

# islandcolonypartners

445 Seaside Avenue, Mezzanine, Honolulu, HI 96815

## Island Colony Partners License Agreement FAQ

### 1. Do I qualify to sign up for the license agreement?

All current owners who are currently doing illegal short-term rentals qualify for this program.

### 2. Can a new owner, potential buyer, owner in escrow, or owner who has a long-term renter in my unit join the license agreement?

Unfortunately, this program is available only to current owners who are doing short-term rentals provided they meet certain qualifications. All other owners who wish to benefit from short term rentals must join the hotel partnership. If you are not in the hotel program and do not qualify for a license, you must be rent for more than 30 days.

### 3. What are the additional qualifications?

First, your unit must meet a minimum improvement standard. You must schedule an appointment to have your unit inspected.

Once your unit is approved, you may then apply for your license. Please have all of the required documents and additional forms listed below. Your application will not be reviewed until all documents and forms are completed.

#### Documents and Fees

- Certificate of Insurance
- Copy of GET License
- Copy of TAT License
- Tax clearance
- Verification of Real Property Tax as Hotel & Resort – All Residential classed units must sign acknowledgement of the declaration from the City & County of Honolulu (C&C)
- Room Inspection Approval
- Payment of the Initial five-year license fee equal to \$1,250.00

#### Forms

- Signed license agreement
- Owner registration form

When your application and all required documents and forms are received you will receive your license via mail or you may pick it up at the Island Colony Partners office on the Mezzanine floor. We will also keep a copy for our records.

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## 4. What are the fees involved with the license agreement? \*

There are three different fees as follows:

- a. License fee – equal to \$250 per year or \$1,250 for the initial five-year license. Thereafter, \$250 per year or an amount not to exceed that amount charged by the C&C for non-conforming Use certificates for Transient Vacation Units. These fees are non-refundable.
- b. Front desk fee – a pro rata share of the cost to operate the 24-hour front desk costs. For the first two years, this amount has a ceiling not exceed \$2,000 per year or \$166.67 per month. The front desk fee will be billed monthly and is due by the 15<sup>th</sup> of the month.
- c. Royalty Fee – equal to 5% of the average monthly revenue per hotel room. For example, if the hotel's average monthly revenue per hotel room is \$3,000 your monthly royalty fee charge would be \$150. The royalty fee will be billed monthly and be due by the 15<sup>th</sup> of the month.

\* All fees are subject to the Honolulu General Excise Tax currently 4.712%.

## 5. Is the License Fee refundable if I decide to switch to long-term rentals (30 days or longer), or sell my unit before my license terminates?

The license fee is non-refundable. However, you are allowed to cancel the license and commit to other types of rentals such as joining the hotel program or committing to rentals over 30 days.

## 6. How is the front desk fee calculated & billed?

The front desk fee is calculated by taking the actual total cost of the front desk divided by the number of units doing short term rentals (hotel program units and license agreement units combined).

For example: If the total annual cost for the front desk is \$500,000 and we have 100 units in the hotel rental program and 100 units under the license agreement, the annual front desk fee would be  $\$500,000/200 = \$2,500$  per year or \$208.33 per month.

For the first 2 years, the front desk fee shall not exceed \$2000 annually.

## 7. What services are offered for the Front Desk fee?

Check in and check out services are included. However, you can opt out of this service but your guests must still register at the front desk.

## 8. Will you be offering other services such as housekeeping, maintenance, payments, etc.?

Not at this time. In the future, we may consider offering additional services based on demand.

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## **9. Will I get billed the monthly Front desk fee & Royalty fee if my unit is under renovation or during my personal use?**

Yes. Front desk and royalty fees are owed whether the unit is under renovation or being used personally.

## **10. If I join the license program can I transfer the agreement?**

The license agreement is non-transferrable and non-refundable. Once your contract is terminated or if you sell your unit the only option for short-term rentals is through the hotel partnership.

## **11. How much advance notice must I give to cancel my license agreement?**

All cancellations notices received after the 1<sup>st</sup> of any month will be effective the end of the following month.

For example: Notice given on April 12 will be terminated effective May 31.

