

Articles of Incorporation
of

FILED

The Friends of Carrollwood Community Center, Inc. 02 NOV - 1 AM 8: 25
a Florida Nonprofit Corporation

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned incorporators, in order to form a nonprofit corporation under the laws of the state of Florida, adopt the following Articles of Incorporation:

- Name** The name of this corporation is the Friends of Carrollwood Community Center, Inc. (herein, the "Corporation").
- Principal Office** The principal place of business and mailing address of the Corporation shall be:
11380 Brookgreen Drive
Tampa, FL 33624
- IRC Section 501(c)(3) Purposes** This corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code.
- Specific Purpose** The specific objectives and purposes of this Corporation shall be:
To advise and assist the Hillsborough County, Parks and Recreation Department to operate the Carrollwood Community Center by: providing volunteers; raising and disbursing funds; supporting its programs, classes, and other activities; and by generally promoting live theatre, art, music and continuing education for people of all ages.
- Duration** The period of duration of the Corporation is perpetual.
- Directors** The affairs of the Corporation shall be managed by a Board of Directors of not less than three persons, the number of which shall be fixed as set forth in the Bylaws of the Corporation. The Directors shall be elected annually by the Directors at a meeting prior to the annual meeting as provided in the Bylaws.
- Registered Agent** The name and address of the registered agent of the Corporation are:
Thomas A. Jones
11380 Brookgreen Drive
Tampa, FL 33624
- Bylaws** The Directors of the Corporation shall adopt Bylaws for the conduct of its business and the carrying out of its purposes as it may deem necessary from time to time. Upon proper notice the Bylaws may be amended, altered or rescinded by approval of the majority, meaning 51% of the complete (not quorum) Board of Directors at any regular meeting or any special meeting called for that purpose.

Dissolution Upon the dissolution of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose.

Limitations On Activities No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code), and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Articles.

Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (2) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code, the Corporation 1) shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Internal Revenue Code; 2) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; 3) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; 4) shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Internal Revenue Code; and 5) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

Indemnification Of Directors Any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether or not brought by or in the right of the Corporation, by reason of the fact that he or she is or was a director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall be indemnified by the Corporation, unless the conduct of such person is finally adjudged to have been grossly negligent or to constitute willful misconduct, against expenses (including attorneys' fee), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, including any appeal thereof.

Expenses (including attorneys' fee) incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation as authorized in this Article.

Indemnification hereunder shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors, and administrators of such person. The foregoing rights of indemnification shall not be deemed exclusive of any other rights to which any such person may otherwise be entitled apart from this Article.

The Board of Directors may authorize the purchase and maintenance of insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article.

Conflict
Of Interest

No contract or other transaction between this Corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of the directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

- The fact of such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
- The contract or transaction is fair and reasonable as to this Corporation at the time it is authorized by the Board or a committee.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

Incorporators

The names and addresses of the incorporators of the Corporation are:

Kate Davis
4215 Winding Willow Dr.
Tampa, FL 33704

Thomas A. Jones
4508 Viewridge Way
Tampa, FL 33624

Ken Hoyt
4610 Westford Circle
Tampa, FL 33624

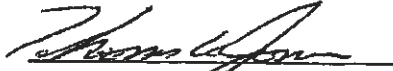
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SECRETARY OF STATE
TALLahassee, FLORIDA

IN WITNESS WHEREOF, the undersigned executed these Articles of Incorporation this October 30, 2002.



Kate Davis
Incorporator



Thomas A. Jones
Incorporator



Ken Hoyt
Incorporator

**State Of Florida
County Of Hillsborough**

The foregoing Articles of Incorporation were acknowledged before me this 30th day of October, 2002, by Kate Davis, Thomas A. Jones, and Ken Hoyt who are personally known to me.



Adria Dickey
MY COMMISSION # DD031333 EXPIRES
April 11, 2005
BONDED THRU TROY FARM INSURANCE, INC



Adria Dickey
Notary Public - State of Florida

**Acceptance
Of Appointment**

Having been named as registered agent and to accept service of process for the above named corporation at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I affirm that I am familiar with and accept the obligations of my position as registered agent.



Thomas A. Jones
Registered Agent

**AGREEMENT BETWEEN
HILLSBOROUGH COUNTY
AND
THE FRIENDS OF THE CARROLLWOOD CULTURAL CENTER
FOR THE MANAGEMENT & OPERATION OF
THE CARROLLWOOD CULTURAL CENTER**

THIS AGREEMENT ("Agreement") is made and entered into by and between the **Board of County Commissioners of Hillsborough County, Florida** (the "County"), a political subdivision of the State of Florida on behalf of the Hillsborough County Parks, Recreation and Conservation Department (the "Parks Department"), and the **Friends of the Carrollwood Cultural Center** (the "Friends"), a 501(c)(3) tax exempt Florida not-for-profit corporation.

Recitals:

WHEREAS, the Carrollwood Cultural Center (the "CCC") is a County-owned facility located at 13335 Casey Road, Tampa, Florida 33618, consisting of a main building, annex facility and surrounding grounds;

WHEREAS, the purpose of the CCC is to provide cultural and educational activities and opportunities for the public, in keeping with the County's cultural programming for all citizens and visitors;

WHEREAS, the County operates, maintains and promotes the CCC through the Parks Department; and

WHEREAS, the County and Friends wish to enter into an agreement providing for the management, operation and promotion of the CCC by Friends.

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

Agreement:

1. Term and Termination

- 1.1 **Term:** This Agreement will commence on the Effective Date and will be for an initial term of five (5) years (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional five (5) year terms unless and until the Agreement is terminated by either party. The Initial Term and any subsequent renewal terms shall collectively be referred to as the "Term" of this Agreement.

- 1.2 Termination: Either party may terminate this Agreement with or without cause upon ninety (90) days prior written notice to the other party.
- 1.3 Removal of Property: Upon termination of this Agreement, Friends shall have thirty (30) business days from the effective date of termination to remove any and all non-fixture property belonging to Friends from the CCC and vacate the CCC. Friends shall leave the CCC and all property belonging to the County in clean and good condition, less normal wear and tear.

2. Consideration

2.1 Management Fees:

(a) Years One (1) and Two (2) - For the first and second years of the Initial Term of this Agreement, the County will pay the Friends a fee in the amount of Three Hundred Eighty Thousand Dollars (\$380,000.00) for the management, operation and promotion of the CCC and the CCC events and activities (the "Management Fee(s)").

