

Agenda

1. Call to Order
2. Public Comment (*Policy 2:230*)
3. Adjustments to Agenda
4. Executive Session - For the purpose of:
 - 4.a. *Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting ILCS 120/2(c)(11)*
5. Discuss and/or Approve Resolution authorization execution of a settlement agreement and claim release related to Sangamon County Case (2019-MR-526)
6. Discuss and/or Approve Resolution authorization execution of a release, settlement agreement, and covenant not to sue related to Sangamon County Case (2018-L-168)
7. Executive Session-For the purpose of:
 - 7a. *Security procedures, school building safety and security, and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public or public property. 5ILCS 120/2(c)(8).*
 - 7b. *The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. 5ILCS 120/2(c)(1).*
8. Adjournment

**A RESOLUTION AUTHORIZING EXECUTION OF A
SETTLEMENT AGREEMENT AND CLAIM RELEASE RELATED TO
SANGAMON COUNTY CASE NO. 2019-MR-526**

WHEREAS, on September 6, 2018, Michelle Stolleis Forbes n/k/s Michelle Denault filed Sangamon County Case No. 2018-L-168 against the Board of Education of the New Berlin Community Unit School District #16 (the “Board”) and Carroll Owen Smith;

WHEREAS, the Board sought insurance coverage for Sangamon County Case No. 2018-L-168 from Country Mutual Insurance Company (“CMIC”) under various policies that Board of Education asserted existed and provided coverage;

WHEREAS, CMIC disputed the existence of those policies and denied it owed insurance coverage for Sangamon County Case No. 2018-L-168;

WHEREAS, CMIC filed a declaratory action against the Board of Education under Sangamon County Case No. 2019-MR-526 (“Coverage Action”) seeking a declaration that CMIC had no duty to defend or indemnify Board in connection with Sangamon County Case No. 2018-L-168;

WHEREAS, the Board of Education filed a counterclaim against CMIC, its purported insurer, seeking a declaration that CMIC did have a duty to defend and indemnify the Board in Sangamon County Case No. 2018-L-168;

WHEREAS, in an effort to settle the dispute between the Board and CMIC without the additional necessity, time, and expense of litigation, the Board and CMIC want to resolve any and all disputes pursuant to the terms and conditions of a settlement agreement and claim release in substantially the same form as the “SETTLEMENT AGREEMENT AND CLAIM RELEASE” attached hereto as **EXHIBIT A** (the “Agreement”).

WHEREAS, it is in the best interest of the Board to approve settlement of this matter.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF NEW BERLIN COMMUNITY UNIT SCHOOL DISTRICT #16, AS FOLLOWS:

SECTION 1: The recitals contained above in the preamble of this Resolution are hereby incorporated herein by reference, the same as if set forth in this Section of this Resolution verbatim, as findings of the Board.

SECTION 2: The Board hereby authorizes settlement of the aforementioned Matter.

SECTION 3: The Agreement by and between the Parties, in substantial the form that has been presented to and is now before the meeting of the Board at which this Resolution is adopted, a copy of which is attached hereto, is hereby approved.

SECTION 4: The Board President, for and on behalf of the Board, is hereby authorized to execute and deliver the Agreement, the Board Secretary is hereby authorized to attest to the same, and the proper members of the Board and their designees are authorized and directed to carry out the Agreement.

SECTION 5: This Resolution shall take effect immediately.

PASSED this ____ day of April, 2025.

Ayes: _____

Nays: _____

Absent: _____

Abstain: _____

By: _____
President, Board of Education

ATTEST:

Secretary, Board of Education

Exhibit A

SETTLEMENT AGREEMENT AND CLAIM RELEASE

This Settlement Agreement and Claim Release (the “Agreement”) is made and entered into by and between BOARD OF EDUCATION OF NEW BERLIN COMMUNITY UNIT SCHOOL DISTRICT 16 (“Board of Education”), and COUNTRY MUTUAL INSURANCE COMPANY (“CMIC”). At times herein, Board of Education and CMIC shall be referred to individually as a “Party” and/or collectively as the “Parties.”

RECITALS

WHEREAS, on September 6, 2018, MICHELLE DENAULT f/k/a MICHELLE STOLLEIS FORBES (“Claimant”), filed a lawsuit against, among others, Board of Education, under Case No. 2018-L-168, in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois (“Lawsuit”);

WHEREAS, Board of Education sought insurance coverage for the Lawsuit from CMIC under various policies that Board of Education asserted existed and provided coverage for the Lawsuit (the “Policies”);

WHEREAS, CMIC disputed the existence of certain of the Policies and denied it owed insurance coverage for the Lawsuit under the Policies;

WHEREAS, CMIC filed a declaratory action against the Board of Education under Case No. 2019-MR-526 in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois (“Coverage Action”) seeking a declaration that CMIC had no duty to defend or indemnify Board of Education in connection with the Lawsuit;

WHEREAS, Board of Education filed a counterclaim against CMIC, its purported insurer, seeking a declaration that CMIC did have a duty to defend and indemnify Board of Education in the Lawsuit (the “Counterclaim”);

WHEREAS, Board of Education, Claimant, and CMIC have agreed to settle the Lawsuit, which settlement is by memorialized by separate agreement between those parties (the “Underlying Settlement Agreement”); and

WHEREAS, while the Parties to this Agreement agree and acknowledge that this Agreement shall not be construed as an admission by any Party of any liability, coverage, or responsibility with regard to the Lawsuit, the Parties now wish to, and hereby do, resolve all disputes between and among them with regard to the Lawsuit, the Coverage Action, the Counterclaim, the Policies, and the Underlying Settlement.

