

**PROTOTYPE  
PROGRAMMATIC AGREEMENT  
BETWEEN  
THE UNITED STATES ARMY [INSERT INSTALLATION NAME] AND  
[INSERT STATE NAME] [INSERT NAME OF STATE HISTORIC PRESERVATION  
OFFICE].  
FOR THE  
PRIVATIZATION OF ARMY LODGING**

**WHEREAS**, the U.S. Army at [insert name of installation] has determined to privatize lodging at [insert name of installation] [insert name of state] through the Privatization of Army Lodging (PAL) program resulting in the transfer of a long-term interest in the construction, demolition, renovation, rehabilitation, operation, and maintenance of lodging and other ancillary facilities at [insert name of installation] to a separate legal entity through the transfer of short-term and long-term interest in the lodging and ancillary facilities (Project) through the Department Of The Army Amended And Restated Lease And Conveyance Of Improvements, DACA65-1-09-47 (the “Ground Lease”) to Rest Easy LLC (Rest Easy); and

**WHEREAS**, [insert name of installation] plans to carry out the Project pursuant to the Military Housing Privatization Initiative (P.L. 104-106, 110 Stat. 544, Title XXVIII, Subtitle A, Section 2801), which amends 10 U.S.C. Chapter 169, by addition of a new Subchapter IV—Alternative Authority for Acquisition and Improvement of Military Housing, codified at 10 U.S.C. § 2871, et seq, thereby making the Project an Undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 CFR Part 800; and

**WHEREAS**, the Area of Potential Effect (APE) for the PAL program at [insert name of installation] includes existing lodging areas and any areas proposed for development of new lodging and supporting amenities (Appendices A and B); and

**WHEREAS**, there are no National Register of Historic Places (NRHP) eligible archaeological sites present within or adjacent to the APE and the SHPO has concurred with this determination; and

**WHEREAS**, there are NRHP listed or eligible properties within the APE contained within Appendix A; and

**WHEREAS**, [insert name of installation] has consulted with stakeholders such as local and regional non-profit and neighborhood organizations that have an interest in the historic properties at [insert name of installation]; and

**WHEREAS**, [insert name of installation] has consulted with the [insert name of tribes], regarding an undertaking associated with the PAL project which may have an effect on historic properties that have religious and cultural significance, and has invited the Tribe(s) to participate in the development of this Programmatic Agreement (PA) as a concurring party, and

**WHEREAS**, [use clause only if a National Historic Landmark (NHL) building or district is located in the APE] [insert name of installation] has consulted with the [insert region] of the National Park Service (NPS), in accordance with 36 CFR § 800.10(b), regarding the effects of the Undertaking on historic properties, and the NPS has chosen to or not to participate; and

**WHEREAS**, [insert name of installation] has consulted with Rest Easy regarding the effects of the Undertaking on historic properties; and

**WHEREAS**, Rest Easy, under Condition 13 of the Ground Lease, has acknowledged and agreed to all historic preservation conditions, notices, obligations and restrictions, as they appear in this PA; and

**WHEREAS**, [insert name of installation] has provided the public an opportunity to comment on the Undertaking through the Army's National Environmental Policy Act process and has addressed the recommendations of the public and reviewing agencies in the development of this PA; and

**NOW THEREFORE**, [insert name of installation] and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

## **STIPULATIONS**

[insert name of installation] shall ensure that the following measures are carried out:

### **1. BASELINE INFORMATION AND PROFESSIONAL QUALIFICATION STANDARDS**

#### **1.1. Baseline Information**

1.1.1. Within six (6) weeks of execution of this PA, [insert name of installation] shall provide an information package concerning historic properties and land to Rest Easy and the SHPO. This information package, in electronic and paper formats, shall include 4 by 6 inch digital color photographs, and will describe individual historic properties and contributing resources that may be present within or adjacent to the APE.

1.1.2. [insert name of installation] shall require Rest Easy to provide condition assessments of Historic Properties within the APE, whenever a current condition assessment does not already exist. Rest Easy shall provide such requested condition assessments of Buildings within the APE. These condition assessments shall provide descriptions of the existing exterior and interior elements of each historic property that contribute to its NRHP eligibility.

