

71D05-1903-PL-000074

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of FEBRUARY 17 2016, by and between THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME ("Saint Mary's"), and JANICE CERVELLI (the "President").

WHEREAS, the Board of Trustees of Saint Mary's (the "Board") has selected Janice Cervelli to serve as President of Saint Mary's;

WHEREAS, Janice Cervelli desires to accept employment with Saint Mary's as its President; and

WHEREAS, this Agreement has been duly approved and its execution duly authorized by the Board.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the actions taken pursuant thereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Saint Mary's and Ms. Cervelli agree as follows:

1. Employment as President. Pursuant to the terms and conditions of this Agreement, Saint Mary's agrees to employ Janice Cervelli as its President, and Ms. Cervelli agrees to be employed by Saint Mary's as President of Saint Mary's, during the Term of Employment specified in Section 2. President understands that she serves subject to the direction of the Board. President further understands that not all rules and policies applicable to her employment are contained in this Agreement and understands and agrees to abide by any other rules and policies that Saint Mary's currently has or may reasonably adopt or amend from time to time during President's employment with Saint Mary's to the extent that the rules or policies do not conflict with specific provisions of this Agreement.

2. Term. Subject to termination as hereinafter provided in Section 4, the term of President's employment hereunder shall commence on June 1, 2016, and shall continue in force through May 31, 2021 (such period being hereinafter referred to as the "Term of Employment").

3. Duties.

(a) Description. President agrees to be responsible for and to perform all the duties normally performed by the president of a college, including, but not limited to, the following:

(1) All duties and responsibilities of the President of Saint Mary's as set forth in the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of Saint Mary's and as established in the policies, procedures, and position descriptions currently existing, or hereinafter reasonably adopted by the Board to the extent they do not conflict with the provisions of this Agreement;

(2) All duties and responsibilities of the President of Saint Mary's generally imposed by (1) the laws of the State of Indiana and (2) the laws, rules, regulations, and canons of the Roman Catholic Church which are applicable to Roman Catholic institutions of higher education. Saint Mary's shall provide President with the services of a Canon lawyer to the extent advice with respect to Canon law is needed;

(3) All duties and responsibilities generally associated with service as Chief Executive Officer of an institution of higher education; and

(4) Such other duties and responsibilities as, from time to time, may now or hereafter be reasonably assigned to the President by the Board to the extent they do not conflict with the provisions of this Agreement.

(b) Faithful Discharge. President agrees that during her Term of Employment as President, she will devote her time to the faithful discharge of the duties of such office.

(c) Other Requirements. Saint Mary's has heretofore provided to President, and President agrees to become familiar with and comply with the employee handbook of Saint Mary's.

4. Termination.

(a) Termination For Cause. President may be discharged for Cause, and this Agreement terminated at any time (during the Term of Employment). For purposes of this Agreement, "Cause" shall mean conduct by President determined by the Board to be (1) the conviction or plea of *nolo contendere* or guilty of a felony; (2) commission of an offense that involves moral turpitude and is a crime under federal, state or local laws; (3) gross negligence or willful malfeasance by President in the performance of her duties that materially harms Saint Mary's; (4) misconduct of



such an egregious nature that it portrays Saint Mary's in a materially unfavorable light; and (5) a material breach of this Agreement by President or President's material failure to perform her duties and obligations to Saint Mary's or to abide by the reasonable policies and regulations established by the Board from time to time, which breach or failure continues for ten (10) business days or more after written notice of such breach or failure is provided by Saint Mary's to President. In the event this Agreement is terminated for Cause under the provisions of this Section 4(a), only accrued salary and vacation benefits to the date of termination shall be paid to President.