NOW, THEREFORE, it is stipulated and agreed by and between the Parties, in consideration of the mutual promises exchanged herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as follows:

1. RECITALS

The above recitals and the facts set forth therein are expressly made a substantive part of this Agreement.

2. SETTLEMENT CONSIDERATION

A. CMIC has agreed to pay Claimant Eight Hundred Fifty-Two Thousand Five Hundred Dollars and No Cents (\$852,500.00) (“CMIC’s Settlement Payment”) for the sole purpose of resolving all insurance coverage disputes with Board of Education regarding coverage for the Lawsuit. Payment shall be made within 45 days of approval by Board of Education of this Agreement and the Underlying Settlement Agreement. Payments shall be made out to “Michelle Denault and Gates, Wise, Schlosser & Goebel”.

B. Within seven days of the receipt by Claimant of CMIC’s Settlement Payment, the Parties shall jointly file a motion to dismiss the Coverage Action with prejudice, with each Party to bear its own fees and costs.

C. CMIC shall not be responsible for any amounts in connection with the Lawsuit, including the Board of Education’s defense of the Lawsuit, other than the Settlement Payment.

D. Upon payment by CMIC of CMIC’s Settlement Payment, the Parties agree and acknowledge that: (1) the respective legal liability and obligations of CMIC under the Policies shall be fully satisfied with respect to the Lawsuit; and (2) CMIC shall bear no further obligations, duties, or responsibilities under the Policies or any other policy of insurance issued or subscribed to by CMIC with respect to the Lawsuit.

3. RELEASES

A. In exchange for the mutual promises in this Agreement, Board of Education, on its own behalf and on behalf of all other insureds under the Policies, and on behalf of each of their respective affiliates, predecessors, successors, parents, subsidiaries, divisions, partnerships, and joint ventures, and all of the foregoing persons’ or entities’ respective past, present and future associates, representatives, owners, members, managers, estates, heirs, assigns, insurers, shareholders, creditors, liquidators, administrators, executors, partners, principals, trustees, directors, officers, employees, committee members, volunteers, attorneys, agents, and all others acting or claiming by, through, under, on behalf of, in concert with, or asserting the rights of any of the foregoing, hereby RELEASE, ACQUIT, AND FOREVER DISCHARGE CMIC, and its past, present, or future affiliates, predecessors, successors, parents, subsidiaries, divisions, partnerships, and joint ventures, and all of the foregoing entities’ respective past, present and future associates, representatives, owners, members, managers, estates, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, executors, partners, principals, trustees, directors, officers, employees, committee members, volunteers, attorneys, and agents, from all past, present, and future demands, claims, actions, causes of action, controversies, suits, liabilities, costs, expenses, attorneys’ fees, losses, judgments, settlements, promises, duties, responsibilities, agreements, covenants, coverages, damages, declaration of rights, monetary or non-monetary relief, of whatever kind or nature, now existing or hereafter arising, whether in law,

equity, or otherwise, known or unknown, based upon, arising out of, directly or indirectly resulting from, attributable to, or in any way involving any of the following (the “Released Matters”):

- (i) the Lawsuit;
- (ii) the Coverage Action as it relates to the Lawsuit ;
- (iii) the Policies as they relate to the Lawsuit;
- (iv) the Counterclaim as it relates to the Lawsuit;
- (v) the Underlying Settlement Agreement as it relates to the Lawsuit;
- (vi) CMIC’s Settlement Payment as it relates to the Lawsuit;
- (vii) CMIC’s investigation, claims handling, or litigation of coverage for the Lawsuit (the Coverage Action), the Counterclaim as it relates to the Lawsuit, and the Policies as they relate to the Lawsuit, including without limitation any claims of “bad faith,” or claims of unfair or unlawful business or insurance practices under any state or federal regulation or statute, all common law claims for bad faith insurance practices or breach of the implied covenant of good faith and fair dealing, and all claims for any alleged failure to effectuate prompt, fair, and equitable settlements of claims arising from or related to the Lawsuit and Coverage Action.

Notwithstanding the foregoing, this release shall not extend to claims for breach of this Agreement or the warranties or representations contained herein.

B. In exchange for the mutual promises in this Agreement, CMIC, on its own behalf and on behalf of its past, present, or future affiliates, predecessors, successors, parents, subsidiaries, divisions, partnerships, and joint ventures, and all of the foregoing entities’ respective past, present and future associates, representatives, owners, members, managers, estates, heirs, assigns, insurers, shareholders, creditors, liquidators, administrators, executors, partners, principals, trustees, directors, officers, employees, committee members, volunteers, attorneys, agents, and all others acting or claiming by, through, under, on behalf of, or in concert with, or asserting the rights of any of the foregoing, hereby RELEASE, ACQUIT, AND FOREVER DISCHARGE Board of Education and its past, present, or future affiliates, predecessors, successors, parents, subsidiaries, divisions, partnerships, and joint ventures, and all of the foregoing persons’ and entities’ respective past, present and future associates, representatives, owners, members, managers, estates, heirs, assigns, shareholders, creditors, liquidators, administrators, executors, partners, principals, trustees, directors, officers, employees, committee members, volunteers, attorneys, and agents from all past, present, and future demands, claims, actions, causes of action, controversies, suits, liabilities, costs, expenses, attorneys’ fees, losses, judgments, settlements, promises, duties, responsibilities, agreements, covenants, damages, declaration of rights, monetary or non-monetary relief, of whatever kind or nature, now existing or hereafter arising, whether in law, equity, or otherwise, known or unknown, based upon, arising out of, directly or indirectly resulting from, attributable to, or in any way involving any of the Released Matters.

