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August 17, 2012

VIA EMAIL (JBRIGGS@CITYOFWINTERPARK.ORG)
AND FEDERAL EXPRESS

Jeff Briggs
Planning Department
City of Winter Park
1045 Azalea Lane
Winter Park, Florida 32789

Re: SunTrust Bank - 520 N. Interlachen Avenue, Winter Park, Florida 32789
Request to Repeal Resolution No. 2091-11 Historic Designation

Dear Mr. Briggs:

I am writing of behalf of our client, SunTrust Bank ("SunTrust"), and its affiliated entity, CRM Florida Properties, LLC, which, by Certificate of Title dated July 17, 2012, acquired title to the above property, to request the Winter Park City Commission, in accordance with Section 2.11(b)(8) of the City Charter, repeal its August 8, 2011, Resolution No. 2091-11 designating this property as a historic landmark.

Before examining the reasons for this request, a brief overview of the chronology of this property's acquisition, contemplated renovations and subsequent historic designation by the City is appropriate as a starting point here. On February 28, 2006, Clardy Malugen ("Malugen") acquired the property located at 520 N. Interlachen Avenue from Patrick and Marisol Jackson (the "Property"). As part of her purchase, Malugen executed and delivered a Promissory Note (the "Note") in favor of SunTrust evidencing her indebtedness in the original principal amount of $1,959,300.00. The Note was secured by a Real Estate Mortgage dated February 28, 2006 (the "Mortgage"), recorded on March 9, 2006 in Official Records Book 8518, Page 2376, of the Public Records of Orange County, Florida. The Mortgage encumbers the Property and provided notice to the public of SunTrust's first lien against it as its security for the Note.

Pursuant to the remedies and acceleration provisions in the Note and Mortgage, on December 8, 2009, SunTrust provided Malugen with written notice sent via U.S. and Certified Mail, return receipt requested, allowing her with an opportunity to cure her defaults under such loan documents on or before January 19, 2010. Malugen failed to cure her defaults and, as of June 30, 2010, Malugen owed SunTrust $2,175,788.22, exclusive of additional interest, costs and attorneys' fees. On August 13, 2010, SunTrust was left with no option but to file its Complaint in Orange County Circuit Court to foreclose Malugen's interest in the Property. Extensive and comprehensive litigation between SunTrust and Malugen then ensued[1].

On June 5, 2011, 10 months after SunTrust's filed its Notice of Lis Pendens for the foreclosure litigation, Malugen submitted her City of Winter Park Historic Designation Application which the City received on June 22, 2011. On July 13, 2011, the City Historic Preservation Commission heard and voted to transmit to the City Commission its findings and recommendation that the designation be approved in accordance with Section 58-457 of the Winter Park Code[2]. Thereafter, on August 8, 2011, the Winter Park City Commission adopted Resolution No. 2091-11 approving the Property's designation. Malugen submitted the application for bad faith, tactical reasons and sought to use the designation as a basis for claiming a 50%+ discount to satisfy her debt to SunTrust.

In reviewing Malugen's Historic Designation Application, the August 8, 2011, City Commission Meeting Minutes, and the City Code, at no time was SunTrust, as Malugen's lender and the holder of a first mortgage lien on the Property, notified or even mentioned during this 3 month City process. Though the City Code provisions regarding historic designation procedures, Section 58-457(2)(d), provide the City "is responsible for mailing a notice of public hearing to all property owners of record whose property located within the boundary of the designation 15 days prior to the public hearing" for each proposed historic designation, there is no such responsibility or provision of notice to any mortgage lender for the subject property. Where the property owner's equity in the real property is minimal, as was the case here, the mortgage lender is, in economic reality, the equitable owner of the property whose rights will be substantially affected by the contemplated historic designation actions of the applicant. If all adjacent property owners are worthy of receiving a notice of the contemplated historic designation actions of the applicant under the City Code, wouldn't the applicant's lender also be worthy of receiving such a notice from the City?

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[1] A complete Schedule of Exhibits listing in chronological order all of the pertinent loan documents, litigation pleadings and City historic designation documents is enclosed for reference.

[2] Though Malugen filed an earlier application in November 2006 for the historic designation of the Property together with a certificate of review for a new garage with a side setback variance that was later objected to by her neighbors, the process required by the City Code was not then completed as Malugen put her request on hold and considered her options related to the objectionable new garage construction she had proposed prior to any final City approval.

Florida law provides for pre-board action notice in both the municipal code enforcement[3] and zoning[4] contexts. The reason for this pre-action notice is simple - procedural due process requires reasonable notice and a fair opportunity to be heard. Neither was provided to SunTrust here. The result to SunTrust, upon receiving title to the Property via its foreclosure litigation efforts another 11 months after the City's designation, is a property that is limited in the permits that may be issued by the City Building Division or the new construction, exterior alterations or demolition that may be undertaken and now has an accompanying significant loss in value and property rights constraint. SunTrust's ability to market and sell the Property to a third party purchaser and recoup its original loan amount is severely inhibited by this series of events set in motion by Malugen during the midst of intense litigation with her lender.

Please let this letter serve as our client's request that the City Commission repeal its historic designation for the Property that was granted on August 8, 2011, for the above reasons at its next, first available regularly scheduled City Commission Meeting. I understand this request will likely be placed on the City Commission Agenda for consideration at one of the two September 2012 Commission Meetings and that there is no City application or fee that is required for this request. But, if there is any further information you may need from me, please let me know and I will be happy to provide it to you to the extent it is available. Should you have any questions or comments, please do not hesitate to contact me. I look forward to your response, Jeff. Thank you.

Very truly yours,

Jason W. Searl

JWS/cr

Enclosure (Schedule of Exhibits "A" through "T")

cc: William E. Reischmann, Jr., Esq. (via email only w/enc.)
Daniel Kaiser, SunTrust Bank (via email only w/enc.)
John M. Brennan, Esq. (via email only w/enc.)

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[3] Pursuant to Section 162.09(1), Florida Statutes (2012), after inspection and notice, a municipal code enforcement board may order a code violator to pay a fine for each day a violation continues past the date set by the board for compliance. *See also Broward County v. Recupero*, 949 So.2d 274, 276 (Fla. 4th DCA 2007).

[4] Pursuant to Section 166.041(3), Florida Statutes (2012), notices of proposed changes to a zoning ordinance are mandated in order to protect interested persons, who are thus given the opportunity to learn of proposed ordinances, given the time to study the proposal for any negative or positive effects they might have if enacted, and given notice so that they can attend the hearings and speak out to inform the city commissioners prior to ordinance enactment, but noncompliance with the notice provisions takes away or reduces these opportunities. *See also Coleman v. City of Key West*, 807 So.2d 84, 85 (Fla. 3d DCA 2001) (emphasis added).