## **12. Can I switch while I have the license agreement and join the Hotel rental program?**

Yes, as long as you bring your room to hotel standards, you are always welcome to join the Hotel Rental Program. When inquiring about the Hotel Rental Program, we inspect your unit and offer a renovation/furniture package estimate that will bring your unit to hotel standards. Please note that in this transition, your one-time license fee will not be refunded.

## **13. I want to join the rental program, but I have reservations until the end of the year.**

The hotel can assist you in honoring those reservations by repositioning them into a hotel unit. We are still working on how to best handle this situation, but we will honor all previously confirmed reservations. All reservations must be turned over to the Hotel Rental Program and we will use our best efforts to place those guests in your unit or a similar or better one.

Please make an appointment with Kristie Maruyama to further discuss details.

## **14. Do I need to manage my short-term rentals myself since the license agreement is with me?**

No, you may have a licensed realtor manager manage your short-term rentals, but they must be an approved property manager.

## **15. How does my property manager get approved?**

All property managers wishing to conduct short-term rentals must be qualified and approved. They must fill out an agent registration form (provided by us), submit all required documents

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and meet the qualifications listed on the agent registration form. They will be notified within five business days.

## **16. How long is the unit approval process?**

You will be notified within three to five business days whether your unit meets the minimum standards. If your unit is not approved, we will inform you of the improvements needed to meet the standards. Once you have made the necessary improvements you may schedule another inspection.

## **17. Can I use my own housekeeping and maintenance staff for my room?**

Yes, but all vendors including cleaners and maintenance personnel must be also be qualified and approved. We will provide a vendor registration form. Every vendor must complete their own form.

**SHORT TERM RENTAL LICENSE AGREEMENT**

This Short Term Rental License Agreement (“License Agreement”) is entered into on \_\_\_\_\_, 2020 (“Effective Date”) by the parties identified below on the following terms and conditions:

LICENSOR: Island Colony Partners (“ICP”), whose mailing address is 445 Seaside Avenue, Mezz. Floor, Honolulu, Hawaii 96815.

LICENSEE: \_\_\_\_\_,  
whose mailing address is \_\_\_\_\_  
\_\_\_\_\_.

WHEREAS, Licensee is the owner of Unit \_\_\_\_\_ of the Island Colony condominium Project (“Project”) situated at 445 Seaside Avenue, Honolulu, Hawaii 96815;

WHEREAS, all units at the Project are subject to the Island Colony Restated Declaration of Condominium Property Regime, which was recorded with the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as document number 2304255 and the Bureau of Conveyances of the State of Hawaii (the "BOC") as document number 96-057032, on April 25, 1996 (the "Declaration"), the Restated Bylaws of the Association of Apartment Owners of Island Colony, which was recorded with the Land Court as document number 2304256 and the BOC as document number 96-057033, on April 25, 1996 (the "By-Laws"), and the Amendment to the Restated Declaration of Condominium Property Regime and to the Restated By-Laws of the Association of Apartment Owners of Island Colony, which was recorded with the Land Court as document number 3507534 and the BOC as document number 2006-200083, on November 1, 2006 (the "Amendments") (hereinafter collectively referred to as the "Project Documents");

WHEREAS, the Declaration, including Section 10, provides that it was the intended nature of the Project that a maximum of units in the Project would join and become limited partners of ICP in connection with a commercial hotel operation;

WHEREAS, the Declaration provides that ICP has the sole and exclusive right to do rentals of shorter than thirty (30) days in the Project;

WHEREAS, Section 11.a. of the Declaration provides that any Residential Apartment (“Unit”) at the Project not participating in ICP hotel program “shall not be rented for a period of less than thirty (30) days.”;

WHEREAS, Section 11.a. of the Declaration further provides that anyone doing rentals longer than thirty (30) days shall provide a written lease to the hotel operator, which is American Pacific Hotels LLC (“APH”).

