, was far from a firm commitment, and despite the effusiveness of the Transit Chairman, it

would take several years before the plan would become a reality. Nevertheless, the announcement of the plan provided the conditions necessary for the City to begin a serious review of the Island's development future.

#### POLITICAL CLIMATE

The Island also seemed ripe for development politically. Urban redevelopment in the 1950's and 60's had clearly become a political liability. In fact, after a thorough review of its renewal and housing programs<sup>10</sup>, in 1966, The City of New York decided to change its policy rather drastically from large-scale clearance to "vest-pocket housing", using vacant or underutilized sites in existing neighborhoods (endearingly referred to by housing officials as "Hazen's Gas Stations"<sup>11</sup>), while at the same time stressing the controlled development of larger vacant or underutilized sites of land elsewhere in the City.<sup>12</sup> Welfare Island was such a site, representing a development opportunity that would not force dislocation of anyone or anything unlike politically controversial urban renewal clearance. That fact alone would garner the City political credit from threatened communities and their representatives, especially the poor and minorities who made up thirty percent of the Mayor's constituency and who were most often renewal's victims. Also, given the City's many pressing needs--i.e., housing, open space, jobs and increased municipal revenues,

to name but a few, it was more dangerous politically for the Administration to continue ignoring the Island than to develop it, even if that development would only go a short way towards meeting some of those urgent needs.

These considerations alone made the project enormously popular with the Mayor, but its high visibility off the East Side and the United Nations made it all the more attractive. In fact, the Island's state of decrepit disrepair had become a liability, requiring some action lest it tarnish the Administration's desired image of improving the City. If the Mayor could produce a plan that would demonstrate his commitment to good design and architecture, it would not only win the approval of his prime constituency, the affluent liberal Manhattanites, but would also enhance the Mayor's prestige and political credit and in addition, serve as a highly visible monument to himself, a lasting legacy to his administration.

Perhaps the very nature of the Lindsay Administration also played a part in the political decision to develop the Island. Unlike his cautious predecessor, Mayor Lindsay represented change in every way, from his attempts at improving the physical facade of the City to his introduction of new techniques and innovative approaches into City operations, all in an attempt to provide more effective government control.<sup>13</sup> An innovative new development plan for Welfare Island would mesh well with this creative image,

especially if the City were to initiate and maintain control over the project rather than leave it to private interests alone. It would also serve to combat charges against the Lindsay Administration that it had not only reneged on campaign promises to increase housing production, but had actually fallen behind the production level of the previous administration. In every sense, then, the Mayor had nothing to lose and almost everything to gain by pushing for development of the Island.

Thus, the newly announced transit link, together with the declining institutional character of the Island, its general state of disrepair and abandonment, the City's various pressing needs and a favorable political climate all combined to indicate a readiness for development. Clearly, too, the political credit to be achieved by the City for initiating and controlling any development on the underutilized Island would far outweigh any possible disadvantages. Thus, the decision to develop Welfare Island was a conscious decisive attempt on the part of the City to come to grips with the City's needs and to initiate development itself, rather than merely react to outside initiatives. Having taken this decisive step, it remained to be seen how effective the City would indeed be in controlling development on the Island towards achieving the City's perceived goals and objectives, objectives which were still in the process

of being defined.

### GOALS AND OBJECTIVES

The Mayor's development objectives for the Island often seemed to be shaped and reflected by his alter ego in the development sphere, Jason Nathan. As the Housing and Development Administrator and as a man closely associated with Lindsay's style, Nathan shared Lindsay's vision for the Island. In a televised interview shortly after taking office, Nathan spoke about opportunity poles of virtually unused pieces of land . . . one, but a stone's throw away from midtown Manhattan, was probably the most expensive land in "America".<sup>14</sup> Referring to Welfare Island, he felt it could be the "jewel in the crown", but also one of the most complex problems.

Nathan envisioned an exciting, innovative and creative approach to development of the Island. He wanted to see the Island as a complement to the City and its problems and therefore felt that the ultimate solution had to be one of lasting social significance, breaking with traditional methods and norms. Mayor Lindsay shared his enthusiasm, although as Nathan commented: "He was extremely interested in the development of the Island for his own ego and the City's. Both were legitimate, both had to be recognized."<sup>15</sup>

Both the Mayor and Nathan expressed little



patience with the proposal that suggested building a park on most of the available land, feeling that the Island was large enough to support several uses, not just that one. For the same reason, they were not wedded to housing as the final and sole solution, regardless of the feelings of many (William Diamond, Assistant Administrator of HDA for special programs, in particular) to the contrary. Nathan continuously stressed that his organization was the Housing and Development Administration and therefore was not dedicated to housing alone.<sup>16</sup> Although concerned with the number of housing units produced, the Mayor and Nathan were more concerned with providing quality housing in a quality environment. They foresaw an end result possibly combining housing and recreational schemes, or even some combination unthought of as yet--as long as that alternative fulfilled the social significance criterion.

Although a major goal clearly was to see any Welfare Island plan implemented outside of the City Capital Budget with private development and financing playing a major role, Nathan would not accede to giving up New York City's "birthright" to private development. He felt the City should first make the basic decision on how the Island should be used and only then bring in private or outside interests to act as agents for implementing the Island's development under some kind of continuing City

control. The City, then, would remain the principle party in determining the future of the Island.<sup>17</sup>

The determination of goals and objectives is not always a simple process for many objectives may be unarticulated or assumed to be givens (yet still remain very much a part of City operational policy) while others may be more emphatic and enunciated. Regardless of how goals and objectives are arrived at, they must be clearly defined before effective action can be taken towards achieving them. Basically, the City's goals and objectives for Welfare Island can be separated into four main categories: 1) financial; 2) political; 3) social; and 4) physical. A fifth overall operational objective, control, was seen as essential to achieving the others.

#### FINANCIAL

1. Minimizing Capital Expenditures. The City's major financial objective was to avoid using the City's overburdened debt limit wherever possible by attempting to implement all Welfare Island plans outside of the City's Capital Budget.<sup>18</sup> Not only was the budget already at a breaking point due to the high number of projects across the City vying for priority, but also the task of obtaining City appropriations for such a major expenditure was a lengthy and complicated process, one that required approval of line item by line item and that often resulted in considerable project delay and

political "haggling". In addition, since any substantial capital outlay was also bound to be controversial, the chances of the Mayor's project even passing the Democratically-controlled Board of Estimate were dubious, especially since the City was barely operating with the two percent State constitutionally-imposed debt limit for housing (two percent of total assessed real estate valuation in the City) and was already frantically trying to devise ways of circumventing that limit as much as possible.<sup>19</sup> The ten percent debt limit for all capital expenditures was also strained and the City would therefore attempt to limit its burden of building improvements and infrastructure.

2. Minimizing Financial Risk. The City wanted to assume as little of the financial risk and burden of development as possible. In the past, developers had often relied upon City assistance to bail them out of development problems, i.e., arranging financing when the developer could not (conventional), increasing tax abatement when the developer was confronted with cash flow problems, or increasing density from permitted levels in an attempt to make the development more financially feasible. For the Welfare Island project, the City realized it needed a financially strong developer, not only to avoid eventualities such as these, but also to avoid assuming any financial

obligation in the event of a developer default (such as being left with an unfinished development and consequently no revenues after the City had already completed the construction of public facilities). In addition to a strong developer, however, a detailed and binding written agreement would be needed, the specifics of which would have to be ironed out in negotiations between the City and the developer in order to insure and protect the City's financial interests.

3. Expense Budget. City administrations are generally concerned about the likely fiscal effects of any proposed land use.<sup>20</sup> The budgetary impact of any new development must be carefully balanced against project revenues not only to maintain taxpayer and political support, but also to win required legislative approval for proposed capital and expense budgets. In this case, however, the City appeared more concerned with minimizing its capital contribution than its yearly expense budget (primarily because the Capital budget is scrutinized more carefully) and seemed prepared to provide a whole array of social services that would probably not be covered by anticipated revenue. Although the City's major concern was to receive sufficient revenue from whatever development was to be constructed on the Island to pay off public facility debt service, it also wanted enough revenue to cover the level of services needed for maintenance and operation of

those public facilities, although the latter was not an overriding factor. A "no-load" or surplus revenue development may have been a desirable although unrealistic objective that could conceivably be traded off for other fiscal or non-fiscal benefits elsewhere in the development negotiations.<sup>21</sup>.

### POLITICAL

1. Enhancement of the Mayor's Prestige. Perhaps a major consideration for any politician is his political survival, a factor that certainly permeated Mayor Lindsay's thinking in regard to Welfare Island. Any decisions made clearly had to take into account their effects on the Mayor's image and his subsequent chances for reelection or pursuit of higher office. The Mayor's political goal of heightening his prestige (that had suffered greatly as a result of a multitude of municipal strikes--transportation, sanitation and education--that had all crippled the City to varying degrees and earned him the enmity of many segments of the City's population), therefore, weighed heavily upon his objectives for Welfare Island.

2. Increasing the Amount of New Housing Construction.<sup>22</sup>. It had generally been agreed by City officials that one of the weakest points in the Lindsay Administration had been its failure to construct new housing as promised

during the 1965 campaign, and that if the present situation was not altered, the four years under Lindsay would produce fewer new housing units than the previous four under Wagner, a situation that could be a political liability.<sup>23</sup>

3. Achieving Consensus. It became politically important to develop consensus and support for whatever plan was chosen for the Island. Although the concept of citizen participation had previously been promoted by Lindsay,<sup>24</sup> the City would not face the problem of community demands with this development as no community currently existed on the Island. Nevertheless, the Mayor realized that any plan proposed would be scrutinized by the representatives of the City's minorities and poor with suspicion to insure that their needs and desires were also taken into account. A controversial plan would reduce any favorable impact that the City's development initiative would otherwise have.

### SOCIAL

Remembering the "hot summers" in Detroit, Newark and New York City in 1967, the Mayor was concerned with the social needs of the City's poor and minorities and had already committed his Administration toward improving their lot.

1. Social Significance. The City was therefore concerned that the Welfare Island development be one of lasting social

significance and at the same time be a development model of excitement, innovation and creativity.

2. Economic Integration. The Island could also fit in well with the City's stated goal of stimulating opportunities for the growth of ethnically and economically integrated neighborhoods. Not only was this goal a political must for any City-sponsored development,<sup>25</sup> but also a sincere desire on the part of the Lindsay Administration along the lines of prevailing liberal sentiment; the hope being that by integrating and harmonizing different groups, the City would not be ripped apart by the growing disparities between the rich and poor and Black and White, a problem becoming more and more evident in the City.<sup>26</sup>

3. Meeting the Needs of the City and its Residents.

Clearly the Island was too small to provide a solution to the many pressing needs of the City, but it could conceivably begin to meet at least some of them. Plans could include housing and park space (as well as other necessary amenities), two needs running across all segments of the population, although industry, certainly equally important, could probably not be easily accommodated.

PHYSICAL

High Quality Urban Design. The one goal that perhaps fits

best with the Lindsay spirit and style was the goal of providing high quality urban design in new development.<sup>27</sup>

Throughout his two terms, the Mayor continuously stressed his commitment to good design, spurred on by the accolades of influential critics such as Ada Louise Huxtable and the intellectual and cultural elites of New York. The City would therefore want to control the architect selected for any Welfare Island development plan in order to insure that this objective was met.<sup>28</sup> The City had no specific physical goals for development of the Island as it was confident that any plan that would match its other goals and objectives, including that of high quality urban design, would be not only acceptable but completely consonant with the City's desires.

#### CONTROL

Because of its importance, control warrants inclusion as one of the City's objectives, despite its being more of a means to an end than an end in itself. The City realized that in order to achieve its other objectives it would have to retain control over the development, control being the modus operandi that could make the difference in the achievement of those objectives.

The City announced openly that it desired control over development of the limited supply of undeveloped land left in the City.<sup>29</sup> This objective implied that the



City would not passively respond to outside developer initiatives, but would instead initiate, plan and insure that any development would in fact be in keeping with the City's perceived goals and objectives, rather than leave those goals to either the whims of private developers or outside interests alone. Control then, may possibly have summed up the City's philosophy of dealing with the development of Welfare Island in one word--for this approach fit in well with the Mayor's hope of maximizing the political impact of the development plan selected and with Nathan's belief that in no way should the City give away its development "birthright".

**CHAPTER III**  
**THE DELIBERATIONS**

The Appointment of The Welfare Island Planning & Development Committee

Once the Mayor and his staff had made the decision to develop Welfare Island and had determined their goals and objectives, they faced the problem of deciding upon an implementation strategy, one that would insure acceptability and support for their decisions. Numerous ideas had been presented for developing the Island over the years and the task of sorting through them was seen as politically difficult; for any political credit received there would also be enemies made, few people totally satisfied, and ammunition provided for political opponents, regardless of the outcome. This very difficulty of sorting and choosing among alternatives resulted in Mayor Lindsay's appointment of a committee of distinguished citizens, a blue-ribbon committee, whose primary function (as seen by the City) was to legitimize the administration's preconceived plan and to develop some well thought out and more readily acceptable recommendations.<sup>1</sup> The Mayor was, in essence, shifting the burden of officially making this highly political choice to the committee, thus taking the issue out of partisan politics and instead, elevating the decision to one of consensus for the benefit of the City as a whole.

Assuming the development was a success, the Mayor would still receive primary credit for getting the project underway, as even the most distinguished of committees is eventually forgotten; if it was a failure, then the committee would be a convenient mechanism for shifting part of the blame.<sup>2</sup>

In addition, the committee would serve as a further testing laboratory to identify any major difficulties in the Mayor's plans for the Island before an irreversible decision was made. Using public listening to receive feedback from the media and other sources, the committee provided the "proving ground" so essential in decision-making, especially with decisions that may have long-term effects and political ramifications.

The Mayor's decision to appoint the committee, then, can be seen in decision-making or planning terms as a successful technique for implementing the Mayor's own plans in a politically hostile environment, and at the same time achieving what he and his Administration perceived to be the City's goals and objectives. Other possible approaches did not have the advantages of the "blue-ribbon committee" from the Mayor's vantage point. The appointment of consultants could lead to charges that they were hired by the City to do the City's bidding. Academic solutions were often unrealistic and unpredictable, and any plan drawn up by the Administration alone would have the political liability of partisanship attached to it (not to mention the fact that all these approaches, regardless of merit, would prove more costly to the City).

Thus the City was in a position to have its carefully conceived plans tested by professional consultants and responsible citizens and presented to the public to be further refined and developed. This technique represents a method of policy planning and decision-making that is highly flexible

and goal oriented, and that potentially could maximize impact and minimize political repercussions (at least initially), all the while giving the Mayor and his Administration credit for initiative, imagination, foresight, action and the creation of momentum for this project, a project that is all the while carefully orchestrated and controlled from City Hall.

Committee Membership

Convinced that the "independent" citizens committee was the best strategy, the Mayor appointed the Welfare Island Planning and Development Committee in January of 1968, composed of:

representative citizens of the City of New York, and appropriate City officials, and directed them to review past studies and recommendations made by others for uses of Welfare Island, to consider the whole problem anew, and to present their conclusions to you (the Mayor), if possible, not later than the year end.<sup>3</sup>

In essence, the purpose of the committee was to review all the previous proposals for the Island and to propose solutions in the form of recommendations that the City Administration could live with and hopefully embrace. In the process of clearing away the underbrush of these previous proposals, the committee was also expected to cover all pertinent technical aspects and considerations in order to sufficiently justify their recommendations. Jason Nathan in fact warned the committee not to present its conclusions in the abstract, but instead to present highly defined recommendations which could sell themselves. In other words, he did not want broad philosophical principles, but

rather highly defined recommendations that could be the basis for development; a plan that "would excite the minds and warm the hearts of City residents," a plan that could clearly be accepted and implemented. 4.

The Mayor initially appointed eighteen private citizens and three City officials ex-officio to the committee, with Benno C. Schmidt, prominent member of the financial community and one of the few men in New York close to both Mayor Lindsay and Governor Rockefeller, as Chairman. The committee members, despite the Mayor's and Schmidt's assertion of representativeness, can hardly be called a true cross-section of the City's population. Appointment to the Welfare Island Planning and Development Committee for the eighteen private citizens was considered a prestigious honor conferred on friends of the City and especially on political friends of the Mayor. Many of the committee members represented either the liberal Manhattan socialities of the Mayor's "Silk-stocking" Congressional District, his Republican business supporters, or members of the art establishment who were concerned with issues of design, parks, and open space, and who shared the Mayor's vision for a transformed visual New York.

The prime qualification of the committee members selected was obviously not their expertise in planning, real estate or development (in fact there was only one real estate man on the committee), but rather their independent positions of prestige and power, 5. and their acceptance of the fact that they were

the "Mayor's Committee" with the task of basically assisting the Mayor in his decision-making. <sup>6</sup> The committee's composition actually formed more of a social gathering than a working force, and while not minimizing the contribution of its members, it was a foregone conclusion that they would provide a plan consonant with what the City wanted, both by virtue of the City's presence on the committee and by the composition and leanings of the citizen members themselves.

Besides fulfilling an honored civic function and serving as a manifestation of social standing, membership on the committee had the added appeal of being a "clean job", especially since any plan for the Island would not involve dislocation of the poor and of minorities. It further had appeal in that this piece of land, off many of the members' front doorsteps (Manhattan's East Side), was considered to be the City's potential "crown jewel" with an extremely high visibility and a minimum of development problems. Not only would there be no dislocations, but there would also be no substructure problems, and once the promised subway was provided, no access problem. This committee would have the honor of recommending to the Mayor how this last untouched space so close to Manhattan should be developed. <sup>7</sup>

The Mayor saw the members as a committee basically sharing his political philosophy, social consciousness, and high standards, a committee that could be swayed by his aides on the committee, especially Jason Nathan who most clearly reflected the Mayor's view of what the Welfare Island development would

eventually look like. The committee's main function would be to help achieve consensus, or more charitably as Jason Nathan later stated, the committee would "independently come up with the same conclusions as the City". 8.

To further insure that the City's objectives were indeed met, the Mayor appointed three City officials ex-officio to the committee. Led by Jason Nathan, Planning Chairman Donald Elliott and Parks Administrator August Heckscher would not only provide City input, but would also bring professional expertise to the committee. A fourth City official was appointed much later, only after the committee had already decided to retain the hospitals, and only after the official's slighting was brought to the Mayor's attention. Thus the Health Services Administrator, Dr. Bernard Bucove, joined the committee without contest, considering the vital stake the hospitals had in any set of committee recommendations.

#### Financial Resources

Despite the fact that the City had defined the Welfare Island committee's mandate, had carefully controlled the appointment of members to the committee, and had then insured its control over the committee's decisions by appointing its trusted officials to it, the City nevertheless felt it was crucial that the committee's public image be one of an independent self-sustaining operation that would arrive at a set of determinations quite apart from the City's influence. Although the main reason for asking the committee to raise its own financing was



to avoid taxing limited City budgets and the consequent political involvements implicit in the use of City funds, an additional compelling reason for this request was the desire to portray the image of an impartial committee as a means of achieving widespread political consensus for the eventual plan.

The two major expenditures required by the committee were for technical staff assistance and legal counsel. To provide staff assistance and professional advice, the committee engaged the Development and Resources Corporation of New York, chaired by David Lillienthal.<sup>9</sup> Lillienthal, former chairman of the Tennessee Valley Authority and first head of the United States Atomic Energy Commission, provided a high powered staff to evaluate and sort out proposals and to develop the technical studies needed by the committee. The firm of Carter, Ledyard and Milburn was unanimously appointed as legal counsel to the committee. These services were financed by contributions to the Welfare Island Planning and Development Corporation made by committee members and others.<sup>10</sup>

#### Previous Proposals

Over the years, hundreds of official and unofficial proposals had been made for developing the Island. Aside from those which suggested housing, open space, recreational uses, and various combinations of the three, proposals included more unusual uses such as that of an atomic energy plant beneath the Island, a United Nations housing and educational center, a correctional prison facility, and a resort complex and gambling casino, to list only a few. For the

most part, these latter proposals were never seriously considered, or if they were, were easily dismissed as unfeasible for lack of appropriate merit, access, timing, financing, or sustained support.

Prior to the creation of the Schmidt Committee (as it came to be called), only one proposal, the Richmond-Gruen Plan had received serious attention from the City.<sup>11</sup> This plan to provide a highly intensive development of 20,000 units was responsible for generating a Housing and Redevelopment Board Study, a City Planning Commission study and counter proposal, and an opposing American Institute of Architects (New York Chapter) open space and recreational plan. The controversy and concern that resulted may have played a role in the creation of the Schmidt Committee itself,<sup>12</sup> and certainly did in formulating the City's determination not to turn the Island over to private development. The City's desire to maintain control and initiative over any future development of the Island (although various other reasons were cited for the Richmond-Gruen proposal's ultimate rejection) was certainly an outgrowth and possibly even the climax of the interest Welfare Island had elicited over the years. The various proposals collectively were instrumental in catalyzing a concern for action among City officials as well as a sense of accountability to the citizens of New York regarding any development for the Island. The appointment of a blue-ribbon committee to examine these

numerous proposals and develop recommendations of its own was clearly an evolutionary process and the City's way of beginning to act on these concerns.

#### COMMITTEE CONSIDERATIONS

The members of the Schmidt Committee approached their task using a set of constraints that included: City needs and desires; political acceptability; physical characteristics; pre-existing uses; and to some extent financial feasibility. <sup>13</sup>. These constraints, however, merely served as parameters within which the committee was able to develop acceptable recommendations, and in reality did very little to change any pre-conceived notions the committee members might have had.

#### Physical Characteristics

1. Size and shape. An obvious constraint on development was the size and shape of the Island. Only two miles long and 1/5 of a mile wide, the Island's shape precluded many types of development and provided serious design problems even to those uses considered feasible. In order to maximize the available land area, careful land use planning would have to be applied.
2. Location. The East River itself imposed another constraint upon the Island's development. Any constriction of the river, as would occur if the East Channel were dammed or filled, would increase the already critically high velocities of the reversing currents. Furthermore, any proposals for bridging to the Island would have to take into account the strict clearance

requirements of the shipping channels.

3. Environmental considerations. The committee was concerned with the possible impact that any high intensive development would have, not so much on the Island itself, but more so on surrounding areas and services. <sup>14.</sup> Some committee members shared the general concern of residents and real estate interests on the East Side who for obvious reasons did not want to have their East River views obstructed by high rise and/or unattractive development. Air and water pollution problems would also have to be considered in terms of adequate solid and liquid waste collection and treatment facilities, and the impact of heating facilities. These considerations together with the possibility of overloading transit capacity, etc., would act to modify the size and density of any development scheme.

#### Access

The sine qua non for this development was a technically sound and financially feasible transportation system, capable of accomodating peak loads for the proposed land use. The existing transportation facilities for the limited use of the Island were inadequate and had contributed to the Island's decline. The access problem would have to be resolved sucessfully before any development could be considered feasible.

#### Pre-existing Uses

Also important was the realization that although there was no residential community to be displaced on the Island, there were existing facilities as well as a variety of

abandoned buildings, some of possible historic merit. Any proposal to eliminate the existing active hospitals and fire department training school would have to take into account the problems of physical relocation as well as financial feasibility. A decision to retain these uses might present problems in terms of limiting uses to those that would be compatible. In any case, the institutions represented built-in adversaries, or at the least, a concerned indigenous community. A decision concerning what to do with those pre-existing uses would have to precede and necessarily influence the character and shape of any recommendations for the Island.<sup>15.</sup>

#### Needs of the City

Probably one of the major considerations facing the committee was the needs of the City and its residents. No doubt the City had many often conflicting needs, including housing, parks, jobs, etc., but obviously 147 acres could hardly be expected to make a substantial contribution towards any one of them. Realizing this, the committee would have to provide recommendations that would benefit the greatest number of citizens and at least in part, alleviate some of those problems it perceived to be most pressing. One task of the committee would be to determine the extent to which these needs could best be met on the Island and which would be most suitable.

#### Financing

Any development recommendations for the Island would require substantial financing. Realizing the City's desire

not to utilize limited capital resources for development purposes, one of the committee's prime concerns was to insure that outside financing would be available given the other projects within the City likely competing for the same scarce resources. Financial feasibility of the project itself, however, was not seen as a major consideration, and indeed played only a secondary role in the selection of a plan (coming after political, social and design considerations). 16.

#### Political Acceptability

Any proposal would first have to meet the Mayor's criterion of political acceptability; that is it would have to take into consideration and incorporate those political concerns that had become axioms of City policy (i.e. the philosophy of economic integration for any housing plan). Furthermore, it would have to be acceptable to the various minority groups, civic groups and the media, as well as all other groups directly or indirectly concerned. With the task of having to satisfy such a wide and often conflicting cross-section of interests, and in order to provide a politically realistic and viable set of recommendations, the committee would have to temper its desire for a creative and artistic plan with careful consideration to the many other demands upon it.

#### The Committee's Deliberation

As already mentioned, the decision which essentially had to precede all others was the question of what to do with the

existing facilities on Welfare Island, including two functioning hospitals, a fire training school and an assortment of derelict and abandoned buildings. The decision was crucial and needed resolution for several reasons. First, it was necessary to determine the actual amount of land that would be developable and consequently over how much land the committee would be able to exercise its control. Second, a determination was needed in order to insure that any contemplated uses would be compatible with those already in existence. And finally, the committee was also under pressure from the Mayor and others to decide this matter quickly in order to relieve the uncertainty and concern that was hindering operations and destroying morale of the hospitals' staff and patients.

### Hospitals

The hospital issue was a thorny one for the committee, for while it would obviously prefer to develop its recommendations without any preconditions, there were too many factors supporting the retention of the hospitals despite the effect such a decision might have upon the future usage of the Island. The eventual decision to retain the hospitals came after a visit to Welfare Island by committee members and after three months of study and observation of the various facilities and operations located on the Island.

The unanimous view of the ten members who had visited the Island was that it would be impractical to recommend the elimination of either Bird S. Coler or Goldwater Hospitals, primarily

because of the financial state of both the City and the City Hospital system. More specifically, the decision made by July 10 to retain the two hospitals at their current locations was made apparently for the following reasons: <sup>17.</sup>

1. The estimated cost of replacing these two hospitals at another location would be in the order of \$172 million, excluding the cost of purchasing new land. The committee concluded that in view of the financial burdens which the City in general and its Department of Hospitals in particular faced, the cost of such a relocation would be exorbitant and unrealistic.

2. The committee also felt that the hospitals were making critically important contributions to meeting the City's urgent and growing need for facilities for the chronically ill and disabled, <sup>18.</sup> and rather than deprive the City of the beds these hospitals provided during the time it would take to relocate, its recommendation was to retain them at their current locations.

While it was not the committee's intent to make the retention of these hospitals the central basis upon which its recommendations for utilization of the balance of the Island would be predicated, its decision necessarily excluded uses incompatible with the continued operation of these hospitals. At the same time, it also tended to make the committee examine uses that would complement or enhance the hospitals, such uses as housing and recreation attuned to hospital patients and staff, thus further limiting the range of development



alternatives. While the major reason for the early decision on the hospitals was to relieve the uncertainty in the minds of those who since the committee's inception had been apprehensive about the future of the hospitals,<sup>19.</sup> the decision, no matter how realistic, acted as a major inhibiting factor, severely limiting the range of development choices open to the committee to what was compatible with the hospitals rather than what perhaps would be the best overall development program for Welfare Island.

The City, represented by Jason Nathan, felt the decision to be a wise one, noting that previous study groups had floundered on the same question.<sup>20.</sup> To Nathan and the Mayor, it was politically acceptable and noncontroversial to retain the hospitals where they were, rather than risk charges of insensitivity and financial imprudence.

#### Demolition of Abandoned Buildings

Along with its decision regarding the hospitals, the committee also had to decide what would be done with the abandoned buildings strewn over the Island. The committee members who visited the Island unanimously recommended selective demolition of most of the abandoned buildings, save those of unique historic and architectural interest.<sup>21.</sup> Such a move would not only provide more available land for the committee to work with, but would also serve as evidence of the City's development momentum and even provide opportunities for the disadvantaged poor as part of the City's summer work program. All of these

benefits could be obtained for a relatively small expenditure on the part of the City. The City indeed followed through on the recommendation immediately, finishing the demolition program by November 12, 1968. 22.

### Fire Training School

Because of the fire training school's (currently located in the center of the Island) habit of setting fires on the Island as a part of its training program, it was generally agreed that the facility would have to be relocated, probably to a remote part of the Island. Only when the committee had reached an advanced state of deliberation was the decision made to relocate the school to the south end of the Island, away from the hospitals with which it had certainly never been compatible, and away from the other recommended uses that were more compatible with the hospitals. The relatively low cost of relocating the facility was not considered a serious factor. In fact, at the urging of Dr. Ralph Bunche, the committee eventually agreed that the fire training station not be located on the Island at all, but rather be removed entirely. The convenient excuse for its removal was the impracticability of its intended site given the construction of the Delecorte Fountain. 23.

With the question of existing uses resolved, the committee was now in a position to deal with recommendations for developing the remaining portion of the Island, although any recommendations made could be expected to reflect heavily the

decision to retain the hospitals.

Throughout the deliberations, three major proposals surfaced again and again and were seriously considered by committee members: housing; recreation and park use; and an atomic energy plant.

#### Atomic Energy Plant

The unexpected obstinacy of the atomic energy plant proposal was troublesome. Although an atomic plant had never been built in the midst of a major metropolis, many of the members seemed to strongly support the proposal that one be built on Welfare Island. It was never quite clear who had originated the idea, but it was widely presumed that Consolidated Edison had, and that it had then encouraged individual committee members to advocate for it. <sup>24</sup>. Many of the members, swayed by their seeming concern for pollution control, conservation and the environment actually believed it would be a positive step, while others went along out of shared business interests, or considerations for friends such as Lawrence Rockefeller, well known conservationist yet strong advocate of the plan. <sup>25</sup>.

It took the continuous arguments of Dr. Lillienthal, Jason Nathan and others to finally convince the committee that there had not been enough time to study the experience of atomic plants in metropolitan areas, and therefore the safety of the City could not be assured. Furthermore, the capacity of the plant itself was in question as well as its metropolitan

location given inexpensive power transmission from outside the center City. Despite these arguments, it took an open confrontation between opponents and proponents before the issue could be resolved (Jason Nathan and Lillienthal at a meeting with Lawrence Rockefeller and Schmidt <sup>26.</sup>) and it was not resolved completely until the Mayor forced the committee's hand on October 8, 1968 in order to counter a news report citing the intended use of the Island as a nuclear power plant. Thus, while not ruling out an atomic plant on Welfare Island sometime in the future (Consolidated Edison wanted the current site of Goldwater Hospital for that purpose), the committee rejected it at least as a part of its current recommendations.

#### Parks and/or Housing

The park bias on the committee was clearly a strong one and certainly understandable given the backgrounds and leanings of the members. Many members also served as museum trustees and civic leaders and had supported conservation and open space initiatives elsewhere in the City. <sup>27.</sup> The park and open space cause was considered an especially desirable land use for Welfare Island given the noticable lack of parks in their own "backyard", Manhattan's East Side (except for Carl Schurz Park). The desire for open space on Welfare Island then was part of the overall attempt to transform densely populated Manhattan into its rightful place as a City beautiful and one of cultural eminence, and fit well with the beliefs of many on the committee that parks provided the only solution which would allow the Island to be

utilized by the greatest number of New York citizens of all classes.

The committee was faced with several strong considerations, however, that seemed to preclude an all parks solution, whether a Tivoli Gardens, a Disneyland or a Flushing Meadow Park. Perhaps the most compelling reason was its political unacceptability. The expenditure that would be required to develop parks on the isolated Island would certainly be seen as frivolous by many and hardly justifiable, especially given the neighborhood park needs of ghetto areas and more importantly, the crying urban needs, i.e. decent housing, schools and community facilities throughout the City. The point was realized by at least one committee member:

And I'm sure you agree with me that we must expect a hue and cry from minority, poverty-prone groups who, after all comprise some 30 percent of the Mayor's constituency. 28.

It took primarily the decision to retain the hospitals as well as the entreaties of Nathan and others to convince the committee of the folly of an all park solution. There was even some doubt raised that an all park solution would be able to attract a large enough number of New Yorkers to justify such a plan, given the Island's isolated and inaccessible location. Even with the subway completed, such a solution would have to be very exciting and unique (even then financially uncertain given the experience of New York's World Fair in 1965) to entice New Yorkers in great numbers away from Manhattan's own parks, which would still be far more accessible and much closer to other places and activities of interest.

For these various reasons, those committee members initially wedded to parks alone as a solution were convinced that other uses for the Island should be considered as well, uses that would provide a captive audience for the parks and open space that the committee would try to preserve on the Island to the greatest extent possible. This stance was acceptable to the other members since it represented the least expensive land use and at the same time, did not preclude alternative future uses, if park use proved unsuccessful. 29.

On the other hand, housing as a proposed use was considered to be a much more pressing need, at least by the City. The Wagner years of 1961 - 1965 had produced an average of 49,000 housing units a year, significantly more than Lindsay's first term which produced an average of only 22,000 units a year. Dr. Frank Kristof (using an annual rate for 1969 of 24,200 based upon only the first seven months of the year), calculated an average of 24,000 units completed annually and warned:

...represents a disastrous setback for continual housing progress in the City. Along with an annual loss, through abandonment and demolitions of approximately 44,000 units of existing housing the City had an annual deficit of 20,000 housing units over the past three and a half years, in the face of an annual increase of about 16,000 households over this period. These events have contributed to a precipitous drop in vacancies, to intense pressure on rents, and to an extension of rent control (the only way twenty-five years of political control of the housing supply permits the City to react). 30.

The urgency of this situation in 1968 was clearly upon the consciousness of the City Administration and was certainly brought to the attention of the Welfare Island Planning and

Development Committee. Not only was the overall housing production picture poor, but housing in the government sector was also down considerably from Wagner levels and increasing vocal discontent was being heard from representatives of the poor and minorities. From a level of 7,000 public housing units constructed in 1965 when Mayor Robert Wagner left office, production declined to only 3,000 in 1969, representing a drop of more than 59%. Publicly aided housing fell from a level of 16,000 units in 1965 to 4,000 units in 1969, a spectacular drop of 75% in only four years. Even housing produced by private sectors fell 61%, slightly less than the overall drop of 65% in the four year period.

(See Table I on page 68.)

TABLE I

NEW YORK CITY NEW DWELLING UNITS COMPLETED

<u>YEAR</u>	<u>TOTAL</u>	<u>PUBLIC</u>	<u>PUBLICLY AIDED</u>	<u>PRIVATE</u>	<u>MAYOR</u>
1961	35,127	2,086	4,297	28,744	WAGNER
1962	47,304	6,786	7,310	33,208	WAGNER
1963	60,031	2,950	11,825	45,256	WAGNER
1964	51,919	7,222	9,926	34,771	WAGNER
1965	49,452	7,179	16,513	25,760	WAGNER
1966	32,131	5,253	5,870	21,008	LINDSAY
1967	23,036	2,860	6,145	14,031	LINDSAY
1968	17,242	1,439	5,784	10,019	LINDSAY
1969	17,469	2,997	4,314	10,158	LINDSAY

SOURCE: Mr. Alexander Garvin, Director of Community Development, New York City Planning Commission, March 18, 1974.



Clearly housing production was a sensitive political issue of the highest priority in the City Administration.

Despite the fact that both the need for housing and the political necessity of providing it were keenly felt by the City, the committee might not have come to the conclusion of providing housing at all had the decision to retain the hospitals not been made. The consequent attempt to meet the needs of the hospitals and to find compatible uses and facilities for them made the decision to include housing more or less fall into line. Relatively early the committee had begun to focus on the issue of hospital-related facilities, especially patient and staff housing and recreation. It seemed to be the general consensus that any program for staff housing should also include a number of commercial amenities including supermarkets, drug stores, movie theaters, etc., as would be required by any "normal" community, and especially so in this case given the isolation of the Island.

This consideration provided the opening for the City's argument. Jason Nathan and others contended that the total hospital staff alone would be insufficient to support such amenities, and thus, the amount of housing originally contemplated might have to be expanded to a wider community in order to make such a plan financially feasible. <sup>31</sup>. Some on the committee feared that such an expansion would not only change the character of the Island, but might even change the hospitals' orientation towards more general care, reflecting the wider community's needs.

It was still relatively easy, however, for Nathan to win his argument for expanding the proposed housing, since no one on the committee was in a position to challenge his assessment of economic feasibility.

The decisive moment came during the November 6, 1968 Board meeting when Nathan skillfully won reluctant approval for his compromise recommendation to have Philip Johnson along with R. Wood Tate of the staff prepare a "meaningful recommendation for a combined housing and recreational use of the Island...".<sup>32</sup> Johnson, the only architect-planner on the committee, was acceptable to most committee members as well as to the City. As a trustee of a museum and as a respected designer, he had earned the trust of the museum-parks group who felt he could be counted on to prevent the worst fears of some members from materializing--a dreadful intensive high-density sterile housing development. Nathan, who also felt he could rely on Johnson to share his objectives for the Island, engineered Johnson into the position of saving the City's plan.

There was a logical progression then from the committee's initial decision to retain the hospitals to the final one of expanding housing to a sufficient size to support infrastructure and commercial amenities. These decisions together with the political unacceptability of an either-or solution led to the reluctant compromise.

To accomplish his objective, Nathan carefully extricated himself from the decision-making, giving a free hand to Johnson,

with whom he had previously discussed strategy. By indirection, Nathan was directing the committee. In this way, however, the City was able to provide the housing that it know to be a political necessity, while at the same time allowing the committee to feel it was making its own decision. Nathan could now relax, confident that the decision to provide housing and parks was assured, with Philip Johnson providing the community vibrancy and excitement Nathan felt to be such an important part of the plan.

#### The Committee Recommendations

The committee arrived at a final recommendation for the future use of Welfare Island after a year of deliberations consisting of ten formal meetings, written comments of members, and technical staff assistance from the Development and Resources Corporation. After clearing away the underbrush of previous proposals, the committee approached its task from the perspective of problems and opportunities presented by Welfare Island for New York City. The final report was not seen as a finished blueprint or a detailed design, and the recommendations were intentionally left broad with considerable room for the City and any development organization selected to enlarge upon them.

In typical Lindsay Administration manner, the final Schmidt Committee report was kept secret. (Whatever circulated copies there were were either leaked or unofficially marked "top-secret").<sup>33</sup> As with the annual Housing Statistics Yearbook

and the long awaited Master Plan for the City of New York, the Lindsay Administration used this technique to measure influential interest group opinion, to weigh the political impact of the report, and to provide the Mayor with the information needed to make a "go-no-go" determination up to the last minute before public release.

In brief, the recommendations were as follows: 34.

1. Hospitals

The committee recommended that Goldwater Memorial and Bird S. Coler Hospital and Home be retained on the Island as City-operated, long-term care facilities. The major reasons cited for their retention were the financial impracticability of relocation and their significant contribution to the City's needs.

2. Demolition

Seven buildings of the Island's abandoned remains had already been demolished by the City as a result of the committee's recommendations. It was recommended that this demolition program be expanded to the other unwanted buildings, with the exception of those that should be preserved for architectural, historic or religious interest as a part of the project development.

3. Transportation

The committee recommended that the new 63rd Street subway line should include a station on Welfare Island to be completed simultaneously with that line. The estimated cost of \$1.5

million, the committee believed, would be a relatively small investment in return for the increased value of Welfare Island to the City that would result from this station's inclusion.

It was felt that the Welfare Island Bridge connecting Queens to the Island was in need of modification on the Welfare Island approach which currently formed a wall inhibiting effective integration of new developments to the north and south of the bridge. It was suggested that the bridge approaches be incorporated into a new parking structure sufficient to meet the parking requirements of the Island, and thus reduce the on-Island vehicular traffic to a minimum. A new bridge or tunnel from Welfare Island to Manhattan was deemed impractical and economically unfeasible.

The committee further recommended the construction or extension on the Island of suitable roadways, as well as an internal bus or mini-bus transit system for all parts of the Island. Water access by ferry or other means, although not intended as a major transportation source to Manhattan, was recommended, as well as a docking facility for pleasure boats.

#### 4. Parks and Recreation

The committee felt that open space and park use for 80 acres of the Island would require no added justification given the crowded nature of the City. Ideally located and highly visible, the landscaped parks and gardens would provide a source of beauty.

It was suggested that areas adjacent to the hospital be developed as parks including facilities for games and walking paths, etc. for patients and hospital staff. The parks might have athletic fields, playgrounds, swimming pools, ice skating areas, and other uses which would increase utilization but not detract from open space usage. Landmarks would be rebuilt consistent with park usage and with subway completion. The committee also recommended extending facilities to include museums, concert shells and other intensive recreational facilities, although it inveighed against any Coney Island-type recreational character.

5. Housing

The committee recommended the development of 500 - 1000 units of housing for the physically disabled who were ambulatory and did not require intensive care. 1000 - 1500 units were reserved for medical staff desiring to live on the Island. The committee also recommended the development of non-hospital related housing, sufficient in size only to justify community facilities, convenience shopping and services needed to provide adequate support to the residential community. The total community would comprise some 4000 - 5000 units, contain between 10,000 - 15,000 people, and require the use of no more than about twenty acres of land. The community's size, the committee felt, should not be determined by the committee but by the eventual development entity for the Island.

The committee believed that the design of this community was

of paramount importance to the success of the entire proposed development. It did not believe that Welfare Island should be the location of a large-scale housing development, and instead preferred to see created on the Island a small housing community of unusual appeal that could inspire finer housing design elsewhere. Although the committee made no specific design recommendations, it felt strongly that a high-rise visual barrier would be inappropriate.

While realizing that luxury housing would be most desirable in terms of economic return (projected taxes) to the City, the committee felt that financial criteria alone were not overriding. Using the City's Welfare Island for luxury housing would be "socially and politically unsound". Therefore, the committee recommended that it would be both economically feasible and socially useful to provide some housing for low income families, some for middle income and some for high income.

#### 6. Fire Training Facility

Because the committee felt the activities of the Fire Department to be inconsistent with proposed usage of the Island, the committee recommended it be removed from the Island as the development proceeded, despite the necessity of obtaining an alternative site and providing sufficient lead time to construct the facilities required. The responsibility for implementation of this recommendation was left to the Development Corporation acting in conjunction with the Fire Department and other concerned City agencies.

7. Pollution Control

The committee recommended that the Department of Water Resources carry out a plan for sewage disposal best suited to the recommended land uses, expressing the view that Welfare Island should serve as an example in reducing air pollution in the City.

8. Implementation

The committee, realizing that the effectiveness of any of its recommendations depended upon the quality of the implementation and follow-through, recommended that a single managing organization be responsible for the actual development of the Island. The appropriate City agencies such as the Department of Hospitals would continue to manage their own operations.

The committee recommended that responsibility be placed in the hands of a multipurpose development corporation with the power to receive Federal, State and local funding assistance, and with the power to issue bonds and enter into private contractual arrangements. A new special-purpose development corporation for Welfare Island could be created similar to the Battery Park City Authority or the United Nations Development Corporation, as long as whatever instrument was selected had sufficient powers and financing capability to carry out the development task effectively, and at the same time would assure the preservation of the City's vital interests. Representatives of city departments concerned in the affairs of the Island such



as health, housing, parks and planning officials should be included on the Corporation's board, together with selected private citizens whose experience and interest could contribute to the quality with which the Welfare Island plan was to be carried out.

9. Name

The last recommendation of the committee was to change the name of the Island. This recommendation came out of the feeling that the Welfare Island name was obsolete and would be increasingly so as the Island was developed. Suggested names for the Island included East River Island, East Island and Minnahnock Island. 35.

Conclusions

Basically, the City succeeded in getting what it wanted from the committee in terms of a set of recommendations that seemed closely aligned with the City's own goals and objectives for the Island. Thus, the effectiveness of the blue-ribbon committee as a method of legitimizing the City's own plans seemed successful: the strategem has worked. There may be some reason to doubt, however, that if the City had not participated on the committee and had not had the substantial input it did, that the results might very well have been different. There were many occasions throughout the deliberations when it seemed the committee, despite the City's careful planning, would exercise that independence which the Mayor had so wanted to portray in favor of an atomic energy plant or an

all parks solution, two uses that continuously received strong support. Had it not been for several factors, especially the sensitive and calculating role of Jason Nathan representing the City's interests and the decision to retain the hospitals with the inevitable logical progression that this decision entailed, the final results might very well have been different.

CHAPTER IV

THE CITY SELECTS A DEVELOPER

Although the Schmidt Committee recommendations were not exactly what the City had expected, they were general and flexible enough to allow the City to achieve its goals and objectives within them. With the committee's report already publicly released, and with the interest, feedback and momentum that the Mayor had been seeking generally favorable, the City realized it would have to demonstrate its ability to move quickly if it were to capitalize upon the atmosphere that had been created. After all, the realization of any plan depended not so much on the plan alone, but more on the quality of the implementation and follow through. Therefore, before any further planning was undertaken, the City felt it important to determine how and by whom the development would be carried forward.

Involvement of the developer at this point would serve two important purposes: first, it would allow the City to unload all or at least part of the burden of front-end planning and financial and technical feasibility costs onto the developer; and second, it would be much more prudent to have the developer come up with a detailed plan to the City's liking based on the already accepted committee guidelines than to have the City provide a detailed plan that would later be unacceptable to any developer. The only risk in selecting a developer so early would be the City's possible loss of control over the development, but since the City was moving cautiously and deliberately, it felt this risk could be minimized.

Essentially there were four possibilities open to the City in the determination of a development instrumentality:

1. A private developer could be brought in;
2. One or more City line agencies (such as the Housing and Development Administration and/or the City Planning Department) could serve as overall developer;
3. A separate City Development Corporation could be established expressly for the purpose;
4. The New York State Urban Development Corporation could be given the job.

Before the City could select the most appropriate alternative, it was important that it assess and understand what it needed from a developer in a project of this magnitude and scope.

