

PHASED RETIREMENT AGREEMENT AND GENERAL RELEASE

This Phased Retirement Agreement and General Release (the “Agreement”) is entered into this _____ day of _____ 20____, by and between Seton Hall University (“SHU”) and _____, (“I”, “my”, “myself” and “me”), collectively, the “parties.”

In consideration of the premises and mutual covenants hereinafter set forth, I agree to the following:

1. **Resignation and Reduced Course Load.** I am a tenured member of the SHU faculty and requested a phased retirement. I read and understand SHU’s Phased Retirement Policy for Tenured Faculty at the South Orange Campus, <https://www.shu.edu/policies/phased-retirement-for-tenured-faculty-south-orange.cfm> (the “Phased Retirement Policy”). In accordance with the Phased Retirement Policy:

- a. I voluntarily and irrevocably relinquish tenure, and resign as a tenured faculty member of SHU, effective _____; and
[date]
- b. I accept an appointment as Professor, without tenure, effective _____; and
[date]
- c. I shall carry the following course load or its equivalent (which equivalent will be determined in accordance with the *Faculty Guide*), each academic year, from _____ through _____
[Semester/Academic Year] [Semester/Academic Year]

(the “Phased Retirement Period”):

- i. _____

[Course Name; Semester; Academic Year(s); Frequency – must constitute the requisite credit hour course load in accordance with the Phased Retirement Policy]; and
- ii. _____

[Course Name; Semester; Academic Year(s); Frequency – must constitute the requisite credit hour course load in accordance with the Phased Retirement Policy]; and

iii. [Continue as needed to describe each distinct part of the responsibilities]

- d. Upon written request by the chairperson and with the Dean's written approval, I may accept overload teaching assignments in Fall, Spring and Summer semesters at the then regular faculty overload rate. Absent a request by the chairperson, I agree not to seek any overload teaching assignments; and
- e. SHU reserves the right to review the Agreement at any time to evaluate departmental needs and/or my performance and make adjustments or amendments as necessary; and
- f. I shall retire from SHU at the conclusion of the Phased Retirement Period effective _____ ("Retirement Date"). I understand I may voluntarily choose to retire at any time during the term of this Agreement. I understand that my retirement will result in my: (i) permanent conclusion of employment with SHU; and (ii) ineligibility for SHU benefits based on active employment status.

2. **Phased Retirement Payment and Benefits.** So long as I continue to carry out my job duties, as stated in Paragraph 1 above, in a manner satisfactory to SHU and do not revoke this Agreement within seven (7) days of signing it, I understand:

- a. Effective _____ and through the Academic Year of _____/_____ year, I will be paid one-half of the base salary I was receiving on July 1, 20____. My salary throughout the Phased Retirement Period shall be in accordance with the Phased Retirement Policy. Applicable taxes and withholdings, including deductions I have already authorized, will continue to be deducted from my salary; and
- b. Notwithstanding Paragraph 2.a., during the term of this Agreement, I will be governed by the SHU salary and benefits program, including the requirements of the 403(b) plan, as applicable to full-time tenured faculty. I understand that SHU benefits based on a percent or multiple of salary, such as retirement contributions, will be reduced as a result of a reduced salary. I understand that SHU fringe benefits, other than retirement contributions, will not be reduced or forfeited in any other manner.

I specifically acknowledge that this reduced course load teaching arrangement, including but not limited to, rate of salary and modified eligibility for certain benefits, constitute sufficient additional consideration not otherwise owed to me but for this Agreement.

3. **GENERAL RELEASE.**

(a) In consideration for the sums and benefits described in Paragraph 2 above, I hereby release and discharge SHU and its current and former trustees, regents, officers, directors, agents, administrators, employees, students (including residents and fellows), successors, assigns, insurers, and affiliates (collectively, the "Released Parties") from any and all claims, demands or liabilities whatsoever which I ever had or may now have against the Released Parties, or any of them individually including, but not limited to, any charges, grievances, complaints, claims, demands or liabilities in connection with my relationship with the Released Parties, pursuant to any Federal, State, local or agency law, rule, regulation, ordinance, executive order or other requirement including, but not limited to: the wage laws of New Jersey or any other state; Fair Labor Standards Act (FLSA); Equal Pay Act;