WHEREAS, on March 9, 2018, the board of directors of the AOA of Island Colony and ICP and APH entered into a Settlement Agreement related to *Association of Apartment Owners of Island Colony v. Island Colony Partners, et al.*, Civil No. 13-1-1847-07 ECN and *Island Colony Partners v. Shuto Sales & Mgmt., LLC, et al.*, Civil No. 13-1-1962-07 (Consolidated);

WHEREAS, as a term of the Settlement Agreement, ICP agreed to issue for a limited time licenses to current owners of units in the Project, who, as of the date of the Agreement are not limited partners of ICP, are engaged in short term rentals of less than 30 days and who wish to continue to engage in short term rentals of less than 30 days (“Short Term Rentals”);

WHEREAS, pursuant to the terms of the Settlement Agreement, Licensor is willing to grant to Licensee the right to do short term rentals of less than 30 days in accordance with the terms and conditions contained herein;

NOW THEREFORE, in consideration of the promises, covenants and conditions as set forth in this License Agreement, it is hereby agreed as follows:

**1. GRANT OF LICENSE**

Licensor hereby grants to Licensee a non-exclusive, non-transferable license, without the right to sublicense, to do short term rentals of less than thirty (30) days at the Project for Unit No. \_\_\_\_\_ (“Unit”), and no other unit at the Project, as provided and limited herein.

This License Agreement shall be effective as of the Effective Date above.

**2. TERM**

The initial term of the License shall be for five (5) years, commencing as of the Effective Date of this License Agreement. Thereafter this License Agreement shall be automatically renewed each year for one (1) additional year, pursuant to the terms of this License Agreement as set forth herein.

This License Agreement will be automatically renewed unless 60 days prior to the expiration of the License Agreement, and at the sole discretion of the parties to the License Agreement, either (i) ICP or APH provides the

Licensee with written notice that the License Agreement will not be renewed or (ii) the Licensee provides ICP or APH with a written cancellation notice. In addition, ICP reserves the right to revoke the License Agreement at any time for (a) any conduct by the Licensee deemed detrimental to the interests of ICP or (b) any breach of the License Agreement, including without limitation, any failure to comply with the terms set forth herein.

### **3. LICENSE FEES**

Licensee shall pay and agrees to pay the following to ICP and APH for the rights as provided herein:

**a. Initial Annual License Fee:** The initial annual license fee shall be \$250 per year for the initial five year term for a total of \$1,250 due and payable immediately to ICP upon execution of this License Agreement. The initial annual license fee is non-refundable. Failure to pay this initial license fee shall void and cancel this License Agreement immediately and Licensee shall have no further rights under this License Agreement.

**b. Annual License Fee:** The Annual License Fee after the initial annual fee has been paid may be adjusted at ICP's sole discretion from time to time, similar with the amount charged by the City & County of Honolulu for Non-Conforming Use Certificates for Transient Vacation Units. The Annual License Fee shall be due and payable fifteen (15) days prior to the first month of the renewal of this License Agreement after the initial five year term.

**c. Monthly Front Desk Fee:** Licensee shall pay to ICP a Monthly Front Desk Fee plus General Excise Tax ("GET"). The Monthly Front Desk Fee shall be based on a pro-rated share of the front desk and overhead costs. This amount is to be based on the total budgeted annual expense related to the operation and maintenance of the 24-hour front desk (consisting of labor costs; the front desk's share of (a) AOA maintenance fees, (b) lease rent, (c) utilities, and (d) insurance costs; equipment lease expenses; front desk improvements; sales and marketing expenses, management and administrative expenses, overhead and other necessary expenses) and will be allocated equally among all units doing Short Term Rentals (e.g. the number of units in ICP's hotel rental program by the number of units with Short Term Rental License Agreements).

The Monthly Front Desk Fee will be charged based on an estimated annual budget and the estimated number of units doing Short Term Rentals, and said monthly fee may be adjusted after 3 months based on actual costs.

At the end of each calendar year there will be a "true-up" (reconciliation) at which time the actual amount needed to compensate ICP for the front desk expense and the actual allocation of such expense to each unit based on the

actual number of participating units will be determined. Any excess or deficiency in the amount of the fees paid during the year will be allocated to the following calendar year and the monthly fee for the following calendar year will also be adjusted based on results of the true-up. Any owner electing not to renew a License Agreement shall pay ICP any deficiency and/or ICP shall refund any excess to the owner within fifteen (15) days after the expiration of this License Agreement. The AOA shall have the right to reasonably audit ICP's true-up. From March 9, 2018 to March 9, 2020, ICP agrees that the maximum Monthly Front Desk Fee will be \$2,000 per year for the Licensee. However, if Licensee's proportionate share of the Monthly Front Desk Fee is lower than the actual cost, the actual amount will be assessed.

