

# Real Estate Photography Contract and Licensing Agreement

This Contract and Licensing Agreement (the "AGREEMENT") is entered into and effective on this date, between Glen Johnson – Aperture Photographics ("PHOTOGRAPHER")

and, \_\_\_\_\_ ("CLIENT"). This Agreement constitutes a contract to produce photographs, graphics, video, digital assets, or digital images (collectively known as "PHOTOS") of the property located at: \_\_\_\_\_ ("PROPERTY").

The Photos are to be taken on the day of: \_\_\_\_\_ Time: \_\_\_\_\_ AM PM

This Agreement governs the relationship between the parties and constitutes the entirety of the agreement.

**Ownership of Photos:** All Photos and rights relating to them, including copyright and ownership, remain the sole and exclusive property of the Photographer.

**Usage Rights Granted to Client:** Only the CLIENT listed above is entitled to the rights specified herein and such rights may not be transferred to any other agent or company, parent company, affiliates, or subsidiaries. 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. Any use not directly related to the sale of the Property, must be negotiated with Photographer separately and in advance of such use.

Photos may be uploaded to any MLS listing service solely for promotion of the Property during the pendency of this the property listing. However, regardless of any terms and conditions of the MLS or other company Client chooses to use to list the property, at no time does this Agreement provide Client with the right to transfer copyright, or any other rights as provided by the Copyright Act 17 U.S.C § 106.

Photos will contain invisible copyright and ownership information embedded in the metadata of each image. 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.

**All rights granted within the terms of this Agreement expire when the property is sold. At that time, a new owner takes possession of the property thus voiding all previous Property Model releases and rights for Photographer and Client to use the images for that property, unless a new Property Model release can be obtained from the new owner.** Client agrees to proceed with reasonable expediency, to remove all images of Property from any location where they may have been visible to the public while the rights to use them were in force. 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 use of the Photos. It is the Client's responsibility to obtain the necessary model or property releases and to ensure they are in full effect and in force before the Photos are created and during the entire time the Photos are in use.

(A Property / Model Release is provided with this document)

**Relationship of the Parties:** The parties agree that Photographer is an independent contractor. Photographer and the Photos 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.

**Creation of Photos:** While Photographer welcomes the input and specific requests about what the client wishes to produce and how the client wishes the images to appear, the manner and method of creating any Photos is solely at the discretion of Photographer. Photographer will use his/her best efforts to ensure that the Photos conform to Client's specifications.

**Delivery:** Within two business days, Client will receive an invoice with a payment link and a link to view "watermarked proofs" for inspection. These images must be approved in writing (email is preferred) or changes must be requested at that time. Once the images are approved and final payment received, a download link will be provided to Client along with instructions on how to download and open the file containing all the finished images. The finished images will be created

according to the Default Specs, or the detailed Client Image Specs specified below. Finished images will contain no watermark on the outside but will contain copyright meta data on the inside that does not show up when the image is viewed. Photographer will gladly provide suggestions and recommendations about image specs based on the desired usage described by CLIENT. 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 immediately. Photographer's sole obligation will be to replace the Photos after suitable modifications are made. Photographer will not be liable for poor reproduction quality, delays, or consequential damages that arise from the printer unless it can be determined that Photographer failed to produce images that meet the specifications provided by Client in the spaces below.

**Default Normal Image Specs:** Unless otherwise specifically requested below, Photographer will produce images in the following resolutions; (1) normal web use 1000 x 1000 pixels, (2) HD web use or small print 2880 x 2880 pixels, or (3) If video is produced it will be at HD video resolution of 1920 x 1080 pixels.

**Image Specs Requested by Client :**

**Archiving Images:** Photographer may retain the images at Photographer's discretion, but has no obligation to retain or archive any Photos after the final images are received by client and deemed acceptable.

**\$100 Retainer and Cancellation:** Upon signing of this contract, Photographer will reserve the time and date of the photo shoot. The retainer paid for this reservation is applied to the final bill if the shoot is completed. If the shoot is canceled with less than 4 days notice, the retainer is forfeited to Photographer as compensation for lost wages. If the shoot is canceled more than 4 days in advance, the retainer may be applied to a new shoot date and a new location within the following six months, but becomes forfeit to Photographer if not used within 6 months.

Once the images are produced, all fees are payable irrespective of whether Client makes use of the Photos, (as in the case of a house being sold after the photos are produced but before the listing is posted.)

**Payment:** All fees and expenses contracted under this agreement must be paid prior to delivery of the finished Photos.

**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 Oregon. Any claim or litigation arising out of this Agreement or its performance may be maintained only through the binding Arbitration of a third party, located in Lane County, Oregon.

**Arbitration Required/Mediation First Option.** Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate through either of the organizations named above or any other mediation process or mediator as the parties may agree upon.

The parties hereby consent to the personal jurisdiction of such Arbitration. 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 hire the services of a Mediation and/or binding Arbitration specialist, the selection of which must be discussed and an attempt made to come to a mutually agreed selection. If one party refuses to participate, or if a mutually acceptable Arbitrator cannot be agreed upon, either party may hire an Arbitration specialist and proceed with an Arbitration hearing. In a hearing for which legal service of notice has been

performed, the present party is entitled to a binding default judgment if the other party refuses to attend. It is agreed that an Arbitration judgment is binding upon both parties.

**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.

**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.

IN WITNESS WHEREOF, the parties have caused this Contract and Licensing Agreement to be duly executed as of the dates written below.

CLIENT

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PHOTOGRAPHER

Name: \_\_\_\_\_

Date: \_\_\_\_\_