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

**CASE NO.:** 2014CA-1164

**RALPH MCKNIGHT and  
DIANE MCKNIGHT, his wife,**

**Plaintiffs,**

**vs.**

**CITY OF GAINESVILLE,**

**Defendant.**

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

**COME NOW**, the **Plaintiffs**, RALPH MCKNIGHT and DIANE MCKNIGHT, his wife, by and through the undersigned counsel and hereby file this Complaint for damages against the above-named **Defendant**, CITY OF GAINESVILLE, and as grounds therefore would allege:

**JURISDICTION AND PARTIES**

1. This is an action for damages in excess of \$15,000.00 exclusive of interest and costs.
2. Jurisdiction over said claims arising under Florida law is concurrent. This Court has jurisdiction to hear this action.
3. **Plaintiff**, RALPH MCKNIGHT, is a resident of Gainesville, Florida, is over the age of eighteen (18), and is otherwise sui juris.

4. **Plaintiff**, DIANE MCKNIGHT, is a resident of Gainesville, Florida, is over the age of eighteen (18), and is otherwise sui juris.
5. **Defendant**, CITY OF GAINESVILLE (hereinafter referred to as "CITY"), at all times material hereto is or was a governmental entity charged with the responsibility of operating, administering, and overseeing municipal property, located in Alachua County, Florida.
6. At all times material hereto, **Defendant**, CITY OF GAINESVILLE, had full authority to control, supervise and managed all city-owned buildings, land, and properties, including all trees and vegetation, located on municipal properties, in Alachua County, Florida.
7. Pursuant to Florida Statutes §768.28, all conditions precedent to instituting this action have occurred or have been performed. **Plaintiff's** Notice of Claim to **Defendant** is attached hereto as Exhibit "A" and **Defendant's** denial of said claim is attached hereto as Exhibit "B".
8. This cause of action accrued on property controlled by **Defendant**, CITY OF GAINESVILLE, in Alachua County, Florida.

**COUNT I**  
**NEGLIGENCE**

9. **Plaintiffs**, RALPH MCKNIGHT and DIANE MCKNIGHT, adopt and re-allege each and every allegation as set forth in paragraph one (1) through eight (8) above as though fully rewritten herein.
10. On or about, JULY 6, 2011, **Plaintiff**, RALPH MCKNIGHT, was walking by or near Passage Family Church, located at 2020 NE 15<sup>th</sup> Street, Gainesville, Florida 32609, picking up trash and other debris to help beautify the area.

11. **As Plaintiff, RALPH MCKNIGHT, walked near a large tree located between the sidewalk and roadway, he tripped on at least one large tree root that was protruding from underneath the ground at the base of the tree, thereby causing him to fall and suffer serious injuries.**
12. **The large tree roots protruding from underneath the ground were allowed by Defendant's employees, agents, or servants to remain growing in this condition for several years on the Defendant's municipal property thereby causing an unsafe condition, which resulted in Plaintiff, RALPH MCKNIGHT, falling and thereby sustaining serious injuries.**
13. **Plaintiff, RALPH MCKNIGHT's contact with the protruding, overgrown tree roots and the resulting injuries were caused by the negligence of Defendant, CITY OF GAINESVILLE, its employees, agents, and/or servants without any negligence on the part of Plaintiff, RALPH MCKNIGHT, contributing thereto.**
14. **The negligence of Defendant, CITY OF GAINESVILLE, its employees, agents, and/or servants consisted of the following:**
  - a. **failing to maintain its premises in a reasonably safe condition by permitting and allowing said large tree roots to grow and protrude from underground;**
  - b. **failing to correct a dangerous condition on its premises by failing to remove said large tree roots on its premises;**
  - c. **failing to maintain said area or walkway in the area of Plaintiff, RALPH MCKNIGHT's accident in a clear and safe condition for persons traveling between the walkway and the roadway near the address listed above;**

- d. failing to properly and adequately supervise and/or oversee the maintenance, service and/or care of the large tree roots protruding from underground to prevent the public from tripping and falling;
  - e. failing to properly warn persons of the condition of the large tree roots protruding from underground that presented a safety hazard, which should have included warning cones, warning tape, warning signage, verbal warning, or other reasonable warning; and
  - f. destroying evidence.
15. **Defendant**, CITY OF GAINESVILLE, had actual knowledge that the subject area was in a residential neighborhood, in front of a church, and frequented by pedestrians.
16. **Defendant**, CITY OF GAINESVILLE, had actual knowledge that large tree roots protruding from underground were allowed to remain growing in this condition for several years on City property by its employees, agents, and/or servants thereby rendering the area dangerous to persons passing over the same and further that no warnings regarding the same were given.
17. If **Defendant**, CITY OF GAINESVILLE, lacked such actual knowledge, said condition of the area and lack of appropriate warning existed for a sufficient time period prior to **Plaintiff**, RALPH MCKNIGHT's accident, such that **Defendant**, in the exercise of reasonable due care, could and should have had such knowledge and notice.
18. **Defendant**, CITY OF GAINESVILLE, was further negligent in the operation of its cleaning/maintenance business activities in that it failed to properly supervise, train, and instruct its employees, agents, and/or servants on the maintenance and upkeep of the City's trees and/or their overgrown or

