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Create any derivative use of an Image unless indicated on the invoice.

Use of the Image in a manner that is defamatory, pornographic or obscene, whether directly or in context or juxtaposition with specific subject matter.

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Use of the Images to promote a business that sells or licenses photographic images, or otherwise competes with PHOTOTAKE in any manner.

Use any Image in any electronic template or application, including those that are web-based, where the purpose is to create multiple impressions of an electronic or printed product, including, but not limited to, website designs, presentation templates, electronic greeting cards, business cards or any other electronic or printed matter.

Ship, transfer or export any of the Images into any country or use any of the Images in any manner prohibited by any export laws, restrictions or regulations.

User assumes full liability for its employees, agents, assigns and free lance or contract staff for the misuse of any Image.

RELEASES

No model releases or other releases exist on any Images unless the existence of such release is specified in writing by PHOTOTAKE.

INDEMNITY

You agree to indemnify and hold PHOTOTAKE, and the copyright holder, harmless from any and all claims, liabilities, damages, costs and expenses, including reasonable attorney's fees, arising from the use of an Image or any breach of this agreement.

NO WARRANTY

PHOTOTAKE GIVES NO RIGHTS OR WARRANTIES WITH RESPECT TO THE USE OF NAMES, TRADEMARK, LOGO TYPES, REGISTERED OR COPYRIGHTED DESIGNS OR WORKS OF ART DEPICTED IN ANY IMAGE, AND THE USER MUST SATISFY ITSELF THAT ALL NECESSARY RIGHTS, CONSENTS OR PERMISSION AS MAY BE REQUIRED FOR REPRODUCTION ARE SECURED. PHOTOTAKE IDENTIFIED THE CAPTION FOR EACH IMAGE TO THE BEST OF ITS ABILITY, BUT CANNOT BE HELD RESPONSIBLE FOR ERRONEOUS OR INCOMPLETE CAPTION INFORMATION.

DELIVERY OF DIGITAL IMAGES

SCANNING FEE: A fee of \$25 will be charged for the delivery (digital or otherwise) of each high resolution file (25 Megabyte) requested.

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PHOTOTAKE MAKES NO REPRESENTATION OR WARRANTIES AS TO THE ACCURACY OF THE CONTENT, OR THAT THE USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR FREE. THE USE OF THIS SITE IS AT YOUR OWN RISK.

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LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL PHOTOTAKE OR THE OWNER OF THE IMAGES BE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES AS A RESULT OF THE USE OF THIS SITE OR FROM YOUR ACCESS OR USE OF THE IMAGES ON THIS SITE. IN ANY EVENT, THE LIMIT OF LIABILITY OF THE COPYRIGHT OWNER OF THE IMAGE AND AGENT SHALL BE THE FEE PAID FOR THE IMAGE TO AGENT.

UNAUTHORIZED USE:

Since it is difficult to determine damages resulting from unauthorized usage, in the event you utilize an Image other than for the usage indicated on our Invoice, we agree to forego our right to sue you for copyright infringement and you agree to pay, as liquidated damages, a retroactive license equal to ten (10) times the normal price we would have

charged for such unauthorized use within ten (10) days of our billing such fee. If you fail to timely make such payment, we shall have the right to sue for copyright infringement and/or breach of contract, for which we will shall seek all damages and remedies available, including attorney's fees and all associated costs.

RETURN PERIOD & HOLDING FEES FOR IMAGES:

Images other than digital files are to be returned within 2 months after date of invoice, except in cases of outright purchase. User agrees to pay, as reasonable charges, the sum of \$5.00 per week per image after such 2-month period to date of return. NOTE THIS IS NOT A BAILMENT. Holding fees will accrue for one year from the stipulated return date, after which unreturned Images shall be deemed to be lost and you will be billed for lost Image fees in accordance with the Liquidated Damages provisions below. Payment of Lost or Damage fees does not entitle you to any rights whatsoever in the Images, which must be returned to PHOTOTAKE immediately if subsequently found. You will then be liable for holding fees rather than Lost Fees, whichever is less.

