

# MEMORANDUM

## CITY OF ST. PETERSBURG

TO: The Honorable Chair and Members of City Council

FROM: Lynn Gordon, Legal Intern/Attorney

DATE: March 10, 2009

RE: Conversion of Burdick Marital Trust to Total Return Unitrust

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On April 23, 2007, the City of St. Petersburg received notice from SunTrust Bank ("SunTrust"), as trustee of the George E. Burdick Living Trust ("Living Trust"), advising that the St. Petersburg Public Library is a remainder beneficiary of the Burdick Residual Trust. Mr. Burdick is deceased, and upon his death the Living 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. According to the provisions of the Residual Trust, the City is to receive two (2) shares of the remaining Residual Trust property at the time of the final distribution upon termination of the Residual Trust. One share is designated for the Public Library of St. Petersburg and one share is designated for the Mirror Lake Branch of the Public Library of St. Petersburg. The final distribution of the Residual Trust 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 shares are to be used to establish a fund for the purchase of non-fiction books on scientific subjects. There are a total of six (6) shares to be disbursed among the remainder beneficiaries upon termination of the Residual Trust.

Among the general provisions of the Living Trust is the statement that it is not the grantor's (Mr. Burdick) intention that the assets of any trust be conserved for the benefit of remainder beneficiaries. The primary purpose in creating the Marital Trust after Mr. Burdick's death was to provide for Mrs. Burdick, and the rights and interests of the remainder beneficiaries are incidental and subordinate to that purpose. The general provisions also state that it is the express intention of Mr. Burdick, as grantor, that Mrs. Burdick shall have a substantial degree of beneficial enjoyment of the Marital Trust assets, and the Marital Trust shall be administered in such a manner that Mrs. Burdick shall not be deprived of beneficial enjoyment of the Marital Trust.

The City received a letter from SunTrust advising that Mrs. Burdick is requesting additional disbursements as the income beneficiary of the Marital Trust. Mrs. Burdick currently receives quarterly disbursements from the all of the net income of the Marital Trust. Since the Marital Trust is an income trust, currently, the trustee cannot invade the principal of the Marital Trust to

provide additional funds to Mrs. Burdick. Mrs. Burdick, through SunTrust, is requesting that the City execute a Total Return Unitrust Conversion Agreement and Trust Policy to convert only the Marital 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. The disbursement will be based on the average year end market value for the previous 3 years. SunTrust plans to pay Mrs. Burdick five percent (5%) of the market value based on the three year average. The disbursements will still be made quarterly.

If the income generated after the conversion is not sufficient to pay the five percent (5%) to Mrs. Burdick, the principal of the Total Return Unitrust may be diminished so that the entire amount due for disbursement can be paid. The Residual Trust will remain untouched.

The Total Return Unitrust will remain in effect until one of three events occurs: Mrs. Burdick's death; the Total Return Unitrust is reconverted into an income trust; or the Marital Trust is terminated or modified pursuant to Florida law. Upon Mrs. Burdick's death, when no further disbursements can be made under the Total Return Unitrust (the converted Marital Trust), the remaining assets will be added to the Residual Trust. Since the City's remainder interest is in the Residual Trust, the City's interest could be affected because the amount of remaining assets available to be added to the Residual Trust depends on the disbursements of the Total Return Unitrust. According to SunTrust, as of March 5, 2009, the current value of the Residual Trust is \$514,834.00 and the current value of the Marital Trust \$517,236.00.

My research indicates that even if the City refused to take such action, the likely result would be that the Marital Trust would still be converted into a Total Return Unitrust by the trustee in court. According to SunTrust, the other residual beneficiaries have signed the Total Return Unitrust Conversion Agreement and Trust Policy.

This conversion is consistent with the intent of George Burdick who originated the Living Trust.

Recommendation: Approve execution of 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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