From the City's vantage point, it was important that any development agent selected have the funding capacity, staff expertise and proven ability to carry the plan forward swiftly to completion.<sup>1</sup> Significant amounts of financing would be required not only in the form of seed money and equity for the front-end planning and technical feasibility studies, but also to provide mortgage financing for the development's huge capital cost (incorporating the infrastructure as well as design experimentation and additional amenities). The City additionally was concerned with minimizing its own financial risk and burden as well as its capital outlay (given tight expense and capital budgets) to the greatest extent possible,

thus reinforcing the availability and adequacy of financing as a major criterion. The developer would need to demonstrate his proven ability or track record to get the job done speedily. This would mean also having an expert staff with the commitment and time to devote fully to the project and the staying power and stamina to make sure the job got done. Getting the job done quickly would certainly earn the Mayor credit for successfully getting the development underway and gaining momentum in the attempt to reverse the City's apparent decline; but it would also serve to minimize interest and construction cost escalations that could severely jeopardize marketability and project success. Not only did the City want the lion's share of political credit for initiating and carrying the project through, but it also hoped to share in the profits and value created by the development. Finally, as a means of insuring that its objectives would be achieved, the City also wanted a developer who would be responsive to the City and under its control. It realized, however, that attaining this latter objective would be most difficult given the often negative experience with developers in the past reneging on agreements with the City.

Having determined what it wanted from a potential developer, the City was now ready to examine its various options.

#### Private Developer

In assessing what would be required of any developer attempting to tackle the Welfare Island plan, it quickly became apparent that the difficulties and obstacles to be faced would be too great for any private developer. The Schmidt

Committee, in fact, had already eliminated this possibility. Only one board member, Walter Wriston, President of the First National City Bank, had even seriously considered it.

I would be interested in knowing what logical reasons could be advanced against having the City put the Island up for bids to major developers in this country and thereby obtain some real money in exchange for the land. Obviously, any request for such tenders would have to be subject to the approval of the appropriate municipal authorities. In this way, the City would not have to expend any funds to rebuild the Island, or even to demolish some of the buildings presently on it, would retain control of the types and nature of installations to be built and would in fact realize a substantial cash gain.

Moving real estate from the public to the private sector always raises emotional problems, but such transfers could be beneficial to all concerned if enough control is retained on the ultimate installation. 2.

Wriston's argument, although convincing, stressed financial gain as the City's prime consideration. Although certainly wanting to minimize its financial outlay, the City felt that control over the development in order to see it through and to achieve City objectives was even more important. In fact, the primary reason for appointing a committee of prestigious private citizens in the first place was to determine a use for the Island that would be in the best and widest public interest and that would receive wide public consensus. To then charge a private developer with carrying out the recommendations would be seemingly (despite traditional safeguards such as lease restrictions, etc.) contradictory to

this purpose, as the private developer's major concern is usually private profit rather than the public interest. Also a major consideration was the prospect of having public rather than private interests capture the value created by development of City-owned land. <sup>3</sup>.

Furthermore, once development designation was given to a private developer, and once the City had agreed to development specifics, the City would then be excluded from any further input and would thus lose the initiative and control it strove so hard to maintain (as any prudent private developer would never agree to leave himself open to major modification of the plan by the City in the future). Yet, on the other hand, as the City had experienced so often in the past, a private developer would be likely to come back to the City asking for plan changes, pleading hardship and inability to carry out the plans unless substantial modifications were made or significant City financial assistance (such as infrastructure expense, tax abatement and even subsidized mortgages, or increased density ) were given. The City, suspicious of developers using this sometime ploy, was reluctant to trust "its prize jewel" to any private developer (that all too often has little equity and insufficient financial resources to weather long planning periods and inevitable delays without financial assistance which cities are reluctant to give--a situation that often creates political and financial problems). It seemed very clear that it would be poor public policy for the City to convey this



land in any way to a private developer for private profit.

Wriston's second major error was his assumption that any private developer would want to undertake the project. A project of this scope requires enormous amounts of front-end planning money that very few, if any, private developers could alone provide. Also the private developer's inability to borrow long-term tax-exempt money puts him at a competitive disadvantage, especially given the high expected capital expenditures involved and the long construction and pay-out periods before any cash flow or return could be expected. Even if resources were somehow available, the questionable social and economic mixing scheme and other innovative plans for the development might seriously jeopardize its marketability once completed, thus providing additional risk and making the project unjustifiable from the vantage point of most private developers.

The private developer's unwillingness then to risk undertaking the Welfare Island development without substantial City expense, coupled with the City's basic mistrust of private development in carrying out the public interest were primarily responsible for the rejection of this alternative.

#### The City as Developer

Despite the fact that a City line agency could undertake the development without the political difficulty a private developer would encounter (i.e. upholding the public interest and City political credit), the financial problems, staffing requirements, legal and constitutional issues, not to mention any potential problems of self-dealing, were so complex as to rule out this possibility.

The major problem was that any City development of this kind would have to be financed through the City's hard pressed normal 2% housing and 10% general debt limit. Given the vast number of competing projects in neighborhoods throughout the City (some politically important as well), the imposition of a project of this magnitude and scope would heavily tax the City's resources or possibly force a change in priorities to the detriment of projects elsewhere.<sup>4</sup> It was also felt that the City lacked development expertise (the City had no experience in developing anything other than public facilities and government housing) to carry out the plan and that whatever expertise and manpower it did have would be dissipated by this project, again to the detriment of housing and development policy elsewhere in the City. Legally, it was even questionable if the City line agencies had the enabling powers to undertake development of this nature, and a further constitutional problem arose in using tax-exempt City financing for upper income housing and commercial space.<sup>5</sup> Additionally, the City did not want to be put in the position of landlord given its bitter experience with public housing tenants and especially with tax-foreclosed often abandoned properties. The numerous problems and complications with this approach caused the City to reject this alternative (despite the attractiveness of capturing the value of development for the City) without even seriously considering it, although a City sponsored Development Corporation received more attention.

The elimination of the first two possible approaches led the City to the two Schmidt Committee recommendations: the creation of a City Development Corporation; or utilization of a subsidiary of the New York State Urban Development Corporation. Both of these alternatives had the advantage of being semi-public bodies, capable of floating tax-exempt bonds to finance any development outside the City or State debt limits, and able to undertake multi-purpose development using powers of contracting out for development and receiving Federal, State and local funding assistance.

#### City Development Corporation

The creation of a City Development Corporation could be confined to an ad hoc single project approach similar to the Battery Park City and United Nations Development Corporations, or could be broader in scope, able to undertake city-wide development especially in parts of the City where private developers for whatever reason may refuse to go, or where City policy dictates that public interest concerns and therefore City control should predominate. In the case of Welfare Island, the main advantage of using a City Development Corporation from the City's viewpoint was that the City would completely control it and would therefore retain all political credit for initiating and seeing through the development, from its City-inspired inception to its ultimate completion. Its other major advantage however was financial. By being outside the City's debt limit, the corporation could float tax-exempt bonds to pay for public

facility infrastructure and capital improvements without impinging upon the City's tight and scarce capital budget, or its full faith and credit, while at the same time allowing the City to capture the value created by the development. It would also provide the City with a source of development expertise un beholden to anyone, and in a sense could be used as a measuring rod against which other developers would be judged (playing a role similar to that of the Tennessee Valley Authority in the electric utility industry).

The major arguments against the City Development Corporation, however, fall into three areas: administration and management problems, political impracticability and financial risk. The administration and management problems are basically the same as for the City line agency alternative, primarily the lack of staff and expertise. In fact, Roger Starr, who was later to become the Housing and Development Administrator, commented:

While it might in theory be true that the City could develop Welfare Island through its own efforts...the assembly of an administrative mechanism under the City itself capable of carrying out this project would surely strip the City's housing agencies of talented personnel otherwise occupied. 6.

His belief was shared by other City officials as well, including the then current Development Administrator, Jason Nathan.

Another chief disadvantage of the approach was the necessity of receiving local and state political approval before any such instrumentality could be created. Even if local legislative approval were forthcoming, it was considered

highly unlikely by City officials that the State would permit the creation of a local development corporation with the power to float tax-exempt moral obligation bonds for the City, especially given the traditional City-State rivalry and the already existing State Urban Development Corporation having the powers and capability to carry out a mandate similar to that of a City Development Corporation. <sup>7.</sup>

The last major disadvantage was the financial risk involved. The risk and financial burden of development would rest on the City, not only for the enormous planning and other front-end costs of a development of this size, but also for the capital infrastructure and improvements. Substantial initial funding, either directly from the City or from the sale of bonds, would almost certainly be required, significantly obligating the City financially, and the City would be responsible for the financial viability of the development regardless of its success or failure.

Mayor Lindsay, clearly wanting the City to develop the Island, strongly supported the City Development Corporation approach despite its disadvantages. Jason Nathan, on the other hand, strongly opposed it. Lindsay argued: "God damnit Jay, it should be your monument," to which Nathan retorted, "It'll be a great monument if it won't be built. If it is built it won't be anybody's monument, it'll be Lindsay's and you know that as much as I do." <sup>8.</sup> Nathan inveighed against the City developing this complex project:

I was against the City doing Welfare Island knowing how the City operates. I was convinced that if Welfare Island ought to be done, it should be done by an autonomous body having the independence and power, once under contract, to put its financial resources behind it and have override powers of zoning and building codes. It should be a one-shot decision by the Board of Estimate and not an ongoing political football that would return to the Board of Estimate every time before it could make a move. 9.

Nathan clearly considered UDC to be the better alternative.

#### The New York State Urban Development Corporation

While no immediate decision was made to eliminate the City Development Corporation alternative, the Urban Development Corporation was already on the scene offering more immediate advantages to the City, especially given the political difficulties of creating the City Development Corporation. In fact, the existence of the State UDC may in itself have precluded acceptance by the state legislature of a city copy, and being a quasi-public state development agency, UDC could allay the City's political fear of conveying the Island to private development interests. Regardless of all the other advantages, however, the crucial one appeared to be that UDC already existed and that an ad-hoc special development corporation or a City Development Corporation was not politically feasible.

In order to understand fully how the Urban Development Corporation was eventually chosen as the overall developer, it would be helpful to briefly examine UDC and the powers enabling it to facilitate development.

The riots of the summer of 1967 led to a prevailing

national mood of "saving our Cities," that resulted in substantial public and private corporate commitment to the "City". One manifestation of that commitment was the creation of the Urban Development Corporation in New York State on April 10, 1968 for the purpose of rebuilding New York's cities.<sup>10.</sup> As a corporate governmental agency, UDC constituted a political subdivision of the State, and as a public benefit corporation it was entrusted with a broad range of powers and exemptions including the power to condemn, clear land, relocate displacees, and issue tax-exempt moral obligation bonds, and exemptions from municipal permit granting powers and certificates of occupancy, especially local zoning and building codes, as well as limited exemption from local property taxes on properties held by UDC. The major legislative purposes of the corporation were to attract new jobs, have UDC as a participant with the private sector in city, state and federal programs, and to replan, reconstruct and rehabilitate substandard areas. Its mandate broadly covered the provision of capital for the acquisition and construction of industrial, manufacturing, commercial, educational, recreational and cultural facilities in addition to housing. From a development perspective, however, the corporation most importantly was a development agent that had the capability of planning, financing, constructing and managing almost every conceivable project, including residential, commercial, industrial and institutional facilities necessary to carry out its mandate.<sup>11.</sup>

The powers that UDC could bring to bear greatly appealed to the City. Especially attractive was its capacity to substantially reduce the financial risks and burdens of development for the City, risks that would almost certainly be considered too great for any private developer or conventional lender and perhaps even for the City itself, especially given the project's magnitude, innovation, and host of other concerns.

By using its powers to issue tax-exempt bonds at a rate reflecting the full faith and credit of the state at essentially the same low rate the City itself could borrow at, UDC could obtain the necessary financing for the project including the large sums of seed money and equity needed. Its size, available resources and the fact that it operated on a self-insurance principle would also place UDC in a position to sustain many of the risks and development problems that would be encountered including the long period before cash flow would be generated and project investment returned. <sup>12</sup>. Thus UDC could finance the entire development without diverting or using the City's own hardpressed expense and capital budgets, and could consequently relieve the City not only of the major responsibility for supervision of the development, but also more importantly of the financial risk of failure.

UDC could also offer the City additional financial incentives, depending upon the City's negotiating ability. For one, UDC could build public facilities infrastructure itself, thus averting a major cause of developer delay and risk while at the



same time, helping to transform a project that would seem marginally profitable and risky for a conventional developer into one that is both practicable and attractive. <sup>13</sup>. UDC could also capture the value created by development for the public interest and put back into the project a portion of the profits it realizes on the packaging and sale to the private developer, using those profits to lower rents for lower income families.<sup>14</sup>. Not only was there a good possibility of the City's sharing in the captured value and in any profits, but also more importantly a share of the profits would go to the public purse and thus diffuse the issue of a private developer gaining from the public interest. Although the City might prefer to receive all the profit, to the average citizen it makes little difference whether the profit goes to one governmental pocket or another, as long as it remains in the public sector.

Unlike the situation in which a private developer reaps all benefits of a successful development while the City shoulders the significant burden and risk of a failing one (such as infrastructure installation, property tax losses, and in the case of urban renewal, land writedown by all three levels of government), by using UDC as a developer in this instance, the City could conceivably share in the success and profit of development while minimizing significantly its own risks and burdens in the case of failure. UDC thus offered the City an opportunity to lessen City risk and increase possibilities of City revenue.

By using UDC as the developer, the City in a sense would also gain access to a second level of government, its arch rival the State, with numerous potential supplementary funding sources for the development. If the Welfare Island project failed, UDC as a state public developer could be counted on to make up any deficit. And certainly having national and state administrations run by the same party could only help the overwhelmingly democratic city fare better politically, using UDC to catch the administration in a more favorable posture. Given the predilection of the federal government to give the state more of a role, UDC could be expected to fare especially well there in terms of receiving grants and requisite subsidy commitments.

As a public developer, UDC certainly put public interest above private profit and could be counted on more readily to share the City's goals and objectives for Welfare Island. Its legislative intent and administrative rhetoric in fact lent credence to this belief. This factor would facilitate and speed up the development process especially in terms of required public approvals which could be granted with less scrutiny and more dispatch than in any transaction with a private developer (in this case primarily the conveyance of city-owned land). Traditionally, private developer dealings are at arm's length and require elaborate administrative safeguards to protect the public interest, prevent even the semblance of arbitrary or capricious actions, and avoid all hint of graft or corruption. 15.

Thus, the choice of UDC would eliminate the problem of a political giveaway or "sweetheart deal" with a private developer, as well as the possibility or semblance of City self-dealing.

UDC, like the City, was publicly committed to good design and was actively pursuing this goal in its developments. Another of its major goals was to develop in the inner City and Welfare Island was clearly an example of this type of development on a large highly visible scale.

Its commitment to economic integration and social and design innovation was evidenced by its willingness to take the risk and spend the money needed to accomplish those objectives, risks the City, although sharing the same goals, was unable to assume. These shared goals and objectives, however, gave the City confidence that its plan would indeed be carried out.

The City also appreciated UDC's ability to quickly facilitate development using its array of powers. Not only was speed important in terms of its impact on construction cost, but also in terms of beating the steadily rising interest rates. It took on even more importance, however, given the City's major efforts to reverse the flight of the middle class by building developments such as Welfare Island, social experiments that hopefully would prevent further fragmentation of the City. Speed was crucial in maintaining the momentum of the project and the support it had generally received in the community.

Delay might mean reappraisal by various groups, discontent and dissension. UDC might serve to minimize this, partly because of its unique new powers and because of its ability to serve as a buffer between the City and the City's various interest groups. Lindsay further wanted to see development of the Island during his term as Mayor, not only so that it could be his administration's legacy, but also to avert the possibility of some other Mayor appointing a politically connected private developer, changing the plan, or not building at all. Speed was thus essential to having the Mayor's plan realized, and UDC was the most reliable mechanism to provide that speed.

Finally, by utilizing UDC, the City could insure partial control over the development through its participation in a subsidiary board, if agreement with UDC on this point could be reached. Such an arrangement would grant the City a modicum of control without its concurrent assumption of the risk and burden of development. The primary disadvantage, however, was that no matter how good the participation of the City, it would still be a UDC subsidiary and the effectiveness of subsidiary boards has traditionally been minimal. In any case, the City was reconciled to the fact that it would have to share political credit for the Island's development with its arch rival, the State, despite all of the effort and initiative it had already demonstrated.

UDC was in effect the only feasible choice for developer given the political uncertainty of creating an ad hoc or overall City Development Corporation, the City's desire not to place primary responsibility in the hands of a private developer for the implementation of the Island plan (and vice versa <sup>16.</sup>), and the impracticability of the City's developing the Island itself. By selecting UDC and hopefully obtaining favorable terms in subsequent negotiations, the City could assure its goal of carrying out the Welfare Island plan with minimum risk and burden to itself. That UDC was a fledgling agency with an unproven track record, although of concern to the City, was mitigated by Ed Logue's reputation, UDC's formidable array of powers, and the secure knowledge that the State was standing behind UDC to assure its financial obligations. It was inconceivable to City officials how they could have done better, given the constraints they had to live with.

#### UDC's Interest

UDC was thus considered by the City to be the most realistic and preferable of the available alternatives. Equally important was UDC's strong interest in undertaking the Welfare Island development along lines that would be agreeable to the City, an interest fostered by UDC's President and Chief Executive Officer, Edward J. Logue. <sup>17.</sup> Prior to his position as head of UDC, Logue's involvement in the Mayor's Task Force on Housing & Neighborhood Improvement led him to Welfare Island as part of his investigation of NYC's housing scene. Logue "saw the opportunity

right away <sup>18</sup>. and in his report, identified Welfare Island as a site where special area planning and design (falling between project level and city-wide planning) were needed and as an area of great development potential.

Perhaps Logue's first serious contact as potential developer of Welfare Island, however, did not come until September 18, 1968, when a morning phone conversation between Benno Schmidt and Edward Logue, followed by a call from Schmidt to John G. Burnett, Development & Resources Corporation's Vice President and Director of Urban Development, and later General Manager of UDC, resulted in Burnett's sending Logue all of the nonpublicly available working papers for the Island. <sup>19</sup>. By then, UDC was being considered by Schmidt and D&R as a potential development instrumentality for the Island, and regardless of who had initiated the contact, both parties were clearly interested. In fact, Logue would be kept informed of the Committee's deliberations from that point on. <sup>20</sup>. Even before the plan was determined, Schmidt and D&R had decided to maintain and cultivate UDC's evident interest, possibly with the concurrence of Jason Nathan, but probably without the Mayor's. The Mayor and UDC were still city-state protagonists and the Mayor would have to be won over to a pro-UDC point of view, no minor accomplishment.

Logue was Welfare Island as an opportunity to demonstrate the fledgling UDC's development capability and as a proving ground for applying and testing UDC's development powers,

financial resources and commitment towards "saving our Cities", its ultimate raison d'etre.<sup>21</sup> Given its high visibility and lack of development problems, Welfare Island was perceived by Logue not only as the City's "jewel", but also as UDC's potential flagship project for both New York City and State. It offered UDC a chance to experiment in terms of social and design innovations, an experiment that would credit Logue and UDC with creativity and willingness to pioneer new approaches, and would perhaps establish UDC as an effective development entity. Its willingness to cooperate and work closely with New York City on such a major and seemingly difficult and complex project would also serve to encourage other cities throughout the state to seek out UDC's assistance in their own redevelopment and development efforts.

Ed Logue was as enchanted with Welfare Island as all of the previous suitors had been, with one essential difference. As master of the Urban Development Corporation, he was actually capable of "pulling off" the development, not only because he was a public developer and therefore to be trusted with the City's "jewels", but also because he had the development and financial depth that the State had endowed upon him together with a reputation of getting things done that made his fledgling agency more potent than it perhaps would otherwise have been, even with its well-endowed stable of powers. Logue wanted a flagship to carry him in New York City, the real state capital for all practical purposes, and the place where Logue's reputation as chief of this new development engine would be made or broken.<sup>22</sup>

In line with UDC's established policy of not forcing itself upon the cities and towns of the state, UDC would not openly announce its interest in Welfare Island, and instead attempted to coax New York City into making the first move. Thus, in 1968 Ed Logue wrote a letter informing all cities and town that UDC was available to assist and explore development possibilities with them. New York City's initial response was not encouraging.

#### New York City's View of UDC

As a state instrumentality, UDC was viewed by the City with distrust, not only because of the personal animosity between the Mayor and Ed Logue (after Logue had spurned the Mayor by taking a job with Nelson Rockefeller <sup>23</sup>), but also because of the very real deepseated feelings of homerule that were aroused by UDC in a city where those sentiments ran very high. In fact, when he had initially been faced with the legislative prospect of a statewide UDC, the Mayor had assumed a very strong stand declaring:

Home rule is critically important, and we will take all steps that we must take in order to protect that very important principle in New York City, and I'm sure other cities in the State feel the same way... If efforts are made to somehow damage/affect the zoning powers that we have as a planning tool, we would have to resist it. <sup>24</sup>.

The City's strong resistance was understandable. Already suffering from a loss of effective control over the private sector in terms of the City's development destiny, the City was determined not to relinquish any further control to the



State, however worthy the objectives, without a good fight.

Perhaps another reason for the Mayor's reluctance to go with UDC on the Welfare Island project, despite all the talk of home rule and usurpation of power, was quite simply as John McGarrahan, the Mayor's housing aid, related: "He thinks the job could be done a lot better if the City had its own UDC and I think he's probably right. Given the choice between a New York State UDC and a New York City UDC, we'd all opt for a New York City UDC. Given a choice between a State UDC and nothing, well obviously the State UDC is a very useful tool." 25.

The City's reluctance to press for its own UDC was primarily due to the realization that an upstate legislative majority that supposedly passed UDC only because of substantial armtwisting by Nelson Rockefeller and threats on the occasion of Martin Luther King's funeral of withholding "favours" to legislators, would certainly not support a separate City UDC, and even if it did, the Governor would never sign it. As McGarrahan relates: "...there's only one UDC that's going to go through the legislature of the State of New York and be signed by the Governor and that's the State UDC. And that's the decision the Governor made a couple of years ago in 1967 and that's the way it is." 26.

Despite this realization, the Mayor made his preference obvious. As the press briefing on February 13, 1969 announcing the Welfare Island report, the Mayor indicated that he would immediately form a City Development Corporation to develop parks, recreation facilities and housing for Welfare Island as recommended by the Schmidt Committee. 27. He neglected to

mention, however, that the City Development Corporation was only one of two alternative development mechanisms recommended, and never noted the possibility that UDC might be utilized. Regardless of the Mayor's open hostility towards UDC, Ed Logue and UDC refused to give up without a fight and decided to push for UDC's designation as developer.

The UDC Response to the Mayor's Welfare Island Announcement

Without delay, only a day after the Schmidt Committee report was released, UDC drafted a letter to the City's Development Administrator, Jason Nathan, expressing its agreement with the conclusions of the report and its willingness to implement them, stating:

We agree that such a unique resource should be developed in such a way as to benefit the greatest possible number of New Yorkers. We concur in the recommendation of the report that along with additional hospital facilities, a small self-sustaining housing community should be developed on the Island and that its design should reflect the highest standards for architectural excellence in housing and community design. We agree further that maximum usable open space should be retained for park use and for future development of a wholly new intensive recreational system when transportation to the Island develops to support it. We agree finally that attention should be given to the retention of existing structures of historic value. 28.

Stressing the advantages of UDC over the multi-purpose City Development Corporation proposed by the Mayor, Logue commented:

The advantage of the latter course, UDC, we believe to be substantial. No new legal authority is required to establish the UDC subsidiary. The UDC subsidiary is already endowed with all the powers recommended by the report. In addition the UDC is already well staffed and ready to proceed to the next stage of planning for the project. 29.

He continued by emphasizing financial resources and speed, two significant attributes of UDC Logue knew to be very attractive to the City.

UDC was not only prepared to talk to the City, but to act as well in order to bring this proposed project from its very preliminary planning stage to reality. UDC proposed to do the following almost immediately: <sup>30</sup>.

1. To form a subsidiary corporation pursuant to the powers of the UDC Act for specific purposes of undertaking detailed planning studies and ultimate development of the Welfare Island Project.
2. To form a board of directors of the subsidiary corporation that would consist of appropriate members of the Welfare Island Planning and Development Corporation and representatives of concerned City agencies.
3. To arrange the actual staffing and day-to-day work activities of the subsidiary corporation so that they could be performed under contract to agreed upon consultants or by direct staff hired by the subsidiary.

Logue did not want to miss the opportunity of developing 4,000 new housing units plus related commercial facilities as well as civic facilities such as schools, playgrounds, day care centers, etc., and possibly a unique type of city-wide recreation facility. Towards this end, UDC, like the trojan horse, came bearing gifts. It offered substantial amounts of money (\$500,000 initially subject to equal amounts of money being

made available by private sources for the purpose of hiring consultants and such staff persons as would be necessary for the next planning phase), promises of full cooperation, acceptance of the City's report and recommendations, and excitement and commitment to the job, while at the same time stressing that it would be removing the risk and burden of development from the City, moving quickly to save precious time and avoid political problems of setting up a new instrumentality, and even granting the City what appeared to be a modicum of control on the Board of Directors of the subsidiary. The offer was a difficult one to resist.

The City seemed to be working at cross purposes with regard to UDC. While the Schmidt Committee and Nathan were seriously considering UDC as a potential developer for Welfare Island, another branch of the City was turning down Ed Logue's offer of placing UDC's development capability at the disposal of the State's cities and towns. Donald Elliott, the City Planning Commission Chairman, was assigned this latter task, and in line with the Mayor's general hostility towards UDC, Elliott rejected the offer, "rejecting each site line by line for some stupid reason." <sup>31.</sup> Upon hearing of Elliott's response Nathan characterized it as "naive to the nth degree." <sup>32.</sup>

#### The Mayor Reverses Course

What particularly irked Nathan was the fact that Elliott had responded to Logue's letter without first clearing the response with the other City agencies involved in development. <sup>33.</sup>

Extremely distressed about this, Nathan called for a meeting with the Mayor to air the matter, and at that meeting, painted a scenario of the implications of that "naive" City Planning response if left uncorrected.

Mr. Logue, an old pro, beautiful operator is going to stage the expected accomplishments of the first year in a joint press conference with the Governor. Announcing the first year's program he'll point to two projects in Oswego, two in Albany, two in Syracuse, etc., possibly \$500 million of UDC activity. The press naturally assuming the City needs housing and development too, they'll ask where is UDC in New York City? Logue will simply and eloquently respond: Gentlemen, here is this great new capacity to regenerate and help our cities and we receive a letter from the City telling us to go screw ourselves. 34.

This vivid political scenario and the strong possibility of Logue's actually making it a reality, together with the City's realistic appraisal of its own inability to develop the Island, reluctantly led Lindsay to begin a dialogue with Ed Logue.

The City found itself in a dilemma. The consequences of not using UDC's potential could be politically disastrous. On the other hand, the City desired not only to control development in its bailiwick, but also to guard the semblance of home rule and political credit associated with it. Any use of UDC, especially given the City's previous disposition against it, would have to clearly show strong benefit to the City or else certainly hurt the Mayor's credibility. Giving UDC Welfare Island alone would be considered a political sellout equivalent to giving the choicest plum to its arch rival, even if it was the best developer to implement the City's plan. The City would

have to get much more to not only justify giving UDC Welfare Island, but to justify using UDC at all. Nathan was conscious of this and developed strategy to fit the situation at hand.

Nathan presented to the Mayor what he thought would be a great deal from the City's viewpoint. It was based on knowing Logue's desire to develop Welfare Island and the City's need for housing development elsewhere, plans and sites that Logue might not be as interested in. The City would thus try to utilize UDC more on the City's terms. If the City was going to select UDC as developer of Welfare Island, it was determined to obtain the most it could from UDC.

I said to Lindsay and (Deputy Mayor) Sweet that Ed Logue will never conclude UDC a success unless he proves the effectiveness of UDC in New York City. He wants a flag carrier in New York City. He'd give his eyeteeth for a highly visible project like Welfare Island. Welfare Island will be our carrot. Logue wanted it. I wanted a package undertaking using Welfare Island as hostage.

I told the Mayor, the development and the housing needs of NYC are so enormous that it would be nothing less than criminal not to use every resource available. There is more to be done that we can do. We must lasso any new capability, put them to work and we must put Welfare Island into the package. In the past Lindsay didn't want to do it, but now that was the decision...<sup>35</sup>.

Nathan and Logue negotiated, and basically UDC was amenable, in fact eager to undertake the projects.

Donald Elliott remembers the negotiations with UDC and in a sense how effective the City ploy was.

Ed wanted Welfare Island very badly. Essentially what happened was that we, the City, asked him to build 10,000 units in New York of projects which had been planned by the City, and where all community input and so forth had already occurred. He agreed to do so if he got Welfare Island. He took the position that we were offering him all the dogs in the City and that they were very difficult sites and did not have a lot of sex appeal. But Welfare Island had everything. It was a great jewel and he was very eager to do it. 36.

The City's scenario was more successful than perhaps even the City dared dream. Realizing that UDC was the best developer in any event, the City extracted what it thought to be a good quid pro quo for its "crown jewel", the development projects that the City had been unsuccessfully trying to develop for years and had been unable to for sundry reasons.

UDC may have fared even better than the above implies for it also wanted to penetrate the City and prove its capability, even with some more difficult projects. Nathan would charitably and sincerely state:

By no means did Ed Logue take all the dogs. Two of the most attractive parcels in Harlem, the Northeast and Northwest corners of Central Park, the two best locations in Harlem considering their capacity to be transitional neighborhoods, since they faced the park. 37.

Years later, in retrospect, the Mayor's housing assistant at the time less charitably stated that Logue wanted the Island so badly that he took some projects that he shouldn't have taken, including Welfare Island itself. The meeting concluded with Lindsay's designation of Jason Nathan to personally represent

the City and begin negotiations with Edward Logue. The memorandum of understanding was the result of those negotiations, the prelude to the lease between the City and UDC. The memorandum can in a sense be seen as the official confirmation of the City's designation of UDC as the developer of its Welfare Island plan.



CHAPTER V

THE DECISION TO LEASE

Once the City had decided to develop Welfare Island and had chosen UDC as developer, it has two alternative means of transferring the land to UDC--by sale or lease. This chapter will attempt to analyze why the lease position was the one eventually chosen and agreed to by both parties, and what advantages and disadvantages this decision offered to each.

In making its choice, the City had to be certain that it selected the method most advantageous to itself in terms of minimum risk and burden, as well as the one that would least compromise the achievement of its goals and objectives for the Island's development. At the same time, concerned that the approach be workable, the City had to be certain that it would be acceptable and advantageous to the other party in the transaction as well.

Given the widespread interest in public development bodies such as UDC, this chapter also aids in demonstrating what specific powers UDC could bring to bear to aid the City in controlling, facilitating and speeding up the development of Welfare Island. These powers certainly played an important role in the decision to lease or sell and the advantages of a public (or quasi-public) developer over a private developer are thus discussed. Furthermore, the very fact that both parties were public bodies working in concert with mutual give and take may have in itself facilitated the development process in a way that would not have been possible had a public and private

body been the parties involved. Although financial concerns were certainly important, so were the achievement of shared goals in the public interest.

But perhaps the primary reason for this type of analysis is to present to urban planners and policymakers a better understanding of the actual development process. By focusing in on the specific concerns of both parties, policymakers can gain understanding of the crucial ingredients necessary in facilitating development, in order to produce workable development vehicles.

#### THE CITY'S VIEWPOINT

The City's overriding concern in deciding on a means of disposition to the Urban Development Corporation was the selection of a method that would still allow its goals and objectives for Welfare Island to be achieved.

There were basically five major areas for the City to consider in its decision to lease or sell: 1) financial; 2) protection of the public interest; 3) control over development; 4) political; 5) legal.

#### Financial Considerations

##### Lump-sum Payment

The most obvious financial advantage of a sale to a landowner is the immediate lump-sum payment he receives. Under ordinary circumstances, capital gains tax is subtracted from

the agreed upon sales price, substantially diminishing the actual amount received by the owner and thus also decreasing the relative advantage of a sale. Critics of the City's policy charge that by not selling land outright for fair market value, the City is being deprived of an important source of revenue, especially since the City, unlike any other property owner, is not required to pay capital gains tax on sale proceeds, and thus receives the full amount of the set sales price.

Given this factor, and considering the City's strained finances and its desperate need for funds to relieve hard pressed budgets without increasing property taxes, critics claim that a sale would substantially improve the City's financial position by freeing more funds to pay for existing expenses or debt, thereby possibly improving the City's credit rating. Even if the City did not expend the funds immediately, it could reinvest the sale proceeds and tax savings and perhaps receive a higher return, tax free, than it would otherwise.

#### Difficulty of Fixing a Sales Price

But as the two parties tried to determine a development plan and terms acceptable to both, it became obvious that unresolved problems and factors as yet unknown would hinder the determination of a fixed sales price. Fixing a sales price is a difficult matter regardless of the development situation, since even the most sophisticated real estate appraisal techniques are dependent on a variety of assumptions, and assumptions by virtue of what they are, are always open to challenge. Thus, two parties using

the same techniques but different assumptions could arrive at greatly differing results.

This uncertainty over fixing a sales price if further compounded in the Welfare Island case since for a variety of reasons it seemed desirable to keep certain aspects of the development program flexible. For example, not being sure of the marketability of office space on the Island at this point in the development planning, it was difficult to specify the exact square footage of office space that should be built. Without a fairly precise square footage figure, it was impossible to estimate the cost of construction or the rental income which would be received for that space and therefore, for the entire project. This kind of uncertainty and desire for flexibility meant that by fixing a sales price now, the City would be acting almost in the dark, without any knowledge of future valuation of its land. It would thus be leaving itself open to criticism in the future of letting the land go for too low a price, or possibly too high, resulting in the destruction of the economic feasibility of the project. In addition to uncertainties such as these, there were also more general unknowns such as changing interest rates, construction costs and other variables that clouded the picture in these early stages.

#### Leasing as a Profit-Sharing Solution

From the City's viewpoint, a classic business solution to this type of problem was the profit-sharing lease, most frequently used in shopping center and retail leases and in situations where the landowner remains as a partner. Basically, this type of

lease is equivalent to the joint venture type of development in which the landowner contributes his land, the developer contributes the other capital needs as well as considerable development expertise, and both participants share in the profits. This kind of lease solves the land price valuation problem which a sale presents, and accepts a floating rent with a guaranteed minimum as the fairest resolution to the initial development ambiguities. Assuming that the lessee, UDC, has a profit incentive in the development, the City felt that it certainly stood more to gain by having a guaranteed minimum and a profit participation through a lease than it would if it were to fix a rent or a sales price that would remain stable regardless of the changing valuation of the land and improvements. The guaranteed minimum in this case is ground rent which is the remunerative return a lessor receives for allowing a lessee to use his premises during the term of the lease.<sup>1</sup> This rent generally has extremely good security, the lessee's improvements, with these improvements serving an additional purpose for the lessor of considerably enhancing the value of his land. Ordinarily, the return to the lessor ignores for practical purposes the reversionary residual value of the property which he also receives at the lease's termination. Given normal expectations of land appreciation, however, and the considerable expense of improvements to be provided by the lessee on Welfare Island, the City felt that it stood to make a considerable profit when the lease expired. The City

saw this residual value then as financial security and a hedge in inflationary times, reasoning that holding an asset during an inflationary period would be a good investment, eventually yielding a higher value. It was also a way of utilizing city land that currently was non-revenue producing in a more constructive way and certainly with a more remunerative future. By leasing then, the City in essence was able to make a new investment, while at the same time, obtaining the ground return on its land plus the residual value of any improvements, all without having to put up any major equity investment (except public facilities which the City must provide in any case; whether sale or lease). At the termination of the lease, it would receive a property worth potentially far more than the one initially delivered to the developer, with the City having only to forego the use of the Welfare Island land for the term of the lease. (See illustration I below.)

ILLUSTRATION I

From the lessor's point of view, he is no worse off in a lease than he would be under a sale. This determination can be made after looking at the actual present values of the streams of income attributed to both a sale and a lease situation. For example, a landowner leases his premises for 99 years and receives a conservative return of 6% on a \$50 million land valuation, or \$3 million annually as ground rent. A conservative assumption is that the residual value would provide for a \$100 million improvement valuation that would go to the lessor. If the landowner had decided to sell, he would receive the \$50 million in a lump-sum payment.

Lease

The lessor will receive \$3 million (6%x\$50 million) for 99 years, and \$100 million dollars at the end of 99 years.

- I. Present worth of \$1 at 6% in 99 years=.003124  
Residual value at end of 99 years = \$100 million  
.003124x\$100 million = \$312,400.
- II. Present worth of \$1 at 6% received annually for 99 years = 16.615  
\$3 million received annually for 99 years  
16.615x\$3 million = \$49,845,000.
- III. Present value of lease equals I + II  
\$312,400  
\$49,845,000  
\$50,157,400=present value of lease

Sale

The present value of a sale is determined by the immediate lump-sum payment made. In this case \$50 million. As it is plainly evident, the difference between the lease and sale option is a mere .3%, or \$157,000. The lease value is greater but insignificantly. However, if the proceeds from the sale are reinvested elsewhere at a higher return, then the sale option may or may not become more remunerative (capital gains and rate of return).



Economic Risk in Leasing

The City's position can be seen as virtually riskless under this solution even if the development fails economically. The only risk it takes is of losing its future stream of income in the form of ground rent payments and the opportunity cost of not having sold or invested elsewhere. But the land value will likely increase and whatever leasehold improvements were made will probably still be to the City's advantage.

If non-payment occurs or any other of the lease provisions are defaulted, the City is secure in the knowledge that it has first claim upon the lessee's improvements. In any lease situation, the possibility that the lessee may default upon payment of ground rent is a strong one. This may occur if marketability of his improvement is unsuccessful, if the development never gets off the ground in the first place, or if development costs are higher than originally anticipated. Regardless of the reason, the result will be that the lessee will not pay his rent, and depending upon the lease terms, may or may not have time to make up his omission. Income thus may be temporarily interrupted or may permanently cease, making this annual income stream not totally reliable.

Under a sale situation there is no worry about future streams of income, as there is one lump-sum payment made at the transfer of title and all ties to the property are severed for the original owner. However, in a sale, the City would end its economic interests in the development when it received the agreed

upon sales price, and would thus lose out on the possibility of any future profits and residual value.

#### Valuation Problem

Selling property in any case can be extremely difficult, especially during periods of tight money. Generally, leasing provides an acceptable alternative, especially if a sale would not have brought a very good price (such as in a distress sale), or if the owner has no financial need for an immediate lump-sum payment. In this case, since there is also difficulty in valuation of the project, perhaps the City felt that this leasing arrangement offered the easiest way out of the dilemma by allowing the City to retain the residual value. Even if the project is undervalued, the City would still own it at the lease's termination and all this while would be participating in the development's profits (although carrying this undervalued interest throughout the lease term). Leasing, in fact, generally provides for the stabilization of a land value at a level which oftentimes may be higher than the sales price would have been.<sup>2</sup> For instance, where a high sales price may be unobtainable or unagreeable to a prospective purchaser, the lessor's high valuation may be acceptable to a lessee, if the negotiated ground rent he would be obligated to pay and the other terms of a lease would still make his development feasible. In fact, it may be more acceptable to him than an outright purchase, since a lease would be less of a strain on his resources, and since the ground rent payment rate usually amounts to less than the

rate of payment under a mortgage. 3. In a sense the agreed upon ground rent then establishes the value of the property.

ILLUSTRATION II

The ground rent, capitalized at the then going capitalization rate is one method providing a valuation for the land. Three alternatives appear below:

- I. If for instance the lessor uses a 6% capitalization rate on a ground rent of \$3 million, the value of the property will be:

\$3 million by 6%=\$50 million

- II. Using a higher capitalization rate of 8% (more probably used by a prospective developer) the result is as follows:

\$3 million by 8%=\$37,5 million

- III. Using a lower capitalization rate (possibly used by the City as lessor) another value is arrived at:

\$3 million by 4%=\$75 million

While the lessee could afford the \$3 million ground rent, he may not be able to afford to purchase the land at any one of the three land valuations, even at the highest "cap" rate, and still have an economically feasible development. This is especially true of developers despite the fact that they traditionally have high capitalization rates and therefore low valuations of land. The purchase of land is even more unlikely given the landowners' low capitalized rates and higher valuations. This divergence alone in addition to those problems already mentioned earlier hinders determination of a sales price, a problem that leasing circumvents by allowing both parties to benefit; the land owner gets his valuation, while the lessor pays what he can afford (if unable to purchase at his own valuation).

City Facilitating Development By Leasing

The City realized that in order to facilitate the development of Welfare Island (once it had decided not to develop the Island itself), it could not insist that the developer put a great sum of cash up front for land. Yet if the City were to sell and not be charged with a giveaway land price, a large up front cash sum would have to be required, thus hindering rather than facilitating development. Leasing, therefore, would seem to be a less burdensome means of conveyance (for the developer) at least initially than would selling. Even in a lease, however, the City realized the danger of charging too high a sum in ground rents and taxes, a factor which might destroy the economic feasibility of the entire development by forcing rents up, thus possibly endangering the marketability of the conventional housing as well as the office and retail commercial space.

Aside from these concerns there were other financial considerations, some unique to the City as a lessor, which entered into the decision of whether or not to lease.

City Exempt From Taxes on Rent

Although the City does not pay capital gains tax on sale proceeds of land (as mentioned earlier), it is also unique in that it is exempt from income taxes on any rent, in this case ground rent, which it would receive under a lease. Thus, for private financial interests ground rent payments are far less

attractive as they are fully taxed and unsheltered. While taxable entities might find leasing at a low ground rent economically unrewarding, then, the City and other non-taxable institutions are able to lease land for comparatively low returns due to this tax-exempt feature, thus facilitating development where it might not otherwise occur. The City, under a lease, would thus receive a tax-free return as ground rent together with any residual value of the improvement built by the lessee.

#### Public Facilities

Also important is the fact that the City is normally required to provide public facilities and infrastructure for any area of new development, whether under a lease or sale, and must do so for Welfare Island. <sup>4</sup> Under the sale option the City would have to use a good portion if not more than the amount of proceeds it would receive from the sale of Welfare Island to build public facilities there, with this investment of funds offering little return or benefit. On the other hand, with the City's knowledge of UDC's powers as a developer, the City felt that UDC could build the infrastructure and public facilities faster than the City could if UDC were willing to utilize its own financing. The City would then need to find some way of reimbursing UDC for this expenditure, whether by paying UDC directly, by deducting payments from ground rent or taxes, or by some other means. The main benefit to the City

in that case would be that the City's debt limit would not have to be used, a very crucial factor since the City did not want to give up its scarce bonding capacity. This possibility alone, if agreeable to UDC, would make leasing very attractive from the City's point of view, allowing the City to avoid a major capital outlay that it would have to assume under a sale. Another advantage for the City in this transaction is that the City, in essence, does not have to assume the financial risk of providing public facilities without knowing whether or not the development would be successful and therefore whether or not future tax proceeds would eventually pay for this major investment by the City. Also with leasing, the financial drain on the developer is less, so presumably he can make improvements at a faster pace thereby increasing land values and property tax revenues sooner, another advantage for the City.

In a sense, whether leasing or selling, the transaction can be seen as a "wash". Under a sale the City must build the public facilities using the sale proceeds. Under a lease, with UDC building and financing the public facilities, project revenues are pledged toward public facility debt service even though the City's debt limit is not obligated. This latter arrangement places the City in the same net cash position it would be in if it had sold the project, thus completing the wash.

If under a lease the City were to pledge its future rent and tax receipts to pay for public facilities built by the City or UDC, it is also losing the possibility of mortgaging the land and thus of obtaining the additional financial benefit from leasing. (See illustration III). This process, or pledge, is otherwise known as subordination. Because the City does not have the obligation to provide these facilities, it is losing some economic benefits that would ordinarily accrue to a landowner under a lease or sale. Under a sale, the City would have to plough back the sale proceeds into public facilities, while under a lease, this responsibility to provide public facilities would probably eat away the greater part of ground rent and taxes. In either case, the City must in effect subordinate its economic interests, although by leasing, it can shift some burdens to the lessee and also obligate him to develop the entire plan in order to generate the needed revenues to pay off public facilities and insure an economically viable development. The City will have lost nothing, since it had nothing to lose (it would have the obligation of public facilities in either event), but will have in this way gained substantial leverage over the lessee.

#### Protecting the Public Interest

Aside from these financial concerns, the issue of protecting the public (in this case, City) interest was a crucial one in the determination of whether to lease or sell,

ILLUSTRATION III

By mortgaging his land (if there is no subordination to the lessee interest) the lessor is able to pick up a major source of capital and possibly increase his return through positive leverage. The lender will agree to mortgage the land given the fair certainty of sufficient income to secure the debt and the certainty of not needing an equity cushion should default occur, having as security the far more valuable total improvements of the lessee. For example:

If, Land Valuation = \$50 million  
Ground Rent (6% of land value)=\$3 million  
Mortgage terms of 6% over a forty year term=a constant of 6.61%  
70% of land value mortgagable (although it may be possible to receive 100% or more of land value, given the loan's security, as long as income is sufficient to pay off debt service).

Mortgagable loan=70% of \$50 million	=	\$35 million
Debt service=6.61% x \$35 million	=	\$2,313,500
Net income to lessor	=	\$686,500

The lessor is able to pick up \$35 million (possibly more) and still receive \$686,500 as yearly income (4.58% of remaining \$15,000,000 of land value). Using a lower interest rate, positive leverage could be achieved. A 5% interest rate on land would provide a return of approximately 6.3%. The lessor is able to achieve a return higher than that received from ground rent.



### Finality of Sale

Many regard a lease as less final and more flexible than a sale. In a sale, a much stricter legal interpretation of the City's interest and correct valuation of the City's property must be made and made at the outset, for the decision is a terminal one and a sale is virtually impossible to undo. In a sense, a sale would leave the City open to much more criticism than would a lease. Even if it were possible to set an agreeable sales price (and the complications involved have already been noted), no matter at what level the price was set there would still be charges of a giveaway, and the giving away of a public asset by sale, even to another public body is considered a political liability. Thus, underlying the whole decision-making process was the thought that the less the City gave up the better, making the lease by definition a better method of conveyance than a sale (with the onus of proof falling upon the supporters of selling as a better method). The reasoning was along the lines of an old planning concept; that the ultimate benefits of public facilities and improvements on public land should accrue to the public<sup>5</sup>. (the City here) and not to an outside developer (despite the fact that the developer in this case is a quasi-public one, and the concept must therefore be more narrowly defined as benefits accruing to the City and not the entire State).

