

ORDINANCE NO. 5915

**AN ORDINANCE APPROVING THE PAYMENT IN LIEU OF
TAXES AGREEMENT BETWEEN THE CITY OF FAIRBANKS
AND REST EASY LLC AND GRANTING A PROPERTY TAX
EXEMPTION FOR CERTAIN PROPERTY INTERESTS**

WHEREAS, the Alaska Constitution makes private leaseholds, contracts, or interests in land or property owned by the United States taxable to the extent of such interests; and

WHEREAS, the Alaska legislature enacted AS 29.45.030(a)(8), which exempts from taxation private leasehold, contract, or other interests in property located on a military base and created under the Military Housing Privatization Initiative (MHPI) if the taxing authority enters into an agreement for the payment in lieu of taxes (“PILOT”) with the leaseholder; and

WHEREAS, Rest Easy LLC is a Delaware limited liability company that maintains certain military lodging units located on Fort Wainwright pursuant to a lease with the United States of America, acting by and through the Secretary of the Army, entered into pursuant to the Military Housing Privatization Initiative codified at 10 U.S.C. § 2871 – 2885 (the “MHPI”); and

WHEREAS, the City and Rest Easy desire to enter into an Agreement that will provide long term certainty as to payments Rest Easy will make to the City and the City will receive from Rest Easy in connection with Rest Easy’s project on Fort Wainwright; and


WHEREAS, the City and the Fairbanks North Star Borough have worked together with Rest Easy to create a PILOT agreement that is fair and equitable under the circumstances,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. The council approves the terms of the attached PILOT Agreement and authorizes the Mayor to sign the Agreement on behalf of the City.

SECTION 2. Upon execution of the PILOT Agreement by Rest Easy and the City, Rest Easy’s property interests located on Fort Wainwright, as described in the PILOT Agreement, will be exempt from taxation by the City of Fairbanks.

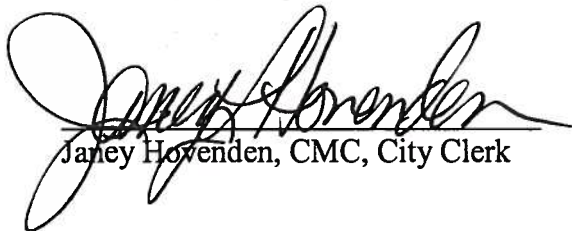
SECTION 3. That the effective date of this Ordinance shall be the 9th day of February 2013.



Jerry Cleworth, Mayor

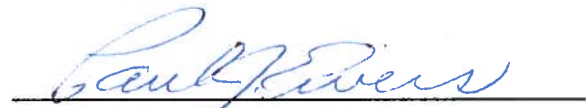
AYES: Eberhart, Gatewood, Staley, Hilling, Walley
NAYS: None
ABSENT: Matherly
ADOPTED: February 04, 2013

ATTEST:



Janey Howenden, CMC, City Clerk

APPROVED AS TO FORM:



Paul J. Ewers, City Attorney

**AGREEMENT
PROVIDING FOR PAYMENTS IN LIEU OF TAXES
BETWEEN
REST EASY LLC AND THE CITY OF FAIRBANKS**

This Agreement Providing For Payments In Lieu Of Taxes ("Agreement") is made by REST EASY LLC, a Delaware limited liability company ("Leaseholder"), and the CITY OF FAIRBANKS, an Alaska municipal corporation ("the City"). Leaseholder and the City may be referred to jointly as the "Parties" and each separately may be referred to as a "Party."

RECITALS

A. Leaseholder manages and maintains certain military lodging units located on Fort Wainwright pursuant to a lease with the United States of America, acting by and through the Secretary of the Army, entered into pursuant to the Military Housing Privatization Initiative codified at 10 U.S.C. § 2871 – 2885 (the "MHPI").

B. The Parties desire to enter into an Agreement that will provide long term certainty as to payments Leaseholder will make to the City and the City will receive from Leaseholder in connection with the Project (as defined in Section 1 below).

