NEW TECHNIQUES IN PUBLIC HOUSING

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INTRODUCTION

By a Memorandum of August 17, 1967, to Secretary Robert C. Weaver, President Johnson announced with dramatic suddenness his approval of "a pilot program, under existing authority, to stimulate private enterprise to build and manage low-income housing"; and he directed Secretary Weaver "to institute . . . a project of the type recommended by the Commission so that the desirability of a large scale program along these lines can be determined as soon as possible."  

The "Commission" referred to by the President was his Committee on Urban Housing, chaired by Edgar F. Kaiser, and representing a cross-section of industry, banking, and labor. Its recommendations are contained in a Memorandum dated August 16, 1967, which mentions that the proposal had been submitted by Secretary Weaver to the President, who then requested the Kaiser Committee to review it. The Committee concluded that the proposal "deserves prompt attention."  

The same Memorandum explained that the new program is a variation of the "Turnkey" public housing program, which was already underway. Under that program private developers build housing for sale to local public housing authorities; the new feature proposed by Secretary Weaver was the application of the Turnkey principle to management of public housing projects by private firms.

This article will first discuss Turnkey I, the production of housing by private developers for sale to public housing authorities; then it will treat Turnkey II and the even more recent Turnkey III. Next, the article will consider the utilization of privately owned, existing, or to-be-constructed housing for low-income families financed under section 236 or section 10(c) of the United States Housing Act. Un-

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1 Memorandum from President Johnson for Secretary Weaver, Aug. 17, 1967, in 3 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1166 (1967).


3 The original program of sale to local public housing authorities is designated in this article, and has been referred to elsewhere, as Turnkey I.

4 This later-conceived program is often termed Turnkey II. The management of the public housing can be by nonprofit groups, profit-motivated enterprises, or organizations of the occupants.

5 Turnkey III is a designation for a program which contemplates ultimate ownership by the occupants of the public housing, this ownership being attained through lease-purchase and self-maintenance arrangements. The program was developed subsequent to the Kaiser Memorandum, supra note 2; but it was anticipated in Secretary Weaver's proposal and in the Memorandum.


der these provisions, various arrangements are possible to achieve low-income and middle-income housing combinations—including home-ownership—in a completely "private" or "nongovernment" setting. Finally, there will be discussed new approaches to federal-local governmental cooperation in carrying out such federally assisted projects.

For simplicity, the article will not deal with Turnkey rehabilitation; but the reader will recognize its applicability to property which is rehabilitated for ultimate sale to the housing authority. Indeed, Turnkey, in an informal way, started with the "Used House" program in Philadelphia, financed by the Public Housing Administration. Under this program, 1,000 scattered row-houses have already been completed; and an additional 5,000 units (3,300 to be rehabilitated and 1,700 to be replaced over a three-year period) were contracted for in the spring of 1967.

For all of the programs discussed here, the basic federal vehicle is the United States Housing Act, which is currently administered in the Department of Housing and Urban Development (HUD) by the Housing Assistance Administration (HAA). The local instrumentality is the public housing authority, which exists under the housing authorities laws of the various states. These laws are in force in every state except Utah and Wyoming and also apply on eighty Indian reservations (including reservations in those two states) and in Puerto Rico, the Virgin Islands, and Guam. Federal public housing legislation includes almost any public body engaged in slum clearance or low-income housing; but the necessity of marketing local tax exempt obligations excludes other than local housing authorities from the program, except for the leasing programs, which do not require the issuance of such obligations.

I

Turnkey I

The term Turnkey, although long in common usage in other areas, entered the public housing field on January 20, 1966, when Secretary Weaver, two days after his appointment, announced an experimental program of Turnkey public housing. Under this program the local housing authority (LHA) would contract for a com-
pleted development to be produced by the developer on his own land and with payment to be made upon the “turning over the keys” of the development to the LHA.

Although simple in concept, the Turnkey system completely reverses the traditional method of producing public housing—site acquisition by purchase or condemnation, preparation of competitive-bidding type plans and specifications by an architect retained by the LHA, competitive bidding and award, and construction by the low bidder. This “conventional” system followed the pattern of public construction with its built-in safeguards and its concomitant built-in delays and expenses. More important from the standpoint of residential construction, the system excluded the great bulk of private entrepreneurs engaged in private construction and thereby lost the potential benefit of their expertise and efficiency, developed in the residential field through competition for public acceptability. The purpose of Turnkey was to permit more adequate utilization of the means and knowledge of private enterprise in producing the finished public housing.

Fortunately, this method of procuring public housing is authorized by federal and state public housing legislation. Federal law authorizes financing of the “acquisition” as well as the “development” of public housing. Similar wording appears in the state enabling acts.

Fortunately, too, the federal provisions which permit a federal guarantee for the issuance by local housing authorities of obligations which will finance the capital cost and subsidies for public housing also authorize the providing of federal guarantees whereby private developers can obtain interim financing to develop projects for sale to the housing authorities. However, it was necessary to develop special contract provisions in close association with lending institutions and developers, so that there would be no doubt that the provisions in the United States Housing Act, developed and nurtured meticulously over thirty years to assure the sanctity of local housing
authority notes and bonds, would similarly assure the federal government’s commitment to the developer of Turnkey housing and to his lender.

This commitment is that if the developer complies with the Letter of Intent and the Contract of Sale, in accord with their terms and with the plans and specifications for the project, then the housing authority will carry out its obligations under the Letter of Intent and the Contract of Sale. Furthermore, if the housing authority fails for any reason to carry out its obligations, whether the failure stems from inability or unwillingness, the federal government has, and will exercise, the unilateral right to take possession or title and proceed to perform in place of the housing authority. Thus, even if an injunction should be issued against the housing authority to prevent it from performing, the federal government agrees to fulfill the authority’s obligation. Then with possession of, or title to, the project, the federal government could remove the court proceeding to the federal courts and the contract would thereafter be carried out as a federal contract pursuant to the United States Housing Act. When lending institutions and the legal profession become fully aware of the "performance

\[\text{(The pertinent clause of the Annual Contributions Contract reads as follows:)}\]

