

ST. PETERSBURG CITY COUNCIL

Consent Agenda

Meeting of January 8, 2009

TO: The Honorable Jeff Danner, Chair and Members of City Council

SUBJECT: Authorizing the Mayor, or his Designee, to execute a First Amendment to the January 30, 2006 Property Disposition Agreement with SunTrust Bank, a Georgia Banking Corporation ("SunTrust"), to amend the size of the bank building to be constructed by SunTrust; to accept the reconveyance of a portion of bank site at nominal cost; to provide for the re-establishment of an east/west alley between 23rd Street South and 22nd Street South; to pay any necessary and customary costs associated with the reconveyance of not more than \$2,500; and to execute all documents necessary to effectuate same; to make non-substantive changes to the documents; and providing an effective date.

EXPLANATION: The City of St. Petersburg ("City") and SunTrust Bank ("SunTrust") entered into a Property Disposition Agreement dated January 30, 2006 ("Agreement"), under which the City agreed to sell and SunTrust agreed to purchase a certain parcel of property located within the Tangerine Avenue Community Redevelopment Area along the south side of 18th Avenue South between 23rd Street South and 22nd Street South ("Property"). The sale was closed and the Property conveyed to SunTrust on August 11, 2006 for the purchase price of \$500,000.

The Agreement contained certain obligations of SunTrust and the City that survived the Closing and were to be performed by the Parties within certain time periods after the Closing Date. In particular, SunTrust was to construct a 3,500 square foot full service branch bank and the City was to deposit \$8 million in the completed bank ("City Deposit").

SunTrust now desires to amend the Agreement to construct a 2,500 square foot bank and further proposes that insofar as the area of land necessary for a smaller full service branch bank is less than what would be required for a larger building, SunTrust has offered to re-convey that portion of the Property that is considered excess land ("Excess Land") back to the City at no cost except usual and customary closing costs. If the City accepts the Excess Land, the City would re-establish an east/west alley between 23rd Street South and 22nd Street South and then the City could use the Excess Land to further the goals of the Tangerine Avenue Community Redevelopment Plan.

Additionally, it is SunTrust's intent to complete the bank, except for unseen but permitted delays, within 120 days of the issuance of the permits or pay an extension fee to the City of \$10,000 for each 30-day extension that the opening is delayed.

In the event that SunTrust should fail to meet its obligations under the First Amendment, the City would be relieved of its obligation for the City Deposit.

RECOMMENDATION: Administration recommends that City Council authorize the Mayor, or his Designee, to execute a First Amendment to the January 30, 2006 Property Disposition Agreement with SunTrust Bank, a Georgia Banking Corporation ("SunTrust"), to amend the size of the bank building to be constructed by SunTrust; to accept the reconveyance of a portion of bank site at nominal cost; to provide for the re-establishment of an east/west alley between 23rd Street South and 22nd Street South; and to pay any necessary and customary costs associated with the reconveyance of not more than \$2,500; and to execute all documents necessary to effectuate same; and to make non-substantive changes to the documents.

COST/FUNDING/ASSESSMENT INFORMATION: Funds are available in the General Fund 0001; Organization: 3602605.

ATTACHMENTS: First Amendment, Resolution

APPROVALS:

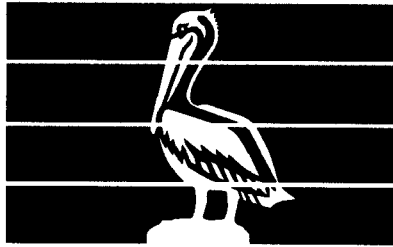
Administrative: _____

Budget: _____

Legal: _____

(As to consistency w/attached legal documents)

for RM
[Handwritten signatures and initials over the approval lines]



CITY OF ST. PETERSBURG

FIRST AMENDMENT TO
PROPERTY DISPOSITION AGREEMENT

City of St. Petersburg
SunTrust Bank

2009

FIRST AMENDMENT TO PROPERTY DISPOSITION AGREEMENT

THIS FIRST AMENDMENT TO THE PROPERTY DISPOSITION AGREEMENT ("**First Amendment**") made this _____ day of _____, 2009 by and between the CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation existing by and under the laws of the State of Florida, ("**City**") and SUNTRUST BANK, a Georgia banking corporation, ("**SunTrust**"), (collectively "**Parties**").