1.1.2.1. Rest Easy shall submit such condition assessments to [insert

name of installation] for approval to the Cultural Resource Manager (CRM) prior to any Undertaking on Building(s) within the APE.

1.1.2.2. [insert name of installation] shall provide copies of the condition assessments, in electronic and paper formats including photographs, to the SHPO.

1.1.2.3. Upon [insert name of installation] request, Rest Easy shall update this documentation whether provided by the Installation or subsequently generated by Rest Easy as necessary to maintain accuracy and record current conditions while the historic properties are included in the Lease. One copy of the updated documentation and any supplemental materials shall be provided to [insert name of installation] and the SHPO.

## 1.2. Professional Qualification Standards

1.1.1. The [insert name of installation] CRM or designated consultant will, at a minimum, consist of an individual who meets the Professional Qualification Standards for Archaeology or for Historical Architecture (48 FR 44738-39).

1.1.2. Rest Easy shall utilize qualified staff meeting the Professional Qualification Standards, on an as needed basis, for development of rehabilitation plans, to review and screen proposed projects and work requirements that affect historic properties.

## 2. CONVEYANCE ACTIVITIES

2.1. This PA with respect to compliance by Rest Easy as a Concurring Signatory shall be enforced by the Army through the Ground Lease, which provisions require that Rest Easy abide by all of the obligations of this PA, thereby making it binding, as applicable, upon Rest Easy or its successors in interest.

## 3. HISTORIC PROPERTY MANAGEMENT

### 3.1. Design Principles

3.1.1. In order to avoid adversely affecting historic properties, [insert name of installation] shall ensure that Rest Easy conforms to the *Secretary of the Interior's Standards for Rehabilitation, Design Guidelines for Department of Defense Historic Buildings and Districts* and the DOD Rehabilitation Treatment Measures. (Appendix D) (*Treatment Standards*) during the term of the Ground Lease.

3.2. Project Review and Consultation Process. [insert name of installation] CRM shall ensure that when the rehabilitation of historic properties and/or the construction of a new lodging facility has the potential to adversely affect a historic property, the [installation] CRM will review and coordinate these undertakings with the SHPO pursuant to the following procedures:

3.2.1. [insert name of installation] shall require Rest Easy to submit all proposed projects having the potential to affect historic properties to the [insert name of installation] CRM.

3.2.2. The [insert name of installation] CRM shall be responsible for creating and keeping a record of each project review.

3.2.3. The documentary record of each project review will be maintained in the [insert name of installation] environmental archives.

3.2.4. The [insert name of installation] CRM or qualified Staff, (if CRM does not meet SOI standards) shall review the project and plans and respond to Rest Easy within fourteen (14) calendar days with one of the following determinations: the project will not adversely affect historic properties or the project may adversely affect historic properties. If the [insert name of installation] CRM determines that:

(a) the project will not adversely affect historic properties, [insert name of installation] CRM shall submit that determination to the SHPO for review. The SHPO will have 20 days from receipt to respond. If the SHPO responds in writing with a concurrence or does not respond within those 20 days, the project may proceed as planned. If the SHPO disputes the determination within those 20 days, the [insert name of installation] may attempt to reach a concurrence with the SHPO or resolve the dispute in accordance with Stipulation 9; or

(b) the project may adversely affect a historic property, the [insert name of installation] CRM shall make recommendations to Rest Easy for alterations to the project plans in order to avoid or minimize the adverse effect. These recommendations shall be made in accordance with the *Treatment Standards* with the goal of minimizing the project to a Determination of No Adverse Effect. If Rest Easy does not accept these recommendations, or the [insert name of installation] CRM cannot come up with recommendations that justify a determination of no adverse effect, the [insert name of installation] CRM shall consult with the SHPO to develop and implement a resolution of adverse effects pursuant to 36 CFR § 800.6. If such a resolution cannot be reached, the issue will be resolved in accordance with Stipulation 9.