"The Local Authority will acquire Project No. — pursuant to a Contract of Sale to be entered into between the seller and the Local Authority. Prior to the execution of such Contract of Sale the Local Authority may issue a Letter of Intent to the seller to enter into such Contract. Such Letter of Intent and such Contract shall bear the written approval of the Government. Failure of the Local Authority to expeditiously continue the undertaking of the Project or to comply with the Letter of Intent or Contract, or if the Letter of Intent or Contract is held to be void, voidable or ultra vires, or if the power or right of the Local Authority to issue the Letter of Intent or enter into the Contract of Sale is drawn into question in any legal proceeding, or if the Local Authority asserts or claims that the Letter of Intent or Contract is not binding upon the Local Authority for any such reason, the occurrence of any such event, if the seller is not in default, shall constitute a Substantial Default for the purpose of Article V hereof and, in such case, the Government will continue the undertaking of the Project and will take delivery of such right, title or interest in the Project as the Local Authority may have and perform such Letter of Intent or Contract of Sale, as the case may be. The provisions of this paragraph are made with, and for the benefit of, the seller and his assignees who will have been specifically approved by the Government prior to such assignment. To enforce the performance of this provision the seller and such assignees, as well as the Local Authority, shall have the right to proceed against the Government by action at law or suit in equity. In order to assist in financing the acquisition cost (herein called Development Cost) of the Project the Government, notwithstanding the provisions of Sec. 410, shall lend to the Local Authority an amount equal to the Maximum Development Cost of the project: Provided, that the Government shall not be obligated to make annual contributions with respect to the Project until the Local Authority has sold an issue of its Bonds to finance such cost."

In connection with the last sentence of this clause, see also 42 U.S.C. § 1409 (1964), which limits loans to 90% only at the point where the annual contribution is actually to be paid. By implication, therefore, this section allows a 100% loan prior to that time.

U.S. HOUSING ASSISTANCE ADMINISTRATION, DEP’T OF HOUSING AND URBAN DEVELOPMENT, LOW-RENT HOUSING MANUAL, § 221.1, exhibit I (Sept. 1967) [hereinafter cited as LOW-RENT HOUSING MANUAL], contains the following statement with respect to this contract clause:

"The developer will undertake the construction financing in his usual way. However, under the above annual contributions contract provision, he and his lender can rely upon performance of the contract by the Federal Government, if necessary, from the time of the execution of the Letter of Intent through the conveyance of the property. The developer and lender are assured that the transaction will be consummated either with Local Authority or with Government funds. If it is deemed desirable, an arrangement could be made whereby payment by the Local Authority, or by the Government, would be made directly to the lending institution."
take-out" guaranteed by the federal government, they should have no question as to the security of the local housing authority's commitment.

On the other hand, HUD has been careful to make as certain as possible that the lending institution which provides the interim financing is responsible, along with the developer, for the completed result.20 This, indeed, is a key feature of the Turnkey system. The housing authority does not require any special guarantee, performance bond, or other assurances of the competency of the developer; its safeguard is that it makes no advances to the developer and does not pay until it is provided with the finished result in compliance with the requirements of the Contract of Sale. Any assurances that the lender requires of the developer are completely within its domain; and if the developer cannot find a lending institution which will finance him, then he cannot participate in a Turnkey project.

While some federal requirements for public construction, such as equal opportunity in employment20 and the requirements of the Davis-Bacon Act,21 continue to apply, others do not, including requirements as to performance and payment bonds.22 Similarly, the usual provisions concerning delay, damage, and liquidated damages are not part of the arrangement, for the simple reasons that they are not required by law and that the running of interest and overhead against the developer is a self-policing limitation on delay. The benefits to the developer for completion ahead of schedule provide an additional incentive for promptness.

Under the revised procedures contained in section 221.1 of the HUD Low-Rent Housing Manual,23 the developer is selected from among others on the basis of his site and the feasibility and desirability of his proposal. No formal advertising is required because each site is unique and, as it belongs to the developer, would not be susceptible to competitive bidding.24

The selection is made by the local housing authority on the basis of very inexpensive general outline information submitted by interested developers; and the selected developer is given a "Letter Designating Turnkey Developer,"25 which advises him that his proposal has been approved and requests him to proceed with preparation of the necessary preliminary drawings and specifications and the state-

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20 In short, the lending institution out of its own self-interest should make sufficient inspections to assure that the developer is complying with the terms of the Letter of Intent and the Contract of Sale; if the developer does not provide the specified finished product, then the housing authority is not obligated to perform.
21 Form HUD-53010, Annual Contributions Contract, Part One, § 304; Exec. Order No. 11,246 (Sept. 24, 1965); Low-Rent Housing Manual § 221.1(8b).
22 40 U.S.C. §§ 276a to 276a-5 (1964); Form HUD-53011, Annual Contributions Contract, Part Two, § 115(B); Low-Rent Housing Manual § 221.1(8b).
23 Low-Rent Housing Manual § 221.1 does not require performance or payment bonds for turnkey projects.
24 Issued in September 1967.
25 The time-honored "uniqueness" of land, which is the basis for the right to specific performance of contracts for the sale of realty, provides the justification for the housing authority's use of "negotiation," rather than competitive bidding.
26 Low-Rent Housing Manual § 221.1, exhibit 3. Exhibit 3 is reprinted as an appendix to this article.
ment of selling price required for the Letter of Intent. The developer then proceeds, at some expense, to prepare these documents and to comply with other requirements. The data and material supplied by the developer must be fairly complete because they provide the basis for two independent cost estimates of the proposed development; and on the basis of these estimates the Letter of Intent price is negotiated by the housing authority, with the approval of the Housing Assistance Administration.

A key safeguard in the Turnkey process, both from the standpoint of the developer and of the government, is the cost estimating step. It is essential, therefore, that both the developer and the cost estimator know as nearly as possible the items of cost to be considered. The Turnkey process needs further development in this regard because of the relative absence in this country of a cost estimating profession. Unlike appraising, cost estimating in the United States is generally done very informally and not on a fee basis. Moreover, the estimate usually includes only those elements having to do with direct construction costs. Such items as financing costs, taxes on land and improvements during construction, overhead and profit, entrepreneur and builder's risk must be specifically called to the attention of the cost estimators.

