

Last Update December 3, 2008

BY VISITING OR USING ANY WEBSITE OWNED BY e-toursonline Interactive Media, YOU ARE AGREEING TO BE BOUND BY THESE TERMS CONDITIONS. YOU ARE ALSO AGREEING THAT SUCH AGREEMENT CONSTITUTES A BINDING CONTRACT BETWEEN YOU AND e-toursonline.

IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS AND CONDITIONS, PLEASE DO NOT VISIT OR USE THE e-toursonline Interactive Media WEBSITE, <http://e-toursonline.com>

### Service Agreement

The following is the terms of the service agreement between e-toursonline Interactive Media ("Service Provider") and the buyer ("Buyer") of goods or services through Service Provider's Web site (the "Site"). If you do not agree to these terms, you will not be able to purchase anything, so please review these terms carefully:

Introduction. Buyer agrees to the terms and conditions outlined in this Online Contract ("Contract") with respect to the goods, services and information provided by or through the Site. This Contract constitutes the entire and only agreement between the Service Provider and Buyer, and supersedes any and all prior or contemporaneous agreements, representations, warranties, and understandings with respect to the goods, services and information provided by or through the Site, and the subject matter of this Contract. Buyer agrees to review this Contract prior to purchasing anything and purchase of a good or service shall be deemed acceptance of this Contract.

Credit Card Policy. Buyer represents and warrants that (i) the credit card information supplied is true, correct and complete and (ii) charges incurred by the Buyer will be honored by the Buyer's credit card Service Provider and (iii) Buyer will indemnify Service Provider for any credit card charge-back filed by or on behalf of the Buyer and (iv) Buyer understands that in the event a credit card charge-back is filed, Buyer's account will be placed with a third party collection agency and (v) Buyer shall pay charges incurred by Buyer at the amounts in effect at the time incurred, including all applicable taxes, collection fees, interest and any additional fee incurred by the Service Provider in the attempt to collect upon Buyer's debt. Buyer shall be responsible for all charges incurred through use of Buyer's password. Buyer agrees to keep his or her password confidential and to notify Service Provider within 24 hours of any breach of this Contract or unauthorized use of the password. Service Provider does not protect Buyer from unauthorized use of Buyer's password.

Copyright. The content, organization, gathering, compilation, magnetic translation, digital conversion and other matters related to the Site are protected under applicable copyrights, trademarks, and other proprietary (including but not limited to intellectual

property) rights, and, the copying, redistribution, use or publication by a Buyer of any such content or any part of the Site is prohibited.

Release of Liability Buyer gives e-toursonline Interactive Media, their assigns, licensees, and legal representatives the irrevocable right to use Buyer's picture, portrait, or photograph in all forms and media and in all manners, including composite or distorted representations, for advertising, trade, or any other lawful purposes, and Buyer waives any right to inspect or approve the finished version(s), including written copy that may be created in connection therewith. Buyer acknowledges that Buyer has requested services from e-toursonline which will result in the creation of a virtual tour of the requested property(ies) and that virtual tour(s) of said property(ies) will be made available for online viewing.

Buyer agrees for Buyer's self, Buyer's clients, and all of Buyer's family and heirs, to RELEASE e-toursonline from all liability, claims, demands or any causes of action of any kind, in tort or in contract, which may arise as a result of utilization of Buyer's virtual tour in any form and media and in any manner, including composite or distorted representations, for advertising, trade, or any other lawful purposes. In the event that it is found by a court of law, or otherwise, that Buyer was not legally able to release e-toursonline from liability on behalf of Buyer's clients, then Buyer agrees to indemnify e-toursonline from any and all losses sustained as a result of Buyer's representation to the contrary.

Buyer is of legal age and agrees that Buyer has read this release and is fully familiar with its contents.

Editing, Deleting, and Modification. Service Provider reserves the right in its sole discretion to edit or delete any information or content appearing on the Site and to remove any goods and services for sale. Upon notice published over the Service, Service Provider may modify this Contract, or prices, and may discontinue or revise any or all aspects of the Site in its sole discretion and without any prior notice. Modification of this Contract will be deemed effective upon publication on the Site and Buyer agrees to be bound by such revisions. If buyer objects to any future modification of this contract, then Buyer's only recourse is to cease use of the Website and services provided by Service Provider. In this case, upon Buyer's notification to Service Provider within 5 business days of effective date of contract modification, Service Provider will refund all UNUSED credits in Buyer's account.

Right to Refuse. Service Provider reserves the right in its sole discretion to refuse service at any time. Sale of any goods or services is subject to availability.

Indemnification. Buyer agrees to indemnify, defend and hold Service Provider and its affiliates, licensors and suppliers harmless from any liability, loss, claim and expense, including reasonable attorney's fees, related to a Buyer's violation of this Contract or use of the Site.