protruding roots, and further failed to provide its employees, agents, and/or servants with proper safety equipment and warning devices for them to use, which would have prevented the subject incident from occurring.

19. As a direct and proximate result of the negligence of **Defendant**, CITY OF GAINESVILLE, **Plaintiff**, RALPH MCKNIGHT, has suffered severe bodily injury resulting in pain and suffering, disfigurement and/or permanent scarring, inconvenience, disability, physical impairment, mental impairment, mental anguish, expensive medical treatment, loss of diminished earning capacity, loss for the enjoyment of life, and aggravation of any previously existing condition. The injuries to **Plaintiff**, RALPH MCKNIGHT, are permanent within a reasonable degree of medical probability and he will continue to suffer these losses and expenses into the future.

**WHEREFORE, Plaintiffs**, RALPH MCKNIGHT and DIANE MCKNIGHT, respectfully pray for judgment in excess of \$15,000.00 (Fifteen Thousand Dollars) against the **Defendant**, CITY OF GAINESVILLE, with costs incurred herein, a jury trial on all issues triable as of right, and such other relief as this Court deems just and proper.

**COUNT II**  
**LOSS OF CONSORTIUM**

20. **Plaintiff**, DIANE MCKNIGHT, hereby adopts and re-alleges as if fully restated herein, every allegation as set forth in paragraphs one (1) through nineteen (19) above.
21. **Plaintiff**, DIANE MCKNIGHT, is now and at all times material was the lawful wife of **Plaintiff**, RALPH MCKNIGHT.
22. As a direct and proximate result of the above-referenced negligence of **Defendant**, CITY OF GAINESVILLE, **Plaintiff**, DIANE MCKNIGHT, has

suffered loss of consortium and has been otherwise deprived of her husband's love, support, comfort, solace, and services, has suffered a great inconvenience in the past and will suffer the same for the rest of her life and will continue to be deprived of the foregoing services usually and ordinarily provided by a husband in good health and of unimpaired vigor and strength, all to her damage.

**WHEREFORE, Plaintiff, DIANE MCKNIGHT**, respectfully prays for judgment in excess of Fifteen Thousand Dollars (\$15,000.00) against **Defendant, CITY OF GAINESVILLE**, with costs incurred herein, a jury trial on all issues triable as of right, and such other relief as this Court may deem just and proper.

**DATED** this 2<sup>nd</sup> day of April 2014.

**HARPER GAINES, PLLC**

/s/ Kamaria H. Williams  
**Kamaria Harper Williams, Esquire**  
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**Arnold S. Gaines, Esquire**  
Florida Bar No.: 0670928  
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Counsel for the Plaintiffs



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Jacksonville / Orlando / Tallahassee

Kamane (Katy) Harber  
Charles E. Hobbs, II  
Arnold S. Gaines  
Nicole Benjamin

October 18, 2011

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Marion Radson, City Attorney  
City of Gainesville  
200 E. University Ave., Rm. 425  
Gainesville, Florida 32601

Teresa Scott, P.E.  
Public Works Director  
405 NW 39th Avenue  
Gainesville, Florida 32609

Re: Claimant: Ralph McKnight  
Agency: City of Gainesville Public Works Department  
D/I: 7/6/11

Dear Mr. Radson:

Pursuant to Florida Statutes § 768.28, the above referenced claimant hereby provides notice of the intent to pursue a claim for damages against the City of Gainesville. Our law firm represents Ralph McKnight. Any correspondence relating to this claim should be directed to my attention. The following is the specific information requested by the aforementioned statute:

Name and address of claimant:	Ralph L. McKnight 6033 NE 27 <sup>th</sup> Avenue Gainesville, Florida 32609 SSN: [REDACTED] DOB: 07/21/57 POB: Gainesville, Florida
Date/time/place of accident:	On July 6, 2011, at or about 6:30 PM, at or about 2020 NE 15 <sup>th</sup> Street, Gainesville, Alachua County, Florida, 32609.
Description of the accident:	Mr. McKnight was on the grounds of the Passage Family Church, where he is the Support Services





THE HARPER LAW FIRM

Director. He saw some trash at the base of a tree located directly in front of the church. As he traversed the grassy area between the sidewalk and NE 15<sup>th</sup> Street in an attempt to pick up trash, he fell as a result of one or more tree roots protruding from the ground.