New Jersey Law Against Discrimination (NJLAD); New Jersey Family Leave Act (NJFLA); Employee Retirement Income Security Act of 1974 (ERISA); Title VII of the Civil Rights Act of 1964 or the Civil Rights Act of 1991; New Jersey Conscientious Employee Protection Act (CEPA); Age Discrimination in Employment Act of 1967 (ADEA); Americans with Disabilities Act (ADA); Older Workers Benefit Protection Act (OWBPA); Family and Medical Leave Act (FMLA); Worker Adjustment and Retraining Notification Act (WARN); Immigration Reform and Control Act (IRCA); Equal Pay Act; New Jersey Civil Rights Act; Millville Dallas Airmotive Plant Job Loss Notification Act (NJ WARN); Sarbanes-Oxley Act of 2002; Occupational Safety and Health Act of 1970 (OSHA); Lilly Ledbetter Fair Pay Act; National Labor Relations Act (NLRA); and any claim, cause of action, demand or complaint alleging retaliation, breach of implied or express contract, breach of promise, misrepresentation, invasion of privacy, negligence, fraud, abuse of process, estoppel, defamation, humiliation, personal injury, infliction of emotional distress, violation of public policy, wrongful or constructive discharge, claim under the *Faculty Guide* or any other tort.

(b) **Covenant Not to Sue Regarding Any Released Claim & No Solicitation of Future Claims.** Except as otherwise provided by law, I agree not to assert any claims, charges or other legal proceedings against any Released Parties in any forum, based upon any events, whether known or unknown, occurring prior to the date of the execution of this Agreement including, but not limited to, any event related to, arising out of, or in connection with, my employment or the employment of any similarly situated employees or independent contractors. I further agree that I will not solicit any former, current or future employee or independent contractors of the Released Parties to pursue claims, charges or other legal proceedings against the Released Parties. I specifically waive any rights to become, and shall not become, a member of any class in any case in which any claim is asserted against the Released Parties, involving any event that has occurred as of the date of this Agreement. I further agree to release any and all entitlement to my share of any judgments or settlements against the Released Parties. In the event that any agency, court or other forum does not dismiss with prejudice any charge, complaint or action against the Released Parties, I agree that I will not give testimony or evidence voluntarily against the Released Parties. This Paragraph is not intended to limit the parties from instituting legal action for the purpose of enforcing this Agreement.

(c) **Rights of EEOC and Similar Federal, State and Local Authority.** I understand and agree that neither I, nor any non-governmental person, organization or other entity acting on my behalf, has or will in the future file any lawsuit and/or charge asserting any claim that is waived under Paragraph 3, except to the extent that such agreement is prohibited by law. This Agreement does not waive any rights I may have to file an administrative charge with the Equal Employment Opportunity Commission or National Labor Relations Board. However, if I file a lawsuit and/or charge making any claim waived in this Agreement, I shall pay for all costs, including reasonable attorneys' fees, incurred by the Released Parties in defending against my claim. Furthermore, I waive my rights to individual damages in connection with any administrative or court proceeding against any of the Released Parties based upon anything which has happened prior to the execution of this Agreement, and if awarded money damages, I shall assign to the Released Parties, my rights and interests to such money damages. This Paragraph also does not affect the right of the Released Parties to recover costs, including attorneys' fees, to the extent authorized under federal or state law.

(d) I understand that I am not waiving, releasing, or giving up any claim for workers' compensation benefits, vested retirement or savings plan benefits, or any right to unemployment benefits. I further understand that I am not waiving, releasing, or giving up any claims I may have with respect to any medical, prescription, dental, flexible spending account, or life insurance benefits provided by plans maintained by SHU to which I may be entitled.

4. **Potential Conflict with Phased Retirement Policy.** To the extent there exists any conflict between this Agreement and the Phased Retirement Policy, I understand this Agreement shall control.

5. **SHU Policies and Procedures.** I understand that during the term of this Agreement, I remain subject to all SHU policies, procedures and protocols including, but not limited to, all mandatory training requirements, <https://www.shu.edu/policies/policy-on-mandatory-compliance-training.cfm>.

6. **No Admission of Liability.** I acknowledge that nothing contained herein constitutes an admission of wrongdoing by SHU. SHU specifically disclaims any liability for or wrongful actions against me, on the part of itself and the other Released Parties.