RECITALS

WHEREAS, the City and SunTrust entered into that certain Property Disposition Agreement dated January 30, 2006 (the "**Agreement**"), under which the City agreed to sell and SunTrust agreed to purchase a certain parcel of property located in the City of St. Petersburg, Florida, as more particularly described therein (the "**Property**"); and

WHEREAS, on August 11, 2006, the City and SunTrust closed on the sale and purchase of the Property; and

WHEREAS, the Agreement contained certain obligations on the part of SunTrust and the City that survived the Closing and were to be performed by the Parties within certain time periods after the Closing Date; and

WHEREAS, the City and SunTrust now desire to amend the Agreement in order to reaffirm their post-Closing obligations, to modify the time frames within which such obligations are to be performed, and to modify the Agreement in certain other respects, all as more particularly described below.

NOW THEREFORE, for and in consideration of one dollar (\$1.00) and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged and the covenants and promises contained herein the Parties hereto agree as follows:

1. **RECITALS.** The above Recitals are true and correct and are incorporated herein and made a part of this First Amendment.
2. **DELETE PARAGRAPH 2.2 OF THE AGREEMENT IN ITS ENTIRETY AND REPLACE IT WITH THE FOLLOWING:**

2.2 **SUNTRUST WORK.** Notwithstanding the requirements of the June 27, 2005 RFP or anything to the contrary in this Agreement, SunTrust shall use best efforts to construct a branch bank that is a qualified State of Florida public depository of not less than 2,500 square feet (climate controlled). The City shall waive the requirements of a 3,500 square foot branch bank, as set forth in the June 27, 2005 RFP and the August 1, 2005 SunTrust proposal in consideration of SunTrust proceeding and completing the

construction of the branch bank on the Property as provided herein. SunTrust shall proceed in the following manner:

2.2.1 SunTrust shall file applications for site plan approval and a building permit to construct the aforesaid 2,500 square foot Bank within thirty (30) calendar days of the Effective Date of this First Amendment. City agrees to accept and process the concurrent applications for site plan approval and building permits submitted by SunTrust.

2.2.2 City shall have sixty (60) calendar days to approve said site plan, unless appealed, in which case, City shall have a total of ninety (90) calendar days to approve said site plan ("**City Site Plan Approval**"). City shall issue building permit(s) corresponding to the City Site Plan Approval for the construction of the Bank ("**Building Permits**") in accordance with the City's customary administrative procedures.

2.2.3 SunTrust shall commence construction not later than fifteen (15) calendar days after the City's issuance of the Building Permits ("**Commence Construction Date**"). For the purposes of this Agreement the term commence construction shall mean the act or acts of beginning to dig footers and/or drive pilings.

2.2.4 SunTrust shall complete construction not later than one hundred twenty (120) calendar days after the Commence Construction Date ("**Complete Construction**"). For the purposes of this First Amendment, the term Complete Construction shall be collectively defined as (i) the City receiving a copy of the certificate of occupancy from SunTrust, (ii) SunTrust's occupancy of the Bank, and (iii) the Bank is open for business as a Full Service Branch Bank as defined in the RFP. Notwithstanding the foregoing and provided that SunTrust has actually commenced construction of the Bank and is diligently pursuing completion, SunTrust may extend the time to Complete Construction for four (4) successive periods of thirty (30) days each by written notice to the City. As additional consideration for the extensions, SunTrust shall pay to the City a \$10,000.00 extension fee for each 30-day extension period that is exercised prior to the commencement of each extension period. Any material default of this paragraph 2.2.4 shall relieve the City of its duties under paragraph 2.4.2 of this Agreement.

3. AMEND PARAGRAPH 2.3 OF THE AGREEMENT IN PERTINENT PART TO CONFORM WITH THE NEW TIME FRAMES SPECIFIED ABOVE AND TO ADD THE FOLLOWING SENTENCE TO THE END OF THE PARAGRAPH:

In the event the City has the right to repurchase the Property pursuant to this paragraph 2.3, City shall exercise such right not later than ten (10) calendar days after the Commence Construction Date or such repurchase right shall be deemed waived and shall be null and void.

