

Last Updated August 25, 2020

Terms of Service, Real Estate Photography by Justin Mikkelsen Photography.

By submitting a request for photographic services, client agrees to be bound by these terms and conditions.

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 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 may contain copyright management information (CMI) at the discretion of the Photographer in the form of either 1) a copyright notice © and/or 2) other copyright and ownership information embedded in the metadata or elsewhere, unless otherwise agreed to by the Parties. 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. Client is responsible for ensuring that the Photos are removed from MLS databases at the expiration of this Agreement.

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 this Agreement, 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.

Client Usage; Limited Commercial Use License.

Client is granted by Photographer high-resolution un-watermarked digital files and Photographer is issuing to Client a non-exclusive perpetual limited license for Client's limited commercial use of the digital files in the normal course of Client's business, including, but not limited to, advertising, marketing, or other promotions, or on Client's website, blog, or social media platforms. Client understands that the digital files are meant for print and online marketing and advertising materials or campaigns. The digital files may be not altered, edited, or manipulated in any way, except that Client may add their business name, logo, website or other advertising or marketing campaign text to the digital files so long as it does not affect the elements of the image as styled by Photographer.

The digital files may not be used by anyone other than the client. The Client cannot sell, lease, or give images to third party.

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.

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.

Delivery

Photographer may 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.

Unless otherwise specifically provided, Photographer is not responsible to provide images 1) larger than 8"x10" at 300 dpi in JPEG or other suitable file type. Photographer has no obligation to retain or archive any Photos delivered to Client.

Matterport 3D Tours

If Client order includes the order of a 3D Model, the following applies. A "Matterport Space" is a 3D model hosted on the platform of Matterport, Inc. ("Matterport") that includes the following features: Inside mode, Dollhouse mode, Floor Plan mode, Property Description, Address, and Contact Information. It can be shared using a URL or embed code.

Matterport Delivery

Service Provider will provide a URL and embed code for the completed Matterport Space(s) (which will include access to Guided Tours and CoreVR Experience, if ordered). Customer understands and agrees that all Matterport Spaces (including associated Guided Tours and CoreVR Experience, if ordered) are hosted solely on Matterport's platform, and Customer will not receive any digital assets for Matterport Spaces. Matterport Snapshots and Matterport 2D Schematic Floor Plans will be provided by email or a third-party digital repository. Service Provider will make all of the foregoing 3D Services available to Customer within 2 days after the date of the Capture Services. Customer can request that Matterport Spaces contain hidden "presented by" and "contacts" details for use on real estate MLSs.

Matterport Hosting Term

Service Provider agrees to process and host the created Matterport Space(s) on the Matterport platform for a period of 6 Months following the completion of Capture Services. Additional hosting time may be purchased for an additional fee as set by the Photographer.

Fees

All fees and expenses payable under this agreement are required at time of service and payable irrespective of whether Client makes actual use of the Photos. No Photos will be delivered unless payment is received in full.

Refunds

Due to the custom nature of custom product and commercial photography, digital files cannot be returned and all money paid is nonrefundable.

Service Location Preparation

Customer is required to prepare the Service Location in advance of any services, including without limitation:

- Removing confidential or unwanted items
- Adjusting furniture and/or decor to desired position
- Informing the Service Provider of any rooms or areas that should be excluded from Capture Services
- Ensuring the Service Location is free of moving persons, pets, or objects

Unless otherwise arranged, a Service Location that has not been properly prepared, in Service Provider's sole discretion, will be considered unready and the date of service must be rescheduled. Service Provider shall not be responsible for the untidiness of any Service Location or for small

alignment issues, mirror, window, glass, and reflective views. Customer shall further ensure that the Service Location is accessible upon the day of service for up to 3 hours.

Cancellation

If Client cancels this Agreement or a rescheduling request occurs 24 hours prior to the Property shoot, Client will pay any expenses incurred and a fifty (50)% cancellation fee.

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.

Transfer and Agreement

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.

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. It is the Client's responsibility to obtain the necessary model or property releases and ensure they are full effect and in force.

General Law

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 in courts physically located in Marion County, Oregon, 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.

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.