Efficient Use of Land

By leasing in this situation, the City is able to demonstrate that it is using city land productively instead of holding it idle, and that it is attempting to maximize a rather large and thus far underutilized land bank without investing very much of its own funds (and therefore not being subject to risk of loss), yet sharing in any profits that may result. Any criticisms of the plan for Welfare Island can be defended as being only temporary, for no matter how successful or unsuccessful the development proves to be, the City is still the owner of the property as far as the public is concerned, and at the lease's expiration, it can then modify the development or totally redevelop the area if it so desires. This is important when noting the fact that there are now declining areas in the City on land the City may once have owned but sold for sundry reasons. The City is put into the position of having to buy back land through eminent domain or urban renewal in order to once more upgrade and/or redevelop the area. By leasing in this case, the future eventuality that this same plight may befall Welfare Island is averted. This landbanking philosophy should win some political credit once it is more clearly understood. 6.

City Control Over Development

Perhaps the most significant advantage of leasing from the City's viewpoint is that the City's leverage or control over the development is greater as a vital party to the lease.

Limits Flexibility

Some critics claim that a lease provides for less control by the City, for instead of continuous approval and review as is usually the case for developers, a one-time appearance by UDC is all that would be required under a lease situation. If for some reason the City was negligent, or did not have sufficient foresight, or was lacking certain facts when drawing up the lease, it would have little recourse later in altering the lease terms. In effect, then, the City under a lease has only one chance to press for the plan it desires. Given a change in administration, it is also possible for those terms to become, in a sense, the legacy of one administration that will have to be carried forth despite changing development circumstances or political winds. Even if City policy towards development changes, the provisions of this original lease could not be modified unless the mutual consent of both parties was obtained (although the City could use delaying tactics in carrying out its part of the lease as leverage in obtaining the changes it desired). In a sense the lessor is locked into the lease, more so than the

lessee who is more easily able to terminate if necessary development approvals are not forthcoming. The loss of flexibility is not only for the present, but for the full length and duration of the lease. No matter what future opportunities for unencumbered profitable sale or disposition of the property may arise during that period, the lessor cannot remove or abridge the rights of the lessee. Thus, it is the lessee who in effect controls the property and not the lessor. Any sale of the lessor's interest must protect the lessee's rights, and the rate of return to the purchaser would be controlled by the original lease terms.

Traditionally, it has been difficult to impose restrictions upon the sale of property, although the City could still retain some means of control over the developer in a sale agreement through zoning, mechanisms similar to urban renewal, the UDC's Memorandum of Understanding, restrictive deed covenants, or other promises by UDC to the City. Encumbrances, however, have been generally discouraged as to give complete autonomy to the purchaser (although restrictive covenants in sales have become a recent innovation promoting city planning objectives). This policy supposedly stems from a desire to make the title as clear and clean as possible. Controls as comprehensive as to cover the social and complete physical plan of a major development, although conceivable under some of the mechanisms mentioned above, would be much more binding and more appropriate under a

leasing option, especially where control is desired for a period extending beyond the actual development alone. In addition, a lease arrangement would tend to give the developer less leeway not to proceed than he would have under a sale.

#### Leasing as Important Means of Control

Leasing provides the lessor with a means of controlling what the lessee may do with the land. Controls may be stringent and very specific, or relaxed, depending on the desired objectives of the lessor and what he can extract from the lessee during the negotiating process. It must be remembered that the City's main desire in the case of Welfare Island was to insure that the development package was built, and not just any development but rather the one commissioned by the City. <sup>7</sup> By leasing, the City was able to formalize its desire to see the agreed upon Johnson plan carried out and would do so by having UDC accept the development package (including those social goals, inputs and controls that the City felt to be important) as part of the lease agreement. Controls could include land use, design, planning and zoning provisions and virtually any other provision agreeable to both parties. <sup>8</sup> The lessor can thus control many aspects of the development, even though he personally is non-accountable and risks little or nothing in the process. The lease allows the City to have a say in the determination of the development program, both physical

and social, and it can further require that the development program be completed by specifying a strict timetable to which the developer would have to adhere.<sup>9</sup> If the developer did not comply with that plan or with other provisions of the lease, he would be technically in default of the lease and could conceivably jeopardize his entire investment. Only a lease would provide the appropriate remedy if for instance UDC did not begin construction by the required time, or if the development proved financially disastrous; under the lease default provision, the land and any improvements on it could be taken from UDC by the City. In a sale, on the other hand, it would be virtually impossible to sanction UDC for not adhering to an agreed upon program.

The lease document, including these crucial controls, would chart the development progress not only for the present, but for the entire duration of the lease. The City would thus be able to monitor, and sometimes by mutual consent even modify the development's course over the years, thus achieving some modicum of control. Also, dependent upon a reliable stream of ground rent and in-lieu of tax payments, the City is provided with a sense of participation and a real stake in the development's success. This continuing involvement would furthermore give the City a better standing in any possible law suit to enforce the development plan since courts generally respect economic interests, and the City, by leasing in this case, has a

continued economic interest.

Control for the lessor is even more far-reaching in this case, primarily because both parties to the lease transaction are public bodies, a factor which confers upon the lease transaction an atmosphere of trust and confidence perhaps greater than would be realized in any other combination of parties to an agreement. It is assumed that both are working toward a common objective: the success of the social and physical development program towards the greatest public good (this factor also mitigates the fear that the public interest would not be served under a City-UDC joint agreement). A lease commitment from another public body that is trying to establish itself and its reputation would carry enormous weight. It would certainly be more meaningful than that of the ordinary private developer who, away from the public limelight, has primarily only financial criteria with which to contend.

#### Political Factors

##### City Identification With Project

Although not mentioned frequently, another factor also played a role in the City's decision to lease the Welfare Island land; the City's (in essence, the Mayor's) strong desire to be identified politically with the Welfare Island development. Even more than other major developments throughout the City, this potential crown jewel, visible daily to millions of city residents as well as to domestic and international visitors alike, could potentially have an enormous impact upon the City's image. It

was therefore important to the City that it be identified with the project's implementation and progress. 10.

#### Political Credit

Under a lease situation, there is no alienation of the City from the island. The City as the lessor, the owner of the fee and equity partner participant in the profits, remains legally and financially bound to the development and can thus still legitimately claim credit. The fact that the City is the land-owner, initiator and expeditor of the development would provide enormous mileage if the development succeeds and if it does not, there would be little or no liability on the City's part, such as might have been the case had the City decided to undertake the development itself. Political mileage is received in various stages: in the predevelopment stage the City receives credit for initiating the concept introduced by the Schmidt Committee and for its follow-through on the Johnson plan; it receives political credit for getting a developer, the UDC, to carry out the City's plan; and the decision to lease ensures that political credit will continue beyond the completion of the development. If a sale occurred, the City's visibility would likely end at the point of sale, even though it had initiated and developed the conceptual framework and was responsible for making the project a reality.



Not only does the Mayor and his administration receive credit, but members of the Board of Estimate who must approve the lease do also. A difficult political situation is diffused by the fact that no community presently lives on Welfare Island, meaning a lack of vocal neighborhood opposition and no need for any relocation. A decision to lease, and the fact that the lease would be to another public body would also mitigate the fear that a ravenous developer will be the prime beneficiary and once again has outsmarted the City. All these factors combine to make the Board of Estimate's work easier and therefore its credit for implementing the project greater. Its members are adding their political stamp of approval and will share in the glory of the project's success, if it succeeds. If it fails, they most likely will put its failure on the Mayor's or Governor's doorstep (the Mayor and Governor being intense political rivals, both aspiring for higher office and each protecting "turf interest."). The Mayor in turn can claim sole credit for its success as it was his administration's project. And in a sense, his administration has provided a legacy for itself, for the lease controlling the development will last not only for his administration but for many years more and for many more Presidential and other political primaries.

For many private landowners, the prestige value of ownership and project success, factors which are certainly reflected in

the City's desire for identification with Welfare Island, are often illusory.<sup>11</sup> In the case of Welfare Island, however, the City retains high visibility in the project as a result of leasing and insures itself a participators's role in the project's success or failure, throughout the lease and beyond.<sup>12</sup> The City has established a policy of leasing land where it desires to be associated with that project and where control and public interest elements combine to make leasing an advantageous situation. In addition to getting development in the City without using City funds, leasing actually provides a means of facilitating development for the developer, since he is not required to put any cash up front for land cost and can instead use his financial resources for the actual improvements. Welfare Island, then, became a bellweather for the City in pursuit of this inarticulated but active policy.

#### Legal Considerations

In addition to all of the previously discussed merits of leasing, there is another advantage that should at least be considered. It is proposed that leasing is an easier means of disposition than a sale, the legal requirements for a city selling real property being more complex, time consuming and politically fraught with danger. In the case of Welfare Island, however, a reading of the controlling disposition statute dispells this myth. The legal basis for the decision to lease

or sell is most important. A 1969 amendment to the UDC statute simplified substantially the requirements imposed upon the City before it could enter into a lease or sale with UDC. As a result, only the approval of the Board of Estimate is required after a public hearing has been held, even for a sale. 13.

This move was essentially a means of removing legal hurdles and lengthy reappearances before numerous public bodies, requirements that might cause delays and obstacles to the progress of any project.

The ease of conveyance, then, in either sale or lease under the UDC statute is the same, with the "myth" dispelled only because of the UDC Act. This statute is an example of UDC's powers coming into play to facilitate development. The Act also provides a maximum lease term of 99 years, sufficient time for the most conservative of lenders to finance a lessee's project. Regardless of the fact that the UDC Statute cites a sale as analogous to a lease in terms of ease of conveyance, the political fact remains true that a sale still represents a more deliberate decision on the part of the City and a more politically dangerous one than a lease, and if the City had to undergo its normal disposition procedures for a sale or lease, the political fact would become hard reality.

#### THE UDC PERSPECTIVE

UDC was also faced with the question of what was most advantageous to its interests; leasing or buying Welfare Island.

Before entering negotiations with the City, UDC had to decide its posture on this issue and although primarily concerned with its own interests, in the final analysis each party was also forced to consider how the other would fare under each means of conveyance. While there were certainly advantages and disadvantages to both leasing and buying, UDC had to determine if the differences were major enough to create any clear preference on its part. Unlike the City, UDC's considerations as a developer would necessarily be primarily financial, although it was certainly also concerned with facilitating the project and with control.

#### Financial Considerations

##### Depreciation

UDC realized that by leasing it would receive distinct economic advantages not found in buying. First, any housing built could be depreciated.<sup>14</sup> That which is depreciable in a given property is usually the actual construction cost of the property improvement or the value of the improvement in the acquisition of property (usually determined by the assessment ratio of land to building applied to the total purchase price of the property). By leasing the land UDC could depreciate its total cost, whereas if it were to purchase the land, it would only be able to depreciate the cost of construction and not that of land. This total allowable depreciable expense provides the

developer with a non-cash expenditure that can shield income from the property and/or from other sources. Where the developer himself cannot use the excess losses, he can syndicate them to investors, and by syndicating the equity he has more tax advantages to use (or sell) and will consequently receive a higher after-tax return on his development package than on an otherwise comparable development on land that is purchased. This factor, then, would give UDC the additional leverage in negotiations to obtain favorable terms for the sharing of tax shelter proceeds with sublessees. <sup>15.</sup>

#### Ground Rent and Tax Payments Deductible

Secondly, UDC realized that any ground rent payment under a lease is also a deductible expense, unlike land amortization payment which is treated as income. <sup>16.</sup> If the land were purchased, then, and a mortgage procured for it and for improvements upon it, debt service (interest and amortization) would be collected on both the proportion allocable to land and to improvements. For instance, given a hypothetical 80% mortgage on land and improvements, 80% of the land cost and the same percentage of the improvement costs would then have to be repaid or amortized, while if the land were leased and an 80% mortgage was obtained (but this time on improvement costs alone), there would be no land cost to amortize or repay. The only payments made on land under a lease are ground rent and usually taxes and both of these

expenses are allowable tax deductions. In other words, amortization is not tax deductible if the land is purchased, while rent and tax payments are deductible if the land is leased.

#### Front-end Expense and Risk

Also significant financially is the fact that UDC would be averting a major front-end expense by leasing instead of buying outright. Developers traditionally work with as little front money as possible in order to reduce risk, and the initial capital outlay required for the purchase of land is usually a significant portion of total development cost. Since leasing reduces the amount of front money required, money is then freed up and can be used for other purposes such as buying better professional services (for instance superior architects for better design), for improving marketability, for providing the marginal difference that may make the project work where otherwise "coming up with the cash" could prove its undoing, or simply as additional profit. By not having to purchase land, the developer can in essence use land as his own money or capital and thereby reduce his own exposure and risk. In a sale, where he must come up with a substantial sum of money at the onset of development, the carrying costs of that land alone may be enough to do his project in before it gets under way. Thus, leasing may often financially facilitate development where it might not otherwise occur. (See Illustration IV)

ILLUSTRATION IV

In addition to this major savings of a heavy lump-sum cost for land, there is also a savings in the equity needed upon financing. The following example examines the difference between a sale and lease option in terms of equity requirements.

REDUCTION OF CAPITAL REQUIREMENT

<u>LEASE</u>		<u>SALE</u>
0	LAND	\$50 million
\$200 million	IMPROVEMENTS	\$200 million
\$200 million	TOTAL	\$250 million
\$160 million	MORTGAGE (80%)	\$200 million
\$40 million	EQUITY (20%)	\$50 million

Under a sale, \$10 million more in equity is required, or 25% more than under the leasing option, assuming that the lender will lend the same percentage whether on a lease or fee. (There is some risk that under the leasing alternative, since the lessee does not have the land as additional security, the lender may not. However, where there is subordination of the lease the percentage lent may be the same, or even higher). This difference can make an otherwise marginal project economically feasible.

It should be pointed out that sometimes in a sale the developer can also avoid the full cost of land acquisition through techniques such as options, or through a conditional purchase and sales agreement subject to a set of conditions. However, since the seller usually wants to terminate his connection with the parcel and not be left with the land if and when the buyer backs out, these provisions are not included in most sales. In a lease, a "subject to" approach is often more amenable to the landowner or lessor, in some respect due

to the feeling of a perceived shared interest (if the project succeeds he will sometimes share in the profits and in any case will receive the residual value) and even where not amenable, the risk is still far less than under a sale.

By leasing, the developer in effect is borrowing 100% of the value of the land at the same rate or usually below the mortgage debt service rate (that is, lower than the constant payment). The lessor, in effect, is acting as a lender receiving annual payments for the lessee's use of the property in the form of ground rent, the equivalent of an interest payment. If the developer were purchasing the land, however, he would have to pay not only interest but also amortization on mortgaged land. The following example helps to illustrate the savings therefore available which can be passed on to the tenant as rent reductions thus making the project more marketable and economically successful, or which can be retained by the developer as additional profit. (See Illustration V)



ILLUSTRATION V

For purposes of this illustration, we will assume an 80% mortgage for the feehold and for the leasehold respectively, with mortgages respectively on \$250 million for improvements and land, and \$200 million for improvements alone. Assuming a 6% ground rent on the leasehold and none on the feehold, and a debt service constant at approximately 10% for both and equivalent taxes and operating expenses, there is a saving of over \$1 million under the leasehold assumption in cash flow before tax. The same analysis of leasing versus acquiring land also shows that there is a higher rate of return on leased development than on development on acquired land.

RETURN ON INVESTMENT BEFORE TAX

<u>LEASE</u>		<u>SALE</u>
\$40 million	NET RENTAL INCOME	\$40 million
\$10	TAXES (25% of NRI)	\$10
\$ 3	GROUND RENT (6%x\$50m land)	0
\$16.064	DEBT SERVICE (K=10.04%)	\$20.08
\$ 6	ALL OTHER OPERATING EXP.	\$ 6
<hr/>		<hr/>
\$ 4.936		\$ 3.92

The equity under the lease is \$40 million, 20% of \$200 million, while the sale equity is \$50 million, or 20% of \$250 million.

$\frac{\$4.936}{\$40} = 12.34\%$	Rate of Return	$\frac{\$3.92}{\$50} = 7.84\%$
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Under the lease situation, even if revenues plummeted \$1,016,000 to the \$3.92 million level, they would still yield a higher return on invested equity, a return of 9.8%. To equalize the return between sale and lease at 7.84% would require the paring of an additional \$784,000 in revenue from the leased premises, a cushion of \$1.8 million between the 12+% return, and the still adequate 8% return on reduced income from the leasehold property. The return on the lease example can be substantially greater under certain circumstances, such as subordination. Perhaps as important is the breakeven point--the dollar figure (in terms of net rental income) needed simply to sustain the development without any profit or loss. Under leasing the breakeven point in our example is \$35,064,000 while under a sale it would be the higher sum of \$36,080,000. The difference of \$1,016,000 is the cushion that exists under the leasing option.

## Subordination

Capital needs could be further reduced for UDC if the City agreed to subordinate its economic interests in the lease (ground rent and taxes) by giving a first lien to UDC's lenders. Subordination would help UDC significantly in obtaining financial backing both from bondholders and conventional lenders since it would provide them with the security of being first in line to receive any of the development's revenues. Thus, if the City were willing to assume the risk involved in subordination, it would be facilitating the progress of the development and thereby reducing risk for UDC.

Oftentimes under subordination, lenders will value land as part of the lessee's holdings even though the lessee does not own the land, and in such a case the lessee may be able to "mortgage out" without any equity investment. If the lessee were to do that, however, the lessor would be precluded from mortgaging his own land, as any income derived from land and improvements would already be pledged to the lessee's lender. Depending on the degree of subordination (i.e. whether land is pledged in addition to expected revenues), the lessor is placed in a tenuous situation, for in the event of nonpayment of debt service the lender could foreclose on the entire property (including land). The following table demonstrates the advantages of subordination to the lessee.

TABLE II

ADVANTAGES OF SURORDINATION TO THE LESSEE

	<u>SUBORDINATION</u> (LAND PLEDGED)	<u>SUBORDINATION</u> (REVENUES, BUT NOT LAND)	<u>NO SUBORDINATION</u>	<u>FEE</u>
LAND	\$50 million	0		\$50 million
IMPROVEMENT	<u>\$200 million</u>	<u>\$200 million</u>	<u>\$200 million</u>	<u>\$200 million</u>
TOTAL	\$250 million	\$200 million	\$200 million	\$250 million
TOTAL COST	\$200 million	\$200 million	\$200 million	\$250 million
MORTGAGE	\$200 million (80%)	\$160 million (80%)	\$140 million (70%)	\$200 million (80%)
EQUITY	<u>0</u> (\$50 million imputed equity)	<u>\$40 million (20%)</u>	<u>\$60 million (30%)</u>	<u>\$50 million (20%)</u>

In a non-subordinated lease the lender desires a higher return, not having the certainty of a first lien ahead of ground rent, as in subordination. This may be reflected not only in reduced equity to loan ratios (more equity required so there is less debt service--debt service becomes a lesser proportion of gross revenue), but in higher interest rates usually of ½ to a full percentage point. The higher equity requirement may in itself make the project unfeasible.

In the fee example the owner must purchase the land and in this case put up \$50 million in equity, equal to the cost of the land and this project may also be unfeasible.

The most desirable situation from the lessee's viewpoint is subordination, where he requires as much as \$40 million, or as little as no equity, thus greatly facilitating development. He may have to pay the lessor a higher ground rent for the privilege of using his land as equity to avoid the use of limited risk capital.

## Public Facilities

It was crucial to UDC that the public facilities be completed on schedule according to the development timetable, and that they be innovative and of high quality. The only way UDC felt certain this would happen was if it were to construct the public facilities itself, since as its own building inspector and developer it could prevent the usual delays in capital budgeting procedures, lengthy construction timetables and delays and restraining ordinances. If the City would allow UDC to do this under a lease, UDC might agree to provide the financing for those facilities where necessary (except for those facilities that the City could get financing for more readily from other levels of government, such as schools), although it would demand appropriate reimbursement by the City for public facilities debt service.

For UDC, then, if the price of the land under a sale was less than the cost of public facilities, it would be more advantageous for UDC to buy the land and let the City fulfill its responsibilities for providing those facilities. If the price of the land was more than the cost of public facilities, it would be more advantageous to UDC to lease and to provide the cost of public facilities itself, since it could at lease control the timing, innovation and quality of public facilities in this manner.

### Leasing Equivalent to Ownership

UDC understood that leasing on a long term basis was for all intents and purposes equivalent to owning the land for the term of the lease. Depending on its ability to successfully negotiate the points it felt were essential for the development's success, it could then have virtually full control over the property and could even go so far as to mortgage the improvements. As long as UDC then abided by the provisions of the lease agreement, the City would have in effect no direct control for the lease term's duration.<sup>17</sup> The lessee is generally able to assume this virtual ownership position by paying only a minimal sum, a fraction of the cost of the land.

This control over the premises under a lease can be less risky than the lessee's control would be if he had purchased the land and had it mortgaged with the property improvement. Courts in general side with the lessee in disputes concerning the lease, and provide every possibility for him to correct his lease with the lessor, in contrast to a far harsher treatment usually meted out to a mortgagor faced with outstanding backpayments of principle and interest. In a sale situation, the bank would threaten or actually try to foreclose, while in a long term lease there is usually more room for accommodation between lessor and lessee.

### Residual Value

The major disadvantages to the lessee, however, are that he does not receive the residual value of the property and the

prestige of ownership. At the end of the lease term, the lessee must relinquish that improvement and the increased value he has added to the land (often at considerable expense) to the lessor.

UDC, however, felt no great need to retain the residual value of the development if it could arrange through negotiations as long a lease term as it felt was necessary (and by statute that could be as much as 99 years) in order to properly amortize any and all investment and make sufficient profit as well. In any case, the residual value was not significant in terms of the present value of money and profit was not the most essential element for UDC. For UDC was created to do what the other private developers, for whatever reason, (basically the fear or lack of desire to take the kind of risks needed to spur great development) dared not do. UDC's statute gave it immense powers as a developer which it felt certain it could exercise just as well under a lease situation as under a sale, and even if the project yielded only a marginal return, UDC could still undertake the investment, especially since it could obtain its own financing for public facilities (if necessary) as well as for other parts of the development.

#### Reduction of Risk

By leasing, UDC felt that it could reduce risk substantially, a major objective of all developers. The reduction of cash and capital outlays, possibilities of subordination and improved marketability attributed to leasing have already been discussed.

Another area of risk reduction that can be realized under a lease is the lessee's ability to terminate the lease with a minimum loss. If for any reason the development does not proceed, then at least the major initial lump-sum expense of land acquisition has been averted. The actual losses to the lessee would be determined by the lease provisions and would obviously be dependent on how far development has progressed. Termination in the early stages of development (especially before all required and necessary approvals were received) could make losses insignificant, while aborting or abandoning the project after or near completion could mean a substantial loss of equity and credit rating as well as possible long term financial obligations. Nevertheless, a loss of this magnitude would still probably be considerably less than a loss due to abandonment if the land were owned. Assuming the owner had paid the major expense for the land in addition to having invested other equity in improvements, then if zoning and building code permits, local tax agreements, or even financing (not totally applicable to UDC although other factors could certainly stop the development program) were not forthcoming, the owner would have little recourse but to abandon the project and take his losses, including the loss of expected residual value.

If the developer had optioned the land with little or nothing down, on the other hand, or if he had arranged a contingent purchase and sales agreement, no cash would have to be

paid until the project was determined to be feasible and had received all the necessary approvals. The only risk then is the market and overhead of the developer.

Development risk is also reduced for the lessee by sharing obligations and responsibilities with the lessor. Dependent upon the lessee for his payment, it is to the lessor's advantage to do whatever he can (including helping the lessee obtain appropriate approvals and sometimes financing) to insure that the lessee is successful in his development, not only to insure certainty of payment but also to increase residual value of the development. The lessor/lessee partnership thus works to the mutual advantage of both.<sup>18</sup> A disadvantage of this sharing of risk between lessee and lessor is that if the lessor does not fulfill all of his obligations, it is conceivable that the lessee may not be able to proceed (although he does have the option to cancel the lease). He would thus not have full control over the project, and the City's not completing the subway link for instance or not getting necessary approvals may delay or abort the project, adding these uncertainties to the other development problems the lessee must face.<sup>19</sup>

#### One-Shot Approval

By approving a given development plan in the lease, however, UDC is gaining the major advantage of obtaining "one-shot approval" for its project. Once approved by the Board of Estimate, the lease as a controlling document cannot be changed by political



winds. The lease therefore reduces the necessity for UDC to return to the City for any further approvals (except for lease modifications that may be necessary or desired), while under a sale, although it may be possible to arrange for approval of a general development plan, the City would more than likely still want UDC to come in for step by step approval so as not to lose the City's perceived prerogatives.

#### Lease Limits Flexibility

At the same time, however, once the provisions of the lease are fixed, the lessee has very little flexibility for the term of the lease. Usually ground rent, use of the land, and most other crucial elements are locked in at the lease's onset and are not responsive to changes in market, the economy, or other development problems that may occur. Any one of a number of possible items may limit the flexibility of the lessee in the crucial development process, a problem he could avoid if he owned the land. It is therefore crucial for the lessee to foresee as much in advance as possible in order to avert future problems.

#### Good Faith

Implicit in the above is the added danger in a lease of a lack of good faith on the part of either or both parties. Even in the event of a different City administration, the City could conceivably (if there is no subordination) terminate the lease over some minor technicality and take over control of not only the land (that it already owns) but also the building and improvements that the lessee had added, in essence foreclosing

upon the state bondholders and UDC.

Although UDC preferred to lease because of the advantages already enumerated, it would no doubt have also been able to go along with a sale and of course would have negotiated the best possible position for itself. In a sale it could still provide public facilities but at a much higher price to itself since it would have to absorb the additional costs of land and debt service for public facilities, costs that might have been too much for even UDC to handle unless it scaled down the public facilities, increased the revenues by providing more commercially remunerative space, or reduced the amount of low and moderate income housing.

UDC did not fear negotiating with the City for it knew that the City wanted this development to proceed nearly as much as UDC wanted to undertake it; and since both were public bodies, the City could make the kinds of concessions to it that it could not make for any private developer. UDC would then try to maximize whatever it could get from the City. It realized, however, that it could get more from the City under a lease situation than under a sale, for the simple reason that a sale would break the City's ties and interests in the development. UDC knew that once the development plan was determined under a sale, it could not return to the City for changes or modifications, or expect any help from the City over the course of the project. It was just as important therefore for UDC to tie the City into the

development as it was for the City to tie UDC in.

### Conclusion

Besides providing major financial advantages to the City, the decision to lease also gave the City at least a semblance of control and partnership, and best furthered its goals and objectives towards facilitating the Welfare Island development. Leasing was also advantageous for UDC in terms of reducing its front-end risk, offering other significant financial advantages, and allowing UDC to demonstrate its ability to facilitate development (including the provision of public facilities and its concomittant debt burden) without threatening the City's interests or jeopardizing its own. The decision to lease thus seemed to best meet the objectives of both parties.

Prior to the actual lease negotiations, there was another set of negotiations that culminated in a memorandum of understanding, entered into primarily to publicly state the intentions of both parties to carry forward the development (and in effect to validate the City's selection of UDC as developer), and to set down some basic agreed-upon points that would guide the future course of the Island's development. This non-binding agreement, the prelude to the lease, was important as the starting point in the negotiations that were to follow, with each party jockeying to secure the most favorable position in order to achieve its own objectives in facilitating the Island's development.

CHAPTER VI

PRELUDE TO THE LEASE:  
THE MEMORANDUM OF UNDERSTANDING

The Schmidt blue ribbon committee had charted the general development goals for Welfare Island, and the City, having groped for years for a feasible approach to developing the Island, eagerly adopted its recommendations (in line with its own goals and objectives). The next step was implementation. Within two months of the publication of the committee's recommendations, the City had decided upon UDC as the developer and had begun to chart guidelines to be followed in the implementation of the committee's general plan. These guidelines as well as the goals and objectives of the project were embodied in the General and Specific Memoranda of Understanding that were entered into by the City of New York and the New York State Urban Development Corporation on April 17 and April 18, 1969. The memoranda were signed after a tough negotiating period, the first of many, and although the decision to lease was not clearly spelled out, it was generally understood by both parties at that time. <sup>1.</sup>

The policy of entering into memoranda of understanding was initiated by UDC at its inception, when in order to avert potential political confrontation, UDC invited cities and towns throughout the state to take advantage of its facilitating powers in project development. Upon receiving favorable responses, UDC's policy was to negotiate with those localities and to then publicly issue joint expressions of intent known as memoranda of understanding. It is important to note that memoranda of understanding in most cases were essentially letters of intent; written promises

not legally binding, expressing the interest of the two signatory parties in pursuing land development.

General Memorandum of Understanding

New York City was originally reluctant to respond to UDC's request, but when it eventually did, a number of development projects (eight projects and two feasibility studies of projects including Welfare Island), was agreed upon after a period of sustained negotiations. This agreement was expressed in the General Memorandum of Understanding entered into on April 17, 1969 by Jason Nathan, the City's Administrator of Housing and Development and Edward J. Logue, UDC's President and Chief Executive Officer.

In the memorandum, both side listed their respective contributions and responsibilities in making the developments viable ones. <sup>2</sup>. The City obligated itself to do several things, primarily as enticements or rewards to the developer for agreeing to do business along its lines. It agreed to transfer land to UDC free of all tenancies and demolition, to provide UDC with the general development program and to obtain all necessary local and federal approvals. <sup>3</sup>. UDC agreed to maximize the use of its powers in order to facilitate development and to free the City of substantial obligations, although in turn it expected the City to help reduce its front-end risk wherever possible. UDC agreed to arrange financing for Welfare Island and the other seven projects, a task that was often the City's when dealing

with private developers. It agreed to use the residential projects, once built, as relocation resources for residents who may be affected as future areas are designated for re-development, to provide a minimum of 20% low income housing units per project, and to establish community advisory boards. It obligated itself to prepare studies, plans and specifications for the projects on the basis of which UDC would be able to ask the City to modify its original development plan or replace it completely. UDC was to be responsible for project design, including the hiring of talented architects (there would be no city design review, but instead there would be periodic consultations with the City on project status); finally, it agreed to use its powers to facilitate the primary objective agreed to by both the City and UDC: to utilize maximum speed and minimum cost in accomplishing the development of the projects. With the general memorandum setting the ground rules for a UDC-City relationship, the next step would be dealing with Welfare Island specifically.

The Welfare Island Memorandum of Understanding

The specific memorandum of understanding for Welfare Island was signed the following day, on April 18, 1969. The fact that this agreement came only two months after the Schmidt Committee findings were made public emphasized the City's determination and UDC's eagerness to pursue this development. The memorandum

called for the creation of a wholly owned UDC subsidiary to be known as the Welfare Island Development Corporation, and even went so far as to detail the composition of the fourteen-member board: eleven directors to be designated from members of the Mayor's committee on Welfare Island; three from UDC-- its chairman, president and chief executive officer, and general manager. While the chairman of the board was to be selected from the eleven, the UDC president and chief executive would automatically become the president of the subsidiary and would designate a chief executive officer to head the development subject to the subsidiary board's approval. That eleven out of the fourteen board members would be from the Mayor's committee having veto power over the board's chief executive officer assured the City that its interests would be protected as the development progressed. While this board could potentially wield great power, the City realized that most boards never do and are led more by strong staff than by a sometime nominal chairman. <sup>4</sup>. But regardless of its effectiveness, the City had, on paper at least, control of the subsidiary corporation that would develop Welfare Island, an additional safeguard that it hoped would insure the development's being built along the lines it had intended.

Most important for the City, the memorandum also contained the provision that the Schmidt committee's report on Welfare Island was to be the basis for the development of a "detailed and imaginative final plan for the Island", with broad objectives cited of a "community of variety and excitement....



open space and recreational areas....linked as strongly as possible to the remainder of New York City".<sup>5</sup>

As part of its obligation, UDC agreed that within six months it would provide at its own expense, all the necessary design, planning, engineering and economic feasibility studies essential to determining a final plan. The plan would provide the basis upon which both the City and UDC would make a finding of feasibility (basically a decision for each as to whether or not they would proceed with the development) subject to three City preconditions: 1) that the final plan require no City capital contribution other than a land transfer; 2) that an agreement on public facilities could be worked out; and 3) that the availability of state or other non-city tax-exempt funding sources for the projected parks and recreational facilities be determined. By establishing these conditions, the City provided itself with an escape hatch should it decide that it did not want to proceed with the development.<sup>6</sup> The City, however, could later waive these conditions if it so desired. The plan was also to include a construction and improvement timetable that the subsidiary was to abide by. The subsidiary was responsible for arranging all interim and permanent mortgage financing, whether through the State HFA, the FHA, or the sale of UDC bonds and notes, and was obligated to obtain interest reduction or other equivalent subsidy to meet the needs of low and moderate income families; the City in the meantime was to

obtain all necessary federal and local approvals. UDC and the City predetermined a unit mix to contain a minimum of 20% low income, 10% elderly and the balance of an "appropriate range of middle income and conventionally financed housing". Hospital-related housing would also be provided in the amount determined feasible and necessary. The final plan would designate the portions of Welfare Island to be developed and transferred by lease or other appropriate means of disposition to UDC. The disposition documents were to be submitted to the Board of Estimate for approval as soon as possible after an agreement had been reached between the parties.

The references throughout the memorandum are ambiguous as to the exact method of land disposition to be used. It is stated that the City obligates itself to prepare and submit as soon as possible a "draft lease or other disposition agreement" setting forth the terms and conditions for the transfer of Welfare Island for development. Yet, another statement emphasizes that the method of conveyance is yet to be determined.<sup>7</sup> The City seemed to be keeping all its options open, although it appears that by this point it may have already made at least a tentative decision to lease.

The concern of both the City and UDC for high standards of design was reflected in the City's designation (with UDC's concurrence) of well known architect/planner and member of the

Schmidt Committee, Philip Johnson and his partner John Burgee, as master planners. Since Johnson and ten other members of the Mayor's committee would be sitting on the subsidiary board to protect the City's interest, the City felt fairly confident that good design would be assured even without final power of design review. This was especially true given that the City would have approval power over the master plan controls and the development plan in any case and also given Logue's commitment to good architecture as evidenced in his Boston and New Haven achievements.<sup>8</sup> A detailed design review process by the City was replaced instead by "the careful formulation of the final plan", to be designed by the City's chosen architect subject to UDC's supervision.

The memorandum of understanding thus represented a starting point upon which the lease was to be built, with many of the points still to be negotiated or expanded upon by both parties before a final determination. Nevertheless, the memorandum gave the City and UDC an agreed upon basis for further negotiation and the go-ahead to gear up for initial development preparations: the City by demolishing the existing buildings on the Island and UDC by finishing a detailed plan.

The memoranda of understanding were not publicly announced until May 21, 1969--the delay of more than a month seemed to some almost machiavelian, portraying uncertainty on the part of either the State UDC or the City as to whether they in fact wanted to proceed with the agreement. Rumors were actually afoot that the Mayor, on reflection, had changed his mind on giving Welfare

Island to UDC for development.<sup>9</sup> While it was true that a number of people were not happy with the City's involvement with UDC, (especially people such as J. Lee Rankin, Corporation Counsel, who was concerned about UDC encroachment on City powers) it turned out, however, that the actual reason for the delay was less contrived or deliberate than as first thought. According to an April 14 memorandum, a joint Lindsay-Rockefeller press conference had been scheduled for May 5, 1969.<sup>10</sup> A second memorandum indicated a postponement in the press conference that was to announce Edward Logue's involvement as developer. It would be put off to "May 12 at the earliest and probably not before, May 20, 1969", as the Governor was apparently away on vacation.<sup>11</sup>

A second issue involved the decision of whether or not to separate Welfare Island from the rest of the UDC program for New York City when making the agreement public. The dilemma was that the City wanted to establish Welfare Island as the Mayor's program simply being carried out by UDC (to maintain city identification), while at the same time implying that the others (city projects undevelopable for assorted reasons) were being pawned off on UDC without the City's principle involvement.<sup>12</sup> The eventual May 21 press conference, however, announced all ten projects, although stressing Welfare Island.<sup>13</sup>

The City desired to claim credit as an equal in the Welfare Island development. In fact, Mayor Lindsay characterized the

program as "an exciting partnership between the City and the State, one in which State development assistance is built on the vital concept of a State agency helping to achieve the development goals of the City", <sup>14</sup>, while Jason Nathan, the principal city negotiator, commented: "We are undertaking a joint program of real dimension--not only of the housing that will be built but also for the pattern of governmental relations being forged. We already have developed the close working relationship so necessary in any complex joint undertaking such as this." <sup>15</sup>. The Governor described UDC's role in more grandiose terms: "This agreement between the City and State represents the kind of cooperative action we must have to solve the urban crisis in the United States. It represents the type of program from New York City we had hoped to participate in with the new statewide Urban Development Corporation." <sup>16</sup>.

That Welfare Island was seen as a prototype of the kind of city/state partnership needed to solve the urban crisis in the United States is understandable given the urgency and scope of urban problems and the necessity of both parties to show concerned action. Nevertheless, Welfare Island was seen as a bell-weather by both the City and State, an undertaking that would possibly reverse or at least restrain the net outflow of middle income whites to the suburbs by offering them a revitalized urban center, one that if successful could serve as a model wherever applicable around the country. The joint partnership

mentioned was more than just words, for the decision to lease Welfare Island to UDC was in essence a joint venture development, one in which the City would provide the land and UDC would provide the development expertise and the capital to make it work, with both sharing in its success. It was that understanding of partnership, prominently mentioned by Jasan Nathan, that permeated the lease negotiations, and that would profoundly affect the outcome of those negotiations.

The general and specific memoranda of understanding are most important for the City in that they demonstrated the City's ability to engage a developer for Welfare Island as well as for the City's other projects, and marked the formal assumption of obligations and commitments on the part of both parties. It also marked the beginning of the Island's development along agreed upon guidelines (with city preconditions) with the City commencing demolition (as recommended by the Schmidt Committee as well) and UDC undertaking the development planning.

The discussion of the memoranda is included to better understand the lease itself, as the points agreed to by both parties in the memoranda provide the starting framework for the onset of the lease negotiations.

CHAPTER VII

THE LEASE

The New York State Urban Development Corporation and its subsidiary, the Welfare Island Development Corporation, were formally granted control of Welfare Island on December 23, 1969. On that day, the legal contractual instrument, the lease, was signed between the lessor, the City of New York, and the lessee, the Urban Development Corporation and its subsidiary. This agreement is the primary controlling document regulating all aspects of the proposed development for the full ninety-nine year term of the lease, including the delineation of responsibilities of the aforementioned parties and the basic ground rules for their respective financial obligations.

A lease is essentially a written document describing premises that are rented for a stated consideration. The owner is known as the lessor, and the tenant as the lessee; the consideration given is called the reddendum or rent, while the term of the lease is known as the habendum.<sup>1</sup>

Originally, long term ground leases became popular as a means of circumventing a direct sale of property, taking advantage of the legal distinction between leasing and selling and allowing the reluctant seller, whatever his reasons, to maintain his fee ownership.<sup>2</sup> As the financial advantages of leasing became more clearly understood, the lease as an in-lieu of sale approach was replaced by the lease as a financing mechanism. The advantages of leasing instead of buying came to the fore: 1) the avoidance of a major front end cost of development, the purchase of land; 2) realization that land was non-depreciable, while all improvements could be depreciated if leased; and 3) the fact that ground rent was a deductible expense, while amortization of land was not. The lessee could also increase his leverage using



scant equity when it was understood that land and improvements demand the same higher return when purchased, while the return on land leased from the lessor could be lower because of the investment's security (a secured annuity, with a residual value bonus), a feature attractive to tax-exempt institutions such as pension funds.

There is no question that the Welfare Island lease in toto marks the culmination of all the previous decisions examined in this study and presents the vital underpinnings of the entire development, determining the program, plan and means of implementation, as well as the responsibilities and obligations of both parties. The lease is crucial in understanding the Welfare Island project, not only in terms of the specific provisions, but also as one means of analyzing the City's effectiveness in achieving its goals and objectives with minimum risk and financial burden to itself. In addition, the analysis points up the bargaining strengths and negotiating ability of both the City and UDC, the various tradeoffs and concessions each side made, and finally, how each managed to protect its own interests while working towards facilitating the development. Obviously there is no accurate way to predict the future; whether the lease will be changed, whether the development will be completed according to the lease or completed at all. But the lease does provide a mechanism for assessing the responsibilities and obligations agreed to by both parties and the

manner in which they wished to see the development proceed.

For the purpose of this analysis, only those lease provisions focusing upon the most important financing and development issues will be included and examined in detail. The first provision included delineates the developable land area and determines the length of time necessary to construct and finance all planned improvements. The next provision concerns the delegation of responsibilities for the preparation of plans and construction of improvements, for time limits and constraints and for relocation and demolition, thus fixing the obligations of both parties with respect to these items. Tied to these is another provision detailing the means by which public facilities are to be constructed and financed, and the parties responsible for this part of the development. Finally, and perhaps most important of the provisions in any lease are the rent provisions. The development's ultimate success hinges on how well the financing formula contained in these provisions works and on the overall deal made by the City and UDC. The last included provision is the lease's "enforcer", the default provision, that provides protection for both sides. (Other typical provisions such as fire or casualty, insurance, mechanic's liens, use, indemnity, notices, and more although certainly important, were not directly pertinent to the focus of this study and therefore shall

not be included here.)

The lease issues are looked at first in their general context and then as they relate to each party. The positions of both parties before entering into the negotiations are examined and the resolutions to specific issues are then analyzed. The lease provisions themselves are helpful in determining how well the parties understood the significance of various issues, how each attempted to facilitate the development, and how each eventually fared in the negotiations; factors that offer insights into the development process generally. Specialized terms relating only to this lease will be defined using the lease definitions for legal exactness and precise meaning. Finally, for any provisions requiring mention of lease schedules, wherever possible the information contained in those schedules will be mentioned under that item. The main provisions of the lease will be included as Appendix C for reference. <sup>3</sup>.

LEASED PREMISES AND HABENDUM (LEASED TERM)

Perhaps the most essential of the lease provisions, outside of land use and the determination of rent, was the provision dealing with the extent of the leased premises (the specific area in which development was allowed to take place) and the duration of the lease (the term).

Despite the general understanding between the City and UDC

that the leased premises would consist of Welfare Island in general, it nevertheless became important to delineate precisely the exceptions to this understanding. UDC and the City had already agreed that the hospitals would not be leased, but there still remained the task of determining how much land surrounding the hospital buildings the City would retain, and the same determination had to be made for the various bridge footings and water tunnel easements which were also not to be leased.

In general, the City was unconcerned about the exact specifications of the leased premises, reasoning that UDC would certainly want the right to fill land to the bulkhead and pierhead lines in an effort to maximize the actual amount of developable land (indeed this was UDC's position). Realizing that any landfill would benefit the City as would intense development, the City was understandably unconcerned about the actual details of the leased premises. In addition, since the leased premises consisted of an island, there was little room for either party to maneuver (not much to gain or lose), unlike a large mainland tract where bargaining over boundaries can be intense. Thus, in this case at least, the City and UDC both shared the goal of maximizing the land to be developed and consequently made the oftentimes thorny issue of leased premises a non-contentious one. 4.

While the leased premises proved to be a non-controversial point, the length of the lease term aroused more concern. Leases

involving the building of improvements are usually considered long term, having a minimum duration of 21 years. 5.

Generally it is in a lessor's interests to make the lease term as short as possible, and he will press for a term just long enough to allow the lessee to build his improvements, pay off his debt and make his anticipated profits. For the lessor, a short term is desirable so that the lease can then be renegotiated (or a lease term extension can be agreed to in advance in order to prevent later negotiating problems) to reflect changing land valuations or rates of return more accurately, or simply so that he may gain title to the improvements earlier, especially if the project is economically successful. 6. The advantages of the shortest possible lease term also applied to the City as a lessor, although the City's concern was more than just financial. While it would have liked to be able to renegotiate or take over the development at an earlier point, it was concerned more with the project's success as a whole and therefore did not see this issue as crucial. Nevertheless, it would press for the shortest possible term in which the development could be completed feasibly and successfully, without risking the development's success by curtailing the lease term, especially since the maximum limit of ninety-nine years was already set by the UDC statute so a lease any longer was immediately ruled out. 7.

The City itself had also set the precedent in long-term leasing

of using ninety-nine years as a feasible and necessary lease term especially where conventional financing was to be used. 8.

It is generally to the lessee's advantage, on the other hand, to make the lease term as long as possible in order to retain control of the premises, properly amortize his investment and earn maximum profits. Expecting to be the beneficiary of inflation, the lessee may be able to raise his rents, and if there is not an effective rent formula to reflect upward changes in valuation (which the lessor tries to press for), he can possibly make greater profits and pay proportionally less of his project revenues as rent to the lessor.

The desire for as long a term as possible also applied to UDC as lessee, although the length of the term had to be kept within its statutory limit. Like the City though, it was also more concerned with the project's freestanding success socially and physically as well as financially, and like most developers, was unconcerned initially with the residual value of the project (present value was low and the future value uncertain) or the necessity to control the development for long periods beyond its original development goal. Nevertheless, it needed sufficient time to amortize its improvements and a sufficient cushion of time to satisfy even the most conservative of lenders.

In short, the success of the project was the goal of both parties. Although each tried to obtain the most advantageous lease term for itself (subject to maximum term set by UDC statute)

neither side felt so strongly about the term to let it stand in the way of the development's progress and success. Thus, although there were differences in the negotiations over this point, those differences were not irreconcilable.

#### Resolution

Paragraph one of the lease provisions details the eventual outcome of the negotiations over these two points. The metes and bounds description of Welfare Island is broken down into several components. It describes the Island out to the pierhead and bulkhead lines which if filled would bring the total usable land on the Island to 142.84 acres. Counting all the exceptions, however, other than the water tunnel fee parcel and temporary and underground easements, the usable land figure falls to 117.50 acres "more or less".<sup>9</sup> Using the same procedure and assuming maximum filling to the pierhead and bulkhead lines, 121.14 acres "more or less" can be considered developable. The description of the premises to be leased clearly was a noncontentious one between the City and UDC, especially after the UDC agreed to use the City's "standard urban renewal doughnut description"<sup>10</sup> surrounding the hospitals and other non-leased premises in its survey description.<sup>11</sup>

As in the Battery Park city lease<sup>12</sup> and the United Nations Development Corporation lease<sup>13</sup> the habendum or duration of the lease for Welfare Island is also ninety-nine years.

