

CORPORATE SUITE LEASE  
between  
THE COUNTY OF ALBANY  
and  
KEYBANK NATIONAL ASSOCIATION

Lease Authorization: Resolution No.: 171 for 2019

This is an Agreement to Lease ("Lease") a Suite at the Albany County Civic Center, currently known as the Times Union Center (T. U. Center), by and between; the County of Albany, a municipal corporation organized and existing under the laws of New York State, with offices located at 112 State Street, Albany, New York 12207 (hereinafter referred to as "County") SMG, as managing agent of the T. U. Center with offices located at 51 South Pearl Street, Albany, New York 12207 (hereinafter "SMG") and KeyBank National Association with offices located at 127 Public Square, Cleveland, Ohio 44114 (hereinafter referred to as "Suiteholder").

WHEREAS, the County has available for Lease certain private enclosed Suites at its Civic Center; and

WHEREAS, Suiteholder proposes to Lease one (1) Suite; and

WHEREAS, the Albany County Legislature by Resolution No. 171 for 2019 has authorized the County Executive to enter into this Lease AGREEMENT;

NOW, THEREFORE, the County, SMG and Suiteholder, intending to be legally bound hereby, mutually agree as follows:

**ARTICLE 1. LEASED PREMISES: SUITE**

The County hereby Leases to Suiteholder and Suiteholder hereby agrees to Lease from County, Suite No. 15 (the "Suite") as more specifically described in Exhibit "A" for Suiteholder's use during the Lease Term.

**ARTICLE 2. TERM**

The Term of this Lease shall be for a period of three (3) years, commencing on September 1, 2019 and ending on August 31, 2022. At the expiration of the Term, Suiteholder shall return the Suite to the County broom clean and without damage, reasonable wear and tear excepted. Any and all permanent fixtures and structural improvements provided by Suiteholder shall become the property of the County without any reimbursement by or cost to the County.

2. SEVENTEEN THOUSAND FIVE HUNDRED AND 00/100 (\$17,500.00)  
DOLLARS due on or before execution for the first year (2019) of the Lease Agreement.

3. TWENTY THOUSAND FIVE HUNDRED AND 00/100 (\$20,500.00)  
DOLLARS on or before July 1, 2020 and during each subsequent contract year of the Lease Agreement.

4. THIRTY THOUSAND FIVE HUNDRED AND 00/100 (\$30,500.00)  
DOLLARS on or before December 15 during each contract year of the Lease Agreement.

D. The foregoing payment installments are solely for the Suiteholder's convenience. In the event of any default in payment, the County shall provide Suiteholder with written notice of such default and provide an additional thirty (30) days to cure such non-payment. If, after notice, the non-payment is not cured, the County may elect, in addition to and not to the exclusion of any other remedy allowed by law:

1. To accelerate the whole of the amount set forth in Paragraph A above for the whole of the Lease Term remaining, which amount shall become at once due and payable without notice or demand, and/or
2. To withhold providing the Suiteholder with tickets and parking tickets to all Events until such time as the co-tenant is no longer in default of its payment obligations.

E. The Term "Contract Year" as used herein, shall mean any year during the Term hereof commencing on September 1, and ending the following August 31.

F. The Suiteholder shall pay any and all sales tax, if any, determined by the New York State Department of Taxation and Finance to be due and payable under the Terms of this Lease.

G. A flat screen TV and cable access is provided in each Suite. A current charge of \$20.00 per month is billed for cable service.

H. A telephone is provided in each Suite. Suiteholder will be billed a monthly fee of \$32.00 and for any long distance calls made from the telephone.

#### **ARTICLE 4. OBLIGATIONS OF THE COUNTY**

The County agrees to provide the following services and rights to Suiteholder with respect to the said Suite:

tickets for each Event, such tickets to be made available by the County to Suiteholder prior to each Event in accordance with procedures established by the County, subject to the Terms and Conditions set forth in this Lease.

C. Suiteholder shall not sell any food or beverages whatsoever in the Suite. Any food, or beverage used or required in the Suite shall be obtained from Aramark Corporation, or a concessionaire designated by the County, and Suiteholder shall promptly pay all bills for food, beverages and services furnished, sold or rendered to Suiteholder in connection with Suiteholder's use of this Suite. Notwithstanding the foregoing, Suiteholder shall have the right to bring or cause to be brought nonalcoholic beverages into the Suite for its own use or the use of its invitees provided that beverages shall not be brought into the Suite for the purpose of resale to the public and may not be provided by an outside caterer.

D. Suiteholder and Suiteholder's guests shall at all times maintain proper decorum while using the Suite and shall not attach or display any sign, advertisements or notices in or around the Suite without the prior written consent of the County, which consent shall not be unreasonably withheld.

E. Suiteholder and Suiteholder's guests shall comply with all applicable governmental laws and orders, including but not limited to all laws and orders governing smoking in public place. Suiteholder and Suiteholder's guests shall comply with all rules promulgated by the County relating to the use and occupancy of the Suite to the extent consistent with the rights of Suiteholder under this Lease.

