

71D05-1903-PL-000074

**RESIGNATION OF PRESIDENCY AND AGREEMENT**

THIS RESIGNATION OF THE PRESIDENCY AND AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2018, by and between THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME ("Saint Mary's") and JANICE CERVELLI ("Ms. Cervelli").

WHEREAS, Ms. Cervelli has served as President of Saint Mary's College pursuant to the terms of her Employment Agreement dated February 17, 2016; and

WHEREAS, the Board of Trustees of Saint Mary's (the "Board") has indicated its interest in terminating her employment as President pursuant to the "not for cause" termination provision set forth in her Employment Agreement (the "Employment Agreement"); and

WHEREAS, Ms. Cervelli has indicated a willingness to resign her position as President in lieu of a not for cause termination and in return for the consideration set forth in this Agreement; and

WHEREAS, this Agreement has been duly approved and its execution duly authorized by the Board of Trustees of Saint Mary's College (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. **Resignation.** Ms. Cervelli hereby resigns her position as President of the College effective December 31, 2018. From the date of this Agreement through December 31, 2018, Ms. Cervelli will continue to be compensated pursuant to the terms of her Employment Agreement, however, she agrees and understands that she is not authorized to contract on behalf of the College, enter into any agreements on behalf of the College, speak on behalf of the College, or actively promote herself as President of the College. During this period, the College will appoint an Interim President to perform the duties of the College President.

2. **Severance and Benefits Related to Presidency.** Under the terms of Paragraph 4(b) of her Employment Agreement, Ms. Cervelli is entitled to certain compensation, retirement contributions and insurances (the "Benefits") in the event the College terminated her employment as President without cause. In addition, Saint Mary's will pay accrued paid time off and accrued vacation benefits. Paragraph 4(c) of her Employment Agreement also provided that these Benefits would not be available to her if she resigned her Presidency. Therefore, the parties have agreed that, effective January 1, 2019, Ms. Cervelli may receive those Benefits even though she has resigned her employment as President in lieu of being terminated without cause. Specifically, Saint Mary's shall pay severance to Ms. Cervelli by continuing monthly salary payments to her at the same monthly salary rate as October 2018, less all applicable withholdings, for a twelve month period beginning January 1, 2019 (the "Severance Period"). During the Severance Period, Saint Mary's also will pay Ms. Cervelli an amount equal to the

contributions that Saint Mary's would have made on her behalf pursuant to Saint Mary's TIAA/CREF retirement plan (with such amount being based upon the amount of the payments made to her under Section 4(b) of the Employment Agreement). In addition, during the Severance Period, Ms. Cervelli 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 have been entitled to if she had continued in the role of president.

3. **Tenured Faculty Position.** The parties agree that as of January 1, 2019 Ms. Cervelli shall continue her position as a tenured member of the faculty and she shall be paid in accordance with Section 11 of the Employment Agreement. The parties have indicated a willingness to discuss a possible buyout of Ms. Cervelli's tenured faculty position. The parties have also indicated a willingness to participate in good faith in mediation as provided in Section 14 of the Employment Agreement to address the issue of buying out Ms. Cervelli's tenured faculty position and sabbatical rights.

4. **Consideration.** The parties mutually agree that the promises, actions and agreements contained herein are sufficient consideration for the promises, actions and agreements each make to each other, including but not limited to the Mutual General Releases contained in Paragraphs 5 and 6 of this Agreement.

5. **General Release of Saint Mary's.** In consideration of the benefits provided under this Agreement, Ms. Cervelli, on her behalf and on behalf of her agents, representatives, assigns, heirs, executors and administrators hereby releases and forever discharges Saint Mary's, its officers, trustees, employees, members and agents (collectively the "Released Parties") from any claim, demand, action, or cause of action, known or unknown, arising out of, or in any way connected with her employment as President of Saint Mary's or the termination of such employment, including without limitation any claim, demand, action, cause of action or right including claims for attorneys' fees based on but not limited to: Age Discrimination in Employment Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; The Americans With Disabilities Act of 1990; The Civil Rights Act of 1866; The Civil Rights Act of 1991, as amended; The Employee Retirement Income Security Act; The Family and Medical Leave Act of 1993; The Indiana Civil Rights Law; any existing or potential entitlement or benefit under any program or plan unless forbidden by the Employee Retirement Income Security Act; any agreement, contract, or representation (whether oral or written) including her Employment Agreement; any other federal, state, or local law whether emanating or arising from statute, executive order, regulation, common law, or other source including all suits in contract or tort, including claims of wrongful termination or breach of contract. This release and waiver shall not apply to any rights or claims which may arise after the Effective Date of this Agreement nor shall it apply to any claims relating to the Saint Mary's performance of its obligations under this Agreement.