This term is significant as it presupposes sufficient time to amortize any investment made on the land, pay off all lenders, and provide for an adequate return on equity. At the end of this period, the City will again take possession of all the leasehold land and improvements, in this case at midnight December 23, 2068, unless for some reasons (detailed later) the lease is terminated earlier.<sup>14</sup> UDC, then, under Article 14(2) of the UDC Act received the maximum lease term then permitted it by statute. It was obviously able to make a strong case for ninety-nine years as necessary to make the development feasible, while the City, not feeling that the point was crucial and having already set precedents for the ninety-nine year long term lease itself, did not press UDC for any shorter habendum.

#### THE DEVELOPMENT OF PLANS AND CONSTRUCTION OF IMPROVEMENTS

An important question to be resolved was which party should have prime responsibility for preparing designs, plans and specifications for all the improvements<sup>15</sup> called for by the General Development Plan. Although the memorandum of understanding tentatively gave this responsibility to UDC, the parties reconsidered the issue before finalizing it in the lease. Traditionally, the City has reviewed and approved all building plans and sometimes their design before construction has taken place. The City considered this review process crucial in



allowing it to insure not only high architectural standards and aesthetic acceptability, but also the adequacy, safety and comparability of the public facilities and improvements to be built. The City realized, however, that this process often did not facilitate development or allow the developer the power to quickly conceive and execute plans for improvement. As a normal part of its development function, UDC was willing to assume all responsibilities related to preparing plans, either on its own or through its proposed subsidiary, the Welfare Island Development Corporation (WIDC); but it rejected the idea of City intrusion in terms of plan approval. This desire for autonomy stemmed from UDC's legislative ability to override local building and zoning ordinances and also, more importantly, from the feeling that as a public agency it was an equal to the City and therefore should not be subject to the City's normal operating procedures.<sup>16.</sup> Aside from these factors, UDC's commitment to good design was well known, and UDC was fearful of the City's bureaucracy hindering rather than encouraging good design. Even top City officials were of the view that UDC was more to be trusted as the arbiter of final plan design than the City's entrenched, staid and often unimaginative bureaucrats responsible for plan review.

In addition to the question of responsibility for designs and

plans, the issue of responsibility for construction of all improvements remained to be resolved. The City's bringing in of a developer in the first place clearly was for the purpose of obligating that developer to construct all of the improvements, with the exception of the public facilities. This point was already generally understood and agreed upon by both parties, although it had not as yet been definitely ascertained whether UDC itself or WIDC would in actuality carry out this responsibility.

#### Resolution

Subsequent to negotiations on this point, it was agreed that UDC would be obligated for the detailed development planning and implementation (including design), for obtaining the financing, and for assuring the construction of all the improvements. This provision is in sharp contrast to the one in the memorandum of understanding, in which the subsidiary, WIDC, was charged with constructing or arranging to construct the improvements called for by the UDC final plan, and where it is also the subsidiary who was to arrange for project financing. The reason for this change seems to be that since the direct parties to the lease and the negotiations are UDC and the City, the City wanted to have the lessee, UDC, liable for these obligations rather than a paper subsidiary.

#### TIME CONSTRAINTS

Another crucial provision in most ground leases and one which often arouses heated debate is a time limit placed upon

construction. The City would obviously like to have the developer provide the improvements he has committed himself to build as quickly as possible in order to insure both the completion of the development and a safe and reliable stream of ground rent and taxes. To insure that it is built and to prevent UDC from stalling or delaying development for whatever reason, a construction time limit provision was viewed as essential by the City, with that limit forcing development to take place within as short a time period as possible while still allowing the developer some time leeway.

From the developer's viewpoint it would be preferable not to have any timing enforcement provision at all since he would like as much time and leeway as needed to develop the premises. If the developer did agree to such a timing provision, however, in return he would press hard for a provision guaranteeing him a means of extricating himself from the lease obligations in the event that "circumstances beyond his control" prevented the successful development of the land. In other words, the timing control, although forcing development to commence by a certain date, could also be used as a double edged sword. If the City does not fulfill any of the obligations it undertakes and upon which the progress of the development is contingent (i.e. the completion of a subway line to Welfare Island), or if for other reasons beyond UDC's control it cannot proceed with the development, UDC could then press for termination of the lease, leaving

the lessor with the land-very likely with additional obligations.  
Resolution

According to the development timetable eventually agreed upon, construction on Welfare Island was to begin subject to enforced delay <sup>17.</sup> in eighteen months, by June 23, 1971, and to be completed by June 23, 1979. If subway service was not started by this completion date, then an additional two years would be granted beyond the actual start of subway service. (There is still some doubt that subway service will be ready by June 23, 1979.) If subway service does not begin, or if enforced delay somehow postpones completion of construction beyond December 23, 1984, either the City or UDC may terminate the lease, giving 180 days written notice. <sup>18.</sup> The completion of subway service is seen as the City's responsibility and if the lease is terminated for this reason, the City must pay or assume any indebtedness with interest allocable for public facilities. (This is the sole reason UDC could walk away from its lease obligations and force the City to assume the full public facilities debt. This will be discussed more fully in the section on default.) In other words, UDC must begin construction within eighteen months of the lease signing, but if events occur beyond UDC's control (enforced delay, or subway completion substantially delayed), UDC can bail out until June 23, 1985. This again is a two-edged sword, for if no

improvements other than public facilities are started by this date, the effect on UDC, outside of substantial planning and overhead expenses, would be minimal; on the other hand, if construction has already begun, the effects would be catastrophic. Perhaps only a UDC would be able to survive; certainly almost no private developer could.

What should not be lost sight of it that UDC was given the critical element of time. By not having to begin construction, subject to enforced delay, until June 23, 1971, it has a sufficient time period (over two years and two months) in which to make the hard decision of whether or not to proceed. 19. The completion time was certainly a bone of contention between the City and UDC, with UDC trying to extend the period as long as possible and the City trying to reduce it. The resolution occurred some time after September 2, 1969 when Edward Logue approved Paul Byard's request: "May I agree to...reduce the time for completion to eight years?" 20.

#### RELOCATION AND DEMOLITION

UDC wanted to assume a developable site ready for the digging of foundations and construction of improvements. It especially did not want the responsibility for relocation or demolition of existing structures since these problems would only add to its costs and create time delays. The City, on the other hand, realizing that it would be helping to facilitate development by providing UDC with a "ready to go" site,

seemed willing to obligate itself to clear and demolish the leased areas for UDC and to relocate existing City uses promptly. UDC wanted to insure, however, that the City carried out these responsibilities as quickly as possible; certainly no later than UDC's development timetable required certain areas to be ready for construction. Fearing that this relocation requirement, although appearing simple and neat, would become a bone of contention during the development process (possibly even delaying development), UDC wanted the City effectively to obligate itself to a quick and speedy execution long before any development work was even due to commence.

#### Resolution

The eventual provision relating to demolition reaffirmed the general memorandum of understanding which pledged the City to:

...the City will generally transfer project sites to the UDC for development free of all tenancies and improvements and the UDC will have no responsibilities for assembly, relocation, or demolition as parts of the projects. 21.

In fact the City had already begun to demolish the dilapidated buildings on the Island before the memorandum of understanding was even signed, let alone the lease points negotiated.

#### PUBLIC FACILITIES

##### Responsibility for Construction and Financing

The question of public facilities loomed large on the negotiating table. For the City, public facilities represented perhaps the major obligation it had in the Welfare Island project,

not so much as lessor, but as a municipality that also happened to be a landowner. It was the City's traditional obligation to provide and/or construct public facilities for all development in the City. In this case, however, the City was loathe to assume the responsibility of financing or even constructing them. For one, it wanted to avoid if at all possible any appropriation process or debt financing that would further tax its already overburdened debt limit. Its capital budgeting procedure for public facilities is a long and drawn out process calling for approvals from various city agencies as well as from the City Planning Commission and the Board of Estimate. Waiting for approvals through this complicated and lengthy procedure had often delayed projects that depended upon completion of those facilities in order to proceed. Recognizing this problem from previous experience and keeping in mind its desire to have this project completed as quickly as possible, the City felt that UDC, as a quasi-public agency of the State with developmental powers, could construct the facilities for the City (thus avoiding the City's approval process) and could possibly even finance the facilities long term using UDC's own tax-exempt financing. This factor would protect the City's interest by not placing it in the position of having to pay a much greater sum than it would have paid had it financed the public facilities itself. These facilities could then be turned over to the City immediately upon completion by sale or lease under a turnkey approach. Depending on the means of financing to be arranged, difficulties would

still be incurred with City bodies which would then be responsible for appropriating the necessary funds. Nevertheless, this approach was an ideal one for the City since it would then have no obligations for construction on Welfare Island at all, would therefore not have to go through a complicated approval process, and most importantly would not tax its own overburdened debt limit. Aware that it stood little to gain from the development anyway in terms of ground rent and taxes (since whether it or UDC built public facilities, those revenues or others would somehow have to be diverted to repay the debt incurred), the City would therefore be receptive to any solution or compromise that would help it avert the responsibility for construction, even if it meant making significant concessions in the process.

Realizing the City's problem in terms of its overburdened debt limit and fearing the delays that would be involved in obtaining necessary approvals were the City to finance and construct public facilities, UDC was willing to construct the public facilities and to use its own unique financing ability to relieve the City's burden, if it could in return receive some concessions from the City. This arrangement would insure for UDC that the public facilities would be constructed when they were desired and needed and would insure the development's rapid progress. In addition, UDC wanted to provide innovative public facilities as set forth in the Johnson Plan and felt that it could do so



more easily than the City which could not easily assume such an unconventional posture. Basically, UDC wanted control over what was constructed, how and when it was to be constructed, and how it would be operated, maintained and integrated into the development. Only by constructing all the improvements including public facilities could it have this type of control. 22.

Thus UDC and the City were both agreeable to UDC's constructing the public facilities with the only question remaining being how they were to be financed. UDC could even agree to provide tax exempt financing for the public facilities if the City would then obligate itself to buy or lease the facilities or find some other way to reimburse UDC for them, to cover their yearly cost, to make up any deficit, and to agree to take over the full public facilities debt in the event of a lease termination.

Also important was that the City agree to pay UDC by sale or lease a sum to cover UDC's cost of designing, financing, and constructing the public facilities including any debt service, penalty, or premium on such service, as well as UDC's normal allowances (basically a wastebasket term for UDC overhead). 23. It would have to assure itself, however, of favorable lease terms in order to insure the project's success, possibly trading off financing the development for control by the City over plans, etc.

UDC's unique ability to finance improvements thus helped to facilitate the development process, whereas a private developer

would have had extreme difficulty in obtaining city commitments to finance improvements such as utilities let alone housing, and would doubtless have subjected himself to endless delays even if successful. UDC clearly understood "the ace it had up its sleeve" and was hopeful of maximizing this advantage during the negotiations in return for tradeoffs from the city.<sup>24</sup> The City, for its part, was determined to avoid obligating itself financially for any capital improvements, even public facilities if at all possible, and was willing to work out any compromise with UDC that would guarantee such an arrangement.

#### Cost Factors

In order to provide some protection against the possibility that UDC would inflate public facilities costs the City felt that it should demand certification of those costs, although it realized that with UDC as construction supervisor and developer, even certified figures would provide scant protection. The City also wanted cost comparability, but the question arose as to what could be considered comparable to the innovative public facilities that were to be built on the Island. The only public facility that could realistically be compared was the school, and here the City did plan to ask for cost comparability since it was assured of state reimbursement for a large share of its capital expenditure over the life of the school bond issue. Using this reimbursement mechanism, the City would be able to pay

for the school through a lease or sale from UDC and thereby cover its complete cost. Cost comparability in this case would serve the additional purpose of allowing the City's isolated debt service for the school to be scrutinized by the State or even the public, and since it would be unconsolidated it could be used in determining whether costs were indeed excessive. The City would then use other comparable city schools as a valid yardstick measure in obtaining a legitimate average cost for similar facilities (while still granting UDC a little financial latitude beyond that average, if it so desired.)

From the City's viewpoint, however, public facility costs should be low for two reasons. First, the City was counting on UDC as a state agency with Republican friends in the White House to receive sizeable public facility grants for much of the innovative and exotic hardware that would be needed, thus reducing the cash outflow and therefore the City's eventual cost of paying off the public facility debt service. The grants would be viewed in essence as gifts that would not have to be repaid, and would serve as justification for the exotic hardware that probably could not otherwise be afforded. Secondly, counting on the lease to be profit-sharing, the City felt confident that UDC would provide the public facilities within reasonable limits of adequacy and cost accountability since it would be to its benefit as well as to the City's in making the development an economic success. 25.

UDC, on the other hand, felt that cost comparability was an unwarranted nuisance, and argued that there were no comparables for much of the public facilities it would build. One reason UDC was undertaking the construction of the public facilities at all was that the City itself probably would not be able to build many of the public facilities authorized by the General Development Plan since they would be considered excessive, untried and a waste of public resources. UDC was willing to go ahead with cost comparability for the Welfare Island school since the City was making a compelling justification for it. But it reasoned that for the other public facilities, the City would be relying on more than UDC's good faith alone. UDC was also controlled by the knowledge that it would have to either receive a large number of grants or limit its expenditures for public facilities, since any debt service not covered by grants would have to be paid out of development revenues. In addition, there was still the extreme possibility that UDC would have to pay for the public facilities or be obligated for their debt, if for some reason the City refused to release UDC of the debt service obligation even in the event of a default.

The problems of determining cost, and agreeing on cost certification and cost comparability were crucial ones, as was the issue of what review power the City would have. Intense negotiations were necessary before a resolution acceptable to both sides came about, as reflected in paragraph three of the final lease.

## Resolution

In the eventual provision negotiated by the City and UDC regarding public facilities, UDC obligated itself to provide tax-exempt financing for public facilities from its own financing source, thus not taxing the City's debt limit and at the same time speeding up an otherwise lengthy and cumbersome process.<sup>26.</sup> The City's Corporation Counsel, J. Lee Rankin, specifically added the requirement during the negotiations that all public facilities would have to be financed using tax-exempt funds, reasoning that since the debt service cost incurred by the lessee would eventually be borne by the City, the public facilities should be financed with tax-exempt funds as the City would have done had it constructed the facilities itself. <sup>27.</sup>

Equally important to UDC however, was the fact that it could consequently design and construct the public facilities on its own timetable. This provision provided UDC with the flexibility and certainty that facilities would be built on time, a situation that would be less than likely under the City's auspices (as the sorry experience with city public facilities for Coop City has demonstrated).

A significant concession made by the City was that UDC would maintain control over the final design of the public facility construction plans. The City and UDC, each in accordance with its own laws and regulations for projects, could legally certify completion of the project, "whichever event shall occur

first". The negotiating session on July 22, dealt with this very point. Paul Byard stated:

We reached a consensus to the effect that we would certify to completion in accordance with the standards of the department and that the City would have a period in which to make objections. I have retreated somewhat from that understanding because, if the City has the right to inspect and recommend and we have the obligation of a public agency to produce an acceptable facility which ties in with existing facilities, our certificate should be enough. 28

This point was eventually won by UDC. The result was a dilution of City power from approval to mere review and recommendation. The memorandum of understanding had spoken only vaguely of UDC responsibility for design of projects including preparation of architectural plans and specifications, subject to city review. But city review as intended here entails: "From time to time upon request ....., the UDC will review the status of such project with the representative of the City". 29. The City's normal powers of final review for drawings and specifications of public facilities have thus been significantly diluted to: "permit agents of the Department of Lessor having jurisdiction of similar public facilities to inspect such drawings and to make recommendations thereon". 30. This differs significantly from the right to modify or disapprove any project. In effect, the City is abdicating its right of review and its normal prerogative to control its own public facilities as a concession for UDC's agreeing to construct and finance them, in the belief that UDC would produce a high quality product.

In addition to the concessions the City had already made to UDC, the City was prepared to make yet another in its effort to

insure UDC's commitment to construct and finance public facilities. The memorandum of understanding for Welfare Island clearly hinged project feasibility upon "...funds available from State or other sources other than the City for the project parks and recreational facilities".<sup>31.</sup>

In entering the negotiations, even UDC was confident that the New York State Parks Commission for New York City would provide the parks according to their previously announced intent. Hopes for this eventuality were later dimmed, however, and the developer was anxious to make contingency plans. The resultant lease provision contradicts the memorandum by stating that if these funds are not secured through the means mentioned in the memorandum, UDC would secure them from the City or from its own tax-exempt financing, a compromise marking a fundamental change in the City's position. Despite the fact that the City would probably never agree to financing the parks, it has still given in to including parks as a part of public facilities (no matter how reluctantly), a major retreat from its earlier position in the memorandum of excluding parks from its financial obligations.<sup>32.</sup>

Although the method of reimbursing UDC for the construction and financing of public facilities is not discussed in this provision (it is discussed in the section under basic rent), the maintenance and operation of these facilities is considered here. For the sum of one dollar, the City agreed to lease back

from UDC all the public facilities upon completion, and agreed to operate and maintain these public facilities, with the exception of the school or appurtenance and those public facilities to be maintained and operated by UDC as provided for in the General Development Plan. Another provision asserts a modicum of City control over the maximum price it would pay to lease or purchase the Welfare Island school or appurtenance from UDC once completed. By setting an upper limit on what it would spend, the City is thus encouraging UDC to insure that its costs conform to the provisions and do not go beyond, giving the City some degree of certainty in regard to cost. On the other hand, the provision also allows UDC to inflate construction costs, normal allowances, etc, to bring its costs up to the legal maximum set on the schools. 33.

The importance of the leasing and purchasing provisions is in insuring a formula for arriving at a fair price to protect both UDC and the City. Upon purchase of the schools by the City, UDC is protected for all its costs including design, financing, construction, full debt service payments and normal allowances, as well as any premium payments for early note or bond retirement. A similar formula for leasing was worked out but on an annual basis. Upon completion of debt service payments, the City would be able to purchase the school for the nominal sum of one dollar and the balance of any yearly rent due. This



agreement, carefully drawn up by the City and UDC, was essential in protecting their respective interests when an actual financial accounting was due.

#### Conclusion

Although the City accomplished its limited objective of avoiding the construction and financing of public facilities, it had to concede a significant amount of its traditional control over public facilities in the process.<sup>34</sup> Basically, the developer was given complete responsibility for public facilities from construction and financing to actual design, with the City playing little or no role other than in their eventual maintenance and operation. The City felt it could justify this tradeoff primarily because UDC was considered even more committed to high design standards than was the City,<sup>35</sup> and because the financial and administrative burden of providing public facilities had been lifted from the City. It therefore felt it had nothing to lose and everything to gain from such an arrangement. (It should be noted, however, that only because of the developer's unique powers and position could such a tradeoff even take place.)

#### BASIC RENT

In most leases, the determination of reddendum or rent is usually the most important provision, and this lease is no exception.<sup>36</sup> The City wanted to extract as much rent as possible

from UDC without endangering the development or its chances of success. UDC, on the other hand, obviously wanted to minimize its rents payments to the City. In this particular case, a further complication arose as the City is entitled not only to rent, but also to property taxes or tax equivalency payments, and any agreement on rent must take both into account.

#### RENT

To determine what rent was to be paid, both parties had to agree first upon a method of calculating rent. There are basically three different methods of determining rents in ground leases. 37.

#### Fixed Rent

One method is to fix rent absolutely at a predetermined level, a method that for the lessor can be attractive if the rent is set high enough initially to give the lessor a sufficiently high present value return on his land investment. If there is no provision to renegotiate after a certain length of time, however, the fixed nature of the payment tends to benefit the lessee more, since in inflationary times, the rent remains a fixed absolute cost and therefore becomes a declining percentage of the project's gross revenues. The fixed rent approach also has its drawbacks for the lessee, however, since the payment is proportionally steepest during the earliest and most crucial phase of the development process,

a time when the primary objective is to reduce expenditure and minimize risk. Although that disadvantage may be balanced or mitigated by the inflationary effect of proportionally lower rents in the future, that advantage can be realized only if the project is a success. In order to insure the success of the development, the lessee would rather minimize early payments and so retain any profit at a high present value during the early years rather than in later years.

#### Fixed Rent Formula

The second method, a variation of the first, is the fixed rent formula approach. Rather than setting an absolute sum, it pegs rent at a specific date to some other value that may vary such as land or gross revenue. Usually rent varies only upward with each boost setting a new minimum floor level. In this case, however, that boost may only occur either at some prespecified point in time or when the lease is renegotiated. The advantage to the lessee is primarily that rent becomes a fixed cost set at an equitable level, thus reducing uncertainties and project risk and also giving him some certainty over his cash flow (as he would have had he purchased the land). The lessee still benefits by inflation as in the first method, at least until the rent adjustment date.

The prime advantage for the lessor is that if the rent is set high enough initially, he may receive a high present value return on his investment and yet also retain the chance to receive a still higher rent whenever rent is adjusted. On the

other hand, if the rent is not set high enough initially, inflation reduces its benefit in time and the rent adjustment date may be far off in the future. Fairness to the lessor can be insured if a profit sharing agreement is made between the two parties above and beyond the ground rent. A profit sharing agreement is one that allows for a predetermined sharing between the lessor and lessee of the lessee's profits from the project, once all of his expenses and fees have been deducted. This type of provision thus prevents windfall profits to the lessee due to the lessor's agreement to use a fixed formula rent over a long period of years, and basically protects the lessor's interests.

#### Floating Rent

The third method, the floating rent approach, is similar to the previous one except that the rent is allowed to float yearly, tied to whatever value, index (gross revenue, land value, or even the cost of living) or formula is agreed upon. The rent here too is usually permitted to move only upward, each boost thus acting as a minimum ground rent level. For the lessor this is perhaps the best approach since it always guarantees him a minimum rent, (he benefits if the formula used is sensitive to inflationary pressures, as are most) and since it provides for periodic review and consequent adjustments of rent when necessary. For the lessee, however, this technique is the least desirable of all, since even if the

current rent is supportable by revenues, he has no degree of certainty over what his future rent payments will be. If steep rises occur in the early years when cash flow is most uncertain, then the development's very future may be in jeopardy. Very few developments will have net profits rising rapidly enough to support this approach (unless the formula was pegged to profits). The lessee's fear of the inherent problems in this type of approach may lead him to agree to a profit sharing lease above a fixed ground rent as a preferable arrangement.

In entering the negotiations to determine ground rent and tax payments, the City's foremost goal was still to have the Welfare Island development succeed, although at the same time it wanted to maximize the ground rent it would receive from the leased premises. It is possible that the City had in mind a specific yearly ground rent figure since there is a \$2,000,000 floor mentioned at one point.<sup>38</sup> The City felt, however, that an arbitrarily fixed rent sum was by itself too simplistic an approach. Obviously an equitable formula for both parties would have to be arrived at, one that would fairly compensate the City for use of the leased premises and at the same time reduce uncertainties for the developer (at least initially). The City thus reluctantly agreed not to press for the floating rent approach although that would have been most advantageous for itself, and instead was

agreeable to using a fixed rent formula in order to facilitate the development. At the same time, however, it also wanted to protect the City's vital interests and prevent any windfall profits to UDC that might result from such an agreement. To insure those vital interests, it would demand a profit sharing agreement in return for agreeing to this fixed rent formula approach. 39.

In determining a rent formula, the City realized that UDC's only source of proceeds for paying rent would come from the revenue-producing elements of the program and obviously not from public facilities. The determination of the development program, then, was a crucial ingredient in arriving at an acceptable rent, although the City's plan had not been developed with the highest and best use or maximum revenues to the City in mind.

As in most ground leases a land valuation had to be made, in this case based not on the raw square footage of land but upon the type and quantity of the revenue-bearing improvements. Ground rent would have to be set at a level sufficient not only to support public facilities, but also to allow the various housing and commercial elements to be economically viable under their own financing and competitively priced for their respective markets. While the land value issue was crucial, the amount of ground rent per year would depend also upon the agreed upon rate of return to the City for that land value.

Like other developers, UDC also used the land residual approach in determining supportable land value. A developer first determines his maximum total replacement cost and mortgage for the housing and commercial space program. He then calculates his total carrying charges, vacancy reserve, estimated property taxes and his desired return. Whatever remains is the maximum available for ground rent payments that year. Capitalized, this figure determines land value. 40. The developer is unconcerned with the land value however, other than in the way it relates to the dollar figure he can support. The City did not meekly accept this approach, but rather negotiated using its own figures, bolstered by those of comparable housing and commercial space elsewhere in the City.

UDC further benefits by the fact that landowners generally have lower capitalization rates than do developers and this is doubly true where the landowner and the City are one. Thus the landowner, in any case, would come up with a higher land valuation than would any developer. Nevertheless, the two parties negotiated not only on the dollar figure but also on the land value. Even using its own capitalization rate, the City had to justify any deal made and was always susceptible to charges of a giveaway. The City felt it would be able to justify a land value to the public based on its own capitalization rate, a value that UDC could also

accept (although UDC alone could not have justified as high a figure using its own rate). This advantage is one that the developer is able to exploit only through leasing, especially leasing from the City. He is able in effect to borrow the full value of the City's land at a cost less than debt service on the improvements (even at UDC's lending rate).

UDC entered the negotiations with a desire to keep the ground rent payments as low as possible in order to keep rents marketable, and the development economically viable. It therefore regarded fixing the rent payment as crucial in reducing risk and uncertainty and in determining the development's long term cash flow; and in order to guarantee that rent would be determined according to a fixed rent formula, UDC was willing, however reluctantly, to agree to a profit-sharing arrangement. (Most businessmen are more willing to pay a "tax" on profits than on gross revenues especially where the project's success is uncertain and therefore profits unknown.)<sup>41</sup>.

#### Property Tax & Equivalency Payments

The determination of the amount of taxes that should be paid the City by UDC became a complicated procedure owing to UDC's unique tax situation. Exempt from normal tax requirements, UDC's statute called for in lieu of tax payments of



ten percent of shelter rent for all housing it financed, whether public, subsidized, or middle-income housing. <sup>42</sup>.

This factor in essence predetermined the tax solution for the greater part of the housing on Welfare Island.

Although the City would certainly have liked a higher sum, it was willing to go along with this ten percent figure for the public housing since it was already following such a formula itself for other public housing in the City, and for the subsidized moderate income housing since its own moderate income Mitchell-Lama program was also subject to the same formula. For the straight Mitchell-Lama housing, however, for which rents in 1969 were approaching the then high peak of eighty to ninety dollars per room per month, the ten percent figure was clearly unacceptable to the City. The City argued that the income group being served was not low or moderate income and could therefore afford to pay a more just levy. In addition, other non-UDC straight Mitchell-Lama projects in the City were already paying more than the ten percent in taxes and the City was concerned that it obtain at least the equivalent in taxes to comparable housing built elsewhere.

UDC would have liked to leave the tax payment at ten percent for the Mitchell-Lama middle income housing, and statutorily was within its rights to do so. However, special counsel to the City, Sam Brooks, felt that middle income straight Mitchell-Lama should be treated as a separate item with a higher ground rent and tax equivalent <sup>43</sup>., clearly implying that the Board of Estimate would not accept the lease

unless this tax figure was revised. As a result, both parties were at an impasse as to this tax aspect of the housing program. For the conventionally financed housing and commercial space, no such tax stipulation existed and UDC was concerned that the City might levy the same tax burden (usually measured as percent of gross revenue) as for comparable property elsewhere in the City. 44.

Furthermore, UDC was also concerned with fixing most of these tax payments at their initial first year level as a means of stabilizing the earlier more hazardous period of the development. A tax freeze would help keep rents down in the dwellings thus affected (basic rent and taxes being passable expenses to tenants), and under a freeze, the City would not lose out since its interests would be protected from the possibility of UDC's making windfall profits by the inclusion of a profit sharing lease. The City understood UDC's contentions but countered that by providing for public facilities it had incurred a major yearly cost and therefore would need all the tax revenue it could get. Although willing to accept UDC's arguments for freezing taxes for the low and moderate income housing, it was reluctant to do so for the middle income housing (even if government aided), and even more reluctant for the conventionally financed housing, since in both of these categories tenants could supposedly

afford the passthrough of taxes in rents. As for commercial space, the City had no intention of allowing UDC to pay anything but full equivalent taxes to be determined in the same manner as for all other commercial space in the City--at the current real estate tax rate times the assessed value of the improvement.<sup>45</sup> (The City also realized that any profit to be shared would, like taxes, come only from increased revenues or rents to UDC. Thus the City would probably be better off increasing taxes rather than freezing them, thus increasing its revenue.)

One of the crucial problems facing both parties was the Board of Estimate's determination not to accept a tax equivalent expressed in any way other than at the "then current tax rate multiplied by the then current assessed valuation, less the tax exemption".<sup>46</sup> (This was the phrasing used also in the Battery Park City lease.) Thus, while UDC pressed the City for a guarantee of tax stabilization, the City felt it could not accede since the Board of Estimate would not accept anything that on the face of it looked like a tax deal for UDC.

#### Public Facilities Payment

Another crucial unresolved issue in the lease concerned the method by which the City would provide compensation to UDC for constructing and financing the public facilities.

There were several alternative approaches that the City could use to pay for public facilities debt services:

1) the City could appropriate funds directly to pay for the yearly debt service; 2) it could pay for the entire infrastructure after UDC had financed and completed it, thus assuming the permanent financing and allowing UDC to provide the construction financing alone; or 3) it could allow UDC to deduct the debt service payment for public facilities from the rent and taxes due the City. 47.

If the City were to appropriate funds, it would undoubtedly incur some complicated budget problems that it would prefer to avoid, problems such as justifying the unique financing and construction approach, the extent of the facilities, and the amount therefore required on a yearly basis. The City would also prefer not to finance the development under the second alternative for the same reasons as above, and for the additional one of not wanting to use its overburdened debt limit. The one method that did appeal to the City was the deduction of the payment from the revenues due it from UDC. This accounting procedure, if it could be worked out, would thus not obligate the City for any cash payment and would therefore not depend on yearly city appropriations.

This arrangement was ideal from UDC's point of view as well, since it wanted the certainty of knowing that if it agreed to finance the public facilities, it would then be able to retain what it ordinarily would have paid the City in basic rent as reimbursement. It would thus not be dependent upon city

appropriations or payment schedules, or any number of possible delays that city payment might entail. UDC realized that it would also be much easier for the City to pay for public facilities debt out of these revenues than from the general city budget since no direct city appropriation or accounting would be involved.

Another major question, however, revolved not so much around the satisfactory resolution of this issue of reimbursement, but rather around the question of how the City would make up any deficit in basic rent if there was not enough revenue to pay off public facilities debt. UDC wanted the City to appropriate any funds that might be necessary to pay off this debt rather than having to make up any difference itself by paying more rent, the solution which the City would have preferred.

In the determination of the basic rent formula, not only was it important to take account of the debt service for public facilities cost that would possibly be deducted from rent, but it was also important from UDC's point of view to deduct normal allowances allocable to that year. The problem on this issue arose not so much because the City and UDC disagreed on this basic contention, but because they could not agree upon the definition of normal allowances. Normal allowances for a developer usually refers to the overhead expenses, fees and even remuneration for a particular

development. However, the details of the definition can vary and thus only through negotiations could this issue and the others be resolved. 48.

#### Resolution

These were some of the issues that the City and UDC had to deal with in determining the ground rent and tax equivalency payments. Both parties understood that the success of the development hinged on how well the resolution of these problems fulfilled the interests of both parties: the City's desire not to provide additional funds for capital improvements; UDC's need to protect the development's economic feasibility; and both parties' need for a fair and equitable rent formula.

The basic rent formula reads as follows:

(a) Basic Rent. For each year of the term of this Lease, Lessee shall pay to Lessor...as an annual tax equivalent payment and ground rent, a Basic Rent which shall be equal to the aggregate of the following sums, less Debt Service for Public Facilities and Normal Allowances allocable to such year: 49.

For Subsidized Housing:

(1) The sum of (x) a ground rent equal to the product of \$30 multiplied by the number of Completed Units of Subsidized Housing plus (y) a tax equivalent for Subsidized Housing equal to 10% of Annual Shelter Rent; 50.

For Middle Income Housing:

(2) The sum of (x) a ground rent equal to the product of \$180 multiplied by the number of Completed Units of Middle Income Housing plus (y) a tax equivalent for Middle Income Housing equal to 10% of Annual Shelter Rent;

For Conventionally Financed Housing:

(3) The sum of (x) a ground rent equal to the product of \$340 multiplied by the number of Completed Units of Conventionally Financed Housing plus (y) the Tax Equivalent for Conventionally Financed Housing;

For Commercial Space:

(4) The sum of (x) a ground rent equal to the product of \$.60 (sixty cents) multiplied by the number of square feet of Completed Commercial Space plus (y) the Tax Equivalent for Commercial Space. 51.

The fixed formula rent approach is adjusted in the following manner:

Adjustment of Rent. The Basic Rent shall be adjusted as follows:

(a) the ground rents set forth in subparagraphs 1(x), 2(x), 3(x) and 4(x) of paragraph 4(a) hereof shall be adjusted on each Rent Adjustment Date by substituting after such date the Then "Current Ground Rent for the Improvement or part of an improvement adjusted as of such date for the ground rent payable on account of such Improvement or part of an Improvement prior to such date, provided, however, that in the event the Then Current Ground Rent on such Rent Adjusted Date shall be less than the ground rent for such Improvement set forth in subparagraph 1(x), 2(x), 3(x), or 4(x) of such paragraph, as appropriate, no such adjustment shall be made; 52

This provision in the lease adds an inflation adjustor for the lessor, with that adjustment allowed to move only upward.

In the event that the new current ground rent is less than that of the previous rent adjustment date, the rent remains the same.

The inflator provides additional justification for use of a six percent interest rate in devising an appropriate ground rent for the City, as this six percent can be applied to a progressively larger and larger land value. This arrangement seems fine until the definition of rent adjustment date is analyzed. Increased revenue as an inflation hedge is not a certainty in the present or near future, but may be useful someday in order to receive additional revenue from the project...in other words, a forty year rent freeze.

Rent Adjustment Date: The 40th anniversary of the issuance of Lessee's certificate of completion or of Lessor's temporary or permanent certificate of occupancy, whichever shall first have been issued, with respect to each Improvement or part of an Improvement consisting of Subsidized Housing, Middle Income Housing, Conventionally Financed Housing or Commercial Space and each 10th anniversary of the date of such issuance after such 40th anniversary. 53.

## Derivation of Ground Rent and Tax Payment Formula

In order to understand how and why the formula for ground rent and taxes was determined, each formula shall be examined individually.

### Subsidized Housing

Within the context of the lease, subsidized housing refers to housing for those persons (elderly and non-elderly) and families meeting income eligibility standards for admission to federally assisted public housing, and for persons and families eligible under section 236 of the National Housing Act.

For the subsidized housing the ground rent is given as thirty dollars per unit. Elsewhere in the lease the formula's derivation is disclosed:

Then Current Ground Rent: With respect to each improvement consisting of Subsidized Housing, 6% of the product of (x) the current land cost per unit for economically feasible new housing in New York City for persons and families of low and moderate income as of each Rent Adjustment Date for such improvement times (y) the number of units contained in such Improvement; 54.

Assuming that thirty dollars is the product of six percent times the current land cost per unit for economically feasible low and moderate income new housing in New York City, then working backwards, the value of current land cost per unit is \$500. UDC did not begin assuming this \$500 land cost however, until August 28, 1969.<sup>55</sup> Earlier in July it was assuming \$1000 per unit



as land cost for the subsidized housing, and using a six percent rate of return (equal to UDC's cost of borrowing), had determined a \$60 figure per unit, still below the City's expectation of \$120 per unit for subsidized housing ground rent. <sup>56</sup>. The City finally agreed, however, to allow UDC the same \$500 figure for Welfare Island that it applied to any disposition of urban renewal land to UDC. The justification for this figure is that it is the maximum cost that can be charged for land while still allowing the development of economically feasible housing for low and moderate income families. <sup>57</sup>. Using the land residual approach with even the higher than FHA allowable UDC mortgage, the deduction of all expenses and profits from the mortgage leaves a very slim allowance for land if the developer is still to come in under mortgage limits. In other words, a higher land price would be unworkable since it would push rents up beyond project feasibility.

In determining the derivation of the six percent figure it would be useful to look back to 1969 and examine then-prevailing interest rates. (Tables III, IV, & V respectively include: Money Market Rates; Bond and Stock Yields; and Terms on Conventional First Mortgages.) It is apparent from examining interest rates in 1969 that towards the end of the year rates were slowly rising. The six percent figure appears to be more closely related to the rate of long term United States Government Bonds

TABLE III  
MONEY MARKET RATES  
(Per cent per annum)

Period	Prime coml. paper, 4- to 6-months <sup>1</sup>	Finance co. paper placed directly, 3- to 6-months <sup>2</sup>	Prime bankers' acceptances, 90 days <sup>1</sup>	Federal funds rate <sup>3</sup>	U.S. Government securities (taxable) <sup>4</sup>						
					3-month bills <sup>5</sup>		6-month bills <sup>5</sup>		9- to 12-month issues		3- to 5-year issues <sup>7</sup>
					Rate on new issue	Market yield	Rate on new issue	Market yield	Bills (market yield) <sup>5</sup>	Other <sup>6</sup>	
1962.....	3.26	3.07	3.01	2.68	2.778	2.77	2.908	2.90	3.01	3.02	3.57
1963.....	3.55	3.40	3.36	3.18	3.157	3.16	3.253	3.25	3.30	3.28	3.72
1964.....	3.97	3.83	3.77	3.50	3.549	3.54	3.686	3.68	3.74	3.76	4.06
1965.....	4.38	4.27	4.22	4.07	3.954	3.95	4.055	4.05	4.06	4.09	4.22
1966.....	5.55	5.42	5.36	5.11	4.881	4.85	5.082	5.06	5.07	5.17	5.16
1967.....	5.10	4.89	4.75	4.22	4.321	4.30	4.630	4.61	4.71	4.84	5.07
1968.....	5.90	5.69	5.75	5.66	5.339	5.33	5.470	5.48	5.45	5.62	5.59
1969.....	7.83	7.16	7.61	8.22	6.677	6.64	6.853	6.84	6.77	7.06	6.85
1969—Jan.....	6.53	6.14	6.46	6.30	6.177	6.13	6.312	6.28	6.05	6.26	6.04
Feb.....	6.62	6.33	6.47	6.64	6.156	6.12	6.309	6.30	6.19	6.21	6.16
Mar.....	6.82	6.38	6.66	6.79	6.080	6.01	6.223	6.16	6.19	6.22	6.33
Apr.....	7.04	6.38	6.86	7.41	6.150	6.11	6.168	6.13	6.03	6.11	6.15
May.....	7.35	6.54	7.38	8.67	6.077	6.03	6.149	6.15	6.10	6.26	6.33
June.....	8.23	7.25	7.99	8.90	6.493	6.43	6.725	6.75	6.86	7.07	6.64
July.....	8.65	7.89	8.39	8.61	7.004	6.98	7.285	7.23	7.14	7.59	7.02
Aug.....	8.33	7.71	8.04	9.19	7.007	6.97	7.194	7.19	7.27	7.51	7.08
Sept.....	8.48	7.61	8.14	9.15	7.129	7.08	7.316	7.31	7.35	7.76	7.58
Oct.....	8.56	7.86	8.17	9.00	7.040	6.99	7.297	7.29	7.22	7.63	7.47
Nov.....	8.46	7.92	8.18	8.85	7.193	7.24	7.565	7.62	7.38	7.94	7.57
Dec.....	8.84	7.93	8.58	8.97	7.720	7.81	7.788	7.89	7.64	8.34	7.98
1970—Jan.....	8.78	8.15	8.64	8.98	7.914	7.87	7.863	7.78	7.50	8.22	8.14
Week ending—											
1969—Oct. 4.....	8.83	7.73	8.25	9.11	7.106	7.02	7.340	7.31	7.41	7.93	7.93
11.....	8.73	7.88	8.25	9.43	7.046	6.98	7.289	7.33	7.34	7.76	7.74
18.....	8.63	7.91	8.25	9.68	7.042	7.01	7.327	7.30	7.25	7.62	7.36
25.....	8.50	7.94	8.15	8.68	6.975	6.94	7.265	7.24	7.04	7.42	7.12
Nov. 1.....	8.23	7.78	8.00	8.39	7.030	7.00	7.263	7.26	7.12	7.55	7.35
8.....	8.19	7.88	8.00	9.07	6.998	7.07	7.281	7.38	7.06	7.70	7.45
15.....	8.41	7.94	8.00	9.32	7.157	7.14	7.435	7.45	7.15	7.87	7.54
22.....	8.58	7.94	8.20	8.79	7.141	7.24	7.518	7.74	7.50	8.05	7.68
29.....	8.63	7.94	8.50	8.32	7.476	7.49	8.027	7.90	7.77	8.09	7.60
Dec. 6.....	8.63	7.98	8.38	8.91	7.453	7.60	7.613	7.83	7.55	8.11	7.64
13.....	8.75	7.88	8.53	8.75	7.702	7.81	7.803	7.92	7.61	8.32	7.95
20.....	8.93	7.89	8.63	9.14	7.920	7.88	7.922	7.89	7.61	8.37	8.06
27.....	9.00	7.90	8.72	9.18	7.804	7.82	7.815	7.82	7.67	8.44	8.10
1970—Jan. 3.....	9.00	8.03	8.75	8.71	8.096	8.02	8.101	8.03	7.75	8.56	8.26
10.....	9.08	8.11	8.75	8.45	7.960	7.91	7.991	7.93	7.58	8.36	8.21
17.....	8.75	8.13	8.68	8.96	7.837	7.82	7.784	7.64	7.47	8.11	8.10
24.....	8.70	8.16	8.63	9.30	7.789	7.83	7.663	7.70	7.43	8.13	8.04
31.....	8.55	8.23	8.50	9.04	7.888	7.89	7.776	7.80	7.52	8.23	8.20

<sup>1</sup> Averages of daily offering rates of dealers.  
<sup>2</sup> Averages of daily rates, published by finance companies, for varying maturities in the 90-179 day range.  
<sup>3</sup> Seven-day average for week ending Wednesday.  
<sup>4</sup> Except for new bill issues, yields are averages computed from daily closing bid prices. <sup>5</sup> Bills quoted on bank discount rate basis.  
<sup>6</sup> Certificates and selected note and bond issues.  
<sup>7</sup> Selected note and bond issues.

SOURCE: Federal Reserve Bulletin, Board of Governors, the Federal Reserve System, Washington, D.C., February, 1970, p. A 33.

TABLE IV  
BOND AND STOCK YIELDS  
(Per cent per annum)

Period	Government bonds				Corporate bonds						Stocks		
	United States (long-term)	State and local			Total <sup>1</sup>	By selected rating		By group			Dividend/price ratio		Earnings/price ratio
		Total <sup>1</sup>	Aaa	Baa		Aaa	Baa	Industrial	Railroad	Public utility	Preferred	Common	Common
1962.....	3.95	3.30	3.03	3.67	4.62	4.33	5.02	4.47	4.86	4.51	4.50	3.37	6.06
1963.....	4.00	3.28	3.06	3.58	4.50	4.26	4.86	4.42	4.65	4.41	4.30	3.17	5.68
1964.....	4.15	3.28	3.09	3.54	4.57	4.40	4.83	4.52	4.67	4.53	4.32	3.01	5.54
1965.....	4.21	3.34	3.16	3.57	4.64	4.49	4.87	4.61	4.72	4.60	4.33	3.00	5.87
1966.....	4.66	3.90	3.67	4.21	5.34	5.13	5.67	5.30	5.37	5.36	4.97	3.40	6.72
1967.....	4.85	3.99	3.74	4.30	5.82	5.51	6.23	5.74	5.89	5.81	5.34	3.20	5.71
1968.....	5.25	4.48	4.20	4.88	6.51	6.18	6.94	6.41	6.77	6.49	5.78	3.07	5.84
1969.....	6.10	5.73	5.45	6.07	7.36	7.03	7.81	7.22	7.46	7.49	6.41	3.24	.....
1969-Jan.....	5.74	4.89	4.58	5.34	6.89	6.59	7.32	6.78	6.98	7.02	5.93	3.06	.....
Feb.....	5.86	5.02	4.74	5.44	6.93	6.66	7.30	6.82	6.98	7.05	5.94	3.10	.....
Mar.....	6.05	5.25	4.97	5.61	7.11	6.85	7.51	7.02	7.16	7.23	6.09	3.17	5.66
Apr.....	5.84	5.24	5.00	5.57	7.17	6.89	7.54	7.07	7.25	7.26	6.14	3.11	.....
May.....	5.85	5.39	5.19	5.63	7.10	6.79	7.52	6.69	7.27	7.15	6.20	3.02	.....
June.....	6.06	5.78	5.58	6.01	7.27	6.98	7.70	7.16	7.37	7.38	6.33	3.18	6.03
July.....	6.07	5.80	5.61	6.08	7.39	7.08	7.84	7.29	7.50	7.49	6.42	3.34	.....
Aug.....	6.02	5.98	5.74	6.28	7.37	6.97	7.86	7.29	7.57	7.40	6.44	3.37	.....
Sept.....	6.32	6.21	5.83	6.58	7.53	7.14	8.05	7.42	7.68	7.62	6.61	3.33	6.37
Oct.....	6.27	6.12	5.80	6.45	7.72	7.33	8.22	7.59	7.76	7.91	6.79	3.33	.....
Nov.....	6.51	6.25	5.88	6.60	7.76	7.35	8.25	7.61	7.83	7.94	6.84	3.31	.....
Dec.....	6.81	6.84	6.50	7.23	8.13	7.72	8.65	7.95	8.16	8.39	7.19	3.52	.....
1970-Jan.....	6.86	6.74	6.38	7.13	8.32	7.91	8.86	8.15	8.38	8.54	7.01	3.56	.....
Week ending—													
Oct. 4.....	6.56	6.22	5.83	6.58	7.66	7.28	8.18	7.53	7.73	7.82	6.87	3.42	.....
11.....	6.34	6.15	5.80	6.40	7.74	7.37	8.26	7.62	7.70	7.98	6.78	3.41	.....
18.....	6.16	6.05	5.75	6.38	7.77	7.39	8.26	7.65	7.76	7.99	6.80	3.31	.....
25.....	6.07	6.13	5.80	6.48	7.71	7.31	8.21	7.59	7.79	7.89	6.75	3.24	.....
Nov. 1.....	6.32	6.16	5.84	6.52	7.68	7.25	8.17	7.54	7.80	7.82	6.75	3.27	.....
8.....	6.34	6.06	5.75	6.42	7.68	7.26	8.19	7.55	7.79	7.84	6.78	3.25	.....
15.....	6.46	6.14	5.78	6.50	7.70	7.29	8.19	7.56	7.76	7.89	6.75	3.24	.....
22.....	6.61	6.33	5.95	6.67	7.78	7.38	8.28	7.62	7.84	7.98	6.85	3.33	.....
29.....	6.60	6.47	6.05	6.83	7.89	7.50	8.38	7.75	7.96	8.09	6.99	3.43	.....
Dec. 6.....	6.65	6.68	6.34	7.05	7.97	7.60	8.45	7.79	8.01	8.22	7.08	3.50	.....
13.....	6.73	6.82	6.48	7.20	8.05	7.64	8.57	7.83	8.07	8.35	7.21	3.54	.....
20.....	6.84	6.92	6.57	7.32	8.15	7.73	8.68	7.95	8.19	8.44	7.33	3.59	.....
27.....	6.92	6.92	6.57	7.32	8.27	7.84	8.80	8.13	8.28	8.50	7.16	3.51	.....
1970-Jan. 3.....	7.00	6.88	6.52	7.28	8.33	7.90	8.89	8.19	8.34	8.56	7.16	3.48	.....
10.....	6.92	6.80	6.41	7.25	8.36	7.91	8.95	8.18	8.42	8.62	6.99	3.46	.....
17.....	6.84	6.65	6.36	7.00	8.33	7.92	8.86	8.14	8.38	8.57	7.06	3.50	.....
24.....	6.83	6.68	6.34	7.10	8.28	7.90	8.79	8.12	8.34	8.49	7.02	3.56	.....
31.....	6.84	6.77	6.39	7.15	8.29	7.91	8.81	8.14	8.38	8.47	6.98	3.71	.....
Number of issues <sup>2</sup> .....	9	20	5	5	108	18	30	38	30	40	14	500	500

<sup>1</sup> Includes bonds rated Aa and A, data for which are not shown separately. Because of a limited number of suitable issues, the number of corporate bonds in some groups has varied somewhat. As of Dec. 23, 1967, Aaa-rated railroad bonds are no longer a component of the railroad average or the Aaa composite series.