4. **ADD THE FOLLOWING PARAGRAPH 2.6. TO THE AGREEMENT.**

2.6 **EXCESS LAND.** SunTrust shall, at the City's option and within thirty (30) calendar days of the City's written request (but in no event prior to the date of Complete Construction), convey to the City, the fee simple title by special warranty deed to all excess land within the Property that is not contained within the approved site plan for the Bank ("**Excess Land**"). Conveyance of the Excess Land shall be subject to such easements as may be required by SunTrust for utilities serving the Bank. SunTrust shall pay all the costs associated with providing the City with an owner's title policy, documentary stamps on the deed, the survey, and the real estate taxes up to and including the day of closing. City shall pay for document preparation, recording fees, and, if included in the Excess Land, the costs associated with reinstating the previously-vacated east/west alleyway between 23rd Street South and 22nd Street South. Any additional closing costs or expenses shall be divided equally upon the mutual agreement of the Parties. The conveyance shall be subject to the City using the Excess Land in coordination with SunTrust to further the goals of the September 2003 Tangerine Avenue Community Redevelopment Plan.

5. **ADD THE FOLLOWING PARAGRAPH 2.7 TO THE AGREEMENT.**

2.7. **FULL SERVICE BANK BRANCH REQUIREMENT.** In the event that the Bank is not open and ready for business as a Full Service Branch Bank, as defined in the RFP, on or before fifteen (15) calendar days after the date to Complete Construction as specified in paragraph 2.2.4 above (as the same may be extended), the City, without further notice to SunTrust, shall be relieved of all obligations set forth in paragraph 2.4.2 (1) (a) through (h) inclusive, of this Agreement. Paragraph 2.4.2(1) is hereby amended in pertinent part to conform with the amended time frames specified in this First Amendment, and the City reaffirms its obligations under paragraph 2.4.2(1) based upon such amended time frames.

6. **ADD THE FOLLOWING PARAGRAPH 3.14 TO THE AGREEMENT.**

3.14 **FORCE MAJEURE.** If either Party is delayed, hindered in, or prevented from performing any act required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, vandalism, insurrection, war, acts of God, or other reason of like nature not the fault of either Party ("**Permitted Delay**"), then such Party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the Party seeking an extension of time delivering written notice of such Permitted Delay to the other Party within ten (10) days of the event causing the Permitted Delay, and the maximum period of time which the Party seeking an extension may delay any act or performance of work due to a Permitted Delay shall be ninety (90) days.

7. **EFFECTIVE DATE.** The Effective Date of this First Amendment shall be the date the Mayor or his designee, signs this First Amendment ("**Effective Date**"), as specified in the preamble to this First Amendment.
8. **OTHER PROVISIONS.** All other provisions of the Agreement and conditions set forth therein not specifically addressed in this First Amendment shall remain in full force and effect.
9. **CONFLICTS.** If there is any conflict between the terms of the Agreement and the terms and conditions of this First Amendment, this First Amendment shall prevail.
10. **DATES.** In the event that any date specified in this First Amendment shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by any of the parties under this First Amendment. Except as provided in paragraph 3.14 of the Agreement, any modification to any date specified in this First Amendment may be made only at the sole discretion of the Mayor.
11. **FUTURE INTERPRETATION.** The Parties intend for the Agreement and this First Amendment to be hereinafter considered and interpreted together as a single contract between the Parties and that the capitalized terms of the Agreement, not otherwise defined herein shall have the same meaning as defined in the Agreement.

SIGNATURE PAGE(S) FOLLOW(S) THIS PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed by their duly authorized representatives on the day and date first written above.

