

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 the Burdick Marital Trust to a Total Return Unitrust

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 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. According to the terms of the Residual Trust, 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.

If there are any living income beneficiaries on January 1, 2040, those income beneficiaries will each receive one share of the remaining Residual Trust assets. The remainder beneficiaries will also each receive one share. The remainder beneficiaries are: the University of Chicago, or its successor institution; the Public Library of Kinosh, Wisconsin, or its successor institution; the Public Library of Harrisburg, Pennsylvania, or its successor institution; the Public Library of St. Petersburg, Florida, or its successor institution; and the Mirror Lake Branch of the Public Library of St. Petersburg, Florida, or its successor institution. The City's shares are to be used to establish a fund for the purchase of non-fiction books on scientific subjects.

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 three 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.