<sup>2</sup> Number of issues varies over time; figures shown reflect most recent count.

Note.—Annual yields are averages of monthly or quarterly data. Monthly and weekly yields are computed as follows: U.S. Govt. bonds:

Averages of daily figures for bonds maturing or callable in 10 years or more. State and local gov't. bonds: General obligations only, based on Thurs. figures. Corporate bonds: Averages of daily figures. Both of these series are from Moody's Investors Service series.

Stocks: Standard and Poor's corporate series. Dividend/price ratios are based on Wed. figures; earnings/price ratios are as of end of period. Preferred stock ratio is based on eight median yields for a sample of non-callable issues—12 industrial and two public utility; common stock ratios on the 500 stocks in the price index. Quarterly earnings are seasonally adjusted at annual rates.

SOURCE: Federal Reserve Bulletin, Board of Governors, the Federal Reserve System, Washington, D.C., February, 1970, p. A 34.

TABLE V

## TERMS ON CONVENTIONAL FIRST MORTGAGES

Period	New homes						Existing homes					
	Contract rate (per cent)	Fees & charges (per cent) <sup>1</sup>	Maturity (years)	Loan/price ratio (per cent)	Purchase price (thous. of dollars)	Loan amount (thous. of dollars)	Contract rate (per cent)	Fees & charges (per cent) <sup>1</sup>	Maturity (years)	Loan/price ratio (per cent)	Purchase price (thous. of dollars)	Loan amount (thous. of dollars)
1964.....	5.78	.57	24.8	74.1	23.7	17.3	5.92	.55	20.0	71.3	18.9	13.4
1965.....	5.74	.49	25.0	73.9	25.1	18.3	5.87	.55	21.8	72.7	21.6	15.6
1966.....	6.14	.71	24.7	73.0	26.6	19.2	6.30	.72	21.7	72.0	22.2	15.9
1967.....	6.33	.81	25.2	73.6	28.0	20.4	6.40	.76	22.5	72.7	24.1	17.4
1968.....	6.83	.89	25.5	73.9	30.7	22.4	6.90	.83	22.7	73.0	25.6	18.5
1969 <sup>a</sup> .....	7.66	.91	25.5	72.8	34.1	24.5	7.68	.88	22.7	71.5	28.3	19.9
1968—Dec.....	7.09	.89	25.9	74.0	33.7	24.7	7.09	.85	23.3	73.2	28.1	20.4
1969—Jan.....	7.16	.84	25.6	73.6	33.2	24.1	7.18	.86	22.8	72.6	27.9	20.0
Feb.....	7.26	.81	25.6	73.3	32.4	23.5	7.28	.86	22.9	72.8	27.2	19.6
Mar.....	7.32	.93	25.8	73.8	33.0	24.0	7.35	.84	23.0	72.7	28.2	20.2
Apr.....	7.47	.96	25.4	72.6	34.4	24.8	7.46	.85	23.0	71.8	28.2	19.9
May.....	7.50	.88	25.8	73.2	34.7	25.0	7.54	.83	22.7	71.9	27.8	19.7
June.....	7.62	.84	25.6	73.0	34.8	24.9	7.64	.86	22.8	71.4	28.5	20.1
July.....	7.76	.92	25.5	72.0	34.6	24.5	7.79	.91	22.8	71.7	28.5	20.1
Aug.....	7.86	.86	25.2	72.3	34.0	24.3	7.90	.93	22.6	71.2	28.4	19.8
Sept.....	7.89	.92	25.3	72.4	34.3	24.7	7.92	.92	22.2	70.7	27.5	19.2
Oct.....	7.98	.89	25.3	72.9	34.6	25.0	7.98	.91	22.2	70.2	28.1	19.5
Nov.....	7.97	.96	25.3	72.8	34.4	24.6	8.00	.90	22.6	70.4	28.8	20.1
Dec. <sup>a</sup> .....	8.07	1.06	25.4	71.9	35.3	25.0	8.07	.93	23.0	70.6	30.0	20.9

<sup>1</sup> Fees and charges—related to principal mortgage amount—include loan commissions, fees, discounts, and other charges, which provide added income to the lender and are paid by the borrower. They exclude any closing costs related solely to transfer of property ownership.

NOTE.—Compiled by Federal Home Loan Bank Board in cooperation with Federal Deposit Insurance Corporation. Data are weighted averages

based on probability sample survey of characteristics of mortgage originated by major institutional lender groups (including mortgage companies) for purchase of single-family homes. Data exclude loans for refinancing, reconditioning, or modernization; construction loans to homebuilders; and permanent loans that are coupled with construction loans to owner-builders. Series beginning 1965, not strictly comparable with earlier data. See also the table on Home-Mortgage Yields, p. A-53.

SOURCE: Federal Reserve Bulletin, Board of Governors, the Federal Reserve System, Washington, D.C., February, 1970, p. A 35.

(term of twenty years) that yielded six percent for most of the year. (Their highest level since the 1920's, touching nearly seven percent by year's end, but sliding back towards six percent by early 1970.<sup>58</sup>) UDC's own tax-exempt bond rate, backed only by the moral obligation of the State of New York, sold for par at 6.6% in 1970 in one of the largest tax-exempt bond issues ever: \$250,000,000. In retrospect, given the present 1973 level of high interest rates, the six percent figure appears to be rather low. But given the prevailing interest rates in 1969 and the generally lower rates of the 1950's and 60's, the figure is understandable.

Interest rates generally reflect the security of the investment. The City's security in this case is strong, since the City knew that all projects financed by UDC had more than just project revenues behind them; for UDC unlike any ordinary private developer, has the moral obligation of the State behind its bonds, thus indirectly insuring its projects. (To further protect bondholders, a debt service reserve fund equal to one year's principal and interest is maintained at all times from the proceeds of each bond issue; they may in addition have direct appropriations from the State.)<sup>59</sup>

Another safeguard guaranteeing the ground rent payment is the fact that the ground rent, at least in the case of the subsidized housing, amounts to little more than ten percent of the cash flow, while debt service requires nearly fifty percent of

gross income. Where land is not subordinated, the lessor has a prior lien upon project gross revenue second only to property taxes. In other words, the landowner has a prior claim to payment before the lessee's mortgage lender, and since he requires only ten percent of the project's cash flow, has more than an ample cushion even for the worst possible financial eventuality. Perhaps this safeguard explains why ground leasing has always been considered a secure investment, in addition of course to appreciation potential (especially in the center of the City Central Business District). Where land is subordinated, the mortgage lender has first claim to project revenues (again, after property taxes), and the lessor's position, although still fairly secure, is less so than the lender's. The landowner, however, having claim to the residual value, having a second lien, requiring only ten percent beyond the lender's debt service, and also having a possible profit sharing arrangement, is in a very desirable position.

The ground rent is secured as well by the fact that the City has a strong claim upon the improvements, and in the eventuality that basic rent or additional rent is not paid, can bring to bear the default procedures. As a last resort, the City can have the lease terminated and take possession of the land and any improvements. (This will be discussed in more detail later.)

For subsidized housing, the tax equivalency payment amounting to ten percent of shelter rent is determined by statute.<sup>60</sup> A UDC report explained the tax exemption for UDC residential projects this way:

Given today's high cost of housing, it is necessary for UDC to make full use of its exemption from local real property taxes. UDC residential projects are required to make payments in lieu of taxes in the amount of 10% of shelter rent (i.e., rent not including utilities). This is (on the average) the equivalent of a 70% exemption...<sup>61</sup>.

In order to get around the Board of Estimate's not wanting to accept anything that on the face of it looked like a tax deal for UDC,<sup>62</sup> the two parties inserted language elsewhere in the lease explaining the tax equivalent for every category individually, and also included a tax adjustment date some time in the future for subsidized and middle income housing.

UDC and the City resolved the tax stabilization problem by essentially freezing taxes for thirty years at the rate of ten percent of first year's operation shelter rent for the subsidized and middle income housing. Conventional housing is treated differently for unlike the thirty year reprieve given to middle income and subsidized housing, conventional housing is to be "from time to time assessed and reassessed" in the manner of comparable properties.<sup>63</sup> This same approach is to be used for commercial space which also did not participate in a tax freeze.

The determining provision for subsidized and middle income housing was provision five of the lease; adjustment of rent and the tax equivalent adjustment date:

(b) the tax equivalents set forth in subparagraphs 1(y) and 2(y) of paragraph 4(a) hereof shall be adjusted as of each Tax Equivalent Adjustment Date by substituting after such date the Tax Equivalent for Conventionally Financed Housing for the Improvement adjusted as of such date for the tax equivalent payable on account of such Improvement prior to such date; and 64.

Tax Equivalent Adjustment Date: The 30th anniversary of the issuance of Lessee's certificate of completion or of Lessor's temporary or permanent certificate of occupancy, whichever shall first have been issued, with respect to each Improvement consisting of Subsidized Housing or Middle Income Housing. 65.

Although UDC had wanted, still lower taxes, it was reassured that taxes for the conventional housing and commercial space would not be higher than those of comparable real estate in other parts of the City.

#### Middle Income Housing

The derivation of the \$180 per unit ground rent figure is found in the following formula:

.....with respect to each improvement consisting of Middle Income Housing, 6% of the product of (x) the current land cost per unit for economically feasible new housing in New York City for persons and families of middle income as of each Rent Adjustment Date for such Improvement times (y) the number of units contained in such Improvement; 66.

Dividing \$180 per unit ground rent by six percent produces a land cost of \$3000 a unit. At an average of five rooms per unit, land costs amount to \$600 a room. UDC first calculated



this figure at \$300 per room amounting to \$1500 per unit and a payment of only \$90 in ground rent. <sup>67</sup>. In order to compensate for the UDC tax limitation <sup>68</sup>, however, which limits in lieu of tax payments to ten percent of shelter rent, the City argued that ground rent should be raised. UDC was clearly concerned but could not easily see its way out of the impasse. Paul Byard finally broke the deadlock by adding a provision setting a higher ground rent for straight Mitchell-Lama housing (while retaining the tax equivalent equal to ten percent of shelter rent so that housing could be developed as a project of the Corporation) <sup>69</sup>. The resultant additional \$90 in ground rent added to the ten percent shelter rent tax payment provided rough equivalency with the taxes received from a standard Mitchell-Lama project given a fifty percent exemption.

#### Conventionally Financed Housing

.....with respect to each Improvement consisting of Conventionally Financed Housing, 6% of the product of (x) the current land cost per unit for comparable new housing in New York City for persons and families who can afford conventionally financed and fully tax-paying apartments as of each Rent Adjustment Date for such Improvement times (y) the number of units contained in such Improvement; <sup>70</sup>.

Again the familiar six percent rate is used, as it is throughout the determination of ground rent. In this case, by dividing the ground rent of \$340 per unit by six percent, a land cost of \$5,700 per unit is determined. UDC assumed a 4.75 room per unit average for this type of housing, bringing land cost per

room to \$1,200, a figure that was prevailing at the City's zoned density. A July 7 UDC analysis gave a land cost per unit of \$5,000, but using seven percent (cost of borrowing to UDC plus one percent for administration), UDC arrived at a figure of \$350 for ground rent per unit.<sup>71</sup> Only later, by September 26, was a six percent capitalization rate applied and a unit cost of \$5,700 arrived at by UDC, bringing rent to \$340 per unit per year.<sup>72</sup> In other words, by using the City's lower capitalization rate, UDC was able to use a higher land value and still come out with a lower ground rent (although higher than an earlier \$300 ground rent demand, it received a substantially lower ground rent for subsidized housing--\$30 instead of \$120.

The tax rate was set at the tax equivalent for conventionally financed housing:

Tax Equivalent for Conventionally financed Housing:

Lessor's then current real estate tax rate times Lessor's then current assessed valuation of land and buildings for each Improvement or part of an Improvement consisting of Completed Units of Conventionally Financed Housing or consisting of Completed Units of housing to be treated as Conventionally Financed Housing after adjustment under paragraph 5(b) hereof. Such then current assessed valuation for rent and buildings shall from time to time be assessed and reassessed by Lessor in the manner and subject to the limitations then currently imposed upon assessments of like properties by all laws and regulations applicable thereto. Lessee may contest any such assessment or reassessment in like manner.<sup>73</sup>

Although no tax freeze was added, a forty year rent freeze was agreed upon.

Commercial Space

....and with respect to each Improvement or part of an Improvement consisting of Commercial Space, 6% of the product of (x) the current land cost per square foot of comparable commercial space in New York City as of each Rent Adjustment Date for such Improvement or part of an Improvement times (y) the number of square feet of commercial space in such Improvement. 74.

Sixty cents divided by six percent brings the square foot land cost of commercial retail and office space to ten dollars. For this space, a floor area ratio of eight was estimated, attributing a value of eighty dollars a square foot for the land (or ten dollars per square foot on each floor). 75.

Initially UDC used eight dollars a square foot for the commercial space and applied the same rate to conventional housing (seven percent), for a ground rent of fifty-six cents a square foot. 76. The later ten dollar a square foot figure and lower capitalization rate of six percent brought the square foot cost for both retail and office space to sixty cents. Thus UDC was able to give in to the City's demand for a higher figure by again using the City's lower capitalized rate, and in return for this higher ground rent and for the conventionally financed higher ground rent it received the lower subsidized housing ground rent figure. UDC gave in to the City's request that ground rent and tax equivalent for commercial space be separately stated rather than combined in a lump-sum as UDC would have liked (since then both would have presumably been frozen, insuring tax and rent stability, something that would have been very attractive to potential retail and office tenants).

The tax rate was set at the tax equivalent payment for commercial space.

Tax Equivalent for Commercial Space: Lessor's then current real estate tax rate times the product of Lessor's then current assessed valuation (expressed in dollars per square foot of commercial space) for land and buildings for each Improvement or part of an Improvement consisting of Completed Commercial Space times the number of square feet of Completed Commercial Space. Such then current assessed valuation for land and buildings shall from time to time be assessed and reassessed by Lessor in the manner and subject to the limitations then currently imposed upon assessments of like property by all laws and regulations applicable thereto. Lessee may contest such assessment or reassessment in like manner. 77.

#### The Tenuous Balance

The importance of the rent and tax payments for the conventional housing and commercial space is central to understanding the lease (See Table VI). The conventionally financed housing alone makes up 55% of the total anticipated cash flow and 65.5% of the housing cash flow. Consequently, an inordinate amount of weight is placed upon this housing and upon the commercial space (which together comprise 70.86% of all revenues) to support the public facilities of the development. The subsidized units combined contribute only 14% of the total cash flow although they represent 55% of the units, while the conventional housing alone with less than half the number of units contributes four times the amount of cash flow (55.36%). In essence, the conventional housing and commercial space are subsidizing the low income and moderate income housing units. This means that the project's success and therefore UDC's ability to develop Welfare Island hinges on the most risky of all the improvements, the conventional housing, that will not even be

TABLE VI

BASIC RENT AND TAX EQUIVALENT PAYMENTS CASH FLOW ANALYSIS

HOUSING TYPE	NO. UNITS	% UNITS	% BASIC RENT & TAX EQUIVALENT	% BASIC RENT & TAX EQUIV. HSNG.	% BASIC RENT & TAX EQUIV. TOTAL
LOW INC. P.H.	1000	20	\$144,000	4.82	4.08
ELDERLY P.H.	500	10	\$ 60,500	2.03	1.71
MOD. INC. 236	1250	25	\$285,000	9.55	8.07
MITCHELL LAMA	1000	20	\$540,000	18.09	15.28
CONVENTIONAL	1250	25	\$1,956,000	65.52	55.36
TOTAL	5000	100%	\$2,985,500	100%	

COMMERCIAL RETAIL	100,000sf.	1/3 COMM.	\$152,000	N/A	4.3
COMMERCIAL OFFICE	200,000sf.	2/3 COMM.	\$396,000	N/A	11.21
TOTAL	300,000sf.	100%	\$548,000	N/A	15.51
TOTAL BASIC RENT AND TAX EQUIVALENT \$3,533,500					= 100%

Conventionally financed housing equals 65.52% of total housing revenue, and 55.36% of total revenues; yet it only contributes 25% of total units.

If commercial space is added to the conventionally financed housing, revenues equal \$2,504,000, or 70.86% of total revenues.

financed by UDC. If this housing cannot market, then sufficient cash revenues cannot be generated to pay off the public facilities and thereby to have the project operate successfully, at least not without inordinate amounts of UDC subsidy to pay off debt service for the public facilities (even if it defers debt from the City by calling it prepaid rent, without changing the development program).

#### Reimbursement for Public Facilities

The basic rent formula sets appropriate ground rents and tax equivalent payments for all of UDC's revenue-producing improvements. Deducted from this total sum is debt service for public facilities and allocable normal allowances.

This netting off of debt service for public facilities and normal allowances from basic rent is the final part of the entire financing formula, making the development work. This arrangement basically determines that public facilities will be paid for by the City, with the City allowing the lessee, UDC, to first deduct the cost of debt service from the rent payment.<sup>78</sup> This financing device eliminates many of the problems confronted by the two parties. For the City, it eliminates the necessity of having to appropriate funds from its hardpressed budget in order to pay for public facilities. Instead, it is successfully fulfilling its financial obligation by using the development's projected rents and taxes, thereby eliminating the necessity for a budget line item and the subsequent series of necessary approval. The end result is the same, however.

In return for the City's rightful rent and taxes, UDC has in essence assumed responsibility for the financing and construction of the public facilities, and in addition, has gained control over their design and timing. The City has avoided a major direct yearly capital expense that would have strained its debt limit, and more importantly, has escaped all financial obligations for any improvements on Welfare Island. By trading its expected rents and taxes, the City has in fact helped to facilitate the development of a new town with a superarray of public facilities, facilities that if financed by the City would most certainly have delayed and possibly even jeopardized the project because of all the appropriations and approvals that would have been needed. The resolution of this point can be criticized by some as a bad deal for the City, since it seems to reap little or no rent or tax benefit at all from the development in return for making possible a wasteful and extravagantly expensive development and infrastructure. The City could retort that the criticism is short-sighted, not taking into account the real economics of the development and the fact that the City will eventually take over the full array of improvements including the public facilities, built at little expense to itself. Also, if other development and the City as a whole are to flourish, then the City must do whatever is necessary to facilitate development of the sort that will be best for

the long run well-being of the City. Clearly Welfare Island was a project commanding the highest priority of the City administration.

Vital from UDC's point of view was the inclusion of the normal allowances provision, which it saw as crucial in adequately covering its overhead costs, in providing financial compensation to the Corporation for its efforts, and in helping to keep the project a viable entity. The definition and interpretation of normal allowances was carefully examined by the City and the final definition was eventually agreed to by both parties.<sup>79</sup> (See Appendix C)

#### Deferral

UDC also wanted assurances that it would not be obligated beyond basic rent, should basic rent not cover the cost of public facilities. After assessing the expected cash flow positions, UDC and City negotiators were confident that no deficit would occur after netting public facilities debt and normal allowances.<sup>80</sup> Despite this fact, UDC agreed to the City's request that UDC set off any deficit that might occur by paying it in that same year, and then carrying it forward and deducting it from future rent payments. In other words, in order to have the development proceed, UDC was reluctantly agreeing to a prepayment of rent formula that would cover any deficit and at the same time not obligate



the City to use its own appropriations. (UDC agreed only because it was fairly confident that no deficit would occur.) 81.

Profit Sharing Agreement

In return for agreeing to the fixed formula rent approach, the City demanded a profit sharing agreement, called additional rent, that was intended to prevent a windfall profit to UDC. The agreement became moot, however, given UDC's deductions, especially its project fee. 82. (See Appendix C) In determination of net income, the project fee deduction (or development fee paid out of project revenues rather than capital) was viewed by UDC as fair compensation for risks taken in connection with the development of the Island. The City, represented by John McGarrahan, recognized UDC's claim to a project fee in return for its assuming development risks: "...if UDC is to be an effective instrument in the City on this and other projects, we must recognize the practical need for it to be a self-sustaining development enterprise". 83.

The additional rent is equal to net income. To understand additional rent, the definitions of gross income and net income must be understood:

(b) Additional Rent. In addition to the Basic Rent, Lessee shall pay, in the same manner as the Basic Rent, Additional Rent equal to Net Income for the preceeding year. 84.

Net Income:

Net Income: For any period, Gross Income less (i) Normal Allowances, (ii) Basic Rent, (iii) the amount of the following costs incurred by Lessee: any amounts by which Lessee's operating and maintenance costs for any Public Facility consisting of a garage, an elevator, a mini-transit system or park exceed receipts derived by Lessee from such Public Facility, to the extent such excess shall not be included in Normal Allowances, and (iv) the Project Fee.

Gross Income:

Gross Income: For any period, the total of all receipts of any nature derived by Lessee from the Leased Premises or the financing of the development thereof, including, without limitation, rents, profits, interest and return of principal, other than payments to Lessee of the purchase price of or annual rent for any school or appurtenance and other than development fees, after deducting from such total all Debt Service for such period. 85.

To insure that this profit-sharing and UDC project fee approach did not overly benefit UDC, J. Lee Rankin inserted an amendment into the lease giving the Board of Estimate the right of election to amend the lease within five years. 86. The amendment deleted the provisions with respect to the project fee and provided that the City receive sixty percent of the additional rent and the lessee retain the remaining forty percent. Rankin reasoned that this arrangement would give the City a chance to eliminate the flat fee and have any payment to the lessee based on the success of the development and on how well the developer kept down the projected costs and expenses. This amendment thus encourages UDC to maximize profits from the project. In return for allowing UDC to receive forty percent of the net income (it received zero before), the quid pro quo was to strike out the UDC Project Fee, with the hope of minimizing proceeds to UDC and increasing the return to the City. This amendment takes effect only if approved by the Board of Estimate by December 23, 1974. 87.

### Summary

Of the three rent approaches mentioned earlier, the most advantageous one for the lessor is the floating rent approach where profit sharing is not contemplated. Where profit sharing is a possibility, however, and where the lessor is genuinely concerned with the project's success, then the fixed formula rent with profit sharing is the preferable solution in insuring the project's success for the reasons already discussed, and this indeed was the approach adopted in the lease. For the same reasons that the City was reluctant to make it appear as if a tax deal had been set for UDC, it also wanted to avoid giving the impression that a rent deal was being made. The illusion it wanted to present was that a floating rent was the resolution, if only to assuage the City's Board of Estimate (the reason for the inclusion of the "then current ground rent" provision for each category).

Basically, each party felt it had negotiated a fairly good deal for itself; but from an overall perspective, the City seems to have gained a more advantageous position than UDC, assuming far less risk and burden than it would normally assume in most other developments. For essentially, the City was able to negotiate in such a way as to avoid expending any of its own financial resources for front-end capital expenses. Not only did UDC agree to construct public facilities, but it

also agreed to be reimbursed for these public facilities through ground rent and taxes and to recover any public facility deficit beyond basic rent from its future basic rent payments to the City, again allowing the City to avert any expenditure of funds.

In return for UDC's agreeing to accept such terms, the City did agree to give UDC a forty year rent freeze on all revenue-producing elements of the development and a thirty year tax freeze on middle and subsidized housing according to statute (although not on commercial space or conventional housing that were to be normally taxed). The City further aided UDC by using its low capitalization rate (that gave justification for higher land values than would otherwise be the case), in setting ground rent levels sufficiently low to make the development feasible (especially for subsidized and middle income housing). However, the basic rent formula clearly sets the burden of ground rent and tax revenue on the conventional housing and commercial space, thus increasing the risk element of the development for UDC.

#### DEFAULT

A strong default provision in a lease becomes the lease's "enforcer". For the lessor, this provision provides protection and the means to repossess the property if default occurs for any of a number of reasons including non-payment of rent. For the lessee, the provision clearly sets out the legal recourse and protective mechanisms available to him should a default occur.

Default can often be a blessing in disguise for either party. For the lessor, a relatively minor default unrealized by the lessee may be the golden opportunity to gain control of valuable assets. The lessee, on the other hand, could intentionally default in order to possibly minimize his losses should a project's continued operation prove financially ruinous. Thus, the rights and obligations of each party under the default procedure as well as methods of arbitration and legal recourse (courts have traditionally tended to avoid lease termination wherever possible, often supporting the lessee<sup>88</sup>.) must be clearly defined to avoid problems of interpretation.

In the lease, the City's interest like that of any lessor is a secured annuity. If rent is not paid and a valid default is declared, the lease offers the City the protection of being able to terminate the lease and reenter the premises. Availing itself of summary eviction proceedings would be a last resort after all ordinary recourse was exhausted. As mentioned earlier, equity courts are not often willing to go along with the lessor in forfeiting valuable leases, and there have been situations where the courts have set aside terminations, even after a tenant has been dispossessed for non-payment of rent. The City realized that UDC's major concern in the event that default did occur (for instance, if there is a delay in the completion of construction

beyond December 23, 1984), was that the City should then assume the full financial responsibility for public facilities (as it must under paragraph 2). The City did not, therefore, view default lightly, primarily because it also saw this responsibility as unavoidable in order to assure the bondholders that even in the event of the project's not proceeding and revenues not forthcoming, it would not leave them without recourse. If the infrastructure had already been installed, the City could either develop the Island itself, lease it, or sell it to some other developer, in a more advanced stage of construction. The City, was reluctant to become obligated for the public facilities debt, however, especially if the development should turn sour at some point through no fault of its own. It therefore insisted on protection against UDC's voluntarily defaulting on the lease (for whatever reason) and also insisted upon the right to cancel for events of default, despite the fact that UDC would have liked to be the only one able to default.<sup>89</sup> As might be expected, the City preferred a short non-payment of rent clause, but it also wanted mandatory arbitration procedures in the event that the two parties could not come to terms on any matter in the lease.

In addition to UDC's already stated concern that the City assume full financial responsibility for public facilities debt service in a default, UDC's posture was basically to reduce the

possibility of default on its part by requesting a longer period before default could be declared for non-payment of rent. <sup>90</sup>. It was also concerned that it be given the right to dispute any matter that the City might claim had been defaulted, or in other words, it also wanted strong arbitration according to which disputed lease matters could be brought up and hopefully resolved. Tough negotiating preceded the final agreement on the default provision.

#### Resolution

Both parties' concern with an arbitration agreement resulted in a separate Arbitration provision. The City also wanted included and UDC did not object to a No Waiver provision, whereby either party could insist on a strict interpretation of the lease at any time unless written acceptance of waiver by both parties was procured. The definition of default finally agreed upon lists two conditions under which default would be allowed to take place: 1) if payment of basic rent or additional rent is not made and such non-payment continues for twelve months; or 2) if the lessee fails to perform or keep any term, covenant or condition of the lease. <sup>91</sup>.

(See Appendix C)

The twelve month nonpayment of rent default provision was a victory for the City. Near the end of the negotiations Paul Byard requested of Edward Logue: "May I agree to reduce the period for default of rent to twelve months..." <sup>92</sup>. Default for non-performance of "any term, covenant or condition of the lease" seems also to have been a point clearly won by the City. The City kept battering away at UDC through Sam Brooks:

"The Board of Estimate will not accept (your) default clause and will insist on being able to cancel for events of default." 93.

A subsequent provision, while protecting UDC's bondholders in terms of facilities (as in paragraph 2), obligates the City to assume the public facilities burden in the event of a default, but also protects the City in two ways. First, if the City re-enters the leased premises in case of default, its action is not to be accepted as a surrender of the lease by UDC. The only way surrender of the lease may be accomplished is if the City Board of Estimate accepts such a surrender. 94. This provision clearly protects the City from any intentional default action; and since the City wanted a means of terminating the lease if it so chose, it clearly did not want the financial obligation of public facilities debt service. Unless it was advantageous for the City, it would let UDC hold that obligation even if UDC defaulted, while at the same time still reserving the right to terminate the lease itself.

The subordination provision which follows, however, almost guarantees that the City would not terminate the lease.

Lessor agrees, for the benefit of the trustee or holders of any leasehold mortgage, that Lessor's right, title and interest in and to rent and other charges payable under any sublease shall be subject and subordinate to the rights of any leasehold mortgage to any rent and other charge pledged as security for the payment thereof until payment in full of the indebtedness, with accrued interest, secured by any leasehold mortgage. 95.



This extremely important provision protects the leasehold mortgagee and the bondholders by assuring them a first claim upon rent and other income that was pledged to pay off any debt. This provision was inserted to increase security for the financial community, to protect their interests, and to insure their participation in financing the development plan. Anything other than a first lien (such as placing the City in first position which it is in fact entitled to in terms of taxes on real property throughout the City) could result in a lack of willingness on the part of the financial community and objections from UDC's bond counsel to backing this endeavor. (Under statute the City has no right of taxation on UDC leasehold interests.) This apparent compromise agreement, although pledging the City's rent and in lieu of tax payments to the lessee's lenders, nevertheless does not pledge the fee itself as is the case in most subordination agreements. Its effect, however, is the same, in that UDC receives assurance for its lenders, in this case bondholders, of a first lien on "rent and other charges".

The City reasoned that it should not matter to UDC whether or not it had subordination (except in conventionally financed construction and even here, UDC may be satisfied with no subordination if lease terms are long and interest rates high enough), since in essence UDC is both the mortgage lender and the developer. Once UDC began to construct and finance the public facilities as agreed in return for the City's agreeing to pay for them over

the next fifty years or so out of rent and taxes, the only way UDC would be able to retire the entire debt service for public facilities without outside help would be to build the entire development, even if the development turned out to be economically disadvantageous to it. In this way UDC is basically roped in--it must finish all of the housing program, especially the riskier "conventional" housing and the commercial and retail space, since those elements provide the greater part of the ground rent and taxes that would go to the City and in turn back to UDC to pay off the public facilities debt UDC has assumed. Even if the public facilities debt service became more costly than UDC has originally anticipated because of higher construction costs, etc., the burden would be on UDC to raise rents or subsidy or to create more commercial uses (with the City's approval). The City thus transfers the responsibility for building the entire development fully to the developer.

The City had faith that UDC would get the development moving since it could finance development with funds received from debt issues and state grants, and could also receive subsidy funds in order to make rents feasible, thus burying any problems or mistakes (by subsidizing any deficit) for a period of time. These were all important considerations for the City, for they meant that it would not have to renegotiate or backtrack before the public, and would avoid the political embarrassment that occurs when a developer returns and asks for changes in the

"deal" in order to make it work for him. (The City has all too often been faced with a private developer crying poverty and returning to the City asking for changes or other assistance, including financing at times, to make a project work: e.g. Waterside.)

From the City's viewpoint, however, there was actually no subordination. Once it had agreed to allow ground rent and taxes to be used to pay off UDC's debt service obligations, it no longer had any economic interest in the project. That was the price the City paid for allowing UDC to assume the construction and full indebtedness for public facilities. The City, in effect, sold the land, because by subordinating, it agreed to receive no income in the form of rents or taxes, and really had only a secondary participation in any additional profits, thus benefiting only if the development proved to be profitable. (For UDC this subordination meant that as mortgagee, there would be effectively no payment of ground rent and taxes until all City indebtedness was paid off.)

Another aspect of this particular "subordination" acts to reinforce the reality of a "sale" to UDC. Unlike real subordination where the lessor must take over the mortgage in the event of a default in order to protect his interests, the City does not have to in this case. In other words, the City has no economic reason to foreclose for non-payment of ground rent or in lieu of tax payments since they are subordinated anyway.

The City would want to avoid foreclosure in any case as it certainly would not want to assume the burden of public facility debt; and since only the Board of Estimate can accept termination of the lease for non-payment, UDC cannot terminate the lease on its own for nonpayment and force the City to assume the indebtedness. Once payments were subordinated, then, the City no longer had any economic interest in the project and therefore had nothing to lose. It has subordinated its interests until public facility indebtedness is paid off and may have to wait, possibly even beyond the term of the lease, before being entitled to ground rent and tax payments or before regaining control over the land and improvements. The subordination of the City's economic interests, however, still leaves the City with the fee position, and under other circumstances would thus leave the lender with the technical disadvantage of not being able to sell the entire development, including land, even if it chose to foreclose on the lessee (although in this case they are one and the same).

#### CONCLUSION

There is no doubt that in the final analysis the City did well in the lease negotiations with UDC and succeeded in furthering most of its goals and objectives. It showed its sophistication and negotiating ability, rarely losing sight of its objectives, yet pushing for and getting crucial concessions from UDC through the use of a variety of ploys (i.e. claiming

that the Board of Estimate would not approve a lease unless certain conditions were met) and the knowledge of how desperately UDC wanted to develop Welfare Island. The City carefully traded off minor points such as design control, final plan approval, relocation and demolition, leased premises and length of the lease term (all of which did not compromise the City's basic goals and objectives and in fact even furthered them by helping to move the development along faster), in return for UDC's agreeing to construct and finance all the improvements including public facilities, a traditional City responsibility. The financing of revenue improvements was expected, but the unique arrangement with public facilities was a masterful coup for the City. UDC felt though that it was to its advantage to build and finance the facilities in order to insure their availability when needed and to avoid the unnecessary delays of the City approval process. For the latter reason, it also agreed to accept the City's pledge of ground rent and taxes due it from UDC as reimbursement for public facilities debt service (allowing UDC to deduct debt service for public facilities from the payment due the City), again avoiding a separate City appropriation.

The City in effect subordinated its position, giving first lien upon ground rent and taxes to UDC's lenders (bondholders), but felt it was really not giving up anything significant. For UDC was able to finance the public facilities using tax-exempt bonds, thus not costing the City substantially more in terms of

debt service than it would have paid itself. The City was even able to negotiate that in case of a deficit UDC would pay it and credit itself as in essence prepaying future ground rent and taxes, with the City continuing to avoid all obligation. In a sense, the City traded off its expected ground rent and taxes in return for no financial obligation, and in addition, at the lease's termination would receive a complete new community on Welfare Island including all the innovative public facilities built at practically no cost to itself.

As additional security for the City, the default provision was negotiated in such a way that even in the case of a UDC default, the City could refuse to accept surrender of the lease and therefore assumption of the financial obligation of public facility debt service; thus, UDC was essentially locked into completing the development. In fact, according to the terms of the ground rent and tax equivalency formulas which concentrate weight on the conventional housing and commercial space for most of the revenue produced, UDC must successfully complete these riskier elements of the project in order not only to subsidize the subsidized housing and middle income housing, but also to pay for public facilities debt service.

In a sense, then, the importance of the ground rent and tax provisions was not in providing revenue for the City, but rather in keeping rents down and in limiting the developer to the

total debt service required to support the revenue producing improvements as well as public facilities. By using its own capitalization rate to lower ground rent and taxes for UDC, the City contributed towards making the development viable. Of secondary importance to the City as well were the definitions of normal allowances, net income and project fee that on the surface seem to favor UDC, but that actually leave very little cash that can be utilized in profit sharing with the City. These provisions and several others (i.e. the amendment to strike UDC's project fee and replace it with another profit sharing formula if that appears more advantageous in five years) become moot and do not concern the City unless there is sufficient revenue in the future to warrant such concern (that did not appear likely for some time to come, if at all). The City was more concerned with controlling its downside risk and it succeeded in securing that through negotiations with UDC. Its upside position, while perhaps not as favorable as it would have liked in terms of profit sharing and the concessions it made of a 40 year rent freeze for all revenue producing elements and 30 year tax freeze for subsidized and middle income housing (not conventional housing or commercial), still leaves the City with little responsibility and obligation, and with the risk placed squarely on UDC's lap. It was a small price to pay for the privilege of not having to expend any funds while still having the development it wanted built, the social mix it wanted

achieved, and an innovative new town to which it was considered an integral party completed.

It was even able to retain development controls such as time constraints which forced UDC to proceed and complete the development within certain time spans (although it can be argued that UDC had the crucial element of time in which it could decide not to build if it so chose). The general development plan agreed to by both parties (based upon the Philip Johnson plan that the City had commissioned) and the other lease provisions provided the City with the controls it desired to insure the development's being accomplished more or less along the lines it had intended, and therefore minimized the necessity for direct City intervention in the development process. It had a competent developer with almost unlimited financial resources behind it (the State) that could be relied upon to complete the development and to assume financial deficits (should there be any) without the City having to bail it out through tax deals, financing, etc., as had been the City's experience so often in the past.

The lease exemplified the City's understanding of the development process, especially of the financial intricacies of development and of its own role and that of the developer's in facilitating the process. The City worked with UDC to help it achieve the freedom it needed and desired to proceed, and in return achieved for itself the financial autonomy it so



desperately wanted without losing control over the development (in terms of compromising its goals and objectives for the Island). UDC though, is perhaps the only developer capable of making the kinds of concessions that it did, and even for UDC, questions can be raised as to how wise those concessions were in the long term. But the City's policy of using UDC and of initiating and pursuing the development of this complex venture (without losing understanding of what was happening or which obligations to assume or not assume) displayed a masterful job of City policymaking and decision-making furthering the public interest in the development sphere.

CHAPTER VIII

CONCLUSIONS

Perhaps the most important generalizable conclusion of this study is the fact that cities do not have to be impotent and ineffective in dealing with developers. From the initial decision to develop Welfare Island to the final lease negotiations, New York City demonstrated a determination, expertise and capability in the art of development unanticipated by most observers, and succeeded in effectively shattering the myth that cities can have no effective role in controlling their planning and development destinies. The case study method provided the laboratory to test the notion of whether or not cities could indeed change their traditional passive role. Examination of the decision-making process in the Welfare Island development led to an understanding of the way in which city officials and planners perceived their roles and proceeded to act to achieve their objectives. Based on this case study, it has been demonstrated that cities are indeed capable of taking on the role of initiating and planning development, and with a good understanding of the development process and wise-decision-making, can achieve their development goals and objectives with minimum risk and burden to themselves.

Since the thesis is studying essentially the planning stages of this development, it is limited to the events leading up to the signing of the lease on December 23, 1969 and does not delve further into the actual construction and building phase of the project.

### Achievement of Goals & Objectives

It may be helpful to briefly review the City's originally stated goals and objectives (refer to Chapter II) in an attempt to assess how effective the City actually was in achieving each of these goals.

#### Financial

In terms of financial objectives, the City succeeded in all three areas that it had outlined. It certainly minimized its capital expenditures, not only in terms of revenue-producing improvements but also in avoiding its traditional responsibility of building and financing public facilities. By having UDC agree to accept responsibility for these facilities, the City avoided straining its debt limit any further and consequently avoided the political problems and delays traditionally involved in appropriating such expenditures. The City effectively minimized its overall financial risk in several ways: first, by choosing a developer that it knew had strong financial resources and the backing of the State should that be necessary; second, by leasing and therefore insuring itself of residual value and a share in future profits; and third, by negotiating the financial lease terms in such a way as to transfer the bulk of burden and risk for the development onto UDC rather than itself. In terms of its expense, the City willingly traded off the opportunity of receiving adequate ground rent and taxes to cover

its anticipated costs (including maintenance and operation of public facilities) in exchange for other significant financial and nonfinancial concessions, realistically feeling it could not expect more. In general, however, the City realized that it had succeeded in its financial goals and objectives to a degree beyond even its own expectations.

#### Political

The City also accomplished the three political objectives that it originally set for itself in the Welfare Island development. The Mayor's prestige was certainly enhanced by the City's initiating and facilitating the development and then retaining its identification with the project as it progressed, while the political consensus that the City so desired was achieved by the Mayor's appointment of the Schmidt blue-ribbon committee (an action that served to legitimize the City's plan). Finally, the Welfare Island project would increase the amount of new housing construction in the City, and so help to mitigate this previous political liability for both the Mayor and his administration. Thus, this development, by achieving these political objectives, was an important factor in restoring the City's credibility in the development sphere.

#### Physical

The physical and design objectives for the Island were perhaps the most visible of the City's accomplishments. Not

only did the City succeed in having its basic plan developed, but it was also instrumental in the selection of the planner/architects most attuned to the City's desires who would further refine the plan. Also, secure in the knowledge that UDC and Ed Logue both were at least as committed to good design as the City itself, the City agreed to trade-off final plan and design review. But in no way did the lack of active physical control over the final plan and design detract from the achievement of these objectives. In fact, UDC and the City were lauded most favorably by design critics, and the City in particular received very favorable reaction from various civic and special interest groups as well as from the general public for both its initiative and for its innovative, exciting and well designed plan. The plan itself was fully consonant with all the City's other goals and objectives and by having UDC agree to incorporate that general development plan into the lease, the City was further assured of its completion.

#### Social

The City apparently also achieved its social objectives for the development. It wanted Welfare Island to be a model of lasting social significance, one that would embody the excitement, innovation and creativity that the Lindsay Administration felt were so much a part of New York. Although no guarantee could be made that those qualities would indeed be present in

the actual development, the physical and social structure to encourage those qualities were laid out quite carefully in the development plan. Also, while the Schmidt Committee plan could not realistically meet all the needs of the City, it did attempt to maximize beneficial uses of Welfare Island for the entire City, given the Island's inherent limitations, and attempted at least in part to meet some of the needs of the City's residents. Perhaps more significant was the City's success in obligating the developer to incorporate the economic and racial integration aspects of the plan (with the risk of failure it implied) in an effort to enhance racial, ethnic and class harmony in a city where those factors were often at tinderbox levels. Possibly more than any other objective, this one was made possible only by the presence and acquiescence of UDC, a public developer, created not only to build economically feasible development but also to take the risks necessary in the achievement of its mandated social objectives.

#### Control

The City effectively achieved control over the development of Welfare Island, viewing control not as an objective but rather as a means to an end. Although the City gave up control over a number of areas (including final design and plan review), it never lost sight of its overall objectives and made the

necessary compromises toward achieving them. If control over design for instance was given up, it was with the understanding and agreement that the design objective would nevertheless be achieved. Also, the necessity for physical control and actual intervention in the development process would have negated and even contradicted the City's intent to assume as little of the risk and burden of development as possible.

### The Crucial Factors

There were several factors present in the Welfare Island case that seemed instrumental in enabling the City to successfully accomplish its objectives. They are: 1) ownership or control of land; 2) the presence of a public development instrumentality; and 3) the City's demonstrated understanding of the development process as well as its expertise and negotiating ability.

Two of these factors, control of land and an understanding of the development process, can be achieved by most cities. The presence of a state development corporation, however, while clearly a factor in the Welfare Island case, may not be available to most cities. Nevertheless, the first two factors provide cities with alternative options without making them dependent on other layers of government for project success. While cities may be able to successfully achieve their objectives without a state development corporation, the creation of similar state



development corporation models may be desirable for cities, especially if existing local and state development or finance instrumentalities are insufficient alone to do the job.

1. Land. In the case of Welfare Island, one of the most instrumental leverage factors operating in the City's favor was its ownership and control of land that was strategically located and marketable, land that many developers were in fact anxious to develop. Ownership of such land enabled the City to initiate and develop plans and strategies that would best serve the public interest; any developer then wanting to undertake the project had to deal with the City in order to gain control of the land. The City's price, however, was the undertaking of the City's plans. Thus, ownership or control of land would seem to be a prerequisite for any successful city development role.

2. The Presence of a Public Development Instrumentality. The existence and presence of UDC certainly enhanced the City's ability to get development moving more or less in the direction of its intended plans. UDC enabled the development to proceed speedily, minimizing governmental delays and a host of problems that would certainly have delayed or discouraged a private developer. No private developer was able to make the concessions to the City that UDC made, including its acceptance of the City's unique social and economic mix and other innovative aspects of

the plan. The City would also have almost certainly had to assume greater financial obligation and risk without UDC, possibly for the capital improvements and certainly for public facilities, a major disadvantage. Because UDC was a quasi-public developer that shared many of the City's goals and objectives, the City had more trust and confidence in UDC to carry out the City's development plans without compromising many of its objectives in the process. In addition to the controls that the lease provided, the need for the City's future active participation was further diminished by the knowledge of UDC's and Ed Logue's commitment to good design and development, a commitment that would assure the City of the Island development it had envisioned, one that would bring credit to the Linsay Administration that initiated it and to the City as a whole for pursuing the development.

3. Understanding of the Development Process. The City also was able to succeed as well as it did because of the thorough understanding of the development process that it demonstrated throughout its decision-making. It had a thorough command of its goals and objectives for the Island and brought the plan to fruition step by step: from its original decision to develop the Island; to the development of its plan (Schmidt and later the Johnson Plan); its choice of developer to carry it out; its decision to lease; and finally its ability to negotiate a lease that in essence achieved all its objectives and insured that the chain of

previous decisions led to the desired outcome. The City demonstrated a sufficient understanding of the limitations of its role as well as the leverage it could use with developers, and methods and strategies that it could employ to achieve its objectives with minimum risk and burden to itself. That it was able to successfully translate that knowledge and ability into a tangible development through its negotiations with the developer again is a major accomplishment, marking a change in the City's perception of its role.