### 3.3 Exemption for Rehabilitation and Investment Tax Credit Projects

- 3.1. A project that has been designed and will be carried out in conformance with a Federal Historic Preservation Tax Incentives Program Part II Certification Application approved by the NPS per 36 CFR part 67, will require no Section 106 review under this PA or otherwise. The tenant will provide the approved application to the CRM before carrying out the project. If the Part II Certification Application is approved with conditions by the NPS, the CRM shall ensure that the project documents are modified to comply with the conditions, but will not subject the application to any further review. Neither the [insert installation name] nor the tenant shall make any irrevocable commitment regarding project design until Part II Certification has been completed by NPS. [Insert installation] encourages Rest Easy to also explore any state historic preservation tax credit benefits using the established application process with the SHPO before beginning rehabilitation projects involving historic properties.
- 3.3. If a [insert installation name] tenant is denied Part II Certification or is unable to meet conditions for such certification, the provisions of Stipulation 3.2. shall apply to the project.

#### 4. EXEMPT ACTIVITIES

- 4.1. The activities described in Appendix E shall not be subject to Section 106 review under this PA or otherwise provided they are carried out consistent with [insert name of installation] and pursuant to applicable Secretary of the Interior Treatment Standards.
- 4.2. [insert name of installation] shall require that Rest Easy and its representatives, agents, and subcontractors document and report all proposed activities described in Appendix E to the [insert name of installation] CRM pursuant to Stipulation 3.2.

#### 5. POST-REVIEW DISCOVERIES

- 5.1. Unanticipated Adverse Effect. In the event Rest Easy discovers that an action taken in accordance with this PA has resulted in an unanticipated adverse effect to historic properties, Rest Easy shall immediately notify the [insert name of installation] CRM and Rest Easy shall immediately stop work related to the adverse effect. In the event that the [insert name of installation] CRM determines that an action taken in accordance with this PA resulted in an unanticipated adverse effect to historic properties, the [insert name of installation] CRM shall immediately notify Rest Easy. If the action is still being performed, the [insert name of installation] CRM shall direct Rest Easy to immediately stop work related to the adverse effect.
  - 5.1.1. [insert name of installation] CRM, in consultation with the SHPO, shall make recommendations to Rest Easy for actions to be taken to reverse the adverse effect. These recommendations shall be made in accordance with the *Treatment Standards* with the goal of minimizing the scope of the

action so that the CRM may reasonably and timely make a Determination of No Adverse Effect.

5.1.2. If Rest Easy accepts these recommendations, the [insert name of installation] CRM shall consult with the SHPO to develop and implement a mitigation strategy pursuant to 36 CFR § 800.6.

5.2. Unanticipated Archaeological Discovery. In the event of unanticipated discovery of archaeological materials during any of Rest Easy activities, Rest Easy shall immediately stop work in the area of discovery and notify the [insert name of installation] CRM. Rest Easy agrees that no unauthorized personnel will have access to the site and that no further work or damage will be done to the discovery until the [insert name of installation] CRM has complied with 36 CFR § 800.13(b) and any other legal requirements.

## 6. EMERGENCY SITUATIONS

6.1. Emergency situations are those actions deemed necessary by [insert name of installation] as an immediate and direct response to an emergency situation, which is a disaster or emergency declared by the President or Governor of [insert name of state], or other imminent threat to life or property. Emergency actions under this PA are only those implemented within thirty (30) calendar days from the initiation of the emergency situation.

6.2. The [insert name of installation] CRM will proceed in accordance with 36 CFR § 800.12(b) and (d) with regard to emergency situations.

## 7. REPORTING

7.1. [insert name of installation] CRM shall report to the SHPO on the status of the Undertaking and the implementation of this PA annually from the execution of this PA. Upon request, Rest Easy shall assist in the preparation of this report. This report shall include: Information on the current condition of the historic properties;

7.1.1. Actions taken in accordance with applicable treatment standards, including a general description of activities that were exempt from SHPO review pursuant to Appendix E;

7.1.2. Descriptions of unanticipated problems, activities, policies or other issues that could affect the historic properties, including the documentation of project reviews carried out under Stipulation 3.2; and

7.1.3. Updates to documentation of the exterior and interior and condition assessments of historic properties after modifications are made.

## 8. ANTI-DEFICIENCY ACT

8.1. The stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs [insert name of installation] ability to implement the stipulations of this PA, [insert name of installation] shall consult with the signatories pursuant to Stipulations 9 and 10. [insert name of installation] responsibility to carry out all other obligations under this PA that are not the subject of an Anti-Deficiency Act violation will remain unchanged.

