

**2023 EMPIRE STATE BUILDING PHOTO CONTEST
OFFICIAL RULES**

THERE IS NO PURCHASE NECESSARY TO ENTER OR WIN. A PURCHASE OR PAYMENT WILL NOT IMPROVE ONE’S CHANCES OF WINNING.

1. **SPONSOR:** ESRT Empire State Building, L.L.C. (“*Sponsor*”), 111 West 33rd Street, New York City, New York, 10120, USA, is the sponsor and coordinator of this skill-based contest (“*Contest*”).

2. **ELIGIBILITY:** The Contest is open to legal residents who are, as of date of entry, 13 years of age or older and physically located within, the United States and the District of Columbia excluding California (collectively referred to hereafter as “*Contestant*” or “*Contestants*”).

2a. Contestants may not have any contractual relationships, such as, but not limited to working as an exclusive photographer for a specific entity, which could interfere with or prohibit them from entering and fully participating in the Contest. The Sponsor retains the right to determine in its sole discretion if a Contestant’s existing agreement represents a conflict.

2b. Excluded from eligibility to participate or win a prize are: employees, officers, directors, and agents of Sponsor, and its respective parent companies, subsidiaries, affiliates, governors, owners, distributors, retailers, and advertising/promotion agencies (collectively, “*Entities*”); the immediate family members (spouse, parent, child, sibling and their respective spouses, regardless of where they reside) of employees, officers, directors and agents of the Entities, and those living in the same household of each, whether or not related, are excluded from eligibility, all other than where prohibited or restricted by law.

2c. This Contest is subject to all applicable federal, state, and local laws and regulations. Void in California and where prohibited by law.

2d. Sponsor reserves the right to require any Contestant to provide evidence of eligibility, to Sponsor’s reasonable satisfaction. By entering the Contest, Contestants agree to have their Entries published in the gallery page (“*Gallery*”) of the Contest website located at www.esbnyc.com/annual-photography-contest (“*Website*”). If a Contestant’s Entry (defined in Section 3(d)) is deemed a Finalist (also defined below in Section 3(j)), he/she agrees that he/she is willing for the Entry to be shown on the Sponsor’s websites (including each of the Website of the Contest and the websites of the Company at esbnyc.com and esrtreit.com), its social media pages (including without limitation Instagram and Twitter), in the windows within the Empire State Building’s Fifth Avenue lobby and in other locations within the Empire State Building as decided solely in the discretion of Sponsor, and marketing materials for promotional use during and/or following the conclusion of the Contest or otherwise distributed, for the purpose of promoting the Contest or for promoting the goods and services offered by the Sponsor.

2e. Instructions on how to submit your Entry are described below in Section 5. Submitting your Entry is free of charge, but normal Internet access and usage charges imposed by your online and/or mobile service provider will apply at your own cost.

2f. For purposes of these Official Rules (“**Rules**”), all times and days are US Eastern Time (“**ET**”) as recognized in the United States. Sponsor’s computer is the official time keeping device for this Contest; and the awarding of any prize (as defined in Section 7 below) is subject to the eligibility and forfeiture provisions set forth herein.

2g. Contestant may not have been convicted of, or currently charged with, a felony or any crime punishable by one (1) or more years in jail or a crime of moral turpitude, all as determined by the Sponsor in its sole discretion. By entering, each Contestant understands and agrees that, if selected as a winner the Contestant will be required to sign and return an (i) Affidavit and (ii) a Release (“**Winner’s Documents**”) (see Section 6 for more details on the notification process). Failure to sign such documents and/or to furnish all required information will result in disqualification. In addition to the foregoing, Sponsor reserves the right in its sole discretion, to disqualify any Entry (as defined in Section 3(d)) and/or disqualify the Grand Prize Winner and/or the Runner-Up Winner (as defined in Section 3(l)) if the results of the background check reveals that such person’s conduct has been inconsistent with generally accepted norms and/or might diminish the public reputation of the Contest as determined by Sponsor in its sole discretion.

3. BRIEF OVERVIEW OF CONTEST, ENTRY PERIOD AND JUDGING

3a. **Entry Period:** You may enter the Contest from the period commencing at **12:00 PM (noon) ET, on July 31, 2023 and ending at 11:59 PM ET on September 22, 2023 (“Entry Period”)**. Sponsor reserves the right to extend the Contest end date by a reasonable time if, in its sole discretion, it does not receive a sufficient number of eligible and qualified submissions.