C. Whereas the Alaska Legislature has enacted AS 29.45.030(a)(8) which authorizes the City to enter into a Payment in Lieu of Taxes Agreement with respect to MHPI projects such as the Project.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the Parties hereto do agree as follows:

Section 1 - DEFINITIONS

Whenever used in this Agreement, if a definition is provided below, that definition is controlling. Otherwise, terms shall have any legal definition provided by legal authorities or their ordinary meaning. The term:

(a) "Lease" means the lease agreement between the Secretary of the Army and Rest Easy LLC, as amended, a memorandum of which was recorded as Instrument No. 2011-015001-0 with the Office of the Recorder of the State of Alaska, Fairbanks Recording District, and includes the entire Project and certain other land and related improvements located at various other Army installations (which are not subject to the terms and conditions of this Agreement).

(b) "Project" means all interests of Leaseholder in the land, improvements, buildings, structures, fixtures, alterations and associated personal property in each case to the extent located at Fort Wainwright and subject to the Lease.

(c) "Taxing Body" means the City of Fairbanks, in which the property subject to the Lease is situated.

Section 2 - TERM

This Agreement becomes effective on the date it is executed by the last Party to do so (the "Effective Date") and continues in force until terminated in accordance with Section 5.

Section 3 - OBLIGATION OF REST EASY LLC TO MAKE PAYMENTS IN LIEU OF TAXES

(a) So long as

- (i) the land at Fort Wainwright that is subject to the Lease is owned by the federal government; and
- (ii) the Project is used primarily to provide lodging to military personnel pursuant to the terms of the Lease; and
- (iii) the Lease remains in force and effect with respect to the applicable land and improvements at Fort Wainwright,

the City agrees that it will not levy or impose any real or personal property taxes upon the Project or upon the Leaseholder with respect to the Project. During such period, the Leaseholder shall make annual payments (herein called "Payments in Lieu of Taxes" or "PILOT") in lieu of such taxes and in payment for the public services and facilities furnished to the residents of the City of Fairbanks by the City without other cost or charge for or with respect to such Project. The Parties acknowledge that, unless a separate Payment in Lieu of Taxes Agreement or similar arrangement is entered into between the Leaseholder and the Fairbanks North Star Borough (the "Borough"), the Borough will be required to provide valuations, issue tax invoices, make collections or take other actions required by applicable law in connection with taxes levied or imposed by the Borough.

(b) Leaseholder shall pay the City a PILOT in the amount of \$25,713.50, based on the initial assessed value (\$6,794,532) times the City mill rate for 2012 (5.734) times 66%, per year as adjusted in accordance with Section 3(c). Payment of the annual PILOT amount is due within 30 days after the Effective Date, for the first year, and on September 1 in each calendar year thereafter.

(c) The annual PILOT amount payable by Leaseholder to the City under Section 3(b) shall be adjusted annually according to the formula set out in "Exhibit A – Calculation of Annual PILOT Amount For Rest Easy LLC," the terms of which shall upon execution of this Agreement become part of the Agreement as if fully set out herein.

Section 4 – AMENDMENTS

(a) This Agreement shall only be amended, modified or changed by a writing, executed by authorized representatives of the Parties, with the same formality as this Agreement was executed, including approval by the Fairbanks City Council if the amendment results in any monetary adjustment.

(b) The only representative of the City authorized to sign any amendment, modification or change to the terms and conditions of this Agreement is the Mayor of the City or his/her duly appointed designee. The only representatives of Leaseholder authorized to sign any amendment, modification or change to the terms and conditions of this Agreement is any officer of the sole member of the Leaseholder's managing member or his/her duly appointed designee. Each Party represents to the other Party that such Party has duly authorized, executed and delivered this Agreement and that any amendment, modification or change to this Agreement that is agreed to and signed by or on behalf of such Party shall be duly authorized, executed and delivered by such Party.

(c) Any attempt to amend, modify, or change this Agreement by either an unauthorized representative or unauthorized means shall be void.

(d) Any change in the duration of this Agreement must be approved in writing by the City and attached hereto as an amendment.

(e) This Agreement may be terminated in accordance with the provisions of Section 5.

Section 5 – TERMINATION

This Agreement may be terminated:

(a) By mutual consent of the Parties expressed in writing.

(b) By the City if (i) the Lease is terminated and not replaced with a new lease to Leaseholder or its Mortgagee (as defined in the Lease) for the remaining term of, and on substantially the same terms and conditions as, the Lease; or (ii) if any of the fee interest in the real property then subject to the Lease and located at Fort Wainwright is no longer owned by the United States.