6. **Release of Ms. Cervelli.** Saint Mary's, on behalf of itself and its affiliates, trustees, officers, directors, employees, agents, representatives, assigns, heirs, executors and administrators, and in full consideration of Ms. Cervelli's execution of this Release, hereby releases and forever discharges Ms. Cervelli, her heirs, executors, administrators, attorneys and

agents from any claim, demand, action, or cause of action, known or unknown, arising out of, or in any way connected with her employment as President of Saint Mary's, or the termination of her employment as President, including without limitation any claim, demand, action, cause of action or right including claims for attorneys' fees, with respect to any claim under federal, state, or local law whether emanating or arising from statute, executive order, regulation, common law, or other source including all suits in contract or tort, including claims of breach of contract, other than any and all claims and/or causes of action based upon gross misconduct, gross negligence, fraud or felonious activity by Employee. This release and waiver shall not apply to any rights or claims which may arise after the Effective Date of this Agreement nor shall it apply to any claims relating to the Ms. Cervelli's performance of her obligations under this Agreement.

7. **Covenant Not to Sue by Ms. Cervelli.** Ms. Cervelli further agrees that she will not sue Saint Mary's or any Released Party concerning any claim relating to, arising out of, or occurring during the course of her employment as President of Saint Mary's. Should Ms. Cervelli violate this Covenant Not to Sue by suing Saint Mary's or any Released Party, Ms. Cervelli explicitly agrees to pay all costs and expenses incurred by Saint Mary's and each Released Party in defending against such a suit, including reasonable attorneys' fees. This covenant shall not apply to any suit relating to rights or claims which may arise after the Effective Date of this Agreement nor shall it apply to any suit based upon claims relating to the Saint Mary's performance of its obligations under this Agreement.

8. **Review of Counsel.** Ms. Cervelli acknowledges that, prior to executing this Agreement, Saint Mary's advised her in writing to seek independent advice from an attorney of her own selection regarding the terms of this Agreement, and Ms. Cervelli sought such independent advice.

9. **Knowing and Voluntary Execution.** In executing this Agreement, Ms. Cervelli 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, including the rights she is waiving under the Age Discrimination in Employment Act, any other federal statute, any state statute or local ordinance, and any common law of the State of Indiana. Ms. Cervelli further represents that by entering into this Agreement, she is not relying on any statements or representations made by Saint Mary's or any Released Party, which are not incorporated in this Agreement; rather, Ms. Cervelli is relying upon her own judgment and/or advice of counsel.

10. **Consideration and Revocation Periods.** Ms. Cervelli acknowledges that she has been advised of her right to consider this Agreement for twenty-one (21) calendar days, but she may execute this Agreement before the 21-day period has elapsed. If Ms. Cervelli executes this Agreement prior to the expiration of the 21-day period, Ms. Cervelli agrees that she has voluntarily waived the balance of the 21-day consideration period provided for in the Older Workers Benefit Protection Act. Ms. Cervelli further acknowledges that she has seven (7) calendar days from the date of execution of this Agreement within which, in writing, to revoke this Agreement (the "Revocation Period") and that all mutual considerations, including all waivers, covenants not to sue and releases, will not be effective until after seven (7) calendar days from the date of execution of this Agreement (the "Effective Date"), provided she has not revoked her consent to this Agreement on or before the Effective Date.

11. **Consequences of Revocation.** Ms. Cervelli understands that if she revokes this Agreement pursuant to Paragraph 10 of this Agreement on or before the Effective Date, this Agreement will become null and void and unenforceable by either Ms. Cervelli or Saint Mary's.

12. **Confidentiality.** The parties hereby acknowledge and agree that this Agreement is confidential. The parties agree not to disclose the existence of this Agreement to any individual, entity or group of individuals, except for the following: Employee'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. The parties agree to instruct any individuals whom 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 their confidentiality.