C. The releases above are and may be pleaded as a full and complete defense to, and are and may be used as the basis for an injunction against, prosecution of any demands, claims, actions, causes of action, controversies, suits liability, costs, expenses, attorneys' fees, losses, judgments, settlement, promises, duties, responsibilities, agreements, covenants, damages, declaration of rights, monetary or non-monetary relief, of whatever kind or nature that seeks recovery arising directly or indirectly out of, or in any way involving or relating to, or based upon, or in connection with any of the Released Matters.

4. WAIVER OF RIGHTS

The Parties expressly waive any and all rights they may have, under federal or state statute, common law, contract, equity or otherwise, to assert unknown or unsuspected claims related to the Released Matters herein.

The Parties acknowledge that they may have sustained damages, losses, fees, costs, or expenses that are presently unknown and unsuspected, and that such damages, losses, fees, costs, or expenses they may have sustained might give rise to additional damages, losses, fees, costs, or expenses in the future. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of such possible past, present, or future damages, losses, fees, costs, or expenses.

5. NO ADMISSION OF LIABILITY

Nothing in this Agreement shall be construed as an admission of liability, fault, or coverage or the lack of coverage under any Policies or any other policy of insurance issued or subscribed to by CMIC. CMIC does not concede or agree that any coverage is afforded for the Lawsuit. This Agreement is not and shall not be deemed to be a policy or contract of insurance, and is not subject to any insurance-related statute, regulation, or other law. Nothing in this Agreement changes the terms and conditions of any Policy.

6. NO MODIFICATION OF POLICY

This Agreement is not, and shall not be deemed to be, a policy or contract of insurance, and is not subject to any insurance-related statute, regulation, or other law. Nothing in this Agreement changes the terms and conditions of any Policies.

7. NO CUSTOM, PRACTICE, OR COURSE OF DEALING

Each Party understands and agrees that the terms of this Agreement have been specifically negotiated and drafted with respect to the specific matters dealt with herein, and that in doing so each Party has made compromises from the positions which it believes itself to be legally entitled to assert, and no Party hereto shall be deemed to have established any custom, practice, or course of dealing which may be held against that Party in the future by reason of that Party's acceptance of this Agreement or any of its terms. Board of Education expressly agrees that the fact that CMIC has compromised coverage for the Lawsuit, which is a disputed claim, will not be used in connection with any other request for coverage Board of Education makes under any of the Policies or any past or future policies of insurance that Board of Education has or may obtain from CMIC.

8. LIMITATION OF WAIVERS

Waiver of any one breach of a provision of this Agreement shall not be deemed a waiver of any breach of any other provision, or of this Agreement.

9. CONSTRUCTION

The Parties have reviewed and revised, or have had the opportunity to revise, this Agreement. The Parties agree that any uncertainty or ambiguity shall not be interpreted or construed against any Party under or by any rule of interpretation providing for interpretation against the Party who caused an uncertainty to exist or against the draftsman, and that this Agreement shall be construed as if the Parties prepared it jointly.

10. INTEGRATED AGREEMENT

A. This Agreement constitutes the complete expression of the terms of the settlement between the Parties. All prior and contemporaneous agreements, representations, and negotiations are hereby superseded.

B. The Parties warrant and represent that no promise or representation of any kind has been expressed or implied by the Parties released herein or by anyone acting for them, except as is expressly stated in this Agreement.

C. No amendment to or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of the Parties.

11. ARMS-LENGTH NEGOTIATIONS

A. This Agreement represents a settlement of coverage issues and is the product of arms-length negotiation. The Parties have read this Agreement carefully and completely, have had the advice and assistance of their own independent legal counsel, and agree that this Agreement is executed solely in reliance on each Party's own judgment, beliefs, and knowledge, and not on any representations or statements of fact or opinion made by any other Party or its agents.

B. The Parties further agree that this Agreement has been negotiated and executed in good faith and without improper influence by any person. The Parties have informed themselves of the terms of this Agreement and understand the same, and the Parties sign this Agreement as their own free act.

12. NEWS MEDIA CONTACT AND NO DISPARAGEMENT

The Board of Education and CMIC and their respective counsel agree they shall not initiate discussion of this matter or the resolution of the dispute with any news organization or media, and will not seek out any news organization or media as it relates to the Coverage Action or the resolution of the Coverage Action. The Parties agree not to engage in any conduct or make any statements regarding the Parties that are defamatory or disparaging in nature. This paragraph does not restrict the Board of Education's ability to make any statements or engage in any conduct while

it is: (1) conducting business in any meeting or preparing to conduct business in any meeting; (2) responding to any lawful request for information from any third-party (including, but not limited to FOIA); or (3) reporting to any government agency. **UNENFORCEABLE PARTS OF AGREEMENT**

In the event that any provision of this Agreement is held unenforceable or invalid, such holding shall not affect the validity or enforceability of the other provisions of this Agreement or this Agreement as a whole, but instead, this Agreement shall be construed as if it did not contain the unenforceable or invalid part.