3b. You may enter the Contest by visiting the Website (esbnyc.com/annual-photography-contest) and following all onscreen instructions to submit your Entry, including selecting the Contest category to which you want to submit your photo (or video, if applicable) to compete in from the drop-down menu. Please see Section 5 for additional entry details.

3c. Contest Categories are as follows:

- (1) ESB x City Wide – pictures of ESB surrounded by the New York City landscape
- (2) Beginner Entry – shots from photo newbies
- (3) Observatory Views – features ESB’s iconic views taken from one of the Observatories
- (4) Sunset & Sunrise – photos of or from ESB during the golden hours
- (5) Smartphone Shot – snaps taken with an iPhone or similar
- (6) Photoshop/Edit – creative edits from unique backgrounds to starry night skies
- (7) Weather Shot – captures of the building under rain, sleet, snow, or rainbow
- (8) Nightscapes – shots of the building lit up after sunset
- (9) Video – 30 second video clips of ESB in all her glory
- (10) Youth – a new category for videos and photos from ESB’s 13-17-year-old fans

(11) General Entry – shots that don't fit any of the above categories

3d. Submit your one photo or video taken from or taken of the Empire State Building in New York City, NY as a **.jpeg, .gif, or .png file format or video** (collectively referred to hereafter as “**Entry**” or “**Entries**”). For the exception of the Photoshop/Edit category, all Entries must be created by a natural person without the benefit of computer scripts, automated processes or Artificial Intelligence (“AI”) generated or edited images; if there is any question to whether a given computer process qualifies as AI, Sponsor, at its sole and absolute discretion, will decide the issue.

3e. **YOU MAY NOT INCLUDE ANY RECOGNIZABLE PERSON OR PERSONS OTHER THAN YOURSELF, AND/OR A MEMBER OF YOUR IMMEDIATE FAMILY WHO IS 18 YEARS OF AGE OR OLDER (EXCEPT ALABAMA AND NEBRASKA WHERE IMMEDIATE FAMILY MUST BE 19 YEARS OF AGE OR OLDER, AND EXCEPT MISSISSIPPI WHERE IMMEDIATE FAMILY MUST BE 21 YEARS OF AGE OR OLDER); ALSO, YOU MAY NOT INCLUDE PETS IN YOUR ENTRY.**

3f. Sponsor shall make all eligibility determinations regarding the Entries and the individuals included in an Entry. See Section 8(q) for more details on the use of Sponsor Intellectual Property (“*Sponsor IP*”). **NO PURCHASE OF ADMISSION TICKETS TO VISIT THE EMPIRE STATE BUILDING OBSERVATORY IS NECESSARY TO PARTICIPATE IN THIS CONTEST**, nor will it increase your chances of winning this Contest.

3g. There is a limit of one (1) Entry per Contestant during the Entry Period, regardless of whether a person has more than one (1) email address (in which case the Contestant is still only permitted one (1) Entry). If the Sponsor concludes in its sole discretion that a Contestant has tried to circumvent this limitation by any means, including but not limited to establishing multiple email or social media accounts, such Contestant will be disqualified from the Contest.

3h. Each Contestant acknowledges and agrees that Sponsor may receive many Entries in this Contest and that such other Entries may be similar or identical in theme, idea, format or other respects to Contestant's Entry and Contestant waives any and all claims Contestant may have had, may have, and/or may have in the future that any composition, other Entries, and/or ideas accepted, reviewed and/or used by the Sponsor and its affiliates, or their respective officers, directors, employees and agents may be similar to or the same as their Entry.

3i. If there is a dispute concerning the identity of a Contestant, the Sponsor will deem the Authorized Account Holder (as defined in Section 8(n)) of the listed email address at the time of submission to be the Contestant, as the one and only true Contestant.

3j. ROUND 1: FINALIST ENTRY (JUDGING PHASE)

- (i) All eligible Entries received during the Entry Period will be reviewed and scored by a Sponsor-appointed panel of judges consisting of employees of Sponsor and an independent judge (“**Judges**”).

- (ii) Entries will be scored based on the following criteria (“**Criteria**”): Originality (40%), Creativity (30%), Depiction (meaning that the photo or video is sharp/in focus) (10%), and Uniqueness (20%) using a 0 -100-point scale.
- (iii) The Judges will review all eligible Entries and score each Entry based on the Criteria (as defined in Section 3j (ii)) to determine the top fifteen (15) judged Entries per Contest category (each a “**Finalist Entry**”) that will advance to the Finalist Voting Round (see Section 3k). The Sponsor reserves the right determine less than fifteen (15) Entries per Contest category if in its sole discretion it does not receive ample eligible Entries for a Contest category. Furthermore, at the Sponsor’s sole discretion, Finalists may be notified of their standing in the Contest via email.
- (iv) In the event of a tie, the tie will be broken by the Judges based on the first judging criterion - Originality. In the event of a further tie, the tie will be broken by the Judges based on the second judging criterion - Creativity. In the event of still a further tie, the tie will be broken by the Judges based on the third judging criterion – Depiction. In the case of a further tie, the tied Entries will be re-judged by another panel of Judges (which will also include an independent judge) and the judging process will follow the same tie-breaker procedure stated herein.

