




August 20, 2012

MEMORANDUM

TO: District Board of Trustees

FROM: Jim Murdaugh, President 

SUBJECT: Indemnification of TCC Foundation Board Members, Officers and Employees

Item Description

Beginning in 2001, TCC Housing owned The Orchards apartment complex, which served TCC students. In July, 2004, an agreement was entered into with Network Multi-Family Security Company to provide security services for The Orchards. In July, 2004, Marjorie Turnbull served as the Operating Officer for TCC Housing and also as the Executive Director of the TCC Foundation. The agreement stated incorrectly that the TCC Foundation was a party to the agreement. In error, Marjorie Turnbull signed the agreement. Network Multi-Family Security sued the TCC Foundation for breach of contract in 2009 because The Orchards was sold and payments to Network Security ceased. TCC Housing was later added as a Defendant, however was removed on July 31, 2012. In the event that Marjorie Turnbull or any TCC Foundation Board member(s), officers, or employees are sued in connection with this lawsuit, this item seeks to have the College indemnify the Board member(s), officer, or employee for any damages, expenses, and costs of litigation.

Overview and Background

Please see attached overview and background.

Past Actions by the Board

There have been no prior actions by the Board.

Funding/Financial Implications

In the event that a TCC Foundation Board member, officer, or employee is found liable, the College or the TCC Foundation will be responsible to pay any damages, interest, costs and expenses. The security company is seeking \$140,000, plus interest, from the TCC Foundation.

Staff Resource

Teresa Smith

Recommended Action

That the Board of Trustees approve a resolution (attached) to indemnify any TCC Foundation Board member, officer, or employee for liability resulting in damages, costs, interest, and expense arising from his/her duties with the TCC Foundation with regard to the issues raised in this lawsuit.

Overview and Background

Indemnification of TCC Foundation and TCC Housing Board Members, Officers, and Employees

For a number of years, the TCC Foundation owned an apartment complex known as The Orchards. The Orchards served as housing for TCC students including athletes.

In 1999, TCC Foundation entered into an agreement with Network Multi-Family Security Corp. for the provision of security monitoring services as well as installation of some security equipment.

In 2001, TCC Foundation assigned all of its interest in The Orchards to TCC Housing. The agreement with the security company continued.

Because of the addition of some security monitoring equipment, in July, 2004 a new agreement was prepared. Because TCC Foundation had no interest in The Orchards since 2001, it was TCC Housing's intent to enter the agreement with the security company. At that time, Marjorie Turnbull was serving as both the Executive Director of TCC Foundation and the Operating Officer for TCC Housing.

TCC Foundation, and not TCC Housing, was identified in the agreement as the party contracting for services from the security company. This was an error. Marjorie Turnbull signed the agreement believing it to be for TCC Housing.

At no time did TCC Foundation pay for security services under the 2004 agreement. TCC Housing paid for the security services through the property manager, Coastal Properties. From 2004 to 2006, no significant issues arose with regard to the agreement.

In 2006, TCC Housing decided to sell The Orchards. Portofino Villas, LLC, a.k.a. Student Housing Solutions, purchased the property in September, 2006. After apparently doing its due diligence, Portofino Villas notified the security company in late 2006 that it would not be utilizing the security company's services. In January, 2007, the security company replied and agreed that, in essence, the contract was terminated. Portofino Villas never made a payment to the security company for any services. TCC Housing made a final payment to the security company in October, 2006. TCC Housing made all of its payments when due.

In 2009, the security company filed a lawsuit against TCC Foundation and Portofino Villas with the primary claims being for breach of contract against the Foundation and unjust enrichment against Portofino. Network Security asserted that the agreement ran with the property and TCC Foundation was obligated to make payments even after the property was sold, and by failing to make payments after 2006, TCC Foundation breached the agreement. Portofino Villas was dismissed from the lawsuit in 2011 following agreement by the security company and Portofino Villas.

All along, TCC Housing has advised the security company that TCC Foundation is not a proper party Defendant because it had no interest in The Orchards at any time during the contract term. The security company amended its complaint in 2011 and added TCC Housing as a Defendant also under a breach of contract theory. The two direct support organizations attempted to have TCC Foundation dismissed because of the error in the agreement. The Court denied the Motion to Dismiss and the case continues.

In the event that any TCC Foundation or TCC Housing Board member, officer, or employee becomes a Defendant in this lawsuit, and if a judgment is rendered against the Board member, officer, or employee, it is requested that this Board agree to indemnify the Board member, officer, or employee.

Indemnification will include responsibility for payment of any damages, interest, judgments, expenses and costs, directed at or incurred by the Board member, officer, or employee as a consequence of his/her acts or omissions while acting for the appropriate direct support organization (DSO), with regard to this litigation.

Resolution

Be it resolved, that every person who has been a Board member, officer or employee of TCC Foundation or TCC Housing shall be indemnified and held harmless by TCC from and against all costs and expenses which may be imposed upon or reasonably incurred by him/her in connection with or arising out of any claim, action, suit, or proceeding brought by Network Multi-Family Security Company in which he/she may be involved by reason of his being or having been a Board member, officer, or employee of TCC Housing or TCC Foundation, whether or not he/she continues to be a Board member, officer, or employee at the time such costs and expenses are imposed or incurred.