Thus control of land, having UDC as developer, and the City's effective development role were primary factors enabling the City to successfully develop Welfare Island along the lines it had intended.

The study of New York City's effectiveness in initiating and pursuing the Welfare Island development implies that cities do not have to retain impotent and ineffective roles in the development sphere. There is no need for cities to feel outnegotiated, financially unsophisticated, and development-unwise in dealing with developers. An understanding and sophistication is necessary if they are to take an active role in developing land and achieving urban development objectives. Other cities may follow New York's lead and adopt a similar approach if suitable to their own objectives and unique situation. The process remains the same. Cities must first identify potential sites requiring development, whether their own underutilized land, land acquired by eminent domain, or land controlled through conscious or unconscious landbanking. Once those areas are identified, cities must

determine realistic and appropriate objectives and translate them into effective strategies. The development process in reality is not a set method or approach, but rather is ad hoc and must be determined specifically for each site.

#### Areas For Further Research

Further research ideas arising from this study fall into two areas: one, further analysis of Welfare Island upon completion of the development (in fact the first phase, 2000 units of housing, is scheduled to be completed by the beginning of 1975); and two, further analysis of the three factors which were seen as responsible for the City's success.

I. Further Exploring Welfare (Roosevelt) Island. As successful as the City has been up to the lease signing, it would be instructive to return to Welfare Island after the completion of the development, scheduled for some time after 1979, to examine several issues:

A. Development Issues. For example, how well did the Island's actual development correspond to the General Development Plan agreed upon in the 1969 lease? Was the lease a workable document; was it sufficiently flexible to take into account the needs of the developer? Did the social and economic mixing scheme provide serious difficulties for UDC, possibly in its own negotiations for subdevelopers, for instance? Is the development proving to be as marketable and successful as projected?

B. Social Issues. Does the new community function?--a question entailing a host of issues concerning the achievement of its model status. Do people interact or do they live and work in separate enclaves? Is there a feeling of community? Is the Island thriving, or dull, uninviting, and sterile as some have charged new communities with being?

C. Effectiveness of UDC as Developer. How effective was UDC in producing workable plans, in hiring architects, developers and builders, in keeping costs down, in negotiating with private developers, and in sharing profits and tax proceeds with the City? Was UDC able to effectively manage the development financing (including sale of bonds) and construction, and to insure the marketability and workability of the plan, not only for subsidized housing but for conventional? Was it able to gain the support of lenders for the conventional housing and to obtain all needed subsidies and expected federal grants from Washington? Basically, was UDC able to handle the job, or did the City make a mistake in choosing UDC? Did UDC concede too much to the City initially, thus weakening its development capability?

D. Financial Development. What were the final costs actually incurred by both the City and UDC? Did UDC try to renegotiate the lease at any point or ask the City for more than the lease initially provided? Would UDC try to change the development program in terms of social mix and economic formulae instead of

depending so much upon the riskier elements of the development, namely conventional housing and commercial space, to make it financially work? Were these changes beneficial to the development and the City's interests? What costs had the City not counted on or poorly assessed? Did the City sufficiently consider its share of operating and maintenance costs for public facilities and services and what were these costs? What benefits did the City receive that it had not expected?

How well the City negotiated with UDC is another issue. A question that follows is whether or not UDC will be able to fulfill its commitments to complete the development. If it completes its commitment regardless of the City's success in bargaining then perhaps the feeling will be that the City didn't bargain hard enough. If UDC fails to complete the development will the City be blamed for bargaining too hard? If UDC fails to complete the development the reasons for its failure may have to be investigated to ascertain what role the City played in that failure. However, the only conclusion that could be drawn is that UDC acted in its own interest in accepting its commitment to develop the Island and expected it to be successful. Certainly the City cannot be blamed for insisting on the best possible deal for itself within reason. Any other posture would be unrealistic. Public or private developers must be prepared to take risks; the degree of risk to be assumed commensurate with the developer's expectations of success.

A detailed cost-benefit analysis of the City's direct and indirect contributions to the Island's development should be undertaken. It should try to take into account not only direct cost expenditures, but also extremely difficult measurements of the success of the social plan, the contribution of the development as a model to aid the City's morale and its contribution as a model in the City's ability to deal with developers. Also possibly entering the equation should be the fact that by allowing UDC to develop Welfare Island, the City gained UDC as a developer for much more difficult projects in other less desirable parts of the City. A matrix for examining that question would be valuable for future research.

## II. Testing Future Implications of Thesis

A. Land. The study has found that land leverage was crucial in the City's ability to achieve as much as it did, implying that landbanking of underutilized vacant land, or areas such as parks, etc. until land is ripe for development, is of possible importance to cities wishing to have a greater role in their development futures. It also implies that even where cities don't own land, they might find it worthwhile to acquire land in a landbanking program, or to exploit opportunities that may arise (such as underutilized or phased out Army or Navy installations, etc. which they may purchase from federal or state governments). This policy may require national legislation that would authorize the writing down of the cost of such land to cities for recreation or future development depending on the suitability of the

site and the micro and macro planning needs of the neighborhood and the city as a whole.

Such landbanking legislation that may further this objective, if it can be determined to be a worthwhile policy, should be further explored and tested. The use of eminent domain as an advanced technique before development or even as a landbanking tool should be explored. Testing of comparable sites in New York and other cities could be done to establish more clearly landbanking's usefulness.

B. UDC. This study finds that the presence of UDC was an important component in aiding New York City to achieve its goals and objectives in the Welfare Island case study. It is important, therefore, to further test the advantages and disadvantages of public development instrumentalities such as UDC. Towards this end, it may be instructive to match several UDC projects with those of private developers to determine the comparative performance of each in several areas:

1. To determine whether public development corporations or private developers can best pursue social objectives and the public interest.
2. To determine whether public development corporations or private developers can provide for more innovative and exciting urban design and pleasing living environments.
3. To determine how cost effective both public development corporations and private developers are.
4. To assess the relative speed and facility with which development is planned and constructed.



5. To assess which best furthers the achievement of municipal and localities' planning and development objectives.

Given the importance of the role UDC played in furthering the Welfare Island development and further research establishing this fact, then perhaps methods should be explored of creating public development corporations or similar mechanisms perhaps better suited to the particular needs of localities. Even local ad-hoc agencies might be a preferable alternative to the private developer since development agencies can in a sense channel development along lines acceptable to cities, bear the risk of development for subdevelopers, and furthermore, provide more certainty for investors than in comparable projects privately developed. If the public development concept is seen by other cities as helpful or desirable, then studying the best form legislation can take to that effect may be useful, possibly even the suggestion of a national model enabling statute (such as the zoning enabling standard under President Hoover). Research may conclude that such a mechanism is not currently necessary in some areas where the private sector has more than adequately met existing housing needs, or where social design goals are not felt to be the obligation or responsibility of government (as may indeed be the case), or where other instrumentalities exist that may achieve more or less similar objectives. Nevertheless, states and localities that can benefit tangibly from the creation of a public development body, should

receive encouragement as knowledge of its advantages is more widely disseminated. Had the UDC concept not already been created, it most probably would have to be invented.

Perhaps these new urban skills will propel block grant policies further, thus encouraging the federal trend away from the categorical programs of the past. Cities would control where and how funds would be spent and where they would be most effective in the urban development sphere. States (perhaps the most appropriate level) or the federal government may wish to participate in the formation of public development corporations to aid and abet cities' development policies. They can take the risk that cities with limited resources cannot. A new ability of localities to control their planning and development destinies may mitigate the necessity of the states and federal government assuming that role, thus relieving them of a burden that localities feel rightly belongs at that level. While it does not relieve the states or the federal government of the responsibility of planning for state and national growth, it nevertheless adds a major element of planning stability at the local level and provides responsiveness to the needs of urban residents, as well as parameters for states and the federal government to use as planning baselines. Federal and state policies should be sensitive to urban planning policies instead of complicating or competing with them. For states and the federal government this would be an important change in their perception of how cities can control and initiate their own development.

Although it would be tempting to state unequivocally that the City is capable of initiating and planning all development in the City on land it owns, this statement does not necessarily follow and is unsupported by the evidence furnished by this limited study. What can be said, however, is that if New York City succeeded in this particular case, Welfare Island, other cities may be able to succeed similarly elsewhere. The factors responsible for the City's success--the availability of a suitably located and marketable site, the presence of UDC (or other development bodies capable of so significantly facilitating development and minimizing risk), and the City's willingness and capability to assume a more active development posture--may or may not be reproducible elsewhere.

Whether or not cities and towns will respond to the challenge of planning and controlling land development where feasible is open to question. Will cities have the leadership, understanding, financial resources and wherewithal to change their traditional role, or will they feel that development still properly remains the province of the private sector and that only traditional land use, and zoning, building code and other regulatory functions are appropriate for municipalities, any further action being financially, socially, and possibly politically risky.

Cities are still the only level of government that can plan and control their development destinies. The City's role in the

Welfare Island case was paramount. Without the City's active participation clearly development of Welfare Island would not have fulfilled the City's physical and social planning objectives. Judicious management of the planning process by the City can lead to better development redounding to the benefit of the City.

In order to assume a more active role, cities will have to develop knowledge of the development process, skills of bargaining and of negotiating. They must understand trade-offs and the economics of development. An understanding of the economic incentives to developers, such as tax losses, will provide cities with the kind of authority and leverage to bargain effectively to achieve their objectives in an era of fiscal austerity. This new role also requires the training and recruiting of skilled planning and development officials, well versed in the development process, capable of successfully developing and implementing planning strategies based upon a realistic appraisal of the particular site constraints and overall city goals and objectives, and able to successfully negotiate agreements to insure those objectives, without undue risk and burden thrust upon the city.

Cities can also sharpen other tools they already have at their disposal, some of which are not used aggressively enough. Where legally possible, techniques such as more aggressive use of eminent domain to aid land assemblage, property tax incentives to aid new development in desired areas, and incentive zoning and techniques such as underzoning, leading to more direct

negotiations with developers, with the clear intent and purpose of furthering urban development goals and objectives should be utilized. Better coordination between various arms of local government (where the mayor has direct control) is needed, such as coordination of transportation and land use planning, park planning and land banking for future development. Most importantly, more effective control of infrastructure placement is needed at a pace determined by municipal planners and designed to maximize leverage in development negotiations. Some cities such as New York and Ramapo have made starts in this direction (New York in incentive zoning and Ramapo through a development point system based on infrastructure placement), but a more thorough understanding of the development process and coordination of the many tools and techniques available to planners and policymakers can lead to more effective control over cities' development destinies.

But the city will have to adapt its goals to meet the realistic problems it faces. Funding limitations, limitations of marketability and a whole host of other problems may still impede successful urban development. The city will have to learn to operate within the realm of the "possible" using its resources and skills to the maximum and taking advantage of whatever assets it has in the process. The City in the last quarter of the century perhaps may not look like a Buck Roger's well planned environment, but the city can if it so

desires maximize its resources and skills through enlightened development planning to ensure that the legacy left to the City by its forebears will redound to the benefit of all its residents.

Instead of merely reacting to developer initiatives as has so often been the case in the past, cities can assume a different role, that of actually initiating and pursuing their own plans for developing land, gearing those plans to the goals and objectives that best serve the public interest. By assuming such a posture, cities can actively control urban development and help shape their own future.

APPENDIX A

HISTORICAL BACKGROUND

The history of Welfare Island is one marked by many changes in ownership and name, colorful escapades, scandal and changing uses.

I. Early History

The Indians named it Minahonnonck (or Minnahanock), "an island place," although from high above the island looks like an Indian arrow head.<sup>1</sup> The story of Peter Minuit's purchase of the island of Manhattan for \$24 worth of woven cloth and metal tools is well known. Not so well known is the story told of Welfare Island, bought by Governor Woulter Van Twiller from the Indians in 1637 for use as a country estate.<sup>2</sup> The island then was called Varcken Eylandt (Hog's Island), named for the pigs raised there. Governor Stuyvesant, however, voided the Indian sale to Van Twiller in 1652 and granted the island to Captain Francis Fyn by order of the West India Company to prepare it for fortification against the British. Fyn's island was confiscated in 1665 when Fyn capitulated to the British and the island was transferred to the British Crown along with New Amsterdam. The British called it Perkens Island, but that name was shortlived as the Sheriff of New York, Captain John Manning, bought the island in 1668 and gave it his name.<sup>3</sup>

Manning was banished to his island for life after falling into disgrace for hastily surrendering New York to the Dutch in 1673, after the Dutch had staged a surprise naval assault in an attempt to regain control of their old colony. Manning was charged with treason and found guilty by his incensed fellow townsmen, even after his return from a trip to England where he pleaded his case successfully before King Charles II. During his banishment to the island, however, Manning lived in a fine mansion and entertained his visitors in style with bowls of rum punch in "The Castle." <sup>4</sup> But he lived in disgrace until his death in 1686, whereupon the island title and name were passed to Robert Blackwell, the man who married Manning's step-daughter and heir. The island eventually was passed on through the hands of Jacob Blackwell, Robert's son, who was the proprietor during the Revolutionary War when the island was landed on by the British forces following their victory on Long Island, and subsequently to James Blackwell, Robert's grandson. <sup>5</sup> The Blackwell name would grace the island for over two centuries, and to this day Blackwell's mansion still stands, a rare reminder of a New York country home of the Federal period. (Blackwell's mansion is currently being rehabilitated as part of the Welfare Island development plan.)

During all this time, the only access to the island was by boat; consequently, this lone solitary outpost to the north of the major Dutch and British settlement down by the Battery, was and could only be little more than a country estate. A descrip-



tion of the island still exists in an advertisement by James Blackwell, Robert's grandson, offering Blackwell's Island for sale in the early 1800's:

A healthy situation and many fish and fowl caught here. Two small dwelling houses, a barn, a bake-fowl house, cyder mill, orchard of 540 fruit trees...pears, plums, peaches and cherries. A number of the best stone quarries already cleared to begin work immediately. A complete set of farming tools and quarry utensils and stock. Running springs of most excellent water abound; 107 meadows, eight of which are sale meadows. Whole improved with manure in a good fence (sic). Inquire of Mr. Joseph Hallett, 204 Water Str. or on premises of James Blackwell. 6.

Various attempts at sale by the now insolvent Blackwell family led eventually to a sale to James S. Bell in 1828 for \$30,000.00.

The island again changed hands in 1828 when James S. Bell sold it to the Corporation of New York for a profit at \$32,500. Bell's widow, Magdalene, contested the transfer and on September 11, 1844, her suit was settled by payment of an additional \$20,000. 7.

## II. The Era of New York's Garden of Charity 8.

### Penal Colony

Soon after the City purchased the island, it was put to use as a place for charitable and corrective institutions. 9.

Welfare Island was to begin its scandalous history as a way-station for the human outcasts of society; a perfect location for such a use as the dangerous and swift currents of the East

River were considered an absolute safeguard against escape and sufficient distance to keep such outcasts far removed from the mainstream of society. From 1832, the year in which the fortress-like penitentiary was completed, to 1936 (a period of 104 years), this massive structure of medieval dungeons, rounded turrets, and notched battlements (designed in part by James Renwich) would serve as a home to some of New York's most scandalous figures.

Charles Dickens, Britain's famed social critic, commented on conditions in the city's new possession in his American Notes published in 1842:

One day, during my stay in New York, I paid a visit to the different public institutions on Long Island, or Rhode Island, I forget which. (It was Blackwell's Island.) ...I was taken to these institutions by water, in a boat belonging to the island jail, and rowed by a crew of prisoners, who were dressed in a striped uniform of black and buff, in which they looked like faded tigers. They took me, by the same conveyance, to the jail itself. 10.

Prison gangs quarried the island and Blackwell granite was used for construction of many of the island's institutions as well as for other city facilities. Later, prison labor was used for many hospital functions until in the 1900's, public outrage forced substitution of paid labor. The prison is described admirably by Dickens:

It is an old prison, and quite a pioneer establishment, on the plan I have already described. I was very glad to hear this, for it is unquestionably a very indifferent one. The most is made, however, of the means it possesses, and it is well regulated as such a place can be. 11.

His compassion is evident:

The women work in covered sheds, erected for that purpose. If I remember right, there are no shops for men, but be that as it may, the greater part of them labour in certain stone-quarries near at hand. The day being very wet indeed, this labour was suspended, were in their cells. Imagine these cells, some two or three hundred in number, and in every one a man locked up; this one at his door for air, with his hands thrust through the grate; this one in bed (in the middle of the day, remember) and this one flung down in a heap on the ground, with his head against the bars, like a wild beast. Make the rain pour down, outside, in torrents. Put the everlasting stove in the midst; hot and suffocating, and vaporous, as a witch's caldron. Add a collection of gentle odours, such as would arise from a thousand mildewed umbrellas, wet through, and a thousand buck-baskets, full of half-washed linen--and there is the prison, as it was that day. 12.

A 19th century newspaper account characterized the island as "a little city on waters...a city in which all the misery, despair and viciousness of the metropolis are epitomized." 13.

Numerous scandals erupted and by 1914, conditions were so poor that Dr. Katherine B. Davis, the new commissioner of the Department of Correction, advocated the construction of a new prison hospital and disciplinary quarters. Dr. Davis devoted herself to stopping the smuggling of narcotics onto the island, and within a year, five staff personnel engaged in the sale of narcotics to inmates had been arrested and convicted.

By 1921, the State Commission of Prisons, in documenting the conditions, had described the prison in their report as: "...one of the worst in the State and a disgrace to the City of New York." 14. It was described by others as "a sin-steeped pile" and later as a clubhouse for gangsters. 15.

Among its most illustrious prisoners were Tammany's infamous Boss William M. Tweed and Mae West. <sup>16.</sup>

The Blackwell name had become so strongly associated with scandal that the Committee on Public Thoroughers of the Board of Alderman recommended to the Mayor in April of 1921 that Blackwell's Island be changed to Welfare Island in order to erase the stigma attached to its former name. <sup>17.</sup> A few days later the Mayor proclaimed that Blackwell's Island hereby be known as Welfare Island. The name change was ushered in this way: "That name Blackwell, with all the suggestions that it connotes something of the past, and that the new name Welfare seems to express the ideals for which the institution on the Island stands." <sup>18.</sup> By 1924, conditions were so bad that the State Prisons Commission recommended abandonment of the penitentiary and transformation of the island into a playground. This was followed by a Grand Juror's Committee recommendation that a new prison be erected on nearby Riker's Island together with a Board of Estimate appropriation of \$100,000 for the new prison in October, 1925. <sup>19.</sup>

In the meantime, those convicted of drug traffic continued to be a major component of the inmates; 60% of the persons committed to the workhouse in 1925 were drug addicts or connected with illicit traffic in narcotics according to criminal records. The prison conditions remained basically unchanged and little progress was seen on Riker's Island despite progress with plans and clearing of the site by prisoners. It took three riots and considerable publicity between 1929 and 1934 to have \$9 million appropriated for the prison on Riker's.

The worst riot occurred on October 22, 1932, triggered by a feud between Irish and Italian gangs competing for influence in the prison. After healing their wounds and differences, they joined forces in the operation of a prison vice ring. Joey Rao, a Dutch Schultz Harlem gangster, bootlegger and racketeer, convicted of extortion in the Bronx soda water business, headed the Italian faction, while Edward Cleary headed the Irish group. The gangsters, living in the style of feudal barons, smoked expensive cigars, wore silk shirts, underwear and costly dressing gowns, and had suites and their own garden plots in separate hospital wards overlooking Manhattan. Valets served the gangster lords in their rooms where they dined on steak and other choice food stolen from the prison commissary. They totally controlled the prison, squeezing profit out of every aspect of prison life. New clothes of inmates were sold, privileges such as easier or more lucrative jobs were sold, and even the parole list of the warden was presented for their approval. Drug traffic was wide and open, with even the guards assisting in the sale of narcotics to inmates. A sophisticated carrier pigeon system was even devised as a means of bringing heroin into the prison. 20.

This state of affairs was to be ended by Mayor F. H. La Guardia in one of his first acts on January 24, 1934. The "Little Flower" had his newly appointed Commissioner of Corrections, Austin McCormick, stage an early morning raid on the prison. The cells were cleared and their contents thrown into the hallways. The booty included paper soaked in heroin solu-

tion, files, razors, lead pipe pieces, and even transvestite trappings--cosmetics, perfume, female underwear and a lady's wig. Rao, Cleary and their henchmen were ousted from their prison suites and marched into the prison's most unpleasant cells. This depravity, now fully exposed by the crusading LaGuardia, led to repeated demands for a new prison, and in 1936 the old stone prison was demolished and the prisoners finally transferred to Riker's Island. 21.

This act marked the end of Welfare Island's use as a penal colony although the reasons for a change in use relate more to exogeneous factors than to the suitability of the island itself for prison use; after all it was on another island that the penal colony on Welfare Island was rebuilt. The name Blackwell Island had become besmirched by prison scandal, and it was not long before the "neutral" name of Welfare Island also become synonymous with scandalous conditions abiding during those days. The name transition was thus a failure, but the prison moved not only because the island itself had become a place of ill repute, but more importantly because of its outmoded status, obsolescent facilities, and because of the fact that new and varied institutions were being built on Welfare Island, making it more than just a prison colony and thus assuring that the prisoners would certainly not be missed in the changing status of the island.

City Home for Dependents (Almshouse)

Simultaneous with the island's use as a correctional center, it was also being used as the site of an almshouse, the predecessor of the City Home for Dependents. The city's original almshouse, holding thirty inmates, was on the site of the present city hall and was later moved to the grounds of Bellevue farm uptown on 26th Street to rid the new city hall of complaints. Because of persistent and intolerable overcrowding of both the almshouse and hospital at Bellevue Farm, (by November, 1926, with New York City's population at only 175,000, there were 1,366 inmates in the almshouse, 335 prisoners, 102 sick and 82 insane patients), it was decided to relocate the almshouse on Blackwell's Island on a 19½ acre tract. 22.

Dickens describes conditions in the following manner:

At a short distance from this building is another called the Alms House, (This was probably the predecessor of the City Home for Dependents.) that is to say, the workhouse of New York. This is a large institution also: lodging, I believe, when I was there, nearly a thousand poor. It was badly ventilated, and badly lighted; was not too clean; and impressed me, on the whole, very uncomfortably. But it must be remembered that New York, as a great emporium of commerce, and as a place of general resort, not only from all parts of the States, but from most parts of the world, has always a large pauper population to provide for; and labours, therefore, under peculiar difficulties in this respect. Nor must it be forgotten that New York is a large town, and that in all large towns a vast amount of good and evil is intermixed and jumbled up together. 23.

Originally, in keeping with the philosophy that poverty is a crime, John Sebring, overseer of the first Publick Workhouse and House of Correction in the City, was directed: "to set the poor to work, and to correct the contumacious, that such poor as are able to work may not eat the bread of slought and idleness and be a burden to the publick." 24. Many of the city's vagrants and helpless poor were incarcerated with hardened criminals in the tombs.

After the almshouse was built on the island, shortly after 1828, conditions were slightly better although the philosophy of the day prevailed. In 1852 the workhouse was built and the able-bodied indigent removed from the almshouse, while the aged and disabled remained. W. H. Davenport reported in Harper's Magazine in 1866, that the workhouse was designed by the city commissioners to be "as repulsive as is consistent with humanity; while the almshouse was supposed to be 'a place of comparative comfort, liberally though economically maintained!'"25.

Modest stipends were paid to workhouse laborers but this policy was soon abandoned as the workhouse became a penal institution for minor offenders--a haven for persons convicted of small thefts, drunkenness, vagrancy, disorderly conduct, prostitution or drug addiction, generally sent to the island directly from night court in Manhattan.

When male and female blind asylums were added to the almshouse in 1869, its name was changed to the New York City Home for the Aged and Infirm. The "blind leading the blind" became a common sight as each morning a line of men would form two abreast, arms touching, the shoulder in front, to be led to



the barber shop. Each year the inmate population would swell as winter neared and seasonal labor was laid off, for no one would ever be turned away. The home, continually crowded beyond capacity, was so bad at the end of the 19th century that people slept two and three to a bed and on the floors, in sheds and in tents. Barlow alludes to its serenity and quiet village beauty with its carefully tended flower beds, grass plots and hedges.<sup>26.</sup>

The City Home for Dependents, the oldest of the hospitals and institutions run by the City, originally started as an almshouse for indigent citizens. As the need for medical services increased, it was expanded into both nursing home and home for the aged. Pavillions for male and female blind were added as well as a physio-therapy building in 1908. The last major structure added was a female industries building in 1915, although in 1941, the old Neurological Institute was renovated and made a part of the City Home for Dependents. In 1952, after 218 years (124 on Welfare Island), the almshouse was closed, its able-bodied inmates transferred to the Staten Island farm colony, and the bedridden placed in the newly opened Bird S. Coler Hospital. <sup>27.</sup>

### Lunatic Asylum

Perhaps the most famous building on the island and one that has captured the imagination of many, is the original New York City Lunatic Asylum that became part of Metropolitan Hospital. Its octagonal rotunda has been praised by

Charles Dickens: "The building is handsome; and is remarkable for a spacious and elegant staircase... its spiral staircase is generous in scale and as interesting for the original sort of handling of space as a Baroque stairhall." <sup>28</sup>. Giorgio Cavaglieri calls it the grandest interior in the city dating from before the Grand Central Station concourse and a fascinating premonition of the Guggenheim Museum that Wright certainly never saw. <sup>29</sup>.

The east-west wing of the building and the Octagon were completed June 10, 1839, but the north-south wing was completed in 1847-48, depending on but modified from the A.J. Davis design of 1834-1835. <sup>30</sup>. Additional changes occurred in 1878 following a long and complicated battle between architect, builder and the city. The original domed roof of the Octagon will be restored as part of the current Welfare Island development plan, and it is hoped will provide a valuable accent to the island's skyline as will be seen from Manhattan's East Side.

Although the asylum's exterior was held in high esteem, conditions inside the asylum were deplorable. Dickens describes the inmates of the asylum in horrifying detail:

I cannot say that I derived much comfort from the inspection of this charity. The different wards might have been cleaner and better ordered; I saw nothing of that salutary system which had impressed

me so favourably elsewhere; and everything had a lounging, listless, madhouse air, which was very painful. The moping idiot, cowering down with long dishevelled hair; the gibbering maniac, with his hideous laugh and pointed finger; the vacant eye, the fierce wild face, the gloomy picking of the hands and lips, and munching of the nails; there they were all, without disguise, in naked ugliness and horror. In the dining-room, a bare, dull, dreary place, with nothing for the eye to rest on but the empty walls, a woman was locked up alone. She was bent, they told me, on committing suicide. If anything could have strengthened her in her resolution, it would certainly have been the insupportable monotony of such an existence...31.

In 1867, the authorities made the mistake of committing a girl of twenty, who after being refused a job at the New York World, had disturbed the landlady of her cheap Manhattan boarding house by her strange behavior. Ten days later, the World ran an expose of the conditions on Blackwell's Island, an expose so shocking that it caused the City to institute reforms. The girl who had survived ten days in the insane asylum wrote under the pen name of Nellie Bly. 32.

Despite the horrors and woes afflicted on those unfortunate human creatures in pre-Freudian days, the external surroundings were considered innocent and charming. The grounds were shaded by tall willows, horse-chestnuts and buttonwood trees. A tree-arched carriage road led to a river full of sailing craft of all types. The view to the East was that of luxuriant foliage and elegant buildings (and not of Con Edison's present Ravenswood smokestacks),

while the view to the West was that of Manhattan Shore with noble mansions and boat houses abounding. An adjoining twenty acres was used for a truck garden and an extensive flower garden.

### Hospitals

The 1800's and 1900's saw a number of public hospitals devoted to a variety of purposes developed on Welfare Island. Many of these hospitals decayed or became obsolete over the decades, with only two still functioning today: Goldwater Memorial Hospital, which is a unique center for treatment of chronic diseases; and Bird S. Coler Hospital, which deals primarily with geriatric custodial cases. The two hospitals are the successors on the island to such now defunct hospitals as Metropolitan, Smallpox, New York Cancer Institute, City, and Central Neurological Hospital. Some of these old hospital structures will be preserved as reminders of the island's role as a place of quarantine in those pre-vaccine days when various contagious diseases struck terror into the hearts of city dwellers. As Barlow put it: "So imbued was the island with the atmosphere of disease and death that in the minds of many a trip across the East River was synonymous with a trip across the River Styx." 33.

Following is a brief description of some of the better known hospitals:

### Smallpox Hospital

Built around 1854-56, Smallpox Hospital was designed by James Renwich. This structure is currently known as the Nurses' Residence and will be preserved as a landmark building in the current Welfare Island development plan.

### Metropolitan Hospital

The abandoned ruins of the Metropolitan State Hospital are in the 22-acre compound which includes Riverview Juvenile Center, two churches, and the Octagon mentioned earlier as part of the Lunatic Asylum, on which site Metropolitan Hospital was built. Originally the hospital was the Ward's Island Homeopathic Hospital and was located in the inebriate asylum there. In 1894 a plan was instituted to put only state institutions on Ward's and city institutions on Blackwell, so by 1902 the hospital was relocated on Welfare Island as a concentrated tuberculosis unit and general hospital, while the insane patients were transferred to the state's institution on Ward's Island. The hospital's notoriety stems not only from acute tubercular cases, but also from the leper cases housed there from 1902 until the federal government took them over in 1921.

### City Hospital

City Hospital was a general hospital, the second oldest of the hospitals and institutions conducted by the City of New York. Opened in 1832 as an almshouse, it became a hospital in 1837 and was totally destroyed in 1858 in the

midst of a freezing blizzard, by a fire due to faulty building construction. A new hospital was built in 1861 with stone quarried and constructed by the prison inmates. In 1866 the name was changed to Charity Hospital and only later, because of "real or fancied" objections on the part of the patients, it was changed again to City Hospital in 1892. <sup>34</sup>. In 1869, the administration of the hospital became so corrupt that the Commissioner appointed a new medical superintendent with complete authority over administrative matters to make major improvements. The hospital reached a peak bed capacity of 1060 in the 30's and that was reduced to 880 upon the completion of Goldwater Hospital in July, 1939. Despite major modifications in the 50's, the hospital closed its doors in 1957 and many patients transferred to Elmhurst Hospital in Queens.

#### Goldwater Memorial Hospital

With the old scandalous prison site demolished and replaced by a new prison on Riker's Island, a hot debate ensued between Parks Commissioner Robert Moses who immediately published plans for a new sports park and Hospitals Commissioner Goldwater who argued the case in favor of a new hospital for the chronically ill. Goldwater's argument eventually prevailed and the hospital that bears his name today was constructed in 1939.

The hospital plan was enthusiastically embraced by LaGuardia, and a comprehensive plan was envisaged, making Welfare Island a center for the chronically ill (since the Department of Corrections had departed).

As a center for the treatment of chronic diseases it was unique in the City. It was also considered an architectural innovation in its day, giving considerable attention to sunlight exposure and to other design features which related the building structure to the water environment. Occupying a 21 acre area, Goldwater handles patients from throughout the City. Constantly overburdened by "purely custodial cases" (generally indigent patients without homes, sometimes transferred from other hospitals to open up needed beds), however, the need was soon recognized for a hospital on Welfare Island to deal primarily with custodial cases, what was to be Coler Hospital. <sup>35</sup>.

#### Bird S. Coler Hospital

Named for the former Commissioner of the New York City Department of Welfare (January 1918 to December 1928), Bird S. Coler Hospital was completed in 1952, at which time the City closed Metropolitan Hospital and the City Home. Originally the hospital was organized and operated as a traditional chronic care hospital, with treatment organized along the usual disease-oriented care system. In 1962 the New York Medical College--Center for

Chronic Disease was established at Coler to provide a program directed to the care of the individual patient with a strong emphasis upon rehabilitation, even for those chronically ill patients who would never be able to achieve total self-sufficiency.

There is no question that Coler is a geriatric facility, with a 1966 study showing that over half of the patients were 65 and older at first admission and less than 5% below age 35. The average stay at the hospital in 1967 was 832 days. Basically patients fall into two categories: those who require active long term care, and those who require little active care but require attention beyond that which they can give themselves. 36.

#### Elevator and Storehouse Building

Completed in 1918 to provide elevator access to the Island from the lower level of the Queensboro Bridge, this building contained space for ambulances and other vehicles to load into one of four vehicular elevators on the top floors and descend to the Island and Reception Hospital for emergency uses. When the Welfare Island bridge was completed in 1955, the elevators stopped taking vehicular traffic from the bridge, although pedestrian elevator traffic still continues five days a week.



### Blackwell Mansion

The twenty-seven acre City Home area also contains the Blackwell Mansion, originally built about 1789. It served as a staff house for resident physicians until 1934 and later as the medical superintendent's residence. This home is being rehabilitated under the present Welfare Island plan.

### Fire Training School Area

Just north of the City Home Area is the New York City Fire Department Bureau of Training which conducts a wide variety of basic and advanced courses for firemen. The basic training building is used for training firemen in smoke and heat conditions and in search and rescue operations. Both the Fire and Police Departments conducted training exercises in riot control in the old City Hospital area, with the Fire Department conducting operations in many of the abandoned buildings around the island, and in the nearly deserted streets.

### Primate Colony

This former hospital building housed a colony of rhesus monkeys and larger primates used by New York University Medical School for cancer and leukemia research.

### The Lighthouse

At the northern tip of Welfare Island on ground that was once separated from the remainder of Welfare Island

by a wooden bridge until land-fill closed that gap, exists a small granite lighthouse, believed to have been built in the early 1800's. A fixed date is unavailable as improved building records in the City did not begin until the 1860's. 37.

An amusing story that may be more apocrypha than true tells of the lighthouse's origins. An Irish mental patient fearing a British invasion of the Island some day is believed to have built a fort on the small detached Island to safely secure it, believing it to be his special mission in life to frustrate a British takeover. 38. This event supposedly occurred in the mid-1800's. Meanwhile, the East River was becoming a major shipping channel and the authorities decided to construct a lighthouse to aid shipping, only to find a recalcitrant Irishman who only after much cajoling and the payment of a large sum of bogus money, permitted the fort to be demolished. The story continues that the patient built the lighthouse himself and left the stone marker at its base with the following inscription:

This is the work/was done by/John McCarthy  
Who built the light/House from the bottom to the  
Top all ye that do pass by may/Pray for his soul  
when he dies. 39.

To complete the story, legend has it that this builder had once been a river boat captain and for many years the captains of boats moving up and down the river always saluted the fort and later the lighthouse as they passed. 40.

### The Religious Structures

#### Church of the Sacred Heart

This Roman Catholic Church, formerly known as Saint Mary's, was built in 1912 on land loaned to it by the City. It served most recently as the residence for the senior Catholic chaplain at Coler and three other priests who serve at the New Metropolitan Hospital in Manhattan.

#### Chapel of the Holy Spirit

This Episcopal church is housed in a city building built in 1923. It formerly served as the Protestant chapel for Metropolitan Hospital and most recently as the residence of the Protestant Chaplain from the new Metropolitan Hospital.

#### The Synagogue

In the City Home area, this small building served as the Jewish place of worship and most recently was the residence of the Jewish chaplain. It was built in 1928 and sold to the City.

Chapel of the Good Shephard

Built in 1889, this Episcopal Church was used for the Protestant chaplain of Cöler Hospital. Designed by Frederick Clark Withers, it is considered worthy of preservation as a City landmark.

Church of the Good Samaritan

Built by the Lutheran Inner Mission Society on a 99 year lease with the city in 1917, it was most recently owned by the Association for Relief of Indigent Germans in the City and State Institutions of New York

APPENDIX B

THE ISLAND OVER THE YEARS

<u>Period</u>	<u>Name of Island</u>	<u>Ownership</u>	<u>Usage</u>
Pre-Colonial to 1637	<u>Minnahonnonck</u> or <u>Minnahanock</u>	American Indian	Wilderness
1637 - to 1652	<u>Varcken Eylandt</u>	Governor Woulter Van Twiller, Dutch	Country Estate & Livestock Farm for hogs
1652 to 1665	<u>Fyn</u> or <u>Fin</u> Island	Captain Francis Fyn, Dutch	Same
1665 to 1668	Perkens Island	British Crown	Country Estate
1668 to 1686	Manning Island	Captain John Manning, Sheriff of New York City	Country Estate and Place of Banishment
1686 to 1828	Blackwell Island	Robert Blackwell	Country Estate, quarry, orchards, cider mill, farm
1828	Blackwell Island	James S. Bell	Same
1828 to 1921	Blackwell Island	Corporation of the City of New York	Prison, Almshouse, variety of charitable & correc.facil.; Garden of Charity
1921 to 1969	Welfare Island	Corporation of the City of New York	City Hospital Fire Training School Relocation & Placement
1969 to 1973	Welfare Island	Leased by N.Y.C. to W.I.D.C. sub. of U.D.C. 99 year lease	
1973 to 2068	Roosevelt Island	Leased by W.I.D.C.	Develop New Community & 2 pre-existing hosp. 5000 families

APPENDIX C

THE LEASE

The sixty-page lease is made up of twenty-seven provisions covering a variety of topics, and three supplemental schedules designed to clarify and provide detail for the twenty-seven provisions.

Schedule One, Leased Premises, sets forth in its first seven annexes the metes and bounds description and easements on the "leased premises". The eighth describes the water supply easements and city fee parcel, and the ninth, the property and utility maps. The second schedule, the General Development Plan, outlines: 1) the basic program; 2) land-use; 3) design criteria and 4) circulation; and also includes three appendices providing charts of existing conditions, development land use and a site plan. The last schedule presented is the Lessor's Demolition, which provides for the City to demolish twenty-six buildings as well as part of a twenty-seventh. The third and last section of the lease ends with the Exhibit A Agreement defining the relationships and respective roles of the City, UDC and its subsidiary, and includes provisions dealing with: 1) services of a subsidiary; 2) obligations of the corporation; 3) payment of subsidiary; 4) agreement of the city and corporation concerning subsidiary; 5) termination; 6) notice; and 7) arbitration.

Appendix C will include only the main body of the lease, the twenty-seven provisions.

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**THIS LEASE**, made this 23rd day of December, 1969 between THE CITY OF NEW YORK, a municipal corporation of the State of New York having an office at City Hall, Borough of Manhattan, City, County and State of New York ("Lessor"), the NEW YORK STATE URBAN DEVELOPMENT CORPORATION, a public benefit corporation of the State of New York having an office at 666 Fifth Avenue, Borough of Manhattan, City, County and State of New York ("Lessee"), and the WELFARE ISLAND DEVELOPMENT CORPORATION, a New York corporation having an office at 666 Fifth Avenue, Borough of Manhattan, City, County and State of New York ("Subsidiary"),

W I T N E S S E T H :

1. *Leased Property; Term of Lease.* Lessor hereby leases to Lessee and Lessee hereby rents from Lessor the following described property (the "Leased Premises"):

(a) All the lands described in Schedule 1 attached hereto; and

(b) All building structures, facilities, equipment, paving, surfacing and other structures now or hereafter located on such lands;

SUBJECT, HOWEVER, to (i) the agreements of record and other exceptions referred to in such Schedule 1, and (ii) such state of facts as an accurate survey would show:

For a term commencing on the date hereof and expiring (unless this Lease shall sooner terminate as provided herein) at midnight on the 99th anniversary of the date hereof.

2. *Lessee's Obligation to Prepare Plans and Construct Improvements; Lessor's Obligation to Relocate and Demolish; Agreement with Subsidiary.* Lessee shall prepare or cause to be prepared designs, plans and specifications for the Improvements called for by the General Development Plan, shall obtain or cause sublessees to obtain or shall otherwise arrange for financing upon such terms as Lessee shall deem appropriate for the development of the Improvements and shall construct the Improvements or cause the Improvements to be constructed. Construction shall commence, subject to



Enforced Delay, no later than eighteen months from the date hereof and shall be completed, subject to Enforced Delay, no later than the eighth anniversary of such date or, in the event subway service to the Leased Premises shall not have commenced by such eighth anniversary, then such construction shall be completed two years after the actual commencement of such service to the Leased Premises.

In the event of any delay in the completion of construction beyond the fifteenth (15th) anniversary of the date hereof on account of failure to commence such subway service, either Lessor or Lessee may upon 180 days' prior written notice terminate this Lease. Upon such termination Lessor shall

(a) pay to the trustee for the holders of any indebtedness of Lessee a sum of money sufficient to fully and completely redeem any such indebtedness of Lessee allocable to Public Facilities, with accrued interest, then outstanding, together with an opinion of Lessor's Corporation Counsel stating that the Lessor has power and is duly authorized to make such payment, or

(b) deliver to such trustee an instrument in writing duly executed on behalf of Lessor in form and substance satisfactory to such trustee, unqualifiedly assuming the full payment of any such indebtedness of Lessee allocable to Public Facilities, with accrued interest, then outstanding, together with an opinion of Lessor's Corporation Counsel stating that Lessor has power and is duly authorized to assume such payment and may assess, levy and collect taxes on all the taxable real property in The City of New York without limitation as to rate or amount to make any and all payments required under such indebtedness.

Lessor shall promptly and with all due diligence proceed to relocate all occupants and uses of the Leased Premises. Lessor will promptly and with all due diligence complete the demolition of all improvements on the Leased Premises listed on Schedule 3.

In connection with Lessee's obligation to design, finance and construct the Improvements, Lessee, Lessor and Subsidiary have simultaneously herewith entered into a contract in the form attached hereto as Exhibit A wherein the Subsidiary shall supply certain services in connection with the development of the Improvements. Lessor approves of and consents to said agreement.

3. *Lessor's Public Facilities.* In accordance with paragraph 2 hereof, Lessee shall finance with tax exempt financing from the sale of its own bonds and notes, from Lessor or from other sources of tax exempt financing, and shall design and construct all Public Facilities. Lessee shall deliver to Lessor to the person and at the place provided in paragraph 15 hereof complete sets of schematic and working drawings and specifications for each such Public Facility at the time of completion of such schematic and working drawings and specifications, respectively, in order to permit agents of the department of Lessor having jurisdiction of similar public facilities to inspect such drawings and to make recommendations or comments thereon.

Prior to the completion of each Public Facility which shall be a school or an appurtenance to a school, Lessor shall agree to purchase or lease each such school or appurtenance when and as completed in the manner provided herein and shall initiate and complete all procedures and appropriations necessary to permit Lessor to complete such purchase or lease as herein provided. Lessor may purchase each such school or appurtenance by payment to Lessee of a price equal to the cost to Lessee of the design, financing and construction of such school or appurtenance including Debt Service for Public Facilities and Normal Allowances allocable thereto and any premiums or penalties payable on the retirement of bonds or notes issued to finance such school or appurtenance. Such price shall be payable in a lump sum upon the next Rent Payment Day after completion, or within three months after completion if such next Rent Payment Day shall be less than three months after completion, after delivery to Lessor of Lessee's Certified Payment Statement with respect to such price, or in equal semi-annual installments on each Rent Payment Day after the completion of such school or appurtenance through the period of permanent financing thereof after delivery to Lessor of Lessee's Certified Payment Statement with respect to each such installment. In the event such price is paid in installments, such price shall be deemed fully paid at the time of the discharge and satisfaction of the financing of such school or appurtenance upon payment of any balance due on account of such price for the period from the date of such discharge and satisfaction to the last previous Rent

Payment Day. Upon completion of payment by Lessor, Lessee shall deliver to Lessor such deeds or other documents as may be necessary to transfer ownership of such school or appurtenance to Lessor and to provide Lessor with the right to maintain and operate such school or appurtenance on the Leased Premises during the term hereof.

Lessor may lease each such school or appurtenance upon completion by payment of an annual rent equal to the aggregate of Debt Service for Public Facilities and Normal Allowances allocable to such school or appurtenance for each year of the term of this Lease. Such annual rent shall be payable in installments after completion by payment on each Rent Payment Day of the portion of such annual rent accrued in the period for which payment is due on such Rent Payment Day, after delivery to Lessor of Lessee's Certified Payment Statement with respect to each such installment. Such lease shall provide Lessor with the right to maintain and operate such school or appurtenance on the Leased Premises during the term hereof. Lessor may purchase each such school or appurtenance for which annual rent shall have been paid through the period of permanent financing thereof by payment upon satisfaction and discharge of such financing of the sum of one (\$1) dollar plus the balance of any annual rent due at the time of such purchase. Lessee shall deliver to Lessor against such payment such deeds or other documents as may be necessary to transfer ownership of such school or appurtenance to Lessor.

The cost to Lessee of the design, financing and construction of any school or appurtenance required to be purchased or leased as provided above, including Debt Service for Public Facilities and Normal Allowances allocable thereto, shall in no event exceed the average cost of the three (3) schools or appurtenances of similar size for similar age groups for which construction contracts have most recently been bid and let in The City of New York prior to the date of the commencement of construction of such school or appurtenance, plus 10%.

Lessee will use its best efforts to secure funds for the construction, operation and maintenance of the parks from the New York State Parks Commission for the City of New York. In the event that such funds are not secured by Lessee from such Commission, Lessee shall secure tax exempt financing for such parks from Lessor or from the proceeds

of sale of its own bonds and notes and shall undertake such construction, operation and maintenance.

Lessor shall not discriminate against residents of the Leased Premises with respect to the provision of police, fire, sanitation, health protection, public education and other municipal services. In order to provide such services Lessor shall, except with respect to each school or appurtenance required to be purchased or leased by Lessor as provided above and except with respect to each Public Facility to be maintained and operated by Lessee as provided in the General Development Plan, lease each Public Facility from Lessee upon completion for the sum of one (\$1) dollar and Lessor thereafter during the term of this Lease shall have the right to operate and maintain such facility in conformity herewith.

Each Public Facility shall be deemed complete either when there shall have been issued by Lessee and delivered to Lessor a certificate of completion stating that such Public Facility has been completed in accordance with all laws and regulations applicable to projects of Lessee and in accordance with the working drawings submitted to Lessor for inspection, as modified by Lessee to reflect such recommendations of Lessor as Lessee may in its sole discretion accept, or when there shall have been issued by Lessor and delivered to Lessee Lessor's temporary or permanent certificate of occupancy or any other certificate or license required to permit the occupancy or use of such Public Facility, whichever event shall first occur.