Year One shall begin on the Effective Date of this Agreement and end nine (9) months thereafter. The Management Fee paid to Friends for Year One shall be for the purpose of off-setting any start up costs associated with the management and operation of the CCC and for the initial marketing and promotion of the CCC by Friends. The first payment for Year One under this Agreement shall be due ten (10) days from the Effective Date of this Agreement and shall total One Hundred Ninety Thousand Dollars (\$190,000.00). The remaining payments due for Year One shall be made in two (2) equal quarterly installments (every three months) of Ninety Five Thousand Dollars (\$95,000.00).

The Management Fee paid to Friends for Year Two shall be payable on a quarterly basis (every three months) in equal installments of Ninety Five Thousand Dollars (\$95,000.00) plus any applicable Market Equity Increases (defined below).

** Year One of this Agreement shall be the only year that runs for nine (9) months. All the remaining years under this Agreement shall be twelve (12) month years.

(b) Years Three (3), Four (4) and Five (5) - For the third, fourth and fifth years of the Initial Term of this Agreement, the Management Fees shall be reduced and off-set in accordance with the revenue sharing arrangements set forth in Subsections 2.3(b), (c) and (d) below. Such Management Fees shall be payable on a quarterly basis (every three months) in equal installments plus any applicable Market Equity Increases (defined below).

2.2 Market Equity Increases: For years two (2) through five (5) of the Initial Term of this Agreement, the Management Fee shall be increased per year at the rate equal to the market

equity/cost of living increase received by the County's departments ("Market Equity Increase(s)").

- 2.3 Revenue Sharing: In addition to the consideration set forth in Section 2.1 above, the Friends will receive additional consideration in the form of a revenue-sharing arrangement based on revenue generated by any classes, performance, events, and activities held at the CCC and revenues generated by rental of the CCC facilities to the public/third parties through the Friends.

The following is the revenue-sharing arrangement for the Initial Term of this Agreement. For the purpose of this Agreement, "Direct Net Revenue" shall be defined as the gross revenue generated by the applicable event, activity, class, performance and rental less any expenses directly related to such event, activity, class, performance or rental (which may include, but is not limited to, instructor expenses, performer/artist expenses, special security expenses, etc.). In addition to the above-mentioned direct expenses, the Friends will deduct from the Direct Net Revenue an allowance for administrative expenses equal to Fifteen Percent (15%) of the Friends' employee compensation plus administrative expenses incurred by the CCC for the applicable period, plus the entire amount of any cash contributions to the CCC's operating income in the form of outright gifts, grants and scholarship funds raised by the Friends in its role as a support organization for the CCC, but excluding any portion of monies/funds derived from the Naming Rights set forth in Section 10 of this Agreement (the foregoing shall be referred to collectively as the "Adjusted Net Revenue"). The Friends will then make the resulting distribution of the Adjusted Net Revenue as follows:

- (a) Year One (1) and Year Two (2) – For the first and second years of the Initial Term of this Agreement, the Friends shall retain One Hundred Percent (100%) of the Adjusted Net Revenue generated by the Friends from any events, activities, classes, performances and rentals of the CCC. The purpose of the Friends's retention of 100% of the Adjusted Net Revenue is to partially off-set the start-up costs related to the marketing and promotion of the CCC by the Friends.
- (b) Year Three (3) – For the third year of the Initial Term of this Agreement, the Friends shall retain One Hundred Percent (100%) of the Adjusted Net Revenue generated in the third year by the Friends from any events, activities, classes, performances and rentals of the CCC. The Management Fee for the third year of the Initial Term shall be reduced by the amount of Forty Percent (40%) of the Adjusted Net Revenue generated in the second year of the Initial Term of this Agreement.
- (c) Year Four (4) – For the fourth year of the Initial Term of this Agreement, the Friends shall retain One Hundred Percent (100%) of the Adjusted Net Revenue generated in the fourth year by the Friends from any events, activities, classes, performances and rentals of the CCC. The Management Fee for the fourth year of the Initial Term shall be reduced

by the amount of Fifty Percent (50%) of the Adjusted Net Revenue generated in the third year of the Initial Term of this Agreement.

(d) Year Five (5) - For the fifth year of the Initial Term of this Agreement, the Friends shall retain One Hundred Percent (100%) of the Adjusted Net Revenue generated in the fifth year by the Friends from any events, activities, classes, performances and rentals of the CCC. The Management Fee for the fifth year of the Initial Term shall be reduced by the amount of Fifty Percent (50%) of the Adjusted Net Revenue generated in the fourth year of the Initial Term of this Agreement.

2.4 Management Fees and Revenue Sharing Arrangements for Subsequent Renewal Terms: The Management Fees and revenue-sharing arrangement for any subsequent renewal terms of this Agreement shall be agreed to in writing between the Friends and the Director of the Parks Department prior to the commencement of such renewal terms.

3. Management and Operation of the CCC

3.1 General: The Friends will be responsible for the day-to-day management and operation of the CCC and shall work in coordination with the Director of the Parks Department or his/her designee as needed.

3.2 Employment of Needed Personnel: The Friends will employ all needed CCC personnel, including, but not limited to, the CCC Manager, artists, performers, independent contractors, and other staff.

3.3 Advice and Planning: The County shall work with the Friends in developing proposed policies, activities, improvements and long-range planning for the CCC. The Friends shall also advise and inform the Parks Department and/or the County on CCC-related matters when requested to do so. Such policies, activities, improvements and planning must be in keeping with the County's cultural programming and shall be subject to the prior written approval of the Director of the Parks Department and/or the Hillsborough County Board of County Commissioners, as appropriate, and in accordance with the County's policies.

3.4 Events and Activities:

(a) The Friends shall be responsible for developing, procuring, implementing and managing programs, events, activities, classes and performances to be held at the CCC with emphasis on the County's cultural programming ("Events and Activities").

(b) The Friends shall have the discretion to determine the fees and rates charged for such Events and Activities on the condition that such fees/rates are reasonable and market-driven. In the event it is determined that such fees/rates are not reasonable and market

driven, then the Director of the Parks Department shall have the right to determine such fees/rates.

- (c) The Friends shall retain the revenues generated from the Events and Activities in accordance with the revenue sharing arrangement set forth in Section 2 of this Agreement.

3.5 Rental of CCC Facilities to Public/Third Parties:

- (a) The Friends shall be responsible for procuring and managing the rental/use of the CCC facilities by members of the public and/or third parties for use of the CCC for appropriate and approved events and activities in order to develop the CCC as a community resource and to emphasize the County's cultural programming.
- (b) The Friends shall use County-approved Use Agreements/Rental Agreements in procuring such rentals/use commitments of the CCC.
- (c) The Friends shall have the discretion to determine the fees and rates charged for such rentals/use of the CCC facilities on the condition that such fees/rates are reasonable and market-driven. In the event it is determined that such fees/rates are not reasonable and market driven, then the Director of the Parks Department shall have the right to determine such fees/rates.
- (d) The Friends shall retain the revenues generated from the rentals of the CCC facilities in accordance with the revenue sharing arrangement set forth in Section 2 of this Agreement.
- (e) Any use and/or rental of the CCC shall be in compliance with the County's policies, regulations and all applicable laws.