3k. ROUND 2: FINALIST VOTING ROUND (CATEGORY WINNER) (PUBLIC)

- (i) The Finalist Voting Round will commence at **10:00 AM ET on November 6, 2023, and end at 10 PM ET on November 17, 2023** (“**Finalist Voting Round**”). The public will be able to vote for their favorite Finalist Entry per category at esbnyc.com/annual-photography-contest by following all onscreen instructions and using the Judging Criteria (as defined in Section 3j (ii)) in these Rules to aid them in determining their favorite Entry. Limit: one (1) vote per day per IP address.
At the conclusion of the Finalist Voting Round, the top scoring Finalist Entry in each category will be declared the top Category Entry. In order to determine the sole two (2) Category Entries that will advance to compete for the grand prize and runner-up prize in Round 3, each Category Entry will be rejudged by the Judges using the following criteria: Originality (40%), Creativity (30%), Depiction (meaning that the photo or video is sharp/in focus) (10%), and Uniqueness (10%) total points earned through votes (10%), using a 0 -100-point scale.
- (ii) After the Category Entries are rejudged, the overall two (2) top scoring Category Entries will advance to Round 3 to compete for the grand prize. Additionally, the remaining nine (9) Category Entries (who do not advance to Round 3) plus the next two (2) top scoring Finalist Entries from the categories whose entries advanced to Round 3 will each be declared a “**Category Entry Winner**” subject to verification.
- (iii) .

3l. ROUND 3: WINNER VOTING PHASE (GRAND PRIZE / RUNNER UP) (PUBLIC)

- (iv) During Round 3, the top two (2) scoring Category Entries will be posted on the Sponsor’s Instagram and Twitter branded accounts to determine a grand prize winner (“**Grand Prize Winner**”) and runner-up winner (“**Runner-Up Winner**”), subject to

verification and compliance with these Rules. **Commencing at 10:00 AM ET on November 27, 2023, and ending at 10:00 PM ET on December 8, 2023** (“*Winner Voting Phase*”), the public will be able to vote for their favorite Category Entry from among the two (2) posted Entries by following all instructions and using the Judging Criteria (as defined in Section 3j (ii)) in these Rules to aid them in determining their favorite Entry from among the two (2) featured Category Entries. Regardless of whether you have Twitter or Instagram, there is a limit of: one (1) vote per day, per IP address. The public can visit @empirestatebldg Twitter account (<https://twitter.com/empirestatebldg>) or at: @empirestatebldg Instagram (<https://instagram.com/empirestatebldg>) and follow instructions to vote for their favorite Entry.

- (v) At the conclusion of the Winner Voting Phase, the overall top voted Entry will be declared the Grand Prize Winner and the remaining Entry will be declared the Runner-up Winner, subject to verification and compliance with these Rules.

3m. Disqualification of an Entry and/or votes can result if Sponsor (in its sole discretion) suspects any fraud or voter/voting misconduct. This includes (but is not limited to) if any votes violate voting limits or involve the purchasing of bulk votes. Determination of violations are at Sponsor’s sole discretion and include but are not limited to: (i) unusual patterns in votes for an individual Entry originating from the same IP address during the same day; (ii) unusual username patterns originating from the same IP address; and (iii) unusual time-of-day patterns originating from the same IP address. Sponsor reserves the right to disqualify any votes that are cast in violation of these Rules to achieve an unfair advantage or by robotic means of any sort. Sponsor shall have no obligations to disclose why an Entry is disqualified.

3n. Contestants are prohibited from obtaining votes by any fraudulent or inappropriate means, including, without limitation, offering prizes or other inducements to members of the Judges, as determined by Sponsor in its sole discretion. Neither Sponsor, nor anyone acting on its behalf, will engage in communications with any Contestant regarding Contest and/or Entry other than to notify potential Finalists, including Winners. The decision of the Judges shall be final and binding.

