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PROJECT**

**LAND USE REGULATORY SYSTEM (ZONING)**

**THE DEVELOPMENT  
PROCESS ON LEASED LAND**

**Moscow  
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In addition to this Manual, the Project published copies of the Zoning Ordinances for Kazan, Samara, and Vyborg and special studies on the following issues: *Preservation and Development of Historical Buildings and Historical Areas*, *Subdivision*, *Interjurisdictional Land Issues*, *Servitudes*, *Reservation of Land for Future Public Needs*, and *Environmental Protection and Land Use Regulation*. The Project also published an a periodic newsletter addressing land use issues and a training brochure.

Copies of these materials and additional information on zoning and land use may be obtained from the following organizations and individuals:

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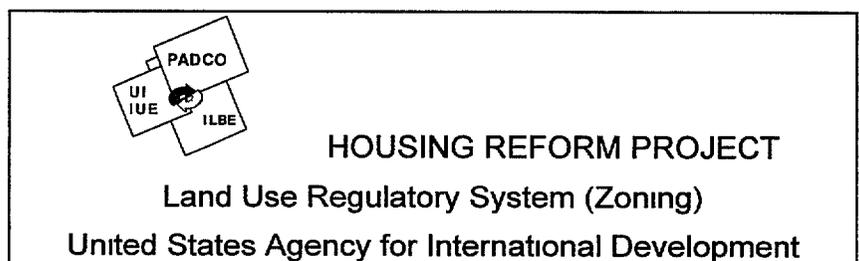
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## EXECUTIVE SUMMARY

This Manual should be viewed as a logical continuation and conclusion of the previous projects implemented by USAID and dedicated to reforming the existing process of land allocation for construction in Russia and to provide new forms of legal documents for this process

### 1 Who needs this Manual and why?

The substance of the Manual to a great extent is conditioned by the existing situation in Russian cities (end of 1997 - beginning of 1998)

The existing situation is very contradictory and is characterized by numerous intersecting movements. First of all, slow but steady growth in the real estate market. Secondly, from inertia, the old land use methods have been transferred from the socialist system, which denied free market and was not capable to stimulate the market. Thirdly, existing land use laws and legal acts either do not establish the necessary certainty, or confirm the old "non-market" system (for example, the "acts of preliminary approval of construction sites"). Fourthly, under the law local self-governance agencies obtained significant independence in regulating land use, but they do not know how to use this independence. Fifth, a very strong Russian tradition, according to which the regions look to Moscow and say "if it is good enough for them, it is good enough for us", is still alive.

As far as land use issues are concerned, we essentially have to deal with two different groups of local administrations. The first group, the dominant one so far, considers these issues to be administrative and technical ones (in other words not legal). Their solution is to multiply the number of instructive documents and directives without changing the legal essence of land allocation process for construction. The second group is gradually beginning to understand that some substantial changes are needed regarding legal foundations of this process. Without such changes it is impossible to talk about development of a civilized real estate market. The majority of representatives of both groups does not clearly understand why the changes are needed, what they mean, how they should be administered and what the cities can gain.

This situation defined the need for and purpose of this Manual, which include three fundamental steps

- to provide arguments demonstrating the substantive contradiction between the existing process of land allocation and requirements of the market from the city's side (its administration and people) and from the side of developers and investors ,

- to demonstrate an integrated model a of step-by-step transition to a market-oriented system of land use which will be based on zoning principles,
- to suggest and test in practice the basic documents which accompany and administratively provide for allocation of land for construction (Long-term Lease Agreement, Certificate of Permitted Use of Land)

The audience of the Manual is

- city administrations,
- specialists working in city planning (developing), land surveying and legal areas,
- educational institutions preparing specialists in the above mentioned fields

## 2 Summary of the contents of the Manual

The Manual consists of two parts

- PART I IMPROVEMENT OF PROCEDURES FOR ALLOCATION OF LAND FOR CONSTRUCTION,
- PART II IMPROVEMENT OF PROCEDURES OF ALLOATION OF LAND FOR LONG-TERM LEASE

Part I is dedicated to the whole cycle of procedures, starting from the beginning filing of an application, through all intermediate stages of preparation of the required documents, their approval and issuance of conclusions and permits, to the very end of this cycle - acceptance of a completed project and its registration

In the first section of Part I there is an analysis and evaluation of the existing process of granting long-term rights for land for construction in Russian cities This analysis includes two parts

- typological cases and legal foundation for land allocation,
- overview of the existing Russian land use system from the point of its compliance with requirements and conditions of the developing real estate market

In the second section of Part I, there are recommendations for city administrations on how to improve the process of granting land rights for construction In order to illustrate the recommendations this part of the

Manual contains a concrete example of how to analyze the existing process in a city

The recommendations on how to improve the existing process include

- the concept of consistent improvement of the existing process,
- description of the initial stage of reforms,
- suggestions on replacing the old documents (Architectural-planning Assignment) and implementation of new documents - (Certificate of Permitted Use of Land) Sample documents are included They were tested in Novgorod and Kazan

Part I contains a broad supplement of analytical materials, including diagrams, which illustrate the whole cycle of procedures under review, and sample documents

Part II of the Manual covers the following issues

- purposes and goals of a long-term lease,
- main requirements to lease land within a market environment,
- specific features of long-term lease agreement for construction,
- terms of long-term lease agreement which stimulate real estate market development and private construction This sections provides a detailed review of the following issues
  - rights defined by the lease agreement,
  - permitted uses and construction restrictions,
  - term of the lease agreement,
  - terms of payments and rent,
  - qualification for selection (requirements of a lessee),
  - connection to engineering infrastructure,
  - construction schedules,
  - sale, transfer, sublease,
  - collateral,
  - nonperformance of obligations and penalties,

At the end of Part II of the Manual, there is a sample lease agreement This sample form was tested by incorporating the comments and suggestions provided by different government agencies of Kazan

## Introduction

The present edition of the Manual “Development Process on Leased Land” has been prepared in accordance with the plan for the “The Land Use Regulatory System (Zoning)” Project which was implemented in a number of Russian cities by the United States Agency for International Development

The development of a new city planning system in the cities is a multilateral and multifaceted process which touches not only upon city planning but also upon economic and social mechanisms of implementation. Even perfect Land Use Regulations based on a market economy will not have the desired result if they are not supported in other areas. Land lease, like other procedures connected with the transfer of ownership rights to real estate and with the desire of society to maintain economic attractiveness of the city and a good environment represent those “burning issues” of the day which require attention and improvement

This Manual provides a step-by-step description of the development process and the acquisition of rights to land

The first part is dedicated to the whole cycle of procedures connected with acquisition of different real estate rights including the preparation, implementation and completion of construction and commissioning of completed sites. A comprehensive legal overview for all such procedures is given in this part, including those concerning development on lease land

The second part is dedicated to the actual legal issues concerning development on leased land and preparation of the lease agreement

The purpose of the Manual is to provide administrations of Russian cities with techniques, recommendations and information which will allow them to prepare and implement their own “Land Use Regulations” based on urban development regulation principles that are adequate to the formation and development of the real estate market and that establish a refined process for preparation and implementation of development projects as well as the allocation of long-term land use rights

The Manual is intended for specialists working on development of a land use regulatory system in their cities in order to provide them at the initial phase with the following

- analysis of the key issues of the current process and its adequacy to the requirements and conditions of the developing real estate market,

- understanding the need and possibility of improving the current process based on regulatory zoning system to be introduced by local self-government administrations,
- recommendations on how to analyze and improve the process in being in a particular city, how to develop regulatory schemes to be applied in typical situations and how to define them in “The Land Use Regulations” to be prepared,
- recommendations on how to carry out negotiations and prepare long-term lease agreements

The development of the Manual was carried out in several stages. During the first stage, the authors prepared the first draft of the Manual which included the recommended procedures for acquisition of land rights and the lease agreement. During the second stage, the first draft of the Manual was given to the cities for testing. The goal of the testing was to check the main procedures and concepts of the suggested long-term lease in real life, in a real city.

Since the Manual is aimed at improving market procedures in cities where a land market for development is just emerging, some of its provisions were difficult to understand. The test clearly pointed out parts of the Manual which contradict local legislation or the existing logic of allocation of land for development. The final step - completion of the second draft of the Manual where the above mentioned issues were addressed, was made based on the comments received from the cities.

In the first part of the Manual the subjects of the testing were

- modified method of implementing the whole cycle of procedures related to allocation of land for development which was addressed in the appropriate chapters of the Land Use Regulation,
- the suggested form of a document new to Russia - the Certificate of Permitted Land Use. This document may become one of the key elements which will support the implementation of this modified method for allocating land for development.

The testing of the first subject was accomplished in Kazan through two stages. During the first stage, the modified concept was prepared and presented to the Working Group. Later on, this concept was approved and was used as a foundation for an appropriate chapter of the city's Land Use Regulation. During the second stage, three versions of the modified text of this draft document were presented. Representatives of various administrative departments and members of the Working Group provided written comments and suggestions. All comments and suggestions were consolidated in one chart, where the authors gave their critique. Consequently, the text of the Regulation was modified.

The main comment during this stage was provided by the Land Committee, which assumed that the suggested procedures were not in compliance with the existing Land Code of the Republic of Tatarstan. A detailed legal analysis of the legislation was carried out in order to prove that this was not the case. It became clear that the Committee referred to an article which does not apply to Kazan (an article about preliminary approval of a construction site) where there is an approved General Plan and city development concept, and, therefore, a different article is applied (Article 69, which states that preliminary approval procedures are not applied if a General Plan is in place).

The testing of the second subject was accomplished in Kazan and Novgorod for the form of the Certificate of Permitted Land Use. There were no comments in opposition to this document. Some comments on technical issues were presented which were taken into account in the final version of this document.

As a whole, the representatives of the above-mentioned cities noted that the suggested procedural plans and the form of the Certificate make it possible to arrange land allocation for development more rationally.

In the second part of the Manual, a model lease agreement was the subject of testing. This test was accomplished in Kazan. The administrative agencies in charge of real estate transactions provided their comments on the Lease Agreement. The city's Municipal Land Committee and Property Committee gave detailed comments on the text of the agreement. Members of the Architecture Committee reviewed the suggested version and presented their own draft agreement. In addition, the Lease Agreement was checked in detail for its compliance with Federal Law.

The results of the testing show that, in general, municipal authorities agree with the suggested concept of the Lease Agreement. All agencies noted that the suggested Lease Agreement contains different methods for a flexible relationship between the city and the developer, which makes it possible, on the one hand, to improve the efficiency of monitoring developer's actions, and, on the other hand, to provide him with more freedom and opportunities for development.

The comments of the Land Committee mainly touched upon technical adjustment of the Lease Agreement to Kazan conditions. The main proposal of the Land Committee was to delete two sections from the Lease Agreement which touch upon construction and installation of infrastructure because, from their point of view, they contradict Articles 19-21 of the Land Code of the

Tatarstan Republic This Manual contains additional explanation of why these Articles are important

The comments of the Property Committee were mostly concerned with bringing this agreement into compliance with the RF Civil Code. In general, these comments were taken into account. One of the most important issues was the rental rate - the key issue of any lease agreement. The version suggested by the Property Committee was incorporated in this document as the one which better meets the objective of attracting investment.

The version of the Lease Agreement suggested by the Architectural Committee differed mostly in the form of the document. In this version, all conditions on construction and disposition of leased property were simplified and combined in major sections: "Duties and Responsibilities of the Administration", "Duties and Responsibilities of the Developer", "Failure to Comply with the Terms of the Agreement and Penalties".

All comments were thoroughly analyzed and, as a rule, were incorporated in the Lease Agreement, except for cases where they contradicted the concept of this document. Such comments served as an indication to pay special attention to these issues in the Manual.

The first part of the Manual consists of two sections: the first section gives a critical analysis of the existing procedures and points out ways to improve them, the second section contains procedural recommendations for the city administration and project working groups. In other words, the first part provides general objectives to be translated into concrete recommendations applicable to real situations in cities in the second section. The Appendix to the first sections contains procedural charts effective in different cities now, other analytical and informative material, as well as a suggested form of the new document - Certificate of Permitted Land Use.

The second part of the Manual consists of three sections, which explain the distinguishing features of the long-term lease, and one section which combines all long-term lease terms, and an appendix which contains a model Lease Agreement.

## **PART I**

### **IMPROVING PROCEDURES FOR ALLOCATION OF LAND FOR CONSTRUCTION**

Improvement of the whole cycle of procedures which define the process of granting land ownership rights and preparation, implementation and completion of construction includes the following steps

- preparation of a comparative chart which describes the various options regulated by the existing legal acts (RF and subject of the RF levels), or by those which have not yet been legally described (Section 1 1 1 and Appendix 1 1 and 1 2),
- a combined assessment of the existing procedures in Russian cities from the point of view of compliance with the requirements and conditions of the developing real estate market (section 1 1 2 , Appendix 1 3)
- a detailed analysis of existing procedures in cities (Section 1 2 1 ) including a comparison of different cases (Section 1 2 1 1 , Appendix 1 1), preparation and description of a chart on basic procedures for land allocation (Section 1 2 1 1 ), as well as an analysis of the fundamental documents which accompany the process under review, such as ARCHITECTURAL AND PLANNING ASSIGNMENT (Section 1 2 1 2, Appendix 1 7),
- development of proposals to improve existing procedures in cities (Section 1 2 2 ), including preparation of a chart for step-by-step improvement of these procedures (Section 1 2 2 1 , Appendix 1 6), description of the improved procedures in a local legal act the “Land Use Regulation” (Section 1 2 2 2 ), preparation of the key documents which will replace the existing ones, such as ARCHITECTURAL AND PLANNING ASSIGNMENT (Section 1 2 2 3 Appendix 1 8)

#### **1 1 Analysis and assessment of the existing process for allocation of long-term land use rights for development projects in Russian cities**

A way to success in any business is to understand the need for it In conjunction with the current land use regulation and land development relationship in Russia, this need is understood by realizing that the existing regulatory system can not be effective for a long time in a market environment The emergence of different forms of ownership and decentralization of management underway in Russia has lead to a number of inevitable consequences This section deals with the nature of these consequences, demonstrates the need for and purpose of the reforms to be carried out, and shows a general approach to implementing step-by-step reforms

### **1 1 1 Typological situations and current legal foundation in the process of land allocation**

In order to orient the work on a particular situation in the cities, a typological scheme describing the whole range for allocation of land for development is needed. The scheme should be based on a number of key factors (typological characteristics)

1 who allocates (sells) a land parcel (parcels),

- the state (the Russian Federation, a subject of the Russian Federation),
- municipality,
- individuals (natural persons or legal entities),

2 who acquires (buys) a land parcel (parcels)

- the state (the Russian Federation, a subject of the Russian Federation),
- municipality,
- individuals (natural persons or legal entities),

3 what is being allocated or sold (description of parcels or territories)

- a land parcel or an undivided area,
- a land parcel (parcels) within developed or undeveloped area,
- whether there is a historical landmark or other protected historic property,
- whether a parcel is located in a historic preservation zone or other type of protected zones,
- other characteristics of parcels or areas (forest, agricultural land or other)

4 the purpose for which a land parcel or an area is allocated (sold)

- for allocation or transfer to the ownership of privatized enterprises,
- for allocation or transfer to the ownership of homeowners in condominiums,
- for agricultural use,

- for dachas and gardens,
- for private residential development,
- for other development,
- for subdivision by developers with subsequent construction of engineering infrastructure and sale of developed parcels to individual builders (or sale of completed housing and land upon completion of construction by the developer),
- for other purposes

## 5 what public authorities participate in the approval process

- the Russian Federation,
- subjects of the Russian Federation,
- agencies of local self-administration,
- dual subordination

A combination of the above mentioned characteristics provides a number of basic typological situations that can be studied in more detail. The principle for formation of the key typological situations is given in a table in Appendix 1.1. The proposed model is designed to

- describe a general regulatory context within which the proposals for particular cities on modification of the current regulatory schemes can be analyzed and prepared,
- provide a full set of regulatory documents (of the Russian Federation, subjects of the Russian Federation, local administrations) describing the current procedures applicable to various situations,
- identify “regulatory gaps” and inconsistencies, clauses to be amended or refined, etc., in the current regulatory system

The basis for the current city planning regulation - initial land allocation to individuals (natural persons or legal entities) by the authorities, and the preparation, implementation and completion of construction - is established in the laws and legal acts at different levels of the RF, subjects of the RF, local governments. At the RF level, there are laws of the RF, Presidential decrees, Resolutions of the RF government, and other legal acts drafted by different ministries of the RF government. The list of the basic legal documents is provided in Appendix 1.2.

An analysis of these documents and the appropriate regulatory documents of a number of subjects of the Russian Federation (The Republic

of Tatarstan, Novgorod, Tver, Leningrad oblasts, cities of Moscow and St - Petersburg) and local self-governance agencies (of Novgorod, Tver, Irkutsk, Kazan, Samara) makes it possible to describe in the next section the current Russian land use and development regulatory system

### **1 1 2 General overview of the current Russian regulatory system of land use and land development and an analysis of its adequacy for the requirements and conditions of the developing real estate market**

The current system of the initial allocation of land parcels for development to individuals (legal and natural entities) by public authorities can be summarized (step-by-step) in the following way

- application for land allocation for project design, preparation and approval of the preliminary choice of a land parcel for targeted use, design permit, preparation of an Architectural and Planning Assignment for design, lease of a land parcel for the design period,
- preparation and approval of design estimates, application for allocation of a land parcel for development, decision on allocation of a land parcel for development,
- site surveying, land lease agreement for the term of construction, building permit,
- construction,
- project acceptance and registration,
- acquiring documents to certify long-term land use

The process described above may vary in different cities. However, the variations do not affect the fundamental nature of the existing system: two types of rights - rights to develop (that is, rights to modify the real property directly or indirectly by designing and building), and rights to hold land parcels are so closely interconnected that the long-term land use rights can not emerge in full until an investor undertakes direct or indirect action and makes investments in real property that does not belong to him yet. The current system in Russia is opposite to the one adopted in countries with developed market economies: there, as a rule, first long-term land use rights are acquired, and only afterwards owners begin to develop the parcels belonging to them. In Russia one has to prepare designs, build real property, register it, and only after that does he have the right to apply for long-term land use. The figure in Appendix 1.3 illustrates the "topsy-turvy" nature of the Russian system.