13. SIGNATURES AND COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which shall constitute one Agreement. Each signature may be delivered by facsimile, PDF, or by electronic mail, which shall be treated as an original signature.

14. NO THIRD-PARTY RIGHTS

This Agreement is intended to confer rights and benefits on the Parties. Except as otherwise expressly provided herein, no person or entity other than the Parties shall have any rights under this Agreement. The Parties warrant and represent that they are the sole owners of the respective rights and claims relinquished by this Agreement and that, prior to entering into this Agreement, the Parties have not sold, transferred, or assigned any rights or obligations under the Policy.

15. AUTHORITY OF SIGNATORIES

CMIC hereby warrants and represents that the person signing this Agreement is expressly authorized and empowered by CMIC to bind CMIC to each of the obligations set forth herein. Board of Education hereby warrants and represents that the person signing this Agreement is expressly authorized and empowered by Board of Education to bind Board of Education and any such individuals to each of the obligations set forth herein. The Parties further represent and warrant that they are authorized to make the releases set forth in this Agreement for all entities and individuals granting releases pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement by their respective authorized officers, representatives, or counsel.

**BOARD OF EDUCATION OF NEW BERLIN
COMMUNITY UNIT SCHOOL DISTRICT
16**

Dated: _____, 2025

By: _____

Its: Board President

Attest: _____
Board Secretary

**COUNTRY MUTUAL INSURANCE
COMPANY**

Dated: _____, 2025

By: _____

Its: _____

A RESOLUTION AUTHORIZING EXECUTION OF A RELEASE, SETTLEMENT AGREEMENT & COVENANT NOT TO SUE RELATED TO SANGAMON COUNTY CASE NO. 2018-L-168

WHEREAS, on September 6, 2018, Michelle Stolleis Forbes n/k/s Michelle Denault filed Sangamon County Case No. 2018-L-168 against the Board of Education of the New Berlin Community Unit School District #16 (the “Board”) and Carroll Owen Smith;

WHEREAS, the Board disputes and denies any liability regarding allegations described in Sangamon County Case No. 2018-L-168 (“Matter”);

WHEREAS, the Board, Carroll Owen Smith, and Michelle Stolleis Forbes n/k/a Michelle Denault (“Parties”) each undertook work in pursuit of resolving the Matter;

WHEREAS, without the admission of any fault or liability by the Board, and in an effort to settle the dispute between the Parties without the additional necessity, time, and expense of litigation, the Parties want to resolve any and all disputes pursuant to the terms and conditions of a release, settlement agreement, and covenant not to sue in substantially the same form as the “RELEASE, SETTLEMENT AGREEMENT, AND COVENANT NOT TO SUE” attached hereto as **EXHIBIT A** (the “Agreement”).

WHEREAS, it is in the best interest of the Board to approve settlement of this matter.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF NEW BERLIN COMMUNITY UNIT SCHOOL DISTRICT #16, AS FOLLOWS:

SECTION 1: The recitals contained above in the preamble of this Resolution are hereby incorporated herein by reference, the same as if set forth in this Section of this Resolution verbatim, as findings of the Board.

SECTION 2: The Board hereby authorizes settlement of the aforementioned Matter.

SECTION 3: The Agreement by and between the Parties, in substantial the form that has been presented to and is now before the meeting of the Board at which this Resolution is adopted, a copy of which is attached hereto, is hereby approved.

SECTION 4: The Board President, for and on behalf of the Board, is hereby authorized to execute and deliver the Agreement, the Board Secretary is hereby authorized to attest to the same, and the proper members of the Board and their designees are authorized and directed to carry out the Agreement.

SECTION 5: This Resolution shall take effect immediately.

PASSED this ____ day of April, 2025.

Ayes: _____

Nays: _____

Absent: _____

Abstain: _____

By: _____
President, Board of Education

ATTEST:

Secretary, Board of Education

Exhibit A

RELEASE, SETTLEMENT AGREEMENT, AND COVENANT NOT TO SUE

This Release, Settlement Agreement, and Covenant Not to Sue (“Agreement”) is made as of this ___ day of April, 2025 (“Effective Date”), between MICHELLE DENAULT f/k/a MICHELLE STOLLEIS FORBES (“Plaintiff” and/or “Claimant”), CARROLL OWEN SMITH (“Defendant Smith”), the BOARD OF EDUCATION OF NEW BERLIN COMMUNITY UNIT SCHOOL DISTRICT 16 (“Defendant Board of Education”), and COUNTRY MUTUAL INSURANCE COMPANY (“CMIC”), an insurance company authorized to do business in the State of Illinois.

RECITALS

WHEREAS, Plaintiff filed a lawsuit on September 6, 2018, against Defendant Smith and Defendant Board of Education in Sangamon County Case No. 2018-L-168, in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois (“Lawsuit”). Plaintiff, Defendant Smith, and Defendant Board of Education will be collectively referred to as the “Parties”; and

WHEREAS, Defendant Board of Education filed a Counterclaim for Contribution (“Counterclaim”) against Defendant Smith in the Lawsuit; and

WHEREAS, CMIC filed a declaratory action against the Defendant Board of Education in Sangamon County Case No. 2019-MR-526 (“Related Insurance Case”) seeking a declaration that CMIC had no duty to defend or indemnify Defendant Board of Education against Plaintiff’s claims in the Lawsuit and Defendant Board of Education filed a counterclaim against CMIC, its purported

insurer, seeking a declaration that CMIC did have a duty to defend and indemnify Defendant Board of Education in the Lawsuit.