Section 221.1 includes a standard cost estimating contract, and an exhibit to this contract contains a summary of items of cost; but it is not complete and will be supplemented in the future. The amount of such items as overhead, profit, and developer's and builder's risk is not specified. Therefore, the cost estimators are required to state what they consider reasonable for those items in that locality for that type of contract or arrangement. This flexibility was provided deliberately to take account of the variations that occur with the locality and with the risk involved under different circumstances. The requirement that these amounts be stated specifically, justified by the cost estimators, and subject to review by the local housing authority and by the HAA should (a) afford adequate safeguards through exposure and (b) eventually provide a guide to the establishment of standards.

The land is also subject to two independent appraisals, which serve as guides for determining the value attributable to the site. The combined land appraisals and cost estimates, together with the developer's asking price, form the basis upon which the housing authority and the HAA negotiate the Letter of Intent price. That price is of key importance because it will be the final price, subject to modifications based on the conditions set forth in article four of the Letter of Intent.

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26 The developer is now involved in Phase II of the procedure for developing a turnkey project. This Phase covers the period from the Development Conference through Execution of Letter of Intent. See Low-Rent Housing Manual § 221.1.

27 The writer infers that the cost estimating profession is much more formally developed in the United Kingdom where chartered quantity surveyors may be retained to provide a "package" type of cost estimate. See Royal Institution of Chartered Surveyors, The Services of the Chartered Quantity Surveyor (April 1966).

28 Low-Rent Housing Manual § 221.1, exhibit 6, exhibit A.

29 Low-Rent Housing Manual § 221.1, exhibit 8. Exhibit 8 is reprinted as an appendix to this article.
After the Letter of Intent price is established, a third Phase of the turnkey procedure is entered. In this phase, the developer's architect produces final working drawings and specifications, and the two cost estimators are each required to provide an independent up-to-date cost estimate based on these final plans.

Article four of the Letter of Intent then comes into play. If the midpoint of the cost, based on the two final cost estimates, is above the Letter of Intent price, the developer must produce the project for the Letter of Intent price. If the midpoint is within five per cent below the Letter of Intent price, the developer must produce the project for the price established by that midpoint. If the midpoint is less than ninety-five per cent of the Letter of Intent price, then either party is free to withdraw from the transaction or to negotiate a price satisfactory to the local housing authority and to the HAA. Article four provides further that, if a negotiated price cannot be agreed upon, the developer, at his option, may sell his land and plans to the housing authority for prices previously established and may be reimbursed for his expenses up to that point. In the event of such reimbursement, cost certification is required. Also, an additional fee is permitted to the architect for revising the plans to make them suitable for competitive bidding.

By this method both the developer and the government benefit. The developer benefits because he knows that, once he has received a Letter of Intent, his risk is minimal; even if a Contract of Sale does not result, he can, at his option, be reimbursed for the bulk of his investment and expenses. Under those circumstances, the housing authority will obtain a site, which it has already approved, and plans, which, after revision, can be used as a basis for advertised bidding.

In any case, the Turnkey procedure tends to telescope the time and expense involved in acquiring the site and developing final plans for the public housing project. Since the period up through the development of final plans probably accounts for the greatest delay in procuring public housing, the saving of time provided at this point by the turnkey procedure is a considerable benefit.

In addition to a saving of ten to fifteen per cent in cost, Turnkey also provides greater speed and volume—unquestionably prime considerations in its adoption by HUD and by the President. By its very nature Turnkey forces a compression of time; the developer's own overhead, interest, and other costs are running during the development period and so he expedites the transaction by pressure on his staff, his architect, and the staffs of the local or federal agencies involved. This pressure, which does not exist in the conventional system of procuring public housing, makes it possible to envisage an interval of only seven to nine months from approval of any application by the housing authority up to the start of construction. The average

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20 See Low-Rent Housing Manual § 221.1. This Phase extends from the Letter of Intent through execution of the Contract of Sale.
21 The time span is illustrated in the chart contained in Low-Rent Housing Manual § 221.1, exhibit 2, where the thirty steps from approval of a program reservation up to the start of construction are set forth along with the time periods involved.
is twenty-eight weeks; but standard plans permit a much shorter period, while high-rise complicated construction will probably require a longer period because of the architectural and engineering work involved.

The pressure of time and need resulted in Secretary Weaver’s directive of September 7, 1967, which provides the basis for a priority system for projects that can be under construction within nine months. While many public housing projects to be produced conventionally will probably be able to qualify, because they already are in advanced stages, only Turnkey has so far been able to achieve anywhere near this time schedule. The average period has been between three to four years for “conventional” public housing.

Of special interest is the possibility of constructing Turnkey I on urban renewal sites. In view of the considerable amount of unused urban renewal land and the greater emphasis on utilization of urban renewal powers and funds to provide housing for low- and middle-income families, urban renewal sites and the use of urban renewal or urban redevelopment powers to generate sites should receive special attention.

The developer in such cases would be selected on the basis of the desirability and feasibility of his proposal by the local public renewal agency (LPA). He would then be provided with an appropriate contract under which he would be authorized to approach the LHA with the proposal to build a Turnkey development for sale to the LHA. When he satisfies the LHA to the point of execution of a Letter of Intent, he is provided with title to the site on which to build the development. If he fails to satisfy the LHA, his right to proceed is withdrawn, and the site made available to another developer.

The utilization of urban renewal or redevelopment powers should become increasingly important as in-town sites become harder to obtain and more costly. Such powers can be used much more flexibly, selectively, and specifically for land assembly for low- and middle-income housing than has heretofore been the case. Especially important and unusual are the possibilities of utilizing the state statutory powers of acquisition, clearance, and rehabilitation for generation of sites and properties for Turnkey development apart from federal urban renewal assistance. These powers are very broad and flexible and, because they need not be circumscribed by federal urban renewal requirements, could separately provide a major source of Turnkey sites. The significance of this possibility should be understood in light of the fact that the great majority of Turnkey developers will be builders who will have to find sites or look to others for land. Such builders will be eager for ready-made sites or properties supplied by the LPA and will complete for their use.