Understanding the reasons that have lead to this legally ambiguous situation and its consequences is a clue to understanding the gist of the current system in place in Russia

The reasons that have lead to this situation may be described as follows

- in the preparation of the legal and regulatory documents that have established the basic contours of the current system, possible consequences of changes underway in the country, and especially the changes in forms of ownership and their impact on the Russian urban development regulatory system, were not recognized (and, these consequences have still not been adequately recognized),
- the former non-market socialist system of land allocation for development was mechanically applied to the fundamentally new market conditions (either the possibilities of this old system and its “flexibility” were overrated, or other mechanisms and other urban development regulatory systems were unknown, or both),
- the transition from a non-market urban development regulatory system to a new market one can not be achieved in “one pass” by virtue of one regulatory document Such a transition is only possible based on a package of regulatory documents to be prepared locally, this should be understood to be, at a minimum a) the need for such documents, b) what they should contain from the factual and legal point of view, c) the need for administrative and procedural changes In addition, there should be the political will to make these changes, experts who know how to make them, and the time and money to pay for preparation of these documents

Analyzing the reasons listed above, one may conclude that the present situation is quite understandable It is hard to expect that from the very start there could be profound political and professional insight But there is more than that a danger that a mistake made once may be repeated several times The first regulatory documents were followed by others that continued to “reinforce” the old system despite the fact that it was poorly suited to new market conditions It has ended in a vicious circle, a way out of which should be found as soon as possible This issue will be addressed in other sections of this Manual and in other Manuals to be prepared under this project

Let us have a closer look at the system in Russia, its origin and suitability to the requirements and conditions of the developing real estate market

At the extremes, there are two different approaches to urban development regulation - non-market and market

The first, the non-market one, is based on the fundamentals of the socialist economic system 1) real estate, including land, belongs to one owner - the state, and hence can not circulate, in other words, it can not change hands, 2) the characteristics of real estate directly depend on the concrete plans of a developer-investor (in this case it is the state or an agency representing it), and are designated by targeted use of each parcel, 3) these characteristics have the status of technical specifications (but not regulatory restrictions) developed in the design process (but not before it starts) only for the parcels designated for development (but not for the entire territory beforehand) Under such conditions the question about acquiring rights to a land parcel by a developer does not even arise until he starts designing, since the developer (always represented by the state) does not need any such rights he already enjoys them (the land parcel does not change hands), and the question when general development requirements are developed - before, during or after the design is completed - does not matter for such a developer

The second approach used in countries with developed market economy is based on three interrelated fundamentals, each subsequent one being based on the previous one 1) there should be conditions for free circulation of real estate, in other words, for continuous transfer of property rights from one party to another, 2) the characteristics of real estate which define the possibilities of its use now and in the future, as well as development requirements, should be established in advance and should be relatively independent of the concrete plans of temporary holders of real estate (those to whom it belongs today or will belong in the near future), 3) the established characteristics should have the status of legal regulations (not just technical specifications), should cover all land parcels within established territories (zones) and be applied as development rules and restrictions The two latter fundamentals make it possible to implement the first one (real estate sales) by dividing the rights of ownership and development as a rule, first the long-term use rights to land parcels and other real property units formed as legal subjects are acquired, and afterwards owners prepare and implement development projects Thus, rights to land parcels (including, long-term lease) are guaranteed, which allows one to use land parcels as a collateral to get a loan to finance the development This makes it possible to accelerate the development process for individual real property and for the entire city

At present in Russia, there is a mixture of two contradictory market and non-market approaches in place The contradiction lies in the fact that, on the one hand, the intention to provide for the transfer of real estate from one party to another (first of all, the transfer of land parcels from municipalities to private owners) is declared, while on the other hand, the methods used are derived from the old non-market practice (for instance, the two last fundamentals of the socialist approach)

The key flaws of the current system come down to the following

- investors do not have legal information on potential investments in real estate,
- developers do not have guaranteed long-term land use rights,
- real estate owners can not respond promptly to the changing market situation

A more detailed description of the above mentioned flaws is given below

Investors do not have legal information on potential investments in real estate

Before when there was only one land holder - the state, there was no need to establish a precise fixed form of land ownership. At every stage of any city planning actions, the property owner did not change, therefore, the rights regarding nature and parameters of the land use could be modified at the discretion of government officials without any time limits or any need to complete the legal aspect of this process.

This situation of permanent legal uncertainty still exists. If the issue is addressed more carefully, it is evident that property rights are not established at any stage of the city planning process, in other words, the lists of permitted types of uses and permitted construction alterations are not established for defined territorial zones (for example, it is not done in the Master Plan). The documents of a subsequent stage (site plan), amends the previous one and eliminates it (The Master Plan) because the first one is more powerful as far as the area being designed is concerned. But the amendments at this stage assume more changes in the document of the subsequent stage (block development plan or land parcel development plan), which again, from the legal point of view, eliminates the document of the previous stage (site plan). Everything ends up with a "targeted use" for a particular land parcel. This situation contradicts the market principle of "freedom of choice" in a competitive environment for more efficient use of land.

The previous and current systems of city planning documents do not provide any information on what is permitted and what is prohibited on particular land (without preliminary complicated, and not guaranteed, procedures of design work for a particular parcel). Hence, there is no foundation for a fruitful exchange between the city administration and a potential investor.

Developers do not have guaranteed  
long-term possessory rights to the land

From the legal point of view, currently, almost everywhere there is a contradictory situation where construction alterations to real estate are made by entities who do not possess this property on a long-term basis. In the market environment, the land is purchased first, and then full-scale design work and additional construction are carried out. In this country, the developer has to design, build and register the site, and then file an application for long-term possessory rights. In other words the situation is "just quite the opposite" Why is this the case?

The fact is that in order to acquire land before commencement of full-scale design and actual construction, the land parcel should be surveyed by "somebody" This "somebody" is the city which was supposed to establish (regarding large areas) certain restrictions in the form of a list of permitted uses, maximum construction dimensions and parameters on this land even before the design But such characteristics are not set This legal gap is filled by the procedure for preliminary site location approval which establishes these parameters But every time this is done on a case-by-case basis

When the decision on investment feasibility is made by an investor, it appears that these characteristics are not set and in addition, there is no foundation for acquisition of long-term possessory rights to the land This is the result of the fact that the current city planning documentation system does not require the development of these parameters for parcel located within massive urban areas

The result is a high degree of uncertainty and significant risk being taken by investors while carrying out investment projects, as well as additional expenses and time spent on initial stages, and the lack of a real basis to form a mortgage system

Real estate owners can not respond promptly  
to the changing market environment

The current system of planning resembles moving from the big end of a funnel to the small end the initial (at the initial planning stages) there is rather wide range of permitted uses of property, step-by-step (through the intermediate planning stages) becomes narrower and narrower (by adding more details) until it is narrowed down to "a targeted use", established and fixed by an approved plan for the particular site The targeted use does not provide any freedom of choice It specifically states "the permitted use is what is permitted" The targeted use is very strongly "tied" to the site during the transfer of the site from one owner to another The existing procedures are more likely to protect the unchangeable targeted use than to support any changes to it The latter is always accompanied by considerable procedural hurdles

Under this approach, the owners are unable to quickly solve issues of functional adaptation of their property to the market environment and to quickly switch to more efficient types of uses

The analysis carried out has led to the conclusion that the urban development regulatory system in place in Russia does not provide for effective land use in cities and needs changing

## **1 2 Recommendations for city administrations on improving the process of allocation of long-term land use rights, preparation and implementation of development projects**

Materials in this section are based on materials of the previous one, where they are extended up to practical recommendations. The section includes the analysis of the procedures existing in a particular city and suggestions on their improvement. Materials from Novgorod, Kazan, Moscow, St. Petersburg and other cities were used while writing this section.

### **1 2 1 Analysis of existing procedures**

The analysis is based on a three-step scheme. At the beginning a classification of the whole range of land allocation procedures is presented. Further, so to say a "basic procedure" is determined out of this variety and described. This procedure makes it possible to describe in detail all essential features of the existing situation. Then one of the main documents of the existing procedures - Architectural Planning Assignment - is analyzed. This document will make it possible to sharply focus attention on specific features of the process and to emphasize its differences from the procedures practiced in a market environment.

#### **1 2 1 1 Similarity of the existing procedures**

##### **Step-by-step description of existing land allocation procedures through negotiations with an applicant**

This part of the analysis was conducted based on the example of the city of Kazan. The basic legal acts which were valid in the city in the time of the Project beginning is set forth in Appendix 1.4.

The situation in the city related to allocation of rights to land parcels and to construction can be divided into three basic groups:

- 1 "Legalizing" previous rights,
- 2 Construction alterations to real estate by persons who had previously acquired long-term possessory rights to it,
- 3 The initial allocation of land parcels by city authorities to natural persons and legal entities for construction and reconstruction,

The first group of cases is related to the legal registration or re-registration of rights to land parcels. There are actual possessors of these rights, but the documents had not been registered in the proper manner for whatever reasons. This group of cases includes those cases related to the change from one type of right to another, for example the change of a right to an inheritable life estate in a land parcel to an ownership right.

The second group of cases is related to adding floors to or rebuilding existing facilities which are already possessed by someone.

The third group of cases is of the greatest interest to us. A typology of these cases follows:

- 3 The initial allocation of land parcels by city authorities to natural persons and legal entities for construction and reconstruction
- 3.4 The city authorities take the initiative by preparing sketch plans and other documents and by organizing
  - 3.1.5 Tenders (auctions, bids) regarding
    - a single land parcel,
    - large parcels (undivided areas, blocks),
  - 3.1.6 Direct negotiations with bidders for possession of real estate or investors related to
    - a single land parcel,
    - large parcels (undivided areas, blocks),
- 3.7 Natural persons and legal entities take the initiative by submitting an application to the city administration for allocation of
  - 3.2.8 A single land parcel for
    - individual residential construction,
    - garages,
    - trade pavilions or kiosks,
    - other purposes,
  - 3.2.9 Large parcels (undivided areas or blocks) for
    - residential construction,
    - construction of cooperative garages,
    - parking lots,
    - other purposes

In the context of our task, case 3 2 1 is of greatest interest the allocation of land parcels by the city administration for construction based on the application of natural persons and legal entities

In summary, the sequence of the entire cycle of the process being reviewed (from beginning to end) is

- 1 Application for allocation of a land parcel for design and construction
- 2 **Resolution of the head of the city administration** allocating the parcel for the design period and authorizing design The resolution shall contain as an attachment ( or the following documents are prepared based on the resolution)
  - short-term land lease for the design period,
  - a design permit
- 3 Architectural agencies and other agencies should prepare a design certificate which includes
  - Architectural Planning Assignment for the project design
  - technical conditions for connecting to the city engineering and technical infrastructure network
- 4 The development and approval of the construction documents
- 5 **Resolution of the head of the city administration** allocating a land parcel for construction The resolution should contain as an attachment (or the following documents are prepared based on the resolution)
  - a short-term land lease for the construction period
- 6 The construction permit (for construction and assembly)
- 7 Construction
- 8 Commissioning of the completed facility
- 9 Registration of the new real estate
- 10 Application to record title to the land
- 11 **Resolution of the head of the city administration** allocating the right of long-term possession of the land parcel (in the form of a long-term lease or ownership)
- 12 Conclusion of an agreement for long-term possession of the land or government's issuance of a title to the land parcel

A characteristic feature is the fact that a minimum of three resolutions of the head of the city administration (see the bold text) are required to obtain long-term possessory rights for each land parcel

## **1 2 1 2 ARCHITECTURAL AND PLANNING ASSIGNMENT - in the context of existing procedures**

The substance of the existing procedures can be shown by an analysis of one of the key documents - the APZ (Architectural and Planning Assignment)

This section touches upon the documents which are effective in Moscow (City Planning Conclusion), St-Petersburg (City Planning Certificate of a Land Parcel), Kazan (Construction Certificate) All these documents include APZ (sometimes in a modified form) as an integral part and as a basis for the existing procedures The process in Moscow is more detailed than in any other city Here there is a chain of attempts aimed at adapting the previous city planning system to new conditions Therefore, the analysis of what is going on in the capital is very important from two points of view First of all, because the procedures effective in Moscow may describe the situation as a whole in the RF Secondly, by such an analysis it is worth answering the question whether an adjustment of the previous non-market (socialist) city planning system to the existing market environment is possible, and whether the capital's experience can be applied to other Russian cities

The package of documents used in Moscow on the pre-design stage is presented in Appendix 1 5 The analysis of these documents makes it possible to single out four main propositions

**Proposition one** The list of documents formalizes only the first pre-design or pre-construction stage of the investment and construction process There are several other stages which follow development and approval of the architectural and construction documents, acquisition of a construction permit and its implementation commissioning of the completed facility, final registration of long-term possessory rights to land

According to the results of the work the applicant has already paid for at this pre-design stage, the following documents are granted to him

- a) design permit (development of architectural and construction documentation),
- b) short-term land lease for design period, i.e. development of architectural and construction documentation,

The legal aspect of the permitting documentation preparation process (based on the appropriate documents) is almost, or even more than, a year. But the time for development of the architectural concept (which is not limited) is not included.

**An investor has to spend a lot of time and resources in exchange for the right to spend more resources and time in order to prolong the right to spend more expenses for an unguaranteed promise to obtain at the end of this permanently extended process an ownership right for a facility built by him and long-term land lease**

**Proposition two** The pre-design stage of the investment and construction process is organized so that there is not only one design assignment (APZ transferred into city planning conclusion) but four

- architectural concept of land development,
- assignment for preparation of the initial permitting documentation,
- city planning conclusion (the actual APZ)
- assignment by the customer to his contractor-designer to prepare architectural and construction documents which shall be approved by the administration authorities which have already issued and approved the documents of the previous stage

The fact of such a big variety of different assignments proves the following

- 1 The city lacks legislation (maximum and minimum parameters, restrictions) on the use and development of land parcels. One can say that such standards are listed in the city planning documents, if it was not for the fact of subsequent multiple actions to establish such standards which means that they are not set forth in the city planning documents, but just mentioned there and do not have any legal impact on the city administration and investors. These standards are usually established individually for those land parcels in which investors are interested (at the beginning of the pre-design stage while developing initial permitting documents, and then at the design stage, while preparing and developing architectural and construction documents)
- 2 **The pre-design process appears to be very complicated because of duplication of similar actions by different administration departments (movement from one assignment to another) which are paid for by the applicant.** First, investors pay for the services of one of the agencies in the Architectural and Planning Department (APD) which prepares an architectural

concept of the development, then fees to the agencies which are involved in the preparation of initial permitting documents including the city planning conclusions ( most of which were prepared by the architectural concept),

- 3 The existing procedures are based on a legal paradox which has not just formal but financial consequences. The customer does not have a right to start design work without a permit. In order to obtain such a permit he must file an application which contains a design completed before the official permit for design work (architectural concept of development) is issued. In other words, this means that the current system is based on the principle "if it is not permitted, but you really want to, you can". Such a concept can be developed only by the state design agencies of the APD system. The existing procedures make it possible for the state authorities to monopolize the right for investment and construction initiatives, to exercise control over this process, and to receive additional out-of-budget funds for payment of such services. In international city planning practice, the substance of these documents usually boils down to the establishment of legal restrictions for land use and construction improvements to real estate, which can be treated as satisfaction of public needs. Naturally, the satisfaction of public needs must be funded from the city budget, i.e. at the expense of the taxpayers. Here we deal with a "made in Russia" paradox: government agencies which are to fulfill certain public functions can be paid twice for one and the same work. The first time - from the budget for fulfillment of public functions (which actually were not fulfilled), and the second time - by private entities who, as taxpayers, have already paid twice for this work, but who, according to the existing procedures, have to pay additional money for the work which has been paid for twice, but has not been completed.

**Proposition three** What exactly does the pre-design stage of the investment and construction process establish?

In Moscow (as in many Russian cities), the pre-design stage established spatial, technical and other characteristics and parameters for design of a particular facility on land provided on a temporary basis. Moreover, a time limit, usually up to two years, is established during which these characteristics and parameters are valid.

Such characteristics and parameters are set by direct orders-assignments for construction and contain the following

- a) functional purpose of the facility (according to the official documents of the Moscow government and the prefectures of the administrative regions),
- b) estimated lot size (an approximate figure of the lot area proves that the lot has not been legally formed yet within its boundaries. This can take place after the project is approved), area of development, total area of the facility, number of floors, green space area,
- c) requirements and recommendations for design permits
  - according to the location within the city
    - city development factors
    - orientation
    - view corridors
    - visual links
    - compliance with historical development lines
  - according to architectural design
    - composition
    - silhouette
    - dimensions in comparison with surrounding buildings
    - recommended building material of walls
  - according to efficient land use
  - according to use of ground floors
  - according to public services and amenities provided
  - according to night-time lightening
  - according to arrangement of construction
  - special conditions
    - according to “red lines” (one more proof that land parcels are not legally formed)
    - demolition of buildings and their preservation in historical areas
- d) Directions on development and approval procedures for preparation of architectural and construction documents regarding a particular site

It is very important to understand that the pre-design stage of the existing procedures does not establish the rights for permitted use and construction on land (not restricted by time limits), but it establishes temporary characteristics and parameters for design of a particular site on a land parcel provided on a temporary basis for one or two years. Consequently, **the whole process of preparation of the initial permitting documents (together with a long list of the required documents**

**including city planning and other conclusions) is an administrative and technical action which loses its legal effect upon completion of the investment cycle** Actually, if after some time the owner of a land parcel or a building (the previous one or its successor) desires to carry out additional construction or reconstruction, then the same procedures for preparation of permitting and construction documentation shall be applied but in this case regarding a different investment and construction project, regardless of the fact that its implementation is planned to take place on the same land parcel. If the owner of the building (who constructed it according to specially prepared initial permitting and other documents) wants to sell the building, then the new owner must use it according to purposes listed in the previously approved documents. If the new owner wants to change the targeted use of the building, then he again shall go through preparation of initial permitting documents and he cannot be sure that a new type of use will be permitted. **The fact is that an individual system of legalizing land parcels is operating according to the principal of a “three-layer sieve”** The choice of characteristics and parameters relates to the following

- a) a particular land parcel
- b) a particular investment and construction project
- c) every attempt to change targeted use of a land parcel

The last item can take place based on appropriate documents of the Moscow government or prefectures of administrative districts. **According to these procedures, neither the owner, investor or the administration itself knows in advance what the targeted use of the land parcel is** (except for the one existing at that time). In order to find out it is required necessary to go through another cycle of preparation of initial permitting documents. **The systems starts to reproduce and support itself**. Evidently, this is done not for the benefit of those who use this system, but for those who serve and support it the way it is (not free of charge, of course).

Another specific feature of the existing procedures is that **the list of characteristics and parameters assigned to an investor is extremely large and covers everything that can be regulated regarding construction**. This means that there appears to be a city monopoly on investment and construction initiative. The investor's freedom of choice is minimized. And if there is not enough freedom, an investor will hardly try to implement his construction plans in a city which deprives him of free choice.

**Proposition four** It is still unclear on what basis and how these characteristics and land use parameters are established? It is obvious that some documentary foundation is needed to establish them. In this situation, there are two methods. One differs from the other by its legal status and the substance of these foundations as well as by how they are used.