(c) For cause, by either Party where the other Party fails in any material way to perform its obligations under this Agreement. Termination under this paragraph is subject to the condition that the terminating Party must notify the other Party in writing of its intent to terminate, stating with reasonable specificity the grounds for termination, and must allow the other Party sixty (60) days after receiving the written notice to cure such failure. The City's right to terminate this Agreement for non-payment of amounts due is in addition to all other rights the City has to collect amounts due it under this Agreement.

Section 6 - EFFECTS OF TERMINATION

Immediately upon the effective date of termination of this Agreement, the Project and the possessory interests on the federal land thereon shall become taxable to the extent permitted by law. However, nothing in this Section or any other provision of this Agreement shall preclude (or be deemed or construed to preclude) the Leaseholder from then contesting the validity, application, imposition, assessment, or levy, after such effective date of termination, of real and/or personal property taxes on the Project and/or the Leaseholder's possessory interests on the federal land at Fort Wainwright pursuant to the Lease or otherwise.

Section 7 – INSPECTION AND RETENTION OF RECORDS

(a) The Leaseholder is required to submit to the City, by the fifteenth day of the month following the month being reported upon, a fully completed, signed, and dated City of Fairbanks Hotel/Motel Sales Tax Report.

(b) Leaseholder shall maintain any records to which the City has the right to request, inspect, and/or otherwise review relating to this Agreement for a period ending three years after the effective date of termination of this Agreement in accordance with Section 5.

(c) Upon request, and within a reasonable time, Leaseholder shall submit to the City (i) copies of any modifications to the Lease; (ii) such other information that is directly pertinent to validate Leaseholder's proper current, past, or future obligation(s) as set forth in Section 3 of this Agreement; and (iii) supporting documentation relating to the foregoing information, in each case irrespective of how such information is stored. If any such documents or information include documents or information the Leaseholder considers proprietary or confidential, Leaseholder shall mark such documents "confidential" prior to submittal to the City. The City shall keep such documents confidential, to the extent permitted by law, and will notify Leaseholder if any public records request is made that pertains to such documents so that Leaseholder may petition the court for a protective order.

(d) If for any reason Leaseholder ceases operations under this Agreement or the Lease before the end of any record retention period provided for in such Lease, Leaseholder shall nevertheless continue to retain copies of all records described in this Section for the remainder of such record retention period.

(e) If Leaseholder fails to submit to the City the information that is directly pertinent to validate Leaseholder's proper current, past, or future obligation(s) as set forth in Section 3 of this Agreement, the City may, in a reasonable manner, unilaterally project the information required to calculate such obligation(s) under Section 3 and require payment of such obligation(s) in that amount.

Section 8 – ASSIGNMENTS AND REVERSIONS

(a) The Leaseholder will notify the City at any time any Project land at Fort Wainwright reverts to the federal government or is otherwise transferred, conveyed, or assigned to any third party. Such reversion, transfer, conveyance, or assignment to a third party (other than a full reversion to the United States) shall not release the Leaseholder of its obligations under this Agreement unless such release is consented to in writing by the City, which consent shall not be unreasonably withheld.

(b) Except as otherwise consented to in writing by the City (which consent shall not be unreasonably withheld), any assignment by Leaseholder of its obligations under any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by Leaseholder to assign any part of its interest or delegate its duties under this Agreement shall give the City the right to immediately terminate this Agreement without any liability to the City. Notwithstanding the foregoing, Leaseholder may assign this Agreement to an affiliate in the event the affiliate enters into (or assumes the Leaseholder's obligations under) the Lease (or a replacement thereof that is for the remaining term of, and on substantially the same terms and conditions as, the Lease), provided the assignee agrees in writing to assume all of Leaseholder's duties and obligations hereunder, and the City is given prior written notice of the assignment.

Section 9 – PERMITS AND LAWS

Leaseholder shall acquire and maintain in good standing all required permits, licenses and other entitlements necessary to its performance under this Agreement.

Section 10 - NONWAIVER

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of such provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of the City thereafter to enforce each and every provision hereof.