7. **SHU's Proprietary and Confidential Information.** I acknowledge and agree that all agreements into which I entered at the commencement of, or during, my employment with SHU concerning confidentiality of SHU proprietary or confidential information and disclosure and ownership of inventions, shall remain in full force and effect according to their terms, and are incorporated by reference herein. I understand that I shall not directly or indirectly disclose any SHU proprietary or confidential information, personnel and student information, records, contracts, data, specifications and other trade secrets owned by SHU, whether oral or written, to any person, or use any such information, except pursuant to a court order (in which case I will first provide SHU with written notice of such). I further agree to promptly return any and all property of SHU which I may possess including, but not limited to, keys, credit cards and electronic equipment, within seven (7) days of the conclusion of the Phased Retirement Period, and not maintain any copies or portions thereof as applicable.

8. **Prevailing Party.** I understand and agree that the prevailing party in any action brought to resolve a dispute arising from this Agreement or any provision hereof shall be entitled to an award of that party's reasonable attorneys' fees incurred in connection with such action.

9. **Successors.** This Agreement is binding upon and will inure to my benefit and the benefit of my respective heirs, administrators, representatives, executors, successors and assigns, as well as SHU, its successors and assigns.

10. **Execution.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one instrument. I understand that the parties agree to accept facsimile signatures or Portable Document Format ("pdf") signatures in lieu of original signatures.

11. **ADEA & OWBPA Protections.** I am advised to consult with an attorney of my choosing, and review all of the terms and conditions of this Agreement with legal counsel prior to executing this Agreement. I shall have a period of forty-five (45) days from my receipt of this Agreement to accept this Agreement and shall have seven (7) days following my execution of this Agreement during which I may revoke the Agreement as to any claims under the Federal Age Discrimination in Employment Act. I understand that I can waive the forty-five (45) day period; however, the seven (7) day period cannot be waived. Pursuant to 29 C.F.R. § 1625.22(e)(4), I agree that any modifications to the terms of this Agreement made before its execution, whether or not material, shall not serve to restart or extend the original consideration period outlined herein, commencing on the date the original Agreement is approved and given to me. I understand and

acknowledge that SHU has disclosed in the written Phased Retirement Policy what constitutes the “decisional unit” of SHU employees eligible for phased retirement under the Phased Retirement Policy, including the eligibility factors and applicable time limits. I understand that any such acceptance of this Agreement must be postmarked or hand-delivered within forty-five (45) days of receipt to Michael Silvestro, Associate Vice President for Human Resources, Seton Hall University Department of Human Resources, Martin House, 366 South Orange Avenue, South Orange, NJ 07079, or sent via email to michael.silvestro1@shu.edu. I understand that my revocation of this Agreement must be postmarked or hand-delivered, within seven (7) days after execution of this Agreement, to Michael Silvestro, Associate Vice President for Human Resources, Seton Hall University Department of Human Resources, Martin House, 366 South Orange Avenue, South Orange, NJ 07079, or via email at michael.silvestro1@shu.edu. I understand that if the executed Agreement is not revoked during said seven (7) day period, it shall be deemed accepted and the eighth (8th) day after said acceptance shall be known as the “Effective Date.” Notwithstanding the language of Paragraph 2 above, I understand that this Agreement shall not be effective or enforceable in its entirety until the revocation period has expired without revocation, and the Effective Date has occurred, such that none of the payments or benefits listed in Paragraph 2 shall be made until the Effective Date, at the earliest, to the extent permitted under applicable wage and hour laws.

12. **Termination/Governing Law/Jurisdiction.** Termination of this Phased Retirement Agreement and Release shall be governed by the applicable provisions of the *Faculty Guide*, SHU policies and procedures and as otherwise set forth herein. Except for those matters which are within the scope of the *Faculty Guide*, I agree that any dispute I may have arising from this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, and any and all disputes between me and SHU shall be exclusively filed in a court of law located within the State of New Jersey, County of Essex. If, at the time of the filing of any complaint against SHU, I am not a resident of New Jersey, I agree that I shall file my complaint in the Federal District Court, District of New Jersey – Newark. **I KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS I MAY HAVE TO A TRIAL BY JURY OF ANY ISSUE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE RELATING HERETO. I KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS, STATUTORILY OR OTHERWISE, I MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY ISSUE RELATING TO MY EMPLOYMENT, RETIREMENT, AND/OR ITS TERMINATION, INCLUDING BUT NOT LIMITED TO THOSE POTENTIAL CLAIMS LISTED IN PARAGRAPH 3. THIS PROVISION DOES NOT WAIVE ANY RIGHT TO A JURY THAT IS PROHIBITED BY LAW UNDER N.J.S.A. 10:5-12.7(a).**

13. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable or void, I understand and agree that such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement shall remain in full force and effect. However, if the General Release contained in this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, I agree, promptly upon the request of SHU, to execute a new release that is valid and enforceable.