3.6 The CCC Manager:

- (a) The CCC Manager will be selected and employed by Friends and will be responsible for the day-to-day operations of the CCC and accountable to the Friends' Board of Directors.
- (b) The CCC Manager may, from time to time, receive advice and recommendations from the County in developing proposed activities, improvements, and planning for the CCC, and will use his/her best efforts to timely provide the County with budgets,

financial reports, policies, and any other information relating to the CCC which may be helpful in such planning.

- (c) The CCC Manager will use his/her best efforts to maintain regular, ongoing communication with the Director of the Parks Department; and may, when requested to do so, attend Board of County Commissioner meetings and any other meeting held by the County and/or the Parks Department.

3.7 Utilities: The County shall provide heat, electricity, water service and humidity control to meet adequate interior building conditions for the CCC and shall be responsible for the costs associated with such utility services.

3.8 Other Operational Expenses: The Friends shall be responsible for the CCC's other operational expenses, including, but not limited to, expenses of postage, telephones, cable, collection management, staff assistance and office management.

3.9 Custodial and Janitorial Maintenance: The Friends shall provide routine day-to-day custodial and janitorial maintenance of the CCC buildings and facilities.

3.10 Maintenance and Repairs of CCC Buildings, Grounds and Fixtures:

- (a) The County shall maintain all heating, ventilating, air-conditioning equipment and facilities for supplying heat, light, power, hot and cold water services to the CCC, and all drainage and waste pipes or facilities leading from the CCC, and those portions of all utility lines supplying said premises which are located outside the premises, unless such utility lines are maintained or repaired by utility companies.
- (b) The County shall be responsible for any repairs needed for the CCC structures/buildings and fixtures.
- (c) The County shall be responsible for all maintenance of the grounds on all County-owned property adjacent to the CCC.
- (d) The Friends shall notify the County, in writing, of any needed maintenance and/or repairs.
- (e) The County will, to the extent possible, schedule maintenance and repairs so as not to interfere with the CCC's operations and events.
- (f) The County shall not be liable for any damage arising from the County's failure to perform said maintenance and/or repairs.

3.11 Security: The Friends shall provide reasonable security for the protection of the CCC buildings, facilities and grounds, and shall be responsible for any special security needs associated with any Events and Activities held at the CCC.

3.12 Miscellaneous:

- (a) The Friends will use its best efforts to maintain a diverse pool of Board members, volunteers and employees, who can provide professional expertise specialized knowledge, and community experience in furtherance of the purposes of the CCC.
- (b) The Friends shall ensure that all employees, members and/or volunteers are attired in clothing appropriate for a wholesome family atmosphere while at the CCC facility.
- (c) The Friends shall use its best efforts to ensure the cultural integrity of all Events and Activities held at the CCC.
- (d) No event or activity shall be scheduled where there is activity using fire, chemicals or other substance that may in any way be deemed hazardous or dangerous without first obtaining the written permission of the Director of the Parks Department. Any hazardous chemicals or other substances that are required to be stored at the CCC, shall be properly handled and stored in accordance with all applicable federal, state and local laws and regulations. The Friends shall not permit the generation of or disposal of any hazardous substance or toxic materials in or on the CCC premises and/or grounds.
- (e) The CCC will not be used for any purpose outside the scope of the County's lawful purposes. All CCC operations will be conducted in accordance with the County's general policies, ordinances, regulations and all applicable federal, state and local laws.
- (f) The Friends shall not discriminate on the basis of color, race, national origin, age, gender, religion, handicap or martial status in its management and operation of the CCC; and shall not discriminate, in any manner whatsoever, against patrons of the CCC on the basis of race, color, national origin, religion, sex, age, handicap or marital status.
- (g) The Friends shall obtain all licenses and permits necessary for its management and operation of the CCC.

4. Marketing/Promotion of the CCC

The Friends shall aggressively market and promote the CCC throughout Hillsborough County and the State of Florida in keeping with the County's cultural programming.

5. Use of the CCC

- 5.1 Use by the County: The County shall be entitled to use of the CCC facilities, including the main facility, the annex facility and the CCC grounds, for meetings, events and activities hosted the County, the County's departments and/or the Board of County Commissioners. Such use shall be at no cost to the County, with the exception of any special or unique expenses associated with such use (e.g. special security needs, etc.). The County shall be entitled to such use of the CCC whenever there are no Events and Activities scheduled at the CCC facilities that the County wishes to use, and whenever such use does not conflict with any scheduled activities of the CCC.
- 5.2 Use by the Friends:
- (a) The Friends shall be entitled to use the CCC facilities, including the main facility, the annex facility and the CCC grounds, for various Events and Activities as set forth in this Agreement, and for the rental/use of such facilities to the public and/or third parties as set forth in this Agreement.
 - (b) The Friends shall be entitled to use the CCC Annex for its general and administrative office(s). Such office(s) shall be used solely for the purpose of managing, operating and supporting the CCC, including fundraising, housing a volunteer center, and any related use consistent with the Friends' purpose of supporting the CCC. Such use shall be at no cost to the Friends.
 - (c) The Friends may use the storage rooms or similar facilities within the CCC for the storage of equipment and supplies directly related to its management and operation of the CCC.
- 5.3 Scheduling of Events and Activities: The Friends shall generate and maintain an annual calendar listing the schedule of events, activities and programs to be held at the CCC by the County, the Friends and any other organizations (the "Annual Calendar"). Such Annual Calendar shall also include dates of rentals/use of the CCC by the public and/or third parties. The Friends shall update the Annual Calendar, if necessary, every other month, and shall provide the County with such updated Annual Calendar within five (5) business days of the update.

6. Right of Entry by the County

The County's authorized representatives shall have the right to enter the CCC premises and grounds at any time so long as the County's presence is not disruptive to the normal operations of the CCC.

