

## **LEASE AGREEMENT**

This Lease Agreement (the "Lease") made this \_\_\_ day of \_\_\_\_\_, 2015, by and between **Diocese of Ogdensburg** ("Landlord"), with its central administrative offices at 604 Washington Street, Ogdensburg, New York, and **St. Lawrence-Lewis Board of Cooperative Educational Services** ("Tenant"), a body duly created pursuant to the laws of the State of New York with an office at 40 West Main Street, Canton, New York. Landlord and Tenant may sometimes be referred to herein individually as a "party" and collectively as the "parties."

**WHEREAS**, Tenant has demonstrated the need for additional space and seeks to lease a portion of the Old Saint Marguerite D'Youville Academy (the "School"), including its gymnasium and a storage room in the gymnasium, owned by Landlord and located at 315 Gates Street, Ogdensburg, New York, for the purpose of operating its programs and activities; and

**WHEREAS**, the Old Saint Marguerite D'Youville Academy building is no longer needed by the Landlord; and

**NOW, THEREFORE**, in consideration of the promises set forth herein, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE I – RECITALS**

1. **Recitals**: The recitals set forth above shall be incorporated into this Lease as if fully set forth herein.

### **ARTICLE 2 - PREMISES**

2. **Premises**: Subject to the terms and conditions set forth herein, Landlord, for and in consideration of the covenants and agreements set forth in this Lease, hereby leases and grants to Tenant the gymnasium and a storage room in the gymnasium, together with the right to the use of the School's parking areas, restrooms (the "Leased Premises") from 12:00 p.m. to 2:00 p.m. on Tuesdays and Thursdays for the Lease Term. Tenant may not alter or otherwise redesignate the Leased Premises without Landlord's prior written consent.

### **ARTICLE 3 – ANCILLARY SERVICES**

3. Landlord, at its sole cost and expense, shall furnish water, heat, electricity, plumbing, structural maintenance, other maintenance and any other custodial services normally performed in the School, or to provide access to the gym, including snow removal and lawn maintenance. Landlord will also clear the gym of any items, tables, chairs, etc., before each Tuesday and Thursday session.

#### **ARTICLE 4 – TERM; RENT; RENEWAL**

4.1 Term. The term of this Lease shall be for ten (10) months, one school year, and shall commence on September 1, 2015 (the “Commencement Date”) and shall terminate on June 24, 2016 (the “Term”).

4.2 Rent. In consideration of the covenants and obligations herein undertaken by Landlord, Tenant shall pay to Landlord an annual rent of \$7,000.00. Rent shall be paid in ten (10) equal installments of \$700.00 during the term of the Lease, the first installment being due on September 1, 2015, and the last installment due on June 1, 2016.

4.3 Renewal. Tenant shall have the option to renew this lease upon terms and conditions to be mutually agreed upon by Landlord and Tenant. Tenant must give Landlord written notice of its intent to exercise said option to renew at least sixty (60) days prior to the expiration of the initial term.

4.4 Transfer of Ownership. The parties acknowledge Landlord may transfer ownership of the Leased Premises at any time, subject to the termination provisions set forth at Article 12 of this Agreement.

#### **ARTICLE 5 – USE OF LEASED PREMISES**

5. Tenant shall use and occupy the Leased Premises on Tuesdays and Thursday from 12:00 p.m. to 2:00 p.m. during the Term for educational purposes, related programs which may include, without limitation, use of the Leased Premises as a gymnasium, including storage space. Landlord represents that the Leased Premises lawfully may be used for such purposes.

#### **ARTICLE 6 – CONDITIONS PRECEDENT TO**

6.1. The obligation of Tenant to enter into this Lease and to fulfill its obligations under this Lease shall be subject to the following conditions:

(a) Approvals. This Lease and any modifications, including redesignation of the Leased Premises are subject to approval by the parties respective Boards, and compliance with the New York Education Law and all applicable regulations promulgated thereunder.

(b) Personnel. Tenant shall provide necessary personnel for instruction and supervision.

(c) Instructional Supplies. Tenant shall provide its own instructional supplies and equipment.