4. ENTRY REQUIREMENTS, LIMITATIONS & GUIDELINES: Follow the instructions below in these Rules to create your Entry. Entries should adhere to all specifications included in these Rules. Any Entry that fails to meet the specifications in these Rules may be disqualified. All Entries must be received during the Entry Period. Proof of submitting an Entry does not constitute proof of receipt or entry into the Contest.

DO’S & DON’TS

Do’s...

- **Do be creative with your Entry, but make sure the information you include is true and accurate.**
- **Have fun!**

Don'ts...

- **Don't show any brands or logos.**
Avoid visible/recognizable use of brands (other than Sponsor-branded items) on clothes, sneakers, in the background, or anywhere. Avoid wearing clothes with visible logos.
- **Don't be rude or profane.**
Do not include any rude gestures or other inappropriate material, or content that defames others, and for your safety, don't try any risky moves or perform any dangerous stunts.
- **Don't include anyone recognizable besides yourself, members of your immediate family (who are of eligible age); don't include pet(s) in your Entry.**
- **Don't wear revealing clothing or display suggestive movements.**

CONTEST ENTRY REQUIREMENTS/LIMITATIONS

4a. The Entry must be authorized. This means that you must have the legal right and any permissions necessary to submit the Entry into the Contest. By submitting the Entry, you hereby represent that you have all rights necessary to submit the Entry, distribute the Entry throughout any social media, and to grant to Sponsor all the rights set forth herein.

4b. You must have the written consent of any individual who contributed to the making of your Entry, and they must grant you, the Contestant, the right to include them in the Entry; you must consent to the Entry and the Rules, and must consent to the use of the same in the Contest and to its use as set forth herein. If an Entry is deemed a Finalist, the Contestant that submitted the Entry may be required, at any time, to provide Sponsor with evidence of all such written permission(s) and authorizations immediately upon request, and if unable to provide permission(s), Contestant's Entry may be disqualified.

4c. The Entry must be your original work and must not infringe the copyright, trademark, privacy, publicity, or any other intellectual property right of any person or entity. The Entry may not contain trademarks, logos, or trade dress (such as distinctive packaging or building exteriors/interiors) owned by others, without prior permission. The Entry may not contain any personal identification, such as license plate numbers, personal names, e-mail addresses or street addresses.

4d. The Entry must meet all specifications set forth by Sponsor in these Rules, including, without limitation, format, and any other specifications.

4e. The Entry must not, in the sole discretion of Sponsor, contain any inappropriate content, including but not limited to, material which is (or promotes activities which are) abusive, harassing, threatening, defamatory, an invasion of a right of privacy of another person, bigoted, hateful, racially offensive, discriminatory (based on race, sex, gender, religion, national origin, physical disability, sexual orientation or age), violent (e.g., relating to murder, the sales of

weapons, cruelty, abuse, etc.), vulgar, obscene, pornographic or otherwise sexually explicit, harmful or can reasonably be expected to harm any person or entity, profane, offensive or otherwise objectionable as determined by Sponsor in its sole discretion. The Entry must not contain material which is (or promote activities which are) illegal or encourage or advocate illegal activity or the discussion of illegal activities with the intent to commit them (including but not limited to Entries that are, or represent an attempt to engage in, pornography, stalking, sexual assault, fraud, trafficking in obscene or stolen material, underage drinking, drug dealing and/or drug abuse, harassment, computer hacking, theft, or conspiracy to commit any criminal activity) or otherwise unlawful. The Entry must not violate these Rules.

4f. The Entry must not disparage or defame the Entities or the Empire State Building.

4g. You represent and warrant that: **(i)** you are the sole and exclusive owner of the Entry and all rights in and to the Entry including all intellectual property rights; **(ii)** you have the full and exclusive right, power and authority to submit the Entry in this Contest and to Sponsor upon the terms and conditions set forth herein; **(iii)** no rights in the Entry have previously been granted to any person, firm, corporation or other entity or otherwise exercised or exploited; **(iv)** the Entry has not won any previous awards or prize with the exception of submissions that were previously submitted but not selected as a winning Entry in a prior Empire State Building photo or video which may be resubmitted for consideration in this Contest, and **(v)** the full use of the Entry or any part thereof will not in any way violate or infringe upon any copyright (statutory or otherwise), constitute a libel or defamation of or an invasion of the rights of privacy or publicity of, or otherwise violate or infringe upon any other personal property or other rights of any person, firm, corporation or other entity, or subject Sponsor to any costs or liability of any kind or nature whatsoever.

4h. You may be required, at any time, to provide Sponsor with evidence of all such written permission(s) and authorizations within seven (7) calendar days upon request, or you may be disqualified and rendered ineligible to receive a prize in this Contest. All Potential Winners must complete an Affidavit or Release relating to eligibility and publicity (see details and definitions below).

