

Legislative #

121108E

TRAFFIC ENFORCEMENT AGREEMENT

THIS AGREEMENT is made and entered into on _____, _____, by and between the **City of Gainesville, Florida, a municipal corporation** (the "City"), and **Regency Windmeadows Limited Partnership, an Illinois limited partnership** (the "Property Owner").

W I T N E S S E T H

WHEREAS, The City is a municipal corporation under the laws of the State of Florida, providing traffic control and enforcement over the streets thereof; and

WHEREAS, Section 316.006(2)(b), Florida Statutes, provides that municipalities may exercise jurisdiction over any private roads located within its boundaries if the municipality and the party owning or controlling such roads enter into a written agreement for municipal traffic control jurisdiction, and such written agreement be approved by the governing board of the municipality; and

WHEREAS, Butler Development is a private development consisting of approximately 267 acres within the City and generally located between SW Archer Road and SW 24th Avenue and between SW 40th Boulevard and SW 34th Street, as depicted in Exhibit A attached hereto and by this reference made a part hereof ("Butler Development"); and

WHEREAS, the parcels of property that comprise Butler Development are owned separately, not jointly, by two legal entities, S. Clark Butler Properties, Ltd., a Florida limited partnership by S. Clark Butler Properties Corporation, a Florida corporation, its General Partner ("Butler") and Regency Windmeadows Limited Partnership, an Illinois limited partnership ("Regency"); and

WHEREAS, the City approved Butler Development as a Planned Development (PD) in accordance with the City's Comprehensive Plan and Land Development Code by Planned Use District (PUD) Land Use Ordinance No. 090537 adopted on August 5, 2010, and PD Zoning Ordinance No. 090538 adopted on January 5, 2012; and

WHEREAS, Butler Development PUD Ordinance No. 090537 and PD Ordinance No. 090538 were superseded and repealed by the City's adoption of Butler Development PUD Ordinance No. 121107 and PD Ordinance No. 121108, respectively, on November 21, 2013; and

WHEREAS, the Butler Development has a large number of roads, sidewalks and park areas that will remain private, despite their interconnection with and appearance of being a part of the public street grid, and as a result the City's concern is a lack of municipal traffic control jurisdiction over such private roads; and

WHEREAS, this Agreement replaces and supersedes the Traffic Enforcement Agreement that was entered into by and between the City and the Property Owner on January 12, 2012, and allows the City to provide traffic control jurisdiction over private roads as described in

Section 316.006, Florida Statutes, located within the Butler Development, in addition to the jurisdictional authority otherwise exercised by the City under existing law; nothing in this Agreement is intended to limit or remove any such jurisdictional authority.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the parties agree as follows:

1. **RECITALS AND APPLICABILITY.** The foregoing recitals are incorporated into and made a part of this Agreement. Due to their separate, and not joint, property ownership, Butler and Regency are executing separate but identical traffic enforcement agreements. Therefore, with respect to all obligations contained in the agreements, it is understood and acknowledged that Butler is bound only with respect to the properties it owns within Butler Development and Regency is bound only with respect to the properties it owns within Butler Development.

2. **TRAFFIC CONTROL.**

A. **CITY SERVICE AREA:** There is created a service area encompassing all private roads and limited access roads, now existing or constructed in the future, located within Butler Development (“City Service Area”) as depicted in Exhibit “A.” Such roads shall be generally open to the public for vehicular, bicycle and pedestrian travel from and after the effective date of this Agreement.

B. **SIGNAGE:** The Property Owner shall purchase, install, and maintain, at its sole cost and expense, all traffic control devices necessary to conform to the manual on uniform traffic control devices and other specifications of the Florida Department of Transportation, as now exist and as may be revised in the future. Such devices shall be installed on all existing roads, with appropriate review and approval by the City, within four (4) months from the effective date of this Agreement. Such devices shall be installed on future roads as they are constructed and prior to such roads being opened for motor vehicle travel.

C. **LIABILITY/INSURANCE:** To the extent of the insurance required to be maintained under this Agreement, the Property Owner shall hold the City harmless for all claims and damages arising out of the activities of the City performed hereunder except those due to the sole negligence of the City. Throughout the term of this Agreement, the Property Owner will provide General Liability Insurance in the minimum amount of one million dollars (\$1,000,000.00) insuring the City, its officials, agents and employees providing the services set forth pursuant to this Agreement. The Property Owner shall file current certificates of the required insurance with the City. The certificates shall name the City as an additional insured, shall be issued by companies authorized to do business under the laws of the State of Florida, and shall provide a minimum of 30-days advance notice of cancellation to the City.