Non-Transferable. Buyer's right to use the Service is not transferable and is subject to any limits established by Service Provider or by Buyer's credit card Service Provider.

Disclaimer. THE SERVICE, CONTENT, GOODS AND SERVICES FROM OR THROUGH THE SERVICE ARE PROVIDED "AS-IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED (INCLUDING BUT NOT LIMITED TO THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE). THE SOLE AND ENTIRE MAXIMUM LIABILITY OF SERVICE PROVIDER, FOR ANY REASON, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER FOR THE PARTICULAR ITEMS PURCHASED. SERVICE PROVIDER AND ANY OF ITS AFFILIATES, DEALERS OR SUPPLIERS ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LITIGATION, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SERVICE PROVIDER AND BUYER. THIS SITE AND GOODS AND SERVICES WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS. SOME STATE STATUTES MAY APPLY REGARDING LIMITATION OF LIABILITY.

Payment Policy Payment is due when or before services are rendered. If payment is not received within five (5) business days of invoice, buyer understands and agrees that Service Provider may charge an additional 1.5% late payment fee upon the sixth (6th) business day and will charge an additional 1.5% late payment fee per month thereafter. The client will not be able to order any additional services and any associated virtual tours will be disabled until they pay the entire balance due. If the client's tour is disabled for non-payment, a \$10 re-activation fee will be added to the client's account, but the virtual tour will not be re-activated until the entire balance is paid. Buyer understands and agrees that if upon 90 days, the invoice remains unpaid Service Provider may turn over the account to a third party collection agency. If your account is turned over for collection, you agree to pay the company a "Processing and Collection" Fee of \$75 plus any and all accrued late charges, which will be added to the principal amount of the debt.

Refund Policy. A refund for virtual tours will ONLY be issued if an appointment is cancelled within two (2) business days prior to the scheduled Virtual tour. In such event, Service Provider shall provide Buyer a refund to the Buyer's credit card used at the time of purchase. In the case of payment by check, a check refund will be issued no earlier than ten (10) business days from date of Buyer's order. Payment for VOLUME TOUR PACKS are NON-REFUNDABLE. In the case that a Virtual tour that has been scheduled as part of a VOLUME PACK is cancelled at least two (2) business days prior to the

scheduled Virtual tour, a credit will be issued to Buyer's VOLUME PACK account. This Section 9 sets forth Buyer's sole and exclusive right to refund.

Returned Check Policy. It is understood and agreed that upon presentation of a check as the form of payment for services provided by Service Provider, that I am entering into a contractual agreement that obligates me and holds me responsible for any and all penalties, costs, and incidental damages allowable under law, but not limited to, return check charges, state surcharges, interest, collection costs, legal expenses, attorney fees and expenses incidental to the principal obligation on any check that is returned non-payable. Any check returned unpaid for any reason will not be re-deposited. Buyer agrees to pay the full amount of the check plus a returned check fee of \$25.00 for amounts up to \$50, \$30 for amounts between \$50 and \$300, or \$40 if the face value exceeds \$300, within 5 business days of the date that the check was returned unpaid. Payment must be made in the form of cash or certified check. If payment is not received within five (5) business days, buyer understands and agrees that Service Provider will charge an additional 1.5% late payment fee upon the sixth (6th) business day and an additional 1.5% per month thereafter. Buyer understands and agrees that if upon the fifteenth (15th) business day, the returned check remains unpaid Service Provider may turn over the dishonored check and all other available information relating to this incident to the State Attorney for criminal prosecution. Buyer may be additionally liable in a civil action for triple the amount of the check, but in no case less than \$50, together with the amount of the check, as service charge, courts costs, reasonable attorney fees, and incurred bank fees.

Mileage. All virtual tour services and photography services are subject a fuel surcharge when photographer must travel further than 35 miles one way to reach the destination. Fuel surcharge is priced at \$1 per mile over 35 miles. Mileage is always rounded up to the next full mile. All mileage is based on us starting from downtown Traverse City, MI.

Use of Information. Service Provider reserves the right, and Buyer authorizes Service Provider, to the use and assignment of all information regarding Buyer's use of the Site and all information provided by Buyer, subject to applicable law.

Miscellaneous. This Contract shall be treated as though it were executed and performed in the County of Manatee , and shall be governed by and construed in accordance with the laws of the United States of America and of the State of Florida (without regard to conflict of law principles). Any cause of action subject to Federal Jurisdiction will be brought before the United States District Court, located in Florida. Any cause of action of Buyer with respect to the Site or services provided by Service Provider must be instituted within six (6) months after purchase or be forever waived and barred. All actions shall be subject to the limitations set forth in Section 8. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. All legal proceedings arising out of or in connection with this Contract shall be brought solely in Manatee County, Florida and Buyer expressly submits to the jurisdiction of said courts and Buyer consents to extra-territorial service of process. Should any part of this Contract be held invalid or unenforceable, that portion shall be construed consistent with

applicable law as nearly as possible to reflect the original intentions of the parties and the remaining portions shall remain in full force and effect. To the extent that anything in or associated with the Site or the Service Provider is in conflict or inconsistent with this Contract, this Contract shall take precedence. Failure of Service Provider to enforce any provision of this Contract shall not be deemed a waiver of such provision nor of the right to enforce such provision.