4i. If Sponsor believes that the Entry does not comply with these Rules or that the Entry infringes upon the copyright, or other rights of any third party, Sponsor reserves the right in its sole discretion to disqualify and remove any Entry at any time. The Sponsor's decision regarding the Entries is final and binding and not subject to challenge or appeal.

4j. In the event of a disqualification, if applicable, Sponsor may, in its sole discretion, determine or not determine an alternate potential winner (time permitting).

5. **HOW TO SUBMIT YOUR ENTRY:** To submit your Entry visit the Website esbnyc.com/annual-photography-contest and follow all onscreen instructions to enter your first and last name, and a valid email address (collected in order for the Sponsor to follow up with Finalists, including potential winners), Then click the **“Select a File to Upload”** button or other similar button to include your photo (in **.jpeg, .gif, or .png file format**) or video, pick the category

and then click “**Submit**” to submit your Entry along with two (2) check off boxes (i) “I confirm that I am 13 years (and a resident of the United states, **not including California** at the time of this submission” and (ii) “I confirm that I have read and agree to the Rules”.

5a. In the event of any discrepancy or inconsistency between the terms of these Rules and/or the Privacy Policy (defined below), the terms of these Rules shall govern. Entries will not be returned. If your Entry does not pass moderation (i.e., it does not comply with the requirements set out herein), your Entry will not be eligible to be entered into the Contest.

5b. By entering the Contest, each Contestant consents to publication of their Entry; Contestant also understands and agrees that eligible Entries received by Sponsor may be posted, in whole or in part, in any combination, on each of the following: (i) the Website of the Contest (ii) the websites of the Sponsor at www.esbnyc.com / www.empirestatebuilding.com, and/or (iii) the Sponsor’s social media pages, including but not necessarily limited to:

facebook.com/empirestatebuilding
facebook.com/empirestaterealtytrust
twitter.com/empirestatebldg
twitter.com/esrtsocial
Instagram.com/empirestateblg
Instagram.com/esrtsocial

(iv) In the windows within the Empire State Building’s Fifth Avenue lobby (v) marketing materials for promotional use during and/or following the conclusion of the Contest, or otherwise distributed for the purpose of promoting the Contest or for promoting the goods and services offered by the Sponsor for public viewing at any time. Each such Contestant understands and agrees that Entries may be formatted, edited, repurposed, altered or otherwise converted in order to be viewable on the Website and for promotional use on Sponsor’s social media channels and/or marketing materials.

6. NOTIFICATION PROCESS

6a. For the avoidance of doubt, potential Finalists, potential Grand Prize Winner, potential Runner-up Winner and each of the potential Category Entry Winner(s) will be notified by email (“**Email Notification**”) to the email address associated with their Entry to inform them of their standing in the Contest.

6b. Notified potentially winning Contestants must reply to this Email Notification within five (5) calendar days.

6c. Also, notified potentially winning Contestants, must complete and return any or all of the following (i) an Affidavit of Eligibility and Liability (“**Affidavit**”) (ii) Publicity Release (“**Release**”) and (iii) a Background Check (“**Background Check**”) form, any and all of which are required within seven (7) calendar days of the date on which the email notification was transmitted.

6d. “**Winner(s)**” shall refer individually and/or collectively to Grand Prize, Runner-up and Category winners.

6e. After the end of the Winner Voting Phase, and after each Winner has been notified of successfully executing and returning any required paperwork by the Sponsor or its Administrator, the Sponsor will notify via email all Winners of their final Contest status to commence awarding their respective prizes (as defined below in Section 7).

6f. At the sole discretion of the Sponsor, disqualification of a Winner may result from any of the following reasons, including, without limitation: **(i)** a potential Winner’s failure to respond to the Email Notification within seven (7) calendar days after its transmission; **(ii)** the return of an Email Notification as undeliverable; **(iii)** a potential Winner’s failure to execute and return an Affidavit and/or, if required, the Background Check form within seven (7) calendar days of date of transmission; **(iv)** a potential Winner’s failure to provide Sponsor with satisfactory proof of eligibility and/or a negative background check results, and **(v)** any other non-compliance with these Rules.

6h. In the event of a disqualification or prize forfeiture, the Sponsor, in its sole discretion, may determine or not determine an alternate potential Winner (time permitting) for the forfeited prize.