WHEREAS, Defendant Board of Education and CMIC have agreed to settle the Related Insurance Case by separate agreement with CMIC paying a portion of the Settlement Amount as defined and set forth below as part of a resolution of the Lawsuit;

WHEREAS, the Parties have agreed to settle and resolve all disputes and fully settle and compromise any and all claims that have been raised or could have been raised in the Lawsuit and to dismiss the Lawsuit with prejudice.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are herewith incorporated in the Agreement and made a part hereof.

2. Settlement Payment. DEFENDANT SMITH, DEFENDANT BOARD OF EDUCATION, and CMIC collectively shall pay Plaintiff, MICHELLE DENAULT f/k/a MICHELLE STOLLEIS FORBES, the total sum of ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) (the “Settlement Amount”), such Settlement Amount shall be paid as follows:

- a. The sum of Eight Hundred Fifty-Two Thousand Five Hundred Dollars and No Cents (\$852,500.00) of the Settlement Amount shall be paid by CMIC;
- b. The sum of One Hundred Two Thousand Five-Hundred Dollars and No Cents (\$102,500.00) of the Settlement Amount shall be paid by Defendant Board of Education; and

- c. The sum of Forty-Five Thousand Dollars and No Cents (\$45,000.00) of the Settlement Amount shall be paid by Defendant Smith.

Payments shall be made within 45 days of approval by Defendant Board of Education and full execution of this Agreement. Payments shall be made out to “Michelle Denault and Gates Wise Schlosser & Goebel”.

3. Litigation. The Lawsuit and the Counterclaim shall be dismissed with prejudice as soon as practicable after the Settlement Amount is paid, but no more than 21 days after payment.

4. Plaintiff’s Releases of Defendant Board of Education. Plaintiff, for herself and her family members, hereby fully, finally and unconditionally releases and forever discharges New Berlin Community Unit School District # 16, the Defendant Board of Education and its board members, officers, administrators, superintendents, employees, agents, representatives, attorneys, and insurance companies (including but not limited to CMIC), and their respective predecessors, successors, assigns, of and from any and all charges, promises, actions, causes of action, covenants, contracts, controversies, agreements, complaints, claims, counter-claims, liabilities, obligations, suits, demands, grievances, arbitrations, costs, losses, sums of money, accounts, bills, judgments, executions, damages, debts and expenses, including attorneys’ fees and costs, of any nature whatsoever, in law or in equity (collectively, “Claims”), which Plaintiff ever had, now has, or shall or may have, whether known or unknown, suspected or unsuspected, and howsoever denominated or described, in any way arising out of, related to or on account of any act, matter, omission, cause or event occurring prior to the Effective Date of this Agreement, including, without limitation, Claims that relate to the Lawsuit or are reflected in the Complaint therein (as amended), whether

sounding in tort (including negligence), breach of contract, contribution, indemnity, statutes or regulations of any jurisdiction, or otherwise. THE RELEASES PROVIDED IN THIS PARAGRAPH DO NOT APPLY TO ANY CLAIMS OR ACTIONS OF PLAINTIFF TO ENFORCE THE TERMS OF THIS AGREEMENT.

5. Plaintiff's Release of Defendant Smith. Plaintiff, for herself and her family members, hereby fully, finally and unconditionally releases and forever discharges Defendant Smith and each of his successors, assigns, representative, heirs, attorneys, and agents from any and all Claims (as defined in Section 4 above) which Plaintiff ever had, now has, or shall or may have, whether known or unknown, suspected or unsuspected, and howsoever denominated or described, against Defendant Smith, in any way arising out of, related to or on account of any act, matter, omission, cause or event occurring prior to the Effective Date of this Agreement, including, without limitation, Claims that relate to the Lawsuit and Counterclaims, whether sounding in tort (including negligence), breach of contract, contribution, indemnity, statutes or regulations of any jurisdiction, or otherwise. THE RELEASES PROVIDED IN THIS PARAGRAPH DO NOT APPLY TO ANY CLAIMS OR ACTIONS OF PLAINTIFF TO ENFORCE THE TERMS OF THIS AGREEMENT.

6. Covenant Not to Sue.

(a) Plaintiff, for herself, her children, her spouse, and her parents, agrees not to bring, commence, institute, maintain or prosecute any action at law or proceeding in equity, or any legal proceeding whatsoever, or any claim for relief or damages against any person or entity released in Paragraphs 4 and 5 of this Agreement based upon any matter that arose

from the beginning of time to the date of this Agreement. The Parties agree that they will not, at any time, take any action of any nature whatsoever to (i) obtain a determination that this Agreement, or the transactions contemplated hereby, are unlawful, illegal or against public policy, (ii) challenge the validity or enforceability of this Agreement, or the transactions contemplated hereby, or (iii) allege that any of the arrangements set forth in this Agreement or any of the transactions contemplated hereby, are unlawful in any other manner whatsoever. THE COVENANTS PROVIDED IN THIS PARAGRAPH DO NOT APPLY TO ANY CLAIMS OR ACTIONS OF PLAINTIFF TO ENFORCE THE TERMS OF THIS AGREEMENT.

Plaintiff agrees to indemnify and hold harmless Defendant Board of Education and/or Defendant Smith against any child, spouse, or parent of Plaintiff, who files a lawsuit against Defendant Board of Education and/or Defendant Smith for any alleged acts or omissions related to or arising from the conduct alleged in the Lawsuit.

- (b) Defendant Board of Education, for itself and its insurance companies (including but not limited to CMIC), and their respective predecessors, successors, and assigns, agrees not to bring, commence, institute, maintain or prosecute any action at law or proceeding in equity, or any legal proceeding whatsoever, or any claim for relief or damages against Plaintiff and/or Defendant Smith based upon any matter that arose from the beginning of time to the date of this Agreement.
- (c) Defendant Smith, for himself and his family members, agrees not to bring, commence, institute, maintain or prosecute any action at law or proceeding in equity, or any legal

proceeding whatsoever, or any claim for relief or damages against Defendant Board of Education (and its insurance companies including but not limited to CMIC) and/or Plaintiff, her family members and attorneys based upon any matter that arose from the beginning of time to the date of this Agreement. Defendant Smith further agrees that she will not, at any time, take any action of any nature whatsoever to (i) obtain a determination that this Agreement, or the transactions contemplated hereby, are unlawful, illegal or against public policy, (ii) challenge the validity or enforceability of this Agreement, or the transactions contemplated hereby, or (iii) allege that any of the arrangements set forth in this Agreement or any of the transactions contemplated hereby, are unlawful in any other manner whatsoever.

Defendant Smith agrees to indemnify and hold harmless Defendant Board of Education and/or Plaintiff against any family member who files a lawsuit against Plaintiff and/or Defendant Board of Education for any matters related to or arising from the Lawsuit.

(d) THE COVENANTS PROVIDED IN THIS PARAGRAPH DO NOT APPLY TO ANY CLAIMS OR ACTIONS OF A PARTY TO ENFORCE THE TERMS OF THIS AGREEMENT.

7. Certain Other Representations and Warranties. Each of the Parties and CMIC represent and warrant that (i) it is validly existing and in good standing under the laws of its respective state of incorporation, (ii) it has the full right power, legal capacity and authority, without the consent of any other person, entity or governmental authority, to execute, deliver and carry out the terms of this Agreement and to consummate the transactions contemplated hereby

and thereby, (iii) all corporate and other actions required to be taken by it to authorize the execution, delivery and performance of this Agreement (and all documents and agreements necessary to give effect to the provisions of this Agreement) have been duly and properly taken or obtained, (iv) the person whose signature appears hereon has been duly and fully authorized to execute this Agreement and (v) this Agreement (and all documents and agreements necessary to give effect to the provisions of this Agreement) is the lawful, valid and legally binding obligation of such Party and CMIC, enforceable against it in accordance with its terms.

8. Non-Disparagement Provision. This Section is a material term of this Agreement, without which Defendant Board of Education would not have entered into this Agreement.

a. General Anti-Disparagement Obligation.

i. Plaintiff agrees that, from the date of execution of this Agreement and for any time thereafter, she shall not, directly or indirectly, make, publish, or cause to be published any statement or communication that could reasonably be construed as disparaging, defamatory, or harmful to the reputation, goodwill, or interests of the current or future members, administrators, employees, counsel, agents, or representatives of the Defendant Board of Education or the administrative practices, financial status or any other aspect of the current or future operations of New Berlin Community Unit School District #16 (“District”). Statements that are non-disparaging under this Agreement regarding events prior to the date of this Agreement will not be in violation of this Section if they are stated about a person who, subsequent to the publication

of the statement, becomes a member, administrator, employee, counsel, agent, or representative of the Board of Education

Furthermore, Plaintiff agrees that any statement (i) regarding facts that remained in dispute during the Lawsuit; (ii) saying Plaintiff won or prevailed in the Lawsuit; and/or (iii) stating an admission of liability by Defendant Board of Education is a breach of this Section.

Plaintiff agrees not to encourage, solicit, or assist any third party in making any disparaging statements as described herein about the current Board of Education, including current or future members, administrators, employees, counsel, agents, or representatives. A breach of this provision shall constitute a material breach of this Agreement.

ii. Defendant Board of Education agrees that, from the date of execution of this Agreement and for any time thereafter, it shall not, directly or indirectly, make, publish, or cause to be published any statement or communication on behalf of the Board of Education that could reasonably be construed as disparaging, defamatory, or harmful to the reputation, goodwill, or interests of Plaintiff.

Furthermore, the Board of Education agrees that any statement (i) regarding facts that remained in dispute during the Lawsuit; or (ii) saying it won or prevailed in the Lawsuit is a breach of this Section.

The Board of Education agrees not to encourage, solicit, or assist any third party in making any disparaging statements as described herein about Plaintiff on behalf of the Board of Education. A breach of this provision shall constitute a material breach of this Agreement.

b. Scope of Non-Disparagement.

The Parties further agree that the prohibition on disparagement extends to all forms of communication, including but not limited to:

- Oral statements (e.g., conversations, interviews, speeches);
- Written statements (e.g., emails, letters, press releases, social media posts, blog posts, articles, books, publications);
- Visual communications (e.g., photos, videos, graphics);
- Electronic or online communications (e.g., social media platforms, websites, online reviews, message boards);
- Indirect statements, including comments made by any immediate family members, agent, representative, affiliate, or legal counsel of Plaintiff, on behalf of Plaintiff, or at the direction of Plaintiff.
- Indirect statements on behalf of the Board of Education, or at the direction of the Board of Education.

c. Remedies for Breach.

In the event of a breach of this anti-disparagement provision by either Plaintiff or the Board of Education, Plaintiff and the Board of Education agree to the following:

- i. Liquidated Damages: If Plaintiff breaches the anti-disparagement provisions of this Agreement, Plaintiff shall pay Defendant Board of

Education liquidated damages the amount of \$15,000.00 for each violation, which the Parties agree is a reasonable estimate of the harm caused by such a breach and not a penalty.

- ii. Attorney's Fees and Costs: In the event of any breach of this provision, breaching Party shall also be liable for all reasonable attorneys' fees, costs, and expenses incurred by the non-breaching Party in enforcing this Agreement and defending their reputation, including, but not limited to, fees associated with filing suit and seeking an injunction to prevent further violations of this provision.
- iii. Injunctive Relief: Defendant Board of Education shall be entitled to seek an immediate injunction or other equitable relief to prevent further violations of this anti-disparagement provision, in addition to any other remedies available at law.

d. Exclusions from Anti-Disparagement.

Notwithstanding the general nature of the provisions of paragraphs 8(a) and 8(c) hereof, the non-disparagement obligations therein described specifically do not prohibit a Party from making any statement or communication regarding the: 1) facts as stated and conceded by the parties in the pleadings filed in the Lawsuit or the Counterclaim; and, 2) uncontested facts established in the Lawsuit and do not prevent Plaintiff from making any statement or communication regarding Plaintiff's personal and individual experiences and reactions to the uncontested facts described in the foregoing. For clarity, Plaintiff is not prohibited from making any of the statements described in the Power Point presentation previously prepared by the Plaintiff and produced to the parties in the Lawsuit. However, Plaintiff shall remove any District logos

(i.e., graphics) from her presentations with the express exception of photographs of individuals wearing clothing or displaying other items which depict such logos.

Furthermore, nothing in this provision shall prohibit a Party from making truthful statements that are required by law, regulation, or court order, or from making statements to regulatory bodies or law enforcement agencies as necessary to comply with legal obligations. The Party making such statements shall provide the other Party with written notice of such legal requirement prior to making any such statements, if feasible. The Parties agree that the provision of the Protective Order, as amended, entered in the Lawsuit on or about November 4, 2019, remains in effect.

9. Attorney Fees and Costs. Each Party and CMIC shall bear its own expenses, fees and costs in connection with the Lawsuit and this Agreement.

10. Time of the Essence. Time shall be of the essence in this Agreement and for all terms thereof.

11. Materiality. Each of the agreements, acknowledgements, warranties and representations contained in this Agreement are material to each of the Parties' and CMIC's willingness to enter into this Agreement.

12. Advice of Counsel. Each of the Parties and CMIC acknowledges it has obtained the advice of its own counsel concerning the terms and effect of this Agreement and the transactions contemplated hereby, and also obtained independent advice and counsel concerning

any and all tax implications of this Agreement and the transactions contemplated hereby, or had ample time and opportunity to do so.

13. Waiver of Right to Trial by Jury. EACH PARTY, AFTER CONSULTING OR HAVING HAD OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS AGREEMENT. EACH OF THE PARTIES AGREES THAT IT SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR, OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

14. Venue. IN ANY LITIGATION CONCERNING THIS AGREEMENT, EACH OF THE PARTIES AND CMIC AGREES AND CONSENTS TO VENUE IN, AND VOLUNTARILY AND INTENTIONALLY WAIVES THEIR RIGHT TO HAVE THE VENUE FOR SUCH LITIGATION IN ANY COURT OTHER THAN, THE CIRCUIT COURT LOCATED IN SANGAMON COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION (COLLECTIVELY, THE "**AGREED VENUES**"). EACH OF THE PARTIES AND CMIC AGREES THAT, IN THE EVENT IT COMMENCES ANY LITIGATION RELATING TO THIS AGREEMENT, IT WILL ONLY COMMENCE SUCH LITIGATION IN THE AGREED VENUES, AND THAT, TO THE EXTENT IT COMMENCES SUCH LITIGATION IN A DIFFERENT VENUE, IT WILL CONSENT TO (AND WAIVE ANY OBJECTIONS TO) A

MOTION TO CHANGE VENUE TO THE AGREED VENUES. FURTHER, EACH OF THE PARTIES AND CMIC WAIVES ANY RIGHT EACH OR ALL MAY HAVE TO FILE A MOTION TO CHANGE VENUE FROM THE AGREED VENUES IN THE EVENT THAT LITIGATION CONCERNING THIS LITIGATION IS PENDING IN EITHER OF THE AGREED VENUES.

15. Headings. The headings in this Agreement are for convenience only and in no way define, limit or subscribe the scope or intent of any provisions or sections of this Agreement.

16. Governing Law. This Agreement shall be construed in accordance with the applicable laws of the State of Illinois and applicable federal law, regardless of the conflicts of laws rules of any forum.

17. Entire Agreement. This Agreement may not be modified, altered, or changed except by a written agreement signed by the Parties and CMIC. The Parties and CMIC acknowledge that this Agreement constitutes the entire agreement between them, superseding all prior written or oral agreements, that there are no other understandings or agreements, written or oral, among them on the subject. This Section does not apply to the separate agreement between Defendant Board of Education and CMIC in the Related Insurance Case.

18. Survival. All representations, warranties, covenants and agreements of the Parties and CMIC made in this Agreement shall survive the execution and delivery hereof, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

19. No Admission. The Parties and CMIC understand and agree that this Agreement is a compromise of disputed claims and that the agreements, payments and other consideration made or given hereunder are not to be construed as an admission of liability on the part of any of the Parties or CMIC.

20. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and CMIC hereto and their respective heirs, successors, executors, administrators, attorneys, affiliates, board members, officers, employees, agents, and assigns.

21. No Third Party Beneficiaries; Reservation of Rights as to Third Parties. This Agreement is solely for the benefit of the Parties hereto and CMIC and no person other than the undersigned Parties and CMIC shall be entitled to claim or receive any benefit by reason of this Agreement, except, however, each person or entity released under Section 4 or 5 of this Agreement shall be a third party beneficiary of such release and shall have the right to independently enforce it and seek remedies for actions by any Party or CMIC inconsistent therewith.

22. No Assignment of Claims. Each of the Parties represents and warrants that it has not made, nor allowed to be made, any assignment or transfer of any right, claim, demand, or cause of action referenced or released in this Agreement.

23. Interpretation. In the event of any ambiguity and/or dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist.

24. Counterparts. This Agreement may be executed in one or more identical counterparts, any and all of which may contain the signature of less than all of the parties, and all of which may be construed together as a single instrument. Executed signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Any Party hereto or CMIC may execute and deliver a counterpart signature page of this Agreement by facsimile transmission or as a PDF attachment via e-mail, as applicable, signed by such Party or CMIC, and any such signature shall be treated in all respects as having the same effect as having an original signature.

25. Construction of Provisions. The following rules of construction shall apply for all purposes of this Agreement and all documents supplemental hereto, unless the context clearly requires otherwise:

- (a) All references herein to numbered sections or to lettered Exhibits are references to the sections of this Agreement or to the Exhibits attached to this Agreement;
- (b) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to”;
- (c) Words of masculine, feminine or neutral gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (d) No inference in favor of or against any Party or CMIC shall be drawn from the fact that such party has drafted any portion of this Agreement.

26. Severability. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining provisions of this Agreement shall not be affected thereby, and the offending provision shall be

deemed modified, reformed or “blue-penciled” by the minimum necessary to render it valid and enforceable as determined by a court of competent jurisdiction and venue.

27. News Media Contact. The Parties, CMIC, and their respective counsel agree that neither they nor any of the entities referred to herein shall initiate discussion of this matter or the resolution of the dispute with any news organization or media and will not seek out any news organization or media as it relates to this matter or the resolution of the dispute. The Parties, CMIC, and their respective counsel agree that any request should be generally answered that the Parties have resolved the dispute. This paragraph does not restrict Defendant Board of Education’s ability to make any statements or engage in any conduct while they are (1) conducting business in any meeting; (2) responding to any lawful request for information from any third-party (including, but not limited to FOIA); or (3) reporting to any government agency.

28. Intellectual Property. Plaintiff agrees that she will not, directly or indirectly, use, display, reproduce, or distribute trademarks, service marks, logos, and/or any other intellectual property of Defendant Board of Education or the New Berlin Community Unit School District #16, including but not limited to use in any books, presentations, movies, advertising, marketing materials, websites, social media, or any other public or private communications. Any unauthorized use is considered a breach of this Section. Notwithstanding the foregoing, Plaintiff is not prevented from using or displaying her own photographs of individuals wearing clothing or displaying other items which depict such intellectual property.

Plaintiff acknowledges and agrees that any unauthorized use or attempted use of trademarks, service marks, logos, or other intellectual property owned by Defendant Board of

Education or New Berlin Community Unit School District #16 would constitute a material breach of this Agreement.

29. No Tax Advice or Representations. Plaintiff acknowledges and understands that Defendants and CMIC are not providing any tax advice with respect to this Agreement or the Settlement Amount. Defendants and CMIC assume no liability whatsoever to any local, state, or federal taxing authority for the tax consequences or treatment of the Settlement Amount. Defendants will make any required reports to the appropriate federal, state, and local taxing authorities in connection with the Settlement Amount. Plaintiff expressly acknowledges that Plaintiff understands and agrees that: (i) Defendants and CMIC are not providing any tax, accounting or legal advice to her, and that neither Defendants nor CMIC make any representations regarding tax obligations or consequences related to or arising from this settlement; and (ii) Plaintiff will assume such federal, state and/or local tax obligations or consequences (including payment of all taxes and required reporting), if any, which arise from this settlement, and Plaintiff will not seek any indemnification from Defendants or CMIC in regard thereto.

30. Further Action. The Parties executing this Agreement and CMIC agree to timely execute such other documents as maybe reasonably necessary to further the purposes of this Agreement.

Remainder of page left intentionally blank

IN WITNESS WHEREOF, the undersigned have this date executed this Settlement Agreement.

Michelle Denault f/k/a Michelle Stolleis Forbes

Board of Education of New Berlin Community Unit
School District 16

By: _____

_____, President of Board

Attest: _____
Board Secretary

Carroll Owen Smith

Country Mutual Insurance Company

By: _____

_____, Title _____
