

ORDINANCE NO. 86-23 AC CMS

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN  
A. H. CLARK AND THE CITY OF OBERLIN  
AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME  
AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain,  
State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the Agreement between A. H. Clark and the City of Oberlin, Ohio, and dated April 4, 1986, and providing for certain public parking in proximity to the Oberlin police station, a copy of which is attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute said agreement and the associated easements on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted 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 action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, to-wit:

"to provide parking for the new police station prior to the beginning  
of construction"

and shall take effect immediately upon passage.

PASSED: 1st Reading- April 7, 1986

2nd Reading- April 14, 1986 (Tabled); April 28, 1986 (Emergency)

3rd Reading-

ATTEST:

  
Clerk of Council

  
Chairman of Council

POSTED: April 29, 1986

AGREEMENT

THIS AGREEMENT is made as of this 25 day of June, 1977 between the CITY OF OBERLIN, a municipal corporation organized and existing under the Constitution and laws of the State of Ohio (hereinafter referred to as the "City"), and ARTHUR H. CLARK (hereinafter referred to as "Clark").

The following recitals of fact are a material part of this Agreement:

A. The City is the owner of a tract of land described as follows and hereinafter referred to as "Parcel 1":

Parcel 1

Situated in the City of Oberlin, County of Lorain, and State of Ohio, and being parts of Village Lot 182 and part of Outlot No. 36 in Original Russia Township Lot No. 86, and further described as follows:

Beginning at a point in the East line of South Main Street, 354.75 feet North of the center line of East Vine Street; thence East parallel with the center line of East Vine Street, 125 feet to the principal place of beginning of the premises described herein; thence East in a line parallel to center line of East Vine Street 75 feet; thence South parallel with the East line of South Main Street, 15 feet; thence East in the Northerly line of Outlot No. 36 about 289 feet to the Westerly line of lands deeded to the Oberlin Improvement and Development Company by deed dated \_\_\_\_\_ and recorded in Volume 793, Page 484 of Lorain County Record of Deeds; thence South in the Westerly line of property so deeded to The Oberlin Improvement and Development Company to the center line of Plum Creek; thence Southwesterly in the center line of Plum Creek to the Easterly line of land deeded by Iral Webster to John Wall by deed dated June 29, 1881, and now owned by Robert Fauver, et al; thence North in the easterly line of property so deeded to John Wall and in the Easterly line of land formerly owned by Charlie E. Mason to the Northeast corner of said Charlie E. Mason's land; thence Westerly in the Northerly line of land formerly owned by Charlie E. Mason to a point which is 125 feet Easterly from the East line of South Main Street; thence Northerly in a straight line parallel to the Easterly line of South Main Street to the place of beginning, and containing therein approximately .6 Acres of land.

B. Clark is the owner of three (3) parcels of land described as follows and hereinafter referred to as "Parcel 2", "Parcel 3" and "Parcel 4", respectively:

Parcel 2

Situated in the City of Oberlin, County of Lorain and State of Ohio, and known as being a part of Original Oberlin Village Lot No. 36 as shown by the recorded plat in Volume 5 of Maps, Page 30 of Lorain County Records, and bounded and described as follows:

Beginning at the SouthWesterly corner of lands conveyed to the City of Oberlin, Ohio by Deed dated December 27, 1961 and recorded in Volume 812, Page 639 of Lorain County Records of Deeds, said SouthWesterly corner being 92.95 feet Southerly from the NorthWesterly corner thereof; thence in a line Easterly along the Southerly line or property so conveyed to the City of Oberlin, Ohio, a distance of 199.10 feet; thence Southerly along the Westerly line of said property so conveyed to the City of Oberlin, a distance of 50 feet; thence Westerly along the Southerly line of property now owned by the Oberlin Improvement & Development Co., Inc., Grantor herein, Westerly to the South-easterly corner of land conveyed to the City of Oberlin; thence Northerly along the Easterly line of lands conveyed to the City of Oberlin, 50 feet to the place of beginning, and containing therein approximately .23 acres of land.

Parcel 3

Situated in the City of Oberlin, County of Lorain and State of Ohio, and bounded and described as follows:

Beginning at the SouthWesterly corner of lands conveyed to Carl C. Kinney, Jr., by Deed dated April 21, 1954 and recorded in Deed Volume 597, Page 574 of the Lorain County Record of Deeds; thence Easterly in the SouthEasterly line of Kinney lands, a distance of 215.08 feet to an iron pin in the Westerly line of South Pleasant Street; thence Southerly in the Westerly line of South Pleasant Street to the center line of Plumb Creek; thence Westerly and SouthWesterly in the center line of Plumb Creek to the Easterly line of lands conveyed to Robert Fauver and Jerome G. Steel by Deed dated July 15, 1941 and recorded in Deed Volume 313, Page 354 of Lorain County Records of Deeds; thence Northerly along the Easterly line of land so conveyed to Fauver and Steel, a distance of 121.18 feet to the place of beginning, and containing therein approximately .2 Acres.