F. Any changes or upgrading of the Suite's finishings and/or furnishings shall be solely at Suiteholder's expense and only with prior written permission of the County, which permission shall not be unreasonably withheld.

G. Suiteholder shall commit no waste of the Leased premises and agrees to take good care of the premises, the fixtures and appurtenances.

#### **ARTICLE 6. RIGHT OF ENTRY**

The County and its employees and agents shall have the reasonable right to enter Suiteholder's Leased premises for: (a) the performance of the duties required to be performed by the County hereunder, and for any and all reasonable purposes related thereto, and (b) to investigate any suspected violations of the provisions of this Lease, County rules, and/or any applicable governmental laws, orders, codes or regulations.

#### **ARTICLE 7. INSURANCE**

A. Suiteholder, at its own expense, shall maintain and keep in effect, with insurance companies acceptable to the County, insurance hereinafter specified, with respect to Suiteholder's obligations under this Lease. Suiteholder shall provide the County annually with a certificate of insurance at least ten (10) days prior to the commencement of the contract year evidencing Suiteholder's payment for a comprehensive general liability policy covering bodily

Suiteholder's right under this Lease. Any re-letting of the premises upon Termination, eviction, or re-entry shall be solely on Suiteholder's behalf and shall not be deemed to be the County's acceptance of Suiteholder's surrender of the premises. Any deficiencies arising from the re-letting shall be due from the defaulting Suiteholder on the first day of each of the following years for the remainder of the Term.

B. In addition to any other remedy allowed by law or by this Lease, in the Event either Suiteholder is in default of any obligation set forth in this Lease, the County retains the option to withhold providing a defaulting Suiteholder with Event tickets and parking tickets until any breach or default is cured.

C. In the Event County defaults in any of its obligations hereunder, Suiteholder may terminate this Lease with no additional penalty or payment and may, at its option, pursue any and all other remedies allowed it, be they in law or in equity.

#### **ARTICLE 10. WAIVER, INDEMNIFICATION AND DAMAGE**

A. The failure of any party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained shall not be construed as a waiver of such covenant, condition or option in any other instance.

B. The County shall not be responsible for theft or any other loss or disappearance of any of the property of Suiteholder or its guests except if caused by the negligent act, omission or misconduct by the County, its employees or agents.

C. Suiteholder shall hold and save the County of Albany, State of New York, New York State Urban Development Corporation, the Hearst Corporation, and SMG, their officers, employees, and agents harmless from and indemnify them against any and all liability of any kind whatsoever occasioned within the Suite by reason of any injury to property and/or third persons occasioned by any act or omission, neglect or wrongdoing of the Suiteholder or any of its officers, agents, representatives, guests, employees, invitees or any other persons admitted by the Suiteholder upon the premises except County or facility employees in the performance of their official duties. Suiteholder shall, at its own cost and expense, defend and protect the County, New York State Urban Development Corporation, the Hearst Corporation and SMG, their officers, employees and agents against any and all such claims or demands.

D. Suiteholder agrees to reimburse County for any reasonable costs associated with the repair of the Suite as a result of the destruction of or damage to the Suite or any County property caused by Suiteholder or Suiteholder's employees, guests and/or invitees.

E. If the Suite is destroyed or is substantially damaged by elements or fire or other casualty so as to become untenable, and the County elects to restore the Suite or repair such damage, this Lease shall remain in full force and Suiteholder shall be entitled to be reimbursed for the period the Suite is untenable. However, no such reimbursement shall be allowed if Suiteholder or Suiteholder's guests caused the destruction or damage. If the County does not elect, as aforesaid, to restore or repair the Suite within a reasonable period of time, not to exceed

written notice, the Suiteholder may assign this Lease without County consent in the Event of a merger, consolidation, or sale of all or substantially all of the Suiteholder's assets where the assignment is made to the survivor of such merger or consolidation or the purchaser of such assets. If consent is given by the County to an assignment or subletting of this Suite or any interest therein, the County shall not be barred from subsequently refusing to consent to any further assignment or sublease. Any attempt to sell, assign or sublet in violation of this paragraph without County consent, shall be deemed a default, entitling the County to elect any remedy authorized by law or by the Terms of this Agreement. If the premises are occupied by anybody other than Suiteholder, and Suiteholder is in default hereunder, the County may collect all payments due and owing from the occupant; but no such collection shall be deemed a waiver of the covenant herein against assignment and subletting or the acceptance of such occupant as a Suiteholder or a release of Suiteholder from further performance of the covenant(s) herein contained.

C. No sale by Suiteholder of any tickets issued to it pursuant to Article 5 hereof is permissible; and any sale or attempted sale of such tickets by Suiteholder will be deemed to be a material breach of Suiteholder's obligations hereunder, and shall subject Suiteholder to the Termination provisions of Article 9 at the sole option of the County. The unauthorized sale of any tickets by agents, employees or guests of Suiteholder will not be deemed a material breach of the Lease subjecting Suiteholder to the Termination provisions of Article 9. Suiteholder reserves the right to distribute tickets for promotion, advertising or other similar purposes.