(b) Termination Without Cause. Should Saint Mary's discharge President during the Term of Employment without cause, Saint Mary's shall pay severance to President by continuing monthly salary payments to President at the salary rate then in effect, less all applicable withholdings, for one year following her termination (the "Severance Period"). During the Severance Period, Saint Mary's also will pay President an amount equal to the contributions that Saint Mary's would have made on behalf of President pursuant to Saint Mary's TIAA/CREF retirement plan (with such amount being based upon the amount of the payments made to President under this Section 4(b)). Such payments shall be made at the same time as the monthly salary payments to President during the Severance Period. In addition, during the Severance Period, President shall also be entitled to participate in such medical and disability insurance plans of Saint Mary's upon the same or comparable terms as other employees of Saint Mary's, subject to all eligibility requirements, in the same manner and with the same contributions to cost by Saint Mary's, as she would be entitled to if no discharge had occurred.

(c) Resignation By President. President may resign from her employment upon providing ninety (90) days' notice to Saint Mary's. Should President resign her employment during the Term of Employment, Saint Mary's shall have no further obligations under this Agreement beyond payment of wages and vacation benefits, if any, earned as of the effective date of resignation.

5. Evaluation of the President During Term of Employment. The Chair and Vice-Chair of the Board shall annually review the performance and compensation of President as President as provided in the Bylaws, within forty-five (45) days of the end of each fiscal year of Saint Mary's during the Term of Employment. Such review will be conducted after the Chair and Vice-Chair of the Board have sought the feedback of the entire Board regarding the President's performance for that year.



6. Compensation and Benefits During Term of Employment. Subject to the terms of this Agreement, Saint Mary's agrees that it will pay President as follows during the Term of Employment:

(a) Salary. President shall be paid an annual minimum salary of Three Hundred Five Thousand and no/100 Dollars (\$305,000.00) (the "Salary"). Such annual salary shall be paid to President in equal monthly installments (being President's monthly salary). President's salary shall be reviewed annually by the Board and President will be entitled to receive an annual increase in an amount equal to at least the incremental average salary percentage increases for Saint Mary's cabinet and President. However, no additional increase to President's Salary shall occur without approval of the Board, as required in the Bylaws. During the Term of Employment, President's annual Salary may be increased but not decreased.

(b) Vacation Leave. President shall receive four (4) weeks of vacation leave on an annual basis during the Term of Employment. In addition, prior to the beginning of the academic year in the fall of 2016, President shall be entitled to take two (2) additional weeks of vacation leave.

(c) Completion Bonus. In addition to her Salary as set forth above, President also may be entitled to receive a Completion Bonus in the amount of Ten Thousand and no/100 Dollars (\$10,000.00), less all normal and necessary withholding, upon her completion of the five-year term set forth in this Employment Agreement. President must complete the entire term of this agreement to qualify for this bonus.

(d) Additional Compensation. If President completes the term of employment set forth in this Agreement or if President becomes Permanently Disabled (as defined herein), she will also receive additional compensation, less all normal and necessary withholdings, in an amount equal to six (6) months of her then current annual salary. This Additional Compensation shall be paid to President throughout the six months following the date upon which the compensation is awarded her pursuant to Saint Mary's normal paydate schedule. This amount shall be payable to President only if she is employed as President on the last date covered by this Agreement or if she is employed by Saint Mary's at the time of the declaration of her Permanent Disability. No amount of this additional compensation is to be paid or shall vest prior to the final day of the term of employment.

(e) Other Benefits. President shall be entitled to participate in such medical and disability insurance plans, retirement plans and other employee benefit plans and programs (including the TIAA/CREF retirement plan with employer match of your contributions) as are established by Saint Mary's from time to time upon the same or comparable terms as other employees of Saint Mary's, subject to all eligibility requirements. Any such benefits, plans and/or policies shall be subject to change or termination from time to time as determined by Saint Mary's. To the extent that federal or state law or the retirement plan itself limits the employer's ability to match salary in excess of applicable annual compensation and contribution limits, Saint



Mary's shall pay (as long as permissible under the retirement plan) additional compensation to President in the amount of the otherwise prohibited match within 60 days after the end of each calendar year.

In addition to, but not in limitation of, benefits otherwise available hereunder to President, Saint Mary's shall provide to President the following benefits during the Term of Employment:

(1) Saint Mary's shall provide President with an automobile allowance in the amount of \$750.00 per month paid to the President on or about the 15<sup>th</sup> day of each month, the personal use of which shall be reported as W-2 income from Saint Mary's to President for tax reporting purposes. On a semi-annual basis, President shall provide Saint Mary's with receipts and/or documentation to support the reasonableness of this automobile allowance.