## 9. DISPUTE RESOLUTION

9.1. Should any signatory party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, [insert name of installation] shall consult with such party to resolve the objection. If [insert name of installation] determines that such objection cannot be resolved, [insert name of installation] shall:

9.1.1. Forward all documentation relevant to the dispute, including the [insert name of installation] proposed resolution, to the ACHP. The ACHP shall provide [insert name of installation] with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, [insert name of installation] shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. [insert name of installation] will then proceed according to its final decision.

9.1.2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, [insert name of installation] may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, [insert name of installation] shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to this PA, and provide them and the ACHP with a copy of such written response.

9.1.3. [insert name of installation] responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

## 10. AMENDMENT AND TERMINATION

### 10.1. Amendment

10.1.1. This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## 10.2. Termination

10.2.1. If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation 10.1.

10.2.2. If within thirty (30) calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate this PA upon written notification to the other signatories.

10.2.3. Once this PA is terminated, and prior to work continuing on the Undertaking, [insert name of installation] must either (a) execute a Memorandum of Agreement (MOA) pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7.

10.2.4. [insert name of installation] shall notify the signatories as to the course of action it will pursue.

## 11. DURATION

11.1. This PA is effective on the last date that all signatories hereto sign.

11.2. This PA will expire within fifty (50) years from the date of its execution concurrent with the Ground Lease, unless previously terminated under the provisions of Stipulation 10.2 above. This PA will be reviewed periodically, every five years from the execution of this PA, or whenever there is a proposed modification to the Ground Lease or a change of [insert name of installation] mission, or if the Ground Lease is renewed. During these reviews, [insert name of installation] shall consult with other signatories and concurring parties to reconsider the terms of this PA and amend it in accordance with Stipulation 10.1. In the event that the Ground Lease is terminated with no renewal, this PA will terminate.

**EXECUTION** of this PA by [insert name of installation], SHPO, and the ACHP and implementation of its terms are evidence that [insert name of installation] has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

## SIGNATORIES

[insert name of installation] [insert state]

By: \_\_\_\_\_/S/\_\_\_\_\_ Date: \_\_\_\_\_

**State Historic Preservation Officer**

By: \_\_\_\_\_/S/\_\_\_\_\_ Date: \_\_\_\_\_

CONCURRING SIGNATORIES

**Rest Easy LLC**

By: RE Managing Member, its managing member

By: Lend Lease (US) Public Partnerships Holdings LLC, its sole member

By: \_\_\_\_\_/S/\_\_\_\_\_ Date: \_\_\_\_\_

APPENDIX A

BUILDINGS WITHIN THE PAL UNDERTAKING, [insert name of installation]

Appendix A. Buildings within the PAL undertaking, [insert name of installation].

Building No.	Parcel	Construction Date	Original Building Code	Original Building Function	Current Building Code	Current Building Function	Management Consideration

APPENDIX B

PAL PARCELS AND BUILDING LOCATIONS, [insert name of installation]

APPENDIX C

PHOTOGRAPHS OF BUILDINGS WITHIN THE PAL UNDERTAKING

APPENDIX D

TREATMENT STANDARDS

## APPENDIX E

### REHABILITATION OF BUILDINGS WITHIN THE BOUNDARIES OF THE [insert name of installation] DISTRICT: ACTIONS EXEMPT FROM SECTION 106 REVIEW

The following actions shall not be subject to Section 106 review under this Programmatic Agreement or otherwise:

#### 1. Exterior Architectural Elements:

##### 1.1. Roofs

- 1.1.1. Rehabilitation of roofs or parts of roofs that have deteriorated, when done in-kind, to match the existing material, design, and method of application.
- 1.1.2. Adequate anchorage of the roofing material to guard against wind damage and moisture penetration shall be provided.
- 1.1.3. Adjacent surfaces shall be protected to prevent damage during construction.
- 1.1.4. Permanent addition of safety hooks on roofs as required by the Occupational Safety & Health Administration.

##### 1.2. Drainage Systems

- 1.2.1. Rehabilitation of gutters, downspouts, flashing, and counterflashing that are damaged or missing, when done in-kind, to match the existing in material, design, and method of application.
- 1.2.2. Alternatively, replacement with similar form, of a color matching the eaves, or walls of the building, so as to reduce the intrusion onto the historic property.