7. Record Keeping and Audit Rights

- 7.1 **Record Keeping:** The Friends shall keep current and accurate records related to its management and operation of the CCC. Such records shall include, but are not limited to, expenses and costs associated with the management and operation of the CCC, documentation of the gross revenue, Direct Net Revenue and Adjusted Net Revenue generated by the Friends related to the Friends' operation of the CCC and any Events and Activities held at the CCC and/or for the benefit of the CCC, any other revenues generated from the Friends' operation of the CCC, and any applicable taxes. The Friends shall retain such records for at least five (5) years after the expiration or termination of this Agreement.
- 7.2 **Annual Reports:** Within Ninety (90) days of the end of each applicable year during the Term of this Agreement, the Friends shall furnish the County with an annual report showing the following: (a) all expenses and costs directly associated with the Friends' management and operation of the CCC for the applicable year, (b) all gross revenue, Direct Net Revenue and Adjusted Net Revenue generated by the Friends related to the Events and Activities held at the CCC and/or for the benefit of the CCC for the applicable year, (c) any other revenues or income generated from the Friends' operation of the CCC for the applicable year, and (d) a budget and estimate of anticipated revenues and expenses/costs related to the Friends' management and operation of the CCC for the upcoming year.
- 7.3 **Annual Independent Audit:** Within Ninety (90) days of the end of each applicable year during the Term of this Agreement, the Friends shall furnish the County with a copy of an annual independent audit of the Friends' financial condition for the applicable year.
- 7.4 **Fiscal Years:** The Friends and the County acknowledge and agree that the County's fiscal year ends on September 30th of each year, while the Friends' fiscal year ends on December 31st of each year. Accordingly, the Friends will submit to the County the Annual Report referenced in Section 7.2 above no later than December 31st of each year and the Annual Audit referenced in Section 7.3 above no later than May 31st of each year.
- 7.5 **Right to Inspect Records and Right to Audit:** During the Term of this Agreement and for five (5) years after the expiration or termination of this Agreement, the County shall have the right to inspect and/or audit the Friends' accounts, books and records relating to its management and operation of the CCC. Such inspection and/or audit may be conducted by County personnel and/or an independent auditor/inspector at the sole discretion of the County.

8. Taxes and Assessments

- 8.1 **The Friends:** The Friends shall be solely responsible for all taxes, fees, assessments and surcharges of any kind based on revenue, profits or sales derived by the Friends through its operation of the CCC. The Friends agrees to pay, when due, all taxes properly assessed against the Friends by the State of Florida and any other governmental entities in connection with the Friends' operation of the CCC.
- 8.2 **The County:** The County shall be solely responsible for the property taxes for the CCC facility/property and any other taxes related to the County's ownership of the CCC.

9. Authority to Enter into Contracts

- 9.1 The Friends acknowledges and agrees that it does not have the authority to enter into contracts on behalf of the County or the CCC, even if such contracts are for the sole benefit of the CCC. The Friends may enter into contracts for the benefit of the CCC only if (a) such contracts are solely between the Friends and the other party(ies) to the contract, and (b) such contracts do not financially or otherwise obligate or commit the County and/or the CCC in any way to the other party(ies) to the contract (other than as provided for herein).
- 9.2 This provision does not prohibit the Friends from entering into contracts on its own behalf, provided that such contracts do not obligate or commit the County or the CCC in any way (other than as provided for herein).
- 9.3 Contracts which obligate or commit the County or the CCC to a third party, whether such commitments/obligations are financial or otherwise, must receive prior approval by the Director of the Parks Department and/or the Board of County Commissioners (with the exception of contracts providing for use/rental of the CCC).

10. Naming Rights to the CCC

Pursuant to the August 16, 2006 approval by the Hillsborough County Board of County Commissioners and the "Naming Rights Policy for the CCC", which is attached hereto as Exhibit "A" and which is incorporated herein by reference, Friends has the authority to:

- (a) oversee the naming/sponsorship process of the CCC on behalf of the County; and
- (b) enter into naming rights agreements for the CCC with third party sponsors subject to the approval process set forth in the "Naming Rights Policy for the CCC."

11. Background Checks

The Friends shall be responsible for conducting or having background checks conducted on all volunteers/employees, instructors and/or presenters who will have direct contact with youth participants or invitees to the CCC. Such background checks shall be at the sole expense of the Friends. The purpose of said background checks is to determine if the volunteer/employee, instructor or presenter has a criminal history that could jeopardize the safety and welfare of any child participant or invitee. In the event a background check reveals a criminal history that could jeopardize the safety and welfare of a child participant/invitee, the Friends shall prohibit such person's entry onto the CCC and such person's participation in any and all of the Events and Activities. The Friends shall also provide the County with a copy of such background check within three (3) business days of the Friends' receipt of the background check along with a written confirmation of the Friends' actions to prevent such person's entry onto the CCC and to prevent such person's contact with youth participants/invitees. The Friends shall provide the County with copies of any and all background checks conducted within five (5) days of the Friends' receipt of such a request from the County.

12. Insurance Requirements

- 12.1 General - During the Term of this Agreement, the Friends agrees that it shall maintain, at its sole cost and expense Commercial General Liability insurance in full force and effect continually, which coverage requirements may be reasonably increased to meet the then - current and actual needs of the County and/or the Parks Department, as requested by the County. The insurance coverage shall be written on standard forms and placed with insurance carriers authorized by the Insurance Department of the State of Florida. The Friends shall fully and timely comply with all requirements and conditions imposed by the insurance policy and shall take no action that could, in any way, limit the County's or any of the additional insured's rights or coverages under said policy. The Friends acknowledges and agrees that it shall have said insurance in place and in effect on the Effective Date of this Agreement.
- 12.2 Policy Limits - Coverage shall be no more restrictive than provided for in the most current edition to the commercial general liability policy filed by the Insurance Service Office. Coverage shall provide a general aggregate limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. All coverage shall include broad form property damage and personal injury liability.
- 12.3 Additional Insureds - The policy for coverage shall include the County and its employees as insureds and shall provide for the separation of the insureds' interests such that the insurance applies separately to each insured against whom a claim is made or suit is brought.

- 12.4 Certificates of Insurance – A certificate of insurance (or a copy of the policy, if requested by the County) shall be furnished to the County no later than five (5) business days after the Effective Date of this Agreement.
- 12.5 Specialty Insurance - Any specialty insurance required for special events or specialized equipment, material and/or art work stored at the CCC shall be provided by the Friends at its sole expense and shall also name the County as an additional insured (an example of such specialty insurance includes, but is not limited to, Liquor Liability Insurance policy, etc.).

13. Property

- 13.1 Improvements and Modifications to the CCC: No improvements and/or modifications/alterations shall be made to the CCC structures, facilities and grounds without the prior written approval of the Director of the Parks Department. All improvements to the CCC shall be the property of the County.
- 13.2 Damage to County Property: The Friends shall not alter or damage the CCC and/or the County's property in any way. In the event that the Friends damages or alters the CCC's grounds, structures, facilities, fixtures or other County property (without the prior written approval of the County), whether willfully or accidentally, the Friends shall immediately and fully repair the damage/alteration or reimburse the County for such repair, at the sole discretion of the County.
- 13.3 Moveable Property of the County: Moveable property purchased by and/or donated to the County will remain the property of the County.
- 13.4 Moveable Property of the Friends: Moveable property purchased by and/or donated to the Friends and used at the CCC will remain the property of the Friends unless such property was purchased or donated for the benefit of the CCC and/or purchased or donated for use at the CCC, in which case, such property shall be the property of the County.
- 13.5 Inventory Records of Property: The County and the Friends will maintain accurate inventory records of their respective CCC property, including the source and nature of funding of the acquisition. Inventory records will be available for inspection at any reasonable time.

