

**LARK 'N RIDE™ CLUB  
BICYCLE USER AGREEMENT,  
LIABILITY WAIVER AND RELEASE**

**THIS BICYCLE USER AGREEMENT, LIABILITY WAIVER AND RELEASE** (the "Agreement") constitutes the entire agreement between (a) the person agreeing to use Lark 'N Ride™ Bikes (hereinafter, "Rider," "you" or "your") and (b) 598 Main Street LLC, d/b/a Larkin Development Group (hereinafter, "LDG," "us" or "we"). "Lark 'N Ride™" is a bicycle rental program, established by LDG, to provide individuals working in properties owned by LDG or one or more of its Related Parties (as that term is defined below) access to Bikes. Wherever used herein, the term "Bike" shall include any equipment rented from LDG by Rider in connection with Lark 'N Ride. Prior to use of a Bike, LDG requires that you agree to all terms and conditions in this Agreement, which are intended to promote the safe use of Lark 'N Ride™ Bikes. You should carefully read all terms and conditions before entering this Agreement.

LDG expressly agrees to let, and the Rider expressly agrees to take on, use of the Bike subject to the terms and conditions of the Agreement. Rider is solely responsible for compliance with all terms and conditions of the Agreement that apply to Rider.

- 1. Age and Employment of Rider.** Rider is 18 or older and is actively working at a property owned by LDG, or owned by any person or entity under common control with LDG, which properties include, but are not limited to, 726 Exchange Street, 740 Seneca Street, 239 Van Rensselaer Street, 111 Hydraulic Street, each located in Buffalo, New York 14210. If Rider intentionally or unintentionally misrepresents Rider's age or place of work, Rider accepts full responsibility and is liable for any consequence, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to any such intentional or unintentional misrepresentation.
  
- 2. General Assumption of Risk by Rider.** Rider agrees that riding the Bike involves many obvious and not-so-obvious risks, dangers and hazards, which may result in injury or death to Rider or others, as well as damage to property, and that such risks, dangers and hazards cannot always be predicted or avoided. Rider agrees that such risks, dangers and hazards are Rider's sole responsibility. Rider agrees that if Rider's use of any Bike causes injury or damage to another person or property, then Rider may be liable for all resulting injuries, damages and related costs. By choosing to ride the Bike, Rider assumes all responsibility for all related risks, dangers and hazards, and Rider agrees that LDG is not responsible for any injury, damage or cost caused by Rider with respect to any person or property, including the Bike itself. Rider is solely and fully responsible for the safe operation of the Bike at all times. Rider may need to take additional safety measures or precautions not specifically addressed in this Agreement.
  
- 3. Prohibited Acts.**
  - a. Rider must not ride the Bike while carrying any briefcase, backpack, bag or other items if carrying such items impedes Rider's ability to operate the Bike safely.
  - b. Rider must not use any cellular telephone, text messaging device, portable music player or other device that may distract Rider from safely operating the Bike; provided, however, that Rider may use a cellular telephone only while employing an activated hands-free device that does not hinder Rider's ability to safely ride the Bike.
  - c. Rider must not operate the Bike while under the influence of any alcohol, drugs or other substance that may impair Rider's ability to safely operate the Bike.
  - d. Rider must not carry a second person on the Bike.
  - e. Rider must not use any locking mechanism, other than the locking mechanism provided by LDG, to lock the Bike.
  - f. Rider must not violate any applicable federal, state or local law, including those for bicycle riders.
  - g. Rider must not dismantle or modify the Bike in any way. This rule does not apply to the use of the seat height adjustment feature on the Bike.
  - h. Rider must not exceed the maximum weight limit for the Bike.
  - i. Rider must not operate the Bike in extreme weather conditions, including snow, hail and electrical storms, which make it more dangerous to operate the Bike. Rider is advised to adjust Rider's riding behavior and braking distance to suit the weather conditions.
  - j. Rider must not allow others to use the Bike. Rider understands that when Rider has possession of the Bike, it is only to be used by Rider.