The Monthly Front Desk Fee shall be billed to the Licensee by the fifth (5<sup>th</sup>) day of each month and must be received by ICP by the fifteenth (15<sup>th</sup>) day of the month. If the Effective Date of this Agreement is a date other than the 1<sup>st</sup> of the month, Licensee agrees to pay within five (5) days from receipt of a bill from ICP for the Monthly Front Desk Fee for that month, regardless of the number of days left in the month.

**d. Monthly Royalty Fee:** A Monthly Royalty Fee shall be paid to APH based on an amount equal to five percent (5%) plus GET of the average per unit rental revenue realized by those units in the ICP hotel rental program. As an example, if there are 100 units in the ICP hotel rental program with an average rental revenue of \$1,000 per unit for the month, then 5% of \$1,000 is \$50 and \$50 shall be the Monthly Royalty Fee payable to APH for those units who are subject to this License Agreement.

The Monthly Royalty Fee shall be calculated on a monthly basis based on the previous month's average and billed to the Licensee by the fifth (5<sup>th</sup>) day of each month and must be received by APH by the fifteenth (15<sup>th</sup>) day of the month. If the Effective Date of this Agreement is a date other than the 1<sup>st</sup> of the month, Licensee agrees to pay within five (5) days from receipt of a bill from APH for the Monthly Royalty Fee for that month, regardless of the number of days left in the month.

**e. Late Charge:** Licensee agrees that if Licensee fails to make any payments set forth above, ICP and APH will incur certain costs and expenses, the exact amount of which are extremely difficult or impracticable to fix. Such costs and expenses will include without limitations, administrative, collection, processing and accounting costs and expenses. Therefore if ICP or APH do not receive from Licensee any payments as required under this License Agreement by the due date, a late charge of five percent (5%) of any fees due under this License Agreement, or a minimum of \$20, whichever is greater, will be charged for any amount received more than ten (10) days after the due date. Licensee further agrees that interest at a rate of 10% per annum shall accrue on all outstanding amounts from the due date until ICP or APH receives payment.



#### **4. CONDITION OF THE UNIT**

Licensee agrees that the condition of the Unit shall be in reasonably comparable quality to units in ICP's hotel rental program and will be consistently maintained in such condition. Specifically, Licensee agrees that Licensee will comply with the "Unit Interior Quality Standards" as determined by the Standards Committee, which may be updated from time to time. Licensee agrees that the Unit may be inspected at reasonable times during the term of this License Agreement by Licensor and its agents and/or members, or by agents and/or members of the Standards Committee, which is comprised of members designated by ICP and the Board of Directors of the AOA of Island Colony.

#### **5. LICENSEE'S SERVICE PERSONNEL**

Licensee agrees that all personnel, including the personnel of any vendors or other third party contractors or service providers (collectively "Service Personnel"), who service the Unit must submit an application to ICP for each Service Personnel. The application fee for each Service Personnel shall be \$50 plus GET. If Licensee is seeking a License for multiple units at the Project and Licensee will be using the same Service Personnel(s), Licensee will only need to submit one application and fee for each Service Personnel. Any Service Personnel shall first approved by ICP prior to doing any work for Licensee.

Furthermore, Licensee agrees that each Service Personnel must:

- (a) acquire and maintain commercial general liability insurance coverage with a minimum limit of \$1 million per occurrence, Worker's Compensation Insurance, if applicable, in amount not less than \$500,000 each accident;
- (b) be licensed or bonded, if required by Hawaii law; and
- (c) abide by a minimum dress code and grooming standards comparable to that used by personnel servicing units in ICP's hotel rental program and use service elevators when accessing the Project. Dress code and grooming standards and access to the Project shall be determined and periodically reviewed by the Standards Committee, which may be amended from time to time.