The first method (which has not been properly disseminated) legal zoning documents can be used as such basis

The second method (which is still effective almost in most Russian cities) approved city-planning documents (the Master Plan, Concepts for City District Development, Detailed Design Plans) are used as the basis

The previous analysis (refer to section 1 1 2 ) shows that the city planning documents are drafted so that they are not complete from a legal point of view This fact is very important for understanding the essence of the existing procedures Logically, the pre-design stage is rather necessary, especially its development within the framework of a number of assignments-conclusions including the APZ

Actually, it is not possible to switch from the city planning documents (in their present condition) to design of a particular facility on particular land Another assignment (a bridge) What is this the basis of this "bridge" and how is it made? There are two main types of foundation for preparation of a city planning conclusion or APZ

- a) city planning document
- b) creativity of administrative agencies

Neither of them has fixed, formally defined boundaries **Therefore, the decision-making process depends on individual interpretation of administration officials who act on their own And, in principle, there can not be any other way within this system**

A good example of the evident lack of these boundaries is the city planning conclusion, so called "requirements and recommendations for design work", or more precisely, the impossibility of distinguishing (at first glance) - requirements from recommendations An investor, while organizing a project, can be required in the form of recommendations, or recommended in the form of requirements, to comply with rather sophisticated and unclear conditions such as, for example, to take into account "city forming factors, orientation, perception zones, visual links, composition, silhouette, dimensions in comparison with surrounding buildings" An investor, receiving such "requirements-recommendations", tries to separate the one from the other, i.e. what must be accomplished and what is not mandatory But on second thought, it turns out that there is no need to separate one from the other The fact is that there are no recommendations, all of them are requirements The very fact that the city planning conclusion contains these conditions means that they must be taken into account, otherwise, the project will not be approved at subsequent stages, and the process will stop In other words, what emerged as "recommendations" in the administrative agencies, is mandatory for the investor and his contractors

Once started, administrative creativity becomes “more and more popular” and continues even beyond the pre-design stage. The requirements, formed at this stage, can be modified, amended and added to new “requirements-recommendations” at subsequent stages of approval of the architectural and construction documents. An investor is permanently “on the short leash”, and the administration, which periodically changes its own “conditions-requirements”, has a right from time to time to provide the investor with new “portions” of requirements. **The investment and construction process is organized so that conditions and requirements for its implementation are set forth not only in the beginning, but also afterwards, as the project is approved at different stages.** An investor, being aware of the drawbacks of the existing procedures, either “starts to play”, hoping that finally he will understand the rules of this game and will not lose, or does not “play” at all. The existing procedures somehow act as a “a sieve” in investment selection. It only permits access to the city to major and “connected” investors with excess money (that makes it possible to overcome procedural labyrinths easily and without delays, which are not barriers to big money). Other medium and small investors have to face barriers that are hard to overcome.

**The fact that the existing procedure is based on the principle of “discretionary decisions”, deprives the participants of the investment and construction process of the opportunity to rely on legal criteria to resolve disputes on the legal and illegal requirements and conditions. It turns out that these requirements and conditions are true in advance because the administration has a right to establish them, i.e. the administration is always right. In such a situation, there is no formal basis for appeals, including courts, which, basically, are deprived from protecting rights in this process.**

Let us summarize the main conclusions from the APZ analysis (or city planning conclusion as version of it)

- 1 a multi-stage process for allocating long-term lease rights for construction,
- 2 a multiplicity of tasks and stages of the same type and their preparation of them at the pre-design stage along with multiple duplication of actions in their preparation,
- 3 repetition of administrative actions in preparation of initial permitting documentation regarding every specific land parcel, every investment project, every attempt to change targeted use of land,
- 4 multiple clarifications of conditions and requirements for implementation of investment and construction projects during the

whole process from beginning to end with a dominating principle of “individual decision-making”

All these provisions, essentially, reflect the same universal characteristic every phase of the process is legally incomplete and unclear. Clear legal conditions are very important to an investor. He can reach this level of certainty only one way - by going through the whole process. But even then, the completion of the process can still be vague (from the point of view of the rights obtained to the real estate). For example, in order to change the targeted use of land or make construction alterations, the investor must start all over again, beginning with preparation of the initial permitting documents.

From the above analysis, we can draw two main conclusions:

- 1 **An urban regulatory system based on multiple duplication of the same type of actions, which generates legal uncertainty and incompleteness regarding issues on the use of land and real property, will always be ineffective and time-consuming.**
- 2 **Experience has shown that all attempts to adapt a “non-market” socialist system of urban regulation to the market environment have been in vain. Moreover, such attempts make the situation even worse and keep the system from getting out of the “legal dead-end” where it has found itself due to inertia.**

## **1 2 2 Suggestions to improve the existing procedures**

### **1 2 2 1 Concept for successive improvement of existing procedures**

The following proposals were developed based on the experience of the zoning documents prepared (local legal acts - “Land Use Regulations”) in a number of Russian cities.

In order to make a proper transition to a new system of land allocation for construction (and further to a new urban planning system), we need precise answers to two questions:

- what are the purposes of the transition and what is the concept for their implementation,
- what are the specific features of the initial transitional stage.

**The main purpose of the future transition is to provide for a step-by-step movement from the existing “discretionary decision” method to**

**one based on legal zoning and subdivision of land into land parcels as legal units of real property**

This main purpose can be divided into several characteristic provisions

- 1 **It is important to make move towards new procedures to grant land ownership rights for construction prior to the beginning of the investment and construction process, and not at the end, which is the current practice**
- 2 The process shall be proceed in two parallel, connected and synchronized directions
  - direction 1 - preparation of zoning documents (the zoning map and parameters of permitted real estate uses for every zone) which establish land use restrictions regarding permitted types of use and parameters for construction alterations, preparation of subdivision plans of the city establishing fixed boundaries for land parcels as legal real estate units **The first direction, removing the legal uncertainty and substantive vagueness from the previous city planning documents, provides a precise legal basis for the decision-making process and provides for changing the procedures for document approval which are implemented within the framework of the second direction,**
  - direction 2 - changing the existing city planning procedures based on legal documents prepared according to direction
- 3 **Step-by-step completion of the package of legal documents should be linked with the same step-by-step shift of the time for granting (obtaining) long-term lease rights from the end of the process to the beginning**

The last provision provides for the substance of a step-by-step shift to a new city planning system. The essence of this concept becomes clear after the following question is answered: Why can't this modified system be implemented by a one-step action, for example, by a law or another legal act, and what would this step-by-step transformation look like?

Implementation of a zoning system takes time. This is connected with technical, organizational and administrative conditions.

First, preparation of the zoning documents is connected with resolution of unfamiliar problems. These problems basically refer to establishment of land parcels and development parameters regarding different types of territorial zones. Such tasks can be considered new because the previous

practice was oriented toward establishing parameters for large city areas such as districts and blocks, and not for land parcels. Therefore, the solution to this problem is linked to an analysis and modification of the existing standards in order to adjust them to the zoning requirements.

Second, a city planning system based on legal zoning requires a modification of documents, their substance and style, as well as modification of administrative procedures connected with this process. This also requires time and practical experience with further explanation of this experience in precisely drafted legal acts.

All this requires the cities, which have decided to improve their city planning system, to develop a conceptual chart for step-by-step implementation of legal zoning taking into account the specific features of the cities. The following main provisions could be the same for these charts:

- defining two main stages of this process: stage one - preparation and approval of a local legal act - "Land Use Zoning Regulations", stage two - expanding the existing Regulation by introducing changes and amendments concerning the established procedures,
  - stage one - preparation of Land Use Zoning Regulations in order to resolve a "dual" problem: to make this document work from the date of its adoption and to provide for its implementation and development within the framework of the initial structure. Regarding the definition of real estate use rights, the Regulation provides a detailed list of permitted uses of real estate located within different territorial zones, but it does not yet list parameters of permitted construction (except, perhaps, for rather simple residential zones where establishment of such parameters can be easy even at the initial stage of the preparation of the draft Regulations. Establishment of parameters for other zones is postponed till the second stage, connected with amendment to specific sections of the Regulation,
  - stage two - preparation of amendments to the existing Regulation (primarily regarding maximum and minimum standards for permitted construction on land located within the zones for which such parameters have not been developed), preparation of subdivision plans where the city is divided into land parcels which are legal real estate units.

The example of such a concept developed for Novgorod is presented in the form of a chart is given in the Appendix.

**1 2 2 2 Distinguishing features of the initial  
stage of transformation Fate of such documents  
as ARCHITECTURAL AND PLANNING ASSIGNMENT within  
new city planning regulation**

Let us look at how the process of granting (acquiring) land rights for construction changes during the first stage, after the initial implementation of the Land Use Regulations. On the first stage there are a) two types of territorial zones - with a complete and incomplete set of zoning parameters and b) two main types of procedures regarding granting (acquiring) of land rights related to these zones.

Procedures Applied within Zones with  
a Complete Set of Zoning Parameters

A complete set of zoning parameters means that regarding a specific zone, the following characteristics and parameters are established for all parcels located within the zone:

**A Types of Permitted Land Use, which include**

- main permitted real estate uses, which can not be prohibited by the city administration if all construction and safety standards and other mandatory requirements were taken into account,
- permitted real estate uses which are auxiliary to the main types of uses, if there is no main permitted use established on a land parcel, the auxiliary one can not be considered as the main type of use and is prohibited, unless otherwise provided by the Regulation regarding specific cases and location of real estate,
- real estate uses which require special approval by public hearings according to the established procedures,

Real estate uses which are not on the Regulation list shall be considered prohibited for a specific territorial zone and can not be permitted even according to special approval procedures. The list of the Regulation can be amended and changed in compliance with the existing procedures.

Usually, several permitted real estate uses are established for every territorial zone.

Legal entities and natural persons who have long-term possessory rights to real estate enjoy the right to choose and change uses (permitted as main and auxiliary within specific territorial zones) If alterations to real estate do not involve major improvements, it is necessary to inform the city administration about the change from one type of use to another If such alterations do involve major improvements, a construction permit is required and it is necessary to inform appropriate city agencies about the change from one type of use to another

**B A List of Maximum and Minimum Parameters of Permitted Real Estate Uses** which may include

- minimum sizes of land parcels including lineal sizes of maximum width of land parcels along the front side of the street (vehicular passageways) and maximum depth of land parcels,
- minimum setbacks from parcel boundaries,
- maximum height of buildings,
- maximum development ratio (ratio of total developed land parcel space to total vacant space),
- maximum coverage ratio (ratio of total area of all structures (which already exist or can be constructed) on a land parcel to total land parcel area

A combination of the aforementioned parameters and their maximum and minimum values are established individually for each territorial zone

The presence of the aforementioned characteristics and parameters along with fixed boundaries of land parcels means that

- such land parcels were legalized and long-term lease rights for such land parcels can be granted without any additional actions (except for those, connected with establishment of additional land use restrictions, for example, an agreement on public servitudes),
- such documents as the APZ are not needed any more, zoning parameters shall be used as the basis for development and further approval of architectural and construction documents

**Within territorial zones for which there is a complete set of zoning parameters, long-term lease rights for construction (in the form of private ownership or long-term lease for 49 years) can be granted prior to the development of the architectural and construction documents Documents such as the APZ shall be abolished**

Procedures Applied within Zones with an  
Incomplete Set of Zoning Parameters

An incomplete set of zoning parameters means that permitted real estate uses, regarding a specific zone and all parcels located within this zone, were established for this zone except for maximum and minimum parameters for construction alterations

During the transitional period (prior to the establishment of a complete set of zoning parameters) there are three different versions of a city planning regulatory system which may be implemented by the city administration within these zones

**Version 1 A moratorium on granting new land parcels for construction** This action is possible if there is a set period of time during which it is valid. First of all, this time period should not be long, secondly, it should be linked with the city administration's responsibility to develop and approve missing zoning parameters prior to the last date of the moratorium. After the moratorium is established, the city planning system (regarding granting long-term lease rights for construction, development and approval of architectural and construction documents) shall operate as described above

**Version 2 The missing construction parameters shall be developed according to the existing procedures, i.e., according to three steps**

- a) development of an architectural concept (or a pre-design proposal or a feasibility study) by the customer,
- b) preparation of an APZ (an interdepartmental technical document) by the appropriate city planning agency,
- c) approval the architectural and construction documents by the "interested government agencies"

The substance of the APZ shall be limited by the construction parameters. Issues of the targeted use, in other words, the compatibility of permitted uses of real estate shall be resolved according to the existing Land Use Regulation. **According to this version, long-term lease rights shall be granted not before the approval of the architectural and construction documents. APZ is still used, but its substance is limited by construction parameters of permitted uses for the real estate**

**Version 3 The missing construction parameters are established by a legal act - Certificate of Permitted Use of a Land Parcel** If the city administration chooses this version, it should be ready to grant long-term lease rights to investors prior to the beginning of the investment-construction process, before approval of the architectural and construction documents, even temporarily if the Land Use Regulation is not complete. A special legal act is needed in order to implement this task. This act shall

- 1 be granted on behalf of the local self-governance agency and be approved by the Head of the City Administration (it should not be an interdepartmental technical document like the APZ),
- 2 contain a description of the restrictions on the rights of the permitted uses and construction alterations (it should not contain separate construction characteristics for a particular site according to a particular entity, like the APZ),
- 3 possess legal effect without time limits and be independent of individual plans of particular real estate possessors, those who possess it now and those who may obtain this real property in future as a result of secondary market transactions including buy-sell transactions, (and its effect shall not be limited for a period of one to two years as is presently a case with documents like the APZ)

**If such a legal document (Certificate of Permitted Land Use of a Land Parcel) is available, long-term lease rights can be granted prior to the beginning the development of the architectural and construction documents, and the APZ should be abolished**

This version (as well as the other two, described above) are applied to territorial zones for which there are no maximum and minimum construction parameters established by the Land Use Regulation. As soon as these parameters are incorporated into the Regulation and become a part of the package, the Certificate of Permitted Land Use of a Land Parcel shall not be required any more. It can still be used as a form of "extract" from the existing Land Use Regulation. In this case, it should be approved by the Chief Architect of the city and not by the Head of the City Administration. The signature of the Chief Architect shall certify that the Certificate complies with the Regulation. Therefore, **Certificates of Permitted Use of Land Parcels shall be considered as a legal document during the transitional period which guarantees the rights of investors during preparation of local laws - Land Use Regulation. The Certificates can be prepared and used only when the aforementioned Regulation is adopted by the city**

In Appendix 1.7 there is chart which illustrates the nature of the changes to the existing procedures if the Certificate is used. Appendix 1.8 contains a sample form of this document.

### Conclusion to Part I of the Manual

Within the framework of the existing legislation, cities possess enough rights for independent action to establish their own city planning system. At present, this independence boils down to a choice between two possibilities:

- 1 To act under inertia, i.e., to use and enforce the procedures which remained after the former soviet "non-market" system in an environment which is not appropriate for a developing real estate market,
- 2 goal-directed and step-by-step improvement of the previous system in connection with the changing socio-economic conditions

This choice will be defined, on the one hand, by understanding the necessity and inevitability of change, and, on the other hand, by the increasing pressure on city administrations connected with negative consequences of inertia and passive attitude.

The last condition, to a greater extent than logical arguments, will define not only the choice itself, but also the time period of delay in making the second choice. Therefore, the experience of the cities which made the first move towards the new system, by developing and implementing the local legal acts (Land Use Regulations) based on zoning and legal principles, becomes very important. The precedent set by the examples of Novgorod, Tver, Irkutsk, Pushkin, Kazan, Samara and Vyborg can not help but be noticed by the administrations of other cities.

**Chart to develop a typology of cases for allocating land**

Primary cases (from the point of view of the organization of procedural charts)

<b>Primary typological cases</b>	<b>Who allocates (sells) land to whom</b>								
	Who allocates (sells) the land <b>A. The government</b>			<b>B. The municipality</b>			<b>C. Private parties</b>		
	To whom is the land allocated (sold)								
	Government <b>A 1</b>	Municipality <b>A 2</b>	Private parties <b>A 3</b>	Government <b>B 1</b>	Municipality <b>B 2</b>	Private parties <b>B 3</b>	Government <b>C 1</b>	Municipality <b>C 2</b>	Private parties <b>C 3</b>

**Case A 1 (government to government)**

Regulations, laws and procedural charts	<b>Case A 1 Government to government</b>														
	RF to a subject of the RF					Subject of the RF to RF					Subject of the RF to subject of the RF				
	What is allocated (description of the land, area)					What is allocated (description of the land, area)					What is allocated (description of the land, area)				
1 Laws and Regulations - of the Rf - of subjects of the RF															
2 Agencies (coordinating, approving) - of the Rf, of subjects of the RF															
3 Procedural charts															

**Case A 2 (Government to municipality)**

Regulations, laws and procedural charts	Case A 2 Government to municipality									
	RF to municipality What is allocated (description of the land, area)					Subject of the RF to municipality What is allocated (description of the land, area)				
1 Laws and Regulations - of the RF										
of the subjects of the RF										
2 Agencies (coordinating, approving) - of the RF,, - of subjects of the RF										
3 Procedural charts										

**Case A.3 (Government to private parties)**

Regulations, laws and procedural charts	Case A 3 Government to private parties																
	owners of privatized enterprises			homeowners in condominiums			natural persons for individual houses			legal entities, developers			others (who ?)				
	one parcel (or several)	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	one parcel	
	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	undeveloped area	
	What is allocated <u>one land parcel, undivided area</u> What is allocated <u>parcel (parcels) in developed or undeveloped area</u> What is allocated <u>if a building is a landmark or other protected facility (y/c, no)</u> What is allocated <u>is the parcel located in a landmark protection zone other protected zones(y/c, no)</u>																
	yes	yes	no	yes	yes	no	yes	yes	no	yes	yes	no	yes	yes	no		
1 Laws, regulations and procedural charts - of the RF - of subject's of the RF																	
2 Agencies (coordinating, approving) - the RF, - subject of the RF - municipality																	
3 Procedural charts																	

**Case B 1 (Municipality to government)**

Regulations, laws and procedural charts	Case B 1 Municipality to government														
	Municipality to subject of the RF				Allocation by initiative of RF				Municipality to RF						
	municipality		subject of the RF		RF		municipality		Subject of the RF		RF		RF		RF
	What is allocated (description of the parcels, areas)														
1_ Laws, Regulations and procedural charts - of the RF - of the subject of the RF															
2 Agencies (coordinating, approving) - the RF, - subject of the RF - municipality															
3_Procedural charts															

**Case B 2 (municipality to municipality)**

Regulations, laws and procedural charts	Case B 2 Municipality to municipality							
	a municipality				Allocation by initiative of a subject of the RF			
	What is allocated (description of parcels, areas)							
1_ Laws, Regulations and procedural charts - of the RF - of subject of the RF - of local self-governance agencies								
2 Agencies (coordinating, approving) - the RF, - subject of the RF - municipality								
3_Procedural charts								

