

**Legislative #**

**130557A**

ORDINANCE NO. 130557

An ordinance of the City of Gainesville, Florida, to vacate, abandon, and close a portion of SW 42<sup>nd</sup> Street generally located between SW 24<sup>th</sup> Avenue and the 3200 block of SW 42<sup>nd</sup> Street, together with two stormwater parcels associated with SW 42<sup>nd</sup> Street, as more specifically described in this ordinance; providing terms and conditions; providing a severability clause; providing a repealing clause; providing directions to the Clerk of the Commission; and providing an effective date.

WHEREAS, S. Clark Butler Properties Corporation, a Florida corporation, acting as General Partner of S. Clark Butler Properties, Ltd., a Florida limited partnership, (“Developer”) is the owner and developer of certain property commonly referred to as the “Butler Development,” which is generally located between SW Archer Road and SW 24<sup>th</sup> Avenue and between SW 40<sup>th</sup> Boulevard and SW 34<sup>th</sup> Street; 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) Ordinance No. 121107 and PD Ordinance No. 121108, both adopted on November 21, 2013; and

WHEREAS, the Developer and the City agree, subject to the terms and conditions as set forth herein and pursuant to Section 30-192 of the City’s Land Development Code, to vacate, abandon, and close a public right-of-way that includes a portion of SW 42<sup>nd</sup> Street between the northern and southern boundaries of the Butler Development PD (approximately from SW 24<sup>th</sup> Avenue to the 3200 block of SW 42<sup>nd</sup> Street) together with two (2) stormwater parcels associated with SW 42<sup>nd</sup> Street, as more particularly described herein, to make possible the development of the Butler Development PD; and

1           **WHEREAS**, the City acquired the said public right-of-way and associated stormwater  
2 parcels by the adoption, on July 14, 2009, of Alachua County Resolution 09-64 by the Board of  
3 County Commissioners of Alachua County, Florida, with said Resolution being recorded in  
4 Official Record Book 3899, Page 1107, of the Public Records of Alachua County, Florida; and

5           **WHEREAS**, Section 30-192 of the City’s Land Development Code allows the City to  
6 vacate a public street or public place upon determining that it no longer serves a public purpose  
7 or that the vacation of the public street or public place is in the public interest; and

8           **WHEREAS**, municipalities in Florida have the authority under Article VIII, Section 2(b)  
9 of the Florida Constitution and Section 166.021(4), Florida Statutes, to impose conditions on  
10 vacation of a public right-of-way. See *City of Temple Terrace v. Tozier*, 903 So. 2d 970 (Fla.  
11 2nd DCA 2005); and

12           **WHEREAS**, the City finds that after the Developer constructs and dedicates to the public  
13 use and benefit certain road improvements as described in Section 2 of this ordinance and as  
14 shown on Exhibit “A” attached hereto and made a part hereof as if set forth in full, the said  
15 public right-of-way and associated stormwater parcels being vacated herein will no longer be  
16 needed to serve a public purpose; and

17           **WHEREAS**, the request to vacate the said public right-of-way and associated stormwater  
18 parcels subject to the terms and conditions as set forth herein was presented to and approved by  
19 the appropriate departments of the City; and

20           **WHEREAS**, on January 22, 2015, a public hearing was held by the City Plan Board,  
21 which acts as the local planning agency pursuant to Section 163.3174, Florida Statutes, where it  
22 voted to recommended that the City Commission approve this petition to vacate the said public

1 right-of-way and associated stormwater parcels subject to the terms and conditions as set forth  
2 herein; and

3       **WHEREAS**, at least ten (10) days' notice has been given once by publication in a  
4 newspaper of general circulation notifying the public of this proposed ordinance and of public  
5 hearings in the City Hall Auditorium located on the first floor of City Hall in the City of  
6 Gainesville; and

7       **WHEREAS**, public hearings were held pursuant to the notice described above at which  
8 hearings the parties in interest and all others had an opportunity to be and were, in fact, heard;  
9 and

10       **WHEREAS**, the City Commission finds that it is in the public interest to vacate,  
11 abandon, and close the public right-of-way and associated stormwater parcels that are the subject  
12 of this ordinance, subject to the terms and conditions as set forth herein.