14. Indemnification

- 14.1 Indemnification by the Friends: To the extent permitted by law, the Friends shall defend, indemnify and hold harmless the County, its respective officers, directors, agents, employees, attorneys and assigns from and against any and all actions, claims, suits, damages, fines and liabilities arising directly or indirectly from the Friends' management, operation and use of the CCC.

- 14.2 Indemnification by the County: To the extent permitted by law, the County shall defend, indemnify and hold harmless the Friends, its respective officers, directors, agents, employees, attorneys and assigns from and against any and all actions, claims, suits, damages, fines and liabilities arising directly or indirectly from the County's maintenance and use of the CCC.

15. Amendments

This Agreement may not be amended unless such amendment is in writing and duly executed by the parties hereto.

16. Relationship of Parties

Nothing herein contained shall be deemed to constitute either of the parties hereto as a joint venture, partner or agent of the other, and neither party shall claim any status which is contrary to the terms of this Agreement.

17. Severability

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement will not be affected thereby.

18. Waiver of Provisions

No change, waiver or discharge hereof of the provisions in this Agreement shall be valid unless in writing and signed by the party against which it is sought to be enforced. No delay or omission by either party in exercising any right hereunder shall be construed as a waiver. A waiver by either of the parties of any provision or breach shall not be a waiver of other provisions or breaches of this Agreement.

19. Assignment

Neither party hereto may assign this Agreement or any part hereof or rights hereunder without the prior written consent of the other, and any attempt of assignment without such prior written consent shall be null and void. In the event of an assignment to which prior written consent has been given, all of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns.

20. Fiscal Non-Funding

Notwithstanding anything to the contrary contained in this Agreement, the continuation of this Agreement is contingent upon the appropriation of funds by the County to fulfill the requirements of this Agreement. In the event the County terminates this Agreement based on fiscal non-funding, then such termination shall be without penalty or expense to the County or the Friends, except for obligations that have arisen prior to the termination date.

21. Entire Agreement

This Agreement contains the final and entire agreement between the parties hereto with respect to the matters set forth herein and contains all of the terms and conditions agreed upon with respect thereto, and no other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written.

22. Governing Law

This Agreement shall be governed by the laws of the State of Florida without giving effect to any rules of conflicts of law. Venue of any disputes relating to this Agreement shall be in Hillsborough County, Florida.

23. Survival

The provisions of Sections 1.3, 7.1, 7.5, 8, 9, 13.2, 16, 17, 18, 21, 22, and 23 of this Agreement shall survive the termination or expiration of this Agreement.

24. Notices

All notices required under this Agreement shall be in writing and shall be sent by electronic mail (with receipt confirmation), facsimile (with receipt confirmation), registered or certified mail (with return receipt requested), or by overnight delivery to the applicable address set forth on the signature page of this Agreement:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date and year first written above.

Dated this 3RD day of January, 2008 (the "Effective Date")

the "County"

the "Friends"

Hillsborough County, Florida

Friends of Carrollwood Cultural Center

By: Ken Ayers
Chairman, Board of County Commissioners

By: Tom Jones
Print Name: TOM JONES
Title: PRESIDENT

Attest: PAT FRANK
Clerk of Circuit Court



By: Beverly Anne Miller
Deputy Clerk

Address for Notices to the County:
Hillsborough County Parks, Recreation
& Conservation Department:

Attn: _____
Address: _____

Phone: _____
Facsimile: _____

Address for Notices to the Friends:
Friends of Carrollwood Cultural
Center:

Attn: Tom Jones
Address: 13345 COCCY RD
Tampa, FL 33618

Phone: 813-969-3991
Facsimile: 813-962-6648

APPROVED BY COUNTY ATTORNEY

BY: _____
Approved as to Form and Legal Sufficiency

BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY FLORIDA
DOCUMENT NO. 08-0016

Naming Rights Policy CARROLLWOOD CULTURAL CENTER

Effective Date: 8/16/06

Supercedes: N/A

Section 1 - Purpose and Context

The purpose of this policy is to establish and set forth guidelines for the naming of the rooms and other items/objects in and around the Carrollwood Cultural Center (the "CCC") located at 13335 Casey Rd. Tampa, FL 33618, including adjacent buildings and other related property in honor of individuals or organizations that have made an outstanding contribution to the CCC and/or the Friends of the Carrollwood Cultural Center, Inc (the "FCCC"). All monies raised from the sale of the naming rights contemplated herein shall go toward the acquisition of equipment, items and other improvements for the CCC.

Section 2 - Definitions

For the purposes of this policy the following definitions apply:

1. *Name*- a word or combination of words that are the official, approved designation and identification for the Cultural Center property.
2. *Naming Rights*- the granting of an exclusive name to a CCC property or part of a property, as approved and subject to a naming agreement to serve as the official appellation or designation.
3. *Property*- buildings, facilities and spaces including auditorium, roads, parks, monuments, park benches, chairs, walkways, gardens, building complexes, courtyards, lobby, halls and other physical spaces or a part of a building.
4. *Sponsorship*- contribution in kind or cash, provided by a corporation, charitable institution or agency, private institution or individual, to support a CCC activity, for which some recognition is anticipated or required.
5. *Donation*- contribution in kind or cash, provided by a corporation charitable institution or agency, private institution or individual, to support Cultural Center activity, where no recognition is sought or required by the donor.

Section 3 - Policy Statement

All names and naming arrangements must be consistent with the mission, values and goals of Hillsborough County, the FCCC and CCC. In addition, all names and naming arrangements shall comply with the Hillsborough County Board Policy No. 01.12.00.00 and any other applicable laws and policies.

1. The Board of Directors of the FCCC (the "FCCC Board") is responsible for recommending names and naming arrangements in accordance with the procedures described herein. However, this shall not preclude recommendations from the Advisory Board for Hillsborough County's Parks, Recreation and Conservation Department (the "Parks Advisory Board") and/or the Board of County Commissioners for Hillsborough County, Florida (the "BOCC") of names and naming arrangements in accordance with the procedures described herein.
2. The FCCC Board may provide recommendations for functional and historic names for property, which, upon approval by the Director of the County's Parks, Recreation and Conservation Department (the "Parks Director") and the Parks Advisory Board, will apply until such time as a naming proposal is advanced and accepted under this policy. This shall not preclude name recommendations by the Parks Director, the Parks Advisory Board or the BOCC.
3. In general, a part of a building or space will be named as a result of a substantial contribution in cash or in kind to the FCCC and/or the CCC. Notwithstanding that principle of this policy, the policy will allow



FRIENDS OF THE CARROLLWOOD CULTURAL CENTER

the naming of a property in honor of someone significant without a financial contribution, on the recommendation of the the FCCC Board, the Parks Advisory Board or the BOCC.