6g. A potential Winner is not entitled to receive a prize until the potential Winner has been **(i)** verified **(ii)** notified as above **(iii)** submitted any required documentation **(iv)** and is notified of successfully completing this entire process by the Sponsor or its Administrator.

6h. If the prize won is valued at \$600 or more, the Winner will be required to furnish his/her Social Security number to the Administrator and an IRS Form 1099-MISC will be filed in the name of the Winner for the value of the prize.

6i. Any prize won by an eligible minor will be awarded to the winner’s parent or legal guardian who will be required to execute and return any prize documents needed for verification.

7. PRIZES & THEIR VALUE

One (1) Grand Prize: **(a)** Grand Prize Winner will receive \$5,000.00.

One (1) Runner-up Prize: Runner-up Winner will receive \$1,500.00.

Up-to-eleven (11) Category Winner Prizes: Each Category Winner will receive \$500.00.

7a. All prizes will be awarded as a corporate check.

7b. Maximum value of all prizes: \$12,000.00.

7c. Limit one (1) Prize per Winner/household. If an Entry is declared the Grand or Runner-up Prize Winner, such Winner will not be eligible to win a Category Winner Prize.

7d. No transfer (except to a surviving spouse residing in the same household), or substitution of prize except at Sponsor’s sole discretion.

7e. All federal, state, and local taxes and all other costs and expenses associated with acceptance and use of a prize not specified herein are the recipients' sole responsibility. Any tax payable on prizes shall be the responsibility of each applicable Winner.

8. RELEASE, WARRANTY, GRANTING OF RIGHTS, LIMITATION OF LIABILITY AND INDEMNIFICATION CONDITIONS

By entering this Contest and/or accepting a prize, you agree and represent, to the fullest extent permitted by law, that:

8a. You have all rights, permissions and consents necessary to grant the rights to Sponsor as expressed herein;

8b. You will abide by and be bound by the Rules, the Judges' and Sponsor's decisions (which shall be final and binding in all respects), and you will abide the Privacy Policy;

8c. You acknowledge that the Empire State Building image depicts a famous and venerable institution, that such image and the name "Empire State Building" are registered trademarks owned by Sponsor, that Sponsor also has trademark common law rights in the Empire State Building image and name based on the goods and services for which it is registered or has been used by Sponsor or its licensees, and that all trademark rights which may arise from the use of the Empire State Building image or name in any Entry shall inure to the benefit of Sponsor;

8d. You hereby release and hold harmless the Entities, and their respective agents, employees, officers, directors, shareholders, insurers, parents, subsidiaries, divisions, affiliates, predecessors, successors, representatives, independent contractors, advertising, promotion and fulfillment agencies and legal advisors (the "**Released Parties**") from any and all liability for claims, injuries, losses or damages of any kind (including attorney's fees) to persons, including death, and property, resulting, in whole or in part, directly or indirectly, from the awarding, delivery, acceptance, use, misuse, possession, loss or misdirection of the prize or any Entry-related materials; participation in this Contest or any prize-related activity; or any interaction with, or downloading of, computer information;

8e. You acknowledge that the Contest is not sponsored, endorsed, administered, or associated with social media entity, including, but not limited to Twitter and Instagram.

8f. When accepting a prize, a Winner grants the Sponsor an unconditional right to use the Winner's name, address (city and state only), voice, likeness, photograph, biographical and prize information and/or statements about this Contest for any programming, publicity, advertising and promotional purposes throughout the universe in any and all media now known or hereafter devised, in all languages and in all versions, without compensation (except where prohibited by law).

8g. In the event viruses, bugs, unauthorized human intervention, Acts of God, acts or regulations of any governmental or supra-national authority, war, national emergency, accident, fire, riot,

strikes, lock-outs, industrial disputes, acts of terrorism, other causes that corrupt, prevent or impair the administration, security, fairness or proper play of this Contest so that it cannot be conducted as originally planned, except where prohibited by law, or other matters beyond the Sponsor's reasonable control, the Sponsor has the right to modify the Rules or to cancel, modify, terminate or suspend this Contest; and in such event, to determine the winning Entries by such method as Sponsor shall consider equitable;

8h. Released Parties are not responsible for: (i) typographical or other human errors, including errors in the advertising, Rules, determination and announcement of the Winners and distribution of the prizes, unless the error in question is based on gross negligence; (ii) lost, incomplete, late, stolen, inaccurate, delayed, garbled, or misdirected registrations, theft, destruction, or unauthorized access to, or alteration of, Entries; (iii) failures or malfunctions of phones, phone lines, or telephone systems; (iv) interrupted or unavailable network, server, or other connections, upload errors, or otherwise; (v) any error, omission, interruption, defect, or delay in any transmission or communication; (vi) human-processing error; (vii) traffic congestion on the Internet or any technical problem, including, but not limited to, any injury or damage to Contestant's or any other person's computer related to or resulting from Contest participation; (viii) errors or omissions in these Official Rules, in any Contest-related advertisements or other materials, or in prize awarding; (ix) or other problems or errors of any kind whether mechanical, human, electronic, or otherwise;

