

RESOLUTION 2018-12

A RESOLUTION SETTING FORTH THE POLICY OF THE UNIVERSITY PARK RECREATION DISTRICT BOARD OF SUPERVISORS WITH REGARD TO THE SUPPORT AND LEGAL DEFENSE OF THE BOARD OF SUPERVISORS AND DISTRICT OFFICERS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of Supervisors ("Board") and the officers of the University Park Recreation District ("District") are constantly presented with the necessity for making decisions regarding various phases of District policy and management; and

WHEREAS, it is absolutely essential to the effective operation of the District that such decisions be made in an environment where the threat of personal liability for the Board and its officers is maintained at a minimum; and

WHEREAS, the Board wishes to formalize a policy with regard to the support and legal protection of the Board and its officers so as to reduce the threat of personal liability to such individuals and allow for an effective decision-making environment.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE UNIVERSITY PARK RECREATIONDISTRICT THAT:

1. As set forth in this Resolution, the District, in accordance with Florida law, agrees that the following Board members and officers of the District shall be provided the benefit of the indemnification, support and legal defense provisions provided in this Resolution:

- a. All members of the Board of Supervisors; and
- b. The District Manager, Secretary and Assistant Secretaries, Treasurer and Assistant Treasurers, and other District officers.

2. As set forth in this Resolution and in accordance with Sections 111.07 and 768.28, *Florida Statutes*, the District hereby agrees to provide legal representation to defend any and all civil actions, including federal civil rights and other federal civil claims, arising from a complaint for damages or injuries suffered as a result of any action or omission of action of all Board members and officers, present or former, arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the Board member or officer acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil actions includes, but is not limited to, any civil rights lawsuit seeking relief personally against any Board member or officer for an act or omission under color of state law, custom or usage, wherein it is alleged that such Board member or officer has

deprived another person of rights secured under the Federal Constitution or laws, including, by way of example, actions under 42 U.S.C. § 1983 or other federal statute. The District hereby further agrees to provide legal representation to defend against any other litigation arising against a Board member or officer from the performance of their official duties while serving a public purpose, including civil, administrative or criminal actions as permitted by law. By these provisions, the District does not waive any immunity from liability or limited waiver of such immunity as granted under Florida law. Rather, the District is stating that to the extent the State does not through its laws protect the Board and its officers from liability, the District is committed to doing so to the extent described in this Resolution and as permitted by law.

3. The District may insure itself in order to cover all reasonable costs and fees directly arising out of or in connection with any legal claim or suit that directly results from a decision or act made by a Board member or officer while performing the duties and functions of his or her position.

4. This Resolution is intended to evidence the District's support of Board members and officers who perform acts and render decisions in the good faith performance of their duties and functions. The District will neither support nor defend those actions or omissions committed by an individual outside the scope of his or her office or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. By adoption of this Resolution, the District Board member(s) and/or officer(s) in question are each presumed to have acted within the scope of his or her office and are presumed to be acting in good faith, without a malicious purpose and not in a manner exhibiting wanton and willful disregard of human rights, safety or property. The District's Board of Supervisors may overcome this presumption only by unanimous vote of those participating and voting, in accordance with Section 7 herein.

5. In the event that the District has expended funds to provide an attorney to defend a Board member or officer who is found to be personally liable by virtue of actions outside the scope of his or her employment or function, or is found to have acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, the individual shall be required to reimburse the District for funds so expended. The District may recover such funds in a civil action against such individual.

6. The District agrees to pay any final judgment, including damages, fines, penalties or other damages, costs, and attorney's fees and costs, arising from any complaint for damages or injuries suffered as a result of any action or omission of action of any Board member or officer as described in Section 111.07, *Florida Statutes*. If the action arises under Section 768.28, *Florida Statutes*, as a tort claim, the limitations and provisions of that section governing payment shall apply. If the action is a civil rights action arising under 42 U.S.C. § 1983, or similar federal statutes, payment for the full amount of judgment may be made unless the individual has been determined in the final judgment to have caused the harm intentionally. The District agrees to pay any compromise or

settlement of any claim or litigation described in this paragraph, provided, however, that the District determines such compromise or settlement to be in the District's best interest.

7. To rebut the presumption of the automatic payment of judgments or provision of legal representation pursuant to this Resolution, at least one of the following determinations shall be made by a unanimous decision of the District's Board of Supervisors participating and voting:

- a. The actions of the Board member and/or officer were outside the scope of his or her duties and authority; or
- b. The acts or omissions of the Board member and/or officer constituted bad faith, malicious purpose, intentional infliction of harm or were done in a manner exhibiting wanton and willful disregard of human rights, safety or property; or
- c. The Board member and/or officer received financial profit or advantage to which he or she was not legally entitled.

8. To ensure the provision of legal representation pursuant to this Resolution, the following must be met:

- a. A copy of the summons, complaint, notice, demand letter or other document or pleading in the action, or a letter setting forth the substance of any claim or complaint, must be delivered to the District Chairman, Vice Chairman, District Manager or District Attorney within fourteen (14) calendar days after actual receipt of any such document together with a specific request in writing that the District defend or provide representation for the Board member and/or officer; and
- b. The Board member and/or officer must cooperate continuously and fully with the District in the defense of the action.

9. Any indemnification, legal defense or other protection provided pursuant to this representation shall not extend to:

- a. Consulting or other outside professional or business activities for which the Board member and/or officer received financial or other material compensation, which are outside the scope of his or her District duties and authority; and
- b. Any independent contractor for whom defense or indemnification is not authorized pursuant to Section 1(b) of this Resolution, unless the Board votes to authorize such indemnification, legal defense, or other protection; and

- c. Any fine, penalty or other punishment imposed as a result of conviction for a criminal offense, and any legal fees and costs incurred to defend criminal prosecution in which a conviction is obtained; and
- d. Any indemnification or defense prohibited by law.

10. In the event legal representation or defense is provided pursuant to this Resolution, the Board member and/or officer may either:

- a. Retain legal counsel appointed by the District, in which case legal counsel shall be paid directly by the District; or
- b. Retain legal counsel chosen by the Board member and/or officer, in which case the District shall have the right to:
 - i. Approve, in advance, any agreement for legal fees or disbursements; and
 - ii. Pay all or part of the legal fees, costs and other disbursements and to set a maximum for legal fees, costs and other disbursements; and
 - iii. Direct the defense and settle or compromise the action or claim; and
 - iv. Reduce or offset any monies that may be payable by the District by any court costs or attorneys' fees awarded to the Board member or officer.

11. The benefits of the policy adopted in this Resolution shall not enlarge the rights that would have been available to any third-party plaintiff or claimant in the absence of this policy.

12. To the extent permitted by law, this policy shall inure to the benefit of the heirs, personal representatives and estate of the Board member and/or officer.

13. The District reserves the right to change, modify or withdraw this Resolution in its sole discretion, except as to actions, demand or other claims based on acts or omissions that occurred before the effective change, modification or withdrawal of this Resolution.

14. This Resolution shall be effective as of its adoption on the date listed below and shall apply to any acts or omissions occurring after that date.

PASSED AND ADOPTED this 26th day of September, 2018.

ATTEST:

UNIVERSITY PARK

RECREATION DISTRICT

Carol J. Davis
Secretary/Assistant Secretary

Robert L. Wood
Chairman