**Case B 3 (Municipality to private parties)**

Regulations, laws and procedural charts	Case B 3 Municipality to private parties															
	owners of privatized enterprises	home owners in condominiums	natural persons for individual houses	legal entities, developers	others (who?)											
	one parcel (or several)	What is allocated			one parcel	one land parcel	undivided area	one parcel	large area	one parcel	large area	one parcel	large area			
	undeveloped area	What is allocated			parcel (parcels)	in developed area	or in undeveloped area									
yes	no	yes	no	yes	no	yes	no	yes	no	yes	no	yes	no	yes	no	
yes	yes	no	yes	yes	no	yes	no	yes	no	yes	no	yes	no	yes	no	
1 Laws, regulations and procedural charts - of the RF - of subject of the RF - of local self governance agencies																
2 Agencies (coordinating, approving) - the RF - subject of the RF - municipality																
3 Procedural charts																

**Case C 1, C 2 (Private parties to government or municipality)**

Regulations, laws and procedural charts	Case C 1, C 2 Private parties to the government or municipality (alienation, gift - ?)											
	Russian Federation				Subject of the Federation				Municipality			
	What is allocated (parcel description)											
	By initiative of Russian Federation (RF)			Subject of the Federation (S)			Municipality (M)			Private Party (P)		
1 Laws, regulations and procedural charts - of the RF - of subject of the RF												
2 Agencies (coordinating, approving) - the RF, - subject of the RF - municipality												
3 Procedural charts												

**Case C 3 (Private party to private party)**

Regulations laws and procedural charts	Case C 3 Private party to private party											
	sale			lease			loan from mortgage bank			other		
	What is allocated (description of parcels)											
1 Laws, regulations and procedural charts - of the RF - of subject of the RF - municipality												
2 Agencies (coordinating, approving) - the RF, - subject of the RF - municipality												
3 Procedural charts												

**List of Main Laws and Legal Acts of  
the Russian Federation which Regulate Allocation of Land  
for Construction**

**Laws of the Russian Federation**

1 The Law of the Russian Federation “On the Basic Principles of Local Self-Governance in the Russian Federation”,

2 “The Land Code of the Russian Federation” No 1103-1 dated 25 04 91 (edition dated 24 12 93)

3 The Law of the Russian Federation “On the Fundamentals of Urban Development in the Russian Federation” No 3295-1 dated 14 July, 1992 (with amendments and additions from 19 July, 1995)

4 The Law of the Russian Federation “On Architectural Activity in the Russian Federation” No 169-F3 dated 17 November, 1995

5 The Law of the Russian Federation “On the Environmental Protection”, 1991

6 The Law of the Russian Federation “On the Right of Residents of the Russian Federation to Acquire into Private Ownership and Sell Land Parcels for Accessory Structures and Dacha Construction, Gardening and Individual Housing” No 4196- dated 23 12 92

**Decrees by President of the Russian Federation**

7 Presidential Decree “On Sale or Lease of Land Parcels Located within Urban and Rural Areas for Development to Natural Persons and Legal Entities” dated 26 11 97, No 1263

8 Presidential Decree “On Urgent Measures for Implementation of Land Reforms in the RSFSR” from 27 12 91, No 323

9 Presidential Decree “On the Procedures for Sale of Land Parcels in the Process of Privatization of State and Municipal Enterprises, Their Extension and Further Development , as well as Land Parcels Allocated to Citizens and Their Associations for Commercial Purposes” from 14 06 92, No 631

10 Presidential Decree “On Regulation of Land Relationships and Development of the Agrarian Reform in Russia” from 37 10 93, No 1767

11 Presidential Decree “On Bringing the Land Regulation of the Russian Federation in Consistency with the Constitution of the Russian Federation” from 24 12 93, No 2287

12 Presidential Decree “On Additional Measures for Providing Land to Citizens” dated 23 04 93, No 480

13 Presidential Decree “On the Right of Ownership of Natural Persons and Legal Entities to Land Parcels under Real Property in Rural Areas” dated 14 02 96, No 198

14 Presidential Decree “On Use of Constitutional Rights of Citizens for Land” dated 07 03 06, No 337

15 Presidential Decree “On Additional Measures for Development of Mortgage Lending” dated 28 02 96, No 293

### **Decrees by the Government of the Russian Federation**

16 Decree by the Government of the RF “On the Procedures for Purchase and Sale of Land Parcels by Residents of the Russian Federation” dated 30 05 93, No 503

17 Decree by the Government of the RF “On the Regulation on the Procedures for Lease of Land Parcels, Natural Property, Buildings and Structures on the Territory of National Parks for Regulated Tourism and Recreation” dated 03 08 96, No 926

18 Decree by the Government of the RF “On the Inventory of Lands for Finding Opportunities to Allocate Them to Residents” dated 12 07 93 No 659 (Amendments dated 27 12 94)

19 Decree by the Government of the Russian Federation “On the Regulation on the Procedures for the State Control over the Use and Protection of Lands in the Russian Federation” from 23 12 93, No 1362 (Amendments dated 12 03 93)

20 Decree by the Government of the RF “On the Regulation on the Procedures for Establishing Land Use Boundaries in Cities and Other Settlements” dated 02 02 96, No 105

21 Decree by the Government of the RF “On the Regulation on the Structure and Procedures for Keeping Records of Cadastre Numbers of Real Property and Filling in the Forms for the State Registration of Rights to Real Property and Transactions Therewith” dated 15 04 96, No 475

### **Other Documents and Regulations**

22 Letter by Roscomzem “On Legal Liability for Squatters” dated 13 04 94, No 3-14-1/482

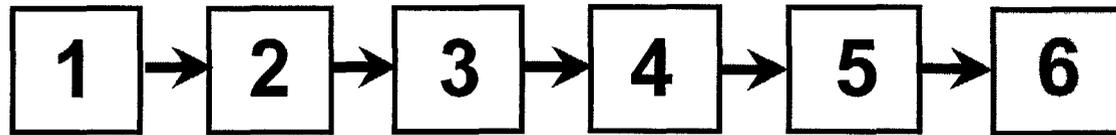
23 Letter by Roscomzem “On Use of Land Parcels as a Collateral” dated 01 02 96, No 2-21/199

24 Instruction on the structure and the order of preparation and approval of urban development documents The State Committee of the RF for Architecture and Urban Development (Gosstroy of Russia) M , 1994

25 Instruction on the order of preparation and approval, the structure of design documents for construction of enterprises, buildings and structures SNiP 11-01-95 The Construction Ministry of the Russian Federation (Ministry of Russia) M , 1995

# Long-term Land Parcels Rights Procedure

## Existing procedure



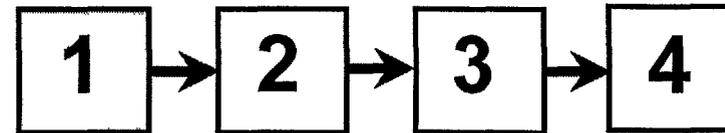
### Stages

- 1 Land acquisition through auction/tender or by other means with long-term possession rights (ownership or long-term lease)
- 2 Obtaining zoning approval for development planning  
Project coordination, construction permit
- 3 Construction
- 4 Turnover of the project to the owner, registration of the project

### Stages

- 1 Application to allocate land for project planning, development, coordination and approval of the document of primary selection of the targeted use parcel, design permit Working out the APZ\* for project planning, leasing the land for the design period
- 2 Development, coordination and approval of the design budget documentation, application to allocate land for construction, permit for land allocation for construction
- 3 Marking the boundaries, lease agreement for the period of construction, construction permit
- 4 Construction
- 5 Turnover of the project to the owner, project registration
- 6 Documents on long term possession of land

\* APZ - Arhitekturno-planirivochoye zadaniye, Architectural and Planning Task



## Legal zoning procedure

Appendix 1.3

**List of Legal Acts on Land Allocation Issues  
of the City of Kazan**

Kazan Legal Acts

1 "Regulations for Conducting Land Auctions and Bids and Other Transactions with Land in the City of Kazan" Approved by Resolution of the Head of the City Administration No 815, dated 21.06.96

2 Regulation "On Establishing Rights of Citizens, Corporations, Enterprises and Organizations for Land in the City of Kazan" Approved by Resolution of the Head of the City Administration No 255 dated 29.03.93

3 Temporary Provisions for Defining Simultaneous Payment while Allocating Land for Ownership and Long-term Possession Adopted by Resolution of the Head of the City Administration No 589 dated 08.06.94

4 "On Temporary Provisions for Transfer of Land into Ownership in the City of Kazan" Resolution of the Head of the City Administration No 1348 dated 20.10.96

Legal Acts of the Tatarstan Republic

5 Regulation "On Procedures of Allocation and Alienation of Land to Enterprises, Organizations, Corporations and Citizens and Their Unions" Approved by the Resolution of the Council of Ministers of the Tatar SSR dated 07.08.91 No 346

6 Regulations for Conducting Land Auctions and Bids and Other Transactions with Land" Approved by Resolution of the Council of Ministers of the Tatarstan Republic dated 21.03.96 No 221

### Document Used in Moscow for the Pre-design Stage

An analysis of APZ is reminiscent of opening up matreshka dolls - a lot of documents stacked inside each other. For example, just a part of these “matreshka documents”, beginning with the customer’s first actions, is as follows

- the architectural concept for development of the plot even before the customer submits his official letter-request on the allocation (selection) of land for construction reconstruction or restoration of a facility to the Moscow government’s commission on land relations and city planning, the customer must arrange and pay for work in the pre-request stage, he must conclude a contract with the Design Organization of the Architectural and Planning Department which prepares his sketch design proposals, i.e. the pre-design architectural and construction documents in the form of an architectural concept for the building or structures, the architectural concept must include
  - an explanatory note with the city planning and location justification, the overall area of subsurface and surface parts, an ecological and economic plans and parameters, including engineering and transportation support,
  - historical and architectural sketch plan (when required),
  - a site plan, Scale 1 2000,
  - a diagram of the overall plan for the parcel development, Scale 1 2000,
  - basic floor plans, Scale 1 200,
  - cross-sections, Scale 1 200,
  - facade diagrams, Scale 1 200,
  - sample materials and a mock-up
- the customer’s letter-request on the allocation (selection) of land for construction, reconstruction or restoration of a facility to the Moscow Government’s Commission on Land Relations and City Planning, the letter-request the contract with the Design Organization of the Architectural and Planning Department and the architectural concept for the building on the plot,
- the order to develop the initial approval documents which is issued by the Commission on Land Relations and City Planning to three committees - the Moscow Architectural Committee Moscow Land Committee and Moscow Property Committee, the order includes the assignment to develop the initial approval documents
- the assignment to develop the initial approval documents, which is prepared through the joint efforts of the customer and Territorial Regulatory Department of the Architectural and Planning Department of the Moscow Architectural Committee on the basis of instructions from the Chief of the Architectural and Planning Department or his deputy, the Chief of the Center for Initial Approval Documents (who carries out the above mentioned order), the assignment includes (in addition to a citation to a contract on the customer’s payment for preparation of these documents)
  - initial facility data,

- functional use of the facility (in accordance with the Order of the Government of Moscow or of the Administrative District Prefecture),
  - overall facility area (based on BTI data),
  - number of stories (including underground floors, attics and mansard roofs),
  - material for load bearing structures and the fences,
  - coverings (roofing), wall and floor materials,
- existing documentation
  - property or land ownership documents,
  - historical and cultural research documents (for historical development),
- proposals for changes to the facility
  - functional purpose (if it is not restricted by the appropriate orders),
    - first floor,
    - basement,
  - parameters and dimensions
    - changes to load bearing structures and wall and floor materials,
    - additions (showing floors and overall area),
    - layout of usable area in basement (showing the number of levels and overall area),
  - anticipated time periods for doing the work
    - beginning of construction,
    - commissioning of the facility
- additional information
  - permitted engineering lines throughout the facility waterlines, electric and gas lines, sewer lines, heating, stormwater run-off
- appendices
  - copies of land and property ownership documents,
  - BTI plans (Scale 1 2000) BTI general plan (Scale 1 500),
  - photographs of the exterior of the facility and the courtyard facade (10 x 15 cm),
  - conclusions of the engineering and technical study for the proposed addition or additional floors,
  - historical-cultural studies (for historical development)

**initial approval documents** include six conclusions issued by various agencies (city planning conclusion, facility engineering support conclusion, ecological expert conclusion, conclusion for recording land and property relations surveying conclusion, property conclusion) and a planning permit, i.e., a permit to develop the planning stage of the architectural and construction documentation,

■ **city planning conclusion** (which is essentially a modern-day APZ) includes the following

1 General Part

- address administrative district, municipal region, parcel, block, building,
- type of construction work for the facility,
- functional purpose (makeup of the complex)
- customer, developer,

2 Justification for Development of the City Planning Conclusion

- orders of the Government of Moscow (Administrative District Prefectures),
- documents establishing property and land relations (showing recorded areas),
- contract with the Government of Moscow (Administrative District Prefecture),

3 Estimated Technical and Economic Parameters of the Facility

- lot area (sq m ),
- development area (sq m ),
- overall facility area (sq m ),
- floors,
- compensatory green area (sq m ),

4 List of Organizations Approving the City Planning Conclusion

- number, date,
- Department for State Control of Landmark Protection and Use (UGKOIP), Moscow Land Committee, Moscow State Hygiene and Disease Control Center (MGTs), Underground Building Section (OPS), Moscow Geological Committee, General Plan Scientific Research and Planning Institute, Department of the State Fire Service (UGPS) of the MVD, Moscow Nature Committee, Moscow Property Committee, Emergency and Civil Defense Headquarters (GO), and others,

5 Conditions for Developing the Planning Documents (based on the conclusions of the approving organizations)

- for the development of the additional planning documents, (the technical conclusion and study, the historical conclusion and study, the archeological study the construction engineering study, etc ),
- planning requirements and recommendations,
- additional conditions,

- effective on the date of registration with the Architectural and Planning Department,

## 6 Appendices

### 6.7 Sketch 1 (Scale 1:2000),

- proposed technical and economic parameters,
- changes to the facility borders and dimensions,
- conclusion of the Underground Building Section of the Moscow City Geological Committee,
- additional approvals,

### 6.8 Conclusion on planning condition

#### 1 description of the city planning situation

- current city planning documentation
- prospects for development of adjacent territory,
- type of facilities for the central administrative buildings,
- historical and architectural description of the area,

#### 2 estimated technical and economical parameters of the facility

- area of the land
- area of the development
- overall facility area
- floors

#### 3 requirements and recommendations for planning solutions

- placement within the city development system (important city features and orientation, site lines, view corridors, compliance with historical lines of development),
- architectural solutions, composition, silhouette, size in relation to surrounding development, recommended wall materials, etc.),
- effective land utilization and use of subsurface space,
- use of first floors
- improvement of the territory and compensatory green area,
- setting up night lighting for the facility,
- organizing construction,

#### 4 special conditions

- adjustment of red lines,
- possible removal of structures from the parcel and the necessity for the Commission for Building Preservation to review buildings and historical regions,
- procedures for developing planning documents,

5 conclusion of UGKOIP (for facilities and historical development zones)

- the presence of historical and cultural landmarks
- buildings (including buildings recommended for state protection), periodic assessment of the degree of condition of developments which are significant historically and architecturally,
- the presence of preserved historic street layout, information about former streets and land boundaries,
- the conduct of additional historical and cultural studies, planning and archeological field work and receipt of planning-restoration assignment,
- special requirements (reconstruction of the missing elements of development, reestablishment of valuable lots, etc ),

6 6 Conclusion on the Study of the Real Property

1 Description of the lot

- location of the lot within the city's system (territorial proximity to city centers, major thoroughfares, metro stations, railroads, airports, water transportation, etc ),
- location of the facility to the existing zone (facilities) indicating distances to the lot
  - the industrial and communal zone (facility),
  - historical and cultural landmark protection zone (facility),
  - nature zone (facility),
  - residential development
  - zones of other restrictions,
- description of the lot boundaries
- description of the boundaries of the compensatory improvements and greenery,
- the existence of temporary structures, technical facilities, etc ,
- the presence of green plantings (including trees, bushes, lawns),

- the presence of common use areas (children, storage, sports),

## 2 Additional information

- information on previously recorded initial documents and permits,
- special conditions, requirements and recommendations,

## 3 Description of the buildings and structures located on the parcel (based on BTI data),

- number, address, name, floors, floor height, condition of the exterior, additional information, recommendations,

## 6.7 Conclusions of Approving Organizations (they define the bounds of their jurisdiction the possibility of working on the facility, special requirements and recommendations for the work, the status of land property relations and requirements to observe the rights of citizens and legal entities whose interests are affected by the work)

- conclusion of MGTs for hygiene and disease control,,
- conclusion of the Department of the State Fire Enspectorate,
- conclusion of the headquarters of GO
- conclusion of Moscow Committee for Woods and Parks,
- conclusion of Moscow Land Committee (in addition, it contains the estimated value of the land lease),
- conclusion of Moscow Property Committee (in addition, it contains an estimated appraisal of the buildings and structures on the parcel),
- conclusion of Moscow Nature Committee (in special cases, it determines the need to do the ecological evaluation),

## 6.8 Documents Which are the Basis for Preparing the City Planning Conclusion

- 1 orders of the Government of Moscow (Administrative District Prefecture),
- 2 documents defining property and land relations (showing the registered areas)
- 3 contract with the Government of Moscow (Administrative District Prefecture),
- 4 order to prepare the initial approval documents issued by the Chief of Architectural and Planning Department or his deputy, the Chief of the Center for Initial Approval Documents,

5 application (assignment) to develop initial approval documents (for facilities being renovated or restored),

6 documents containing the financial arrangements for preparing the initial approval documents

# Principal Diagram of Stage by Stage Development of the Legal Zoning System (Novgorod case-study)

Existing situation and system development stages	Components							Stages of rights and documentation development					
	A	B	C	D	E	F	G						
								- do not exist +- partially exist + do exist					
								1 → 2 → 3 → 4 → 5 → 6					
								1: application primary selection of land design permit APZ land lease agreement for the design period 2: design and budget documentation application to allocate land for construction permit to allocate land for construction 3: marking the boundaries land lease agreement for the period of construction construction permit 4: Construction 5: turnover of the project to the owner project registration 6: Document on long-term possession of the land					
Existing situation	+	+	+	-	-	-	+-						
Stage 1													
Option 1 (applications)	+	-	+	+	-	-	+-	application document on primary land selection APZ land lease agreement for the design period	design and budget documentation permit to allocate land for construction	marking the boundaries documents on long-term possession / land construction permit	Construction	turnover of the project to the owner project registration	
Option 2 (auction, tender)	+	-	+	+	+	+	+	land parcel auction/tender sales documentation	Land parcel long-term possession documents	zoning approval of development planning construction permit	Construction	turnover of the project to the owner project registration	
Stage 2													
Option 1 (applications)	+	-	+	+	+	+	+	Land parcel long-term possession documents	zoning approval of development planning construction permit	Construction	project acceptance project registration		