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In those states where the LPA and the LHA are the same, the developer would be selected by the local agency in its LPA capacity.
Turnkey II was announced by the President as a pilot program to invite private management firms to operate public housing projects. The genesis was Secretary Weaver's recommendation approved by the Kaiser Committee on August 16 and announced by the President on August 17. The purpose stated by the Kaiser Committee was that the "private management concept could encourage the development of a management industry skilled in handling the special problems of operating low-income housing." Other possibilities cited by the Committee were reductions of cost and of prejudices against public housing and the introduction of competing private professional management techniques to encourage flexibility in the traditional management approach of local public housing authorities.\(^3\)

The first three pilot projects announced by Secretary Weaver at his press conference of August 25, 1967, illustrate the ways in which the principle could be applied. The first of the three is of particular interest because it involves the Lavanburg Foundation project, originally conceived in 1964 for a four-block development in the Bronx in New York City and comprising low- and middle-income housing with commercial, recreational, medical, and community facilities to serve not only the 930-unit project but also the surrounding area. Under this arrangement, the housing authority purchases, on the Turnkey I basis, an undivided interest in the entire project; and thereby it is able to subsidize a portion of the families in the project. The project will be constructed for the Lavanburg Foundation by a private builder and will be managed by a private management firm under a contract with Lavanburg which covers its responsibilities regarding the low-income aspects of the project. The purpose of the entire concept in this instance is to provide a private environment for the public housing tenants in a rental project which is privately-publicly owned on an undivided interest basis. Thus, the low-income families are enabled to stay in the development even though their rents increase above public housing limitations and the middle-income families are enabled to benefit from the public housing subsidy if their income should go down. The undivided interest arrangement, together with flexibility achieved through some use of the leasing program referred to later in this article, makes it possible for the families to be unidentified publicly as to income category and to remain in their units; the transfer between low- and middle-income simply takes place on the books of the managing organization.

The pilot Turnkey II project approved in St. Louis points to the social aspects of the private management function; the Executive Director of the St. Louis Housing Authority announced that, in looking for a private firm to undertake the management of an existing public housing 700-unit project, the Housing Authority "must continue to retain its interest in the social needs of the tenants and put forth its

\(^3\) Kaiser Memorandum, supra note 2.
efforts to assist private management by involving many public and private organizations in the community with respect to the social needs of tenants." The third pilot project will involve private management of a Turnkey I development in Indianapolis.

The first group of Turnkey II projects show that they do not necessarily involve a Turnkey I development. Projects of the Lavanburg type appear to offer the greatest possibility for early consideration. A number of this type are already in prospect—some on urban renewal sites and comprising fairly large areas. Their common characteristics are combinations of middle- and low-income housing, community, recreational, and commercial facilities. They are usually either totally or predominantly privately-owned and thus provide a natural setting for private management. Such projects can and will include combinations involving rent supplement, 221(d)(3) below-market, public housing leasing, and public housing Turnkey components.

Perhaps the most interesting and significant Turnkey II involvement is in connection with the North Gulfport, Mississippi project, which utilizes Turnkey I, Turnkey II, and Turnkey III. Turnkey II is different in the context of this project because the ultimate purpose is homeownership for the occupants—achieved in part through a "sweat-equity" developed by maintenance of the property by the occupants, rather than by the LHA.

Turnkey II in the setting of this project will involve first an interim "management" organization which, before the development is constructed, will contract with the LHA to assist in the selection of the types of families most suited to a homeownership-type development and to provide the selected families with intensive pre-occupancy training in how to live in and maintain their homes, develop financial neighborhood responsibility, and so forth. The interim Turnkey II contractor will also provide post-occupancy training and guidance and will help the occupants organize themselves into a self-management homeownership association. The homeownership association will then become, in effect, the Turnkey II management contractor vis-à-vis the LHA, since it will be the organization responsible collectively for management of the development and will represent the occupants as a group with respect to their financial and property rights.

While it was assumed that professional private real estate management firms would be the source of Turnkey II contractors, it appears that the type of expertise involved in the training of occupants might very well be the subject for exploration by the large industrial enterprises which have contracted to undertake technical training in connection with government-sponsored educational or job-training programs. This approach seems especially promising in the case of homeownership type projects,

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See Home Ownership Pilot Program Through Turnkey Process Announced by Secretary Weaver, HUD Press Release No. 4538, Sept. 18, 1967. Turnkey III, which involves homeownership, is discussed later in this article.
where greater emphasis will be placed on total maintenance of the units and on training in homeownership responsibilities, family budgets, savings, and so forth.

As is apparent, there are no definitive guidelines for the type of Turnkey II management agreements that are possible. The assumption is that they will range from minimum to maximum involvement of the private management organization in the social problems of the tenants. Naturally, the staffing and fees will vary accordingly; and the receptivity to such arrangements will also differ with the groups involved and with the desires of the particular local housing authority.

The Supreme Court recently considered, but did not decide, the question of the extent to which the local housing authority is in the position of the conventional landlord.35 The problem might vary under the private management contract. The dozens of suits involving tenants' rights with respect to admission, eviction, and rights to hearing, and the far-reaching legal issues involved, are beyond the scope of this article. However, the involvement of private management adds an interesting new dimension to the growing body of discussion and concern about the relationship of landlord to tenant, especially where government subsidization is involved.

III

**Turnkey III**

Turnkey III was first announced by Secretary Weaver in the press release of September 18, 1967,36 which provided the background for the Turnkey I, II, and III project to be developed in North Gulfport, Mississippi. A Turnkey III project is a project owned by the LHA which provides private ownership opportunities for the low-income occupants. Initial ownership by the LHA distinguishes Turnkey III from the homeownership systems which are being separately developed under the leasing program discussed later in this article.

Under Turnkey III as exemplified by the North Gulfport project, the tenants will be given lease-purchase contracts when they have earned, out of the self-maintenance of their units, a “sweat equity” of at least $350. All the tenants will need to have is sufficient income so that twenty per cent of that income will cover all maintenance, operating, and administrative expenses, including utilities. As the income of the tenants increases, they will be required to continue paying twenty per cent of their income for rent, thus reducing the federal subsidy which is available for the debt service on the obligations issued by the LHA to pay for the acquisition under the Turnkey I contract. Tenants who wish to acquire ownership sooner can contribute more than twenty per cent of their income, and such additional contribution will be added to their maintenance “sweat equity” to enable them to purchase the unit more quickly.