RESPONSIBILITY FOR ORIGINAL IMAGES

If original Images are delivered to User, User is responsible for loss or damage to the Images delivered to them, from time of receipt until their return to PHOTOTAKE. User shall be responsible for safe delivery and return of Images to PHOTOTAKE and shall indemnify PHOTOTAKE against any loss or damage to Images in transit or while in the possession of User. This agreement is not considered a bailment and is specifically conditioned upon the item so delivered being returned to PHOTOTAKE in the same condition as delivered. Projection of Images is not permitted. User assumes an insurer's liability herein for the safe and undamaged return of the Images to PHOTOTAKE. Such Images are to be returned by bonded messenger or by registered mail (return receipt requested), prepaid and fully insured.

LIQUIDATED DAMAGES

The monetary damage for loss or damage of an original color transparency or photograph shall be determined by the value of each individual photograph. User agrees, however, that the reasonable value of such lost or damaged photograph or transparency shall be Fifteen Hundred (\$1,500.00) Dollars. PHOTOTAKE agrees to the delivery of the goods herein only upon the express covenant and understanding by User that the terms contained in this section are material to this agreement. User assumes full liability for its employees, agents, assigns, messengers and free-lance researchers for the loss, damage or misuse of the Images.

RETENTION OF DIGITAL FILES:

Digital files may be retained for sixty days or until the date indicated on the invoice. Unless this period is extended in writing, you must delete the Images from all electronic and removable media and destroy any other copy of the Images, except as licensed under this Agreement. PHOTOTAKE's copyright information and Image identification number must be retained with the digital files while you retain them.

CREDIT

Images used editorially should bear a credit line as indicated by PHOTOTAKE. User must register copyright in their name to afford protection to the photograph. Such copyright shall be immediately reassigned upon request, without charge.

DISPUTES OR CLAIMS

Any and all disputes, with the exception of copyright claims, arising out of, under or in connection with this agreement, including, without limitation, the validity, interpretation, performance and breach hereof, shall be settled by arbitration in New York City, New York pursuant to the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction. This agreement, its validity and effect, shall be interpreted under and governed by the laws of the State of New York. If User of this contract is an agent for or an employee of a non-U.S. company but operates in a place of business in the United States or its territories, said User expressly agrees that any dispute regarding this contract shall be adjudicated within the United States in the manner described here.

Copyright claims shall be brought in the Federal Court having jurisdiction. User agrees to be subject to the jurisdiction of the Federal Court of the Southern District of New York.

If PHOTOTAKE is caused to present claims or suit as a result of any breach of the above terms set forth, it shall be made whole for such reasonable legal fees or costs by User.

MISCELLANEOUS

This agreement is not assignable or transferable on the part of User.

This contract contains all the terms of the agreement concerning transmission, delivery and review of Images, and no term or conditions may be added or deleted unless made in writing and signed by both of us. These terms and the terms of any subsequent invoice supersede any and all terms of User's purchase order. Any subsequent invoice may contain additional terms relating to the rights granted and the type of usage allowed.

Time is of the essence in the performance by User of its obligations for payments.

Payment of the invoice herein is to be net thirty (30) days. A service charge of two (2%) percent per month on any unpaid balance will be charged thereafter. Any claims for adjustment or rejection of terms must be made to PHOTOTAKE within ten (10) days after receipt of invoice. In the event that any Images are used by User in publications, User shall provide PHOTOTAKE with two (2) free copies of such publication immediately upon printing.

Rights are being reserved to User when an invoice is created. If the invoiced Image is not used, User must notify PHOTOTAKE within five (5) days from receipt of the invoice. If User fails to do so, User is responsible for full payment on the invoice.

I ACCEPT PACA Legal Handbook Update June 17, 2000