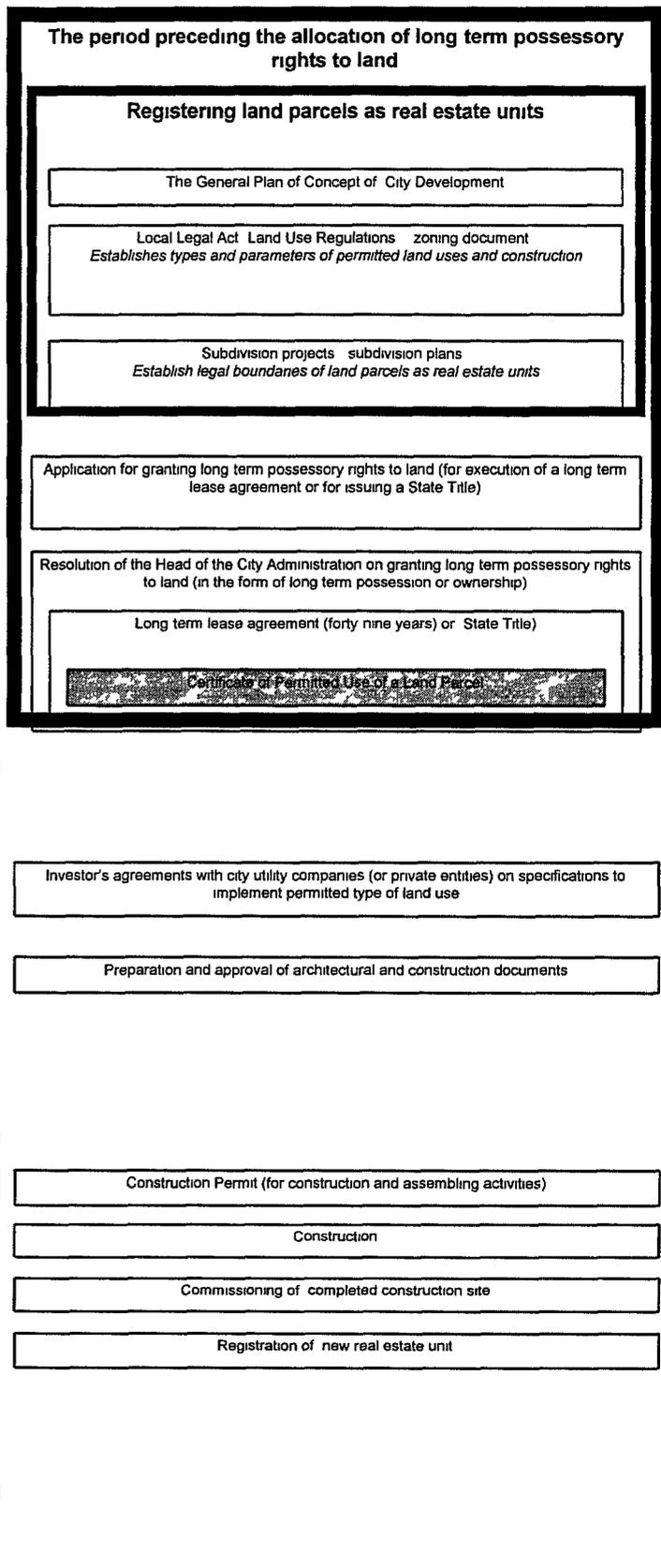
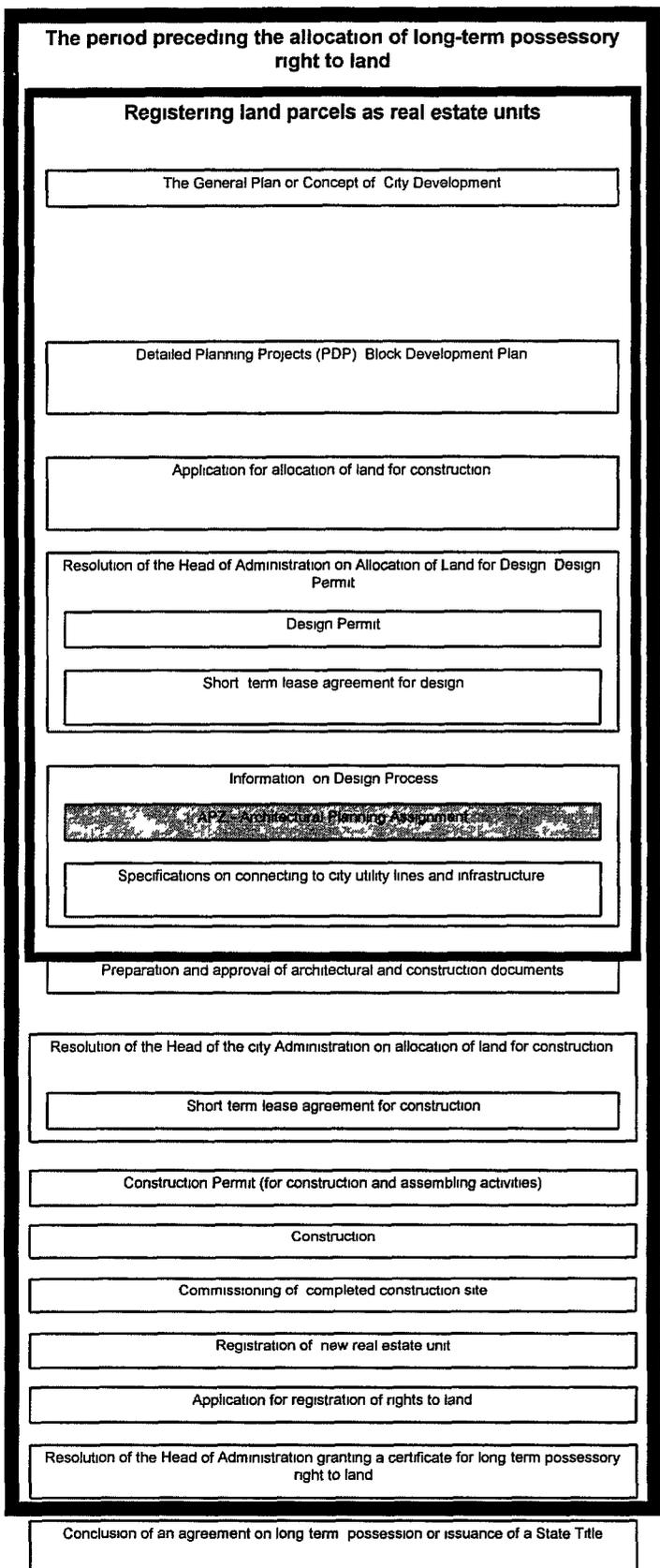
App. 1.6

15

**Diagram Illustrating the Place of Documents such as APZ in the Existing and Improved City Planning System (example of Kazan)**

**Other existing systems**

**Improved system**



## Appendix 1 8

(draft sample form adapted for Kazan Conditions )

# Certificate of Permitted Land Use

«Approved»

\_\_\_\_\_ Chief of the Administration of the City of Kazan

« \_\_\_\_\_ » \_\_\_\_\_ 19\_\_

The Certificate is approved by the Head of the Administration of the City of Kazan if provision 3 2 is filled out, otherwise (provisions 3 1 is filled out) the Certificate (sections 4 5 6) is an extract from the Land Use Regulations (hereinafter referred to as Regulations) approved by Resolution ' \_\_\_\_\_ of an authorized government agency of the City of Kazan as of \_\_\_\_\_ 19\_\_, and is certified by the signature of the Chief Architect indicating that the Certificate is in compliance with the Regulations

<b>1 Information on land parcel identification</b>	1 1 Certificate registration number _____
	1 2 Address of a land parcel _____
	1 3 Number of a land parcel in Cadaster _____
1 4 The land parcel is located within zones shown on the maps of section 2 1 of the Regulations	
1 4 1 Kazan Zoning map (Article 33)	Names of zones _____ <input type="checkbox"/>
1 4 2 Historic preservation restrictions map (Article 35)	Names of zones _____ <input type="checkbox"/>
1 4 3 Archeological layer restrictions map (Article 36)	Names of zones _____ <input type="checkbox"/>
1 4 4 Hygiene water protection and other ecological requirements restrictions map (Article 37)	Names of zones _____ <input type="checkbox"/>

<b>2 Legal status and area of application of the Certificate</b>
The Certificate of Permitted Land Use is a legal document of the authorized government agencies of the City of Kazan. The Certificate states purpose and restrictions on use of a land parcel and serves as a foundation for initial grant of the of long term possession rights (ownership rights or 49 year lease rights) to legal entities and natural persons by means of auctions tenders direct negotiations with applicants land privatization by privatized enterprises. The Certificate can be developed and granted based on an application of real property owners or other interested parties. New owners shall comply with permitted land use established by the Certificate in case of land transactions on the secondary market.
The effective period of the certification is unlimited. Its substance (regarding sections 4 5 6) can be changed only after the Regulations are amended according to Articles 20 and 30 of this legal act.
The Certificate serves as a supplement to the documents which state the rights to land (State Act on Land Ownership Long term Lease Agreement) as well as the basis for development and approval of architectural and construction documents issuance of a construction permit according to Article 14 of the Regulation preparation of agreements with engineering infrastructure services (electrical water and gas suppliers sewer telephone services etc ) on technical aspects of the permitted land use implementation.

<b>3 Basis for establishment of permitted land use characteristics</b>	
3 1 Articles 39 40 41 42 43 Of the Regulations	<input type="checkbox"/>
3 2 Articles 39 41 42 43 Of the Regulations as well as approved city planning documents regarding maximum parameters of permitted construction and requirements to its implementation (this provision is filled out in case Article 40 of the Regulations is not in effect at the time of the Certificate s issuance)	<input type="checkbox"/>
3 3 Site plan	<input type="checkbox"/>
Approved by Resolution of the Head of Administration of the City of Kazan ' _____ dated _____	

<b>4 List of permitted land uses</b> (extracts from Article 39 of the Regulations regarding an appropriate zone of a land parcel s location)		
<p style="text-align: center;"><b>A Main types of permitted uses</b></p> <p>(types of uses which can not be prohibited if all construction parameters safety standards and other requirements are complied with)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p style="text-align: center;"><b>B Types of land uses in addition to main permitted types</b></p> <p>(are supplementary in respect to main permitted types of land use if the main types of permitted land use are missing, the supplementary ones shall not be considered as main types and therefore are prohibited)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p style="text-align: center;"><b>C Types of uses requiring special approvals</b></p> <p>((a special approval obtained by means of public hearings is required. Public hearings are held by the Land Use Commission according to Article 12 of the Regulation))</p> <p>_____</p> <p>_____</p> <p style="text-align: right;">Public hearing held Meeting minutes of Land Use Commission _____ dated _____</p> <p>Type of use _____ approved</p> <p>and is permitted according to Resolution of the Head of the City Administration _____ dated _____</p>

**5 Maximum parameters of permitted construction and reconstruction**

(are filled out like extracts from Article 40 of the Regulation if the appropriate provisions of the Article are missing by establishing of the aforementioned parameters based on approved city planning documents)

**Minimum setbacks from land parcel's boundaries** (are established on the site plan refer to section 8 of the Certificate)

from the front side boundaries (facing the street or a pass) \_\_\_\_ m from side boundaries \_\_\_\_ m from rear boundary \_\_\_\_ m

**Parameters of intensity of land development**

maximum buildings height

meters min \_\_\_\_ and/or max \_\_\_\_

number of floors min \_\_\_\_ and/or max \_\_\_\_

maximum percentage of development

(floor area ratio max \_\_\_\_ %

maximum coverage ratio

(ratio of total floor area of all buildings and structures to the total area of a land parcel) \_\_\_\_ max \_\_\_\_ %

**6 Construction requirements based on historical preservation, hygiene, archeological, water protection and other ecological restrictions**

This section of the Certificate is filled out when a land parcel is located within appropriate zones (provisions 1 4 2 1 4 3 1 4 4 of this form are filled out)

The section is filled out in the form of references to Articles 41 42 43 of the Regulations If a land parcel is located within zones shown on the historic preservation restrictions map (Article 35 of the Regulations) it is possible to refer to the approved documents (including their name the government agency which approved the document and the date of approval) and extracts from these document regarding this land parcel

**7 Other land use restrictions (servitudes, rights of third parties, if any restrictions are established they are attached as references to the appropriate documents including those issued during the preparation of this Certificate)**

**8 Site plan, M 1 \_\_\_\_\_, cadaster number \_\_\_\_\_, total area \_\_\_\_\_ sq m**

Legend

land parcel boundaries

existing construction (for the time of Certificate issuance)

constructions not in compliance with the Regulations

minimum setbacks from land parcel boundaries limited by the Regulations

boundaries of public servitudes (if any)

other indices

8 1 Document on turning points of a land parcels boundaries

**8 2 A document on structures which are not in compliance with the Regulations**  
(for the time of the Certificate issuance)

Structures which are not in compliance with the regulations are shown on the site plan The basis for failure to comply are mentioned for every structure (wrong setbacks from the parcel boundaries exceeded maximum height type/types of use not listed in Article 39 of the Regulations etc) Use and construction alterations to non-conforming structures are regulated by Article 27 of the Regulations

The Certificate was issued by the Chief Department of Architecture and City Planning of Kazan and is in compliance with the Regulations

\_\_\_\_\_  
Chief Architect of the City of Kazan, Chief of  
GUAG

“ ” \_\_\_\_\_ 199 \_\_\_\_\_

## **PART II**

### **2 1 Purposes of long-term lease**

In accordance with the Russian Constitution and the Civil Code, any natural person or legal entity can hold real property, including land, in the form of ownership, inheritable life estate, perpetual use, or lease. However, most Russian cities have local laws and regulations in effect that restrict rights to land parcels. It was the Moscow Government that first restricted the rights to land by passing a regulation providing that the major form of land relations for legal entities in Moscow will be the lease. The example set by Moscow has been followed by other regions.

The key argument used by city authorities to justify their policy is that they are driven by the fear of losing control over effective use of land in the city since private owners "are beyond the city's control". There are several reasons for this viewpoint:

- the existence of contradictions in society regarding land, which is reflected in the opposition between different factions and parties in the State Duma regarding laws giving full title to land,
- inadequate regulatory basis, contradictions and inconsistencies in addressing certain issues, and too much attention and lack of flexibility in addressing other issues,
- inadequate qualifications of city officials to implement effective control and to regulate land use in private ownership in a market environment

In practical terms, this means that the land lease, perpetual use and inheritable life estate have become the most widely used forms of land relations. In our opinion, the lack of private ownership of land by legal entities in cities has become a hindrance to effective urban development in the market economy. However, a land lease can be quite effective and sufficient for the development of the city economy provided it is properly administered. Thus, the main purpose of administering the long-term lease of land in the city should be land relations that will facilitate economic development in a market environment.

Another important issue of administering long-term lease of land is associated with the refinement of the urban development regulatory system and enhancing effective circulation of urban land. At present, most Russian cities have a cumbersome system for allocating land for development. Besides, the current system does not provide investors and developers with information on possible expenses and potential of land before they start planning. One of the possible approaches to improving urban development regulatory system is to introduce a zoning system which legitimizes the

approval process and makes it more democratic. However, all the benefits from the new legal urban development regulation based on zoning may be pointless if they are not linked to changes in the procedures and the very nature of land lease. For instance, a developer, investor or holder of real estate may use the zoning system quite effectively if lease agreements contain a list of permitted uses instead of a single targeted use as has been the case. As far as municipalities are concerned, lease relations that are more suitable to development in a market environment, as well as a new form of urban development regulation, should increase the city's budget revenues by charging fees for the transfer of lease rights to other parties and by receipt of the future rental payments. Thus, another purpose of the long-term lease is to facilitate reforms in legal urban development regulation as well as to enhance profitability of urban areas.

## **2.2 Requirements for land lease for construction purposes in a market environment**

The above-mentioned purposes - development of the real estate market, promotion of urban development regulatory reform and an increase in city revenues due to effective management of urban land - call for a modification of existing lease relations. The gist of the modification is that the lease right should be attractive for private business and it should facilitate the development of the private sector.

To this end, the requirements for a land lease are as follows:

### **1 Long-term lease of land parcels allocated for development should be allowed for a term of up to forty-nine years**

During different phases of urban development, various types of leases, both direct and hidden (for example, reservation of land for the design period), are in use at present. However, a lease for more than ten years is a rare thing in cities. Nevertheless, in a market environment, long-term rights to land parcels are essential for business.

The case for the developer is quite clear. It is believed that a developer needs land only for the period of construction since, as soon as the construction is completed, he sells the completed houses or apartments. However, a developer also needs long-term lease because he can obtain a loan to finance the project only by using long-term lease rights to land as collateral. And it goes without saying that long-term lease rights are essential for investors and owners of the property built on the respective parcels in order to be able to do business.

## **2 Long-term lease rights to a land parcel should be transferred to a private developer or investor at the initial phase of the investment process**

As discussed in the first section of these recommendations, according to the current procedures for land allocation, an investor or owner of the building acquires long-term lease rights to the land only after construction is completed, an occupancy certificate is issued and the new property unit is registered. This means that the investment must be made before the investor has any long-term rights. For a developed market, this situation is unacceptable since the owner puts his investment at risk. For this very reason, many projects initiated by western investors failed to materialize. As soon as they got the insight into the current land allocation system, they decided against the investment. Moreover, they could not invest even if they wanted to because it would be impossible to obtain a mortgage loan to finance the project.

In this connection, we recommend a modification to the current procedures so that long-term lease rights may be obtained during the early phases of the investment process, for instance, before or after the project is approved. Besides, the process of "allocation" should be replaced by purchasing (or to put it more precisely, by "transfer for a fee") rights to a land parcel, in our case - long-term lease rights. Market conditions permitting, fees for transfer of long-term lease rights should be included as a clause in the lease agreement.

## **3 Lessees should have the right to sell lease rights, use them as collateral, sublease the parcel, in other words, the city should have a secondary market in place**

This provision is an essential part of the development of a secondary land market. If the city uses the lease as its main form of land relation, there should be sales of lease rights on the market. Only then can an investor, developer or owner of a building be sure that his investment is protected. In such a way, if the financial situation of an investor or developer changes and he feels that he is not able to perform his obligations, he may lose the invested capital and expended effort. To protect himself in this situation, an investor must have the right to sell his lease to a different party who will assume all his obligations. Of course, in this situation, it is also necessary to protect the municipality's interests so that the sale or transfer of rights at any phase will not result in the appearance of dishonest developers or other persons who are not interested in finishing the construction work within the deadlines specified in the Agreement. Thus, the transfer of the rights at any phase of the project should be permitted only with the consent of the Administration. In order to avoid any difficulties or delays, we recommend that the Administration be prevented from creating obstacles to the transfer of rights to any person. To this end, we suggest that a special provision should be contained in the Lease Agreement, for example, the refusal of the

Administration to permit transfer of the lease should not be conditioned by just any reasons, but by "material reasons" which must be in writing. With this in mind, the lessee can take an unfavorable decision to the court which will decide if the reason for the justification for the refusal is "material"

Similarly, a lessee must have the right to sublease land in order to obtain additional financing or income. However, all this is acceptable so long as it does not violate the municipality's interests. In other words, the rent paid to the city shall not be less than the average market rent for land in the city. Then, sublease for a lessee will not be a tool to make profit on the difference between the market and normative rent but a way to reduce expenses in difficult financial situations because part of rent due to the city will be obtained from the sublease.

