



# PHOTOGRAPHY AGREEMENT; LICENSE / TERMS / CONDITIONS

**By receipt, use and/or payment of and/or for the photographer's photographs, client affirms they have read, understand and agree to the following:**

## **Scope of this Agreement.**

This Agreement applies to any photograph, graphics, digital assets, or digital images created or taken by Photographer and delivered to the Client (collectively known as "PHOTOS") for the property ANY PROPERTY PHOTOGRAPHED AT THE REQUEST OF THE CLIENT ("PROPERTY"). This Agreement governs the relationship between the parties and in no event shall any e-mail communication or other exchange, amend or otherwise modify the terms of this Agreement unless agreed to in writing.

**Rights:** All Photos and rights relating to them, including copyright and ownership rights in the media in which the Photos are stored, remain the sole and exclusive property of the Photographer. This license provides the Client with the limited right to reproduce, publicly display, and distribute the Photos only for promotional or advertising purposes directly related to the sale of the Property. Photos used for any purpose not directly related to the sale of the Property must be with the express permission of Photographer and the payment of additional fees, unless otherwise agreed to in writing.

Photos may be uploaded to any MLS listing service solely for promotion of the Property during the pendency of this Agreement. However, regardless of any terms and conditions of the MLS, at no time does this Agreement provide Client with the right to transfer copyright, or any other exclusive rights as provided by the Copyright Act 17 U.S.C § 106. Photos will contain copyright management information (CMI) in the form of ownership information embedded in the metadata or elsewhere. Removing and/or altering such information is prohibited and constitutes violation of the Digital Millennium Copyright Act (DMCA) and Client will be responsible to the Photographer for any penalties and awards available under the statute.

Unless otherwise specifically provided elsewhere in this document or other signed agreement between the parties, any grant of rights is limited to a term of either one (1) year from the date of the Photo assignment, or (2) at the termination of Client's representation of the Property, whichever occurs first. Further use of images beyond one (1) year requires Photographer's permission and additional fees. Rights are assigned to the Client immediately upon delivery of the Photos.

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## **Relationship of the Parties**

The parties agree that Photographer is an independent contractor, and that neither Photographer, nor Photographer's employees or contract personnel are, or shall be deemed to be, employees of Client. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Photographer and the Photos or any other deliverables prepared by Photographer shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

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## **Creation**

The manner and method of creating any Photographs is solely at the discretion of Photographer and the Client has no right to control Photographer's manner and method of performance under this Agreement. Photographer will use his/her best efforts to: (a) ensure that the Photos conform to Client's specifications; and (b) submit all Photos to Client in publishable quality, on or before the applicable deadlines.

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## **Delivery**

Photographer will provide non-watermarked MLS-Ready JPG images at approximately 1280 x 1024 at 96dpi. Photographer may also select delivery of photographs in JPEG, TIFF, PNG, or other standard format, at a resolution that Photographer determines will be suitable for the Photos as licensed. It is the Client's responsibility to verify that the Photos are suitable for reproduction and that if the Photos are not deemed suitable, to notify the Photographer with five (5) business days. Photographer's sole obligation will be to replace the Photos at a suitable resolution but in no event will Photographer be liable for poor reproduction quality, delays, or consequential damages. Photographer has no obligation to retain or archive any Photos delivered to Client.

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## **Fee**

All fees and expenses payable under this agreement are required no later than five (5) business days from the delivery of the Photos and payable irrespective of whether Client makes actual use of the Photos. Payment is accepted via Pay Pal, cash or check. If full payment has not been received within fifteen (15) days, all rights are revoked at Photographer's discretion. In the event rights are revoked, all images in the possession of Client will be removed from all forms of media and permanently destroyed within two (2) days. Client shall provide Photographer with written statement that all images have been removed and destroyed. Alternatively and at Photographer's discretion, a DMCA Take-Down Notice may be submitted to the Greater El Paso Association of REALTORS® and/or the hosting service of the association's Multiple Listing Service.

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## **Cancellation**

If Client cancels a scheduled assignment within two (2) days of the Property shoot, Client is responsible for 50% of the fee and any expenses incurred. If Client cancels a scheduled assignment within one (1) day of the Property shoot, Client is responsible for 100% of the fee and any expenses incurred. If Photographer arrives at property and property is not ready for Photographs and/or cannot access the property and a re-schedule is requested, Client agrees to pay 100% of the fee and any expenses incurred.

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## **No Exclusivity**

This Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Photographer, and Photographer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Photographer.

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## Transfer and Assignment

Client may not assign or transfer this agreement or any rights granted under it. No amendment or waiver of any terms is binding unless in writing and signed by the parties. However, the invoice may reflect, and Client is bound by authorizations that could not be confirmed in writing because of insufficient time or other practical considerations. If anyone asks you for any of your Rights to the Photos, you agree to refer them to us. If we agree to allow others to use the Photos, an additional licensing fee may be required. We agree not to use the Photos in a way that interferes with your Rights.

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## Indemnification

Client will indemnify and defend Photographer against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the creation or any use of the Photos or materials furnished by Client. You promise to indemnify us, defend us, and pay the expenses of our defense, if a claim is made against us arising out of the services we perform for you. It is the Client's responsibility to obtain the necessary property releases and to ensure they are fully in effect and in force. You authorize us to come onto the property and take Photographs. You have the authority to allow us entry and permit us to take Photographs.

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## General Law/Arbitration

This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all prior agreements between the parties. This Agreement shall be governed and interpreted and enforced in accordance with the laws of the State of Texas. Any claim or litigation arising out of this Agreement or its performance may be maintained only in courts physically located in El Paso County, Texas, and the parties hereby consent to the personal jurisdiction of such courts. In the event of any litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its attorneys' fees incurred in the litigation. If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.

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## Severability

If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.

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## Waiver

No action of either party, other than express written waiver, may be construed to waive any provision of this Agreement and a single or partial exercise by either party of any such rights or remedies will not preclude further exercise of other rights or remedy. We are an independent contractor and not your employee. You are not our agent and cannot make agreements for us.

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