4. The FCCC Board has the discretion to reject any proposal subject to ratification by the Parks Director, the Parks Advisory Board and the BOCC if the proposer/applicant appeals the rejection in accordance with this policy.

5. A functional designation may be added to an approved name to clarify a building's location or identification.

6. An approved naming arrangement should not impose or imply conditions that would limit or appear to limit the CCC's ability to undertake its functions fully and impartially.

7. The agreed acknowledgement and signage on the named property will be consistent with the CCC's style and/or identification guidelines and shall comply with Hillsborough County's policies and regulations.

8. The name approved for a property need not reflect the function of the property, and subject to the deed of arrangement, the name of any real property shall not change for the life of the property, regardless of use or occupancy. Names of parts of property may be altered.

9. The term of the naming rights agreement will be 5 years, except where naming rights have been approved for a limited term based on the level of the sponsorship or benefaction contributed. The sponsor will have the Right of First Refusal to renewal terms after the period terminates. Rights will be offered at least 9 months prior to the end of the term and must be renewed 60-days prior to the end of term. The term for naming rights for items under \$500 (such as Seats, Park Benches, and Pavers) will be determined at the discretion of the FCCC Board and apply to all such identical items.

10. The FCCC Board will honor all existing naming arrangements and where refurbishment of a named property is undertaken, the original name will be retained, subject to the terms of the existing arrangement with the sponsor.

11. A property may be named after a person/s, family or organization where;

- a. there is a demonstrated record of distinguished service to the CCC; or
- b. there has been an outstanding contribution to the development of the CCC; or
- c. there has been a significant benefaction to the CCC; or
- d. the FCCC Board or the BOCC wishes to honor a person of significance, without a financial contribution .

12. A sponsor may give the donation to the FCCC in successive amounts, rather than a single payment, as negotiated in the agreement between the FCCC Board and the sponsor. Should a sponsor default on payment, the FCCC Board will regard the agreement as terminated, and may, at the discretion of the FCCC Board, remove the sponsor's name from building(s)/objects.

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FRIENDS OF THE CARROLLWOOD CULTURAL CENTER

13. A written and signed contract between the parties to the naming agreement is to be put in place and must include the following:

- a. The purpose of the naming agreement.
- b. The details of any financial or in-kind commitment that is associated with the naming arrangement, including the schedules of payment and the application of funds.
- c. The agreed form/s of the name/s and any associated acknowledgements, including signage and associated style details.
- d. The purposes for which any funds are to be used subject to the principles noted above.
- e. The term and renewal details of the naming agreement and any special conditions regarding the arrangement.
- f. The sponsor's benefits and rights as part of the agreement with the FCCC Board.
- g. The arrangements to be mutually agreed upon should the use of the named property be changed or substantially physically altered (including offering alternative arrangements; or, terminating the agreement) through a mutually agreed arbitration process.
- h. If, in the view of the FCCC Board, the Parks Advisory Board or the BOCC, continued association of the sponsor with the CCC could bring the CCC into disrepute, the FCCC Board, the Parks Advisory and the BOCC reserves the right to terminate the naming agreement without penalty and without refunding donations made under the agreement. A clause to this effect should be included in the agreement.
- i. A provision that declares that payment past due over 30-days may be cause for termination of the agreement.
- j. Additional matters that the parties may wish to have included in the agreement.
- k. Rights of first refusal will be provided to named items per section 3 item 10.

14. The FCCC Board reserves the right to:

- a. reject any request or proposal for the application of a name to a property subject to ratification of the rejection by the Parks Director, the Parks Advisory Board and the BOCC in the event the proposer appeals the rejection.
- b. amend the terms of this policy at any time in appropriate circumstances upon prior approval by the Parks Director and the BOCC.

15. Should the use or purpose of a named property change, the FCCC Board shall exercise its rights as negotiated under the agreement contracted with the sponsor/benefactor.

16. Any and all monies or in-kind contributions raised from the sale of the naming rights contemplated herein shall be used to procure equipment, items and improvements to the CCC.

Section 4 - Procedures

1. Any individual or organization must submit a written proposal for the naming of property on the FCCC provided form.

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FRIENDS OF THE CARROLLWOOD CULTURAL CENTER

2. The proposal will be submitted to the FCCC Board who will manage all naming agreements, proposals and inquiries on behalf of the CCC.
3. A written recommendation by the FCCC Board for the naming proposal will be attached to the naming request and forwarded to the Parks Director for his/her approval..
4. The Parks Director will assess the proposal against the principles set out above and may seek further views on the proposal, including continuing advice or other communications with the FCCC Board. If the Parks Director rejects the proposal, then the FCCC Board shall be notified whereupon the FCCC Board shall notify the person/entity submitting the proposal of the rejection. If the Parks Director approves the naming proposal then the naming proposal will be forwarded to the Parks Advisory Board as a recommendation for its approval.
5. Upon receipt of the naming proposal, the Parks Advisory Board will assess the proposal against the principles set forth herein. If the Parks Advisory Board rejects the proposal, then the FCCC Board shall be notified whereupon the FCCC Board shall notify the person/entity submitting the proposal of the rejection. If the Parks Advisory Board approves the naming proposal then the naming proposal will be forwarded to the BOCC as a recommendation for its final approval.
6. Upon receipt of the naming proposal, the BOCC will assess the proposal and shall approve or disapprove the proposal whereupon the FCCC Board shall be notified of the decision and the decision will be recorded in the minutes of the subsequent FCCC Board meeting. The final decision shall be communicated by the FCCC Board in writing to the person/entity submitting the proposal.
7. A person/entity submitting a naming proposal shall have the right to appeal the rejection of a proposal only if the proposal is rejected by the FCCC Board, the Parks Director and/or the Parks Advisory Board. A person/entity submitting a naming proposal shall not have the right to appeal the rejection of the proposal if the proposal has been rejected by the BOCC. The appeal process shall be as follows:
 - a. Rejection by the FCCC Board - If a naming proposal has been rejected by the FCCC Board, then the person/entity shall have the right to appeal to the Parks Director within seven (7) days of its notification of the FCCC Board's decision. If the rejection is upheld by the Parks Director, then the person/entity shall have the right to appeal the decision to the Parks Advisory Board within seven (7) days of its notification of the Parks Director's decision. If the rejection is upheld by the Parks Advisory Board, then the person/entity shall have the right to appeal the decision to the BOCC within seven (7) days of its notification of the Parks Advisory Board's decision. The decision of the BOCC regarding the appeal shall be final and no further appeals shall be permitted.
 - b. Rejection by the Parks Director - If a naming proposal has been rejected by the Parks Director, then the person/entity shall have the right to appeal the decision to the Parks Advisory Board within seven (7) days of its notification of the Parks Director's decision. If the rejection is upheld by the Parks Advisory Board, then the person/entity shall have the right to appeal the decision to the BOCC within seven (7) days of its notification of the Parks Advisory Board's decision. The decision of the BOCC regarding the appeal shall be final and no further appeals shall be permitted.