#### **6. PROPERTY MANAGERS**

All agents or other persons or entities providing third party management services (hereinafter "Property Managers") for Licensee must submit an application to ICP to provide third party management services. The application

fee for each Property Manager shall be \$50 plus GET. If Licensee is seeking a License for multiple units at the Project and Licensee will be using the same Property Manager, Licensee will only need to submit one application and fee for that Property Manager. Any Property Manager must be first approved before providing any services. ICP shall have sole discretion to approve any applications, however, such approval shall not be unreasonably withheld provided that the Property Manager must have and maintain the following:

- (a) Proper licenses, if applicable, including valid real estate broker's licenses;
- (b) Acquire and maintain commercial general liability insurance coverage with a minimum limit of \$1 million per occurrence, Worker's Compensation Insurance, if applicable, in amount not less than \$500,000 each accident;
- (c) Be in good standing with all governmental bodies or other agencies or authorities with regulatory or oversight of short term rentals, including without limitation any applicable licensing boards, city, state, and federal tax authorities, and the Board of Directors of the AOA, and provide a certificate of good standing as may be requested by ICP;
- (d) Comply with all laws, rules and regulations concerning short term rentals;
- (e) Follow any requirements as may be established by the Standards Committee;
- (f) Do not have a significant history of customer or client complaints and do not engage in any activity detrimental to the reputation of the Project or ICP/APH or its suitability for hotel operations.

## **7. TAXES**

Licensee agrees that it will be responsible for (a) applying for Transient Accommodation Tax and General Excise Tax licenses, if Licensee does not already have these, (b) reporting and paying the Transient Accommodation Tax and the General Excise Tax for any applicable rentals, (c) paying any other applicable taxes, including real property tax, attributable to the Unit, and (d) complying with any current or subsequent state or county laws, rules or regulations governing transient rentals. Licensee further agrees to provide Licensor with all applicable Transient Accommodation Tax and the General Excise Tax numbers.

## **8. FRONT DESK SERVICES**

Licensee shall be entitled to the following services from the Front Desk at the Project for the Unit subject to the terms of this License Agreement:

- (a) Check-in Service;
- (b) Check-out Service;
- (c) Key Service;
- (d) General information assistance to guest; and
- (e) Notification to Licensee or designated agent or manager about guest complaints regarding the Unit.

The above services are optional and Licensee may chose to utilize some or none of the Front Desk Services. However, Licensee will inform ICP in writing at least two (2) days prior to the arrival of a guest that it intends to utilize the Front Desk Services.

## **9. REGISTRATION OF ALL GUESTS**

All guests who stay at the Unit must register with the Front Desk regardless of whether or not Licensee utilizes any of the Front Desk Services.

## **10. TERMINATION OF LICENSE AGREEMENT**

This License Agreement shall be terminated upon the occurrence of any of the following:

- (a) Nonpayment by the Licensee of any fee required under the terms of this License Agreement and failure by Licensee to make such payment within ten (10) days after written notice has been sent to Licensee;
- (b) Violation of any of the terms and conditions contained herein by the Licensee, including failure to maintain the Unit in an acceptable condition as set by the Standards Committee, and failure by Licensee to correct any such violations within ten (10) days after written notice has been sent to Licensee. However, Licensee agrees that if Licensee begins to take corrective measures within ten (10) days of receipt of violation of the terms and conditions of this License Agreement, ICP may in its sole discretion allow Licensee additional time to make such corrections. ICP's decision to allow additional time to correct any violations does not create a right to such additional time beyond what ICP allows;

(c) Licensee sells or transfers the Unit. Licensee shall notify Licensor at least thirty (30) days prior to selling or transferring the Unit. If Licensee fails to notify Licensor of a sale or transfer, Licensee will remain obligated to pay any fees, including the Monthly Front Desk Fee and Monthly Royalty Fee, until Licensee has provided proper written notice to Licensor as required herein;

(d) Licensee notifies ICP in writing that Licensee is terminating the License Agreement. Licensee agrees that if Licensee terminates this License Agreement that such termination will not be effective until the end of the next subsequent full month; for example, if Licensee informs ICP in writing on October 10, 2019 that Licensee wishes to terminate this License Agreement, then the termination shall be effective on November 30, 2019.