#### **ARTICLE 12. RIGHT TO CURE; CONDITIONS OF LIABILITY; RIGHT TO SHOW PREMISES**

A. In the Event Suiteholder breaches any covenant or condition of this Lease, the County may, upon thirty (30) day's prior notice to Suiteholder (except that no notice need be given in case of emergency), cure such breach at the expense of the Suiteholder. Any reasonable expenses incurred by the County or by SMG acting on the County's behalf to cure, shall be deemed additional rent and shall be payable on demand.

B. Suiteholder shall not be entitled to claim a constructive eviction from the premises unless the Suiteholder first notifies the County in writing of the condition or Conditions giving rise thereto, and, if the complaints be justified, the County fails within thirty (30) days after receipt of said notice to remedy such Conditions.

C. Upon prior notice, The County has the right to enter the Suite to show the premises to prospective lessees or sublessees.

#### **ARTICLE 13. SUCCESSORS AND ASSIGNS**

This Lease and the covenants and Conditions herein contained shall be binding upon, and inure to the benefit of, the Parties hereto, their respective heirs, devisees, personal representatives, and permitted successors and assigns. This Article shall not be construed to convey any right inconsistent with the Terms of Article 11 relative to assignment of this Lease or subletting of all or any portion of the Suite.

C. The County shall hold and save harmless the Suiteholders, their employees, officers, agents and guests from and indemnify it, or any of them against any and all liability of any kind whatsoever occasioned in, on, upon or about the Albany County Civic Center by reason of any injury to property and/or third persons occasioned by any act or omission, neglect or wrongdoing of the County, SMG, their respective agents, employees, officers and guests, except for those persons admitted to the Suite by the Suiteholders. The County shall at its own cost and expense, defend and hold harmless the Suiteholders, their employees, officers, agents and guests against any and all such claims. The County hereby represents and warrants to the Suiteholder that the Albany County Civic Center is in and shall continue to be in compliance with all federal, state and local rules, regulations and law.

D. County and SMG individually represent, warrant and covenant that neither they, nor any of their agents, subcontractors, or employees performing services or supporting activities under this Lease are (i) an individual or entity that is listed in the annex to, or is otherwise subject to the prohibitions contained in, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 ("Executive Order") of the Office of Foreign Asset Control ("OFAC") regulations; (ii) an individual or entity with whom Suiteholder or any financial institution is prohibited from dealing or otherwise engaging in business under any U.S. law, regulation, executive order or list published by OFAC; or (iii) an individual or entity that is named on the current list of "Specially Designated Nationals and Blocked Persons" published by OFAC on its official website or any replacement website or other replacement official publication of such list. Currently, the lists of such persons or entities can include the following website: The Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control - Department of Treasury at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html>.

E. Non-Discrimination. The following is applicable to only those contracts that are performed in the United States. **To the extent applicable, the County and SMG shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.**

During the Term of this Agreement, either County or SMG shall immediately notify Suiteholder in writing if the representations and warranties contained in this provision are no longer true, in which case Suiteholder shall have the immediate right to terminate this Lease with no cure period applying and no further obligation or penalty.

STATE OF NEW YORK     )  
COUNTY OF ALBANY    ) SS.:

On the \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the state, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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NOTARY PUBLIC

STATE OF NEW YORK     )  
COUNTY OF ALBANY    ) SS.:

On the 6 day of November, 2019, before me, the undersigned, a notary public in and for the state, personally appeared Philip F. Calderone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
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NOTARY PUBLIC

STATE OF NEW YORK     )  
COUNTY OF ALBANY    ) SS.:

MICHAEL A. LALLI  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 01LA6322012  
Qualified in Albany County  
My Commission Expires March 30, 2027.

On the 16<sup>th</sup> day of SEPTEMBER, 2019, before me, the undersigned, a notary public in and for the state personally appeared Robert H. Belber, G.M. of the T.U. Center, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or, the person upon whose behalf the individual acted, executed the instrument.

  
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NOTARY PUBLIC

GARY C. HOLLE  
Notary Public, State of New York  
No. 01HO6362978  
Qualified in Albany County  
Commission Expires Aug 14, 2021

EXHIBIT "A"

SUITE NO. 15  
CORPORATE SUITE FURNISHINGS

Finished and furnished Suite shall include:

- a. Wall to wall carpeting;
- b. Acoustical tile ceiling;
- c. Upholstered fabric stadium chairs with arms-seating areas to be raised for maximum visibility;
- d. Washroom containing appropriate amenities;
- e. Bar with wet sink;
- f. Television monitor bracketed from ceiling;
- g. Sliding glass window opening onto Arena;
- h. Telephone availability;
- i. Recessed step aisle lighting;
- j. Heating, ventilation, and air conditioning.

Any upgrading of the Suite finishings and furnishings desired by Suiteholder shall be at Suiteholder's sole expense and only with the prior written permission of the County, which shall not be unreasonably withheld. All such improvements, alterations or additions shall become the property of the County and shall remain on and be surrendered with the premises, as part thereof at the Termination of this Lease without disturbance, molestation, or injury.