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FRIENDS OF THE CARROLLWOOD CULTURAL CENTER

Section 5 - Changes

- a. This policy will be reviewed at least every four years.
- b. Proposed changes can be submitted at any time.
- c. Changes to this policy will be approved by a majority of FCCC Board Members present at a noticed meeting and must receive final approval by the BOCC.
- d. This policy may be repealed or amended by the BOCC at any time with or without the consent of the FCCC Board.

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FRIENDS OF THE CARROLLWOOD CULTURAL CENTER

Table 1 — Items and Naming Values					
Total	Price	Qty	Item	SF	Note
			Main Building		
			First Floor		Will not name building.
\$10,000	\$10,000	1	Pottery	800	
\$5,000	\$5,000	1	Kitchen	400	
\$10,000	\$5,000	2	Dressing rooms	260	
\$75,000	\$75,000	1	Auditorium	2400	
		1	Stage	900	Part of the Auditorium
		3	Workshops	865	"
\$10,000	\$10,000	1	Arts room	900	
\$20,000	\$20,000	1	Lobby	1000	
\$5,000	\$5,000	1	Meeting Room	110	
			Second Floor		
\$20,000	\$10,000	2	Meeting Rooms	1300	
\$5,000	\$5,000	1	Reading Room	400	
\$10,000	\$10,000	1	Cyber / Lab	650	
\$10,000	\$10,000	1	Arts/ Drama / Music	900	
\$5,000	\$5,000	1	Music	330	
\$10,000	\$10,000	1	Multi Purpose	815	
\$5,000	\$5,000	1	Meeting Room	400	
\$10,000	\$5,000	2	Out Door Patios		
\$20,000	\$20,000	1	Outside Stage		
\$15,000	\$15,000	1	Outside Park		
\$0			Signs		Will review later
\$51,250	\$250	205	Seats		
\$5,250	\$350	15	Park Benches		
\$600	\$500	1	Flag Pole		
\$100,000	\$50	2000	Pavers		Need to get prices
\$402,000				12,430	
			Youth Center Building		
\$125,000	\$125,000	1	Building	6000	
\$60,000	\$50,000	1	Auditorium	1000	
\$30,000	\$6,000	6	Meeting Rooms		
\$7,500	\$7,500	1	Lobby		
\$35,000	\$250	140	Seats		
\$1,400	\$350	4	Park Benches		
\$25,000	\$50	500	Pavers		Need to get prices
\$273,900				6,000	
\$575,900			Grand Total		

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THE FLORIDA SUNSHINE AND PUBLIC RECORDS LAWS
A Guide for the Friends of the Carrollwood Cultural Center

This guide has been prepared using the experience of Carlton Fields, PA and the guidance provided by the Florida Attorney General in their issued opinions and in their annual Sunshine Law and Public Records Manual. The full Sunshine Law Manual is available for downloading from the Attorney General's website.

This guide is presented in a question and answer format. If you require any additional detail or have any questions, please do not hesitate to contact us.

PART A: THE FLORIDA SUNSHINE LAW

WHAT IS THE SUNSHINE LAW?

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings at both the state and local levels. The law applies to the meetings of any board or commission of a state or local agency, as well as to any board or commission that is acting as an agency of a state or local government, when official actions are taken or discussed. It is important to note that, for purposes of the Sunshine Law, "meetings" refers to any gathering of or two-way exchange of communication between two or more members of a board or commission, regardless of whether such gathering or exchange occurs at a formally scheduled meeting.

There are three basic requirements of Florida Statute 286.011:

- (1) meetings of public boards or commissions must be open to the public,
- (2) reasonable notice of such meetings must be given, and
- (3) minutes of the meetings must be taken

The only exceptions to these requirements are those established by law or outlined in the Florida Constitution.

DOES THE SUNSHINE LAW APPLY TO STAFF MEMBERS?

Meetings of staff of boards covered by the Sunshine Law are not ordinarily subject to the Sunshine Law.

However, it should be noted that if a staff member ceases to function in a staff capacity and is appointed to a committee that is given "a policy-based decision-making function," the staff member and the committee is then subject to the Sunshine Law. When determining whether the Sunshine Law applies to a staff member, the answer to the question is determined by what the role of the staff person is in that situation. If the role involves making a final policy decision usually made by the Friends of the Carrollwood Cultural Center Board, the Sunshine Law applies. If the role is ministerial and administrative without policy making authority, then the Sunshine Law typically would not apply. Fact-finding and investigative work is typically considered administrative, as long as the decision-making process is made by the Board in compliance with the Sunshine Law.

The formulation of recommendations by staff does not make staff subject to the Sunshine Law unless Friends of the Carrollwood Cultural Center Board's range of policy choices becomes limited as a result of the staff recommendation. For example, a staff committee charged with the responsibility of identifying a "short list" of providers from which the Friends of the Carrollwood Cultural Center Board may make a selection would become subject to the Sunshine Law, while a staff committee that merely reported the results of its investigation of potential providers – even if accompanied by a recommendation of the provider that staff prefers – would not.

WHAT IS A MEETING SUBJECT TO THE SUNSHINE LAW?

The Sunshine Law extends to all informal discussions and deliberations as well as the formal meetings and vote taken by the Friends of the Carrollwood Cultural Center Board regarding official business. There is no requirement that a quorum be present to trigger Sunshine Law application. The law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. The Sunshine Law is intended to reach "the how and the why" behind official decisions and actions, not merely the venue in which the final decision is formally announced.

CAN ONE BOARD MEMBER TRIGGER SUNSHINE LAW OBLIGATIONS OUTSIDE OF A MEETING?

If an individual Friends of the Carrollwood Cultural Center Board member is authorized by the Board to make a decision that normally the full Board would make, then that individual's meeting with others may trigger a Sunshine Law requirement. It is important to discuss these sorts of issues with legal counsel should such a scenario occur.

CAN BOARD MEMBERS WRITE TO EACH OTHER?