36 Home Ownership Pilot Program Through Turnkey Process Announced by Secretary Weaver, supra note 34.
While they are occupying these units as low-income families, the families will be receiving the benefits of the federal subsidy available for public housing—that is, the amount, which, in addition to what they can afford, is required to meet debt service. If the family income should increase to the point where the family is ineligible for public housing, it is required to purchase the house for the balance then remaining unamortized, to which will be applied the amount in its equity account. The family should be able to obtain a loan for the balance from private sources. That unit would then stop receiving federal subsidy and would go on to the tax rolls, thus fulfilling both federal and local requirements that only low-income families can receive federal subsidy and the benefits of local tax exemption.

The over-income family has the choice of not purchasing the house and moving from the project. In that event, it can take the amount remaining in its equity account with it; but it cannot receive the benefit of the reduction of the debt on the house through the combination of its rent payments and the federal subsidy. The new family moving into a vacated house has to earn the minimum maintenance "sweat equity" in order to get a lease-purchase contract; and the second family's rights to purchase of the house are based on the fair value appraisal of that house or the unamortized balance, whichever is higher.

Turnkey III is patterned after the HAA-assisted mutual-help program on Indian reservations which was developed by administrative interpretations in November 1962. Under that program a group of Indian families helps to construct their own houses and thereby earn an equity from fifteen to twenty per cent. The amount representing this equity is not advanced by HUD but is available at the request of the LHA in the event that it determines the occupants do fail to maintain their houses adequately during their lease-purchase occupancy. If the occupants maintain their own houses and do not use this equity, they are able to have full title in about fifteen to seventeen years. If the equity has to be used for maintenance, obtaining title is necessarily deferred.

The essential difference between the Indian reservation program and Turnkey III stems from the fact that the Indian family initially develops a considerable equity, which has the immediate effect of reducing the capital cost, or principal; and the family is fully obligated initially to maintain its own house, upon penalty of reduction of this equity and postponement of acquisition of title. The Turnkey III type project assumes no initial principal reduction through "sweat equity," but a gradual building up of earned equity through self-maintenance and through voluntary payments by the family above the required twenty per cent of its income.

The Indian mutual-help program was developed prior to the amendment of the United States Housing Act of 1937 by the Housing and Urban Development Act of

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Footnote: Memorandum on PHA Mutual-Help Housing Program in Conjunction with the Bureau of Indian Affairs, from PHA General Counsel for PHA Commissioner, Nov. 30, 1962, as transmitted by PHA Circular on PHA Mutual-Help Housing for Indians, Dec. 5, 1964, and as issued by the Commissioner to all Regional Directors.
1965\textsuperscript{38} which added section 15(9) authorizing sale of detached or semi-detached public housing units.\textsuperscript{39} The legislative history of that amendment stated clearly, however, that it was not intended to limit any authority to sell pursuant to other provisions of the Act; and Turnkey III has been developed pursuant to these other provisions.\textsuperscript{40}

The major advantages of the Turnkey III, Indian mutual-help, and homeownership programs being developed under the leasing powers\textsuperscript{41} are that, with essentially the same subsidy as in conventional rental public housing (or even less, due to the savings resulting from the self-interest of the tenants in their own property and the more rapid amortization of the federal debt covering the capital cost) low-income families are able to aspire to homeownership. Moreover, there is absent the danger inherent in other proposed systems which provide the family with title that they will lose the property if they cannot carry through on their mortgage obligations. While it is true that the family, in the programs discussed in this article, initially has only a lease-purchase contract and not full title, its right to purchase is fully protected if it meets its obligations and maintains its property.\textsuperscript{42} Its earned equity is available additionally to enable it to acquire title sooner and belongs to it if it should wish, or be compelled, to leave the project. The great advantage to the family, however, is that, at the worst, it will be able to continue living in the unit as a renter at the minimum rent; and if it should be able to do nothing more than pay for LHA administrative expenses and take care of maintenance and its utilities, the lease-purchaser and occupant will still acquire ownership at the end of the amortization period.

IV

Leasing Privately Owned Housing

The involvement of the private sector in construction and management and the possibility of ownership for tenants is not limited to Turnkey I, II, and III which involve publicly owned housing. These objectives can also be accomplished by utilizing privately owned existing housing in good condition or to be rehabilitated, or new housing to be constructed, which the housing authority leases or


\textsuperscript{40}The Senate Committee commented,

"The committee commends existing efforts to promote policies and programs providing homeownership possibilities for low-income tenants, such as the mutual-help housing plan for Indian reservations. The provisions of the bill are intended to provide specific authority for sale of public housing units to its tenants, under appropriate circumstances and conditions and subject to prescribed standards, which might not otherwise be authorized by the other provisions of the U.S. Housing Act. They are intended to supplement and not to inhibit the efforts of the PHA to provide other homeownership incentives and possibilities for low-income families.""


\textsuperscript{42}Discussed in part IV infra.

\textsuperscript{43}In many states it is not unusual for land to be purchased under a lease purchase arrangement or through an installment sale contract with title reserved by the seller. Thus, there is nothing extraordinary about the use of the lease-purchase in connection with Turnkey II.
agrees to lease from the private owner or developer for low-income families eligible under public housing rules. The arrangement may alternatively provide for a lease between the owner and the tenant with the LHA agreeing with the owner to carry out the lease terms, including full payment to the owner of the rent and maintenance of the property if the tenant fails to do so. The necessary subsidy is provided by HUD through the HAA under either section 23 or section 10(c) of the United States Housing Act. As in the case of Turnkey, the local powers are derived from provisions in the state laws which authorize housing authorities to lease or otherwise contract for the provision of housing for low-income families.

