MEMORANDUM

Office of the City Attorney

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TO: Mayor and City Commissioners

FROM: City Attorney
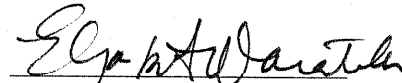
SUBJECT: Kathy Butler and Allen Butler, her husband vs. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-2137

DATE: June 27, 2005

CONSENT

Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Kathy Butler and Allen Butler, her husband vs. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-2137.

On June 10, 2005, the City of Gainesville was served with a summons and complaint. The Plaintiffs allege that on or about June 14, 2001, while at a city-owned garage, Kathy Butler slipped and fell on a liquid leaking from an automobile part. Plaintiff Kathy Butler seeks damages. Plaintiff Allen Butler has filed a loss of consortium claim.

Prepared by:

Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:

Marion J. Radson,
City Attorney

EAW/cgow

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

CASE NO. _O1·05·CA·2137_

Division:_____J_____

KATHY BUTLER AND
ALLEN BUTLER, her husband,

      Plaintiffs,

vs.

CITY OF GAINESVILLE,

      Defendant.

_____/

COMPLAINT

COME NOW the Plaintiffs, KATHY BUTLER and ALLEN BUTLER, and sue

the Defendant, CITY OF GAINESVILLE, and state:

1.   This is an action for damages that exceed the sum of FIFTEEN

THOUSAND ($15,000.00) DOLLARS.

2.   At all times material to this cause, the Plaintiffs, KATHY BUTLER and

ALLEN BUTLER, were residents of Melrose, Putnam County, Florida.

3.   At all times material to this cause, Defendant CITY OF GAINESVILLE was

and is a governmental entity as contemplated by Section 768.28, Fla. Stat.

4.   Plaintiffs have satisfied all conditions precedent to filing this action as

required by Section 768.28, Fla. Stat.

5.   On or about June 14, 2001 the Defendant, CITY OF GAINESVILLE,

owned, operated, managed and was in control of a garage located at 404 NW 39th Avenue,

Gainesville, Alachua County, Florida.

6.   At that time and place, Plaintiff, KATHY BUTLER, was legally upon said premises as a business invitee that was expressly or impliedly invited upon said premises for the benefit of the Defendant.

7.   At that time and place, the Defendant, or its agents, servants and/or employees acting within the scope and course of such agency, service or employment, carelessly and negligently maintained said premises by allowing radiator fluid or some other slippery substance to leak and/or remain on the floor at Defendant's premises, upon which the Plaintiff, KATHY BUTLER, slipped; or failed to warn the Plaintiff of said dangerous condition in a timely manner, causing her to fall.

8.   That the negligent condition was know to Defendant, its agents, servants and/or employees or had existed for a sufficient length of time so that Defendant and its agents, servants and/or employees should have known it.
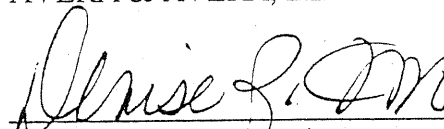
9.   As a direct and proximate result of the foregoing negligence, Plaintiff, KATHY BUTLER, suffered bodily injury and resulting pain and suffering impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning and loss of ability to earn money in the future. The injury of the Plaintiff is permanent within a reasonable degree of medical probability and the Plaintiff will continue to suffer the losses in the future.

10.   That as a direct and proximate result of the foregoing negligence, Plaintiff, ALLEN BUTLER, has in the past and will in the future suffer the loss of his wife's services, companionship, and consortium.

WHEREFORE, Plaintiffs, KATHY BUTLER and ALLEN BUTLER, her husband, ,sue the Defendant, CITY OF GAINESVILLE, for compensatory damages, costs and request a trial by jury of all issues so triable.

DATED THIS ___25___ day of May, 2005.

AVERA & AVERA, LLP

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