D. DUTIES OF CITY: In addition to law enforcement services normally provided by the City to the public; by virtue of this Agreement, the City will enforce traffic regulations as described in Section 316.006, Florida Statutes, within the City Service Area at no cost to the Property Owner. The assignment and schedule of any City police officer assigned to the City Service Area shall be determined at sole discretion of the City. It is understood and agreed that the Property Owner has no authority under this Agreement concerning said assignment and scheduling or of the enforcement of any laws or ordinances. The City makes no commitment to specific times of day in which officers will be required to patrol the City Service Area, except in response to specific complaints of speeding or other traffic violations.

E. CITY'S LEGAL OBLIGATIONS: The Property Owner and the City recognize that there may be certain legal obligations which may modify the terms of this Agreement and the Property Owner and the City agree to abide by this Agreement as modified by any statutory obligations imposed upon the City. The City is responsible for the defense of its employees for any action arising out of the performance or non-performance of duties within the scope of employment. The City shall not be responsible for and expressly disclaims defense of any action arising out of acts or omissions of other agencies or other agents. In the event a lawsuit is filed against any party with respect to this Agreement, the parties served shall immediately notify the City Attorney.

F. NO THIRD PARTY BENEFICIARIES: There are no intended third party beneficiaries to this Agreement, and nothing herein shall be construed to grant any person, firm, or other entity which is not a signatory to this Agreement the right, benefit, or privileges to rely on or demand performance of any provision of this Agreement.

G. OWNERSHIP OF PROPERTY AND/OR EQUIPMENT: The Property Owner acknowledges that the City owns all property utilized by the officer(s) performing traffic control services within the scope of this Agreement. Such equipment includes, but is not limited to, the vehicle, mobile radio, light bar, siren, vest, shotgun, handgun, and radar unit.

3. TERM OF AGREEMENT. The Agreement shall become effective on the date both parties have fully executed same. This Agreement may be terminated by the City on written notice given to the Property Owner at least 30 days in advance of termination.

4. RECORDATION. The Property Owner shall, at its sole expense and within 10 days of execution by both parties, record this instrument and any amendment hereto in the Official Records of Alachua County, Florida.

5. NOTICES. Any notice to the parties shall be hand delivered, sent by overnight courier or U.S. Mail, certified return receipt requested to the following addresses:

As to the Property Owner:

Roy H. Lambert
Regency Windmeadows Limited Partnership
2935 20th Street
Vero Beach, FL 32960

As to the City:

City Manager
City of Gainesville
200 E. University Avenue, Suite 402
Gainesville, FL 32601

6. **VENUE.** In the event legal action becomes necessary to enforce this Agreement, the laws of Florida will control. Venue is in Alachua County, Florida.

7. **SUCCESSORS BOUND.** The terms, conditions and restrictions of this Agreement shall be binding upon, and inure to the benefit of the parties to this Agreement and their individual respective personal representatives, heirs, successors and assigns.

8. **SEVERABILITY.** If any word, phrase, clause, paragraph, section or provision of this Agreement or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this Agreement are declared severable.

9. **SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.

10. **AMENDMENT.** This Agreement may be amended only by mutual agreement of both parties, or their successors and/or assigns, or by legal obligations imposed upon the City as stated in Section 2E above. Any amendment shall be reduced to writing and signed by the parties, their successors and/or assigns, and recorded in the public records of Alachua County, Florida.

11. **ENTIRE AGREEMENT.** This is the entire agreement between the City and the Property Owner regarding traffic enforcement in the Butler Development. It replaces and supersedes the Traffic Enforcement Agreement that was entered into by and between the City and the Property Owner on January 12, 2012.

12. **VIOLATION/DEFAULT.** A violation or default under this Agreement shall be deemed a violation of Ordinance No. 121108 with remedies as provided therein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officials the day and year first above written.

WITNESSES:

CITY OF GAINESVILLE

Print name: _____

Russ Blackburn
City Manager

Print name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by _____, as _____ of _____ for and on behalf of the _____. He/She personally appeared before me and is: (check one of the below)
_____ personally known to me, or
_____ produced the following type of identification: _____

Executed and sealed by me on _____, _____.