13       **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
14 **CITY OF GAINESVILLE, FLORIDA:**

15       **Section 1.** Upon the Developer completing all of the terms and conditions specified in  
16 Section 2 of this ordinance and the City's recordation of this ordinance together with the  
17 executed affidavit of completion (as described in Section 2 of this ordinance) in the Public  
18 Records of Alachua County, Florida, the following described public right-of-way and associated  
19 stormwater parcels in the City of Gainesville shall be vacated, abandoned, and closed for use by  
20 the public generally.

21       See legal description attached as Exhibit "B" and made a part hereof as if set forth  
22 in full. The location of the property is shown on Exhibit "C" for visual reference.  
23 In the event of conflict or inconsistency, Exhibit "B" shall prevail over Exhibit  
24 "C".  
25

1           **Section 2.** The public right-of-way and associated stormwater parcels described in  
2 Section 1 of this ordinance shall not be vacated, abandoned, or closed for use by the public unless  
3 and until the Developer has satisfied all of the following terms and conditions at no cost or  
4 expense to the City. Notwithstanding the foregoing, nothing in this section shall preclude the  
5 Developer from applying for a temporary right-of-way obstruction permit under Chapter 23 of  
6 the Code of Ordinances. When the Developer has completed all of the following terms and  
7 conditions and same have been approved and accepted by the City, the City Manager shall  
8 evidence the completion and approval of the terms and conditions by executing the affidavit of  
9 completion attached as Exhibit "D", which shall be recorded together with this ordinance in the  
10 Public Records of Alachua County, Florida.

- 11           1. The Developer shall construct and dedicate to the public use and benefit: 1) an extension  
12           of SW 62<sup>nd</sup> Boulevard from SW 33<sup>rd</sup> Place to the western boundary of the Butler  
13           Development PD, 2) modifications of SW 43<sup>rd</sup> Street to connect the northernmost part of  
14           the new SW 62<sup>nd</sup> Boulevard extension to SW 24<sup>th</sup> Avenue, and 3) a new extension of SW  
15           42<sup>nd</sup> Street that will connect the Butler Development PD's southern boundary to the new  
16           SW 62<sup>nd</sup> Boulevard extension, all as shown on Exhibit "A" attached hereto and made a  
17           part hereof as if set forth in full.
- 18           2. The Developer shall construct all necessary intersection modifications in association with  
19           the road improvements set forth in Exhibit "A".
- 20           3. The Developer shall complete all improvements that may be required by the Florida  
21           Department of Transportation in association with the road improvements set forth in  
22           Exhibit "A".
- 23           4. The Developer shall relocate all utilities that are located within the public right-of-way  
24           and stormwater parcels described in Section 1 of this ordinance. The relocated utilities  
25           shall be fully constructed, certified as complete and acceptable for service by the Florida  
26           Department of Environmental Protection (i.e., a FDEP Certificate of Completion has been  
27           issued), and accepted for service by Gainesville Regional Utilities.
- 28           5. The Developer shall grant utility easements in the property set forth in Exhibit "A" to the  
29           City d/b/a Gainesville Regional Utilities or any other affected public or private utilities by  
30           recorded Easement Agreement, in form and content acceptable to the utility and at no cost  
31           or expense to the utility.
- 32           6. All road improvements described herein and set forth in Exhibit "A" shall be fully  
33           constructed, certified as open for traffic, and accepted for maintenance by the City's

1 Public Works Department.

2 7. The Developer shall convey to the City fee simple title free from any encumbrances,  
3 except any utility easements granted, to the property associated with the road  
4 improvements set forth in Exhibit "A".

5  
6 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
7 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
8 finding shall not affect the other provisions or applications of this ordinance that can be given  
9 effect without the invalid or unconstitutional provision or application, and to this end the  
10 provisions of this ordinance are declared severable.

11 **Section 4.** All ordinances or parts of ordinances in conflict herewith are to the extent of  
12 such conflict hereby repealed.

13 **Section 5.** Upon receipt from the City Manager of the executed affidavit of completion  
14 (as described in Section 2 of this ordinance), the Clerk of the Commission or designee is  
15 authorized and directed to record a true copy of this ordinance together with the affidavit of  
16 completion in the Public Records of Alachua County, Florida.