(d) Insurance. Tenant shall carry adequate comprehensive general liability insurance with limits of not less than \$1,000,000.00 naming the Landlord as an additional insured. Tenant shall also maintain automobile liability coverage on rental vehicles

parked by the tenant with policy limits of not less than One Million (\$1,000,000.00) Dollars and Workers' Compensation at statutory limits, as well as an employer's liability policy with a policy limit of not less than statutory.

(e) Indemnity. Tenant shall defend, indemnify and hold the Landlord harmless for any and all claims, damages, liabilities or expenses arising out of (a) Tenant's use of the premises or the building, (b) any and all claims arising from any breach or default in the performance of any obligation of Tenant, (c) any act, omission or negligence of Tenant, its agents, invitees or employees; excluding acts or losses caused by Landlord's negligence. Tenant further releases Landlord from liability for any damages sustained by Tenant or any other person claiming by, through or under Tenant due to the premises, the building, or any part thereof or any appurtenances thereto becoming out of repair so long as such disrepair is not caused by the act, error, omission or negligence of the Landlord, or due to the happening of any accident, including, but not limited to any damage caused by water, snow, windstorm, tornado, gas, steam, electrician wiring, plumbing, heating apparatus, so long as such accident is not caused by the act of omission or negligence of the Landlord. Landlord shall not be liable for any damage to or loss of Tenant's personal property, inventory, fixtures or improvements, from any cause whatsoever, except the affirmative acts or proven negligence of Landlord, and then only to the extent not covered by insurance to be obtained by Tenant.

## **ARTICLE 7 – RESPONSIBILITIES OF LANDLORD**

7.1 Maintenance by Landlord. Landlord shall, at Landlord's sole cost and expense, maintain the structural integrity of the Leased Premises, including without limitation, the roof, foundation, exterior walls, windows, window glass, plate glass and all doors and shall maintain, repair and replace as necessary, at its sole cost and expense, all water, sewer or utility pipes, and water or utility meters serving the Leased Premises. Landlord shall maintain, repair, and replace, as necessary, all major systems serving the Leased Premises, including, without limitation, electrical systems, heating systems and plumbing systems. Tenant shall give notice to Landlord or Landlord's agent of the need for repairs or maintenance of which Tenant has actual knowledge. The Landlord shall either exercise its right to cancel this agreement or shall proceed promptly to make such repairs or replacements, or perform such maintenance as is required. All repairs, replacements and maintenance shall comply with the regulations of the Commissioner of Education of the State of New York, Compilation of Codes Rules and Regulations ("NYCRR") Title 8 Part 155. Landlord shall maintain the parking lots, driveways, sidewalks, common areas, and all exterior landscaping serving the Leased Premises at Landlord's sole cost and expense, as needed to maintain the standards of maintenance and appearance for similar buildings in similar localities. Landlord shall provide and pay for all snow and ice removal from the parking lots, driveways, sidewalks and doorways serving the Leased Premises.

7.2 Insurance. Landlord shall maintain its property and liability insurance policies on the premises during the Term of this agreement. Landlord shall also maintain any existing automobile liability, workers' compensation and employer's liability policies at existing levels. The premiums for such insurance shall be paid by Landlord, as required, and Tenant shall be

furnished with proof of insurance at least annually. Tenant shall be responsible for insuring any of Tenant's personal property located in the Leased Premises.

## **ARTICLE 8 – TENANT'S OBLIGATIONS**

8.1 Maintenance and Repairs. Tenant shall take good care of the Leased Premises. At the end or other expiration of the Term, Tenant shall deliver the Leased Premises in good order and condition, damages by the elements and reasonable wear and tear excepted. Tenant shall make no alteration or changes in the Leased Premises unless it has first received written consent from Landlord approving such alterations or changes, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained herein, the parties agree that Tenant shall be under no obligation to make structural repairs to the Leased Premises, and that all such repairs shall be performed by Landlord.

8.2 Compliance with Laws. Each party shall comply with all statutes, ordinances, rules, orders, regulations and requirements of the federal, state and local governments and of any and all their departments and bureaus applicable to the Leased Premises, for the correction, prevention, abatement of nuisances or other grievances, in, upon, or connected with the Leased Premises during the Term; and also shall comply promptly with all applicable rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body.

