

ORDINANCE NO. 1693 AC CMS

AN ORDINANCE AUTHORIZING A REQUEST TO RELEASE REAL PROPERTY FROM THE LIEN AND OPERATION OF THE INDENTURE OF MORTGAGE, AS SUPPLEMENTED, BETWEEN THE CITY AND AMERITRUST COMPANY, CLEVELAND, OHIO, AS TRUSTEE, SECURING THE CITY'S FIRST MORTGAGE ELECTRIC SYSTEM REVENUE BONDS, FIRST THROUGH FIFTH SERIES, AND DECLARING AN EMERGENCY.

WHEREAS, this City has heretofore issued its \$760,000 First Mortgage Electric System Revenue Bonds, \$700,000 First Mortgage Electric System Revenue Bonds, Second Series, \$450,000 First Mortgage Electric System Revenue Bonds, Third Series, \$470,000 First Mortgage Electric System Revenue Bonds, Fourth Series, and \$1,270,000 First Mortgage Electric System Revenue Bonds, Fifth Series (collectively referred to hereinafter as the "Bonds"), which are secured by an Indenture of Mortgage dated March 15, 1957 and four Supplemental Indentures of Mortgage, dated February 1, 1961, May 15, 1965, March 15, 1972 and May 15, 1977, respectively (collectively referred to hereinafter as the "Mortgage") between the City and the Ameritrust Company, Cleveland, Ohio (formerly The Cleveland Trust Company) as Trustee; and

WHEREAS, the Mortgage permits, pursuant to Section 508 thereof, the release from its lien and operation of any property, real or personal, not necessary or desirable for the proper operation of the Electric System upon receipt by the Trustee of an ordinance passed by this Council, a certificate signed by an authorized officer of the City and an opinion of counsel, all in accordance with and meeting the requirements of Section 508 of the Mortgage;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, that:

Section 1. It is hereby found and determined that certain real estate owned by the City and described in Attachment A (referred to hereinafter as the "City Property") is not necessary or desirable for the proper operation of the Municipal Electric System, that the City Property, upon its release from the lien and operation of the Mortgage, should be exchanged by the City for certain real property now owned by A. H. Clark (referred to hereinafter as the "Clark Property") pursuant to an Agreement to exchange the City Property for the Clark Property entered into on January 11, 1983 by and between the City and A. H. Clark, which Clark Property will be used by the Municipal Electric System and subject to the lien of the Mortgage by virtue of Section 506 thereof pertaining to after-acquired property, and that the Clark Property has a value to the Municipal Electric System equal to or in excess of the value of the City Property.

Section 2. This Council hereby requests the release of the City Property from the lien and operation of the Mortgage, and the City Manager, City Auditor, City Solicitor and other appropriate officers of the City hereby are authorized to take any and all action required to evidence such request, to execute and deliver to the Trustee, on behalf of the City, this ordinance, a certificate, and an opinion, each meeting the requirements of Section 508 of the Mortgage, and to execute such other documents and to take such other

actions on behalf of the City as may be necessary or desirable to obtain the release from the lien and operation of the Mortgage on the City Property and to carry out the authorization contained in this ordinance.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4. This ordinance hereby is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that the immediate effectiveness of this ordinance is necessary as a prerequisite to the prompt exchange of the City Property for the Clark Property; wherefore, this ordinance shall take effect and be in force immediately upon its passage.

Passed: March 7, 1983, 1983

Carl Breuninger
Chairman of Council

Attest:

Julia Simonson
Clerk of Council

Approved by the City Solicitor:

Eric R. Severs
Eric R. Severs

Posted: March 8, 1983

LAUNDON • SIMON • CAHL & ASSOC., INC.
CONSULTING ENGINEERS & SURVEYORS

October 18, 1982
JOB NO. 82-1152

THE CITY OF OBERLIN TO CLARK

Situated in the City of Oberlin, Township of Russia, County of Lorain and State of Ohio and being known as part of Original Lot 96 of said township, bounded and described as follows:

Beginning at a point in the Easterly line of South Main Street at the Northwesterly corner of land conveyed to Arthur H. Clark by deed dated February 8, 1978 and recorded in Deed Volume 1197, Page 905 of the Lorain County Record of Deeds.