Section 11 – JURISDICTION; CHOICE OF LAW

Any civil action arising from this Agreement shall be brought in the Superior Court for the Fourth Judicial District of the State of Alaska at Fairbanks. The laws of the State of Alaska and the City of Fairbanks shall govern the rights and obligations of the Parties under this Agreement. This Section shall not apply to any post-termination actions brought pursuant to Section 6 of this Agreement.

Section 12 - SEVERABILITY

With the express exception of Leaseholder's payment obligations to the City under Section 3 of this Agreement (which, if held to be invalid, illegal or unenforceable, shall not be severable and shall result in a termination of this Agreement), if any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of

the remaining provisions shall in no way be affected or impaired thereby, and such remaining provisions shall remain in full force and effect. The invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable comes closest to the intention of the Parties underlying the invalid, illegal or unenforceable provision.

Section 13 - INTEGRATION

This instrument and all appendices and amendments hereto embody the entire Agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the Parties or their principals and agents hereto.

Section 14 – INVALIDITY OF AS 29.45.030(a)(8) OR OTHER LEGAL CHALLENGE TO TAXABILITY OR VALUATION

In the event the Alaska Supreme Court finds the provision of AS 29.45.030(a)(8) authorizing this PILOT Agreement is invalid or unlawful, the Parties shall seek to remedy the invalidity, if possible, and continue this Agreement in effect. If continuing the Agreement in effect is not possible under the terms of the Court's decision, then this Agreement shall terminate and the obligation of Leaseholder for future taxes shall depend upon the state of the law as it exists after termination. If a court other than the Alaska Supreme Court finds that the provision of 29.45.030(a)(8) authorizing this PILOT Agreement is invalid, the City, if it has proper legal standing to do so, agrees to appeal such decision to a higher appellate court unless the Parties agree no appeal shall be taken.

Except as otherwise provided in Section 6 of this Agreement with respect to Leaseholder's contest rights, (a) a subsequent court or administrative body determination concerning taxability and/or valuation of the property or similarly situated property shall have no effect on this Agreement or any obligation hereunder unless specifically ordered by the Court; (b) no party to this Agreement shall request or otherwise move for such an order; and (c) the Parties specifically waive any right to a refund, deduction or increase in payment which may arise from any subsequent court order.

Section 15 - NOTICES

Any notice required pertaining to the subject matter of this Agreement shall be personally delivered, sent via facsimile (FAX) or mailed* by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Leaseholder: Name of Leaseholder: Rest Easy LLC
By: Lend Lease (US) Public Partnerships
Holdings LLC
Title of Agent: Executive Vice Prisdent
Mailing Address: 1801 West End Avenue
Suite 1700
Nashville, TN 37203
Physical Address:
City, State ZIP: Fort Wainwright, AK 99703-1320
Phone:

And,

City: Name of Agent: Jerry Cleworth
Title: Mayor
Mailing Address: 800 Cushman Street
Fairbanks, Alaska 99701
Physical Address: same
Phone, Fax: (907) 459-6793/P; (907) 459-6787/F

*Notice is effective upon receipt.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

LEASEHOLDER
REST EASY LLC,
A Delaware Limited Liability Company
By: RE Managing Member LLC,
It's Managing Member
By: Lend Lease (US) Public Partnerships
Holdings LLC,
Its Sole Member

By: _____
Charles R. Smith
Executive Vice-President

STATE OF TENNESSEE)
) ss:
COUNTY OF _____)

Personally appeared before me, Charles R. Smith, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged upon oath that such person executed the within instrument for the purposes therein contained, and who further acknowledged that such person is the Executive Vice President of Lend Lease (US) Public Partnerships Holdings LLC, sole member of RE Managing Member LLC, managing member of Rest Easy LLC, the within named limited liability company, and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

Witness my hand, at office, this _____ day of _____ 2013.