8.3 Assignment/Subletting. Tenant, its successors, representatives, executors or administrators, shall not assign this Lease, or underlet or underlease the Leased Premises, or any part thereof, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8.4 Tenant's Default. If the Leased Premises, or any part thereof, shall be abandoned during the Lease Term, or if any default be made in the payment of the Rent, or any part thereof, or if any default be made in the performance of any of Tenant's covenants herein contained, Landlord may re-enter the Leased Premises by summary proceedings and remove all persons therefrom, without being liable to Tenant for prosecution therefore. Landlord may rent the Leased Premises on behalf of Tenant, reserving the right to rent the Leased Premises for a longer period of time than fixed in the original lease without releasing Tenant from any liability, applying any moneys collected to the payment of Rent and all other charges due and to grow due to Landlord, any surplus to be paid to Tenant.

8.5 Signs. Tenant shall neither place, nor cause or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to the School or the Leased Premises or any other part of same, except in or at such place or places as may be indicated by Landlord and consented to by Landlord in writing, such consent not be unreasonably withheld, conditioned or delayed. If Landlord shall deem it necessary to remove any such sign or signs to paint the Leased Premises or the School or make any other repairs, alterations or improvements in or upon the Leased Premises, Landlord shall have the right to do so, providing that any sign be removed and replaced at Landlord's expense, whenever such repairs, alterations or improvements shall be completed.

8.6 Right of Entry. Tenant agrees that Landlord and Landlord's agents and other representatives shall have the right to enter into and upon the Leased Premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof. Such right of entry shall be upon reasonable notice to Tenant.

## **ARTICLE 9 – REPRESENTATIONS AND WARRANTIES OF LANDLORD**

9.1 Title. Landlord represents and warrants to Tenant that Landlord holds legal title to the School in its name, and has all necessary right, title and authority to enter into this Lease and perform Landlord's obligations hereunder.

9.2 Health and Safety. Landlord maintains the premises meets all minimum applicable standards for the health, safety and comfort required for occupants and the intended use herein.

## **ARTICLE 10 – DAMAGE BY FIRE OR CASUALTY**

10.1 Damage by Fire or Other Casualty. If the Leased Premises shall be damaged by fire or other casualty insured against by Landlord's fire and extended coverage insurance policy covering the School, and the Leased Premises can be fully repaired, in Landlord's opinion, within one hundred and twenty (120) days from the date of such damage, Landlord, at Landlord's sole cost and expense, shall repair such damage to Tenant's satisfaction. Except as otherwise provided herein, until the repairs to the Leased Premises are substantially completed, the Rent and Ancillary Services Charge shall abate pro-rata based on the part of the Leased Premises which is unusable by Tenant. If, however, the Leased Premises are rendered wholly untenable by fire or other cause as determined by the local fire marshal having jurisdiction over the Leased Premises, or such other duly-authorized governmental individual or entity having jurisdiction over said matters, and the Landlord shall decide not to rebuild the same, or if the entire Leased Premises be so damaged that Landlord shall decide to demolish it or not to rebuild it, then or in any of such events, Landlord may, at its option, cancel and terminate this Lease by giving Tenant notice in writing, within thirty (30) days of the occurrence of the event causing the damage, of its intention to cancel this Lease, whereupon the term of this Lease shall terminate upon the thirtieth (30<sup>th</sup>) day after such notice is given and Tenant shall vacate the Leased Premises and surrender the same to Landlord.

10.2 Termination. Effective upon any termination of this Lease and the surrender of the Leased Premises by Tenant under any of the provisions of this Lease, the parties shall be released thereby and neither party shall have any further liability to the other for any matters arising under this Lease, except for Rent, and other items which accrued prior to the effective date of termination and are then unpaid or which this Lease provides shall survive its termination. Upon termination, tenant shall be responsible for restoring the property to its original condition.

10.3 Repair and Restoration. It is hereby understood that if Landlord is obligated or elects to repair or restore as herein provided, Landlord shall be obligated to make repairs or

restoration only of those portions of the Leased Premises which were originally provided at Landlord's expense, and the repair and restoration of items not provided at Landlord's expense shall be the obligation of Tenant. In no event shall Landlord be obligated to repair or restore any personal property belonging to Tenant.