#### 4. Additional Rider Obligations.

- a. Rider agrees that Rider is a competent bicycle operator, is sufficiently fit to safely operate the Bike, and has received medical clearances for such physical activity. Like any physical activity, riding the Bike may cause minor or major injuries or discomfort and may worsen or complicate underlying medical conditions or diseases. By choosing to ride the Bike, Rider assumes all responsibility for all such injuries or other medical conditions.
- b. Rider agrees that bicycles are machines that may malfunction, even if the bicycle is properly maintained, and that such malfunction may cause injury. Rider agrees that before using the Bike, Rider must conduct a safety inspection of the Bike, which includes inspecting the following: (i) proper tire pressure; (ii) trueness of the wheels; (iii) safe operation of all brakes and lights; (iv) proper attachment of the seat, pedals and basket; (v) good condition of the frame; and (vi) any sign of damage, unusual or excessive wear, or other mechanical problem or maintenance need. Rider agrees not to ride the Bike if Rider notices any mechanical or other problem or safety issue, and Rider agrees to promptly notify LDG of all problems and issues.
- c. Rider agrees that LDG does not provide or maintain places where to ride the Bike, and that LDG does not guarantee that there will always be a safe place to ride the Bike. Roads, bicycle lanes and bicycle routes may become dangerous due to weather, traffic or other hazards. Rider must not use the Bike for racing, riding off road or any other use, besides safe operation on public or private roads or property and designated bicycle routes.
- d. Rider agrees that LDG is not a common carrier. Alternative means of public and private transportation are available to the general public and to Rider individually, including public buses and light rail service, taxis and pedestrian paths. LDG provides the Bike only as a convenience, and such rental availability is intended by LDG to be used only by those persons who are able and qualified to operate the Bike on their own and who have agreed to all terms and conditions of this Agreement.
- e. Rider agrees that LDG may require Rider to return the Bike at any time.
- f. Rider agrees that he/she must immediately report to LDG, phone number 716-849-0077, and the Buffalo Police Department any accident involving the Bike. Rider agrees that he/she is responsible and liable for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to a stolen or lost Bike.

5. **Operating Hours and Availability.** Rider agrees and acknowledges that the Bikes are available Monday – Friday 8:00 a.m. to 4:00 p.m., subject to seasonal limitations. Bikes must be rented within the maximum rental time limits set forth in (6) below. Bikes are limited and are available on a first-come first-served basis.

6. **Maximum Rental Time and Fees.** The Bike MUST be returned by 4:00 p.m. on the same day of departure. Rider agrees that Rider will return the Bike to the designated Lark 'N Ride™ Bike Station by 4:00 p.m. the same day of departure. The key to the Bike's lock must be returned to LDG's facilities management office (the "Facilities Management Office") located in Suite 100, 726 Exchange Street, Buffalo, New York 14210. Rider agrees that he/she is solely responsible for being aware of any elapsed time related to the timely return. If the Facilities Management Office is closed, Rider must return the key to the Main Lobby Security Desk, located in 726 Exchange Street, Buffalo, New York 14210. If the Bike is not returned within 24 hours, the Bike will be considered stolen, and the Rider will be charged \$1,000.00 (the "Replacement Fee"). Rider agrees to provide a valid credit card number and expiration date upon departure and hereby represents and warrants that Rider has authorized LDG to charge the credit card such Replacement Fee if the Bike has not been returned within 24 hours. Any repairs needed as a result of abuse of the Bike will be performed at the normal rates and costs of such repairs, including parts, and shall be paid by Rider. In the event that the Bike is damaged beyond repair, Biker will be charged the Replacement Fee.

7. **Bike Use and Damage.** Rider agrees to return the Bike to LDG in the same condition received, ordinary wear and tear excepted. Rider agrees to ensure that the Bike is always locked and secured when unattended.

8. **Helmets.** Wearing an approved helmet, properly sized, fitted and fastened, while cycling may protect against injury, or may lessen the severity of an injury, caused by an impact to the head; however, bicycle helmets are not 100% effective, do not protect against all head injuries, and do not protect against other injuries. Although some state and local laws do not require bicycle riders to wear helmets, LDG recommends that all riders wear an approved helmet that has been properly sized, fitted and fastened, according to manufacturer's instructions. LDG does not represent or warrant the quality or safety characteristics of any helmet, and Rider agrees that LDG must not be held liable for any injury suffered by Rider while using the Bike, whether or not Rider is wearing a helmet at the time of injury.

