

RESOLUTION 2005-11

**RESOLUTION SETTING FORTH THE POLICY OF THE
MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT BOARD
OF SUPERVISORS WITH REGARD TO THE SUPPORT AND
LEGAL DEFENSE OF THE BOARD OF SUPERVISORS**

WHEREAS, the Board of Supervisors of the Moody River Estates Community Development District ("District") is constantly presented with the necessity for making decisions regarding various phases of District policy and management; and

WHEREAS, it is 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 of Supervisors and its officers is maintained at a minimum; and

WHEREAS, the Board of Supervisors wishes to formalize a policy with regard to the support and legal protection of the Board of Supervisors and its officers so as to reduce the threat of personal liability to such individuals.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF SUPERVISORS
OF THE DISTRICT, 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) Independent contractors, agents or persons shall not be so indemnified with respect to service to the District except to the extent permitted by law and authorized by a majority vote of the members of the District's Board of Supervisors.

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 act or omission of action of any of the above-listed Board members of the District, 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 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 the any of the above-listed Board members for an act or omission under color of state law, custom or usage, wherein it is alleged that such officer or agent 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 its supervisors and officers 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 members of the Board and its officers from liability, it is committed to doing so to the extent described in this resolution.

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 which directly results from a decision or act made by a Board member 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 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/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. In the event that the District has expended funds to provide an attorney to defend a Board member 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 disregard for 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.

5. The District agrees to pay any final judgment, including damages including 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 supervisor or officer as described in section 1 of this Resolution, in any civil action or civil rights law suit 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 interests.

6. Payment of judgments or provision of legal representation pursuant to this Resolution is conditioned on the following as determined in the sole discretion of the District:

- (a) The actions of the supervisor were within the scope of his or her duties and authority; and

- (b) The acts or omissions of the supervisor did not constitute bad faith, malicious purpose, intentional infliction of harm, or were not done in a manner exhibiting wanton and willful disregard of human rights, safety, or property; and
- (c) The supervisors did not receive any financial profit or advantage to which he or she was not legally entitled; and
- (d) 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 was 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 supervisor; and
- (e) The supervisor cooperates continuously and fully with the District in the defense of the action.

7. 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 supervisor 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; 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.
- (d) any indemnification or defense prohibited by law.

8. In the event legal representation or defense is provided pursuant to this Resolution, the supervisor 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 supervisor, 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

Any monies that may be payable by the District shall be reduced or offset by any court costs or attorneys fees awarded to the supervisor.

9. 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.

10. To the extent permitted by law, this policy shall inure to the benefit of the heirs, personal representatives, and estate of the supervisor.

11. 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 which occurred before the effective change, modification or withdrawal of this Resolution.

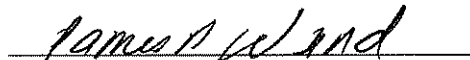
12. This Resolution shall be effective as of its adoption on the date listed below and shall apply to any acts or omissions occurring after that date.

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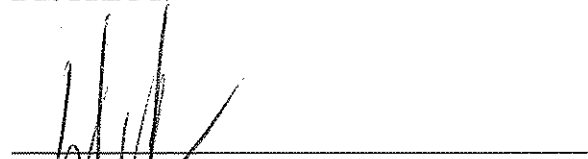
PASSED AND ADOPTED this 14th day of December, 2004.

ATTEST:

**BOARD OF SUPERVISORS OF THE
MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT
DISTRICT**



James P. Ward
Secretary



Scott Clark
Vice Chairman