Agency/agents involved:

City of Gainesville, Public Works Department.

Relief sought:

Mr. McKnight seeks compensation for past, present, and future medical expenses, permanent impairment and damages, mental anguish, pain and suffering, loss wages, loss of earning capacity, and loss of enjoyment of life.

Pursuant to Florida Statutes § 768.28(6)(d), further information required by Florida Statutes § 768.28(6)(c) regarding prior adjudicated unpaid claims in excess of two hundred dollars (\$200.00), will be provided prior to settlement payment, close of discovery or commencement of trial, whichever is sooner.

If additional information is necessary, or if this notice is legally defective in any manner, please contact me immediately.

Respectfully,

Kamaria (Kay) Harper, Esq.



July 2, 2013

The Harper Law Firm  
Attn: Kamaria Harper Williams, Esq.  
10752 Deerwood Park Blvd. South, Suite 100  
Jacksonville, FL 32256

RE: Our Client: City of Gainesville  
Our Claim #: GC2011828335  
Date of Loss: July 6, 2011  
Your Client: Ralph McKnight

Dear Ms. Williams:

As you are aware, Underwriters Safety & Claims is the third party claims administrator of the self-insured fund in which the City of Gainesville participates pursuant to Florida Statute 768.28. We have been asked to assist our client in their investigation of your client's claim for injuries arising out of the above captioned incident. This letter also serves as our client's response to your demand letter and package dated May 9, 2013, as well as your June 14, 2013 correspondence.

We have completed our investigation of a tripped and fall incident that occurred in front of the Passage Family Church located at 2020 NE 15<sup>th</sup> Street, Gainesville, FL. It is our contention that our client is not responsible and will defend this claim should it enter into litigation. We based our decision to deny your client's injury claim based our findings listed below:

**\*Facts/Liability:** You have stated in your demand letter that on July 7, 2011 your client, Mr. Ralph McKnight was picking up trash in an area located between the sidewalk and roadway. Your client had venture toward a large tree located front of the Passage Family Church. While picking up trash in this area your client tripped and fell on a large root protruding above ground from the base of the tree.

You have asserted that it was our client's failure to maintain the roadway and its right of way in a reasonable and safe condition that contributed to your client accidental fall and subsequent injuries. We understand that it is common knowledge that maintaining one's premises in a reasonable and safe condition includes the duty to correct dangerous conditions of which our client either knew or should have known by the use of reasonable care and the duty to warn any parties of the potential dangers. Our investigation

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**EXHIBIT  
B**



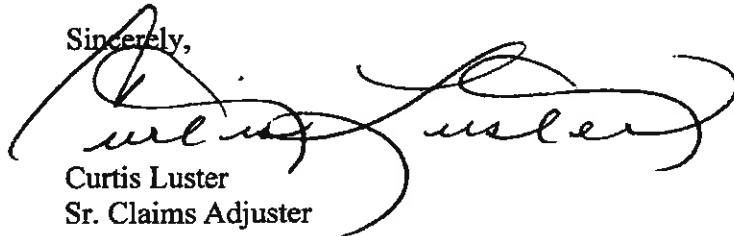
reveals that prior to the above date of loss; our client had no actual notice regarding tree roots protruding above ground inside the area that is consider our client's right of way. Furthermore, there is no indication that residents in the area, or members of the church attempted to contact our client's Public Works Dept. to alert them of this potential hazard.

Once again it must be noted that your client had first hand knowledge of the area in question and he still elected to enter the area at his own risk. As you are aware, our client is not an insurer of your client's safety, rather, our client has a duty to protect against those risks which are reasonable foreseeable. We fail to see where you have established that our client had actual notice of these defects prior to the incident, and failed to take steps to repair it or warn the plaintiff-invitee.

In your demand you are asking our client to pay your client the amount of \$35,000.00 without the benefit of any discovery, cross examination, or pre-suit mediation. At this time we are unable to honor your request. We understand that this was a regrettable accident but it does not give rise to an inference of negligence.

Based upon the above, we must respectfully deny any and all liability on behalf of our client, the City of Gainesville, and will be unable to offer any voluntary settlement on this claim. If you have questions regarding our client's position on this matter you can contact our office at (352) 334-3152.

Sincerely,



Curtis Luster  
Sr. Claims Adjuster

CC: City Attorney Office  
Department of Risk Management  
Department of Public Works

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