(2) President may rent or purchase a residence in the South Bend area. In either event, Saint Mary's will provide President with (i) a monthly housing allowance of \$2,750, (ii) up to \$12,500 (such amount to mutually determined by President and Saint Mary's) for improvement to the first floor of such residence to allow use of such space in furtherance of the business and needs of Saint Mary's and as would be typical for the President of Saint Mary's, and (iii) up to \$5,000 (such amount to mutually determined by President and Saint Mary's) annually for decorating costs for such residence. In the event President chooses to buy a residence in the South Bend area, Saint Mary's shall pay the lesser of 5% of the purchase price or \$25,000 as the down payment on any residence purchased by President. St. Mary's shall also pay President such additional amounts as necessary to cover all state and federal tax liabilities arising out of the payments set forth in this paragraph (2).

On a semi-annual basis, President shall provide Saint Mary's with receipts and/or documentation to support the reasonableness of this housing allowance.

(3) Saint Mary's will maintain a membership in the College's name at The University Club of Chicago in Chicago, Illinois, or such similar club as is mutually agreeable to Saint Mary's and President, with such membership to be used by President in conducting business functions on behalf of Saint Mary's until the date of termination of the Term of Employment for any reason whatsoever.

(4) President shall secure three bids for moving and shall accept the lowest conforming bid. Saint Mary's will reimburse President for the reasonable moving expenses that are incurred by President in her relocation to the South Bend, Indiana, area in order to assume the position of President. Such reimbursement shall be made in a timely fashion by Saint Mary's upon its receipt from President of documents confirming the cost incurred. Saint Mary's will also reimburse President for reasonable storage costs incurred in connection with her move to South Bend.

(5) Saint Mary's will pay for trips by President to South Bend, as mutually agreed to by Saint Mary's and President, to find housing, make necessary arrangements for relocation and to assist in her transition into the President's position.

(6) In addition to President's personal furnishings for the home, Saint Mary's will provide a furniture allowance in a mutually agreeable amount.

(7) Saint Mary's shall purchase a term life insurance policy (or such other life insurance product as determined by the Board) on President in the amount of \$1 million, which policy shall be owned by President or President's beneficiaries.

(8) During the first year of the Term of Employment, Saint Mary's will pay for an executive coach for the President. Such coach will be selected by, and will serve for such period of time as mutually agreed to by, the President and the Board Chair.

(f) Saint Mary's will reimburse President for the cost of an annual executive medical examination of the President. President will provide verification of the cost of such examination in accordance with the reimbursement policies and practices of Saint Mary's. Said examination shall be conducted by a physician selected by President.

(g) Taxes and Other Withholdings. Saint Mary's will deduct and withhold from all amounts paid as compensation to President hereunder all necessary social security and withholding taxes and any other similar sums required by law.

7. Work Product During Term of Employment. Saint Mary's shall own, and shall have the right to publish or reuse, any oral, written, visual, audio, video, digital, or other materials created by President in the course of President's employment during the Term of Employment.

8. Honoraria, Endorsements, and Other Activities. Other than public appearances, speeches, endorsements, publications, employments, and other similar activities conducted by President which have been approved in advance by the Chair of the Board (the "Board Chair"), President may not participate in or receive compensation for outside activities of this nature, or engage in any fund-raising activities for any entity other than Saint Mary's, during the Term of Employment unless President first obtains the prior written approval from the Board Chair, which approval shall not be unreasonably withheld. President also shall seek and receive



prior written approval from the Board Chair before accepting membership on any boards of for-profit or nonprofit entities.

9. Disability. In the event of President's Permanent Disability during the Term of Employment, this Agreement shall terminate on the date of such Permanent Disability and Saint Mary's general policies regarding disability for full-time professional staff employees shall apply; provided, however, that President shall receive her full salary plus benefits during the first twelve (12) months of such disability or until Saint Mary's long-term disability payments become effective by contract, whichever is earlier (the "Short-Term Disability Period"). During the Short-Term Disability Period, Saint Mary's will continue contributions to President's TIAA/CREF retirement program.