Moreover, Ms. Cervelli acknowledges that, as a result of her employment as President of Saint Mary's, she was entrusted with information that is sensitive, private, proprietary, and/or confidential. Subsequent to the Effective Date, Ms. Cervelli hereby agrees that she will keep all such information confidential and she will not volunteer or disclose any such information to anyone or use such information herself without first obtaining express authorization to do so from Saint Mary's. For purposes of this Agreement, "proprietary" or "confidential" information would include, but is not limited to (whether written or not), trade secrets (as defined by applicable law), all information about Saint Mary's services and programs, alliances, strategic partners, donors and prospective donors, strategic plans, growth and development strategies, research, operations, financial information, marketing plans, strategic and financial plans, financial reports, revenue information, future business plans, and other business aspects of Saint Mary's which are not generally known to the public ("Confidential Information"). Notwithstanding anything to the contrary in this Agreement, Ms. Cervelli will never disclose or use confidential information which remains a trade secret of Saint Mary's; provided, that under 18 U.S.C. §1833(b), an individual shall not be held liable for disclosure of a trade secret if that disclosure (i) is made in confidence to a federal, state or local government official or to an attorney for the sole purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. §1833(b) or create liability for disclosures of trade secrets expressly allowed by 18 U.S.C. §1833(b). In addition, this paragraph shall not be applicable if and to the extent Ms. Cervelli is required to testify in a legislative, judicial or regulatory proceeding, or before any state or local legislature, a judge, or an administrative law judge, nor is it intended to interfere with any other legal rights of Ms. Cervelli with regard to disclosure of information to a governmental agency.

13. **Non-Disparagement.** Saint Mary's, the Released Parties, and Ms. Cervelli mutually promise and agree that neither will make false, disparaging or uncomplimentary remarks about each other including any of Saint Mary's officers, administrators, trustees, managers, employees or other affiliated persons. The parties further agree that in the event inquiries are made about Ms. Cervelli's resignation both parties agree to say that Ms. Cervelli made the decision to resign her employment as President at Saint Mary's and continue her role as a tenured member of the faculty.

14. **Return of Property.** Ms. Cervelli agrees, to the extent she has not already done so, to return to Saint Mary's on or before the Effective Date of this Agreement all Saint Mary's property, equipment, information and documents relating specifically to the office of the President of the College. Saint Mary's College agrees to return Ms. Cervelli's hardcopy notes, letters addressed to her personally, pictures, her personal documents located on the College's computer, any hardcopy materials relating to her coursework, and similar personal material.

15. **Successors and Assigns.** The terms and conditions of this Agreement shall be binding upon Ms. Cervelli and her heirs, agents, executors, administrators, and shall also inure to their benefit. This Agreement also shall apply to, be binding upon, and inure to the benefit of Saint Mary's, its successors and assigns and each Released Party.

16. **Miscellaneous.**

(a) **Governing Law; Forum.** This Agreement and the obligations of the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Indiana, without regard to principles of conflicts of laws. Each party consents to the exclusive personal jurisdiction of the federal courts located in the Northern District of Indiana or the state courts located in Saint Joseph County, Indiana over any action arising out of or relating to this Agreement and waives any objection it or she may now or hereafter have to venue or to convenience of forum.

(b) **Non-Admission of Wrongdoing.** Ms. Cervelli and Saint Mary's acknowledge that nothing in this Agreement shall be construed as an admission of fault or liability on the part of either party.

(c) **Entire Understanding.** Unless expressly set forth herein, this Agreement sets forth the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings among the parties related to the subject matter hereof and Ms. Cervelli's employment with Saint Mary's as its President and the end of that employment.

(d) **Severable.** The parties agree that the provisions of this Agreement are reasonable and enforceable. If any portion of this Agreement is deemed to be void for any reason that portion of the Agreement is severable and the remaining portions will remain in full force and effect.

**MS. CERVELLI HAS BEEN ADVISED THAT SHE HAS AT LEAST TWENTY-ONE (21) CALENDAR DAYS TO CONSIDER THIS AGREEMENT AND HAS BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.**

**MS. CERVELLI AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE DAY CONSIDERATION PERIOD.**

**Ms. Cervelli's signature below indicates:**

- She has read this Agreement;
- She has had the opportunity to review this Agreement with an attorney of her own choosing;
- She agrees to follow the terms of this Agreement; and
- She *knowingly and voluntarily* waives any and all claims she might have against the Released Parties in accordance with the terms of this Resignation of Presidency and Agreement.

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



Janice Cervelli

Date: 11/15/18

THE CORPORATION OF  
SAINT MARY'S COLLEGE, NOTRE DAME

By: \_\_\_\_\_

Mary L. Burke, Chair  
of the Board of Trustees

Date: \_\_\_\_\_

DMSL 13365723