In the event of termination of this License Agreement, Licensee will have no further rights under this License Agreement and no further rights to do any Short Term Rentals unless it joins ICP's hotel rental program, which ICP can in its sole discretion withhold, including requiring Licensee to correct any violations of the terms and conditions contained in this License Agreement.

If this License Agreement is terminated as a result of paragraphs (a), (b) or (c) above, Licensee agrees that Licensee shall owe and will pay to ICP and APH the Monthly Front Desk Fee and the Monthly Royalty Fee due and owing for the month that this License Agreement is terminated, in addition to all other amounts which may be owed.

## **11. NOTICES**

Any notice required or permitted by this License Agreement shall be in writing and use one of the following methods of delivery: personal delivery, mail (registered or certified mail, postage pre-paid, return-receipt requested), or nationally recognized overnight courier (fees prepaid) and any such notice or demand shall be deemed to be conclusively given or served upon the earlier to occur of the actual date of delivery or three business days after the date of the mailing.

Notice to Licensor shall be made to:

Island Colony Partners  
445 Seaside Avenue, Mezz. Floor,  
Honolulu, Hawaii 96815  
(808) 921-7110

Notice to Licensee shall be made to:

\_\_\_\_\_ (name of Licensee)

\_\_\_\_\_ (address of Licensee)

\_\_\_\_\_ (address of Licensee)

\_\_\_\_\_ (phone number)

Either party may from time to time designate in writing to the other party any other such address which it wishes notices to be delivered to.

## **12. MISCELLANEOUS PROVISIONS**

(a) This License Agreement represents the entire understanding and agreement between the parties and supersedes any prior or existing verbal or written understanding, commitment, or agreement between ICP and the Licensee.

(b) This License Agreement shall be governed by and construed under the laws of the State of Hawaii.

(c) The courts of the State of Hawaii shall be sole and exclusive venue and forum for any disputes related to this License Agreement regardless of where this License Agreement is executed by Licensee.

(d) The Parties represent and warranty that they have authority to enter into this License Agreement, which shall be binding upon the successors and permitted assigns of the parties.

(e) In entering into this License Agreement, the parties represent that they have read the agreement and the terms are fully understood and voluntarily accepted by them. It is further agreed that this License Agreement is made with the full knowledge of the facts and consequences and the parties have had an opportunity to consult with legal counsel. The parties agree that the rule of construction to the effect that any ambiguities are resolved against the drafter shall not be employed in the interpretation of this License Agreement or any amendment thereof.

(f) The parties agree that this License Agreement may be amended by ICP to include additional provision and procedures.

(g) If any one or more of the provision contained in this License Agreement, is for any reason, held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability will not affect any other

provision of this License Agreement, but this License Agreement shall be construed as if those provisions had never been contained in it, unless the deletion of those provisions would result in a material change so as to cause completion of the transaction contemplated in this License Agreement to be unreasonable.

(h) The waiver by ICP of any breach or partial performance of any term, covenant or condition contained in this License Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach thereof, or of any other term, covenant or condition contained in this License Agreement.

(i) The parties agree to first attempt mediation to resolve any claim or dispute to this License Agreement. However, mediation is not a pre-requisite to the filing of any court action. The prevailing party shall be entitled to recovery of all of its attorneys' fees and costs incurred with any court action to enforce the terms of this License Agreement.

(j) This License Agreement may be executed in counterparts, each of which will be deemed an original but all of which constitutes one and the same instrument. A party's signature(s) when delivered by facsimile, email or other electronic medium shall be treated in all respects as having the same force and effect as an original signature.

IN WITNESS WHEREOF, each of the parties has caused this License Agreement to be executed and delivered on its behalf, as of the date and year first written above, by its duly authorized representative.

LICENSOR:

LICENSEE:

ISLAND COLONY PARTNERS, a  
Hawaii limited partnership

By: American Pacific Hotels LLC  
Its: General Partner

By: \_\_\_\_\_  
William T. Tanaka, Jr.  
Its: Manager

\_\_\_\_\_  
(Name/Title) \_\_\_\_\_

\_\_\_\_\_  
(Name/Title) \_\_\_\_\_