9. **Modifications to Agreement.** LDG reserves the right to unilaterally amend, modify or change this Agreement, at any time and from time to time, without notice and without Rider's consent. By continuing to participate in the Lark 'N Ride™ Program after any such amendment, modification or change, Rider has agreed to be bound by such amendment, modification or change. Rider must carefully review this Agreement on a regular basis to maintain awareness of all amendments, modifications and changes. Whenever a change is made to this Agreement, LDG will post a notification on its website <http://www.larkindevelopmentgroup.com>. If Rider has submitted an e-mail address, LDG will attempt to notify Rider by e-mail when the terms of this Agreement have been amended, modified or changed. Rider hereby agrees that LDG has the right to terminate this Agreement at any time and retake possession of said equipment.
10. **RELEASE. "CLAIMS" MEANS, COLLECTIVELY, ANY AND ALL CLAIMS, INJURIES, DEMANDS, LIABILITIES, DISPUTES, CAUSES OF ACTION (INCLUDING STATUTORY, CONTRACT, NEGLIGENCE OR OTHER TORT THEORIES), PROCEEDINGS, OBLIGATIONS, DEBTS, LIENS, FINES, CHARGES, PENALTIES, CONTRACTS, PROMISES, COSTS, EXPENSES (INCLUDING ATTORNEYS' FEES, WHETHER INCURRED AT TRIAL, ON APPEAL OR OTHERWISE), DAMAGES (INCLUDING CONSEQUENTIAL, COMPENSATORY OR PUNITIVE DAMAGES), OR LOSSES (WHETHER KNOWN, UNKNOWN, ASSERTED, UNASSERTED, FIXED, CONDITIONAL OR CONTINGENT) THAT ARISE OR RELATE TO THE BIKE, INCLUDING THE RIDER'S USE OF THE FOREGOING. IN EXCHANGE FOR BEING ALLOWED TO USE THE BIKE, RIDER (ACTING FOR RIDER AND FOR ALL OF RIDER'S AGENTS, AFFILIATES, REPRESENTATIVES, SUCCESSORS, HEIRS AND ASSIGNS) DOES HEREBY (i) FULLY AND FOREVER RELEASE AND DISCHARGE LDG, 598 MAIN STREET LLC, LCo BUILDING LLC, MILL RACE COMMONS LLC, BOM LLC, AND ANY ENTITY UNDER COMMON CONTROL WITH THE FOREGOING, AND ANY OF THEIR RESPECTIVE MEMBERS, PARTNERS, DIRECTORS, MANAGERS, OFFICERS, AGENTS, EMPLOYEES AND OTHER PERSONS ACTING ON THEIR BEHALF, AND THE SUCCESSORS AND ASSIGNS FOR ANY AND ALL OF THE AFOREMENTIONED PERSONS AND ENTITIES (COLLECTIVELY, "LDG AND ITS RELATED PARTIES") FROM ALL CLAIMS THAT THE RIDER HAS OR MAY HAVE AGAINST LDG AND ITS RELATED PARTIES, EXCEPT FROM CLAIMS CAUSED BY LDG AND ITS RELATED PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (ii) AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS LDG AND ITS RELATED PARTIES FROM AND AGAINST ALL CLAIMS, EXCEPT FOR CLAIMS CAUSED BY LDG AND ITS RELATED PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. SUCH RELEASES ARE INTENDED TO BE GENERAL AND COMPLETE RELEASES OF ALL CLAIMS. LDG AND ITS RELATED PARTIES MAY PLEAD SUCH RELEASES AS A COMPLETE AND SUFFICIENT DEFENSE TO ANY CLAIM, AS INTENDED THIRD PARTY BENEFICIARIES OF SUCH RELEASE.**
11. **DISCLAIMERS. YOU DO HEREBY ACKNOWLEDGE AND AGREE THAT YOUR USE OF ANY BIKE OR RELATED SERVICE IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, LDG AND ITS RELATED PARTIES DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATIBILITY, SECURITY, ACCURACY, NONINFRINGEMENT AND USEFULNESS, WITH RESPECT TO THE BIKE WHICH IS PROVIDED "AS IS" AND "AS AVAILABLE" (AND YOU RELY ON SOLELY AT YOUR OWN RISK). WE DO NOT REPRESENT OR WARRANT THAT ANY BIKE WILL BE IN GOOD REPAIR OR ERROR-FREE, AND DELAYS, OMISSIONS, INTERRUPTIONS OR INACCURACIES COULD EXIST IN ANY USE OF THE BIKE. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS FOR USING THE BIKE, AND LDG AND ITS RELATED PARTIES ARE NOT LIABLE FOR ANY CLAIM ATTRIBUTABLE TO ANY OF THE FOREGOING.**
12. **LIMITED LIABILITY. YOU DO HEREBY ACKNOWLEDGE AND AGREE THAT LDG AND ITS RELATED PARTIES ARE NOT RESPONSIBLE OR LIABLE FOR ANY CLAIM, INCLUDING THOSE THAT ARISE OUT OF OR RELATE TO (A) ANY RISK, DANGER, OR HAZARD DESCRIBED IN THIS AGREEMENT, (B) YOUR USE OF, OR INABILITY TO USE, THE BIKE, (C) YOUR BREACH OF THIS AGREEMENT OR YOUR VIOLATION OF ANY LAW, (D) ANY NEGLIGENCE, MISCONDUCT OR OTHER ACTION OR INACTION BY YOU, (E) YOUR FAILURE TO WEAR A BICYCLE HELMET WHILE USING THE BIKE, OR (F) ANY NEGLIGENCE, MISCONDUCT OR OTHER ACTION OR INACTION OF ANY THIRD PARTY. YOU DO HEREBY WAIVE ALL CLAIMS WITH RESPECT TO ANY OF THE FOREGOING, INCLUDING THOSE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY OR OTHER GROUNDS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS. OUR TOTAL LIABILITY FOR ALL CLAIMS, INCLUDING THOSE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY, OR OTHER GROUNDS, IS LIMITED TO THE SUM OF \$100. SOME JURISDICTIONS DO NOT ALLOW FOR LIMITED LIABILITY OR EXCLUSION OF IMPLIED WARRANTIES; AND, IF ANY OF THOSE LAWS APPLY TO YOU, THEN SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MIGHT NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.**
13. **Governing Law and Severability.** This Agreement is governed by the applicable laws of the State of New York. If any provision of this Agreement is found to be unenforceable, all other provisions will be given full force and effect.
14. **Representations.** Each party ("Promising Party") represents and warrants to the other party that: (i) the Promising Party has the legal power and authority to enter into this Agreement and to undertake and perform all of its duties and obligations hereunder;