#### 4. *Basic and Additional Rent.*

(a) *Basic Rent.* For each year of the term of this Lease, Lessee shall pay to Lessor, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, at the office of the Lessor at the Municipal Building, Borough of Manhattan, City, County and State of New York, or at such place or to such agent as Lessor may from time to time designate, as an annual tax equivalent payment and ground rent, a Basic Rent which shall be equal to the aggregate of

the following sums, less Debt Service for Public Facilities and Normal Allowances allocable to such year:

(1) The sum of (x) a ground rent equal to the product of \$30 multiplied by the number of Completed Units of Subsidized Housing plus (y) a tax equivalent for Subsidized Housing equal to 10% of Annual Shelter Rent;

(2) The sum of (x) a ground rent equal to the product of \$180 multiplied by the number of Completed Units of Middle Income Housing plus (y) a tax equivalent for Middle Income Housing equal to 10% of Annual Shelter Rent;

(3) The sum of (x) a ground rent equal to the product of \$340 multiplied by the number of Completed Units of Conventionally Financed Housing plus (y) the Tax Equivalent for Conventionally Financed Housing;

(4) The sum of (x) a ground rent equal to the product of \$.60 (sixty cents) multiplied by the number of square feet of Completed Commercial Space plus (y) the Tax Equivalent for Commercial Space.

(b) *Additional Rent.* In addition to the Basic Rent, Lessee shall pay, in the same manner as the Basic Rent, Additional Rent equal to Net Income for the preceding year.

(c) *Time of Payment.* The Basic Rent and the Additional Rent shall be payable in semi-annual installments on each Rent Payment Day. Lessee shall deliver to Lessor on or before each Rent Payment Day Lessee's Certified Payment Statement and pay to Lessor the Basic Rent and Additional Rent for the period for which Basic Rent and Additional Rent are payable on such Rent Payment Day.

(d) *Set Off; Deferral.* On each Rent Payment Day Lessor may set off against all sums then due and payable by it to Lessee, and Lessee may set off against all sums then due and payable by it to Lessor, all such sums due and payable to each by the other on any previous Rent Payment Day as shall not have been paid prior to such subsequent Rent Payment Day. In the event that on any Rent Payment Day the amount of Debt Service for Public Facilities and

Normal Allowances deductible as provided in paragraph 4(a) shall be greater than (i) the aggregate of the sums computed in accordance with subparagraphs (1), (2), (3) and (4) of paragraph 4(a) above or (ii) Gross Income, Lessee may defer any sum by which such amount exceeds the lesser of (i) or (ii) and deduct such sum on any subsequent Rent Payment Day or Days. Any such sum remaining to be deducted as of the termination hereof shall be adjusted upon such termination.

e. *Adjustment of Rent.* The Basic Rent shall be adjusted as follows:

(a) the ground rents set forth in subparagraphs 1(x), 2(x), 3(x) and 4(x) of paragraph 4(a) hereof shall be adjusted on each Rent Adjustment Date by substituting after such date the Then Current Ground Rent for the Improvement or part of an Improvement adjusted as of such date for the ground rent payable on account of such Improvement or part of an Improvement prior to such date, provided, however, that in the event the Then Current Ground Rent on such Rent Adjustment Date shall be less than the ground rent for such Improvement set forth in subparagraph 1(x), 2(x), 3(x) or 4(x) of such paragraph, as appropriate, no such adjustment shall be made;

(b) the tax equivalents set forth in subparagraphs 1(y) and 2(y) of paragraph 4(a) hereof shall be adjusted as of each Tax Equivalent Adjustment Date by substituting after such date the Tax Equivalent for Conventionally Financed Housing for the Improvement adjusted as of such date for the tax equivalent payable on account of such Improvement prior to such date; and

(c) from and after the 10th anniversary of the date on which Basic Rent shall have become payable on all Improvements consisting of Subsidized, Middle Income and Conventionally Financed Housing and Commercial Space, the Basic Rent shall be equal to the aggregate of the sums set forth in subparagraphs 1, 2, 3 and 4 of paragraph 4(a) hereof less Debt Service for Public Facilities. Lessee may deduct Normal Allowances deferred from the period previous to such 10th anniversary as provided in subparagraph 4(d) from any Basic Rent due after such 10th anniversary.

6. *Payment of Charges for Municipal and Public Utilities.* (a) Except as specified in (b) below, Lessee will pay or cause to be paid all rents, rates and charges, excises, levies, license fees, permit fees, and other authorization fees, and, except as otherwise herein provided, all other charges of every character which at any time during the term of this Lease may be legally and properly assessed, levied, confirmed or imposed upon the Leased Premises. Lessee may contest, by appropriate legal proceedings diligently conducted in good faith without any cost to Lessor, the amount, validity or application of any imposition or any lien, encumbrance or charge against the Leased Premises.

(b) Lessor and Lessee agree that Lessee by this Lease is acquiring in the Leased Premises a leasehold interest only; that the tax equivalent payments provided in paragraph 4(a) hereof are in lieu of all local and municipal taxes, including real estate taxes on land and buildings, on the Leased Premises or on the Improvements, other than assessments for local improvements; and that in the event Lessee is required to pay any local or municipal taxes, Lessee may deduct the amount or amounts thereof from Basic Rent.

7. *Insurance.* Lessee at its expense will maintain or cause to be maintained with insurers licensed by the State of New York:

(a) standard fire and extended insurance coverage, including war risks when obtainable, with respect to the Improvements against loss or damage by fire, lightning, windstorm, hail, explosion, riot attending a strike, civil commotion, aircraft, vehicles, and smoke in an amount not less than 80% of the full insurable value of such Improvements;

(b) coverage for leakage of sprinkler systems and explosion of high pressure boilers and other heaters;

(c) loss of rental insurance;

(d) Workmen's Compensation Insurance; and

(e) comprehensive general public liability and property damage insurance applicable to the Leased Premises in amounts of at least \$5,000,000 for any one accident, \$1,000,000 for injury

to or death of any one individual and \$500,000 for damage to property, written on an occurrence basis.

All insurance policies maintained by Lessee pursuant to this paragraph shall (i) name Lessor and Lessee and any leasehold mortgagee and any trustee for bondholders as insureds, as their respective interests may appear; (ii) provide (where such provision is obtainable) that any loss shall be payable notwithstanding any act or negligence of Lessee; (iii) provide that no cancellation thereof shall be effective until at least ten (10) days after receipt by Lessor and Lessee of written notice thereof; (iv) provide that the insurer shall waive any right of subrogation against the Lessor or Lessee resulting from negligence of the Lessor or Lessee or any assignee or subtenant of the Leased Premises; (v) provide that Lessor's interest therein shall not be subject to cancellation by reason of any act or omission of Lessee or any leasehold mortgagee; and (vi) provide that any loss is to be adjusted with and payable solely to Lessee, Lessor or any leasehold mortgagee or trustee for bondholders, as their respective interests may appear. Lessee shall deliver to Lessor a copy of all policies of insurance required by this Lease, accompanied by a certificate of the insurer as to the issuance and effectiveness of the policy and the amount of the coverage with respect to the Leased Premises.

8. *Fire or Casualty.* In the event of any damage or loss to improvements on the Leased Premises by fire or other casualty, whether or not insured, Lessee shall at its sole cost and expense repair or rebuild the same, or cause any sublessee to repair or rebuild the same, so as to make the improvements at least as nearly as possible equal to the condition, quality, character and class of the Improvements existing immediately prior to the occurrence or with such changes or alterations as Lessee shall elect to make in conformity with the General Development Plan. All insurance proceeds under fire or casualty insurance, after deduction of any cost of collection, shall be applied by Lessee for such repairing or rebuilding.



9. *Mechanic's Liens.* Notice is hereby given that Lessor shall not be liable for any labor or materials furnished or to be furnished to Lessee upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Lessor in and to the Leased Premises. Whenever and as often as any mechanic's lien shall have been filed against the Leased Premises, based upon any act or interest of Lessee or of anyone claiming through Lessee, or if any title retention agreement, conditional bill of sale, chattel mortgage or otherwise shall have been filed for or affecting any materials, machinery or fixtures used in the repair or operation thereof or annexed thereto by Lessee or its successors in interest, Lessee shall forthwith take such action by bonding, deposit or payment as will remove or satisfy the lien, title retention agreement, conditional bill of sale or chattel mortgage, and if Lessee shall fail to take such action for twenty (20) days after notice to Lessee, Lessor may pay the amount of such mechanic's lien, title retention agreement, conditional bill of sale or chattel mortgage, or discharge the same by deposit, and the amount so paid or deposited, with interest thereon, shall be deemed rent reserved under this Lease, and shall be payable forthwith with interest at the rate of seven per centum (7%) per annum from the date of such advance, and with the same remedies to Lessor as in case of default in the payment of rent.

10. *Use.* Lessee shall use and occupy the Leased Premises in the manner and for the purposes described in the General Development Plan and shall not use or occupy the Leased Premises or permit the same to be occupied other than for lawful purposes, or for a purpose or in a manner likely to cause structural injury in any building to be erected on the Leased Premises or for any dangerous or noxious trade or business.

11. *Indemnity.* Lessee shall not do or permit any act or thing upon the Leased Premises which may subject Lessor to any liability by reason of any violation of law, but shall exercise such control over the Leased Premises as to protect the Lessor notwithstanding

that joint or concurrent liability may be imposed upon Lessor by statute, ordinance, rule, regulation or order. Lessee shall indemnify and hold harmless Lessor from and against any and all liability, suits, claims, demands, actions, judgments, costs and expenses, to the extent that any of the same should not be covered by insurance maintained by Lessee, arising from conduct on or management of or from any work or thing whatsoever done in or on the Leased Premises or out of any breach, violation or non-performance of any Lessee's covenants or conditions of this Lease, by damage to property or any injury to person or persons occasioned by Lessee's use and occupancy of the Leased Premises or by any use or occupancy which Lessee may permit or suffer to be made thereof. Should Lessee be required to defend any action or proceeding to which Lessor is made a party, Lessor may appear, defend or otherwise take part in such action or proceeding at its election by counsel of its own choosing, provided such action by Lessor does not limit or make void any liability of any insurer of Lessor or Lessee with respect to the claim in such action. Lessee's liability hereunder shall be reduced by the net proceeds actually collected by any insurance maintained by Lessee for Lessor's benefit.

12. *Assignment; Subleasing; Mortgaging.* Lessee may at any time assign this Lease with the consent of Lessor. Lessee may at any time assign this Lease without the consent of Lessor to Subsidiary, provided that Subsidiary affirmatively and unconditionally assumes in writing the applicable covenants of Lessee and the provisions of this Lease. Subsidiary shall accept such assignment and assume Lessee's obligations hereunder as set forth in this paragraph, provided, however, that such assignment shall not release Lessee from any of its obligations to Lessor hereunder, in the absence of a written release of Lessee from such obligations executed by Lessor.

Lessee may at any time sublease the whole of the Leased Premises with the consent of Lessor, which consent shall not be unreasonably withheld. Lessee may sublease at any time any portion or portions of the Leased Premises without the consent of Lessor in order to carry out the development required by the General Development Plan.

Each sublease shall provide that such sublease may not be assigned without the approval of the Lessee in each case first obtained.

Lessee may mortgage or hypothecate this Lease without the consent of Lessor. Upon request of Lessee, Lessor shall execute and deliver all such instruments with respect to this Lease, including amendments hereto, as Lessee shall reasonably request to facilitate Lessee's obtaining, or otherwise arranging for, the financing of the Improvements as provided in paragraph 2. At Lessor's request, Lessee shall deliver to Lessor copies of every bond indenture, mortgage or like instrument relating to any indebtedness of Lessee incurred or currently planned to be incurred in whole or in part to finance the Improvements. No provision in any such instrument shall alter the respective rights of Lessor and Lessee under this Lease.

Lessor agrees, for the benefit of each sublessee under each sublease and the holder or holders of each leasehold mortgage of any sublease, that, upon the termination of this Lease pursuant to any of the provisions of paragraph 1 or paragraph 14 hereof, Lessor will recognize the sublessee under such sublease or any transferee or assignee of the sublessee's interest therein by assignment or foreclosure as the direct tenant of the Lessor under such sublease, provided that at the time of the termination of this Lease (a) no default exists under the sublease and (b) the sublessee, transferee or assignee shall deliver to the Lessor an instrument confirming the attornment to the Lessor and recognizing the Lessor as such sublessee's, transferee's or assignee's lessor under such sublease.

**13. Condemnation.** Should a court of final jurisdiction determine that any governmental body, agency or other authority may condemn the Leased Premises or any portion thereof, then if, at any time during the term of this Lease, there shall be a total taking or a constructive total taking of the fee title to any part of the Leased Premises or of the Lessee's leasehold interest therein in condemnation proceedings or by any right of eminent domain, this Lease shall terminate as to that portion of the Leased Premises so taken on the date of such taking and the rent and other charges payable by the Lessee

hereunder with respect to such portion shall be apportioned and paid to the date of such taking. For the purposes of this paragraph, the term "a constructive total taking" shall mean a taking of such scope that the portion of the Leased Premises not so taken is insufficient to permit the restoration of the Improvements thereon so as to constitute a complete, rentable building or buildings, capable of producing a proportionately fair and reasonable net annual income. The average net annual income produced by the Improvements on the portion of the Leased Premises so taken during the five (5) year period immediately preceding such taking shall be deemed to constitute a fair and reasonable net annual income for the purposes of this paragraph.

In the event of any such total taking or constructive total taking and the termination of this Lease as to the portion of the Leased Premises so taken, the award or awards for said taking (herein referred to as the "Condemnation Proceeds"), shall be distributed in the following order of priority:

(a) upon the request of the trustee of the holders of any indebtedness of Lessee, there shall first be paid to such trustee a sum sufficient to fully and completely redeem any such indebtedness allocable to the Leased Premises, or to that portion of the Leased Premises so taken, with accrued interest, then outstanding;

(b) from the balance, if any, the Lessor shall then be paid a sum equal to the value of the land plus the value of any Public Facilities, to the extent the same shall have been paid for by Lessor (herein referred to as the "Land Award");

(c) then the balance remaining, if any, shall be divided between the Lessor and the Lessee in accordance with their respective interests in the Leased Premises immediately prior to such termination of this Lease. The value of Lessor's interest shall be the aggregate of (a) the then value of Lessor's interest in the Leased Premises at the expiration of the term of this Lease, plus (b) the then present worth of the then future rents reserved under this Lease. The value of Lessee's interest shall include the then value of its interest in the remainder of the term of this Lease and the then value of the Improvements.

In the event of a taking less than a constructive total taking, this Lease shall not terminate or be affected in any way, except as hereinafter provided, and the Lessee shall first be entitled to receive, subject to the rights of any trustee for bondholders or leasehold mortgagee, that portion of the Condemnation Proceeds with interest thereon as shall equal the fair market value of the Leased Premises or portions thereof, unimproved and unencumbered by this Lease, plus the fair market value of any Public Facilities constructed or installed at the expense of the Lessee on the part of the Leased Premises so taken. That part of the Condemnation Proceeds with interest thereon as shall be awarded for restoration of the Improvements on the portion of the Leased Premises so taken, plus so much thereof as shall represent compensation for the value of the portion of the Improvements so taken, shall be payable in trust to the Lessee or the holder of any leasehold mortgage constituting a lien on the Leased Premises for application by the Lessee, or such holder, to the cost of restoring, repairing, replacing or rebuilding the Improvements, any balance of the Condemnation Proceeds to be shared equally by Lessor and Lessee.

In the event of a taking less than a constructive total taking, the Lessee shall proceed, or shall cause the sublessee under a sublease of the property affected by such taking to proceed, with due diligence to restore, repair, replace or rebuild the remaining part of the Improvements to substantially their former condition or with such changes or alterations as the Lessee may deem desirable in general conformity with the General Development Plan.

If the whole or any part of the Leased Premises shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, then this Lease shall remain in full force and effect, and the Lessee shall continue, to the extent Lessee shall not be prohibited from so doing by any condemning authority, to pay, in the manner and at the times herein specified, the full amounts of the Basic and Additional Rent and other charges payable by the Lessee hereunder.

14. *Default by Lessee.* In case one or more of the following events shall have occurred and shall not have been remedied:

(a) default shall be made in the payment of Basic Rent or Additional Rent and such default shall continue for twelve months after written notice from Lessor thereof, specifying such default, shall have been given to the Lessee, each sublessee and the Trustee for any bondholders and the holder of any leasehold mortgage; or

(b) Lessee shall fail to perform or cause to be performed any term, covenant or condition of this Lease on the part of the Lessee to be performed, other than the covenant for the payment of Basic Rent and Additional Rent, and shall have failed promptly after written notice thereof from Lessor to commence with due diligence and dispatch the curing of such default or, having so commenced the curing of such default, shall thereafter fail to prosecute and complete the same within a reasonable time, *provided* that Lessee may dispute any matter contained in such notice by giving Lessor written notice thereof within 30 days after receipt by Lessee of such notice of Lessor, and in such case, such dispute shall be determined by arbitration in accordance with the provisions of paragraph 16 hereof and no default under this paragraph (b) shall be deemed to arise unless the arbitrators' determination is adverse to Lessee and Lessee (subject to Enforced Delay) shall have failed to commence promptly thereafter with due diligence and dispatch the curing of such default, or, having commenced the curing of such default, shall thereafter fail to prosecute and complete the same within a reasonable time:

then in case of a default Lessor may, subject to the rights of the trustee for any bondholders and the holder of any leasehold mortgage as set forth herein, at its option, give to Lessee and to each sublessee, and to any trustee and leasehold mortgagee, a notice of election to terminate this Lease at the expiration of thirty (30) days from the date of service of such second notice, whereupon, unless such rent in case of a default under (a) above, together with interest at the rate of 7% per annum, shall have been paid, or any other default cured by Lessee, before the expiration of said thirty (30)

days, the term of this Lease and all right, title and interest of the Lessee hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term of this Lease, and the Lessee will then quit and surrender the Leased Premises to the Lessor, subject, however, to any sublease which the Lessor pursuant to the provisions hereof has agreed to recognize. Upon such termination of this Lease as provided in (a) above, the Lessor shall have the right to enter upon and take possession of the Leased Premises by summary proceedings or other legal proceedings, without being liable in damages therefor, and take and have again the Leased Premises and every part thereof, free, clear and discharged of this Lease, and of all the rights of the Lessee hereunder.

Lessor shall not so terminate this Lease upon the occurrence of a default unless Lessor shall

(a) pay to the trustee for the holders of any indebtedness of Lessee a sum of money sufficient to fully and completely redeem any such indebtedness of Lessee allocable to Public Facilities, with accrued interest, then outstanding, together with an opinion of Lessor's Corporation Counsel stating that the Lessor has power and is duly authorized to make such payment, or

(b) deliver to such trustee an instrument in writing duly executed on behalf of Lessor in form and substance satisfactory to such trustee, unqualifiedly assuming the full payment of any such indebtedness of Lessee allocable to Public Facilities, with accrued interest, then outstanding, together with an opinion of Lessor's Corporation Counsel stating that Lessor has power and is duly authorized to assume such payment and may assess, levy and collect taxes on all the taxable real property in The City of New York without limitation as to rate or amount to make any and all payments required under such indebtedness.

No re-entry by the Lessor shall be deemed an acceptance of a surrender of this Lease. A surrender of this Lease may be accepted only by the Board of Estimate of Lessor and only in the manner provided by law at the time thereof.

Lessor agrees, for the benefit of the trustee or holders of any leasehold mortgage, that Lessor's right, title and interest in and to rent and other charges payable under any sublease shall be subject and subordinate to the rights of any leasehold mortgagee to any rent and other charge pledged as security for the payment thereof until payment in full of the indebtedness, with accrued interest, secured by any leasehold mortgage.

15. *Notices.* Any notice, demand or request which, under the terms of this Lease or under any statute, must or may be given or made by the parties hereto, shall be in writing, and shall be given by mailing the same by registered or certified mail addressed to (a) Lessor addressed as follows: Administrator, New York City Housing and Development Administration, 100 Gold Street, Borough of Manhattan, City, County and State of New York; (b) Lessee addressed as follows: General Manager, New York State Urban Development Corporation, 666 Fifth Avenue, Borough of Manhattan, City, County and State of New York; and (c) Subsidiary addressed as follows: President, Welfare Island Development Corporation, 666 Fifth Avenue, Borough of Manhattan, City, County and State of New York. Any notice given hereunder shall be deemed delivered when deposited in a United States general or branch post office, enclosed in a registered or certified prepaid wrapper, addressed as hereinbefore provided. Any such address may be changed from time to time upon notice given by the addressee in the manner herein provided.

If requested in writing by the holder of any leasehold mortgage or any sublessee, which shall have duly registered with Lessor its name and address, any such notice or demand shall also be given or made by Lessor in the manner herein specified and contemporaneously to such holder of a leasehold mortgage or sublessee. Any such holder or sublessee shall be subrogated to all rights of the Lessee with respect to the remedying of any default of Lessee.

16. *Arbitration.* In the event of any dispute with respect to any matter in this Lease, such dispute shall be determined in the City of New York by arbitration in accordance with commercial arbitration



rules then obtaining of the American Arbitration Association (or, if such Association shall not then be in existence, such other organization, if any, as shall then have become the successor of said Association and if there shall be no successor, then in accordance with the then prevailing provisions of the laws of the State of New York relating to arbitration). Lessor and Lessee shall each appoint a fit and impartial person as arbiter who shall have had at least ten (10) years' experience in the County of New York connected with the subject matter of the dispute. In case either the Lessor or the Lessee shall fail to appoint an arbiter for a period of thirty (30) days after written notice from the other party to make such appointment, then the arbiter appointed by the party not in default hereunder shall appoint a second arbiter for and on behalf of the party so failing to appoint an arbiter. In the case of the failure of the arbiters so appointed to agree upon the matter in dispute, said arbiters shall appoint a third party to act as umpire. In the case of the failure of such arbiters to agree upon an umpire, then such umpire shall be appointed by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York for the First Department. The arbiters so appointed, after being duly sworn to perform their duties with impartiality and fidelity, shall proceed promptly to determine the matter in dispute in accordance with the Rules of Civil Procedure and may hold hearings at which the Lessor and Lessee may adduce evidence and witnesses may give sworn testimony.

17. *No Waiver.* Failure of any party to insist upon a strict performance of any of the covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver by such party of any subsequent breach or default. This Lease may not be changed orally, but only by an instrument in writing signed by the party against whom enforcement or change is sought.

18. *Quiet Enjoyment.* Lessor covenants that the Lessee, upon paying the rent and all other charges herein provided for and upon

observing and keeping all of the covenants, agreements and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation by or from anyone.

19. *Certificate of Lessor.* Within thirty (30) days after delivery to Lessor of written notice of Lessee's request for such statement, Lessor shall execute, acknowledge and deliver to Lessee a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications, that the Lease is in full force and effect as modified and stating the modifications) and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such statement Lessee is in default in performing any term, covenant, agreement, provisions, condition or limitation contained in this Lease, and if Lessee shall be in default, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective sublessee or any leasehold mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge.

20. *Lessor's Inspection and Audit of Books and Records; Lessee's and Subsidiary's Reports.* The Lessee and the Subsidiary shall keep proper books of record and account in which full and correct entries shall be made of all financial transactions, revenues, losses, charges and expenses paid or incurred by Lessee or Subsidiary in respect to its operations on the Leased Premises and the performance by Lessee and Subsidiary of all terms and conditions of this Lease, all in accordance with generally accepted accounting principles. Lessor shall have the right to inspect and audit such accounts on its behalf annually and at such other reasonable times as it may in its sole discretion deem advisable or necessary. The performance of all conditions and terms of this Lease shall be subject to audit and review by Lessor's Comptroller on behalf of Lessor. Lessee and Subsidiary shall cooperate

with the Lessor in maintaining its books and accounts in such manner as to permit audits.

Upon the request of Lessor, Lessee or Subsidiary or both of them shall deliver to Lessor Annual Reports on the progress of the development of the Leased Premises.

21. *Additional Properties.* In the event that Lessor shall determine that the Bird S. Coler and the Goldwater Memorial Hospitals and the incidents and appurtenances thereof and properties currently occupied thereby, as such properties are more fully described in Annex III and Annex IV to Schedule 1 attached hereto, shall no longer be devoted to hospital uses, Lessor shall notify Lessee of such determination, it being the intention of Lessor and Lessee that such properties be developed in a manner consistent with the General Development Plan. After such determination and notice Lessor, Lessee and Subsidiary shall consult with a view to developing a plan for the development of such properties as a part of the General Development Plan.

22. *Definitions.* As used herein the following terms have the following respective meanings:

*Additional Rent:* The payment provided for in paragraph 4(b).

*Annual Shelter Rent:* Total rents received from the occupants of an Improvement or part of an Improvement consisting of Completed Units of Subsidized or Middle Income Housing less the cost, if any, of providing to such occupants electricity, gas, heat and other utilities.

*Basic Rent:* The payment provided for in paragraph 4(a).

*Commercial Space:* Any Improvement, or space in an Improvement, used exclusively for commercial or business purposes.

*Completed Units; Completed Commercial Space.* Dwelling units and commercial space in any Improvement or part of an Improvement as to which there shall have been issued by Lessee and delivered to Lessor prior to any occupancy thereof a certificate of completion stating that such Improvement or such part is complete in accordance with the laws and regulations applicable to projects of Lessee, or as to which there shall have been issued by Lessor its temporary or permanent certificate of occupancy or any other certificate or license

required to permit the occupancy or use of such Improvement or such part, whichever shall first have been issued.

*Conventionally Financed Housing:* As defined in the General Development Plan.

*Debt Service:* Any and all payments of principal, premiums or interest on any bond, note or other indebtedness incurred or payable by Lessee to finance the cost of development of the Leased Premises, including, without limitation, all payments to any sinking, reserve or any other fund required by or pledged to any mortgagee, trustee or holder of any such indebtedness and the payment, purchase, redemption or retirement thereof or as further security therefor. The allocation of Debt Service shall be in accord with Lessee's standard accounting method uniformly applied, which method shall conform with generally accepted accounting principles.

*Debt Service for Public Facilities:* For any period, Debt Service allocable by Lessee to Public Facilities. For such period, Debt Service for Public Facilities shall be reduced by all receipts derived by Lessee from the operation of any Public Facility or the financing thereof as reimbursement of Debt Service payable by Lessee on such Public Facility.

*Enforced Delay:* Any delay in the performance of the obligations of the Lessee, Subsidiary, sublessees or their sublessees by reason of act of God or the public enemy, of the United States of America, the State of New York or the Lessor, the laws, rules, regulations or orders of such political jurisdictions, judicial or other legal proceedings, fires, floods, epidemics or similar afflictions, strikes or labor disputes, freight embargoes, weather of unusual severity and delay by Lessor in the performance of its obligations hereunder, including, without limitation, demolition, relocation or appropriation of sums required for the purchase or lease of any school or appurtenance.

*General Development Plan:* General Development Plan attached as Schedule 2 hereto prepared by the firm of Philip Johnson and

John Burgee providing a program for clearance of the Leased Premises and the construction thereon of Subsidized Housing, Middle Income Housing, Conventionally Financed Housing, Commercial Space and Public Facilities, all as set forth therein, as may be modified from time to time by agreement of Lessee by its President and Chief Executive Officer and Lessor by its Mayor.

*Gross Income:* For any period, the total of all receipts of any nature derived by Lessee from the Leased Premises or the financing of the development thereof, including, without limitation, rents, profits, interest and return of principal, other than payments to Lessee of the purchase price of or annual rent for any school or appurtenance and other than development fees, after deducting from such total all Debt Service for such period.

*Improvement:* Any building, structure, utility, roadway, street, park, public facility, sidewalk, landscaping, site improvement, development and other betterment to be provided by or caused to be provided by the Lessee pursuant to the General Development Plan.

*Leased Premises:* As defined in paragraph 1.

*Lessee's Certified Payment Statement:* A statement prepared and certified by Lessee on or prior to each Rent Payment Day and on or prior to each other day upon which such statement is required to be delivered pursuant to the provisions hereof setting forth the sums required to be paid, set-off or otherwise settled on such Rent Payment Day or other day, including, without limitation, Gross Income, Debt Service for Public Facilities, Normal Allowances, Debt Service for Public Facilities allocable to each school or appurtenance, Normal Allowances allocable to each school or appurtenance, Basic Rent, Net Income and Additional Rent.

*Net Income:* For any period, Gross Income less (i) Normal Allowances, (ii) Basic Rent, (iii) the amount of the following costs incurred by Lessee: any amount by which Lessee's operating and maintenance costs for any Public Facility consisting of a garage, an elevator, a mini-transit system or park exceed receipts derived by

Lessee from such Public Facility, to the extent such excess shall not be included in Normal Allowances, and (iv) the Project Fee.

*Normal Allowances:* All reasonable cash expenditures, disbursements, costs, reserves and allowances of Lessee or Subsidiary of every character incurred, made or paid by the Lessee or Subsidiary in connection with the performance of its obligations and functions in respect of this Lease or arising by reason of, or resulting in any manner whatsoever from, the use, operation and maintenance of the Leased Premises and services provided thereon, including, without limiting the generality of the foregoing:

(a) the cost of supplies and materials required for the administration, operation, maintenance and repair of the Leased Premises, the cost of remuneration of persons, whether or not officers and employees of Lessee, engaged in such administration, operation, maintenance or repair, including wages, medical and general welfare benefits, group life insurance, workmen's compensation insurance, the Lessee's contributions to unemployment insurance and pension funds and uniforms, and amounts paid pursuant to contracts or agreements with contractors or others for or in connection with such administration, operation, maintenance or repair;

(b) the cost of all repairs, alterations and improvements to maintain the Leased Premises net of the proceeds of any insurance received by Lessee applicable to such repairs, alterations and improvements;

(c) the cost of utility services, including gas, electricity, water, fuel and telephone;

(d) the cost of advertising the Leased Premises or portions thereof;

(e) lawyers' fees and disbursements for services rendered in connection with the administration, operation, maintenance or repair of the Leased Premises, including without limiting the generality of the foregoing, all such fees and disbursements relating to the collection of rent from sublessees and all expenses of such collection of rent, and the lawyers' fees payable in respect of the preparation, execution and registration of this Lease;

(f) auditors' fees for preparing the statements herein referred to;

(g) sales, excise and other similar taxes, if any, paid in respect of the foregoing, any charges, levies and fees, if any, paid pursuant to paragraph 6(a) hereof and any local or municipal taxes, if any, imposed with respect to the Leased Premises on the Improvements;

(h) the cost of all permits, licenses or other authorizations required for the administration, operation, maintenance and repair of the Leased Premises; and

(i) payments made by the Lessee in satisfaction of or on account of premiums with respect to any policy or policies of insurance on or in any way relating to the Leased Premises.

Without the consent of Lessor, which shall not be unreasonably withheld, Normal Allowances shall not include any amount by which Lessee's operating and maintenance costs for any Public Facility consisting of a garage, an elevator, a mini-transit system or a park exceeds receipts derived by Lessee from such Public Facility. For any period, Normal Allowances shall be reduced by the amount of any such cash expenditures, disbursements, costs, reserves and allowances allocable to any Improvement that are reimbursed out of the receipts derived by Lessee from its operation of such Improvement or out of the financing provided for the construction of such Improvement. Normal Allowances exclude any cash expenditures, disbursements, costs, reserves and allowances allocable to any park.

*Project Fee:* An amount reserved to Lessee equal to two percent (2%) of Total Project Cost, as hereinafter defined, payable in equal installments on each Rent Payment Day out of the remainder, if any, of Gross Income less Normal Allowances, Basic Rent and any amount by which Lessee's operating and maintenance costs for any Public Facility consisting of a garage, an elevator, a mini-transit system or a park exceed receipts derived by Lessee from such Public Facility, to the extent that such excess shall not be included in Normal Allowances, such installments to equal the following in each

year of the term hereof: 2.5 percent of such amount each year during the first ten years of the term hereof; 1.25% of such amount each year during the eleventh through thirtieth years of the term hereof; the balance of such amount in equal portions in each year of the remainder of the term hereof. In the event that on any Rent Payment Day the portion of any installment of such fee then payable shall exceed the balance of Gross Income less Normal Allowances, Basic Rent and any amount by which Lessee's operating costs for any Public Facility consisting of a garage, an elevator or a mini-transit system or a park exceed receipts derived by Lessee from such Public Facility, to the extent such excess shall not be included in Normal Allowances, Lessee may defer such excess and deduct it on any subsequent Rent Payment Day. Any such excess deferred and remaining to be deducted as of the termination hereof shall be adjusted upon such termination. The phrase "total project cost", for the purposes of this paragraph, means the aggregate of all costs of planning, design, engineering, construction, equipment and completion of the Improvements. Until construction is completed and actual costs are determined, the computation of the Project Fee shall be based upon cost estimates reasonably determined from time to time by Lessee. If and when the estimate of total project cost is adjusted in accordance herewith prior to the determination of actual total project cost, amounts computed and payments made or to be made based upon total project cost shall be appropriately adjusted.

*Public Facilities:* As defined in the General Development Plan.

*Rent Adjustment Date:* The 40th anniversary of the issuance of Lessee's certificate of completion or of Lessor's temporary or permanent certificate of occupancy, whichever shall first have been issued, with respect to each Improvement or part of an Improvement consisting of Subsidized Housing, Middle Income Housing, Conventionally Financed Housing or Commercial Space and each 10th anniversary of the date of such issuance after such 40th anniversary.

*Rent Payment Day:* The 45th day after the last day of each sixth and twelfth month of each year of the term hereof.



*Subsidized Housing:* As defined in the General Development Plan.

*Tax Equivalent Adjustment Date:* The 30th anniversary of the issuance of Lessee's certificate of completion or of Lessor's temporary or permanent certificate of occupancy, whichever shall first have been issued, with respect to each Improvement consisting of Subsidized Housing or Middle Income Housing.

*Tax Equivalent for Commercial Space:* Lessor's then current real estate tax rate times the product of Lessor's then current assessed valuation (expressed in dollars per square foot of commercial space) for land and buildings for each Improvement or part of an Improvement consisting of Completed Commercial Space times the number of square feet of Completed Commercial Space. Such then current assessed valuation for land and buildings shall from time to time be assessed and reassessed by Lessor in the manner and subject to the limitations then currently imposed upon assessments of like property by all laws and regulations applicable thereto. Lessee may contest such assessment or reassessment in like manner.

*Tax Equivalent for Conventionally Financed Housing:* Lessor's then current real estate tax rate times Lessor's then current assessed valuation of land and buildings for each Improvement or part of an Improvement consisting of Completed Units of Conventionally Financed Housing or consisting of Completed Units of housing to be treated as Conventionally Financed Housing after adjustment under paragraph 5(b) hereof. Such then current assessed valuation for rent and buildings shall from time to time be assessed and reassessed by Lessor in the manner and subject to the limitations then currently imposed upon assessments of like properties by all laws and regulations applicable thereto. Lessee may contest any such assessment or reassessment in like manner.

*Then Current Ground Rent:* With respect to each Improvement consisting of Subsidized Housing, 6% of the product of (x) the current land cost per unit for economically feasible new housing in New York City for persons and families of low and moderate income as of each

Rent Adjustment Date for such Improvement times (y) the number of units contained in such Improvement; with respect to each Improvement consisting of Middle Income Housing, 6% of the product of (x) the current land cost per unit for economically feasible new housing in New York City for persons and families of middle income as of each Rent Adjustment Date for such Improvement times (y) the number of units contained in such Improvement; with respect to each Improvement consisting of Conventionally Financed Housing, 6% of the product of (x) the current land cost per unit for comparable new housing in New York City for persons and families who can afford conventionally financed and fully taxpaying apartments as of each Rent Adjustment Date for such Improvement times (y) the number of units contained in such Improvement; and with respect to each Improvement or part of an Improvement consisting of Commercial Space, 6% of the product of (x) the current land cost per square foot of comparable commercial space in New York City as of each Rent Adjustment Date for such Improvement or part of an Improvement times (y) the number of square feet of commercial space in such Improvement.

23. *Surrender of the Leased Premises; Successors and Assigns; Counterparts.* Upon any expiration or earlier termination of this Lease, Lessee shall peacefully vacate and surrender to Lessor the Leased Premises and all Improvements in good order, condition and repair, reasonable wear and tear excepted. The terms of this Lease shall, subject to the terms hereof, bind and inure to the benefit of Lessor and its successors and assigns and Lessee, its successors and assigns. This Lease may be executed in any number of counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

24. *Subsidiary.* Subsidiary has joined as a party to this Lease solely for the purpose of agreeing to report as provided in paragraph 20, of accepting the assignment hereof and of assuming the Lessee's obligations hereunder upon assignment as set forth in paragraph 12 and of agreeing to the undertakings stated in paragraph 26 hereof and for no other purposes.

25. *Administration.* Except where otherwise expressly provided herein, the rights and duties of the Lessor hereunder shall be administered and enforced in all respects by its Administrator of the Housing and Development Administration.

26. *Non-Discrimination.* (a) At all times during the construction, maintenance and operation of the Improvements, Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed or national origin. Lessee shall take affirmative action to ensure that employees and applicants for employment with Lessee, its sublessees, contractors and subcontractors are treated without regard to their race, color, creed or national origin and shall take affirmative action to assist in providing training and job opportunities in order to ensure equal employment opportunities for members of minority groups with Lessee, its sublessees, contractors and subcontractors. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated. Lessee will post in conspicuous places on the Lessee's Premises, available to employees of Lessee and applicants for employment, notices provided by Lessor setting forth the language of this non-discrimination provision; and

(i) Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin;

(ii) Lessee shall send each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of Lessee's agreement as contained in this paragraph and a copy thereof shall be sent to Lessee within three (3) days of notification to such union or representative; and

(iii) Lessee shall furnish to Lessor all information required by Lessor pursuant to this paragraph and will permit access by Lessor to its books, records, and accounts for the purposes of investigation to ascertain compliance with this paragraph.

(b) To evidence compliance with the provisions of (a) hereof, Lessee shall furnish such compliance reports as may from time to time be required by Lessor, such reports to contain information as to Lessee's practices, policies, programs, employment policies and employment statistics. Such compliance reports shall, if Lessor so requests, contain the following additional information:

(i) information as to the practices, policies, programs, employment policies and employment statistics of the Lessee's sublessees, contractors and subcontractors;

(ii) if Lessee has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, such information as to such labor union's or agency's practices and policies affecting compliance as Lessor may require, provided that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training, and such labor union or agency shall refuse to furnish such information to Lessee, Lessee shall so certify to Lessor as part of its compliance report and shall set forth what efforts it has made to obtain such information.

(c) Lessee and Subsidiary shall include or cause to be included the provisions of this paragraph 26 in every sublease, contract and sub-contract of Lessee or Subsidiary and each obligation of Lessee or Subsidiary hereunder shall be deemed an obligation of each such sublessee, contractor or subcontractor. Lessee and Subsidiary shall likewise include or cause to be included in every sublease, contract or sub-contract all non-discrimination provisions required by federal, state or local law, including Lessor's Executive Order 71, as the same may be amended from time to time. All such provisions to the extent applicable are hereby incorporated in this Lease.

(d) Lessor, Lessee and Subsidiary shall require that any contractor or subcontractor performing work on the Leased Premises shall pro-

vide on-the-job training positions in accordance with any applicable governmental order, plan, undertaking or agreement to provide such on-the-job training positions from time to time in effect with respect to Lessor, Lessee, Subsidiary and any organization representing the employees of such contractor or subcontractor; provided, however, that in no event shall any such contractor or subcontractor provide for fewer on-the-job training positions than the number of apprentices or trainees allowed on the job under applicable collective bargaining agreements.

(e) Lessor, Lessee and Subsidiary shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work on the Leased Premises and any contractor or subcontractor performing work on the Leased Premises shall be required by the applicable contract or subcontract to meet such goals.

27. *Amendment.* Upon notice from Lessor to Lessee and approval by Lessor's Board of Estimate within five years of the date of this Lease, this Lease shall be amended as follows:

(a) Subparagraph (b) of paragraph 4 hereof shall be amended to read as follows:

"(b) *Additional Rent.* In addition to the Basic Rent, Lessee shall pay, in the same manner as the Basic Rent, Additional Rent equal to sixty percent (60%) of Net Income for the preceding year";

(b) The definition of *Net Income* in paragraph 22 hereof shall be amended to read as follows:

"*Net Income:* For any period, Gross Income less (i) Normal Allowances, (ii) Basic Rent and (iii) the amount of the following costs incurred by Lessee: any amount by which Lessee's operating and maintenance costs for any Public Facility consisting of a garage, an elevator, a mini-transit system or a park exceed receipts derived by Lessee from such Public Facility, to the extent such excess shall not be included in Normal Allowances"; and

(c) The definition of *Project Fee* in paragraph 22 hereof shall be stricken in its entirety.

APPENDIX D

SYNOPSIS OF GENERAL DEVELOPMENT PLAN

On the basis of the recommendations of the Mayor's Committee on Welfare Island (The Schmidt Committee), New York and UDC agreed to the General Development Plan incorporated into the lease. The following is a brief summary of that plan.

Housing

The new community will have approximately 5,000 units of housing, including hospital-related housing (the total program to be determined in consultation with the City). The City and UDC agreed to an income mix composed of the following: 20% of the units for persons and families eligible for admission to federally assisted public housing; 10% for elderly persons and families of the same income class; 25% for persons and families eligible under Section 236 of The National Housing Act; 20% for persons and families eligible to occupy limited profit housing financed under Article II of the New York State Private Housing Finance Law; and 25% of the units for persons and families affording fully taxpaying conventionally financed housing.

Design

The residential buildings in both North and South Towns (containing 60% and 40% of the dwelling units of all income

groups respectively) are to be irregularly shaped structures opening towards the water, approximately twelve stories high at their highest points along Main Street and tapering down in height as their extensions approach the Waterfront Promenade. The buildings are to provide community rooms and service facilities for tenants, while open lawn areas between building extensions are to be used for recreation.

#### Commercial Space

Approximately 200,000 square feet of office space and 100,000 square feet of retail commercial space are to be provided. Office space and shopping are to be concentrated in the Town Center area with additional commercial facilities to be provided in North Town.

#### Open Space and Landmarks

The open space areas are to be developed to serve not only residents of the Island, but residents of the City as a whole. Parks are to be landscaped to enhance existing topography and growth; Lighthouse and Southpoint Parks at opposite ends of the Island are to offer sitting and picnic areas at the edge of the water. (Lighthouse Park, revolving around the old inactive beacon, consists of three acres at the very northern tip of the Island.)

Immediately to the south of Bird S. Coler Hospital and to the north of North Town is the approximately twenty-five acre Octagon Park, containing the site for the Urban Ecology Center and Octagon landmark. Also in the North Town area is the Chapel of the Good Shephard landmark. Separating North and South Towns is the six acre Blackwell Park containing the Blackwell Mansion, while three additional landmarks and a park are to be found south of Goldwater Memorial Hospital at the southern tip of the Island: the main building of the old City Hospital; the former Smallpox Hospital the Strecker Laboratory; and the approximately ten acre Southpoint Park. That the planners attempted to utilize all available land is evidenced by the seven acres beneath the Queensboro Bridge designated to be developed as a Sports Park complete with recreational areas for the Island's residents.

#### Circulation

The Island's open space areas are unified by a system of pedestrian paths and walkways. A promenade is to be built along the entire waterfront, which will be reserved for pedestrians and cyclists and which will also be suitable for use by emergency vehicles. Pedestrian streets and plazas are to have an internal walkway system, and an efficient and economical mini-transit



system is to be the principal means of on-island public transportation, with residents and visitors encouraged to leave their cars at the Motorgate plaza (accomodating 2500 cars) except when loading and unloading. Vehicular access to the Island is only by Welfare Island Bridge, owned and maintained by the City. The Island's roads lead north from the Motorgate plaza to the Bird S. Coler Hospital and Lighthouse Park, and then wind south through the new community to Goldwater Memorial Hospital and Southpoint Park.

Recognized as essential in assuring the general success of the plan is the completion of the Island's subway station which will provide inexpensive and convenient access from Manhattan and Queens, timed to coincide with the completion of housing and office space. Other pedestrian access will be from Queensboro Bridge passenger elevators decending to the Sports Park.

Wherever feasible, imaginative water access to landings on the west side of Octagon Park and in the Town Center at Town Square and Harbor is being planned.

#### Additional Public Facilities

The plan provides for a variety of public facilities. A school system will be provided to serve approximately 2000 children of Island residents from kindergarten through the eighth grade, and a library facility will be located in South Town. Also to be provided are a comprehensive system of

community facilities including community rooms, day care centers for Island children, facilities for the elderly, two swimming pools (one in each town) and other recreational facilities, and a fire station and police office. Public open spaces are to be incorporated as well, including a town square, a town harbor, a glass enclosed shopping arcade, and parks including renovated landmarks.

Utility infrastructure includes provision for collection, treatment and disposition of liquid and solid wastes, water, gas, telephone and electric lines.

#### Responsibilities of Parties

UDC is obligated by the lease to provide all of the above public facilities with some exceptions. A new elevator to the Queensboro Bridge may be provided at UDC's discretion. An Urban Ecology Center and landmarks scheduled for rehabilitation are to be carried forward only if non-UDC financing can be obtained.

Except for the mini-transit system, elevator, garage and public open spaces (UDC's responsibility to operate and maintain), the City is to operate and/or maintain all the remainder of the public facilities.

FOOTNOTES

Chapter I. Introduction

1. John W. Reps, "Requiem for Zoning," in Taming Megalopolis, ed. by H. Wentworth Eldredge (Garden City, New York: Anchor Doubleday, 1967), p. 747.
2. William L. Slayton, "Guiding Real Estate Development," in Planning 1970 (Chicago, Ill.: American Society of Planning Officials, 1970), pp.227-237.
3. Samuel J. Lefrak, "Of Planners, Head-Bopping and Mountain Goats," New York Times (January 18, 1974), Op-Ed Page. For a developer's view of planning all too commonly shared: "...the era of nonsense is over. Let's get back to reality."
4. Louis Winnick, Deputy Vice President of Domestic Affairs, Ford Foundation, interviewed by author (Ford Foundation, New York, New York), August 10, 1973. Dr. Winnick was a former official of the New York City Housing and Redevelopment Board.
5. Albert G.H. Dietz, Dwelling House Construction (Cambridge, Mass.: MIT Press, 1971), pp.8-9.  
See Francis T. Ventre, "Diffusion of Innovation in Housing Technology" (unpublished Ph.d. thesis, Department of Urban Studies and Planning of the Massachusetts Institute of Technology, 1973).  
There has been a trend toward adoption of statewide and national building codes that attempt to standardize building criteria. However, in practice even uniform state codes are administered by localities, often differently.
6. Reps, op. cit. p. 748.  
Today, the City of Houston is the only major city without a zoning ordinance. Instead, Houston enforces a system of restrictive covenants.  
Some cities use "zoning envelopes" or more flexible density guidelines primarily focused upon the total amount of floor area provided. If a development does not exceed the floor area ratio allowed (FAR equals total floor area divided by lot area), despite alternative building configurations, it would conform to the municipality's zoning.  
An affirmative recommendation would then be sent to the City's highest legislative body for their consideration. The procedure is generally used for major zoning changes. More modest changes are usually through the variance proceedings.