For purposes of this Agreement, "Permanent Disability" or "Permanently Disabled" shall mean the inability of President to perform the essential functions of the job for a period of six (6) continuous months with a reasonable accommodation (as such term is defined in 42 U.S.C. § 12111(9), as amended, and in the common law interpreting same).

10. Death. In the event of President's death, this Agreement shall terminate immediately, and President's legal representative shall be entitled to receive compensation through the last day of the calendar month during which President died, plus any accrued vacation pay, insurance benefits, and any then-current credits and earnings of any deferred compensation plan.

11. Tenured Member of Faculty and Sabbatical. The Board will use its best efforts to secure appointment of President as a tenured member of the faculty of Saint Mary's or a full professor. Such tenure or professorship, if any, would be granted by the faculty of Saint Mary's in accordance with the customary policies and procedures of the faculty in granting tenure to a faculty member or awarding a full professorship. If Saint Mary's grants tenure or a

full professorship to President during the Term of Employment, Saint Mary's will recommend to the faculty that tenure or the full professorship be granted with retreat rights within President's area of teaching expertise (to the extent permitted by the customary policies and procedures of the Saint Mary's faculty), that is, if your employment as President is terminated President may retain a full-time teaching position in President's subject area to be paid in an amount equal to the highest paid professor at Saint Mary's. At the end of the Term of Employment, President shall be entitled to take a one year sabbatical (the "Sabbatical") to prepare her for teaching and with such conditions as shall be mutually agreed upon by the Board and President. During the Sabbatical, President shall be entitled to receive such compensation as provided in the Agreement for successful completion of the Term of Employment, however, the terms of this Agreement shall not govern the employment relationship of President with Saint Mary's. All terms of employment of President during the Sabbatical shall be governed by the policies and procedures of Saint Mary's applicable to a tenured member of the faculty of Saint Mary's or a full professor.

12. Key Person Life Insurance Policy. Saint Mary's shall have the right, but not the duty, to apply for and carry life insurance on President, as a key employee ("Key Employee") of Saint Mary's, in such amount as the Board shall determine. President agrees to cooperate with all procedures and take all actions necessary for Saint Mary's to obtain such life insurance policy.

13. Indemnification. Saint Mary's shall indemnify President and hold her harmless against legal fees, expenses, judgments, and other financial amounts incurred while carrying out the duties of her office as President. President shall continue to be indemnified subsequent to termination of employment as President with respect to acts or omissions within the scope of her employment as President.



14. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from President's employment and/or termination of her employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator chosen by the parties in South Bend, Indiana. The costs and fees associated with the mediation shall be shared equally by the parties.

15. Arbitration. If mediation, as described in Section 14, is unsuccessful, any controversy between the Saint Mary's and President involving the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from President's employment and/or termination of her employment shall, on the written request of either party served on the other, be submitted to binding arbitration before a single arbitrator. The American Arbitration Association shall provide a list of three (3) arbitrators who are licensed to practice law in the State of Indiana. Within ten (10) days of receipt thereof, either party may reject the list of proposed arbitrators in whole and request a new list, or alternatively, each party shall strike one and so notify the AAA in confidence. After being notified of each strike, the AAA shall advise the parties of the remaining arbitrator, or if the parties strike the same person, then the AAA shall choose from the two remaining arbitrators, advising the parties only of the selected arbitrator. Saint Mary's and President stipulate and agree that any arbitration will be held in South Bend, Indiana, pursuant to the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association (or any comparable rules then in existence) (the "Rules"). Pursuant to the Rules, discovery may include depositions, interrogatories and document production. In any controversy

between the Saint Mary's and President involving the construction, application or enforcement of this Agreement, the arbitrator must base his/her decision upon the written contract and they shall not have power to modify, add to or ignore terms of the Agreement. The written decision of the arbitrator shall be final and conclusive upon both parties and may be entered in any court having jurisdiction thereof. The arbitrator's compensation and administrative fees shall be shared equally by the parties. The parties agree to pay their own attorney's fees and costs.