14. **Entire Agreement.** I understand that this Agreement constitutes the entire agreement between the parties, and may not be modified, altered or changed except upon the written consent of the parties. I understand that this Agreement fully supersedes any and all prior agreements and understandings between the parties pertaining to the subject matter of the Agreement. I represent and acknowledge that I have not relied upon any representation or statement by SHU, or SHU’s representatives, with regard to the subject matter of this Agreement, which is not set forth in this

Agreement. I understand that this Agreement shall be construed as a whole, according to its fair meaning, and not in favor or against any party. I understand that this Agreement was the subject of review with full opportunity to consult counsel. Unless otherwise stated herein, I understand that any ambiguities herein shall not be interpreted against the interest of the party that drafted the Agreement or the allegedly ambiguous provision.

15. **Breach of Agreement.** I agree that if I should violate any provision of this Agreement and/or the Phased Retirement Policy, in addition to any and all other equitable and legal remedies which may be available to SHU, and without affecting the validity and enforceability of the General Release set forth in Paragraph 3 above, SHU shall be entitled to cancel its portion of the Agreement, and I shall be subject to sanctions including, but not limited to, the payment to SHU of all monies (except salary earned for work actually performed) and benefits provided to me pursuant to Paragraph 2 above, as well as any and all attorney's fees and costs incurred thereby and together with interest thereon.

16. **Affirmation.** I affirm that I:

- (a) am not aware of any wrongdoing by SHU or any of the Released Parties;
- (b) have not been subjected to discrimination, harassment or retaliation of any type related to my employment by SHU;
- (c) have no known continuing workplace injuries or occupational diseases and provided and/or has not been denied any medical leave requested under federal or State law; and
- (d) understand that the Agreement shall not serve to extinguish any rights I may have to benefits to which I may be entitled under COBRA or benefits which vested prior to the termination of my employment relationship with SHU under an applicable 403(b) plan.

17. **BY SIGNING THIS AGREEMENT, I STATE THAT:**

- A. I CAREFULLY READ AND AGREE WITH EVERYTHING IN THE AGREEMENT;
- B. I UNDERSTAND THE AGREEMENT AND KNOW I AM GIVING UP IMPORTANT RIGHTS INCLUDING, BUT NOT LIMITED TO, RIGHTS UNDER THE STATUTES LISTED IN PARAGRAPH THREE (3) ABOVE (INCLUDING UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT AND OLDER WORKERS BENEFIT PROTECTION ACT), AND UNDERSTAND THAT I AM GIVING UP ANY SUCH RIGHTS OR CLAIMS IN EXCHANGE FOR PAYMENTS AND BENEFITS TO WHICH I AM OTHERWISE NOT ENTITLED;
- C. I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL OF MY OWN CHOOSING PRIOR TO EXECUTING THIS AGREEMENT;
- D. I HAVE BEEN GIVEN A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT PRIOR TO SIGNING IT OF UP TO FORTY-FIVE (45) DAYS;

- E. I HAVE BEEN ADVISED I MAY REVOKE THIS AGREEMENT AS IT RELATES TO FEDERAL AGE DISCRIMINATION CLAIMS WITHIN SEVEN (7) DAYS OF SIGNING IT; AND
- F. I SIGNED THIS AGREEMENT KNOWINGLY, FREELY AND VOLUNTARILY.

_____ Dated: _____
[EMPLOYEE SIGNATURE]

[EMPLOYEE NAME]

APPROVED BY:

SETON HALL UNIVERSITY

By: _____ Dated: _____
Katia Passerini, Ph.D.
Provost and Executive Vice President

WAIVER

By signing below, I hereby irrevocably elect to waive the 45-day period referred to in Paragraph 11 of this Agreement.

_____ Dated: _____
[EMPLOYEE SIGNATURE]

[EMPLOYEE NAME]