Notary Public in and for Tennessee
My commission expires: _____

CITY OF FAIRBANKS

By: _____
Jerry Cleworth, Mayor

STATE OF ALASKA)
) ss:
FOURTH JUDICIAL DISTRICT)

THIS CERTIFIES that on the _____ day of _____ 2013, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Jerry Cleworth, known to me to be the Mayor of the City of Fairbanks, named in the foregoing instrument, and acknowledged to me that he, in his official capacity, is authorized by the City of Fairbanks to execute the foregoing instrument as the free act and deed of the said City of Fairbanks for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

Notary Public in and for Alaska
My commission expires: _____

City of Fairbanks
 Calculation of Annual Pilot Amount For Rest Easy LLC
 (November 2011 through October 2012 is used as the Base Year)

** 2013 through 2019 Gross Revenue numbers and Mill Rates are for example only. **

Agreed Percent of 2012 Assessed Value to Use for Calculations	Rest Easy Gross Revenue Base (November 2011 through October 2012)	Rest Easy Gross Revenue Pilot Amounts for 2013	Rest Easy Gross Revenue Pilot Amounts for 2014	Rest Easy Gross Revenue Pilot Amounts for 2015	Rest Easy Gross Revenue Pilot Amounts for 2016	Rest Easy Gross Revenue Pilot Amounts for 2017	Rest Easy Gross Revenue Pilot Amounts for 2018	Rest Easy Gross Revenue Pilot Amounts for 2019	Rest Easy Gross Revenue Pilot Amounts for 2020	Rest Easy Gross Revenue Pilot Amounts for 2021	Rest Easy Gross Revenue Pilot Amounts for 2022															
(a)	(b)	(c)	(d) = (b)/(100)	(e)	(f) = (d) * (a)	(g)	(h)	(i) = (h) * (a)	(j)	(k) = (i) * (a)	(l)															
Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012	Rest Easy Assessed Value 2012															
Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012	Mill Rates 2012															
Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities	Taking Authorities															
Borough - Avenue	\$6,794,532	11.216	\$76,207.47	69%	\$50,296.63	\$2,640,872	11.400	1.02	1.00	\$31,122.06	11.300	1.01	1.00	\$30,673.62	11.350	1.01	1.00	\$30,997.84	2,700,000	\$2,550,000	\$2,400,000	\$2,683,333	11.100	0.99	1.02	\$50,577.08
City of Fairbanks	6,794,532	5.734	38,959.85	65%	25,713.50	2,640,872	5.900	1.03	1.00	26,457.91	5.800	1.01	1.00	26,009.47	5.850	1.02	1.00	26,233.69	2,700,000	2,550,000	2,400,000	2,683,333	5.600	0.98	1.02	26,518.37
Total	6,794,532	16.950	115,167.32	66%	76,010.43	2,640,872	17.300	1.02	1.00	77,579.97	17.100	1.01	1.00	76,683.09	17.200	1.01	1.00	77,131.53	2,700,000	2,550,000	2,400,000	2,683,333	16.700	0.99	1.02	76,093.45

Notes/Assumptions:

- The PILOT payment due date is 9/1 of each tax year.
- Future PILOT amounts are only adjusted by gross revenue changes (using a three-year adjustment cycle) and mill rate changes (using an annual adjustment cycle).
- Mill rates for each entity are by tax year and are updated yearly.
- Rest Easy's annual gross revenue numbers are revenue derived from all sources for 12-month periods ending on 6/30/20xx (example: the 12-month period ending on 6/30/2013 for tax year 2013). The gross revenue base year is the 12-month period from November 2011 through October 2012.
- The starting point gross revenue base is used as the three-year average for tax years 2013, 2014, and 2015's calculations. The three-year average is updated tri-annually using a three-year look-back annualized average that is then compared to the original 2012 gross revenue base.
- The PILOT amounts for tax years 2013, 2014, and 2015 are calculated by taking the base year's (2012's) calculated PILOT amounts (column f) and multiplying them only by mill rate factors calculated as follows: each year's approved mill rates (tax year 2013, 2014, or 2015) divided by the 2012 base year mill rates (column c).
- In all future years, starting in 2016, the PILOT amounts are calculated by multiplying the base year calculated PILOT amounts times: 1) the mill rate factors: each year's mill rates divided by the 2012 base year mill rates, and then 2) the gross revenue factor: the last three-year look-back annualized gross revenue average divided by the base year gross revenue (column g). Essentially (base year PILOT amounts) x (mill rate factors) x (three-year look-back gross revenue factor) = PILOT each year.

Cells to be input 2013 - 2015
Label for cells to be input for 2018 - 2016
Label for cells to be input for 2019 - 2021
Cells subject to change