Individual Friends of the Carrollwood Cultural Center Board members are allowed to send
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out written correspondence to other Board members without triggering a Sunshine Law issue. Board members, however, can not respond to any such correspondence without complying with the Sunshine Law. Correspondence back and forth between Board members is considered to be a debate over an issue and should therefore occur only in a public setting, while individual statements on issues are not considered to be debate. This is a very narrow distinction and therefore most groups encourage their Board members not to communicate with each other on official matters outside a publicly announced meeting.

CAN BOARD MEMBERS COMMUNICATE BY E-MAIL, TEXT MESSAGING, OR OTHER ELECTRONIC MEANS?

E-mail and other means of electronic communication are subject to the same requirements as other correspondence. Board members can not have a discussion via email of issues that will potentially be before them for a vote. E-mail can be used for sending out agendas and notices, but any other use can quickly run afoul of the Sunshine Law. Any e-mail sent for issues involving subjects other than the Friends of the Carrollwood Cultural Center Board should not include any references to the Friends of the Carrollwood Cultural Center Board.

CAN BOARD MEMBERS CALL EACH OTHER?

Discussions conducted via telephones, computers, or other electronic means are not exempted from the Sunshine Law. Board members should not communicate by any means about issues that could come before the Friends of the Carrollwood Cultural Center Board without complying with the Sunshine Law.

CAN STAFF SERVE AS LIAISONS BETWEEN BOARD MEMBERS?

Staff members cannot serve as "liaisons" or messengers between Board members as a way of avoiding the Sunshine Law. This does not prohibit Board members and staff from talking about issues. It does bar one Board member from telling a staff person to give a message to another Board member on how they would vote on an issue or relaying any other message that the Board member him/herself could not deliver to another Board member outside of an open meeting.

WHAT TYPES OF DISCUSSIONS ARE COVERED BY THE SUNSHINE LAW?

1. Informal discussions, workshops

The Sunshine Law applies to all sessions of the Friends of the Carrollwood Cultural Center Board, whether they are formal or informal gatherings when Board members will discuss some matter on which foreseeable action will be taken by the Board.

2. Investigative meetings

Unless there is a specific statutory exemption allowing a meeting to be closed, investigative meetings by the Friends of the Carrollwood Cultural Center Board would be subject to the Sunshine Law.

3. Meetings to consider confidential material

Again, unless there is a specific statutory exemption allowing a meeting to be closed, meetings to discuss confidential material by the Friends of the Carrollwood Cultural Center Board would be subject to the Sunshine Law.

4. Legal matters

With the exception of the litigation exception outlined below and any other specific exemption in the statutes, Friends of the Carrollwood Cultural Center Board meetings with

legal counsel are subject to the Sunshine Law.

Exemption for settlement negotiations or strategy sessions related to litigation expenditures:

Florida Statutes Section 286.011(8) provides

Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

- (a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.
- (b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- (c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- (d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened and the person chairing the meeting shall announce the termination of the session.
- (e) The transcript shall be made part of the public record upon conclusion of the litigation.

This section has been strictly construed and the courts have required precise compliance with the each of the requirements.

WHO DOES THE SUNSHINE LAW APPLY TO?

1. Members-elect or candidates

Members-elect of boards are subject to the Sunshine Law. A member-elect and a sitting member of the Board may have discussions outside of the Sunshine Law if that member-elect is replacing the sitting member on the Board and they will never serve together on the Friends of the Carrollwood Cultural Center Board

2. Meetings between members of different boards

The Sunshine Law does not apply to a meeting between individuals who are members of different boards (for example, the Friends of the Carrollwood Cultural Center Board and the County Commission) unless one or more of the individuals has been delegated the authority to act on behalf of his or her board

3. Meetings between a board member and his or her alternate

Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law.

4. Meetings between an ex officio, non-voting board member and a voting member of the board

Meetings between a voting member of a board and a non-voting member, who serves as a member of the board in an ex officio, non-voting capacity, are subject to the Sunshine Law as they will both take part in the public discussion

5. Social events

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings. Thus, when two or more members of a public board are attending or participating in meetings or other functions unconnected with their board, they must refrain from discussing matters on which foreseeable action may be

taken by the board but are not otherwise restricted in their actions.

6. A husband and wife or other family members serving on the same board

There is no *per se* violation of the Sunshine Law for a husband and wife or other family members to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of the Sunshine Law.

WHAT ARE THE NOTICE AND PROCEDURAL REQUIREMENTS OF THE SUNSHINE LAW?

Notice for Sunshine Law boards must be reasonable. Notice must be provided in a way that allows the media and general public to attend. The notice requirement is often satisfied through a newspaper ad or issuance of a press release. The notice should have the time and place of the meeting and a summary of the subject matter of the meeting.

CAN RESTRICTIONS BE PLACED ON THE PUBLIC'S ATTENDANCE AT A PUBLIC MEETING?

1. Size of meeting facilities

The Sunshine Law requires that meetings of a public board or commission be "open to the public." The meeting room should be of sufficient size to handle the anticipated attendance.

2. Inaudible discussions

It has been held that whispering or conducting conversations that the public can not hear can be seen as a Sunshine Law violation. While it would be difficult to prove, such conduct should be avoided due to its appearance.

3. Exclusion of certain members of the public

The Friends of the Carrollwood Cultural Center Board can not bar specific members of the public from attending meetings, such as those bidding on a contract or seeking employment.

4. Cameras and tape recorders

Nondisruptive video and tape recording of meetings can not be prohibited by the Friends of the Carrollwood Cultural Center Board

CAN WRITTEN OR SECRET BALLOTS BE USED?

Board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act. Secret ballots are not allowed.

IS A ROLL CALL VOTE REQUIRED?

Roll call votes are not required, but the minutes must reflect how Board members voted on each issue.

ARE MINUTES REQUIRED TO BE WRITTEN?

The Sunshine Law requires that minutes be kept of each meeting. These minutes do not have to be verbatim transcripts, but must summarize what occurred at the meeting. Tape recordings are not required, but if made, the recordings are public records.

HOW HAS THE SUNSHINE LAW BEEN INTERPRETED?

The Sunshine Law has been liberally construed while exceptions to the law have been narrowly construed.

WHAT ARE THE CONSEQUENCES IF BOARD MEMBERS FAIL TO COMPLY WITH THE SUNSHINE LAW?

1. Criminal penalties

Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Florida Statutes Section 286.011(3)(b). A person convicted of a second degree misdemeanor may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to \$500. Florida Statutes Sections 775.082(4)(b) and 775.083(1)(e).

2. Noncriminal infractions

Section 286.011(3)(a), F.S., imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. The state attorney may pursue such actions on behalf of the state.

3. Attorney's fees

Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S.

4. Action taken in violation of the Sunshine Law is void

Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting. "Cure" meetings can be used to solve some inadvertent Sunshine Law violations, but are typically time consuming and publicly embarrassing.