

# ***The Cooperage***

***Genuine Waterfront Lofts in downtown Buffalo, NY***

**Newark Niagara LLC**

**The Pierce Building, 653 Main Street, Suite 104, Buffalo NY 14203**

**Telephone 716-852-2020, fax 716-852-3132**

## **Pre – Lease Deposit Agreement**

Under the terms of this pre-lease agreement, Landlord, Newark Niagara LLC, and Tenant Applicant (TA)

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agree to the following terms:

1. TA has paid to the Landlord \$500.00 as a pre-lease deposit to reserve the choice to lease a loft at the property known as The Cooperage at 55 Chicago St., Buffalo, New York.
2. The Landlord is willing to reserve a loft to be rented by the TA provided that the TA provides adequate assurances to the Landlord that the TA will undertake to lease the loft when it becomes available.
3. In consideration of the Pre-Lease Deposit, the Landlord will not lease or rent the loft to any other person prior to the Lease's execution by the TA as herein provided, nor will the Landlord market or offer the loft for rent to any third persons as Landlord is reserving such loft for TA. Landlord will provide TA (a) the choice to select a loft during "Selection Week"; (b) will charge current monthly rent during the first year lease for mid-2010 occupancy, providing one month of free rent; (c) require no additional security deposit during the first year lease; (d) allow TA to choose paint colors and other finishes in the selected loft from among options provided by Landlord upon signing a lease during construction.
4. Landlord agrees that the Pre-Lease Deposit shall be transferred to and become the Security Deposit required of the TA upon the execution of the Lease by the TA, the payment of the first month's rent, and the TA's taking possession of the loft pursuant to the Lease.
5. TA agrees that in the event that the TA does not lease a loft as herein agreed, the Pre-Lease Deposit shall not be refunded by the Landlord, but shall be retained by the Landlord as consideration for holding a loft for the benefit of the TA and for Landlord's agreement to not market or offer the loft for rent to third persons during the Term set forth herein.
6. The term of this Agreement shall begin upon the execution hereof and shall end on the Lease Execution Date (the "Term") unless the TA should earlier notify the Landlord that TA does not intend to execute the Lease. In the event of such notification, the Term of this Agreement shall end upon the date that the Tenant notifies the Landlord that the Lease will not be executed.

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7. In the event that preparation of the loft is not completed by the Lease Execution Date, the Term of this Agreement and the obligation of the TA to sign the Lease shall be continued for up to 30 additional days after the Lease Execution Date.

8. If the Landlord is unable to deliver a loft to the TA for occupancy by the agreed-upon date, then the Landlord, upon written request by the Tenant, shall refund the Pre-Lease Deposit and the obligations of the Tenant to execute the Lease shall terminate.

9. The TA acknowledges that (a) it is valuable to the TA to be able to pre-select a loft, (b) that the Landlord might miss the opportunity to rent the loft to another prospective tenant and (c) that Landlord runs the risk of losing rental income if the loft is not promptly rented to others upon its completion should the TA not lease the premises as agreed.

10. The terms and conditions of the Lease shall prevail in the event of a conflict with the terms and conditions of this Agreement.

11. In the event of any litigation between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who is unsuccessful in such litigation shall pay the successful party the reasonable attorney fees, court costs and expenses incurred by the successful party all as determined by the court exercising jurisdiction over any such dispute.

12. Time is of the essence as to this Agreement.

This Agreement is executed at Buffalo, NY on the \_\_\_\_\_ day of \_\_\_\_\_, year of 2009.

Tenant Applicant

Landlord

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Tenant Applicant

Managing Member

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