Parcel 4

Situated in the Township of Russia, County of Lorain and State of Ohio and being part of Lots 181 and 182 of the Oberlin Village Plat as appears in Plat Volume 5, Page 30, of the Lorain County Record of Plats, also being part of Original Lot 86 of said township bounded and described as follows:

Beginning at a point in the Easterly line of South Main Street, said point being 38.90 feet Easterly from the centerline of South Main Street at the NorthWesterly corner of lands conveyed to the City of Oberlin by Deed dated May 16, 1919 and recorded in Deed Volume 157, Page 274 of the Lorain County Record of Deeds.

Thence in the Easterly line of South Main Street, North  $0^{\circ} 27' 30''$  East, a distance of 93.64 feet to a point at the SouthWesterly corner of land now or formerly conveyed to I.L. Porter by Deed dated April 30, 1932 and recorded in Deed Volume 263, Page 363 of the Lorain County Record of Deeds.

Thence in the Southerly line of said Porter lands the following courses and distances: South  $89^{\circ} 41' 30''$  East, a distance of 100.00 feet to a point and North  $89^{\circ} 48' 30''$  East, a distance of 65.00 feet to a point.

Parcel 4 (Continued)

Thence North 0° 27' 30" East, a distance of 1.00 foot to a point.

Thence North 89° 48' 30" East, a distance of 35.00 feet to the SouthEasterly corner thereof.

Thence in the Easterly line of said Porter lands, North 0° 27' 30" East, a distance of 39.72 feet to a point.

Thence North 88° 48' 30" East, a distance of 61.11 feet to a point at the North Westerly corner of a building.

Thence along the Westerly wall line of said building and the Southerly extension thereof, South 1° 11' 30" East, a distance of 152.42 feet to a point in the Northerly line of lands leased to the Oberlin Improvement and Development Company by Lease dated February 8, 1963 and recorded in Lease Volume 76, Page 19 of the Lorain County Record of Leases.

Thence in said line, South 89° 06' 30" West, a distance of 33.64 feet to an angle point therein.

Thence continuing in said line, North 0° 27' 30" East, a distance of 16.23 feet to an angle point therein.

Thence continuing in said line and the Northerly line of lands conveyed to the City of Oberlin as aforesaid, North 89° 41' 30" West, a distance of 231.84 feet to the place of beginning of lands herein described.

C. Attached hereto and hereby made a part hereof is Exhibit A. designated and hereinafter referred to as the "Site Plan", which depicts, among other things, the respective locations of Parcels 1, 2, 3 and 4. Parcel 1 is designated as such on the Site Plan and is shown within the area crosshatched on the Site Plan. Parcel 2 designated as such on the Site Plan and is shown within the area outlined in green on the Site Plan. Parcel 3 is designated as such on the Site Plan and is shown within the area outlined in red on the Site Plan. Parcel 4 is designated as such on the Site Plan and is shown within the area outlined in brown on the Site Plan.

D. The City and Clark desire to structure Parcels 1, 2, 3 and 4 into a unified parking area, thereby maximizing the total number of parking spaces available to the public, beautifying such area and causing such area to be more efficient as a parking facility.

E. In order to further the expressed desire of the parties hereto described in recital D above, Clark wishes to convey to the City and the City wishes to receive title to Parcels 2 and 3, subject to the terms and conditions hereinafter set forth.

F. In order to further the expressed desire of the parties set forth in recital D above, the City has agreed to impose and grant, as the case may be, certain restrictions, easements and covenants on and with respect to Parcels 1, 2 and 3 in accordance with the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and of the respective covenants and undertakings of the City and Clark hereinafter set forth, the parties hereto hereby agree as follows:

1. Clark hereby agrees to convey to the City on and subject to the terms hereinafter contained Parcels 2 and 3. The following restrictions and covenants shall be set forth in the deed from Clark to the City:

- (a) Parcel 2 shall be used solely as a public parking lot open to the general public and to others granted similar rights for the parking of automobiles and trucks (no larger than three-quarter ton in size) and for no other purpose whatsoever. Some of said parking spaces, with the written consent of Grantee, may be designated for City personnel.
- (b) The City, its successors and assigns, shall not exact any charges for the use of said public parking lots from members of the general public or from any other persons granted the right to use such parking lot. If any parking spaces are located on Parcel 3, then the foregoing covenant shall apply with the same force and effect to Parcel 3.
- (c) No buildings or other structure of any kind whatsoever, or any part thereof that does not already exist as of the date of this agreement, shall be permitted on any part of Parcel 2 or Parcel 3.
- (d) All of the foregoing restrictions and covenants are also covenants running with the land at law as well as in equity and are binding upon all persons (including without limitation, individuals, corporations, partnerships or unincorporated associations) owning or having an interest in Parcels 2 and 3. All of the foregoing covenants and restrictions shall remain in force and effect for a period of fifty years (50) years from date hereof, or until such time as the commercial store located on the land owned by Clark to the North of Parcel 2 and Parcel 3 (or a building constructed in replacement of said store) shall no longer be in existence, whichever occurs last. Said restrictions and covenants may be reconsidered and renegotiated to take into account new developments at that time or at any other time provided both parties agree in writing to do so. Any breach or the continuance thereof may be enjoined. Clark, his successors and assigns, may maintain any appropriate action at law or in equity to enforce these restrictions and covenants and the invalidity of any restriction or portion thereof or waiver of any restriction or portion thereof shall not render the other such restrictions invalid or be a waiver thereof.