8i. Any prize not accepted by a Winner will be forfeited;

8j. The Released Parties are not responsible for any inability of a Winner to accept or use a prize for any reason;

8k. The Sponsor has the right, at any time, to disqualify any Contestant if it has grounds for suspecting the Contestant of doing any of the following: (i) tampering with, influencing, or impairing or attempting to tamper with, influence, or impair the administration, security, fairness, voting, or proper play of Contest (ii) violating the Rules; (iii) violating the Privacy Policy or other terms or conditions of use, or (iv) acting in an unsportsmanlike or disruptive manner, or with intent to annoy, abuse, threaten or harass any other Contestant;

8l. The Sponsor has the right to disqualify a Contestant whose eligibility is in question or is otherwise ineligible to enter the Contest;

8m. Any attempt by any Contestant to damage or undermine the legitimate operation of the Contest is a violation of these Rules, as well as criminal and civil laws, and should Sponsor believe or become aware that such an attempt has been, is being, or will be made, it has the right to seek remedies and damages from any responsible Contestant(s) to the fullest extent permitted by law, including without limitation to criminal prosecution;

8n. In the event of a dispute as to the identity of an email address, the Authorized Account Holder of the email address will be deemed to be the Contestant. For purposes of these Rules, "**Authorized Account Holder**" is defined as the natural person who is assigned to an email address by an internet access provider, online service provider or other organization (e.g., business, educational, institution,

etc.) that is responsible for assigning accounts and/or email addresses for the domain associated with the submitted account and/or email address;

8o. The website of the Empire State Building (<https://www.esbnyc.com/>) contains proprietary and confidential information that is protected by applicable intellectual property and other laws, and except as expressly authorized by Sponsor in writing, each Contestant hereby agrees not to reproduce, exploit, modify, rent, lease, loan, sell, distribute or create derivative works based on the Website, including its interface, in whole or in part and other logos and product and service names that are trademarks of the respective owners (the “*Website Marks*”) and unless such Contestant has written permission, each Contestant hereby agrees not to display or use in any manner the Website Marks;

8p. Each Contestant hereby grants to Sponsor to the full extent permitted by law:

(i) a non-exclusive, irrevocable, fully-paid, royalty-free, sub-licensable and transferable (in whole or part) worldwide right to use such Contestant’s name, likenesses, voices and biographical information; and

(ii) a non-exclusive, sub-licensable, irrevocable and royalty-free worldwide license under all copyrights (with the exception of unknown types of use), trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights to use, reproduce, transmit, print, publish, publicly display, exhibit, distribute, redistribute, copy, index, comment on, modify, adapt, translate, create derivative works based upon, publicly perform, make available and otherwise exploit such Entry (except where this constitutes a derogatory treatment of the Entry which is capable of prejudicing such Contestant’s legitimate intellectual or personal interests), in whole or in part, in all media formats and channels now known or hereafter devised (including on Sponsor’s website and third-party websites and platforms such as Instagram and Twitter), in any number of copies without limit as to manner and frequency of use, without further notice to you, with or without attribution, and without the requirement of permission from or payment to such Contestant or any other person or entity;

8q. If your Entry includes, uses and/or features Sponsor IP, Sponsor grants you a non-exclusive license to create the Entry using Sponsor IP for the purposes of creating an Entry for this Contest only, provided that such license shall be conditioned upon your granting to Sponsor all rights in the Entry (if such rights are not assigned to Sponsor, your license to create the Entry using Sponsor IP shall be null and void);

8r. Creative ideas, suggestions or other materials Contestant submits are not being made in confidence or trust; and further, no confidential or fiduciary relationship is intended or created between the Contestant and Sponsor in any way; and that the Contestant has no expectation of review, compensation or consideration of any type;

8s. Sponsor and its third-party vendors engaged to implement this Contest are authorized to display Entries on their social media pages and/or at the Empire State Building premises, in connection with the Contest and thereafter, the Entries and any comments;