17 **Section 6.** This ordinance shall become effective immediately upon adoption; however,  
18 the vacation of the public right-of-way and associated stormwater parcels that are the subject of  
19 this ordinance shall not become effective until this ordinance together with the executed affidavit  
20 of completion (as described in Section 2 of this ordinance) has been recorded in the Public  
21 Records of Alachua County, Florida. If this ordinance together with the executed affidavit of  
22 completion is not recorded in the Public Records of Alachua County, Florida, within two years  
23 following the effective date of this ordinance, this ordinance shall be deemed null and void and  
24 of no further force and effect.

25 **PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2015.

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\_\_\_\_\_  
EDWARD B. BRADY  
MAYOR

Attest:

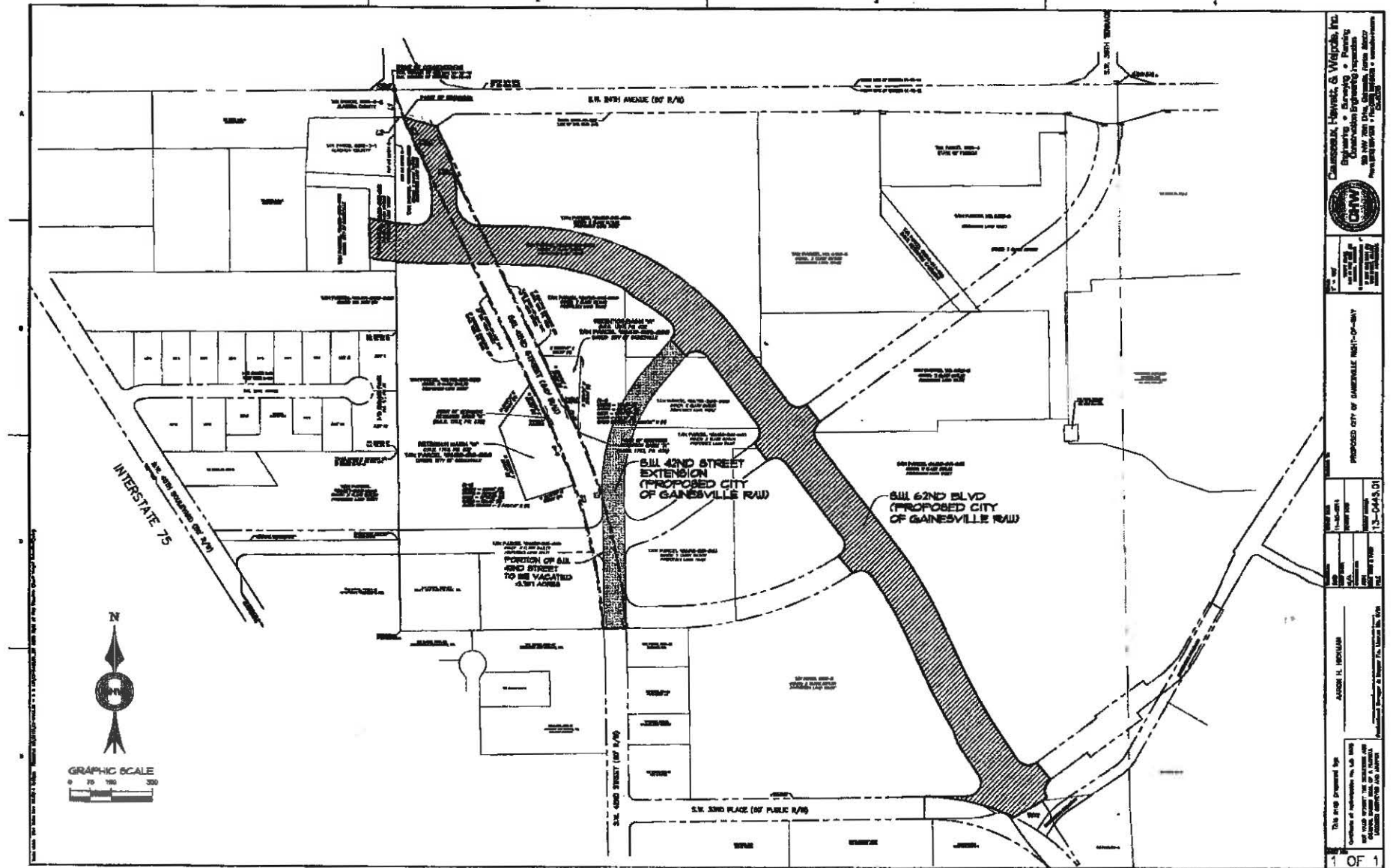
Approved as to form and legality:

\_\_\_\_\_  
KURT M. LANNON  
CLERK OF THE COMMISSION

\_\_\_\_\_  
NICOLLE M. SHALLEY  
CITY ATTORNEY

This ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

This ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015.