7. John Delafons, Land-Use Controls in the United States (Cambridge, Mass: MIT Press, 1969), p. 5.
8. Ibid.
9. Reys, op. cit., p. 748.
10. Romin Koebel, "Incentive Zoning in New York City: Managing the Urban Spatial Environment, an Interactive and Incremental Process," (unpublished Ph.D. thesis, Department of Urban Studies and Planning of the Massachusetts Institute of Technology, 1973), See for a comprehensive account of the workings of incentive zoning.  
Cities that desire to see development proceed often give in somewhat to developer demands and retreat from their fixed position regarding appropriate densities. An example that the author is familiar with is the Cabot Estate negotiations between the City of Boston and Pasquale Franchi, a local developer. While planned unit development provides for large-scale planning of one development by one developer on designated tracts of land, incentive zoning (although covering perhaps equally large areas) provides for building by building planning within a designated district. In return for the developer's providing certain amenities called for, he is allowed bonuses of additional density (e.g. Amenities include the addition of a theatre in the theatre district to qualify for additional floor area in commercial office buildings, or improvements in public transportation infrastructure not necessarily confined to the developer's building, but for the district as a whole.) Cities such as New York, are experimenting with a whole variety of incentive zoning districts and techniques including air rights transfer in historic districts and variations on this theme.
11. After the razing of the Stern Brothers store on 42nd St. between 5th and 6th Avenues, while a special Grand Central district was being debated, the developer went ahead and built under the permissible zoning, producing a building that violated the street facade and did not provide adequate subway linkages.
12. Harry Waters, "The Battle of the Suburbs," Newsweek, (November 15, 1971), pp.61-70  
This is the same zoning that its advocates had to defend not too long ago from property owners' fears of confiscation, using arguments that planning would protect and enhance values. This same defense has come back to haunt planners, who have now come to represent the conservative vested interests of property owners. The metamorphosis of viewpoints stems from zoning's often-used ability to pre-empt certain uses or densities that could lead to or promote social diversification.

13. Most government housing programs are geared to multi-family housing or low income homeownership, and such programs as rent supplement, leased housing and housing allowance provide insufficient subsidy to allow for use in "luxury" areas.
14. Clarence S. Stein, Toward New Towns for America, (Cambridge, Mass: MIT Press, 1957), pp.37-76.  
Charles Ascher would often relate that although originally built for the lower middle class (both in size and price), homes in Radburn quickly rose in price to the point of excluding the very group the developers meant to serve. Unable to control the resale price of homes, they had no control over the future social mix, other than through the physical layout and design of the homes.
15. Arthur Simon, Stuyvesant Town USA (New York: New York University Press, 1970) p. 170.  
Note the transformation of Stuyvesant Town and Peter Cooper Village, both built under the Redevelopment Companies Act of New York by Metropolitan Life and New York Life respectively, to serve the lower middle class, now overwhelmingly occupied by middle class and professionals.
16. Warren Boeschstein, "Design of Socially Mixed Housing," Journal of the American Institute of Planners, Vol. XXXVII, No.5 (September, 1971), pp.311-318. In the Brookline Village Urban Renewal area, the overall plan provided for economic mixing, but each income group was segregated in separate compounds. The Waterside development in New York is another example of segregating subsidized tenants from middle income tenants.
17. Ira S. Robbins, "Housing Achievements," in Urban Housing, ed. by William L.C.Wheaton, Grace Milgram and Margy Ellin Meyerson (New York: The Free Press, 1966), p.9.
18. Roger G. Krohn and E. Berkeley Fleming, "The Other Economy and Urban Housing Problem: A Study of Older Rental Neighborhoods in Montreal," (Cambridge, Mass: Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, August 1972), Working Paper Number 11. Documents the case of the peasant economy, providing the bulk of housing in metropolitan areas for little or no economic return and often actually at a net loss to the landlord.
19. Charles Abrams, "Housing Policy--1937 to 1967," cited in Shaping an Urban Future, ed. by Bernard J. Frieden and William W. Nash, Jr., (Cambridge, Mass: MIT Press, 1969), p.36. He notes: "In many cities, slum elimination reduced, equivalently, the supply of housing available to the slum dweller and raised the rents of remaining slums..."

20. Ibid.  
The National Association of Home Builders (NAHB) accepted the argument and even the National Association of Real Estate Boards (NAREB), originally a strong opponent of "socialized housing," has come around to the view that public housing is non-competitive to new market housing.
21. Henry Aaren, Shelter and Subsidies (Washington, D.C.: Brookings Institute, 1972), p.109.  
Aaron cites Congress' intent in the landmark Housing Act of 1949 to build 810,000 units in six years, or 170,000 units a year. Actual production was thus less than 1/4 of that anticipated, hardly making public housing a success, at least in terms of meeting Congress' production goals. At a Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University luncheon in March, 1974, Assistant Secretary of the Department of Housing and Urban Development, Michael Moskow, cited a figure of a little over one million housing units completed as of February 12, 1974, an average of approximately 40,000 units yearly over the twenty-five years since the Housing Act of 1949.
22. Report of the Housing and Urban Renewal Task Force to Mayor John V. Lindsay, Charles Abrams, Chairman (New York: unpublished report, January 10, 1966), pp.7-8. It noted of large scale public housing in the past: "...public housing...should be devoted to providing buildings, not 'self-contained' projects. The buildings should be inserted as part of existing neighborhoods, not massively superimposed upon them."
23. Herbert Gans, The Urban Villagers (New York: The Free Press, 1962). See for the best account of the program's effects on a neighborhood.  
Martin Anderson's The Federal Bulldozer, (Cambridge, Mass: MIT Press, 1964), refutes the myth of increased tax revenues for cities.  
Robert Groberg, "Urban Renewal Realistically Reappraised," in Urban Renewal, the Record and the Controversy ed. by James Q. Wilson (Cambridge, Mass.: MIT Press, 1966) pp.509-31. The Anderson conclusion of reduced property tax revenues is challenged by Groberg.
24. Harold Kaplan, Urban Renewal Politics (New York: Columbia University Press, 1963). p.24.
25. Ibid., p.24.

26. George M. Raymond, "Housing and Renewal: Problems and Opportunities," in Planning 1970 (Chicago, Ill.: American Society of Planning Officials, 1970), p. 285.

Chapter II. Welfare Island Comes of Age

1. Donald Elliott, Chairman, New York City Planning Commission, interviewed by author (New York, New York), June 27, 1973
2. See Appendix A for detailed history of the Island
3. See Appendix B.
4. John Boogaerts, Jr., Principal Urban Designer, Housing and Development Administration of the City of New York, interviewed by author (New York, New York), July 19, 1973.
5. Elizabeth Barlow, "A mini-city buds on New York's island of despair", Smithsonian, Vol.1, 11 (February, 1971), pp.59-62.
6. Sam B. Warner, Jr., Streetcar Suburbs (Cambridge, Mass.: Harvard University Press and the M.I.T. Press, 1962), p. 154. This is one of numerous studies documenting this correlation.
7. Letter from Charles L. Patterson, Chairman, New York City Transit Authority to J. Clarence Davies Jr., Chairman, New York City Housing and Redevelopment Board, June 1, 1961, p.3. The grade would have made stopping and acceleration difficult thereby increasing running times.
8. New York University Medical Center Affiliation at Goldwater Memorial Hospital, Annual Report (New York, New York, August, 1966), p.3. Even the hospitals, the only continuing functioning uses on the Island complained of lack of access for their medical personnel and staff as the years went by, a problem that often hindered their ability to hire competent help and made it extremely difficult for highly trained medical staff to easily commute from their Manhattan practices to the Island's hospitals.
9. William Zeckendorf, "New Cities for Old," in Urban Land Development by Philip David (Homewood, Illinois: Richard D. Irwin, Inc., 1970), pp.546-549. The East Side, however, was not always the posh place it is now. Prior to the 1950's land values had not reached the level of \$200 a square foot, but were much more like \$10 a square foot. Instead of fashionable apartments and offices, there were meatpacking and slaughtering plants creating a stench that extended as far as Second Avenue, forcing many apartment developments to face Westward only. It took the foresight of William Zeckendorf to assemble the land and transform the area into the United Nations world headquarters.



10. Report of Housing and Urban Renewal Task Force to Mayor John V. Lindsay, Charles Abrams, chairman. (New York, New York, January 10, 1966).
11. Ed Logue and other housing officials often referred to sites in the City's vest pocket housing program, often former garages, as "Hazen's Gas Stations" in honor of Robert Hazen, the City Development Commissioner.
12. "Renewal and Development Strategy," Executive Capital Budget of the City of New York, 1969-1970, (New York, New York, 1969), pp.1-2.
13. David Grossman, Budget Director, City of New York, "Assessment of the Lindsay Legacy," speech delivered at the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, (Cambridge, Massachusetts, February 26, 1974).
14. Jason Natha, President of Franklin Town, interviewed by author (Philadelphia, Pennsylvania), July 20, 1973.
15. Ibid.
16. Ibid.
17. Richard N. Pigossi, internal memorandum to files of the Development and Resources Corporation, March 5, 1968.
18. Ibid., Pigossi relates, "Nathan would like to see the Welfare Island plan implemented outside of the City Capital Budget."
19. Peter L. Baumbusch, "Mitchell-Lama Financing In New York City-1970, A Case Study," unpublished Harvard Law School Paper, (Cambridge, Mass., January 14, 1971).
20. Arthur Solomon, Housing the Urban Poor (Cambridge, Mass.: MIT Press, 1974), p.37
21. Ibid. A "no-load" development is one that would provide equilibrium between revenues and municipal expenditures and cause no tax increase or loss of consumer benefits for the City as a whole.
22. "Renewal and Development Strategy," op.cit., pp.1-2
23. Richard N. Pigossi, memorandum, March 11, 1968. In a speech delivered to the New York Metropolitan Chapter of the National Association of Housing and Redevelopment Officials in the winter of 1968, William Diamond (Assistant Administrator of the Housing and Development Administration of the City of New York) felt that new housing

should be the main component in any future development of the Island, citing 250,000 families living in sub-standard housing in New York. The City longingly looked at Welfare Island as a strong potential site for increasing housing production given the acute demand for housing in the City.

24. "Renewal and Development Strategy," op. cit. The Capital Budget stresses in housing and renewal strategy the participation of renewal residents in the planning process.
25. John Chester, memorandum to files of the Development and Resources Corporation, August 14, 1968 regarding an August 12, 1968 meeting with Dr. Frank Kristof, Assistant Administrator for Policy and Programs of the Housing and Development Administration of the City of New York.
26. Report of Housing and Urban Renewal Task Force to Mayor John V. Lindsay, op.cit. The report guided the City, "It must fortify racial and income diversity wherever it already exists, and encourage and provide for it where it does not...solving the housing problem means not only more and better housing but also functioning communities. It must experiment..."
27. Ibid. It also stated, "...it must recognize that good design is not a luxury but a necessity..." This was also a goal in the Capital Budget and even in the 1968 HDA Annual Report in the form of a transmittal letter from Jason Nathan to the Mayor on November 1, 1969 stressing commitment to design excellence.
28. Pigossi, op.cit. William Diamond and other critics charged, however, that besides lack of money, red tape and other typical reasons for failure, there was too high a preoccupation with design rather than volume of housing and that this had resulted in delays.
29. "Housing and Renewal Strategy," op.cit.

Chapter III. The Deliberations

1. Jason Nathan, interviewed by author (Philadelphia, Pennsylvania), July 20, 1973.
2. John McGarrahan, Mayor Lindsay's housing aid, interviewed by author (New York, New York), July 11, 1972.
3. Mayor John V. Lindsay to Benno C. Schmidt, Chairman of the Mayor's Welfare Island Planning and Development Committee, October 8, 1968.
4. Jason Nathan, op. cit.
5. Marquis Who's Who, Inc., Who's Who in America, 37th edition 1972-1973, Volumes I & II (Chicago, Illinois: Marquis Who's Who, Inc.), 1972. The description of the members, taken mostly from Who's Who includes: Mrs. Vincent Astor, heiress of the famed Jacob Astor fortune, trustee of the Metropolitan Museum of Art, trustee of the New York Public Library (once Astor Library), and member of the Art Commission of the City of New York; William Bernbach, President of the advertising firm of Doyle Dane Bernbach and previously a member of Mayor Lindsay's task force on air pollution; Dr. Ralph Bunche, United Nations Under-Secretary General, Nobel Peace Prize mediator, "representative" of the Black community and UN interests; Marcia Davenport, an author formerly on the editorial staff of the New Yorker; Irving Mitchell Felt, Chairman of Madison Square Garden Corporation; Richard Gelb, President of Bristol-Myers and later financial chairman of Mayor Lindsay's 1969 reelection campaign; Eli Jacobs, Vice President of White, Weld & Company; Philip Johnson, the committee's only bona fide architect-planner, co-designer of the Seagram building and trustee of the Museum of Modern Art; James Linen, publisher of Time Incorporated; Frances Loeb, Democratic Senator Lehman's daughter, New York City liason to the United Nations, and benefactress of the Harvard School of Design Library bearing her name; Andre Meyer, senior partner of the investment banking firm of Lazard-Freres, Inc. and owner of Development and Resources Corporation (paid consultants to the committee); Cornelius W. Owens, President of New York Telephone; Ellmore Patterson, Chairman of the Executive Committee of Morgan Guaranty Trust Company of New York; Alex Rose, leader of the Liberal Party and "kingmaker" (Lindsay ran on the Republican-Liberal ticket in 1965 and the Liberal ticket alone in 1969); Benno C. Schmidt, managing partner of J.H. Whitney & Co. and a trustee of the Whitney Museum of American Art; David Truman, Vice President of Columbia University; Walter B. Wriston, President of the First National City Bank of New York; and finally David Yunich, President of Macy's Stores.

6. Jason Nathan, op.cit.
7. In addition, Irving Felt, for example, needing the Mayor's support to achieve a "tax deal" for Madison Square Garden, no doubt saw membership as an opportunity to cultivate the Mayor's favor, and was willing to subordinate any business or developer interests if necessary to win the Mayor's friendship.
8. Jason Nathan, op. cit.
9. Letter from David Lillienthal, Development and Resources Corporation to Mayor John Lindsay, April 23, 1968. Explaining D&R's function to the Mayor: "What D&R is trying to do in urban America--as it has done with not a little success overseas--is to promote public objectives through the medium of a private corporation, owned by its staff, and subject to the discipline of having to support itself, make a profit, and pay taxes."
10. Welfare Island Planning and Development Corporation, "Minutes of the First Meeting of the Board of Directors," April 25, 1968. The committee became the Welfare Island Planning and Development Corporation Board of Directors. The cost of the committee's work until April 25, 1968 was put by Benno C. Schmidt, chairman, at \$15,000, with the full cost of the work at around \$110,000.
11. Edwin Friedman, New York State Office of Planning Coordination, interviewed by author, (New York, New York), August 9, 1973.
12. Leroy Bowser and R. Wood Tate, draft memorandum to file of Development and Resources Corporation, June 11, 1968. Richard Buford, Executive Director of the New York City Planning Commission, indicated that opposition to the plan initiated by Eli Jacobs and Philip Johnson led to the formation of the Welfare Island Committee on which the two opponents served as members.
13. Report of the Welfare Island Planning and Development Committee submitted to John V. Lindsay, Mayor, February, 1969, pp.125-128.
14. Welfare Island Planning and Development Corporation, "Minutes of the First Meeting of the Board of Directors," op.cit.
15. Welfare Island Planning and Development Corporation, "Minutes of the Board of Directors," September 19, 1968.

16. John McGarrahan, op.cit.
17. Letter from Benno C. Schmidt to Mayor John Lindsay, July 10, 1968. The decision was formalized in this letter after private agreement by the Mayor with Jason Nathan acting as intermediary.
18. Welfare Island Planning and Development Corporation, "Minutes of the Board of Directors," June 13, 1968. Ten directors visited the hospitals and found them to be relatively well run and "that morale of the staff and the patients seem to be of a high level."
19. Ibid. Jason Nathan, even more than the others, realized that the committee would inevitably have to follow uses in keeping with his own goals for the Island.
20. Ibid.
21. Letter from Benno C. Schmidt to Mayor John Lindsay, July 10, 1968, and Mayor John V. Lindsay to Benno C. Schmidt, July 9, 1968. The Mayor responded to the Schmidt draft letter, "This makes good sense--both with respect to the hospitals and the proposed demolition program, and I thank you for moving in this direction. Demolition is important. Those abandoned buildings on Welfare Island are a constant attracting and breeding place for rodents. It's bad for the whole island."
22. Jason Nathan to Benno C. Schmidt, November 12, 1968.
23. Letter from Benno C. Schmidt to Mayor John V. Lindsay, March 14, 1968. Wood Tate, memorandum to file, internal memorandum of Development and Resources Corporation, subject "Welfare Island--meeting with Sally Bowles--City Planning Commission on March 19, 1968," A water geyser installed on ship wreck rock at the Island's southern end, the gift to the City of publisher George Delacorte. It was inadvertently agreed upon by the Mayor without consultation with his aides or the Welfare Island Committee that suggested halting the project. With \$100,000 already expended the Mayor could not back out.
24. Gene Smith, "Nuclear Power, A Future Giant, Faces Slowdown Now," New York Times, January 6, 1969. Con Edison announced in early October that it was seeking city approval for an underground nuclear generating station to be built on Welfare Island in the East River.

25. Welfare Island Planning and Development Corporation, "Minutes of the Board of Directors," March 13, 1968. Mrs. Astor made a favorable presentation of the plan.
26. Jason Nathan, op. cit. At that meeting Lillienthal looked at Rockefeller and demolished him in a half-hour soliloquy. Lillienthal argued that regardless of all claims of complete safety, in view of the current state of technology, to have an invisible nuclear power station is absurd, and to put one down near the heart of one of the world's greatest cities is unthinkable.
27. One of the prime cause celebres was saving Central Park from encroachment, and their emphasis on open space was further demonstrated by their encouragement of vest pocket parks within the City such as Paley Park, a small donated open space oasis off fashionable Fifth Avenue in midtown, near the Museum of Modern Art.
28. Letter from Walter B. Wriston, President, First National City Bank of New York to Benno C. Schmidt, January 6, 1969, commenting on Park Administrator August Heckscher's public advocacy of a Tivoli Gardens for the Island.
29. Welfare Island Planning and Development Corporation, "Minutes of Meeting of the Board of Directors," October 24, 1968. See critique by the Parks, Recreation and Cultural Affairs Administration of commercial recreation on Welfare Island.
30. Dr. Frank S. Kristof, "Housing: The Economic Facets of New York City's Problems," in Agenda for a City: Issues Confronting New York; edited by Lyle C. Fitch and Annmarie Hauck Walsh, (New York, N.Y.; Institute of Public Administration, 1970), pp.34-36.
31. Welfare Island Planning and Development Corporation, "Minutes of Meeting of the Board of Directors," September 19, 1968.
32. Welfare Island Planning and Development Corporation, "Minutes of Meeting of the Board of Directors," November 6, 1968. Jason Nathan, interview, op.cit., Nathan and his assistant Samuel Ratensky had dinner with Philip Johnson and convinced Johnson prior to the meeting to undertake the compromise plan that was eventually agreed to.
33. Citizen' Housing and Planning Council of New York, Inc. would receive "top-secret" draft reports, while author was on the staff.
34. Report of the Welfare Island Planning and Development Committee, op.cit. pp.3-11.
35. Ibid., p.11

Chapter IV. The City Selects a Developer

1. Report of the Welfare Island Planning and Development Committee, op. cit., p.11
2. Letter from Walter Wriston to Benno C. Schmidt, June 25, 1968.
3. Nathan, op.cit.
4. McGarrahan, op.cit. Although the Mayor was to use this approach later in the proposed financing of New York City Convention Center, it was used only as a last resort after being unable to obtain state financing.
5. Baumbusch, op.cit.
6. Letter from Roger Starr, Executive Director, Citizens' Housing and Planning Council of New York, Inc. to Mayor John Lindsay, October 24, 1969.
7. McGarrahan, op.cit.
8. Nathan, op.cit.
9. Ibid.
10. William K. Reilly and S.J. Schulman, "The State Urban Development Corporation: New York's Innovation," in The Urban Lawyer, Summer 1969, Vol.1, No.2, p.132.
11. New York State Urban Development Corporation Act, As Amended through June 1972, Chapter 174, Section 1, New York State Laws of 1968.
12. Philip David, "State Development Corporation," paper delivered at the Massachusetts Institute of Technology's Boston Development Strategy Seminar, Department of Urban Studies and Plannings, March 21, 1975, p.5.
13. Ibid., p.5.
14. Ibid., p.8.
15. Whereas the private developer often reneges on agreements with the City with impunity, asking for additional concessions beyond those which were initially granted or even pulling out entirely, UDC could be expected to keep its word more readily.

16. Albert Walsh, President, National Realty Committee, interviewed by author (New York, New York), July 9, 1973. The former Administrator of the City's Housing and Development Administration confirmed: "Everyone with any knowledge was aware that every major developer at one point or another had looked at Welfare Island and that it was worthwhile only as long as there was an entity like UDC to take a crack at it...to see if they could come up with a proposal which looked feasible after they spent their own money."
17. Ed Logue was the well known urban renewal and redevelopment "King Midas" for whatever he touched had seemingly turned to gold in New Haven and Boston. Seven years in each city had earned him the reputation of a "mover and shaker," someone who could successfully grab up big chunks of federal money for cities. Lindsay, impressed with Logue's reputation, brought him into New York City's housing scene after his own election by appointing him to two committees: the task force on housing and urban renewal chaired by Charles Abrams and at the same time the task force on housing and neighborhood improvement. His chairmanship of the latter resulted in the report, Let There be Commitment, which recommended reconstituting the housing and planning agencies of the City into a super-Housing and Development Administration. It turned out that Lindsay did not get his hoped for Administrator (Ed Logue), however, supposedly because Logue's preconditions for the job were deliberately impossible for Lindsay to fulfill politically. Logue's later courtship with Nelson Rockefeller soon led to his appointment as head of the newly formed State Urban Development Corporation, a much more powerful body than the City Housing and Development Administration Lindsay had created. (In interviews, both Adam Yarmolinsky and Andrew Kerr independently relate that Logue made conditions for accepting the job as housing chief of the City impossible for Lindsay to politically fulfill. Logue meanwhile was courting Rockefeller and accepted his job invitation. When Logue called Lindsay to inform him of the job, Lindsay abused him verbally and Logue hung up.
18. Robert Dormer, Richmond Foundation, interviewed by author (Brooklyn, New York), August 10, 1973.
19. Letter to Edward J. Logue from John G. Burnett, September 19, 1968.
20. Ibid.
21. Jason Nathan, op.cit.
22. Jason Nathan, op.cit.
23. Adam Yarmolinsky, interviewed by author (Boston, Mass.) May 14, 1973.



24. New York Times, March 1, 1968, p.38. Actually the response by other mayors to UDC was favorable, New York Times of February 29 and March 14, 1968. The mayors of Albany, Syracuse, Binghamton and Auburn supported UDC.
25. McGarrahan, op.cit.
26. Ibid.
27. Seth King, "Mayor Discloses Welfare Island Plan," New York Times, February 13, 1969.
28. Draft letter from Edward Logue to Jason Nathan, February 14, 1969.
29. Ibid.
30. Ibid.
31. Jason Nathan, op.cit.
32. Ibid. The Elliott turndown came despite the fact that Edwin Friedman, Senior Planner of the City Planning Department, had been given the task of determining possible development sites for the fledgling agency and produced an internal report looking upon UDC as a strong potential developer for Welfare Island, among other projects, one that could present a development plan and provide a means for implementation.
33. A vivid example of the problems involved in having separate city agencies for planning and development, something Logue himself sought to remedy by recommending in Let There be Commitment that a superagency be created combining both.
34. Nathan, op.cit.
35. Ibid.
36. Donald Elliott, interviewed by author (New York, New York), June 27, 1973.
37. Nathan, op.cit.
38. McGarrahan, op.cit.

Chapter V. The Decision to Lease

1. This ground rent can be fixed absolutely or by formula, and can be used as a guaranteed minimum sum or can be allowed to float. The ground rent can be the only yearly return to the lessor, or it can be supplemented by a sharing of profits above this minimum figure.
2. Stanley L. McMichael, Long and Short Term Leaseholds including Ninety-Nine Year Leases (Cleveland, Ohio: Stanley McMichael Publishing Co., 1925) pp.115-125.
3. The lessor assumes the least risk having first claim upon the income of the lessee's improvements ahead of the lessee's lender (except where there is subordination). The knowledge and security that if default occurs foreclosure will provide the lessor with control of the improvements, allows the lessor to receive a ground rent rate below that of the mortgage interest rate.
4. In some subdivisions the developer provides the infrastructure which is later deeded over to the municipality.
5. Charles Abrams, Man's Stuggle in an Urbanizing World (Cambridge, Mass.: MIT Press, 1964), p.26.
6. The high value of the development, however, makes it prohibitively expensive to condemn and redevelop the premises in the future. This can be seen as an asset, preventing the elimination of much needed housing, although at the same time preventing an increase in the density of whatever open spaces remain, if such an increase was felt to be desirable by the City. The City, however, retains a very valuable asset, the full value of the development, including the addition of a subway stop that immeasurably increases the value of any land in New York City.
7. That plan, an outgrowth of the Mayor's Committee on Welfare Island headed by Benno C. Schmidt, is the basic Philip Johnson plan.
8. It is this type of flexibility under leasing that makes it so advantageous to both parties, with major decisions dependent upon mutual agreement.
9. The ability of the lessor to force development depends on the incentive to proceed, or disincentive to stop. Where the developer owns the land outright, he could decide not to proceed, or to stop if financing or other development problems were unresolvable. If development conditions are poor, it is doubtful that leasing would change the end result; it may in fact facilitate termination. Even in a sale, if the developer had not bought land outright but had only optioned it

or bought contingently, he could conceivably drop the entire development if circumstances warranted.

10. Jason Nathan, op.cit.
11. This is the case along Vanderbilt Avenue where the success of the Biltmore Hotel and other buildings along Park Avenue are certainly not a reflection upon the landowner, the old New York Central Railroad and its successor, the bankrupt Penn-Central.
12. Other projects, for these reasons, were handled similarly, including Battery Park City, United Nations Development Corporation and Waterside.
13. New York State Urban Development Corporation Act, As Amended through June 1972, Chapter 174, Section 1 Laws of 1968. Section 14 (2): Section 14(2): Notwithstanding the provisions of any general, special or local law or chapter, any municipality, by resolution of its local governing body, is hereby empowered without referendum, public auction, sealed bids or public notice, to sell, lease for a term not exceeding ninety-nine years, grant or convey to the corporation any real property owned by it which the corporation shall certify to be necessary or convenient for its corporate purposes. Any such sale, lease, grant or conveyance shall be made with or without consideration and upon such terms and conditions as may be agreed upon by such municipality and the corporation. Certification shall be evidenced by a formal request from the president of the corporation. Before any such sale, lease, grant or conveyance may be made to the corporation, a public hearing shall be held by the local governing body to consider the same. Notice of such hearing shall be published at least ten days before the date set for the hearing in such publication and in such manner as may be designated by the local governing body.
14. Internal Revenue Code (Chicago, Illinois: Commerce Clearing House, Inc., February 1970), Sections 167 and 178. Tax treatment under the Code allows an expense deduction called depreciation (confined to the property's useful life) for the exhaustion, wear and tear, and obsolescence of property utilized in a trade or a business, or for property held in the production of income. Land is considered non-depreciable, and an expense allowance for the cost basis of land is not permitted.
15. UDC negotiates with a developer to form a limited partnership housing company through which tax benefits flow to the investors.

16. Amortization is that part of the mortgage debt service under a purchase that repays principle; and under the Internal Revenue Code it is considered a non-deductible expense. Although the funds which are received and used to repay debt (amortization) more significantly reduce the cash flow, they are nevertheless considered as income to the owner and as such are taxable (representing an actual cash outflow). A lease ground rent payment on the other hand is a deductible expense.
17. Control is illustrated by the following case: When Webb & Knapp sold the Union Carbide building on Park Avenue for \$17 million, the New York Central received nothing although it owned the land underneath, the fee. Webb & Knapp as the lessee controlled the property.
18. The City as lessor can also reduce risk in the area of property tax (although this aspect is not applicable to UDC). The City and the developer can agree together upon property tax payments, usually setting them at a fixed percentage of gross revenue rather than basing them upon the property tax rate and assessed valuations as is so often legally required. The property tax issue has been a particularly thorny one for most developers, and the lack of an agreement with the City has created cash flow problems for many and a lack of confidence in proceeding with projects (especially in the inner City). The lease formalizes the tax agreement in a binding manner and thus offers the developer and his lender far more assurance than does a non-enforcable oral or non-legal written promise (that has been the traditional method in some cities such as Boston).
19. In the case of Welfare Island, UDC had already obtained a commitment from the City that it would assume the major obligation of agreeing to provide a subway link from the Island to Manhattan, clearly a responsibility upon which the entire development hinged. Thus, the City reduced the development risk to UDC by taking responsibility for completion of this vital transit link.

Chapter VI. Prelude to the Lease: The Memorandum of Understanding

1. Memorandum from Stephen Lefkowitz to Robert Litke (internal memorandum of New York State Urban Development Corporation), March 19, 1969.
2. General Memorandum of Understanding between the City of New York and the New York State Urban Development Corporation, April 17, 1969.
3. Basically the City was providing UDC with the old urban renewal package--a cleared site, a detailed program and government approvals.
4. McGarrahan, op.cit.
5. Welfare Island Memorandum of Understanding between the City of New York and the New York State Urban Development Corporation, April 18, 1969.
6. By setting these conditions, the City was establishing a convenient mechanism that could later be used as a means of halting the development or could alternatively be waived allowing development to proceed.
7. Welfare Island Memorandum of Understanding, op.cit.
8. Joint Press Release by Governor Nelson A. Rockefeller and Mayor John V. Lindsay, for release Wednesday, May 21, 1969. During this joint City/State press conference attended by Governor Rockefeller and Mayor Lindsay, Ed Logue declared, "We have carefully selected talented architects to design these projects...we expect to make significant contributions to urban design and environmental planning because there is no reason why lower income housing cannot be built to the highest standards of appearance. We must provide the kind of decent housing so sorely needed in our cities, without ugliness."
9. Memorandum from Deputy Mayor Robert Sweet to John McGarrahan, the Mayor's Housing Aid, April 14, 1969.
10. Ibid.
11. Memorandum from Deputy Mayor Robert Sweet to John McGarrahan, May 2, 1969.
12. Ibid.

13. Joint Press Release, op. cit.
14. Joint Press Release, op. cit.
15. Joint Press Release, op. cit.
16. Joint Press Release, op. cit.

Chapter VII. The Lease

1. Stanley L. McMichael, Long and Short Term Leaseholds including Ninety-Nine Year Leases, (Cleveland, Ohio: Stanley McMichael Publishing, 1925), p.12.
2. Ibid. The American long term building lease differed from earlier leases in that the tenant was obligated to improve the property by erecting a specified type of structure within a stipulated period of time.
3. A lease as long and complex as this one is no easy document to assimilate. A UDC negotiator's comment to his colleague regarding the lease provisions perhaps sums it up best, "Should you find them less than lucid, you will join Dr. Kristof, who asked to have them translated into English, and Mr. Lefkowitz, who took an aspirin."
4. Letter from Paul Byard, UDC Attorney to William P. Clark of Debevoise, Plimpton, Lyons & Gates, Attorneys, July 28, 1969.
5. Stanley L. McMichael and Paul T. O'Keefe, Leases, Percentages, Short and Long Term (Englewood Cliffs, N.J.: Prentice Hall, 1959), pp.1-10. Leases for a period of twenty-one years or more are considered to be long term leases; short term leases run from one through twenty years.
6. Ibid.
7. New York State Urban Development Corporation Act, As Amended through June, 1972, Chapter 174, Section I Laws of 1968, Section 14(2)
8. Stanley L. McMichael, op.cit. One of the most commonly used forms for long term leasing is the 99 year lease, however its significance is unclear. Matthew Beacon in A Treatise on Leases and Terms for Years (1798), explained that the 99 year period represented three lives, while others have hypothesized that an English common law prevented a lessor from granting a lease of 100 years and that 99 years was the maximum term possible. See Harold B. Wahl, "Why a 99 year Lease?" Florida Bar Journal, 548, 1955. One lawyer recently concluded that there is no legal reason for selecting 99 years in preference to an even century, but that one justification for its popularity is that it coincided roughly with the economic life expectancy of two buildings. Currently it is felt however, that 99 years is sufficient time even for the most conservative of lenders to finance a lessee's project. Waterside's developer, Richard Ravitch, could not receive conventional mortgage financing without the assurance of a 99 year lease from the City. (Although once the City agreed to and was able to finance the development itself, the lease term was lowered to sixty years; as a lessor it had no need of extra time to

protect its own lender's interest and desired control and full value.

9. Lease between the City of New York, lessor, the New York State Urban Development Corporation, lessee, and the Welfare Island Development Corporation, subsidiary, December 23, 1969 (hereinafter referred to as the Welfare Island Lease). In schedule 1 of the lease the term "more or less" is frequently used.
10. Letter from Paul Byard, op.cit.
11. Letter from Paul Byard to William P. Clark, August 13, 1969.
12. Lease between the City of New York as Lessor and Battery Park City Authority as Lessee, November 24, 1969.
13. Lease between the City of New York and United Nations Development Corporation, August 1, 1972.
14. Welfare Island Lease, op.cit. p.1.
15. Welfare Island Lease, op.cit. paragraph 22. As defined by the lease an improvement is any building, structure, utility, roadway, street, park, public facility, sidewalk, landscaping, side improvement, development and other betterment to be provided by or caused to be provided by the Lessee pursuant to the General Development Plan.
16. Shirley Siegel, former General Counsel of the Housing and Development Administration of the City of New York, interviewed by author (New York, New York), July 11, 1972.
17. Welfare Island Lease, op.cit., paragraph 22. As defined by the lease, enforced delay is any delay in the performance of the obligations of the Lessee, Subsidiary, sublessees or their sublessees by reason of act of God or the public enemy of the United States of America, the State of New York or the Lessor, the laws, rules, regulations or orders of such political jurisdictions, judicial or other legal proceedings, fires, floods, epidemics or similar afflictions, strike, labor disputes, freight embargoes, weather of unusual severity and delay by Lessor in the performance of its obligations hereunder, including without limitation, demolition, relocation or appropriation of such sums required for the purchase or lease of any school or appurtenance.
18. Welfare Island Lease, op.cit. paragraph 2.



19. Walsh, op.cit. According to Albert Walsh, now President of the National Realty Committee and formerly City Administrator of Housing and Development, "A long planning period was chosen to give UDC a crack at it, to see if they could come up with a proposal which looked feasible to them to encourage them to spend their own money."
20. Letter from Paul Byard to William Clark, July 28, 1969, op.cit.
21. General Memorandum of Understanding, op.cit. p.2
22. McGarrahan, op.cit.
23. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, August 1, 1969.
24. Letter from Edward J. Logue to Jason Nathan, August 4, 1969.
25. McGarrahan, op.cit.
26. Welfare Island Lease, op.cit. paragraph 3.
27. Siegel, op.cit.
28. Letter from Paul Byard to William Clark, July 28, 1969, op.cit.
29. General Memorandum of Understanding, op.cit., p.7
30. Welfare Island Lease, op.cit. paragraph 3.
31. Welfare Island Memorandum of Understanding, op.cit. p.4.
32. Welfare Island Lease, op.cit.
33. Ibid.
34. Shirley Siegal, former General Counsel of the Housing and Development Administration, interviewed by author (New York, New York), June 27, 1973. Shirley Siegal, one of the City lease negotiators, joined others claiming that UDC was encroaching upon City powers and criticized the handling of the public facilities provision: "The matter of the relationship between UDC and the City on the design and use of the public facilities in the project, is an area that has ended up not being taken care of in an ideal way, to put it mildly."
35. Letter from Paul Byard to William Clark, July 28, 1969, op.cit. Byard agreed on the matter of standards, "...that we (UDC) would design the public facilities to equal or exceed the minimum standards of the relevant department."

36. Stanley L. McMichael, op.cit. p.12
37. Ibid., pp. 92-104
38. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, op.cit.
39. McGarrahan, op.cit.
40. Stanley L. McMichael, op.cit., pp.115-125
41. Letter from Paul S. Byard to Jason Nathan, September 8, 1969. Also, Max Kargman, President of First Realty Co. of Boston, often told the author that this was the best reason for a progressive income tax.
42. New York State Urban Development Corporation Act, as amended through June, 1972, Chapter 174, Section 1 Laws of 1968, Section 22.
43. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, August 20, 1969.
44. Ibid. In determining their positions, both parties had to estimate projected rent levels that would yield estimated tax revenues for the City. UDC was concerned that the City would overestimate rent revenues and expect more taxes than were realistic given even optimistic market projections.
45. Ibid.
46. Ibid.
47. Ibid.
48. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, op.cit., August 1, 1969.
49. Welfare Island Lease, op.cit., paragraph 4.
50. Welfare Island Lease, op.cit., paragraph 22.
51. Welfare Island Lease, op.cit., paragraph 4.
52. Ibid., paragraph 5.
53. Ibid., paragraph 22.
54. Ibid.

55. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, August 28, 1969.
56. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, July 18, 1969.
57. Frank Kristof, interviewed by author, (New York, New York), June 15, 1973.
58. Paul Anderson, financial econmist, Federal Reserve Bank of Boston, telephone interview with author, (Boston, Mass.), November 20, 1973.
59. New York State Urban Development Corporation Official Statement for 1972 Series A General Purpose Bonds, July 25, 1972, p.3
60. New York State Urban Development Corporation Act, op.cit., section 22.
61. New York State Urban Development Corporation Annual Report, 1971, p.8.
62. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, op.cit., August 20, 1969
63. Welfare Island Lease, op.cit. paragraph 22, p.26.
64. Welfare Island Lease, op.cit. paragraph 5.
65. Ibid., paragraph 22.
66. Welfare Island Lease, op.cit. paragraph 22, p.27
67. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, op.cit., July 18, 1969.
68. While only UDC financed housing benefited by the thirty year tax freeze, all the revenue producing elements (UDC and non-UDC financed) received a forty year rent freeze.
69. Letter from Paul S. Byard to Samuel Ratensky, Assistant Administrator of the Housing and Development Administration of the City of New York, August 19, 1969.
70. Welfare Island Lease, op.cit., paragraph 22, p.27.

71. Memorandum from Paul S. Byard to Edward J. Logue, Robert E. McCabe and Stephen A. Lefkowitz, op.cit., July 18, 1975. Included "Rough Estimates of Land Rent 7/7/69" by Frank Kristof.
72. Memorandum from Frank S. Kristof to E. Logue, R. McCabe, S. Lefkowitz and J. Nathan, September 10, 1969 (revised, September 26, 1969).
73. Welfare Island Lease, op.cit., paragraph 22, p. 26.
74. Ibid., p.27
75. Memorandum from Frank Kristof to E. Logue, R. McCabe, S. Lefkowitz, September 10, 1969 (Revised September 26, 1969 ).
76. Memorandum from Paul S. Byard to E. Logue, R. McCabe, S. Lefkowitz, July 18, 1975. Frank Kristof 7/7/69 Rough Estimates of Land Rent.
77. Welfare Island Lease, op.cit., paragraph 22, p.26.
78. Letter from Paul S. Byard to William P.Clark, July 28,1969.
79. Welfare Island Lease, op.cit., paragraph 22, pp.23-24.
80. Walsh, op.cit.
81. Memorandum from Paul S. Byard to E. Logue, September 2, 1969.
82. Welfare Island Lease, op.cit., paragraph 22, pp.24-25.
83. McGarrahan, op.cit.
84. Welfare Island Lease, op.cit., paragraph 4(b), p.6.
85. Ibid., paragraph 22, pp.22-23.
86. Siegel, op.cit.
87. Welfare Island Lease, op.cit., paragraph 27, p.30.
88. Seneca B. Anderson, "Mortgagee Looks at Ground Leases," 10 University of Florida Law Review, 1 Spring 1957, in Commercial Real Estate Leases, 5th ed., (New York: Practicing Law Institute, June 1974) pp.155-180.

89. Memorandum from Paul S. Byard to E. Logue, R. McCabe, and S. Lefkowitz, op.cit., August 20, 1969.
90. Memorandum from Paul S. Byard to E. Logue, September 2, 1969.
91. Welfare Island Lease, op.cit., paragraph 14, p.15.
92. Memorandum from Paul S. Byard to E. Logue, op.cit., September 2, 1969.
93. Memorandum from Paul S. Byard to E. Logue, R. McCabe and S. Lefkowitz, op.cit., August 20, 1969.
94. Welfare Island Lease, op.cit., paragraph 14, p.16.
95. Ibid., p. 17.

Appendix A. Historical Background

1. Philip Johnson and John Burgee, The Island Nobody Knows (New York: N.Y. Urban Development Corporation, October, 1969), p.1.
2. Edwin Friedman, Welfare Island-A Comprehensive Program, (New York: New York City Planning Commission, May 1965), p.12.
3. Frederick W. Richmond and Victor Gruen, East Island, (New York: East Island Development Corporation, undated proposal) circa 1961, p.4.
4. Elizabeth Barlow, "A Mini-City buds on New York's Island of Despair," Smithsonian, Vol. 1, No.11, February 1971, p.58.
5. Ibid., p.59.
6. Richmond and Gruen, op.cit. p.4.
7. Ibid.
8. New York City Department of Hospitals, "History of City Hospital," (New York City Department of Hospitals Public Relations Department, undated), p.2.
9. Frances FitzGerald, "Welfare Island: East River Loser," in New York Magazine of the New York Herald Tribune, May 16, 1965, p.9.
10. Charles Dickens, American Notes, 1842. (Greenwich, Conn.: Fawcett Publications, 1961), p.16.
11. Ibid.
12. Ibid.
13. Barlow, op.cit., p.59.
14. Report of the Welfare Island Planning and Development Committee submitted to Mayor John V. Lindsay, February 1969, p.18.
15. Richmond and Gruen, op.cit., p.4.

16. FitzGerald, op.cit., p.9. Mae West was sentenced to ten days in 1927 for her "indecent performance" in a play called Sex. What she resented most was exchanging her skinfitting gold gown for prison-issue dress and itchy underwear. The warden let her wear her own.
17. Report of the Welfare Island Planning and Development Committee, op.cit., p.18.
18. New York City Department of Hospitals, "History of the Metropolitan Hospital" (New York City Department of Hospitals Public Relations Department, undated), p.5.
19. Report of the Welfare Island Planning and Development Committee, op.cit.,p.18.
20. FitzGerald, op.cit., p.9.
21. Richmond and Gruen, op.cit., p.4.
22. New York City Department of Hospitals Newspaper Release. (New York City Department of Hospitals Public Relations Department, June 18, 1952), p.2.
23. Dickens, op.cit.,p.18.
24. New York City Department of Hospitals Newspaper Release, op.cit., p.1.
25. Barlow, op.cit., p.61.
26. Ibid., p.62.
27. New York City Department of Hospitals Newspaper Release, op.cit., p.3.
28. Giorgio Cavaglieri, Protection of Landmark Buildings-Welfare Island, New York City. (New York, March 15, 1970), p.4.
29. Ibid., p.4.
30. Ibid., p.2.
31. Dickens, op.cit., p.16.
32. FitzGerald, op.cit., p.9.
33. Barlow, op.cit., p.62.
34. New York City Department of Hospitals, "History of City Hospital", op.cit., p.1.

35. New York City Department of Hospitals, "Hospital Tour of Welfare Island Wednesday Afternoon, August 20, 1947," New York City Department of Hospitals, August 20, 1947, p.2.
36. Report of the Welfare Island Planning and Development Committee, op.cit., p.29.
37. Cavaglieri, op.cit., p.2.
38. New York City Department of Hospitals, "History of the Metropolitan Hospital," op.cit., pp.4-5.
39. Ibid., p.5.
40. Elizabeth Barlow, op.cit., p.61.

"...where a lighthouse now stands there was a curious structure known as Maxey's Fort. It was built of blocks of clay and grass dug from the Marsh behind it. According to accounts of the day it was built soon after the Civil War by a mad Irish Army officer, Thomas Maxey, and mounted with wooden cannon. Maxey, fearing an invasion by rebel privateers, would stand guard each day brandishing a wood bayonet on a broom handle. He was, in spite of his warrior-like attitude a gentle person, extremely fond of birds. An elaborate gate decorated the causeway that led over the salt marsh to the Fort, it had two large openings near the top designed by Maxey to accomodate the nests of wild geese. Inscribed upon it were these words:

I invite the fowls  
And the birds of the air  
to enter..."



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BIOGRAPHICAL NOTE

Arnold Yoskowitz was born on January 26, 1948 in Queens, New York. He was raised in New York City and attended the City's Public Schools. From February 1965 to January 1969 he attended Brooklyn College of the City University of New York under a New York State Regents Scholarship. He graduated cum laude with honors in Economics, as well as other awards.

Upon graduation from College he accepted a Ford Foundation Travel and Study Award allowing him to study housing development and planning policy issues in New York City, while also a research associate at Citizens' Housing and Planning Council of New York, Inc. His experience there combined with his undergraduate interest in urban affairs led him to select a housing development and planning career. In September of 1969, he enrolled in the Doctoral program in City and Regional Planning of the Massachusetts Institute of Technology as a National Defense Education Act Fellow. During his stay in Cambridge, he took one year to gain experience in housing development with one of the Boston area's largest developers of government assisted housing, First Realty Company of Boston; and also spent time assessing housing development alternatives for the Boston Redevelopment Authority.

The completion of his doctoral work was made possible by a Catherine Bauer Wurster Fellowship at the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, and a Ford Foundation Grant to pursue his dissertation subject.