The federal provisions are limited to the leasing of existing housing. However, the state provisions are not so limited, and housing authorities may contract for the leasing of dwellings to be constructed or rehabilitated. The federal annual contributions contract which assures the necessary federal subsidy restricts the commitment of federal funds until the units are actually constructed in compliance with the requirements of the federal statute which limits the contributions to "existing" structures. Thus, with respect to new construction (or to units to be converted or rehabilitated), there is involved the same Turnkey principle and mechanism as in Turnkey I, that is, the federal assurance that, when the units are brought into

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43 § 23, 42 U.S.C. § 1421b(c) (Supp. II, 1965-66) provides:
"The annual contribution under this chapter for a project of a public housing agency for low-rent housing in private accommodations under this section in lieu of any other guaranteed contribution authorized . . . shall not exceed the amount of the fixed annual contribution which would be established under this chapter for a newly constructed project by such public housing agency designed to accommodate the comparable number, sizes, and kinds of families."

Substantially the same formula is contained in the last provision of § 10(c), 42 U.S.C. § 1410(c) (Supp. II, 1965-66):
"And provided further, That the amount of the fixed annual contribution which would be established under this chapter for a newly constructed project by a public housing agency designed to accommodate a number of families of a given size and kind may be established, as a maximum annual contribution in lieu of any other guaranteed contribution authorized under this section, for a project by such public housing agency which would provide housing for the comparable number, sizes, and kinds of families through the acquisition, acquisition and rehabilitation, or use under lease of existing structures which are suitable for low-rent housing use and obtainable in the local market."
(Emphasis added.)

"As used in this section, the term 'low-rent housing in private accommodations' means dwelling units in an existing structure, leased from a private owner, which provide decent, safe, and sanitary dwelling accommodations and related facilities effectively supplementing the accommodations and facilities in low-rent housing assisted under the other provisions of this chapter in a manner calculated to meet the total housing needs of the community in which they are located; and the term 'owner' means any person or entity having the legal right to lease or sublease property containing one or more dwelling units as described in this section."

Although the federal and state laws refer to leasing, they do not require that the leasing be by the housing authority to the tenant. Instead, an arrangement would be permissible whereunder the housing authority did not serve as lessor but participated by providing a subsidy under the annual contribution contract. Such an arrangement would be consistent with § 23(a)(3) and § 23(d) but might not be subject to certain limitations of state law that apply when the housing authority is itself the lessor.

45 The contract contains a proviso that "the Local Authority shall not commit any annual contribution hereunder in respect to such dwellings until they have been constructed."
existence (or brought up to the agreed-to condition in the case of rehabilitation), the housing authority will have the funds available to meet its commitment to the developer, and that if the housing authority does not meet its commitment, the federal government will.

This arrangement provides an extremely flexible method of (1) making use of existing housing in good condition to absorb vacancies, (2) inducing the rehabilitation, conversion, or modernization of substandard or unsuitable housing for low-income use, and (3) inducing the construction of new housing. In every one of these categories, if the owner is willing, suitable and very attractive arrangements can be worked out for providing the tenants with lease-purchase contracts which enable the tenants, as their incomes increase, to become owners. As of this writing, the homeownership aspects are well along in being worked out. The problem areas lie in establishing the appropriate price for the rehabilitated or newly constructed unit; the protection of the lease-purchase tenant’s equity against the insolvency or bankruptcy of the owner and possible prior liens; and the capital financing required for the rehabilitation, improvement, or construction of the units.

The type of private capital financing is especially important because it must result in sufficiently low monthly debt service to enable low-income families with about twenty per cent of their income, plus the limited public housing subsidy, to live in the units. Since the capital cost is not financed by tax exempt housing authority bonds or notes, and since the project is not exempt from local taxes as is the case of LHA-owned housing under the conventional or Turnkey I system, it is necessary to obtain the longest-term, lowest-interest private financing available. It is certain at this writing that such sufficiently long-term, low-interest financing can be worked out.

The types of dwelling units and the types of ownership are limited only by what is achievable by the private financing arrangements that exist or can be brought into existence. The most simple would be detached, semi-detached, row-house or town-house dwellings, capable of ultimate division under separate mortgage. More complex would be the planned unit development under which the common areas and facilities are owned in common. The system can be applied in condominiums as well as in cooperatives. Also, it can be applied to identified units comprising a portion of the private development as well as on the basis of an undivided share of the whole development. It goes without saying that the arrangements should be as simple as possible. There is a point of diminishing returns between ideal objectives that can be achieved (at least theoretically) by a complicated arrangement and the complications and delays that an intricate arrangement can cause in working out individual property interests.

From the standpoint of the types of developers that might be interested in such an arrangement, the most likely to involve major investment and activity are individual

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48 Except for §10(c) leasing, discussed at pp. 543-44 infra.
or corporate investors with sufficient income to be attracted by the accelerated depreciation over a ten-year period, during which the developer would usually wish to retain ownership and be assured of rental income and maintenance by the LHA with the federal back-up. From the standpoint of the public interest, arrangements can channel investments and activity that would otherwise go towards tax shelter areas not so crucially in the public interest as housing for low-income families, especially where such housing additionally can serve the purpose of promoting individual pride and self-reliance induced by the homeownership possibilities.

The public housing authority in these arrangements automatically serves an even lesser "government landlord" role than in Turnkey I, II, and III and a role which can be tailored to the minimum or maximum required to serve the interests of the owner-investor, on the one hand, who wishes to be relieved of responsibility, and the occupant-potential-owners, who need the subsidy and the training and guidance towards self-reliant ownership status.

The essential differences between section 23 leasing and section 10(c) leasing under the United States Housing Act are: (1) section 10(c) requires that all the local conditions relating to LHA-owned housing be met, including the existence of a "workable program," partial tax exemption or remission, and so on, while section 23 requires only that an approving resolution be passed by the governing body, and (2) section 23 provides for a maximum of five years with option to renew, whereas section 10(c) is not so limited. The latter difference does not stand in the way of working out an appropriate arrangement, however, since the option to renew can be made exercisable by the owner upon the meeting of certain conditions, thus assuring him or his lender that the length of the term is in his control.