Advertising Policy Client understands that e-toursonline, its employees, representatives, owners and contractors are not licensed to sell (or list for sale) real estate of any kind. It is client's sole responsibility to comply with all applicable laws regarding the sale and advertising of real estate. e-toursonline WILL NOT BE RESPONSIBLE TO CLIENT FOR FEES OR FINES IMPOSED ON CLIENT WHICH ARE ASSOCIATED WITH THE ADVERTISING OF VIRTUAL TOURS, DIGITAL IMAGES AND/OR MARKETING MATERIAL. e-toursonline does not guarantee that our services will ensure a sale of the property photographed.

### **Photograph Terms and Conditions**

[1] "Photograph(s)" means all photographic material furnished by e-toursonline hereunder, whether transparencies, negatives, prints, digital media or otherwise.

[2] Except as otherwise specifically provided herein, all photographs and rights therein, including copyright, remain the sole and exclusive property of e-toursonline.

[3] Client will not prevent e-toursonline from making or permitting any alterations, additions, or subtractions in respect of the photographs, including without limitation any digitalization or synthesizing of the photographs, alone or with any other material, by use of computer or other electronic means or any other method or means now or hereafter known.

[4] Client will indemnify and defend e-toursonline against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of any use of any photographs for which no release was furnished by e-toursonline, or any photographs which are altered by Client. Unless so furnished, no release exists. e-toursonline 's liability for all claims shall not exceed in any event the total amount paid under this invoice.

[5] Client shall indemnify e-toursonline against all claims, liability, damages and expenses incurred by e-toursonline in connection with any third party claim arising out of use of said material hereunder.

[6] Time is of the essence for receipt of payment and return of media. No rights are granted until timely payment is made.

[7] Client may not assign or transfer this agreement or any rights granted hereunder. This agreement binds and inures to the benefit of e-toursonline, Client, Client's principals,

employees, agents and affiliates, and their respective heirs, legal representatives, successors and assigns. Client and its principals, employees, agents and affiliates are jointly and severally liable for the performance of all payments and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. However, the invoice may reflect, and Client is bound by, oral authorizations for fees or expenses which could not be confirmed in writing because of immediate proximity of shooting. This agreement incorporates by reference Article 2 of the Uniform Commercial Code, and the Copyright Act of 1976, as amended.

[8] Any dispute regarding this agreement shall be arbitrated in the State of Florida under rules of the American Arbitration Association and the laws of State of Florida. Judgment on the arbitration award may be entered in any court having jurisdiction.

[9] Client hereby expressly consents to the jurisdiction of the Federal courts with respect to claims by e-toursonline under the Copyright Act of 1976, as amended.

[10] Re-shoots: Client will be charged 100% fee and expenses for any re-shoot required by Client. For any re-shoot required because of an act of God or the fault of a third party, e-toursonline will charge no additional fee and Client will pay all expenses. If e-toursonline charges for special contingency insurance and is paid in full for the shoot, Client will not be charged for any expense covered by insurance. A list of exclusions from such insurance will be provided on request.

[11] Cancellations and postponements: Client is responsible for payment of all expenses incurred up to the time of cancellation, plus 50% of e-toursonline's fee. **If notice of cancellation is given less than two (2) business days before the shoot date, Client will be charged 100% fee.** Weather postponements: Unless otherwise agreed, Client will be charged 100% fee if postponement is due to weather conditions on location and 50% fee if postponement occurs before departure to location. Refunds will only be issued in accordance with paragraph 9 of the Service Agreement above. If no one is available to allow us access to the property and the appointment is delayed, client will be charged a \$25 delayed appointment fee. If the appointment is missed for no access, the client will be charged 100% of the service fee.

[12] e-toursonline retains for life reproduction and display rights to all photographs for use in providing images to future clients so long as they are deemed public in nature, photographic competition, promotional materials and any publication of an original manuscript or portfolio presentation for trade or other use. "Public in nature" shall be any subject media that would be visible to the general public from the location the subject media was captured without the requirement of special access being granted by the client.

## **WEBSITE TERMS OF USE**

The information on this website is provided SOLELY as a service by e-toursonline. Every effort is made to keep information as accurate as possible, however WE EXPRESSLY

DISCLAIM ANY IMPLIED WARRANTY OR REPRESENTATION ABOUT ITS ACCURACY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE.

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