Thence in the Easterly line of South Main Street, North $1^{\circ} 17' 30''$ West a distance of 40.40 feet to a point at the Southwesterly corner of land conveyed to Arthur H. Clark by deed dated November 17, 1977 and recorded in Deed Volume 1192, Page 563 of the Lorain County Record of Deeds.

Thence in the Southerly line of said Clark' lands, North $80^{\circ} 43' 00''$ East, a distance of 645.65 feet to a point in the Westerly line of South Pleasant Street.

Thence in the Westerly line of South Pleasant Street, South $1^{\circ} 21' 00''$ East, a distance of 40.38 feet to a point at the Northeasterly corner of land conveyed to Arthur H. Clark by deed dated February 8, 1978 and recorded in Deed Volume 1197, Page 905 of the Lorain County Record of Deeds.

Thence in the Northerly line of said Clark' lands, South $80^{\circ} 43' 00''$ West, a distance of 645.69 feet to the place of beginning of lands herein described.

Containing within said bounds 0.5929 Acres of land.

CERTIFICATE OF CITY MANAGER AND CITY AUDITOR
OF CITY OF OBERLIN, OHIO

The undersigned, City Manager and City Auditor of the City of Oberlin, Ohio, the mortgagor under the Indenture of Mortgage and Supplemental Indentures of Mortgage described below (collectively referred to hereinafter as the "Mortgage") between the City of Oberlin, Ohio, and AmeriTrust Company, Cleveland, Ohio (formerly The Cleveland Trust Company), Trustee, given to secure payment of the City's First Mortgage Electric System Revenue Bonds, First through Fifth Series, hereby certify as follows:

1. The recording references for the Indenture of Mortgage and the Supplemental Indentures of Mortgage referred to above and securing the City's First Mortgage Electric System Revenue Bonds are as follows:

	<u>Date</u>	<u>Lorain County Mortgage Records</u> <u>(Date Received)</u>
Indenture of Mortgage	March 15, 1957	Vol. 696, P. 206 (May 20, 1957)
Supplemental Indenture of Mortgage (Second Series)	February 1, 1961	Vol. 833, P. 691 (March 16, 1961)
Supplemental Indenture of Mortgage (Third Series)	May 15, 1965	Vol. 1012, P. 89 (June 8, 1965)
Supplemental Indenture of Mortgage (Fourth Series)	March 15, 1972	Vol. 1193, P. 782 (May 2, 1972)
Supplemental Indenture of Mortgage (Fifth Series)	May 15, 1977	Vol. 1380, P. 592 (June 13, 1977)

2. The City, by Ordinance No. ____AC CMS, passed _____, 1983, a certified copy of which is attached hereto as Exhibit I, has requested the release from the lien and operation of the Mortgage of certain real property, described in Attachment A to that Ordinance, which real estate is now owned by the City, and such request is made pursuant to Section 508 of the Mortgage.

3. The City intends to exchange that property for other property now owned by A. H. Clark of Oberlin, Ohio, pursuant to an Agreement dated January 11, 1983 between the City and A. H. Clark. An executed copy of that Agreement and specific descriptions of the properties to be released and to be acquired (attached as Exhibits A and B, respectively, to the Agreement) are attached hereto as Exhibit II. The property to be acquired pursuant to that Agreement will be useable in the business of the Municipal Electric System and said property is of equal or greater value to the Municipal Electric System than the property to be released and exchanged. The property to be acquired will become a part of the Municipal Electric System and will be subject to the lien

of the Mortgage as after-acquired property pursuant to Section No. 506 of the Mortgage. No consideration other than the exchange of property and the covenants set forth in the Agreement is to be paid with respect to such release.

4. The real property to be released, which is described in Attachment A to the aforesaid ordinance, is not an essential part of the Municipal Electric System and is no longer necessary to, or desirable in or profitable for the business, use and operation of that System. This certification is being made because the property to be acquired pursuant to the Agreement described above will be of greater use to the Municipal Electric System than the property to be released.

5. No event of default has occurred under the Mortgage.

City Manager
City of Oberlin, Ohio

City Auditor
City of Oberlin, Ohio

Dated: March __, 1983