## ARTICLE 11 – MISCELLANEOUS

11.1 Entire Agreement, Modification, Severability, Waiver. This Lease contains the entire understanding between the parties with respect to the subject matter hereof. All prior negotiations between the parties are merged into this Lease and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as set forth in this Lease. This Lease shall not be modified, amended, altered or changed except by a writing duly executed by Landlord and Tenant, or their successors or assigns. Any provisions of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof.

11.2 Quiet Enjoyment. Landlord covenants that Tenant, on paying the Rent as required hereby and performing the covenants set forth herein, shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the Term.

11.3 Counterparts. This Lease may be executed in one or more counterparts each of which shall be deemed an original, but all of which taken together, shall constitute one and the same instrument. Facsimile signatures shall be accepted as originals.

11.4 Notices. All payments, notices, consents, requests, instructions, approvals and other communications given in connection with this Lease shall be in writing and shall be deemed to have been validly made or given when delivered personally, or when received if properly deposited with the United States Postal Service, postage prepaid certified or registered mail, return receipt requested or with a nationally recognized overnight courier service to the address set forth below; provided, however, that notice shall be deemed sufficiently given upon such mailing or deposit with such courier service if delivery is refused by the intended recipient or cannot be completed because the intended recipient has not notified the sender of a changed address in accordance with this provision:

(a) If to Landlord:

Scott E. Boyer, Business Manager  
St. Mary's Cathedral  
415 Hamilton Street  
Ogdensburg, New York 13669

(b) If to Tenant:

Thomas Burns, District Superintendent  
St. Lawrence-Lewis County Board of Cooperative Educational Services  
P.O. Box 231  
Canton, New York 13617

or to such other name or address as any party shall have specified by notice in writing to the other party. Any notice which is mailed in accordance with the provisions of this Section shall be deemed received five (5) days after mailing.

11.5 Binding Effect. All the terms, conditions and covenants of this Lease shall be binding upon Landlord and Tenant and their respective heirs, executors, successors, and assigns.

11.6 Captions; Language. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

11.7 Governing Law. This Lease shall be governed by, construed, and enforced in accordance with, the laws of the State of New York without reference to the principles of conflict of laws thereof, if any, that would operate to defeat the application of New York law.

11.8 Fully Negotiated Agreement. This Lease has been fully negotiated in an arms' length transaction and neither Landlord nor Tenant has been coerced in any manner to execute this Lease. Each party has had the opportunity to employ legal counsel and seek advice from such counsel with respect to this Lease, its obligations, terms, and implications, and has sought and received such counsel and advice. Neither this Lease, nor any term or provision of this Lease, shall be construed against either Landlord or Tenant as a result of the drafting of this Lease or any term or provision thereof by Landlord or Tenant, or their respective counsel.

11.9 Right to Cure. In the event either party claim's default by the other party under this lease, it shall give written notice of the default to the allegedly defaulting party, and such defaulting party shall have ten (10) days after written notice to cure such default.

## **ARTICLE 12 - RIGHT TO CANCEL**

12.1 Right to Cancel.

- (a) Landlord may, at its sole option, cancel this Agreement any time upon providing the Tenant one hundred twenty (120) days advance written notice.
- (b) Prior to cancellation, Landlord may advise Tenant of any other suitable space owned by the Landlord for possible relocation of the Tenant's programs during the remaining term of the lease.

(c) The Tenant may at its sole option cancel this agreement at any time upon providing the Landlord one hundred twenty (120) days advance written notice. Rent payable to the Landlord shall be prorated in accordance with the number of months of actual occupancy.

13. Conflicts. It is acknowledged this lease shall be void and unenforceable if entered in violation of General Municipal Law §801 or New York State Education Law §410.

14. Approvals. This Lease and any modifications are contingent upon approval by the Board of Education of the Landlord and Tenant, approval by the Commissioner of Education and issuance of a Certificate of Occupancy by the State Education Department Office of Facilities Planning.

Each individual executing this Agreement on behalf of the respective party represents and warrants that he/she is duly authorized to execute and deliver this Agreement. In the case of the Tenant, written approval of the Commissioner of Education is required and which approval Tenant shall use its best efforts to obtain as expeditiously as possible.

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Lease to be executed as of the day and year first above written.

**DIOCESE OF OGDENSBURG**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:

**ST. LAWRENCE-LEWIS COUNTY  
BOARD OF COOPERATIVE  
EDUCATION SERVICES**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: