



College of DuPage
Board of Trustees

NOTICE AND AGENDA

THE AUDIO WILL BE AVAILABLE ONLINE AT

https://cod.edu/about/campus-departments/multimedia_services/live-streaming/botmedia.aspx

SPECIAL BOARD MEETING

THURSDAY, NOVEMBER 10, 2022 – 7:00 PM

425 FAWELL BLVD.
GLEN ELLYN, IL 60137
SSC 2200

AGENDA

MEETING INFORMATION As our COD community continues to navigate through this unprecedented time, the meeting of the Board of Trustees will be held in person and virtually. In an abundance of caution to protect our community and limit the spread of the COVID-19 virus, it is strongly encouraged for members of the public to view a livestream of the proceedings at Board of Trustee Meeting Streaming Media or to provide public comment via phone. The verbatim recording will also be available after the meeting for members of the public to review at the webpage listed above.

*Those wishing to provide public comment via telephone are encouraged to pre-register to speak no later than 5:00 P.M. on the date of the meeting via e-mail at feedback@cod.edu or voicemail at 630-942-2227.

Speakers must provide their first and last name including spelling and the telephone number being used to access the meeting. Please be advised that telephone numbers will be partially blocked and participant names may be visible to the public.

To join this Meeting for the purpose of public comment via telephone:

Phone Number: +1 312 626 6799

Meeting ID: 853 6890 8114

Should members of the public choose to physically attend the Board meeting, the Board will restrict capacity for public attendance in the Boardroom (SSC2200) in accordance with recommendations from the Centers for Disease Control and Prevention (CDC) regarding social distancing requirements.

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE / ROLL CALL
2. CLOSED SESSION
3. RETURN TO OPEN SESSION (At 8:00 P.M.)
4. PUBLIC COMMENT
 - 4a. General Public
 - 4b. College of DuPage Employees

5. NEW BUSINESS

5.a Approval of mutual release between Robert Breuder (“Breuder”) and Board of Trustees, College of DuPage, wherein the College of DuPage (“College”) dismisses its counter claims against Breuder and Breuder releases his claims in the lawsuit captioned *Breuder v. Board of Trustees, et al.* 2015 cv 09323 US District Court, Northern District of Illinois, Eastern Division.

6. CALENDAR DATES / Campus Events

Next Regular Board Meeting is November 17, 2022 at 6:00 P.M. in SSC 2200

7. CLOSED SESSION

8. ADJOURN

NOVEMBER 10, 2022

COLLEGE OF DuPAGE
SPECIAL BOARD MEETING
BOARD APPROVAL

SUBJECT

Approval of mutual release between Robert Breuder ("Breuder") and Board of Trustees, College of DuPage, wherein the College of DuPage ("College") dismisses its counter claims against Breuder and Breuder releases his claims in the lawsuit captioned *Breuder v. Board of Trustees, et al.* 2015 cv 09323 US District Court, Northern District of Illinois, Eastern Division.

REASON FOR CONSIDERATION

Section 3-30 of the Illinois Public Community College Act permits the Board of Trustees to exercise powers "that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board." 110 ILCS 805/3-30.

BACKGROUND INFORMATION

On October 21, 2015, Robert Breuder ("Breuder") filed a lawsuit against the Board of Trustees of Community College District No. 502, DuPage County, Illinois (the "Board of Trustees"), Katharine Hamilton, Deanne Mazzochi, Frank Napolitano, and Charles Bernstein (collectively, the "Defendants") asserting various claims arising from the termination of his employment as president of the College, including breach of contract, defamation and emotional distress.

On June 29, 2018, the College of DuPage filed counterclaims against Breuder asserting claims for breach of contract, breach of fiduciary duty, and conversion. The parties have been actively engaged in litigating this matter.

The College of DuPage is insured by the Illinois Community College Risk Management Consortium ("ICCRMC"). As an insured, the College is indemnified by ICCRMC for legal fees incurred in the course of the litigation and from judgment on and/or settlement of the claims asserted in the lawsuit. During the entire course of litigation, ICCRMC has assumed the cost of defending the College in the lawsuit. After more than seven years of ongoing litigation,

ICCRMC, as the College's insurer, has directed the lawsuit be settled in order to avoid further expense of litigation.

As a result, Breuder and the College's insurer, ICCRMC, have entered into a separate settlement agreement attached hereto as Exhibit A. The settlement agreement between Breuder and ICCRMC, agrees to resolve all of the claims in the lawsuit and requires the College to approve the mutual releases to bring this matter to closure.

RECOMMENDATION

That the Board of Trustees approve the attached mutual release in, *Breuder v. Board of Trustees, et al.* 2015 cv 09323 US District Court, Northern District of Illinois, Eastern Division, dismissing the College's counterclaims against Breuder and authorize the Chair and/or the President to execute the release on behalf of the College.

STAFF CONTACT

Lilianna Kalin, General Counsel

[2022-11-10 Breuder-Board ReleaseFINAL \(003\).pdf](#)

[2022-11-10 Stipulation of Dismissal34.pdf](#)

[2022-11-10 Settlement ICCRMCFINAL.pdf](#)

MUTUAL RELEASE BETWEEN ROBERT BREUDER AND BOARD OF TRUSTEES OF THE COLLEGE OF DUPAGE

This Mutual Release (the “Release”) is made and entered into on this 10th day of November, 2022, by and among Robert L. Breuder (“Breuder” or “Plaintiff”), on the one hand, and the College of DuPage (the “College”), on the other hand. Breuder and the College may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, on October 21, 2015, Breuder filed suit against the Board of Trustees of Community College District No. 502, DuPage County, Illinois (the “Board of Trustees”), Katharine Hamilton, Deanne Mazzochi, Frank Napolitano, and Charles Bernstein (collectively, the “Defendants”) in the United States District Court for the Northern District of Illinois, asserting various claims arising from the termination of his employment as president of the College, including alleged physical injuries, physical sickness and emotional distress therefrom (the “Complaint”). The case in the District Court is captioned *Breuder v. Board of Trustees, et al.*, Case No. 1:15-cv-09323 (the “Litigation”).

WHEREAS, on June 29, 2018, the College filed a counterclaim against Breuder asserting claims for breach of contract, breach of fiduciary duty, and conversion (the “Counterclaim”).

WHEREAS, the College’s insurer, the Illinois Community College Risk Management Consortium (“ICCRMC”), through ICCRMC’s third-party administrator, Cannon Cochran Management Services, Inc. (“CCMSI”), has agreed, subject to reservations of rights, to indemnify and hold harmless the Defendants for legal fees incurred and from judgment on and/or settlement of the claims asserted by the Plaintiff in the Complaint.

WHEREAS, the College’s insurer, ICCRMC, desires a settlement of the Litigation in order to avoid the expense, inconvenience, and delay of further litigation.

WHEREAS, Breuder and the College’s insurer, ICCRMC, have entered into a separate settlement agreement that will be executed on or around November 11, 2022, to resolve the claims in this Litigation (“the Settlement Agreement”), which is attached hereto as Exhibit B.

WHEREAS, it is understood and agreed by the Parties that the releases contained within this Release, coupled by the terms and provisions of the Settlement Agreement, which are being incorporated fully herein by reference, represent a compromise of disputed claims to, in part, avoid further expenditure of time and resources in connection with the Litigation. Each Party denies that there is any legal or factual basis for claims asserted against them in the Litigation, and nothing in either this Release or the Settlement Agreement shall constitute, be construed, or be used in any manner as an admission of fault, wrongdoing, or liability.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Recitals Incorporated.** The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full, and made a part of, this Release.

2. **Dismissal of the Litigation.** Within 5 business days of Breuder's receipt of the Settlement Payment described in paragraph 2 of the Settlement Agreement, and pursuant to Federal Rule of Civil Procedure 41, Breuder and the Defendants shall file a joint stipulation to dismiss all claims pending in the Litigation with prejudice (in the form attached hereto as Exhibit A). If the Court for any reason fails to dismiss all claims pending in the Litigation with prejudice, then this Release will be null and void.

3. **General Release by Breuder.** In consideration of the agreements, covenants and mutual releases contained herein, as well as within the Settlement Agreement, and subject to the exclusions set forth below in sub-provisions b – e, Breuder, his predecessors, successors, agents, assigns, beneficiaries, spouses, heirs, representatives, attorneys, trustees, and those acting or purporting to be acting on his behalf, hereby release and forever discharge the College, and each of its respective successors, predecessors, past and present directors, officers, managers, members, agents, partners, assigns, employees, beneficiaries, spouses, heirs, representatives, attorneys, insurers, trustees (in their official capacities only), and those acting or purporting to be acting on their behalf (collectively "the COD Released Parties"), from any and all claims, counterclaims, demands, actions, causes of action, debts, liabilities, damages, costs, fees, expenses, rights, duties, obligations, liens, petitions, suits, losses, controversies, executions, offsets and sums, of any kind or nature, whether direct or indirect, liquidated or unliquidated, contingent or actual, in law or equity, known or unknown, suspected or unsuspected, foreseen or unforeseen, arising out of any matter occurring prior to the date of full execution of this Release, including, without limitation, matters which in any way relate to or arise from the Litigation, to any claims asserted or attempted to be asserted in the Litigation, to any claims which could have been asserted in the Litigation.

a. Without in any way limiting the generality of the foregoing, and subject to the exclusions set forth below in sub-provisions b – e, this Release constitutes a full release and waiver of any and all claims which may be asserted by Breuder against the COD Released Parties that arises out of or relates in any way to Breuder's employment and/or separation of employment with the College, whether arising under or out of the Constitution of the United States, a statute including, but not limited to 42 U.S.C. Section 1983, and any other county, municipal, federal, state or local statute, ordinance or regulation, as amended from time to time, or common law claims or causes of action relating to breach of contract or public policy, wrongful or retaliatory discharge, tortious action, inaction, or interference of any sort, conspiracy, defamation, libel, slander, conversion, personal or business injury, reputational injury, and including all claims for attorneys' fees and costs. Breuder acknowledges that he received all wages, bonuses, benefits, leaves of absence, reinstatements, vacation pay, reimbursement for expenses to which he is entitled. Breuder specifically waives any rights to recover in a suit brought by any other entity on his behalf.

b. This release excludes any claim which cannot be released by private agreement as a matter of public policy, law, or statute.

c. This release excludes, and shall in no event be construed to include, any claims by Breuder to be indemnified, defended, or held harmless by the College pursuant to paragraph H of Breuder's Employment Agreement with the College. Breuder and the College each affirm that they are not aware of any third-party claims that have been asserted against Breuder that would trigger Breuder's rights under paragraph H of his Employment Agreement.

d. This release excludes claims arising out of the failure of any Party to perform any obligations under this Release.

e. This release excludes any and all claims, whether presently known or unknown, against any Defendant sued in his or her personal capacity in the Litigation that result from, relate to, or arise out of acts or conduct that fall outside the scope of his or her official duties as a member of the Board of Trustees, whether such claims were asserted or not in the Litigation, as the College has no liability, past or present, for any such claims. Notwithstanding the foregoing, nothing in this paragraph affects Breuder's obligation to dismiss with prejudice all claims pending in the Litigation, as set forth in Paragraph 2 of this Release.

4. General Release by the College. In consideration of the agreements, covenants, and mutual releases contained herein, and subject to the exclusions set forth below in sub-provisions b – c, the College, its successors, predecessors, past and present directors, officers, managers, members, trustees (in their official capacities only), agents, partners, assigns, employees, representatives, attorneys, insurers, and those acting or purporting to be acting on its behalf, hereby release and forever discharge Breuder, his predecessors, successors, agents, assigns, beneficiaries, spouses, heirs, representatives, attorneys, trustees, and those acting or purporting to be acting on his behalf (collectively "the Breuder Released Parties"), from any and all claims, counterclaims, demands, actions, causes of action, debts, liabilities, damages, costs, fees, expenses, rights, duties, obligations, liens, petitions, suits, losses, controversies, executions, offsets and sums, of any kind or nature, whether direct or indirect, liquidated or unliquidated, contingent or actual, in law or equity, known or unknown, suspected or unsuspected, foreseen or unforeseen, arising out of any matter occurring prior to the date of full execution of this Release, including, without limitation, matters which in any way relate to or arise from the Litigation, to any claims asserted or attempted to be asserted in the Litigation, to any claims which could have been asserted in the Litigation.

a. Without in any way limiting the generality of the foregoing, this release constitutes a full release and waiver of any and all claims which may be brought against the Breuder Released Parties that arise out of or relate in any way to any actions and/or events that occurred during or relate to Breuder's employment with the College, whether such claims arise under or out of a statute, any other county, municipal, federal, state or local statute, ordinance or regulation, all as may be amended from time to time, or common law claims or causes of action relating to breach of contract or public policy, wrongful or retaliatory discharge, tortious action, inaction, or interference of any sort, conspiracy, defamation, libel, slander, conversion, personal or business injury, reputational injury, and including all claims for attorneys' fees and costs.

b. This release excludes any claim which cannot be released by private agreement as a matter of public policy, law, or statute.

c. This release excludes claims arising out of the failure of any Party to perform any obligations under this Release.

5. Unknown Facts or Claims. Breuder and the College expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or international or foreign law, which would limit the scope of the releases provided in paragraphs 3 and 4, above. Breuder and the College acknowledge that they or any of them may hereafter discover facts or circumstances in addition to or different from those which they now know or believe to be true with respect to the matters encompassed by this Release, but it is the intention of Breuder and the College to, and both Breuder and the College do, hereby fully, finally, unconditionally and forever settle the matters provided by this Release, notwithstanding the discovery or existence of any additional or different facts or circumstances.

6. No Assignment of Claims. Breuder and the College represent and warrant to one another that they have not made, and will not make, any assignment of any claim, cause, or right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any claims that are released herein. Breuder and the College also represent and warrant that they have not, in whole or in part, assigned, sold, or otherwise transferred any of their alleged claims, causes of action, rights or remedies against one another or their past or present parents, subsidiaries, affiliates, successors, predecessors, assigns or other past or present officers, directors, employees, or agents of any of the foregoing, that were or could have been alleged in the Litigation.

7. No Other Litigation and Covenant Not to Sue. Except for the Litigation, Breuder and the College each represent and warrant that none of them nor anyone acting on their behalf has made or filed, directly or indirectly, nor caused to be made or filed, and will not make, file, or cause to be filed, any charge, complaint, suit, claim, or legal proceeding whatsoever in any state or federal court, or to any agency or authority, or in arbitration or any administrative proceeding with any local, state, or federal agency, against each other or any of their successors, predecessors, past and present directors, officers, managers, members, agents, partners, assigns, employees, beneficiaries, spouses, heirs, representatives, attorneys, trustees (in their official capacities only), or any person or entity acting or purporting to be acting on their behalf, which relate to the subject matter of the Litigation, the acts, events, omissions, or transactions at issue in the Litigation, or any acts, events, omissions, or transactions that were or could have been asserted in the Litigation. Breuder and the College further acknowledge and agree to forever refrain from commencing suit or asserting any claim or demand, against each other, or their successors, predecessors, past and present directors, officers, managers, members, agents, affiliates, partners, assigns, employees, beneficiaries, spouses, heirs, representatives, attorneys, trustees (in their official capacities only), whether directly, or individually, or derivatively, and whether in tort, contract, for statutory or administrative remedy, or any other remedy whatsoever, arising out of or relating in any way to the Litigation or the releases contained in this Release. This paragraph 7 does not extend to claims arising out of the failure of any Party to this Release to perform any obligations under this Release.

8. **Consequences of Breach of Releases or Covenant not to Sue.** If Breuder or the College files or pursues any claim, counterclaim, charge, petition, lawsuit, or initiates any administrative or other proceeding, in violation of the General Releases (paragraphs 3 & 4) or the Covenant Not to Sue (paragraph 7) contained in this Release, then the defending Party, or defending Parties, as the case may be, shall be entitled to assert this Release as a bar to any recovery and as a complete defense to such action and shall be entitled to full reimbursement and indemnification of the costs and expenses, including legal fees, related to their defense of any such action.

9. **Coexistent with Settlement Agreement.** The Parties acknowledge and agree that this Release is coexistent with the Settlement Agreement. In the event the Settlement Agreement is declared null and void, this Release will become null and void.

10. **No Admission of Liability.** Nothing contained in this Release or any actions taken hereto in connection with the execution and delivery of this Release shall constitute, be construed as, or be deemed to be an admission of fault, liability, or wrongdoing of any kind whatsoever, and neither Breuder nor the College shall have any obligation beyond the specific agreements and promises set forth herein.

11. **Entire Agreement, Merger, Integration, Amendment.** This Release constitutes a single, fully integrated contract expressing and representing the entire agreement and understanding of the Parties as of the effective date with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, negotiations, discussions, understandings, representations, statements, omissions and writings between the Parties relating thereto and with respect to the subject matter hereof, except as otherwise provided herein. No other promise, representation, omission or agreement of any kind has been made to or by any person or entity to cause any Party to enter this Release, and no Party has relied upon any oral or written statement, representation or omission by any other Party, or any other person or entity, other than those statements expressly set forth in this Release. No modification, alteration, amendment, waiver or change in any of the terms of this Release shall be valid or binding upon the Parties unless made in writing and duly executed by all the Parties. The Parties also acknowledge and stipulate that the compromise and settlement which forms the basis of this Release, which the Parties fully understand, has been arrived at after thorough bargaining and negotiation, and after adequate consultation with legal counsel of their own choice. The Parties further acknowledge and stipulate that this Release represents a final and mutually agreeable compromise of the matters herein, and has been entered into freely, knowingly, unconditionally, and voluntarily. This Release is intended to be final and complete and shall not be subject to any claim of mistake of fact or law.

12. **Severability.** In the event that any one or more provisions contained in this Release (or parts thereof) shall for any reason be held invalid, illegal, or unenforceable in any respect, such a determination shall not affect the validity, legality, applicability, or enforceability of this Release as a whole, or of any other provision, term, or covenant contained in this Release, and, in such instances, this Release shall be construed as if such invalid, illegal or unenforceable provision (or part therein) had never been contained in the Release.

13. **Governing Law.** This Release shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to choice-of-law or conflicts of law provisions or principles.

14. **Dispute Resolution.** The Parties agree to work in good faith to resolve any dispute, claim, or controversy arising out of or relating to this Release. In the event the Parties' good faith efforts are unsuccessful, the Parties agree that any dispute, claim or controversy of any nature arising out of or relating to this Release, including but not limited to any claim based on contract, tort or statute, shall be submitted to final and binding arbitration in Chicago, Illinois, or another venue as agreed upon by the Parties, and shall proceed before a single arbitrator to be agreed upon by the Parties. The arbitration shall be administered by JAMS Dispute Resolution ("JAMS") in accordance with its Comprehensive Arbitration Rules and Procedures. The costs of the arbitration shall be borne equally by the Parties at the time payment is due, except that the arbitrator may decide whether any party should be required to reimburse any other party or parties of its portion of the costs. The Parties shall each bear their own attorneys' fees. The Parties agree to take all steps necessary to ensure the confidentiality of the proceedings and the confidentiality of the arbitrator's award will be added to the basic rule requirements. The arbitrator's award shall be final and binding. Judgment on the arbitrator's award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

15. **Waiver.** No claim or right arising out of a breach or default under this Release can be discharged by a waiver of that claim or right unless the waiver is in writing signed by the Party hereto to be bound by such waiver. A waiver by any party of a breach or default by the other Party of any provision(s) of this Release shall not be deemed a continuing waiver or a waiver of future compliance with such provisions or any other provisions in this Release, and such provisions shall remain in full force and effect.

16. **Construction.** The Parties acknowledge and agree that this Release was drafted by the Parties collectively, that it is the product of arms-length settlement negotiations between the Parties through their respective counsel, and that the Parties have reviewed and accepted the Release. Any controversy regarding the construction of this Release shall be decided neutrally, in light of its conciliatory purpose, and without regard to the events of authorship or negotiation. The determination of the terms of, and the drafting of, this Release has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto after thorough consultation with their legal counsel. The Parties have had a reasonable and sufficient opportunity to consult with attorneys, tax advisors, and other professionals of their choosing prior to executing this Release, and are voluntarily, knowingly, unconditionally, and freely entering into this Release after such consultations. The headings at the beginning of each numbered paragraph of this Release are for reference only and do not limit or summarize the contents of each such paragraph, nor are the headings to be used in construing this Release or in ascertaining the intentions of the Parties. This Release shall be binding upon, enforceable by, and inure to the benefit of the Parties and their respective assigns, heirs, distributees, devisees, legatees, successors, executors, trustees, personal representatives, and administrators.

17. Authority To Bind. Each Party represents, warrants, and agrees that it has read this Release, understands its contents, and has executed it voluntarily and without duress from any person or entity, has duly and validly authorized the execution and delivery of this Release, and has full power and authority to enter into and to perform all actions or transactions contemplated by this Release.

18. Execution and Counterparts. This Release may be signed using one or more counterparts. The Parties stipulate that facsimile signature pages or signature pages emailed in PDF format shall be acceptable and deemed originals. The several executed copies together shall be considered an original and shall constitute a single contract binding upon the Parties.

IN WITNESS WHEREOF, the Parties hereto, each by persons duly authorized to sign and execute on their behalf, have caused the Mutual Release to be executed as of the day and year first written above.

Robert L. Breuder

College of DuPage

Date: November __, 2022

By (print): _____

Its: _____

Date: November __, 2022

EXHIBIT A

(Form of Stipulation of Dismissal)

EXHIBIT B

(Settlement Agreement)

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT BREUDER,

Plaintiff,

v.

BOARD OF TRUSTEES OF
COMMUNITY COLLEGE DISTRICT
NO. 502, DUPAGE COUNTY,
ILLINOIS, an Illinois body politic and
corporate, KATHY HAMILTON in her
official and individual capacity, DEANNE
MAZZOCHI in her official and individual
capacity, FRANK NAPOLITANO in his
official and individual capacity, and
CHARLES BERNSTEIN in his official
and individual capacity,

Defendants.

Case No. 1:15 cv 9323

Hon. Nancy L. Maldonado

Hon. Jeffrey I. Cummings
(Magistrate)

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, the parties having stipulated that all matters in dispute between them in the above-captioned case have been resolved and having further stipulated that the above-entitled action should be dismissed with prejudice in its entirety, including for clarity the Counterclaim of Defendant Board of Trustees of Community College District No. 502, DuPage County, Illinois, with each of the parties bearing their own costs.

IT IS HEREBY ORDERED by consent of the parties, that the above-entitled action be dismissed with prejudice in its entirety.

Dated this ____ day of _____, 2022.

Judge Nancy L. Maldonado
United States District Court

SO STIPULATED:

Attorneys for the Plaintiff Robert Breuder
Melissa N. Eubanks
Johnson & Johnson LLP
439 N. Canon Drive, Suite 200
Beverly Hills, CA 90210

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10 S. LaSalle Street, Suite 3600
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Attorneys for Defendants Board of Trustees,
Frank Napolitano, and Charles Bernstein
Andrew Porter
Katie Hill
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Davis Street
Evanston, IL 60201

Attorney for Defendant Deanne Mazzochi
Jody A. Boquist
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321 N. Clark Street, Suite 1100
Chicago, IL 60654

Attorney for Defendant Kathy Hamilton
Aldo E. Botti
BOTTI LAW FIRM, P.C.
2215 York Road, Suite 304
Oak Brook, Illinois 60523

SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN ROBERT BREUDER AND ICCRMC

This Settlement Agreement and Mutual Release (the “Agreement”) is made and entered into on this ___ day of November, 2022, by and among Robert L. Breuder (“Breuder” or “Plaintiff”), on the one hand, and the Illinois Community College Risk Management Consortium (“ICCRMC”), on the other hand. Breuder and ICCRMC may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, on October 21, 2015, Breuder filed suit against the Board of Trustees of Community College District No. 502, DuPage County, Illinois (the “College”), Katharine Hamilton (“Hamilton”), Deanne Mazzochi (“Mazzochi”), Frank Napolitano (“Napolitano”), and Charles Bernstein (“Bernstein”) (collectively, the “Defendants”) in the United States District Court for the Northern District of Illinois, asserting various claims arising from the termination of his employment as president of the College, including alleged physical injuries, physical sickness and emotional distress therefrom (the “Complaint”). The case in the District Court is captioned *Breuder v. Board of Trustees, et al.*, Case No. 1:15-cv-09323 (the “Litigation”).

WHEREAS, on June 29, 2018, the College filed a counterclaim against Breuder asserting claims for breach of contract, breach of fiduciary duty, and conversion (the “Counterclaim”).

WHEREAS, ICCRMC, through its third-party administrator, Cannon Cochran Management Services, Inc. (“CCMSI”), has agreed, subject to reservations of rights, to indemnify and hold harmless the Defendants for legal fees incurred and from judgment on and/or settlement of the claims asserted by the Plaintiff in the Complaint.

WHEREAS, the Parties desire a settlement of all claims pending in the Litigation in order to avoid the expense, inconvenience, and delay of further litigation.

WHEREAS, it is understood and agreed by the Parties that the following are necessary conditions of this Agreement: (a) Breuder releases any and all claims or disputes between and among Breuder and the Defendants that were or could have been asserted in the Litigation, including all claims brought in, arising from, or relating in any way to the Litigation, regardless of whether such claims are presently known or unknown to exist, with the exception of claims that Breuder has or may have against Mazzochi, whether presently known or unknown, which relate to, result from, or arise out of acts or conduct that fall outside the scope of her official duties as a member of the Board of Trustees of the College which could not have been asserted in the Litigation; (b) the College releases any and all claims or disputes between and among Breuder and the College, including all claims brought in, arising from, or relating in any way to the Litigation, regardless of whether such claims are presently known or unknown to exist; and (c) Breuder and the Defendants stipulate to dismiss the entire Litigation, including all claims that could have been asserted and all claims pending in the Litigation, with prejudice.

WHEREAS, it is understood and agreed by the Parties that this Agreement represents a compromise of disputed claims to, in part, avoid further expenditure of time and resources in connection with the Litigation. Neither the decision to settle, nor anything contained in this Agreement (including the consideration furnished or any actions taken by or on behalf of Breuder, ICCRMC, or the Defendants in connection with the execution and delivery of this Agreement), shall constitute, be construed, or be used in any manner as an admission of fault, wrongdoing, or liability with respect to any of the claims asserted in the Litigation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Recitals Incorporated.** The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full, and made a part of, this Agreement.

2. **Settlement Payment.** ICCRMC shall pay to Breuder a total of Four Million Dollars (\$4,000,000) (“Settlement Payment”), in full and final settlement of all claims pending in the Litigation, with prejudice, including all claims that could have been or were asserted in the Litigation, and any other claims of any nature that Breuder has, or purports to have, against the College, Hamilton, Mazzochi, Napolitano, and Bernstein, with the exception of claims that Breuder has or may have against Mazzochi, whether presently known or unknown, which relate to, result from, or arise out of acts or conduct that fall outside the scope of her official duties as a member of the Board of Trustees of the College which could not have been asserted in the Litigation. ICCRMC shall cause the Settlement Payment to be made to Breuder within 10 business days of the full execution of this Agreement.

The Settlement Payment shall be paid pursuant to and in accordance with the provisions and instructions set forth in the “Confidential Exhibit A” to this Agreement, which is hereby incorporated fully herein by reference.

Breuder acknowledges and agrees that the Settlement Payment constitutes good, valuable, and sufficient consideration for the releases and other covenants contained in and referenced in this Agreement; and that he is not otherwise entitled to any payments or sums of any kind from ICCRMC or any of the Defendants in connection with the Litigation. ICCRMC and Breuder acknowledge and agree that no portion of the Settlement Payment represents wages, that the payment and tax provisions of this Agreement and the Confidential Exhibit A hereto have been bargained over at arms’ length, and that they are a material part of this Agreement. ICCRMC acknowledges and agrees that it is not entitled to any payments or sums of any kind from Breuder.

3. **Dismissal of the Litigation.** Within 5 business days of Breuder’s receipt of the Settlement Payment, Breuder and the Defendants shall file a joint stipulation to dismiss all claims pending in the Litigation with prejudice (in the form attached hereto as Exhibit B). If the Court for any reason fails to dismiss all claims pending in the Litigation with prejudice, then this Agreement will be null and void and Breuder shall reimburse the Settlement Payment to ICCRMC.

4. Releases.

a. General Release by Breuder. In consideration of the agreements and covenants contained herein, including the Settlement Payment and the mutual releases contained herein and within the separate releases executed by and between Breuder, on the one hand, and each of the College, Hamilton, Bernstein, and Napolitano, on the other hand, Breuder, his predecessors, successors, agents, assigns, beneficiaries, spouses, heirs, representatives, attorneys, trustees, and those acting or purporting to be acting on his behalf, hereby release and forever discharge ICCRMC and each of its respective successors, predecessors, past and present directors, officers, managers, members, agents, partners, assigns, employees, beneficiaries, representatives, attorneys, and those acting or purporting to be acting on its behalf, from any and all claims, counterclaims, demands, actions, causes of action, debts, liabilities, damages, costs, fees, expenses, rights, duties, obligations, liens, petitions, suits, losses, controversies, executions, offsets and sums, of any kind or nature, whether direct or indirect, liquidated or unliquidated, contingent or actual, in law or equity, known or unknown, suspected or unsuspected, foreseen or unforeseen, arising out of any matter occurring prior to the date of full execution of this Agreement, including, without limitation, matters which in any way relate to or arise from the Litigation, to any claims asserted or attempted to be asserted in the Litigation, to any claims which could have been asserted in the Litigation. The intention of Breuder and ICCMRC is that the releases set forth herein and the separate releases executed by and between Breuder, on the one hand, and each of the College, Hamilton, Napolitano, and Bernstein, on the other hand, shall constitute full and general releases amongst all Parties to this Agreement and the parties to the Litigation, with the exception of claims that Breuder has or may have against Mazzochi, whether presently known or unknown, which relate to, result from, or arise out of acts or conduct that fall outside the scope of her official duties as a member of the Board of Trustees of the College which could not have been asserted in the Litigation. Notwithstanding the foregoing, nothing in this paragraph affects Breuder's obligation to dismiss all claims that could have been asserted and all claims currently pending in the Litigation with prejudice, as set forth in Paragraph 2 of this Agreement. This release also does not extend to claims arising out of the failure of any Party to perform any obligations under this Agreement.

b. General Release by ICCRMC. In consideration of the agreements and covenants contained herein, including the Settlement Payment and the mutual releases contained herein and within the separate release executed by and between Breuder, on the one hand, and each of the College, Hamilton, Bernstein, and Napolitano, on the other hand, ICCRMC, its successors, predecessors, past and present directors, officers, managers, members, trustees, agents, partners, assigns, employees, representatives, attorneys, and those acting or purporting to be acting on its behalf, hereby release and forever discharge Breuder, his predecessors, successors, agents, assigns, beneficiaries, spouses, heirs, representatives, attorneys, trustees, and those acting or purporting to be acting on his behalf, from any and all claims, counterclaims, demands, actions, causes of action, debts, liabilities, damages, costs, fees, expenses, rights, duties, obligations, liens, petitions, suits, losses, controversies, executions, offsets and sums, of any kind or nature, whether direct or indirect, liquidated or unliquidated, contingent or actual, in law or equity, known or unknown, suspected or unsuspected, foreseen or unforeseen, arising out of any matter occurring prior to the date of full execution of this Agreement, including, without limitation, matters which in any way relate to or arise from the Litigation, to any claims asserted or attempted to be asserted in the

Litigation, to any claims which could have been asserted in the Litigation. The intention of Breuder and ICCRMC is that the releases set forth herein and the separate releases executed by and between Breuder, on the one hand, and each of the College, Hamilton, Bernstein, and Napolitano, on the other hand, shall constitute full and general releases amongst all Parties to this Agreement and the parties to the Litigation, with the exception of claims that Breuder has or may have against Mazzochi, whether presently known or unknown, which relate to, result from, or arise out of acts or conduct that fall outside the scope of her official duties as a member of the Board of Trustees of the College which could not have been asserted in the Litigation. Notwithstanding the foregoing, nothing in this paragraph affects Breuder's obligation to dismiss all claims that could have been asserted and all claims currently pending in the Litigation with prejudice, as set forth in Paragraph 2 of this Agreement. This release also does not extend to claims arising out of the failure of any Party to this Agreement to perform any obligations under this Agreement.

Notwithstanding anything to the contrary contained herein, ICCRMC is not releasing any claims, nor is it precluded from assigning any claims, that it has or may acquire against State Farm Fire and Casualty Company ("State Farm") and any other liability insurers of Hamilton, Mazzochi, Napolitano, and Bernstein (the "Individual Defendants") based on, attributable to, arising out of, involving, resulting from, or in any way related to the claims at issue in the Litigation, including, without limitation, all statutory rights, contractual and extracontractual rights, subrogation rights, contribution rights, and rights arising in tort or otherwise, regarding any obligations owed by State Farm and other liability insurers to the Individual Defendants under their respective insurance policies and applicable law with respect to defense, indemnification, and good faith claims handling; such claims being expressly preserved.

c. Other Releases. Breuder and ICCRMC further agree that a condition of this Agreement is that Breuder, on the one hand, and the College, Hamilton, Napolitano, and Bernstein, each individually on the other hand, execute mutual release in the forms attached hereto as Exhibit C and D, which mutual releases are hereby incorporated fully herein by reference.

d. Survival Notwithstanding Nullification of College Release. In the event the mutual releases executed by and between Breuder and the College, upon which this Agreement is conditioned, are declared null and void this Agreement shall survive any such nullification or voidance and continue to be binding and enforceable upon the Parties to this Agreement.

5. Unknown Facts or Claims. ICCRMC and Breuder expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or international or foreign law, which would limit the scope of the releases provided in paragraph 4, above. ICCRMC and Breuder acknowledge that they or any of them may hereafter discover facts or circumstances in addition to or different from those which they now know or believe to be true with respect to the matters encompassed by this Agreement, but it is the intention of ICCRMC and Breuder to, and both ICCRMC and Breuder do, hereby fully, finally, unconditionally and forever settle all claims that could have been asserted in the Litigation and all claims currently pending in the Litigation with prejudice, and the other matters provided by this Agreement, notwithstanding the discovery or existence of any additional or different facts or circumstances.

6. **No Assignment of Claims.** Subject to the matters and claims discussed in Paragraph 4.b. herein that are expressly excepted from ICCRMC's release of Breuder, and for which ICCRMC expressly reserves its rights with respect to the assignment and litigation of claims against State Farm and any other liability insurers of the Individual Defendants, ICCRMC and Breuder represent and warrant to one another that they have not made, and will not make, any assignment of any claim, cause, or right of action, or any right of any kind whatsoever, embodied in any of the claims that are settled herein, and that no other person or entity of any kind had or has any interest in any claims that are settled herein. ICCRMC and Breuder also represent and warrant that they have not, in whole or in part, assigned, sold, or otherwise transferred any of their alleged claims, causes of action, rights or remedies against one another or their past or present parents, subsidiaries, affiliates, successors, predecessors, assigns or other past or present officers, directors, employees, or agents of any of the foregoing, that were or could have been alleged in the Litigation.

7. **No Other Litigation and Covenant Not to Sue.** Except for the Litigation, ICCRMC and Breuder each represent and warrant that none of them nor anyone acting on their behalf has made or filed, directly or indirectly, nor caused to be made or filed, and will not make, file, or cause to be filed, any charge, complaint, suit, claim, or legal proceeding whatsoever in any state or federal court, or to any agency or authority, or in arbitration or any administrative proceeding with any local, state, or federal agency, against each other or, for Breuder, against any of the Defendants, or any of their successors, predecessors, past and present directors, officers, managers, members, agents, partners, assigns, employees, beneficiaries, spouses, heirs, representatives, attorneys, trustees, or any person or entity acting or purporting to be acting on their behalf, which relate to the subject matter of the Litigation, the acts, events, omissions, or transactions at issue in the Litigation, or any acts, events, omissions, or transactions that were or could have been asserted in the Litigation. ICCRMC and Breuder further acknowledge and agree to forever refrain from commencing suit or asserting any claim or demand, against each other, or as to Breuder against any of the Defendants, or their successors, predecessors, past and present directors, officers, managers, members, agents, affiliates, partners, assigns, employees, beneficiaries, spouses, heirs, representatives, attorneys, trustees, whether directly, or individually, or derivatively, and whether in tort, contract, for statutory or administrative remedy, or any other remedy whatsoever, arising out of or relating in any way to the Litigation or the Releases contained in this Agreement, except as otherwise provided in Paragraphs 4.a. and 4.b. of this Agreement. Notwithstanding the foregoing, this paragraph 7 does not extend to: (a) the matters and claims discussed in Paragraph 4.b. herein that are expressly excepted from ICCRMC's release of Breuder, and for which ICCRMC expressly preserves its rights with respect to the assignment and litigation of claims against State Farm and any other liability insurers of the Individual Defendants; or (b) claims that Breuder has or may have against Mazzochi, whether presently known or unknown, which result from, relate to, or arise out of acts or conduct that fall outside the scope of her official duties as a member of the Board of Trustees of the College which could not have been asserted in the Litigation. This paragraph 7 also does not extend to claims arising out of the failure of any Party to this Agreement to perform any obligations under this Agreement.

8. **Consequences of Breach of Releases or Covenant not to Sue.** If ICCRMC or Breuder files or pursues any claim, counterclaim, charge, petition, lawsuit, or initiates any administrative or other proceeding, in violation of the Releases contained in this Agreement

(paragraph 4) or the Covenant Not to Sue (paragraph 7), the defending Party, or defending Parties, as the case may be, shall be entitled to assert this Agreement as a bar to any recovery and as a complete defense to such action and shall be entitled to full reimbursement and indemnification of the costs and expenses, including legal fees, related to their defense of any such action.

9. **No Admission of Liability.** Nothing contained in this Agreement, or any actions taken hereto in connection with the execution and delivery of this Agreement of the decision to settle, shall constitute, be construed as, or be deemed to be an admission of fault, liability, or wrongdoing of any kind whatsoever, and neither ICCRMC nor Breuder shall have any obligation beyond the specific agreements and promises set forth herein.

10. **Entire Agreement, Merger, Integration, Amendment.** This Agreement, including all attached exhibits which are incorporated by reference into this Agreement as if fully set forth herein, constitutes a single, fully integrated contract expressing and representing the entire agreement and understanding of the Parties as of the effective date with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, negotiations, discussions, understandings, representations, statements, omissions and writings between the Parties relating thereto and with respect to the subject matter hereof, except as otherwise provided herein. No other promise, representation, omission or agreement of any kind has been made to or by any person or entity to cause any Party to enter this Agreement, and no Party has relied upon any oral or written statement, representation or omission by any other Party, or any other person or entity, other than those statements expressly set forth in this Agreement. No modification, alteration, amendment, waiver or change in any of the terms of this Agreement shall be valid or binding upon the Parties unless made in writing and duly executed by all the Parties. The Parties also acknowledge and stipulate that the compromise and settlement which forms the basis of this Agreement, which the Parties fully understand, has been arrived at after thorough bargaining and negotiation, and after adequate consultation with legal counsel of their own choice. The Parties further acknowledge and stipulate that this Agreement represents a final and mutually agreeable compromise of the matters provided herein, and has been entered into freely, knowingly, unconditionally, and voluntarily. This Agreement is intended to be final and complete and shall not be subject to any claim of mistake of fact or law.

11. **Severability.** In the event that any one or more provisions contained in this Agreement (or parts thereof) shall for any reason be held invalid, illegal, or unenforceable in any respect, such a determination shall not affect the validity, legality, applicability, or enforceability of this Agreement as a whole, or of any other provision, term, or covenant contained in this Agreement, and, in such instances, this Agreement shall be construed as if such invalid, illegal or unenforceable provision (or part therein) had never been contained in the Agreement.

12. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to choice-of-law or conflicts of law provisions or principles.

13. **Dispute Resolution.** The Parties agree to work in good faith to resolve any dispute, claim, or controversy arising out of or relating to this Settlement Agreement. In the event the

Parties' good faith efforts are unsuccessful, the Parties agree that any dispute, claim or controversy of any nature arising out of or relating to this Settlement Agreement, including but not limited to any claim based on contract, tort or statute, shall be submitted to final and binding arbitration in Chicago, Illinois, or another venue as agreed upon by the Parties, and shall proceed before a single arbitrator to be agreed upon by the Parties. The arbitration shall be administered by JAMS Dispute Resolution ("JAMS") in accordance with its Comprehensive Arbitration Rules and Procedures. The costs of the arbitration shall be borne equally by the Parties at the time payment is due, except that the arbitrator may decide whether any party should be required to reimburse any other party or parties of its portion of the costs. The Parties shall each bear their own attorneys' fees. The Parties agree to take all steps necessary to ensure the confidentiality of the proceedings and the confidentiality of the arbitrator's award will be added to the basic rule requirements. The arbitrator's award shall be final and binding. Judgment on the arbitrator's award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

14. Waiver. No claim or right arising out of a breach or default under this Agreement can be discharged by a waiver of that claim or right unless the waiver is in writing signed by the Party hereto to be bound by such waiver. A waiver by any party of a breach or default by the other Party of any provision(s) of this Agreement shall not be deemed a continuing waiver or a waiver of future compliance with such provisions or any other provisions in this Agreement, and such provisions shall remain in full force and effect.

15. Construction. The Parties acknowledge and agree that this Agreement was drafted by the Parties collectively, that it is the product of arms-length settlement negotiations between the Parties through their respective counsel, and that the Parties have reviewed and accepted the Agreement. Any controversy regarding the construction of this Agreement shall be decided neutrally, in light of its conciliatory purpose, and without regard to the events of authorship or negotiation. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto after thorough consultation with their legal counsel. The Parties have had a reasonable and sufficient opportunity to consult with attorneys, tax advisors, and other professionals of their choosing prior to executing this Agreement, and are voluntarily, knowingly, unconditionally, and freely entering into this Agreement after such consultations. The headings at the beginning of each numbered paragraph of this Agreement are for reference only and do not limit or summarize the contents of each such paragraph, nor are the headings to be used in construing this Agreement or in ascertaining the intentions of the Parties. This Agreement, including its release provisions, shall be binding upon, enforceable by, and inure to the benefit of the Parties and their respective assigns, heirs, distributees, devisees, legatees, successors, executors, trustees, personal representatives, and administrators.

16. Authority To Bind. Each Party represents, warrants, and agrees that it has read this Agreement, understands its contents, and has executed it voluntarily and without duress from any person or entity, has duly and validly authorized the execution and delivery of this Agreement, and has full power and authority to enter into and to perform all actions or transactions contemplated by this Agreement.

17. Execution and Counterparts. This Agreement may be signed using one or more counterparts. The Parties stipulate that facsimile signature pages or signature pages emailed in PDF format shall be acceptable and deemed originals. The several executed copies together shall be considered an original and shall constitute a single contract binding upon the Parties.

IN WITNESS WHEREOF, the Parties hereto, each by persons duly authorized to sign and execute on their behalf, have caused the Settlement Agreement and Mutual Release to be executed as of the day and year first written above.

Robert L. Breuder _____ Date: November ____, 2022	Illinois Community College Risk Management Consortium _____ By (print): _____ Its: _____ Date: November ____, 2022
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EXHIBIT A
(CONFIDENTIAL)

EXHIBIT B

(Form of Stipulation of Dismissal)

EXHIBIT C

(Form of Release Between College and Breuder)

EXHIBIT D

(Form of Release between Breuder and Individual Defendants)