16. Confidentiality of Agreement. The parties hereby acknowledge and agree that this Agreement is confidential. The parties agree not to disclose the existence of this Agreement or its terms to any individual, entity or group of individuals, except for the following: (a) if by President, to President's spouse, President's legal counsel and tax advisors to the extent necessary for purposes of legal or tax advice; a governmental taxing authority if so required; a court of competent jurisdiction if required by subpoena; or as Saint Mary's may agree in writing; or (b) if by Saint Mary's, to legal counsel and tax advisors to the extent necessary for purposes of legal or tax advice; a governmental taxing authority if so required; a court of competent jurisdiction if required by subpoena; or as President may agree in writing. The parties agree to instruct any individuals who are informed of the nature, terms and/or conditions of this Agreement of the confidential nature of the Agreement and to obtain an agreement from such individuals to maintain its confidentiality.

17. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. In addition, any action brought to enforce an arbitration award with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction within the State of Indiana. President hereby consents to the personal jurisdiction of the courts in the State of Indiana.



18. Notices. All notices required or allowed by this Agreement shall be hand delivered or mailed by certified mail, postage prepaid, return receipt requested. Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to Saint Mary's:

Saint Mary's College  
Le Mans Hall  
Notre Dame, IN 46556  
Attn: Chair of the Board of Trustees

If to the President:

Janice Cervelli  
Office of the President  
Saint Mary's College  
Notre Dame, IN 46556

19. Severability. In the event that any provision, term, or restriction of this Agreement shall be held illegal or otherwise unenforceable, such provision, term, or restriction shall be severed, and the balance of the Agreement shall continue in full force and effect.

20. Remedies. In any action brought with respect to this Agreement or the subject matter hereof, the prevailing party shall be entitled to recover its or her costs and expenses, including reasonable attorneys' fees, along with any other damages or relief available at law, in equity, or otherwise.

21. Knowing and Voluntary Execution; Legal Counsel. In executing this Agreement, President acknowledges and agrees that she has entered into this Agreement knowingly and voluntarily and with full knowledge and understanding of the provisions of this Agreement. President further represents that by entering into this Agreement, she is not relying on any statements or representations made by Saint Mary's or any officers, trustees, employees, members or agents of Saint Mary's, which are not incorporated in this Agreement. Rather,

President is relying upon President's own judgment and/or the advice of President's counsel. President further acknowledges that President has had the opportunity to consult with and be advised by President's own legal counsel, or that President has elected not to do so, and that in any event, President has not relied on legal counsel for Saint Mary's in any respect in the review, negotiation, preparation, execution or delivery of this Agreement.

22. Entire Agreement. The parties hereto acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms. This Agreement contains the full, complete, and entire agreement between the parties, superseding any and all other contracts or proposals, oral or written, and any and all other communications between them relating to the subject matter of this Agreement.

23. Amendment. This Agreement cannot be amended or waived in any respect except by a subsequent written agreement entered into by the parties, and only such amendments or waivers that are thus made in writing shall be effective and binding upon the parties hereto.

24. Counterpart Originals. Two or more counterpart originals of this Agreement may be signed by the parties hereto, each of which shall be an original, but all of which together shall constitute one and the same instrument.

25. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their successors in interest.

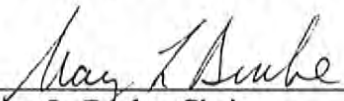
**[SIGNATURES FOLLOW ON NEXT PAGE]**



IN WITNESS WHEREOF, Saint Mary's, by its duly authorized officer, and President have caused this Agreement to be executed on the date(s) stated below, effective as of the date first above written.

THE CORPORATION OF  
SAINT MARY'S COLLEGE, NOTRE DAME

  
Janice Cervelli

By:   
Mary L. Burke, Chair  
of the Board of Trustees

Date: 2/17/16

Date: 2/17/16