The benefits of utilizing section 10(c) stem from the fact that it requires that local tax exemption or remission be provided equal to that required for LHA-owned housing. The United States Housing Act requires that LHA-owned housing be tax exempt but provides for payments in lieu of taxes (PILOT) not exceeding ten per cent of shelter rents (rents less utilities). These payments on a national average are about $40 per year. Since the property under the leasing arrangements discussed here is privately owned, it is normally not tax exempt; and therefore, section 10(c) requires tax remission equivalent to the difference between the value of full tax exemption and payments in lieu of taxes. This difference varies locality by locality but can often be as much as $300 per year. Where the difference is substantial, the effect of such tax remission is to permit the leasing program (using a twenty per cent ratio of income to rent) to serve a substantially lower income group (lower by $1500 per annum in the $300 case).

In so far as net loss to the community is concerned, the payments in lieu of taxes

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47 Depending on his tax position the developer might wish to build the project for almost immediate sale to a nonprofit corporation. The nonprofit corporation could qualify for a 100 per cent loan while the private developer could not.
will generally equal the tax revenue from the property prior to its improvement. The benefit to the community is that the income group to be served will approach that served by LHA-owned housing, to whom the tax-exemption subsidy applies automatically.

This local tax remission can practicably and easily be accomplished by virtue of the standard "cooperation law" provisions found either within or associated with the state housing authorities laws. They provide exceedingly broad powers to cities, counties, states, and other public bodies to cooperate with the housing authority and the federal government in carrying out housing projects. Among these powers are the powers to make donations and enter into long-term agreements. In localities where there are in existence, or will come into existence, LHA-owned projects which are contributing or will contribute PILOT, the local governing body, in its cooperation agreement with respect to the section 10(c) leasing project, can provide that the LHA withhold from such PILOT payments the difference per number of units covered by the 10(c) program between the taxes on the units and the PILOT that would be paid with respect to them if they were LHA-owned. This is the amount that would be necessary for local tax remission.

V

Federal-Local Cooperation to Expedite Action

Areas which offer new directions to promote expeditious execution of federal-local programs relating especially to low-income housing may be found in the "cooperation laws" referred to earlier. These laws provide a ready-made system under which the federal government by direct agreement with the governing body involved can carry out the contract if they feel that it is not being carried out by the local housing agency. The most critical area of federal-local effectiveness is the competency and zeal of the local administrative instrument designated by the federal and local statutes. Very often its lack of effectiveness is due to political rather than technical considerations—as where a newly elected city administration inherits a holdover housing authority board and executive head, which under the state laws can be terminated only for cause.

Under the "cooperation laws" referred to above, it is possible for the city, county, state, or other political entity involved to agree with the federal government to cooperate in carrying out the development if the chosen instrument, such as the LHA, does not do so. For example, in the case of a Turnkey project, the local governing body and the LHA could agree with the federal government that if the project is not under construction within a prescribed period, the federal government could declare a default, take possession or title to the project, and call on the local government to

\[ E.g., \text{Wis. Stat. \$ 66.403 (1965).} \]
\[ E.g., \text{Calif. Health \& Safety Code \$\$ 34500 to 34521 (West 1955, Supp. 1965).} \]
exercise its powers given it by the cooperation laws in helping the federal government execute the project. This consent by the local governing body and the LHA, and the fact that the local governing body would be acting under local law to help carry out the project would avoid the constitutional inhibitions that could prevent direct federal action. In view of the broad provisions of the cooperation laws, it is difficult to perceive a situation under which a project could not be successfully and quickly concluded if the local governing body in good faith cooperates in providing the assistance of which it is legally capable under the cooperation law, including land assembly, donation of facilities and services, and so on.

CONCLUSION

Creative new programs have been devised to implement goals of public housing and to provide homes—and sometimes homeownership—for low income families. Fortunately, the legal profession has used its tools and skills to make these programs a reality, rather than merely a dream. The extent of the lawyers' contribution in this regard serves to corroborate the writer's conclusion several years ago that: "We are approaching a period where the country will again be calling upon the talents of lawyers to lead, if possible, but at least to guide the policy makers in a major effort to implement the vision of the 'Great Society' and to make that vision a reality for every American family."

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APPENDIX

EXCERPTS FROM HAA LOW-RENT HOUSING MANUAL

I

Exhibit 3—Letter Designating Turnkey Developer

Date: ..................

Gentlemen:

This has reference to your proposal to sell to the undersigned Authority a completed property consisting principally of ........ dwelling units and related appurtenances upon the site situated at ..........................................

The Authority generally approves your proposal and requests that you proceed with the preparation of preliminary drawings and specifications and statement of your selling price as required by the Department of Housing and Urban Development (Government) as the basis for an annual contributions contract.

If the drawings, specifications and price are satisfactory they will be submitted to the

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51 Id. at 491.
52 U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSING ASSISTANCE ADMINISTRATION, LOW-RENT HOUSING MANUAL § 221.1 (Sept. 1967).
Government with a request for an annual contributions contract under which the acquisi-
tion of the property will be financed. The Authority will promptly execute such contract
when it is tendered by the Government.
Promptly upon the execution of such contract between the Government and the Authority,
the Authority will issue to you a firm Letter of Intent setting forth the conditions under
which you will prepare working drawings and specifications and under which you and the
Authority will enter into a Contract of Sale of the property.
The Authority will diligently carry out its obligations under said contract and Letter of
Intent.

Yours truly,

........................................
(Local Authority)
By ......................................

II

EXHIBIT 8—LETTER OF INTENT TO ENTER INTO CONTRACT OF SALE OF
LOW-RENT HOUSING PROJECT TO LOCAL AUTHORITY

(Addressed to Seller

by Local Authority)
The undersigned Housing Authority (LHA) has entered into an annual contributions
contract with the United States of America (Government) providing for a loan and
annual contributions by the Government to assist the LHA to undertake to acquire and
to operate a low-rent housing project (designated as Project No. ............) in accord
with proposals and representations made by you (Seller) to sell to the LHA the completed
project consisting of improvements and land; the improvements to consist principally of
.............. dwelling units and related appurtenances completed upon land situated in
........................ and described generally as .........................