This plan prepared by  
 JACOB L. LUDWIG  
 Civil Engineer, No. 148  
 1408 South 1st Street  
 Gainesville, Florida 32601  
 License No. 130557

The City of Gainesville, Florida  
 13-0443.01

CAUSSEAU, HEWITT, & WATKINS, INC.  
 Engineers • Surveyors • Planners  
 Construction Engineering Program  
 500 West 10th Street, Suite 200  
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**CHW**  
 CIVIL ENGINEERS  
 SURVEYORS  
 PLANNERS

1 OF 1

EXHIBIT "A" TO ORDINANCE NO. 130557



Exhibit "B" to Ordinance No. 130557

Partial R/W Vacation – SW 42<sup>nd</sup> Street

A PORTION OF SW 42<sup>ND</sup> STREET, SITUATED IN SECTION 14, TOWNSHIP 10 SOUTH, RANGE 19 EAST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 5/8" REBAR & CAP (LB#7482) MARKING THE NORTHWEST CORNER OF SAID SECTION 14, TOWNSHIP 10 SOUTH, RANGE 19 EAST; THENCE SOUTH 00°40'10" EAST, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 100.02 FEET; THENCE DEPARTING SAID WEST LINE, NORTH 89°19'50" EAST, 34.91 FEET TO THE WESTERLY RIGHT OF WAY LINE OF SW 42<sup>ND</sup> STREET, AND THE **POINT OF BEGINNING**; THENCE DEPARTING SAID WESTERLY RIGHT OF WAY LINE, SOUTH 74°51'34" EAST, A DISTANCE OF 122.80 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SAID SW 42<sup>ND</sup> STREET; THENCE SOUTH 25°44'55" EAST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 198.98 FEET; THENCE SOUTH 63°53'08" WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 17.25 FEET; THENCE SOUTH 25°48'51" EAST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 938.38 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 2217.45 FEET, AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF SOUTH 14°45'33" EAST, 843.76 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND SAID EASTERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 21°56'07", AN ARC DISTANCE OF 848.93 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THE END OF SAID CURVE; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE, SOUTH 88°51'13" WEST, A DISTANCE OF 80.41 FEET TO A POINT ON THE AFOREMENTIONED WESTERLY RIGHT OF WAY LINE OF SW 42<sup>ND</sup> STREET, SAID POINT LYING ON A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 2137.45 FEET, AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF NORTH 14°47'23" WEST, 809.53 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 21°49'55", AN ARC DISTANCE OF 814.45 FEET TO THE END OF SAID CURVE; THENCE NORTH 25°48'40" WEST, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 1092.60 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1751.50 FEET, AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF NORTH 23°40'28" WEST, 125.41 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°06'12", AN ARC DISTANCE OF 125.43 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 3.787 ACRES, MORE OR LESS.

**AND**

RETENTION BASINS "A" & "B", AS RECORDED IN OFFICIAL RECORDS BOOK 1797, PAGE 672 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA.



## Affidavit of Completion Ordinance No. 130557 Terms and Conditions

**Before me**, the undersigned Notary duly authorized to take acknowledgments and administer oaths, personally appeared the undersigned ("Affiant"), who makes this Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth herein are true and correct to the best of his/her knowledge:

1. The City of Gainesville, Florida, adopted Ordinance No. 130557 to vacate certain public right-of-way and associated stormwater parcels, as more particularly described therein, conditional on S. Clark Butler Properties Corporation, a Florida corporation, acting as General Partner of S. Clark Butler Properties, Ltd., a Florida limited partnership ("Developer") completing, at no cost to the City, all of the terms and conditions specified in Section 2 of Ordinance No. 130557. The Developer has completed, at no cost to the City, all of the terms and conditions specified in Section 2 of Ordinance No. 130557 and same have been approved and accepted by the City.

**Under penalties of perjury**, I declare that I have read the foregoing Affidavit and that the matters, facts and things set forth herein are true and correct to the best of my knowledge.

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**WITNESSES:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Print Name

State of Florida  
County of Alachua

The forgoing instrument was sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, City Manager for the City of Gainesville, Florida. He/she [ ] is personally known to me or [ ] has produced a driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_