Notary Public
Print Name: _____
My Commission expires: __/__/__

WITNESSES:

**Regency Windmeadows Limited
Partnership, an Illinois Limited
Partnership**

Print name: _____

Print name: _____

Title: _____

Print name: _____

STATE OF _____
COUNTY OF _____

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by _____, as _____ of _____ for and on behalf of the _____. He/She personally appeared before me and is: (check one of the below)
_____ personally known to me, or
_____ produced the following type of identification: _____

Executed and sealed by me on _____, _____.

Notary Public
Print Name: _____
My Commission expires: __/__/__

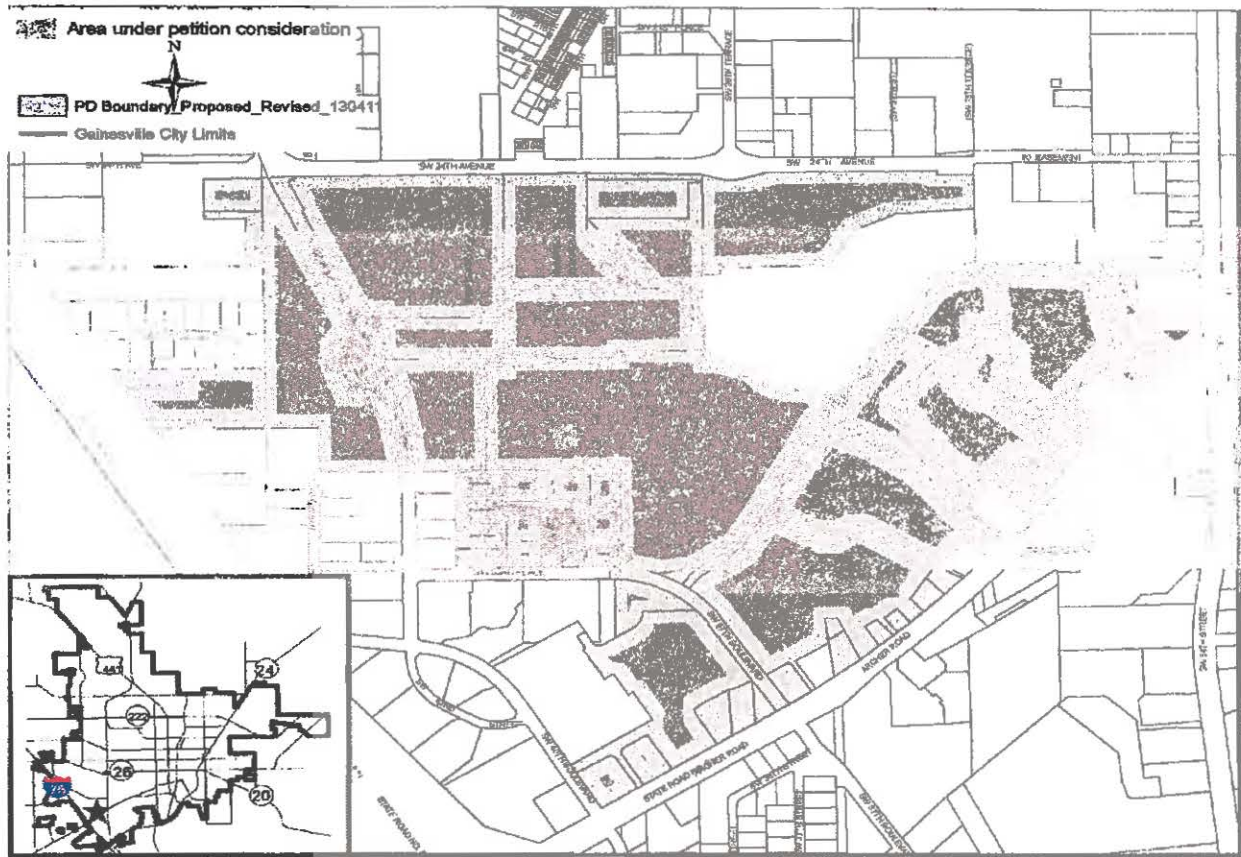


Exhibit "A" to Traffic Enforcement Agreement