The aforesaid deed shall also contain a reservation of easement, reserving unto Clark, his heirs, tenants and assigns, as an easement appurtenant to the land owned by Clark on which said commercial building is located, a perpetual easement for ingress and egress in, on and over the driveway presently located thereon.

2. Prior to the Closing Date (hereinafter defined), the City and Clark shall enter into the easement agreement in the form and containing the same provisions as those set forth in Exhibit B attached hereto and made a part hereof. Four (4) fully executed copies of such document shall be deposited by the City with the Escrow Agent (hereinafter designated) in accordance with Section 5 hereof. Such document shall be filed for record by the Escrow Agent immediately following the recording of the deed from Clark to the City conveying Parcels 2 and 3.

3. The City agrees that it shall, in accordance with the plans and specifications dated March 21, 1977, prepared by Charles E. D. ..., attached hereto as Exhibit C and hereby made a part hereof (hereinafter referred to as the "Plans and Specifications"), commence as a part of its 1978 capital improvements program and with due diligence proceed to reconstruct a parking facility on Parcels 1, 2, 3 and 4 including without limitation, drainage, lighting facilities, grading and paving, landscaping, approaches, entrances, exits, sidewalks, roadways and the realignment and reconstruction of the driveway access to South Pleasant Street. Said initial construction work shall be performed at the sole cost and expense of the City without any cost to Clark or his heirs, personal representatives, successors and assigns, as the case may be. Said work shall be constructed and completed promptly and diligently in a good and workmanlike manner and in accordance with the Plans and Specifications. The City agrees to use its best efforts to accomplish such construction in such a manner so as to cause the least amount of interference for Clark or for any tenant of Clark.

4. The City and Clark agree that after said parking lot in number 3 above is constructed, maintenance of said parking area shall jointly be the responsibility of the City and Clark as described in Exhibit B numbers 4 and 5. The parties agree to annually contract by March 1st of each year for the provision of maintenance services as defined in Numbers

4 and 5 of Exhibit B, the total cost of which shall be shared by the City and Clark prorated upon the area owned by each as a percentage of the total parking area.

5. The City warrants and represents to Clark that (i) the City has full right and lawful authority to enter into and perform the City's obligations under the easement agreement attached hereto as Exhibit B, and (ii) Parcel 1 is owned by the City, in fee simple, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, mortgages and other liens, encumbrances or defects in title of any nature whatsoever affecting Parcel 1, except for the matters specifically set forth in Exhibit D attached hereto and made a part hereof.

6. Within ten (10) days after both parties have executed this Agreement, an executed copy of this Agreement shall be delivered to \_\_\_\_\_, who shall serve as the Escrow Agent for this transaction. Within fifteen (15) days after both parties have executed this Agreement, the parties shall deposit with the Escrow Agent all documents and necessary funds required by the terms hereof. The Escrow Agent shall file the deed from Clark to the City and the easement agreement referred to and described in Section 2 hereof, in that order, with the Lorain County Recorder within seventy-two (72) hours after all funds and documents have been deposited with the Escrow Agent. The costs for filing the foregoing documents shall be split evenly between the parties hereto.

7. All understandings and agreements heretofore had between the parties hereto are merged into this Agreement, which alone fully and completely expresses their understanding, and the same is being entered into after full investigation, neither party relying upon any statement or representation made by the other which is not embodied in this Agreement. No agreement shall be effective to add to, change, modify, waive or discharge this Agreement or any exhibit attached hereto in whole or in part unless such Agreement is in writing and signed by the parties hereto.

8. The rights and obligations set forth in this Agreement shall be binding upon and inure to the benefit of the parties hereto, their executors, administrators, heirs, successors and assigns.



IN WITNESS WHEREOF, the City, pursuant to an ordinance fully passed on September 6, 1977, has caused this Agreement to be executed by its City Manager and City Clerk, and Arthur H. Clark have executed this Agreement, all as of the day and year first above written.

CITY OF OBERLIN, OHIO

By:

Sherry A. Hottle  
City Manager

And:

Eugene J. Sams  
City Clerk

Arthur H. Clark  
ARTHUR H. CLARK

6/6/79

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