8t. Winners will be asked, at the point of acceptance of their Prizes (but this shall not be a condition of receiving a Prize) to grant an unconditional right to Sponsor and assigns to photograph, film, or otherwise capture the fulfillment of the Prize (“*Fulfillment Film*”), and if consent is provided, the Sponsor shall then have the unconditional right to reproduce, distribute, display, exhibit, transmit, broadcast, stream, synchronize with visual material, modify, amend, create derivative works, and otherwise use and permit others to use the Fulfillment Film throughout the universe in any and all media now known or hereafter devised, in all languages and in all versions, in perpetuity, without compensation, except where prohibited by law;

8u. Sponsor’s use of the Fulfillment Film will not give rise to any claims of infringement, invasion of privacy, defamation or claims for performance or payment of any kind, including but not limited to payment of reuse fees, residuals or license fees;

8v. Sponsor shall have the right to make such changes to the Fulfillment Film and make such uses thereof as it deems necessary or desirable, including but not limited to the right to use, edit, and reproduce and/or alter said Fulfillment Film in perpetuity, in its entirety or in part, for any commercial and promotional purposes worldwide without any consultation or additional permission, or compensation, credit or attribution; and

8w. Sponsor reserves the right to remove any posted Entry at any time and for any reason, without liability of any kind. Sponsor may, but is not obligated to, post Entries on the Sponsor’s social media pages and/or the Empire State Building’s website; if Sponsor chooses to do so, such posting is for entertainment purposes only and Contestants release and agree to hold harmless the Released Parties from any and all liability (except in cases of intentional acts or gross negligence on the part of the Released Parties) associated with possible posting (or, conversely, non-posting) of his/her Entry, including his/her express acknowledgment that if posted, posting of the Entry does not constitute any representation by Sponsor as to Contest eligibility. **FOR ALL POSTED ENTRIES, THE ENTRIES REPRESENT SOLELY THE VIEWS/OPINIONS OF THE INDIVIDUAL CONTESTANT AND DO NOT REFLECT THE VIEWS/OPINIONS OF THE SPONSOR IN ANY MANNER.**

9. DISPUTES, ARBITRATION, WAIVER OF CLASS ACTION, GOVERNING LAW:

9a. Each Contestant agrees that: **(i)** any and all disputes, claims and causes of action arising out of or connected with this Contest or any prize awarded shall be resolved individually, without resort to any form of class action, and exclusively by the appropriate federal or state court located in New York County, New York; **(ii)** any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Contest, but in no event attorneys’ and/or legal fees; and **(iii) under no circumstances will a Contestant be permitted to obtain awards for, and Contestant hereby waives all rights to claim, indirect, punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased.**

9b. All issues and questions concerning the construction, validity, interpretation and enforceability of these Rules, or the rights and obligations of the Contestant and Sponsor in connection with the

Contest, shall be governed by, and construed in accordance with, the laws of the State of New York, U.S.A. without giving effect to any choice of law or conflict of law rules (whether of the State of New York, U.S.A. or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of New York, U.S.A.

9c. This choice of law does not deprive you of the protection afforded to you under your own laws and such provisions that cannot be derogated from by agreement by virtue of the law of your jurisdiction.

9d. If there is a discrepancy or inconsistency between disclosures or other statements contained in any Contest promotional materials and the terms and conditions of these Rules, these Rules shall prevail and govern.

10. **WINNER'S LIST:** For a Winner's List (available after January 1, 2024) send an email with the subject line "*ESB 2023 Photo Contest Winner's List Request*" to ghoneywell@esrtreit.com.

11. **TRADEMARKS:** All trademarks referenced herein are the property of their respective trademark owners, who are not sponsors of this Contest, nor do they have any responsibilities regarding its conduct or administration.

12. **PRIVACY POLICY ESB PHOTO CONTEST**

12a. **PERSONAL INFORMATION & PRIVACY:** Information collected from Contestants is subject to Sponsor's privacy policy ("*Privacy Policy*") at <http://www.esbnyc.com/privacy-policy> and applicable data protection laws. Any entry information provided/collected is stored and processed on servers in the United States. Participation in the Contest implies acknowledgement directly from the Contestant to collect, process and use the data provided concerning the Contestant. To opt-out of the Contest, visit Sponsor's privacy policy at: <http://www.esbnyc.com/privacy-policy>. A Contestant can be removed from the mailing list for this Contest by contacting the Sponsor at ghoneywell@esertreit.com.

12b. **This Contest is in no way promoted, endorsed, or administered by, or associated with any social media entity, including, but not limited to Instagram or Twitter. Any questions, comments or complaints regarding the Contest must be directed to the Sponsor or Administrator, and not to any social media entity.**