(ii) there is no contract or other legal obligation that prevents the Promising Party from entering into this Agreement or from undertaking or performing all of its duties and obligations hereunder; and (iv) this Agreement is the Promising Party's legally binding and fully enforceable agreement.

**15. Acceptance of Agreement and Effective Date.** Rider expressly acknowledges that he/she has carefully read the entire Agreement, and fully and expressly agrees to be bound by this Agreement. After careful deliberation, Rider voluntarily gives his/her consent and expressly agrees to all the conditions included in this Agreement as set forth above. Rider has read, understands and expressly agrees to the above Agreement and terms and conditions therein. This Agreement is effective as of the date set forth below.

By signing below, Rider acknowledge that Rider has read, understands and agrees to all of the terms and conditions set forth above in this Agreement and understand its content. Rider understands and assumes all responsibility for all related risks, dangers and hazards and is solely and fully responsible for the safe operation of the Bike at all times.

Rider Name (Printed) \_\_\_\_\_

Company \_\_\_\_\_

Suite # \_\_\_\_\_

E-Mail \_\_\_\_\_

Cell Phone \_\_\_\_\_

Office Phone \_\_\_\_\_

Effective Date \_\_\_\_\_

**Rider Signature** \_\_\_\_\_

Credit Card Information

\*Bicycles must be returned to Larkin at Exchange and keys returned to Suite 100 **by 4:00 p.m. the same day as departure.** If not returned after 24 hours from the time of departure, the bicycle will be considered stolen and the below user credit card will be charged the Replacement Fee of \$1,000.00.

Credit Card Type \_\_\_\_\_

Credit Card # \_\_\_\_\_

Expiration Date \_\_\_\_\_

Security Code \_\_\_\_\_

Name as it appears on Credit Card \_\_\_\_\_