


MEMORANDUM
CITY OF ST. PETERSBURG

TO: The Honorable Chair and Members of City Council

FROM: Lynn Gordon, Legal Intern/Attorney 

DATE: February 6, 2009

RE: George E. Burdick Residual Trust

On April 23, 2007, the City of St. Petersburg received notice from SunTrust Bank ("SunTrust"), as trustee of the George E. Burdick Living Trust ("Trust"), advising that the St. Petersburg Public Library is a remainder beneficiary of the Trust. Mr. Burdick is deceased, and upon his death the Trust property was divided into the Burdick Marital Trust ("Marital Trust") and the Burdick Residual Trust ("Residual Trust"). Mr. Burdick's widow, Mildred E. Burdick, is the income beneficiary of the Marital Trust and there are several income beneficiaries of the Residual Trust.

The City and several other parties are remainder beneficiaries of the Residual Trust. The City is to receive one (1) share of the remaining Residual Trust property at the time of the final distribution upon termination of the Residual Trust. The final distribution is due after the earlier of three events: January 1, 2040; twenty-one (21) years after the death of the last remaining income beneficiary who was in being at the time the trust was executed; or whenever there ceases to be any surviving income beneficiaries. The City's share is to be used to establish a fund for the purchase of non-fiction books on scientific subjects.

Among the general provisions of the Trust is the statement that the assets of the Trust are not intended to be conserved for the benefit of a remainder beneficiary. The primary purpose of the Marital Trust and Residual Trust is to provide for the income beneficiaries, and the rights and interests of the remainder beneficiaries are incidental and subordinate to the purpose of the Trust.

The City received a letter from SunTrust advising that Mrs. Burdick is requesting additional disbursements as an income beneficiary of the Marital Trust. Mrs. Burdick currently receives quarterly disbursements from the net income of the Marital Trust. Currently, the trustee cannot invade the principal of the either Marital Trust or the Residual Trust to provide additional funds to Mrs. Burdick. The trustee is proposing to convert the Marital Trust and Residual Trust into a Total Return Unitrust pursuant to Florida Statutes §738.1041. A Total Return Unitrust pays a percentage of the trust assets to an income beneficiary. Payouts fluctuate with the value of the assets at the end of each calendar year. The intent is to balance the interest of the income beneficiary with the interest of any remainder beneficiary while enabling the trustee to pay as much as possible to the current beneficiary.

SunTrust is requesting that the City execute a Total Return Unitrust Conversion Agreement and Trust Policy to allow Mrs. Burdick to receive payments from the Total Return Unitrust. Suntrust plans to pay Mrs. Burdick five percent (5%) of the market value. The market value includes the principal and income of the Trust, and is based on the value at the end of the previous calendar year.

Depending on the market value of the Trust after conversion to a Total Return Unitrust, the principal of the Total Return Unitrust may diminished in order to pay the entire five percent (5%) to Mrs. Burdick each year. If the income of the Total Return Unitrust is not sufficient to provide Mrs. Burdick with a five percent (5%) payout, the remainder of the 5% would be drawn from the principal of the Total Return Unitrust.

As a remainder beneficiary, the City could lose some or all of the remainder interest it currently holds. However, since the original primary intent is to provide for income beneficiaries above the interests of all other beneficiaries, it seems to be permissible, and even preferred, to utilize the Residual Trust to fulfill the original primary purpose of the Trust. The current combined value of the Marital Trust and Residual Trust is approximately \$551,000.00.

The Total Return Unitrust will remain in effect until Mrs. Burdick's death; or it is reconverted into an income trust (as the Marital Trust and Residual Trust); or the Marital Trust and Residual Trust are terminated or modified pursuant to Florida law.

Recommendation: Approve signing the Total Return Unitrust Conversion Agreement and Trust Policy.

A RESOLUTION AUTHORIZING THE MAYOR
OR HIS DESIGNEE TO EXECUTE A TOTAL
RETURN UNITRUST CONVERSION
AGREEMENT AND TRUST POLICY
REGARDING THE BURDICK RESIDUAL
TRUST; AND PROVIDING FOR AN EFFECTIVE
DATE

WHEREAS, Pursuant to the George E. Burdick Living Trust, the Burdick Marital Trust and the Burdick Residual Trust were established upon the death of George E. Burdick; and

WHEREAS, the Burdick Marital Trust is for the benefit of Mildred E. Burdick; and

WHEREAS, the Burdick Residual Trust is for the benefit of other Burdick family members, as income beneficiaries; and

WHEREAS, the St. Petersburg Public Library is a remainder beneficiary of the Burdick Residual Trust and the City's remainder interest will vest only after the termination of the Burdick Residual Trust; and

WHEREAS, Mildred E. Burdick is the income beneficiary of the Burdick Marital Trust and receives periodic disbursements from the income of the Burdick Marital Trust; and

WHEREAS, SunTrust Bank, as Trustee of the Burdick Marital Trust and Burdick Residual Trust, cannot make disbursements to Mildred E. Burdick from the principal of either of the trusts; and

WHEREAS, SunTrust Bank has requested that Mildred E. Burdick be allowed to receive increased disbursements that may cause the principal of the Burdick Marital Trust and Burdick Residual Trust to be diminished and affect the City's remainder interest in the Burdick Residual Trust; and

WHEREAS, SunTrust Bank is proposing to convert both trusts into a Total Return Unitrust to allow Mildred E. Burdick to receive increased disbursements; and

WHEREAS, SunTrust Bank has requested that the City execute a Total Return Unitrust Conversion Agreement and Trust Policy ("Conversion Agreement"); and

WHEREAS, the Conversion Agreement will allow SunTrust Bank to pay Mildred E. Burdick increased disbursements, and will pay from the principal of the Total Return Unitrust if the increased disbursements cannot be paid in full from the income of the Total Return Unitrust; and

WHEREAS, the City does not wish to oppose Mildred E. Burdick receiving increased disbursements under the Total Return Unitrust;

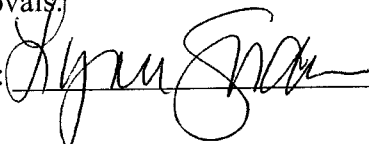
NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Total Return Unitrust Conversion Agreement and Trust Policy be executed to allow increased disbursements to Mildred E. Burdick.

BE IT FUTHER RESOLVED that the Mayor or his designee is authorized to execute Total Return Unitrust Conversion Agreement and Trust Policy.

This Resolution shall take effect immediately upon its adoption.

Approvals:

Legal:



Administration: _____

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