**4 The lease should be based on equal relations between the owner-lessor (municipality) and the lessee. The agreement should include any provisions but openly without ambiguous clauses or hidden "reefs"**

The latter seems evident but, nevertheless, needs clarification. At present, the reality is that private companies and businessmen (builders, investors, developers and other owners), on the one hand, and the municipalities and city agencies, on the other hand, have amassed a number of complaints against each other.

Frequently, city administrations do not look at private developers as a means to address city problems. It goes without saying that city officials do not consider them potential partners, but on the contrary accept them with a great deal of suspicion regarding their intentions to cheat somebody. Under the former administrative system, city officials used to have nearly total control over city development policies. Today, they look upon the private sector as their competitors, claiming their rights. Finally, some city officials look upon private development as a disgusting "speculative" business. It is true that some private developers make great demands of the municipalities and give promises that they can never keep, and as a result, they fail to perform their obligations. The city authorities often claim that allocated parcels remain untouched for years or property under construction remains unfinished. It should also be admitted that there are many cases of fraud.

The private sector has just as many complaints against the municipalities. Most often they claim that they have completed "urgent" municipal orders but are still waiting to be paid the money due for their work under the agreement. Because of frequent changes of top city officials and a subsequent change in priorities and city policies in general, development rules and requirements as well as financial agreements are also changed. As a result, developers and investors are of the opinion that you can not trust the administration - "anyway, they will cheat you". Another problem is the

traditional red tape and unwillingness to make decisions promptly on rather simple issues. Getting approvals is a long and complicated procedure, often involving “running in circles” and illegal actions.

It is evident that city administrations have to change their attitude towards private developers, otherwise they will not only lose a choice between different investment opportunities, but will also leave their cities without a chance to compete for external investments. It can be concluded in general, that cities where administrations, have worked to establish mutual goals and have managed to build partnership relations with private investors, look more attractive to external investors. It is this understanding of partnership versus confrontation that should lay be the basis for relationships and be reflected in clearly formulated provisions of the agreement.

### **2.3 Ways of transferring leaseholds**

There are two ways of allocating leasehold rights to municipal lands in the course of primary privatization: a) through tenders, b) through direct negotiations.

Today the first way is more preferable, though the final choice depends on the situation in the city and the goals set by the city administration. Land transferred into long-term lease on tender terms is more democratic since it provides for an objective choice of a developer or investor for the benefit of the city. It also provides for an effective study of land market in order to set appropriate rental rates, which will make it possible to set starting prices more accurately in future.

However, holding tenders requires that there be demand for land, which is not the case in many cities. First, not all available land is attractive from a commercial viewpoint since it is located in different areas and requires different investment. Second, it is not easy to hold a tender and sometimes there is no payback for the efforts expended.

Holding a tender for the right to lease a land parcel for development should include a number of specific procedures such as: setting up a tender commission, preparation of invitations to bid, setting up qualification requirements, carrying out market studies, setting starting prices, holding an advertising campaign, holding a tender.

The most popular practice in Russia now is transfer of lease rights through direct negotiations. This makes it possible to take into account the developer's requirements. On the other hand, this approach seems quite subjective during evaluation and it may be accompanied by red tape.

Setting the price for a lease may present a problem since under this approach there is no "objective" mechanism as in an open tender. There may be several solutions to this problem, but anyway it is important that the price be set by a collegial body (for instance, zoning commission). The price shall be determined by appraisal of land, which can be done by one of several known techniques: cost approach, comparative sales, income approach, etc.

An appraisal may be conducted by independent appraisers commissioned by the administration or by qualified city officials.

#### **2.4 Specific features of land lease agreement for construction**

In Russian practice, lease relations are regulated by Chapter 34 of the Civil Code of the RF and the lease agreement between the lessee and lessor. Usually, a lease agreement follows the pattern of this Chapter of the Civil Code. In our case, the structure of the agreement is more sophisticated since, along with the standard set of clauses, it contains some that are not standard and are related to terms for completing the development.

The main clauses deal with construction on leased land. It is especially obvious when the city administration is not interested in gaining additional budget revenues for transfer of land to a developer, as in constructing a specific real estate project. For instance, the administration may be trying to enlarge the number of services offered to the population, create new jobs, establish a new communal services company, or may just be seeking to create an architectural ensemble for esthetic purposes. In this case, completion of construction would seem to be a major part of the agreement. Therefore, such an agreement contains sections and articles with detailed provisions regulating the Administration's and Developer's duties regarding deadlines for design, approval of design documents and construction as well as the amount of demolition, family relocation, construction of infrastructure, etc. Thus, there are two such sections in the sample agreement provided in the appendix: the first contains terms for design and construction of the buildings and structures, the second contains terms for demolition, family relocation, laying infrastructure, and servitudes.

In addition, a special feature of the development lease agreement appears in the articles on the transfer of leasehold rights, on sublease, on mortgage and on penalties for non-performance. This is where property or financial relationships appear regarding the real property being constructed. The purpose of these articles is to give a developer a full set of opportunities to use the long-term lease as a tool to obtain additional financing for the period of development. Sections of the agreement like sublease, transfer of leasehold right and especially mortgage serve this very purpose. The above-

mentioned articles contain certain clauses that protect interests of parties that may be involved in project implementation, but are not parties to the agreement (for instance, loanholders, sublessees, final owners of the real property - apartments or houses) If their interests are not represented in the lease agreement, then it will be difficult or impossible for a developer to find a mortgage loan or to maneuver financially if there is an abrupt change in the economic situation

It's important that we note the following if the city administration, as the official owner of city land, doesn't need to transfer the leasehold right with strict conditions on its development, or at least it has no strict requirements on the time periods and other conditions of development, then we should use a simple form of lease agreement Thus, the model agreement given in Appendix 2 1 of this Manual should be simplified We can exclude sections and clauses dealing with the terms of development, as well as the articles serving as a supplement to these terms

Consequently, the contents of a land lease agreement depends on the number of requirements and their strictness In the case of a land lease for construction, the agreement should contain the largest possible number of articles and obligations taking into account not only the interests of the contracting parties, but of the third parties upon whom the developer's activity depends

## **2 5 Terms of long-term lease agreement to enhance the development of the land market and private land development**

### **2 5 1 Rights under the lease agreement**

According to the Civil Code, a leasehold is a form of obligation arising under an agreement between an owner-lessor and a lessee

According to Article 606 of the Civil Code, under the agreement a lessor commits to lease to a lessee a land parcel for a specified rent or compensation for temporary possession and use or only for temporary use This means that an owner continues to enjoy the right to control the property (land parcel) provided he meets these legal and contractual requirements

Unfortunately, neither the Civil Code nor other laws supplementing and clarifying the Civil Code, interpret the term "to control a land parcel" In accordance with current land laws, a lessee, with the exception of specially defined cases, obtains the same kind of rights as the owner, including the right to build, to use the land for commercial purposes and to lease for temporary use, in other words to sublease However, this list does not include the right to use land as collateral It may be inferred that the right to use the land as collateral refers to control of the property but not its possession or

use Anyway, a Manual issued by a legal institute<sup>\*\*</sup> says that a lessee has the right to use his lease as collateral, and alienate the lease agreement by transferring it to the beneficiary of the debt secured by the lease with advance notification to the bank Current laws do not provide a clear understanding of the substance of land lease rights Consequently, all rights to be transferred under the lease agreement should be clearly stated in the agreement and controlled by it Otherwise, legal disputes that are difficult to settle under current laws may arise

The lease agreement should specify the subject of the lease - a land parcel and buildings (if any), permitted uses and all restrictions imposed on this land

## **2 5 2 Permitted uses and development restrictions**

The current urban development regulatory system, as already mentioned in Chapter I, does not make provision for obtaining preliminary information on uses, restrictions, requirements and parameters of construction Moreover, allocation of land parcels for targeted use introduced by the Land Code is practiced everywhere This practice provides for a strict unchangeable use of land Hence, targeted use and all other development requirements are set for each particular project, though they are based on the General Plan or the City Development Concept

This system leads to a lot of ambiguity regarding a developer's rights and requires the developer to expend a lot of time and money to find out what exactly will be permitted on a land parcel Without clear legal regulation, city officials enjoy too much discretion, and in many cases subjective decisions are made according to the dictates of their own judgment and conscience In general, this system does not facilitate private investment

Zoning regulations are directed at correcting this situation and attracting investment to the city First of all, the transition from targeted use to permitted uses within one urban development zone will be made Consequently, a lease agreement will include development rules and permitted land uses will be recorded in a local regulatory document "The Land Use Regulation" In other words, a lease agreement will contain several uses of a land parcel and property to be built on it, within these uses a developer, investor or owner may undertake any development actions without additional approvals

The number of land uses and land development restrictions included in a lease agreement plays an important role There is a direct correlation

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<sup>\*\*</sup> Land and Law Manual for Russian Land owners The Institute for Law and Comparative Law Studies under the Government of the Russian Federation M , 1997, page 310

between the number of restrictions and land value the less freedom a developer is given, the lower is the value of the land or rent. Thus, if a developer enjoys maximum freedom, the value of land will be at a maximum, considering, of course, its location and other characteristics.

For this reason, the number of development restrictions and limitations stated in a lease agreement should be held to a minimum, including only essential ones. Ideally, development regulation under a lease agreement will give a developer the freedom to design his own building and to prepare plans which correspond to his own plans. Besides, a lease agreement should contain a special clause stating that the city administration commits to approve any plan if it meets the requirements and does not contradict any technical specifications. This will give a developer or investor additional assurance that his rights will not be violated for subjective reasons.

One more possible incentive for a developer is to let him use the land before the construction work has started and let him obtain a building permit for the purpose of, first, complying with Land Use and Regulations for this particular zone, and second, providing the developer with an opportunity to start construction under lease agreement and proceed without any interference or delay. That will lessen the number of financial problems for a developer at the initial, most difficult and important phase of construction.

In order to eliminate open interpretation of the land use requirements, a lease agreement should be supplemented by a "Certificate for Permitted Use of Real Estate" issued to the owner with a complete statement of his rights to use land, and perform construction or reconstruction of the buildings.

### **2 5 3 The term of a lease agreement**

We have already discussed why it is essential to introduce the long-term lease for legal entities in the city. Now it is time to talk about the term of the long-term lease. The term of a lease is defined from the point of view of economic profitability of business and opportunity to conduct this business. Russian law stipulates that the improvements made by a lessee on a leased parcel belong to him and not to the owner, and may be purchased from a lessee by the owner if the latter wishes to terminate the lease agreement. Due to this fact, it is quite difficult to determine the term of the lease which would be economically profitable and sufficient.

Western practice shows that stable land rights arise if the minimum term of lease is 15 - 20 years, though usually the period of 20-25 or 49 years is used depending on the specific features of a potential lessee's activity.

Rights of developers or investors may also be protected by including in the lease agreement a clause stipulating that the present lessee shall have a priority right over other candidates to extend the lease agreement. This clause is based on Article 621 of the Civil Code which gives a lessee a priority right to conclude a lease agreement for a new term. Another possible provision of a lease agreement may be a commitment by the owner-lessor to extend a lease agreement with specific terms (either the same or different ones) with a lessee if he desires. Such a clause provides a greater assurance that a lease agreement will be extended and thus may make it possible to raise the cost of the lease (lumpsum payment and rent)

#### **2 5 4 Terms of payment and rent**

City-owned land is one of the main economic resources of any city. In this connection, the most important task of the city administration is to use this resource efficiently. It was mentioned earlier that a city has several options for using its land. The choice of the right land policy depends on existing long-term problems of the city and the availability of other resources. As a rule, the city has two main goals regarding its land - to make a profit by putting the land into circulation, and to build and reconstruct real estate important to the city.

In accordance with the purposes of this Manual let us consider the first goal - to make a profit. There are two main strategies to achieve this goal:

- receiving lumpsum payments for land sales within the municipality's jurisdiction with the subsequent receipt of land tax payments,
- leasing land and receiving rental payments

As mentioned earlier, in different situations, you can choose any of these options, but here we are considering the case where, for certain reasons, the administration and local collegial agency have decided that a lease is a more effective option for their situation. It should be pointed out that in both cases the economics of the transaction is based on defining the value of the land. Now we will not be considering the hardest issue of how the cost of land is determined and how it is appraised, especially since a lot is being written on the matter, including the classics and founders of different economic schools and theories. Evidently, within any political and social system, land has a value that in different ways is converted into a cost, and then the price. In a market economy, the price of land is established by the market, in a socialist economy and the transitional market economy, as is developing in Russia today, various "substitutes" like "standard" price for land are used to determine the price.

With the first option, the sale of land, the owner in exchange for a transfer of all his rights to land, receives the total cost of the land (the whole amount at once or by installments), and then receives regular income in the form of land tax payments. With the second option - the lease of land, the owner doesn't convey his ownership right, but just temporarily and partially transfers his right of possession and use to another person. In return, the

owner receives regular income in the form of rental payments, and the lessee profits from the economic activity that takes place on the land or is somehow related to the land

Obviously, a lease has a different economic meanings. However, because of the difficulties with leases greater than 25 years, the differences on the options are somehow being smoothed out. The “too” long term of estrangement of right to land causes psychological discomfort to the owner, and especially to Russian city officials who were used to total control over the land during Soviet times. These officials start to apply to lease certain elements of economic schemes, characteristic of land sale with transfer of land title.

The mixture of the two systems has taken place in Moscow. Moscow City Administration transfers the leasehold right to land not just for rental payments, but also for a set lumpsum payment. The Administration sells the leasehold right to lessee, at a cost that is equal to the cost of buying ownership of the land and at the same time, the rental payment is equal, in amount and payment terms, to the land tax.

This practice (let us call it “mixed”, for it contains features of the two systems) seems not to be very effective because it puts more difficult obligations on the lessee. In this situation, a developer or an investor pays the same amount of money for the ownership right and still doesn’t get the full set of rights, just a set number of rights included in the leasehold rights provided in the agreement. This imbalance in the advantages received by the administration on the one hand and developers and investors, on the other hand, will finally lead to a weakening the city investment climate and then to stagnation of the city’s economy.

In addition, charging for the transfer of leasehold rights is not stipulated in the Civil Code and, hence, certain legal regulations are needed to provide the legality of such payments. For that purpose, a system of local laws of the subject of Federation or local administrative acts can be used, though it might turn out not to be sufficient.

With respect to all of the above, in this Manual, we recommend using another system of payment - just rental payments. This is the system of payment shown in the sample agreement attached to this Manual.

Nevertheless, in some cities, the mixed practice is still popular, and we should make some comment on it. With the mixed system of rental payments, the main problem is the lumpsum payment made for the leasehold right. The problem is that at the initial phase of the investment process, until a developer or investor has started to make a profit from the project, he must use his own capital to pay for a land lease. At the same time, he needs free assets to develop the project, to obtain permits, to buy building materials to start construction, and for other expenses for development and launching the project. Moreover, at the initial phase of the project, there may be problems getting a loan, especially if the company offering loans is not sure that the developer or investor is investing enough of his own capital. The difficulties of providing loans to buy land are becoming especially increasing at present in

Russia because of poorly developed lending system ( primarily, mortgage loans) for the purchase of land and construction

We can recommend the following a developer (investor) may be allowed to pay for the land in installments over a period of time sufficient to pay for the land not just from his own (or borrowed) capital but also from the income realized from the property This will make the land proposed for development more attractive for developers, which, eventually, will raise the cost of the leasehold

We understand that making installment payments for the land may involve a certain risk for the city For instance, if a developer fails to perform his obligations, the total amount of the purchase price may not be paid However, such risk in the present market environment for land can be considered reasonable since this increases the attractiveness of the land and will eventually lead to more development projects in the city

In this case, a lease agreement should include a schedule of payments showing the payment period, dates of payment and the percentage of the payment made As a rule, such a schedule is included as an appendix to a lease agreement If under the terms of the lease agreement there is a construction schedule, the payment schedule should correspond to the phases of construction and design It is advisable to include an inflation factor in the lease agreement so the city does not incur any losses over the payment period The rental payments using the mixed approach should be equal to or less than the land tax rate

If the lease right is transferred to a developer as a tender, he may submit his proposals on payment according to an accelerated schedule, including the opportunity to pay the entire amount right after the tender is over

Further we will consider the recommended way of establishing lease relations - payment only through the rental payments Setting rent is legally based on Article 614 of the Civil Code and Article 21 of the Law on Rental Payment According to these articles, the terms and dates of rental payments shall be determined by the provisions of the lease agreement However, when leasing lands in state or municipal ownership, the public authorities must set basic rates of rent depending on the type of use and the category of the lessee In other words, the city can set the rent only on the basis of a general (the same for the entire city) principle, of course with as broad differentiation as desired depending on the location, use, etc

Many cities have passed regulations based on this provision according to which the rent was equal to the land tax, and the same mechanism was used to calculate both This was quite reasonable when applied to the

previous "mixed" approach towards rental payment, but is absolutely unreasonable for a pure economic lease mechanism. If the land tax rate is exactly the same as the rental rate, the city loses whatever rental revenues might be available, i.e. the situation is exactly opposite to the one described for the mixed system of payment.

In addition, we should point out that calculating the land tax rate in our present situation is not very effective because the tax is not calculated on the basis of the market price of land and the landowner may not agree with the calculations (although there is no forum to express this disagreement at present). Unfortunately, the current legal procedure for setting basic land tax rates in cities leaves much to be desired and the tax payments can not be considered optimum.

It should be noted that although the mechanisms for setting the land tax and rent for land parcels are similar, there is an important difference between them: the basis for the land tax in a city is determined by Federal laws, while the basic rental rate may and must be introduced by the city.

The best way to set the rental payments is for the city to establish basic rent rates that fluctuate within a certain preliminary defined range so that it will be possible to set rental rates acceptable to the city and the lessee. The exact rental rates should be established by direct negotiations between the administration and potential lessee, according to a set procedure. Determining rental payment from the basic range should be based on market conditions.

In the recommended sample lease agreement two ways for setting rental payments are provided.

The first way is based on the appraised market value of land and the contract terms for capitalizing it. If the market value of the land (if it were sold) equals twenty dollars per sq. m. and the approved period of capitalization is ten years, then in one year, 1 sq. meter of land will generate an income of two dollars. This amount can be used as the annual rental payment and the monthly rent will be 0,17 dollars per sq. m. (10 "redenominated" rubles). Further, this figure shall be correlated with the basic rates and conditions of demand - land offerings. In any case, the amount received by capitalization calculations or by any other way is only one of the factors in the final determination of the rental rate.

The second way, a more complicated one, should be used, as a rule, for expensive, important (from the urban planning point of view) land, which is in high demand. In this case the city may request the major part of the capitalized value to be received at once, within the first few initial months or years of the lease.