WITNESSES

Sign: [Signature]
Print: Lisa M. Joseph

Sign: [Signature]
Print: Adnana Williams

SUNTRUST BANK

By: [Signature]

Name: Ray Binger

Title: EVP, Retail LOB

WITNESSES

Sign: _____
Print: _____

Sign: _____
Print: _____

Reviewed by:

Bruce Grimes, Director
Real Estate & Property Management

CITY OF ST. PETERSBURG, FLORIDA

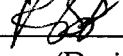
By: _____
Rick Baker, as Mayor


ATTEST

Eva Andujar, City Clerk

City Seal

APPROVED AS TO CONTENT:

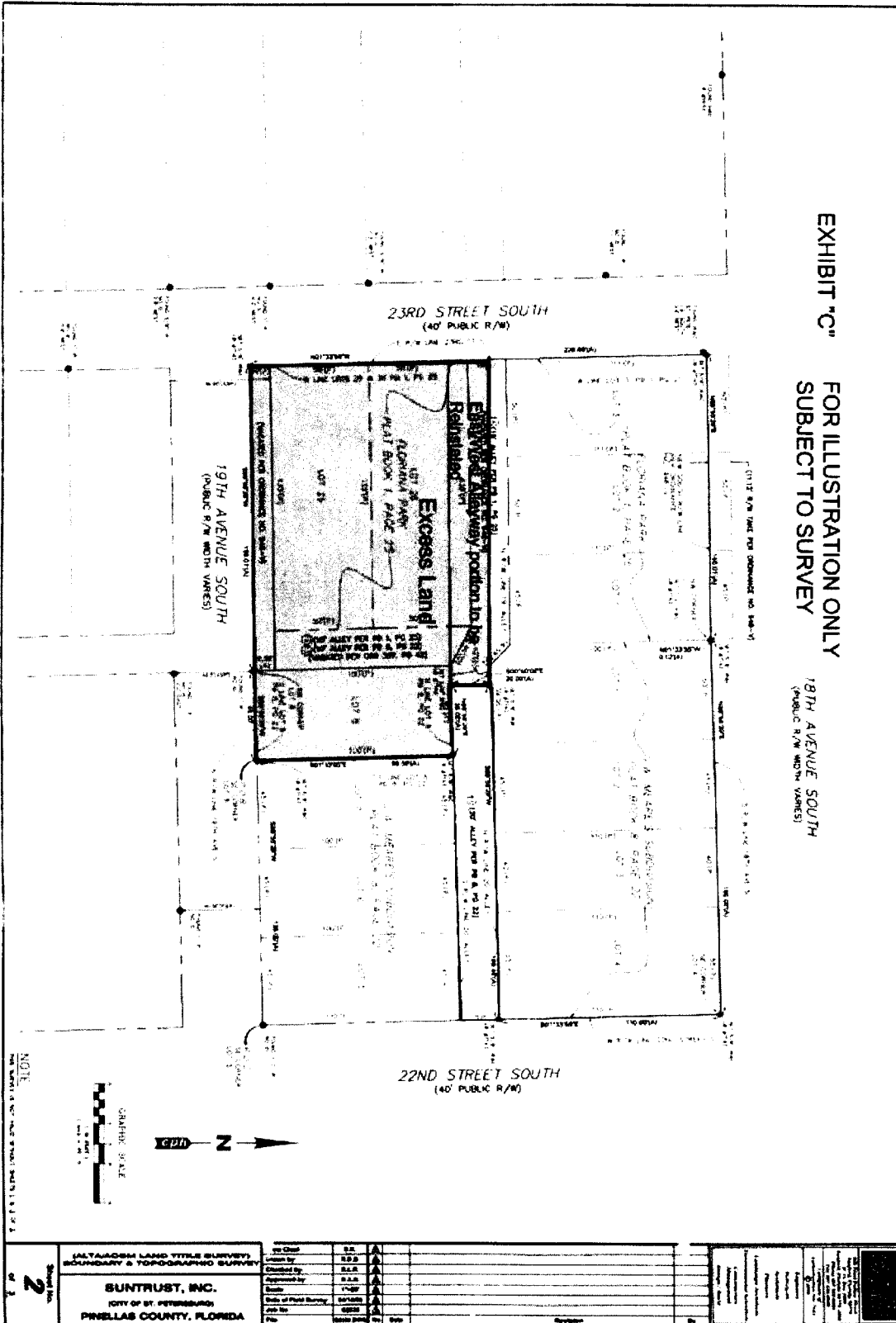


City Attorney (Designee)
By: RICHARD B. BADGLEY
 Assistant City Attorney

APPROVED AS TO FORM:

City Attorney (Designee)
By: _____
Assistant City Attorney

EXHIBIT "C"
FOR ILLUSTRATION ONLY
SUBJECT TO SURVEY
18TH AVENUE SOUTH
(PUBLIC R/W WIDTH VARIES)



A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A FIRST AMENDMENT TO THE JANUARY 30, 2006 PROPERTY DISPOSITION AGREEMENT WITH SUNTRUST BANK, A GEORGIA BANKING CORPORATION ("SUNTRUST"), TO AMEND THE SIZE OF THE BANK BUILDING TO BE CONSTRUCTED BY SUNTRUST; TO ACCEPT THE RECONVEYANCE OF A PORTION OF BANK SITE AT NOMINAL COST; TO PROVIDE FOR THE RE-ESTABLISHMENT OF AN EAST/WEST ALLEY BETWEEN 23RD STREET SOUTH AND 22ND STREET SOUTH; AND TO PAY ANY NECESSARY AND CUSTOMARY COSTS ASSOCIATED WITH THE RECONVEYANCE OF NOT MORE THAN \$2,500; AND TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE SAME; TO MAKE NON-SUBSTANTIVE CHANGES TO THE DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of St. Petersburg ("City") and SunTrust Bank ("SunTrust") entered into a Property Disposition Agreement dated January 30, 2006 ("Agreement"), under which the City agreed to sell and SunTrust agreed to purchase a certain parcel of property located within the Tangerine Avenue Community Redevelopment Area along the south side of 18th Avenue South between 23rd Street South and 22nd Street South ("Property"); and

WHEREAS, the sale was closed and the Property conveyed to SunTrust on August 11, 2006 for the purchase price of \$500,000; and

WHEREAS, the Agreement contained certain obligations of SunTrust and the City that survived the Closing and were to be performed by the Parties within certain time periods after the Closing Date; and

WHEREAS, SunTrust was to construct a 3,500 square foot full service branch bank and the City was to deposit \$8 million in the completed bank ("City Deposit"); and

WHEREAS, SunTrust now desires to amend the Agreement to construct a 2500 square foot bank and further proposes that insofar as the area of land necessary for a smaller full service branch bank is less than what would be required for larger building, SunTrust has offered to re-convey that portion of the Property that is considered excess land ("Excess Land") back to the City at no cost except usual and customary closing costs; and

WHEREAS, if the City accepts the Excess Land, the City would re-establish an east/west alley between 23rd Street South and 22nd Street South and then the City could use the Excess Land to further the goals of the Tangerine Avenue Community Redevelopment Plan; and

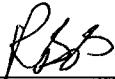
WHEREAS, it is SunTrust's intent to complete the bank, except for unseen but permitted delays, within 120 days of the issuance of the permits or pay an extension fee to the City of \$10,000 for each 30-day extension that the opening is delayed; and

WHEREAS, in the event that SunTrust should fail to meet its obligations under the First Amendment, the City would be relieved of its obligation for the City Deposit.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the City Council authorizes the Mayor, or his designee, to execute a First Amendment to the January 30, 2006 Property Disposition Agreement with SunTrust Bank, a Georgia Banking Corporation ("SunTrust"), to amend the size of the bank building to be constructed by SunTrust; to accept the reconveyance of a portion of bank site at nominal cost; to provide for the re-establishment of an east/west alley between 23rd Street South and 22nd Street South; to pay any necessary and customary costs associated with the reconveyance of not more than \$2,500; and to execute all documents necessary to effectuate same; and to make non-substantive changes to the documents.


This Resolution shall become effective immediately upon its adoption.

LEGAL:




City Attorney (Designee)

APPROVED BY:



Goliath J. Davis, III, Deputy Mayor
Midtown Economic Development

APPROVED BY:



Bruce E. Grimes, Director
Real Estate and Property Management