In furtherance of your proposal to complete and sell the project, the parties shall enter into
a Contract of Sale of the project by the Seller to the LHA, subject to the following condi-
tions:

1. The Contract of Sale shall be in substantially the form of HUD-53015 which is in-
corporated herein by reference.

2. Within .............. days after the date of this letter, the Seller shall present to the
LHA complete working drawings and specifications for the completion of the project
which (a) will have been prepared by a registered architect or under his supervision
and shall be signed or sealed by the architect (and engineer if required) responsible for their
preparation;3 (b) shall set forth in detail all work necessary to the acceptable completion of
the project, including the materials, workmanship, finishes, and equipment required for
the architectural, structural, mechanical, electrical, and site work shown, described, or
implied by the preliminary drawings and other data submitted with the Seller's proposal
and approved by the LHA and the Government; and (c) shall comply with all applicable
State and local laws, codes, ordinances, and regulations as modified by any waivers which
have been obtained from the appropriate jurisdictions and which will meet the Govern-
ment's requirements for approval of the Contract of Sale.

3. Within .............. days after the receipt of the working drawings and specifications,
the LHA shall notify the Seller whether such documents are approved. Promptly upon
approval of such documents by the LHA and the Government, the LHA shall, at its own
expense, obtain two independent cost estimates of the proposed improvements, including
insurance, taxes, financing, developer's and builder's fee, and overhead. If the LHA and/or the Government delays its approval of the working drawings and specifications and execution of the Contract of Sale pursuant hereto for more than \[2\] days after submission by the Seller of the working drawings and specifications, or any revisions thereof, as required in paragraph 2 above, then the purchase price as determined pursuant to paragraph 4, exclusive of the stipulated value of the site(s), shall be adjusted in accordance with the percentage of any change in the United States Department of Commerce composite construction cost index from \[2\] days after such submission to the date of such approval and execution of the Contract of Sale.

4. The purchase price of the project to be stipulated in the Contract of Sale shall be (a) the sum of (i) the midpoint between the lower cost estimate and the higher cost estimate, obtained pursuant to paragraph 3, plus (ii) the amount of \([\$\ ]\) representing the value of the site, including the Seller's acquisition and other expense in connection therewith, and (iii) the amount of \([\$\ ]\) representing the Seller's costs of architectural and engineering services, including the drawings and specifications, property line, topographic, and utility surveys and subsurface investigations, or (b) the amount of \([\$\ ]\) whichever is the lesser, except that if the amount determined pursuant to clause (a) is less than 95% of the amount specified in clause (b), and the LHA and the Seller cannot negotiate a purchase price acceptable to the Government, the LHA shall pay to the Seller the amount of \([\$\ ]\) for the site and architectural and engineering services and the Seller shall convey the site and deliver the drawings and specifications and results of the surveys and subsurface investigations to the LHA. Seller represents to the LHA and the Government that the amounts included for Seller's acquisition and other expense in connection with the site and the amount stipulated herein as the costs for architectural and engineering services are accurate to the best of Seller's knowledge and belief and agrees that such amounts shall be reduced by any amount which Seller is unable to certify as having been actually expended in connection with such services and site. The Seller, at the request of the LHA, shall revise the drawings and specifications to the satisfaction of the LHA so as to make them adequate in scope, nature and detail to permit competitive bidding thereon, for which service the LHA shall pay the Seller the amount of \([\$\ ]\).

5. If subsurface investigations or analyses subsequent to the date of this Letter reveal that it is not feasible to complete the improvements on the site for the amount specified in clause (b) of paragraph 4 and the LHA and the Seller cannot negotiate a purchase price acceptable to the Government, the LHA and the Seller shall be relieved of all further obligations hereunder.

6. The approval of this Letter of Intent by the Government signifies that the undertaking by the LHA of the acquisition of the property constitutes a "project" eligible for financial assistance under the Annual Contributions Contract identified hereinabove; that said Annual Contributions Contract has been properly authorized; that funds have been reserved by the Government and will be available to effect payment and performance by the LHA hereunder; and the Government's approval of the terms and conditions hereof. If this Letter, prepared in four signed copies, sets forth your understanding of the transaction, please so indicate by signing all four copies in the space indicated and return to the LHA. Upon approval thereof by the Government, an approved executed counterpart will be returned to you.
1. This is a suggested form which should be modified to evidence the agreement of the parties.

2. This period (the same number of days in each blank) to be agreed upon by the parties taking into consideration that construction cost estimates must be obtained before the Contract of Sale may be executed.

3. Omit this clause “a” if architect not required. See LRHM Section 221.7.

4. Estimates should include all costs to be borne by Seller, except costs in connection with the site or for architectural and engineering services which are included in [footnotes] 5 and 6 and will be added to the cost estimates as provided in paragraph 4. If any costs such as taxes are prorated only Seller’s share may be included.

5. This amount is determined by negotiation between the LHA and the Seller as approved by the Government taking into consideration the appraisals obtained by the LHA and the cost of the site to the Seller, the accretion or diminution in value, if any, since purchased by the Seller and such additional costs as the Seller represents to the LHA are essential in connection with the acquisition of the site and which have been or will be expended by the Seller on or before the date of the Contract of Sale, such as costs of closing, title examinations, title policies, financing, taxes, zoning, legal expenses, and any other necessary costs as may be agreed to by the LHA and the Seller with the approval of the Government. This total amount shall not exceed an amount which if the LHA is to purchase the drawings, specifications, and site and complete the project would make the project financially infeasible.

6. This amount to be agreed upon by Seller and LHA and approved by the Government shall include only costs incurred for surveys, subsurface soil investigations, and architectural and engineering services up to the completion of working drawings and specifications. This amount should be determined in conjunction with the amount inserted in [footnote] 9 and the total of these amounts should not exceed the value of the services required to produce drawings and specifications adequate to permit competitive bidding thereon.

7. Seller’s offered sales price.

8. This amount is the sum of the amounts stipulated in [footnotes] 5 and 6. If the Seller does not wish to sell the site he must absorb the costs of architectural and engineering services and this paragraph must be appropriately modified.

ARTICLE IX, Approval by Government. The approval of this Agreement by the Government signifies that the undertaking by the Purchaser of the acquisition of the property constitutes a “project” eligible for financial assistance under the Annual Contributions Contract identified in Exhibit “C”; that said Annual Contributions Contract has been properly authorized; that funds have been reserved by the Government and will be available to effect payment and performance by the Purchaser hereunder; and the Government approval of the terms and conditions hereof.