Let's assume that the appraised market value of the land is \$180 per sq. m. with a period of capitalization of 10 years. This provides an annual income of \$18 per sq. m. and a monthly income of \$1.50. Let us say that this figure is a lot larger than the basic average rental rate \$0,75 a month per sq.

m for this area. Then the city can suggest that the developer should pay part of the rent "in advance." For instance, he can pay \$9 per sq m per year or \$90 for 10 years. Thus, the city's recommended rental payment, for a 1000 sq meter parcel will be \$90,000 lumpsum rental payment to be paid over a negotiable term and an annual payment of \$9 per sq m with rental payments made on a monthly basis, for a total of \$180,000 (the appraised market value) over the ten-year capitalization period.

As stated above, a developer doesn't have enough free capital to make a large payment at the initial phase of project implementation. Thus, it is recommended that this lumpsum payment be replaced by an installment lease payment according to a schedule agreed upon with the developer. The schedule of payments should become part of the agreement. Of course, the example described is no more than an illustration of the method, since in practice the amounts and terms of lease payments depend on numerous other factors and will be the subject of negotiations and mutual agreements.

We recommend an approach which provides for a combination of basic rental rates set by the city and direct negotiations with the lessee. Lessees can base their proposals on market information so that basic rates may vary within a certain preliminary defined range.

The Civil Code states that the rent may be changed upon agreement between the parties, but not more than once a year. Therefore, a lease agreement should contain a clause defining the mechanisms for changing the rent. For instance, during the first year or during the entire course of construction, rent can be decreased by using an agreed reduction ratio. Another option that can be included in the agreement is changing the basic rent by adjusting it for inflation. One should not forget that the attractiveness of a proposed lease and, subsequently, its cost will greatly depend upon whether the administration sets an unreasonably high, economically ineffective rental rate. Experience shows that there are definite examples where Western investors stopped negotiations with administrations because they understood they were not protected from future administration rent increases.

## **2 5 5 Qualification decision**

The city's main concern when transferring rights to vacant land is how to control the developer's meeting the deadlines for design and construction. The city officials are driven by the desire to prevent land speculation: first, they want to ensure that a developer will not keep the land untouched in order to resell it at a profit in the future because the city can also do that; second, they want to ensure that projects will not go unfinished, that after demolition of buildings the land will not be wasted and there will not be any other "unesthetic" property. As a result of this approach, cities have chosen to

maintain strict control over transfer of rights to land by linking the process to design and construction phases

An alternative, which will make it possible for city administrations to transfer long-term land rights is to include the developer's commitments to meet the deadlines for the milestones of the project in the lease agreement. A breach of this clause may lead to serious penalties, including cancellation of the lease agreement (though, of course, this measure is not preferable)

Another tool which may improve the possibility the deadlines being met is to prequalify the developer to determine that he is capable of performing his obligations. As a rule, qualification requirements include a record of successful experience and solid financial status. The city should decide on how the information should be verified. As far as the financial status is concerned, it is usually sufficient to have letters from the candidate's bank or letters from his other financial partners.

There are several options for qualification procedures. One of the alternatives is a preliminary qualification inspection where a candidate has to demonstrate that he meets the requirements, after which the purchase of lease rights is possible. If it is found that a candidate does not meet the requirement, the land is not transferred to him.

Qualification procedures are extremely important when the lease rights are transferred by a tender (auction). In this case a qualification inspection is a separate phase where a decision is made on whether to allow a candidate to participate in the tender. Another version of the same approach which does not require a separate qualification procedure and, consequently, saves time is to issue two information packages to potential participants: one - to certify that the bidder meets the qualification requirements, the other - a sealed envelop containing a bid. The open envelop is reviewed first, and if a bidder does not meet the requirements, the sealed envelop is returned unopened.

A tender may be held in one phase where qualification data and the bid are filed at the same time and reviewed at the same time when the bid envelopes are opened. This approach may cause some problems since it makes it possible for the tender commission to declare those who propose the highest prices unqualified because of the possibility of manipulating the results of the tender. Finally, the process where qualification decision is made before the bid envelopes are opened is more preferable since the risk of losing a very attractive bid may make the cities make the qualification decision very carefully.

Finally, it should be noted that qualification requirements that are too strict may prevent many reliable companies that do not have much experience in urban development from participating. Often it is very difficult to draw a line between potential lessees or bidders who are capable of fulfilling their commitments and those who are not. That is why the record of experience in urban development may be one of the qualification requirements but not a crucial one in Russia at present. In the labor market, there are a lot of highly qualified experts in real estate - designers, builders, brokers, etc., - and a good manager can build a good team that will work quite effectively.

In addition, the experience in other cities has shown that developers and investors prefer that qualification procedures and bid submission take place at the same time in Russia because they do not want to waste time preparing qualification certificates without having all the information on the potential project or land for development.

But, there may only be a qualification decision if there is a demand for land that the administration is offering for rent.

## **2 5 6 Connection to engineering infrastructure**

One of the major requirements for urban development in countries with a developed market economy is to provide a potential developer or investor with complete, reliable information on anticipated expenses. Without the knowledge of expenses to be incurred, including those for obtaining permits, standing fees, the engineering infrastructure development and taxes, a developer can not assess whether leasing a land parcel at the proposed cost is profitable. If this kind of information is not available or is unreliable, developers may not wish to conclude a lease agreement at the proposed market prices. That is why it is preferable, from the market point of view, to include in the agreement provisions under which the property will be connected to the city engineering infrastructure (this information is usually included in a building passport or similar document that becomes a mandatory appendix to the agreement).

However, it is not very easy to implement this goal. Since the utility providers issue the information on the terms of connection to the property only to applicants who have obtained the primary rights to land parcels, only architectural and city planning authorities can make such an inquiry before a lease agreement is executed and there is no concrete lessee. The terms of connection obtained in this way can be too hard to meet because, as a rule, they include not only the requirements for the land parcel in question but also requirements for extension and development of the entire network. The architectural and city planning authorities, of course, will not negotiate with the

utility providers since they have neither the incentive nor financial resources for that

Nevertheless, the city should commit to assist developers in obtaining reasonable terms for connection to the infrastructure if it is interested in the development of the real estate market and urban development. The city should limit the utility providers' opportunities to charge additional, unjustified fees and duties. To this end, it is recommended to include in lease agreements lists of all permits that may be required in the course of construction, as well as to indicate the fees that are due for connecting the property to the city engineering infrastructure. Another alternative is to set up reasonable standard fees for the connection, depending on the specifications of the property under construction, that is based on a tariff system similar to payments for utilities.

## **2 5 7 Construction schedule**

Besides requirements for use of a land parcel, a lease agreement may include several other requirements depending on the situation. Thus, if a leasehold is transferred by tender, design and construction deadlines may be included in the agreement.

Meeting the construction deadlines may be a problem in the emerging market environment and, especially, with respect to land. When developers are forced to accept unrealistic construction schedules without considering the market situation they usually fail to complete the projects or just abandon them. Knowing how difficult it is to ensure stable financing of projects, developers choose not to get involved in projects with firm construction schedules if they do not have the right to resell them anytime in case of financial difficulties.

It seems that selling long-term land rights for development without any deadlines for completion of construction is hardly acceptable in Russia at present. Many still remember "Soviet" times when each city used to have at least a dozen uncompleted projects. That is why city authorities tend to include firm deadlines for completion of construction in lease agreements.

In this case, a lease agreement should contain provisions establishing the term of construction and the milestones of the approval process. On the other hand, the city should be prepared to take responsibility for review and approval of design documents within the established time, as well as to define rules for the approval procedure. The agreement may include a clause which states that if a project has not been approved within a specified period of time, the design documents shall be considered to be approved automatically.

However, it should be stressed that limitation of the period of construction is a very powerful factor in the current unstable financial situation that can be counterbalanced only by the right to transfer a leasehold at any phase of design, construction or use of the property. If a particular developer does not have the resources to complete the project, he must have the opportunity to transfer his rights to an interested developer that does have the ability to complete the project at a profit. Furthermore, in the current market environment, the longer the period of construction, the easier it is for a developer to time the pace of construction with the situation in the market, and the more attractive is a long-term lease at the market price.

### **2 5 8 Sale, transfer, sublease**

The resale of land and lease rights is tightly linked to the unconditional obligations to develop the parcels and meet the construction schedule. The issue of reselling rights to land did not arise in Russia before since it was simply prohibited. Developers may find themselves in a situation where they may have to stop investing in a project because of unexpected financial difficulties. In this case, they will not be able to sell their lease to recoup expenses incurred. Even if the city permits the investor to sell his share of rights to the completed (or uncompleted) buildings and structures, this will be of small satisfaction to the investor because he will be totally dependent on the city authorities. This can be considered as another barrier to investing in land and in the city economy in general.

We recommend that a developer should have an unlimited right to sell or lease uncompleted property as well as the leasehold of the parcel or part of it. Such a transfer of lease rights may be accomplished by a purchase agreement which does not contradict the current laws that permit the transfer of a lease right when selling real property.

However, until the project is completed, a developer may resell his rights to land only with the consent of the city, except for certain specific cases, for example, a preliminary sale of rights that becomes effective only after the construction has been completed. This allows a developer to enter into purchase agreements before the construction has been completed.

It is even more important to provide that a developer or investor be able to transfer his lease rights at any time, even when the buildings have not been completed yet or not even started. This situation is only possible based on the terms of the agreement and the key issue here is the city

administration's consent to the resale, and to this end the city should be ready to allow such transfer. The city may agree to such a transfer provided the party to whom the rights are transferred is able to perform the obligations under the lease agreement. A special clause should be added to the lease agreement specifying how a new buyer can guarantee his ability to perform under the agreement and how a permit may be obtained. Also, it is recommended that a new clause be included in lease agreements providing that the city has the right to deny a developer the right to transfer his lease rights provided there are material reasons for that.

Another alternative is to allow free transfer of rights at any time provided the revenues from this transaction is split between the developer and the city if the transfer takes place before the construction has been completed.

### **2 5 9 Using the lease as a collateral**

A lease agreement contains a number of clauses on use of lease rights as collateral. The rights may be encumbered without the permission of the city. If a mortgagor submits to the city as the land owner a written certification of a mortgage, the city agrees not to terminate the lease until it notifies the mortgagor of the possible termination in advance giving him enough time to cure the problems.

In addition, the terms of a lease agreement provide that if the city terminates the lease, it will do everything possible in order to sell the lease rights to another developer or investor, and as soon as it recovers its expenses and the selling price, it will use the revenues from this transaction to compensate the expenses of any mortgagees who have invested in the project.

### **2 5 10 Failure to perform obligations and penalties**

A lease agreement should define the rights and obligations of the city and the developer in detail. If one party fails to perform its obligations under the lease agreement, the other party can apply a number of enforcement measures, including filing suit in court, in order to force the other party to perform its obligations or to demand financial compensation.

The city has the right to impose penalties and fines for minor breaches of contractual obligations as well as to terminate the lease agreement in case of a material breach. If the city cancels the lease agreement, it must resell the property and channel the revenues from the second sale to the purposes specified in a list, including compensation for the expenses incurred by the

city, compensation for the expenses of mortgagors in connection with providing a mortgage loan, if such is the case, as well as the expenses for temporary maintenance of the land and buildings. All remaining funds should be turned over to the developer.

If the city fails to perform its obligations under the lease agreement, the developer also has the right to cancel this agreement in certain cases. Then, the city must refund to the developer the paid up portion of the cost of the lease plus accumulated interest according to the established rate.

Neither of the parties can resort to enforcement measures without informing the other party of surrounding the circumstances and without giving it an opportunity to appeal the legality of these circumstances, or to take steps to eliminate them.

The agreement provides for extending the period of performance in case of force majeure circumstances that may delay or result in the inability to perform obligations.

One more question may arise regarding who will control the partially or fully completed property if the city legally terminates the land lease. According to Russian law, the land and buildings on it may belong to different parties, individually. However, under this provision the termination of lease will be pointless since the land will be burdened with completed or partly completed real property to which a developer will continue to enjoy the right of use, so the land under the property will be of little interest to other parties. The Civil Code of the Russian Federation establishes that the right of the city to control the partially or fully completed property after the termination of a lease agreement is a subject that may be defined by the provisions of the lease agreement concluded between the city and the investor.<sup>\*\*\*</sup>

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<sup>\*\*</sup> The Civil Code, Articles 271, 272, 273, 552, 553, 623, 653

**LAND LEASE AGREEMENT FOR DEVELOPMENT<sup>2</sup>**

**(Sample)**

**Land Lease Agreement for Development**

The City Administration, represented by

\_\_\_\_\_

acting on the basis of the Regulations (hereinafter "Landlord"), on the one part, and \_\_\_\_\_

\_\_\_\_\_

represented by \_\_\_\_\_,

acting on the basis of \_\_\_\_\_

(hereinafter "Tenant"), on the other part, based on the Resolution of the City Administration dated \_\_\_\_\_ have concluded this Agreement on the following

**Section 1**

**SUBJECT MATTER OF LEASE**

Article 1 1 Subject Matter of Lease Landlord offers to lease, and Tenant leases from Landlord, a parcel of land with an area of \_\_\_\_\_ hectares, including all buildings and structures listed in Article 1 2, located at \_\_\_\_\_ and intended for construction, the description of which, in accordance with this Lease Agreement, is provided in the Certificate of Permitted Use of a Land Parcel (Appendix A), together with all the parcel's conditions, restrictions and servitudes

Article 1 2 Present Status of the Parcel At the time of the execution of this Agreement \_\_\_\_\_ the \_\_\_\_\_ parcel contains

\_\_\_\_\_

\_\_\_\_\_

The sample of the agreement is based on the lease agreement prepared by the experts of the Urban Institute S Butler A Vysokovsky and A Khakhalin in the framework of the demonstration project of holding a tender for the sale of a land parcel in Nizhny Novgorod and Tver in 1995

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(buildings, structures, etc with descriptions of them)

Article 1 3 Absence of Restrictions on Landlord's Title The Landlord covenants to Tenant that his title to the land indicated in Article 1 1 is free and clear from any restrictions that might preclude the conveyance of title to, or prevent any kind of construction on, the land parcel The Landlord also covenants to Tenant that if the latter fulfills all agreements and obligations in this Agreement, the Tenant shall enjoy the right to use the land being leased, that is, Tenant shall be entitled to occupy and use the parcel without any interference on the part of the Landlord or any other natural person or legal entity, that may contest the rights granted by Landlord under this Agreement

Article 1 4 Appendices The following documents shall be an integral part of this Agreement

- a) Appendix A - Certificate for Permitted Use of a Land Parcel
- b) Appendix B - Lease Payment Schedule
- c) Protocol of Agreement for Relocation of Families and Demolition of Structures
- d) Protocol of Agreement on Construction of Infrastructure Facilities

## **Section 2**

### **TERM, EFFECTIVE DATE AND TERMINATION DATE**

Article 2 1 Term of the Lease The present Agreement has been concluded for a term of Forty-nine (49) (other \_\_\_\_\_) years, and shall be effective as of the date of its registration in

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The Term of the lease begins on the date the Agreement is executed by the parties to this Lease Agreement Upon expiration of the term of the Agreement, it may be extended by agreement of the parties, for \_\_\_\_\_ years as provided in Article 2 2 of this Agreement

Article 2 2 (Option 1) Extension of the Term Tenant shall have a preferential right, before other parties, to extend the Term of this Agreement for an additional \_\_\_\_\_ years, beginning on the date of the termination of the initial term of the Lease, provided Tenant shall have observed all the restrictions, conditions and obligations undertaken by him under this Lease Agreement Tenant shall have the right to extend the Lease Term provided Landlord shall be given written notification of Tenant's intent to renew no later than six (6) months prior to the termination date of this Agreement

Upon receiving said notification, Landlord shall inform the Tenant of his decision within three (3) months after receipt of Tenant's notification. Upon the execution of a lease agreement for a new term, the terms of this Agreement may be changed with the agreement of both parties. The referenced Lease Agreement shall be registered in the same manner as this Lease Agreement.

*Article 2.2 (Option 2) Extension of the Term. Tenant shall have a preferential right, before other parties, to extend the Term of this Agreement for an additional \_\_\_\_\_ years, beginning on the date of the termination of the initial term of the Lease, provided Tenant shall have observed all the restrictions, conditions and obligations undertaken by him under this Lease Agreement. Tenant shall have the right to extend the Lease Term provided Landlord shall be given written notification of Tenant's intent to renew no later than six (6) months prior to the termination date of this Agreement. Upon receiving said notification, Landlord shall conclude a lease agreement with the Tenant containing all the restrictions, terms and obligations of this Lease Agreement with the exception of the rent which shall be changed as provided for in Article 3.2. The referenced Lease Agreement shall be registered in the same manner as this Lease Agreement.*

**Article 2.3 Maintaining the Leased Property**. Tenant or his legal successors shall maintain the leased property in the proper manner without any financial obligation on the part of the Landlord. Tenant shall maintain all structures in good condition that meets the requirements of the safety regulations and shall perform all repairs. Moreover, the use and the maintenance of the leased land and any structures on it shall comply with applicable legal requirements.

**Article 2.4 Rights to Improvements to the Land**. All improvements made to the land during its development and use at Tenant's expense and provided by this Agreement, or made by the Tenant with written approval of the Landlord, shall be the property of Tenant during the Term of this Agreement.

**Article 2.5 (Option 1) Rights to Severable Improvements Upon Termination of the Agreement**. Upon termination of this Agreement, all severable improvements to the land which were made during the development and use of the land at Tenant's expense shall remain Tenant's property.

**Article 2.5 (Option 2) Rights to Severable Improvements Upon Termination of the Agreement**. Upon termination of this Agreement, all severable improvements to the land which were made during the development and use of the land at Tenant's expense shall become the property of Landlord and Tenant shall be reimbursed for the cost of said improvements.

Article 2 6 Rights to Permanent Improvements Upon Termination of the Agreement Upon Termination of the Agreement, all permanent improvements to the land, including permanent structures, infrastructure facilities, etc , which were made during the development and use of the land at the Tenant's expense and provided for in this Agreement, or made by the Tenant with written approval of Landlord, shall become the property of Landlord and Tenant shall be reimbursed for the cost of said improvements. However, if there is an early termination of the Agreement pursuant to Article 8 1 , the actions of the parties with respect to permanent improvements shall be governed by Article 9 2

Article 2 7 Procedure for Determination of the Cost of Improvements to the Land The costs of the above-mentioned improvements to the leased land which are reimbursable to Tenant shall be set by agreement of the parties through the execution of a Document on the Appraised Value of the Improvements to the Leased Land Subject to Reimbursement. Should the parties fail to reach agreement on the value of the improvements to the leased land subject to reimbursement, an appraisal of these improvements shall be conducted by independent appraisers hired by both parties

### Section 3

#### RENTAL AND OTHER PAYMENTS

Article 3 1 (Option 1) Rental Payment Tenant shall pay to Landlord a rental payment (the "Rental Payment") for the leased land in the following amount

a) \_\_\_\_\_ rubles for the first \_\_\_\_\_ years  
Payments shall be made according to the schedule attached as Appendix B

b) \_\_\_\_\_ rubles per year upon completion of the period shown in Appendix B. The payments specified in this paragraph (b) of the Agreement shall be made monthly, in advance, in equal installments, before the 15th day of each month

The Rental Payment shall accrue beginning with the month following the date of execution of the Lease Agreement by both parties. The Rental Payment shall be made without any additional notification or demand and shall be directed \_\_\_\_\_ to \_\_\_\_\_ account

1

*Article 3 1 (Option 2) Rental Payment Tenant shall pay to Landlord an annual rental payment (the "Rental Payment") for the leased land in the*

amount of \_\_\_\_\_ rubles per square meter per year While the land is being prepared for construction and during actual construction work, an amount equal to \_\_\_\_\_% of the amount indicated above shall be charged The Rental Payment shall accrue beginning with the month following the date of execution of the Lease Agreement by both parties Payments shall be made, in advance, on a monthly basis, in equal installments, before the 15th day of each month The Rental Payment shall be made without any additional notification or demand and shall be transferred to account

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Article 3 2 Changing the Rental Payment During the term of the Lease, the Rental Payment may be changed with the agreement of both parties, but it may not be changed more often than once a year In accordance with the laws and administrative documents in effect within the Republic of Tatarstan, other minimum payment periods for the rental installments may be used The Rental Payment periods shall be changed by providing notification to Tenant and changes shall apply to all installments due after the date of the change to the Rental Payment

Article 3 3 Tenant's Obligation to Pay Other Charges In addition to the Rental Payment, Tenant shall pay all fees, charges and payments related to execution of this Agreement or required by federal and local administrative acts Upon receipt of a written request from Landlord, Tenant shall submit to Landlord copies of the documents confirming payment of these fees, charges and payments

#### Section 4

### FACILITY DESIGN AND CONSTRUCTION

Article 4 1 Parcel Development Tenant shall build facilities on the leased land in accordance with the Certificate Of Permitted Use (Appendix A) and the approved design

Article 4 2 (Option 1) Design Tenant shall submit the design documents required by the Lease Agreement to the Department of Architecture and Planning of the City Administration (hereinafter, DAPCA) by the following deadlines

Sketch Plan no later than \_\_\_\_\_ days  
after signing the Agreement

Working documentation no later than \_\_\_\_\_ days

(final working sketches and after Sketch Design approval specifications)

Article 4 2 (Option 2) Design Tenant shall submit to the Department of Architecture and Planning of the City Administration (hereinafter, DAPCA) the final draft design (draft sketches and specifications) no later than \_\_\_\_\_ days after signing the Agreement

Article 4 3 Administration Review of the Design Documents Tenant shall receive notification of the approval or disapproval of the sketch or draft versions within thirty (30) days after submission of the materials to DAPCA. DAPCA shall have the right to disapprove the Sketch Plan or working design only for the following reasons

a) Existence of certain paragraphs and clauses that contradict this Lease Agreement, SNIPs, laws or local administrative acts

b) For working documentation, the existence of certain elements of construction that do not correspond to the approved Sketch Plan

If Tenant does not receive a notice of disapproval within 30 days after submission of the design materials, or if a resubmission of the documents has been made under the provisions of Article 4 4 of this Lease Agreement, Tenant shall have the right to reapply to DAPCA for approval. If a reasonable justification for the refusal is not provided within the next thirty (30) days, Tenant shall have recourse to the provisions of Article 8 5 of this Lease Agreement

Article 4 4 Resubmission of Designs If the Sketch Plan or Working Design is disapproved by DAPCA, within 30 days after receipt of notification of disapproval, Tenant shall submit the duly corrected Design. The corrected Design shall be reviewed and approved in accordance with the same procedures applied to the initial design application

Article 4 5 Construction Deadlines Tenant shall obtain a building permit in the prescribed manner. Tenant shall begin construction on the land parcel no later than \_\_\_\_\_ days after working design(working documents) approval. Tenant shall complete construction and obtain a Certificate of Acceptance for the completed structure no later than \_\_\_\_\_ months after the effective date of this Lease Agreement

Article 4 6 Extension of Deadlines The dates for Tenant's submission of the Sketch Plan or Working Design and the dates for beginning and completing construction on the leased land may be extended if the reasons provided by Tenant for the extension are acceptable to the Administration. An extension of deadlines shall be accomplished by the contracting parties in the form of a

supplemental agreement attached to this Agreement Tenant shall notify Landlord and DAPCA of his need to extend the design and construction deadlines no later than 10 days prior to the expiration of the deadlines specified in this Agreement

Article 4 7 Use of the Leased Land Prior to Construction Prior to the beginning of construction, Tenant may use the leased land in accordance with its permitted uses, provided that this activity shall not in any way interfere with the beginning or conduct of construction within the time specified in this Lease Agreement

## **Section 5**

### **DEMOLITION, INFRASTRUCTURE, AND SERVITUDES**

Article 5 1 Design Approval by Other Agencies Approval of design documents by the Administration shall not relieve Tenant of his responsibility to obtain Design approval from other agencies or units at the federal, republic or city level in accordance with existing laws

Article 5 2 Permits and Payments Tenant shall obtain, in the prescribed manner, all permits and approvals necessary to conduct all work pursuant to this Lease Agreement and shall pay all fees due for such permits and approvals

Article 5 3 Family Relocation The procedures and conditions for relocating families living on the leased land shall be determined by agreement of the parties, which agreement shall be formalized in a special Protocol attached to this Agreement This Protocol shall stipulate the number of families, their present quarters, their requirements for new housing or the housing that they have already approved and accepted for relocation, if there are such agreements, and other information required to estimate the expenses required for relocation

Article 5 4 Demolition of Buildings and Structures The removal of buildings and structures located on the leased land shall be accomplished pursuant to the approved design documents at the expense of

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(Indicate Tenant or Landlord or their appropriate shares)

Article 5 5 Infrastructure Tenant shall obtain specifications for connection to all infrastructure and shall execute agreements for connection with the appropriate service companies and organizations Construction of infrastructure and installation of utility lines needed to construct buildings and

structures on the leased land and connections to infrastructure in accordance with the appropriate specifications and design documents shall be accomplished by Tenant and Landlord pursuant to the Protocol attached to this Agreement

Article 5 6 Access to the Leased Land Tenant shall ensure unimpeded access to the leased land

a) to Landlord or any supervisory body designated by him to inspect construction and/or Tenant's activities in performance of the provisions of this Agreement

b) to representatives of service companies to repair and service the infrastructure located on the leased land

Article 5 7 Construction Servitudes Tenant shall have the right to independently demand the establishment of servitudes required to construct and operate the buildings (facilities) provided for in this Agreement from owners of neighboring land and, if necessary, from owners of other land, and shall have the right to appear on his own behalf as one of the parties to the agreements establishing servitudes

Article 5 8 Servitudes for Use of the Parcel If it is necessary to establish servitudes that are not related to construction or use of the buildings and facilities provided for in this Agreement, but that are required to use the land, the right to demand the establishment of such servitudes and to appear on his own behalf as one of the parties to these agreements shall belong to Landlord Landlord shall, upon reasonable request from Tenant, demand the establishment of these servitudes or transfer the right to demand them to Tenant by a Power of Attorney In all cases, Landlord shall cooperate with Tenant to establish the required servitudes All payments and expenses related to the establishment of the servitudes indicated in this article shall be borne by Tenant

Article 5 9 Landlord's Cooperation with Tenant Landlord shall cooperate with Tenant in the preparation and adoption of official documents and permits Within ten (10) days after a written request from Tenant, Landlord shall

a) Together with Tenant, apply for permits, approvals, and other documents required by official bodies and needed for construction, and

b) Participate with Tenant to obtain the specifications and agreements for electricity, telephone lines, gas, water, sewer, heating and other infrastructure

Tenant shall pay all fees and payments related to these actions

**Section 6**  
**SUBLEASE AND TRANSFER OF LEASE**

Article 6 1 Sublease Landlord consents to Tenant's sublease of the whole or part of the parcel or facilities at any time during the term of this agreement without being required to obtain any additional consent from Landlord. The terms of the sublease agreement shall correspond to the terms and purposes of this Lease Agreement. Upon termination of this Lease Agreement for whatever reason, the sublease agreement shall also terminate. The length of any sublease agreements shall not exceed the term of this Lease Agreement. Terms of payment for the sublet parcel shall be established by agreement of Tenant and Subtenant. The Sublease Agreement shall be subject to State registration in the manner prescribed by law within ten (10) days from the time of execution of the Sublease Agreement.

Article 6 2 Assignment of Lease with Landlord's Consent Assignment of the lease (transfer of Tenant's rights and obligations under this Lease Agreement to a third party) during any phase of design and construction shall only be permitted with Landlord's written consent. Moreover, Landlord shall not refuse to give his consent without written indication of material reasons therefor.

Article 6 3 Conveyance of Real Property, Except for Residences The sale of real property built by Tenant under this Lease Agreement shall entail a transfer of leasehold rights to the buyers of the real property pursuant to Article 271 of the Civil Code of RF with the exception of the cases indicated in Articles 6 5 and 6 6 of this Agreement.

Article 6 4 Conveyance of Residences and Establishing a Condominium The sale of residences built by Tenant under this Lease Agreement may be accompanied by transfer of leasehold rights to the ultimate buyers of residences, provided Tenant established a condominium regime, created an association and registered them in the manner prescribed by articles 47 and 48 of the Federal Law "On Homeowners Associations".

Article 6 5 Conveyance of Title to the Land to Members of a Condominium When Tenant sells residences in a condominium built on the leased land, Landlord shall

(a) if individual homes (townhouses or individual detached houses) and land are being sold, terminate the lease under this Agreement and convey the land allocated for each house to the purchaser free of charge and convey land in common use to the common ownership of the association members, or

(b) if the residences being sold are part of an apartment building, then, after the creation of a condominium and a homeowners' association, terminate the lease under this Agreement and convey the land allocated for the condominium to the condominium association free of charge as their common property in the manner prescribed by current laws

## **Section 7**

### **MORTGAGE FINANCING, RIGHTS OF MORTGAGORS**

Article 7 1 Leasehold Mortgage Effective upon the registration of this Lease Agreement, Landlord consents to allow Tenant to mortgage his rights under the present Agreement to the existing and newly erected structures on the parcel without obtaining any additional consent from Landlord. A mortgage agreement shall be subject to mandatory state registration within ten (10) days after its execution.

#### Article 7 2 Rights of Mortgagors

a) In the event Tenant breaches a material term of this Agreement which provides Landlord the opportunity of early termination of the Lease, and should the latter decide to terminate the Lease, Landlord shall notify Mortgagor within ten (10) days from the time he made said decision, and shall provide the Mortgagor thirty (30) days from the time of receipt of the notification to cure the breach. Prior to the expiration of the thirty (30) day period indicated above, Landlord shall not take court action to terminate this Lease Agreement.

b) The Mortgagor has a priority right to conclude a lease agreement in his name as a legal successor to Tenant. If the leasehold is transferred to the mortgagor to recover against the mortgaged property under the mortgage (hypothecation) agreement, the Landlord shall not prevent the mortgagor's rights to the leased land from taking effect.

## **Section 8**

### **LIABILITIES OF THE PARTIES**

#### Liabilities of the Tenant

Article 8 1 Tenant's Failure to Perform Lease Terms The Tenant shall not have performed his obligations under this Lease Agreement if

a) Tenant shall not have paid the Rental Payment or shall not have extinguished a debt within ten (10) days after receiving notification from Landlord on the expiration of a payment deadline provided in this Lease Agreement.

b) Tenant shall not have performed other obligations, terms and agreements under this Lease Agreement, including the design and construction deadlines, within thirty (30) days after receiving notification from Landlord listing the Tenant's violations. A violation shall be considered cured if Tenant undertakes appropriate action to correct it within the thirty (30) day period and shall have corrected the violations within the time agreed upon by the parties.

Article 8.2 Penalties and Fines for Non-payment of Rent If the Rental Payment is not paid by the deadline specified in this Agreement, Tenant shall pay the Landlord a penalty in the amount of \_\_\_\_\_ percent of the total amount due, calculated from the date the indebtedness arose, for each day of delay, as well as a fine in the amount of \_\_\_\_\_ percent of the total amount due if payment is delayed thirty (30) days. The total amount of penalties, fees, and fines shall not exceed the amount of \_\_\_\_\_ of the annual rental payment. The payment of fines and penalties does not relieve Tenant of his obligation to perform under the terms of this Agreement.

#### Liabilities of the Landlord

#### Article 8.3 Landlord's Failure to Perform Lease Obligations

a) If Landlord shall have violated Article 1.3 of this Agreement or if defects in the land are found during construction, which defects are not shown in Article 1.2 and which partially or totally prevent use of the parcel, even if Landlord was not aware of these defects when this Agreement was concluded, or if Landlord fails to perform any other obligation under this Lease Agreement, Tenant shall send notification indicating the violations of the terms of this Agreement.

b) These defects shall be considered cured if Landlord undertakes appropriate action within a thirty (30) day period to correct them at no cost to the Tenant and shall have corrected them at no cost to Tenant within the time agreed upon by the parties.

c) Tenant shall have the right to extend the construction period, without the Landlord's consent, for the period of time it took Landlord to eliminate the above stipulated defects on the parcel.

Article 8.4 Tenant's Actions Against Landlord If Landlord fails to perform the obligations contained in Article 8.3, Tenant shall have the right, at his election, to make one of these demands on Landlord:

- a) a commensurate reduction of the Rental Payment,
- b) reimbursement of his expenses for eliminating the defects,
- c) withholding from the Rental Payment the amount expended to eliminate the defects,

d) early termination of the Lease Agreement if the defects can not be eliminated, after sending the appropriate notification to Landlord

Article 8.5 Force Majeure Neither the Landlord nor the Tenant shall bear responsibility for the failure to perform their obligations if the cause of the delay in performance of these obligations is the result of circumstances beyond their control (force majeure) The party that is not able to perform its obligations for the specified reasons shall notify the other party at the very first opportunity If the above-mentioned circumstances occur, the time for performing the obligations under this Lease Agreement shall be extended by the period such circumstances are in effect

## Section 9

### TERMINATION OF AGREEMENT AND TAKING OF LAND

Article 9 1 Actions Against Tenant for Failure to Perform If Tenant shall fail to perform his obligations under this Lease Agreement pursuant to Article 8 1 , then Landlord may take action to terminate the Lease Agreement early based on Article 619 of the Civil Code of RF (failure to pay rent when due on two occasions, waste of the leased property, etc ) as well as under the following circumstances

a) Tenant does not comply with the time for design and construction work with a deviation from the schedule of over six (6) months

b) Tenant fails to perform the terms of Articles 5 3 and 5 4

The Lease Agreement shall be terminated by decision of the Arbitration Court

Article 9 2 Sale of Realty If the Court renders a decision for early termination of the Agreement due to Tenant's failure to perform his obligations, all permanent improvements made by Tenant to the leased parcel shall be subject to mandatory sale by auction. The procedure for conducting the auction, the auctioneer and the procedure for distributing the money received from the auction sale shall be determined on the basis of the Court's decision

Article 9 3 Actions Against Landlord for Failure to Perform If Landlord shall not perform his obligations under this Lease Agreement pursuant to Articles 5 3 , 5 4 , 8 3 , and 8 4 , then Tenant may take action to terminate the Lease Agreement early in accordance with Article 620 of the Civil Code of RF. Tenant shall provide written notification to Landlord of his decision to terminate the Lease Agreement at least thirty (30) days before applying to the Arbitration Court

Article 9 4 Tenant's Ownership of Improvements If the Arbitration Court renders a decision for early termination of this Agreement due to Landlord's failure to perform his obligations, Tenant shall retain ownership of all improvements made by him to the leased parcel

Article 9 5 Compensation for Tenant's Damages In case of early termination of this Agreement due to Landlord's failure to perform his obligations, which termination affects the conduct and completion of construction, Tenant may obtain a decision from the Arbitration Court for

a) Tenant's losses related to Landlord's failure to perform his obligations under this Agreement, and

b) a fine imposed on the Landlord for his failure to perform the terms of this Lease in the amount of \_\_\_\_\_ percent of the annual Rental Payment in effect at the time of the Agreement's termination

Article 9.6 Special Conditions for Early Termination of the Lease Agreement for State and Municipal Needs Early termination of the Lease Agreement for the purpose of using the land for state or municipal needs shall only be possible upon the request of authorized state agencies or local self-governance representative body. The demand for early termination of the Lease Agreement for the purpose of using the land for state and municipal needs and a taking of the improvements made Tenant to the land shall not be granted if the state agency or city administration that submitted this demand to the Court does not provide evidence that the new public use of the land is impossible without termination of the lease under this Agreement. A taking (total or partial) of the improvements made by Tenant to the leased land during early termination of the Lease Agreement for the purpose of using it for state and municipal needs shall be done in compliance with Articles 279-282 of the RF Civil Code. If a decision is made by an authorized agency for early termination of the Lease Agreement for the purpose of using the land for state and municipal needs, Tenant shall be notified of the termination date no less than 12 months in advance, counting from the date the decision was made.

**Section 10  
MISCELLANEOUS**

Article 10.1 Disputes and Disagreements In case of disputes and disagreements between the parties to the present Lease Agreement, the parties shall settle their differences by drawing up a protocol on settlement of differences within thirty (30) days. If the differences are not settled by drawing up a protocol, all disputes and disagreements arising under this Lease Agreement shall be submitted to the Arbitration Court.

Article 10.2 Notifications Any notification or message related to this Lease Agreement shall be considered properly sent upon its dispatch by prepaid registered mail with notice to the following addresses:

(a) To the Tenant \_\_\_\_\_  
\_\_\_\_\_

(b) To the Landlord

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All changes of addresses shall be provided to the parties to this Lease Agreement, each to the other, within ten (10) days

Article 10 3 Preliminary Documents and Understandings Unless otherwise provided in this Lease Agreement, this Agreement shall be superior to any other written documents or oral agreements between Tenant and landlord that existed before this Lease Agreement became effective, and in the event of any inconsistency between such written documents and oral understandings and this Lease Agreement, the latter shall take precedence

Article 10 4 Deviations and Changes Any deviation from or change related to the restrictions, terms or agreements in this Lease Agreement shall be made in writing and signed by the other party with the exception of the cases provided in Articles 3 2 and 8 3 (c) of this Agreement A deviation by one of the parties from performance of any of its obligations shall not be effective if it is not formalized in a written document supplementing this Lease Agreement Oral agreements on deviations from or changes to obligations shall have no effect

Article 10 9 Legal Addresses

Landlord \_\_\_\_\_

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Tenant \_\_\_\_\_

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Landlord

Tenant