##### 1.3. Walls

- 1.3.1. Rehabilitation of siding, trim, or hardware when done in-kind to match the existing material, design, color, and method of application.
- 1.3.2. Rehabilitation of damaged or deteriorated footings, foundations, and retaining walls, when undertaken in-kind, matching existing material, design, color, and method of application. Front stone foundations should be cleaned, in conformance with the specifications contained in the Legacy Demonstration Project Report, to retain the original appearance but side foundation will retain their historical paint.
- 1.3.3. Rehabilitation of exterior surface with paint when undertaken matching original

or in conformance with the specifications contained in the Legacy Demonstration Project Report.

#### 1.4. Porches and Exterior Stairs

1.4.1. Rehabilitation of damaged or deteriorated porches, exterior stairs, and related components thereof, when undertaken in-kind, matching the existing material, design, color, and method of application.

1.4.2. Care must be guaranteed to protect adjacent surfaces against damage during rehabilitation.

#### 1.5. Doors and Windows

1.5.1. Rehabilitation of damaged or deteriorated window frames by patching, splicing, consolidating or otherwise reinforcing.

1.5.2. Replacement of broken clear glass with clear glass of similar thickness, when no modification or damage to adjacent surfaces shall result. Window panes may be double- or triple glazed, as long as it is clear and does not alter existing window material and configuration.

1.5.3. Removal of in-window air conditioner units.

1.5.4. Adjustment of counterweights.

1.5.5. Replacement of caulking and weather-stripping. When matching materials and color, it shall be compatible to the color of adjacent surfaces.

1.5.6. Repair or replacement (when beyond repair as determined by the [insert name of installation] CRM) of damaged, deteriorated, or missing historic doors when done in-kind, matching existing or original in material, color, and method of application.

#### 1.6. Chimneys

1.6.1. Rehabilitation of chimneys or parts of chimneys that have deteriorated, when done in-kind, to match the existing materials, design and method of application.

1.6.2. Adequate anchorage of the chimneys to guard against wind damage and moisture penetration shall be provided.

1.6.3. Adjacent surfaces shall be protected to prevent damage during rehabilitation

## 2. Utility Systems

- 2.1. Installation of mechanical equipment that does not adversely affect the viewshed.
  - 2.2. Rehabilitation of existing or installation of new electrical, cable television, and telephone connections, when wiring is located in unobtrusive locations.
  - 2.3. Communication dishes when installed in unobtrusive locations but not on the historic roof or wall lines of the buildings.
  - 2.4. Replacement, removal, or upgrading of water and plumbing systems when adjacent materials are protected against damage.
3. Interior Architectural Character Defining-Features
    - 3.1. Floor refinishing.
    - 3.2. Repair or refinishing of interior wall finishes by patching or replacing with new plaster that duplicates the existing plaster in strength, composition, and texture.
    - 3.3. Repair or replacement (when missing or beyond repair as determined by the [insert name of installation] CRM) of interior doors and transoms when matching existing or original in material, color, configuration, and method of construction.
    - 3.4. Historic cabinets and accessories
      - 3.4.1. Replacement of items less than forty-five (45) years of age.
      - 3.4.2. Installation of deadbolts, door locks, window latches, and door peep holes.
      - 3.4.3. Installation of fire, smoke, and carbon monoxide detectors when adjacent historic materials are protected.
      - 3.4.4. Replacement of existing floor covering.
4. Site
    - 4.1. Tree or plant removal when trees are dead, diseased, or hazardous, or when located within 5'-0" of a historic building.
    - 4.2. Removal of vines or plants damaging buildings.
    - 4.3. Tree or hedge trimming.
    - 4.4. Repair or replacement of walkways and driveways when done in-kind matching existing.
    - 4.5. Repair or replacement of signage in-kind.

4.6. Repair or replacement of fencing when done in-kind matching existing materials, color, and design.

4.7. Excavations for repair or replacement of building footings or foundation work within two (2) feet of existing footings and foundations.

Excavations for the installation of utilities where installation is restricted to areas previously disturbed by installation of these same