

**ORDINANCE NO. 91-23**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH MARK KLAUS PROPERTIES, LLC FOR THE LEASE OF THE PARKING LOT AREA LOCATED ON PERMANENT PARCEL NO. 028-19B-20-103, AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:**

**SEC. 1:** That the Mayor is hereby authorized and directed to enter into an Agreement with Mark Klaus Properties, LLC for the lease of parking lot area located on South Court Street; known as Permanent Parcel No. 028-19B-20-103, commencing on May 19, 2023 and shall continue to renew on the first of every month for five (5) years unless terminated by the City or Mark Klaus.

**SEC. 2:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.

**SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

**SEC. 4:** That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason the current lease expires on May 18, 2023; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

**PASSED:** May 8, 2023

**SIGNED:** John M. Coyne, III  
President of Council

**ATTEST:** Kathy Patton  
Clerk of Council

**APPROVED:** May 9, 2023

**SIGNED:** Dennis Hanwell  
Mayor

THE UNDERSIGNED, CLERK OF THE COUNCIL OF THE CITY OF MEDINA, OHIO, HEREBY CERTIFIES THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE-RESOLUTION NO. 91-23 ADOPTED BY SAID COUNCIL ON May 8, 2023  
Kathy Patton  
CLERK OF COUNCIL

AGREEMENT

ORD. 91-23  
RKH-A

This Agreement is hereby entered into this 28 day of APRIL, 2023, by and between the CITY OF MEDINA, an Ohio Municipal Corporation, located at 132 North Elmwood Avenue, Medina, Ohio 44256, (hereinafter referred to as "the City") and MARK KLAUS PROPERTIES, LLC, an Ohio Limited Liability Company, located at 260 South Court Street, Medina, Ohio 44256, (hereinafter referred to as "Mark Klaus").

WITNESSETH:

WHEREAS, Mark Klaus Properties, LLC is the owner of property located on South Court Street, Medina, Ohio, known as Permanent Parcel No. 028-19B-20-103; and

WHEREAS, the City of Medina desires to use the parking lot area located on Permanent Parcel No. 028-19B-20-103, including the sidewalks located thereon ("Parking Lot"); and

WHEREAS, the City agrees to maintain the Parking Lot for the term of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties, City, and Mark Klaus, their successors and assigns, hereby covenant, promise, and agree as follows:

I. PREMISES

Mark Klaus hereby grants to the City the nonexclusive use and occupancy of the parking lot area for public parking purposes located on South Court Street, Medina, Ohio, known as Permanent Parcel No. 028-19B-20-103. The City's use of the Parking Lot shall not be exclusive as Mark Klaus retains use of the parking lot area. The parties agree and understand that the City may permit use of the Parking Lot by individuals associated with the Medina City Schools.

Mark Klaus may exclusively utilize the entire parking lot and prohibit public parking by posting barricades with signs indicating that the lot is closed for a special event at both entrances and having a staff person at each. Mark Klaus shall provide notice to the City no less than seventy-two (72) hours prior to exclusively utilizing the parking lot.

II. MAINTENANCE

The City of Medina hereby agrees to be solely responsible for all maintenance of the Parking Lot, including adjacent sidewalk areas, so as to keep the property in good condition during the term of this Agreement. Mark Klaus shall not be responsible for any maintenance needs with respect to the Parking Lot if they should occur. No alterations shall be made to the property except as required for purposes of maintenance and as set forth in this Agreement. The City's obligation to maintain the Parking Lot includes, but is not limited to, snow removal, deicing, crack repair, resurfacing, and striping of parking spaces. During the term of this lease,

no city or city contracted trucks or construction equipment will be granted use of the lot. Pick-up trucks and plow equipment, when needed for snow removal, or parking lot painting equipment will be allowed. Any other equipment deemed necessary, must have written approval by Mark Klaus.

The parties hereto specifically recognize that the Parking Lot known as Permanent Parcel No. 028-19B-20-103 will be restriped in its current configuration or with alterations mutually agreed upon by the City and Mark Klaus. The City hereby agrees to be solely responsible for all costs incurred to restripe the Parking Lot.

### **III. TERM**

This Agreement shall be valid commencing on May 19, 2023 and shall continue to renew on the first of every month for five (5) years unless terminated by the City or Mark Klaus. The City and Mark Klaus shall each have the right to terminate this Agreement at any time for any reason, with a thirty (30) day written notice.

### **IV. UTILITIES**

The City of Medina shall be responsible for all utility costs with respect to the Parking Lot.

### **V. REAL ESTATE TAXES**

Mark Klaus Properties, LLC agrees to remain solely responsible for the payment of real estate taxes on the subject property pursuant to the terms of the Land Installment Contract.

### **VI. RISK OF LOSS AND INSURANCE**

The City of Medina agrees to primary responsibility for damage and/or injury to person or property proximately caused by use of the subject parking lot property during the term of this Agreement. The City of Medina shall maintain, during the entire term of this Agreement, liability insurance coverage covering the City's use of the subject property in the amount of One Million Dollars (\$1,000,000). To the extent permissible under Ohio law and to the extent of the City's insurance liability coverage, the City agrees to indemnify, hold harmless, and defend Mark Klaus Properties, LLC, Mark Klaus LLC, Alien Vacation Mini Golf Attraction LLC, their principles, officers and assignees from and against any and all liability, losses, damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with any claim, suit, proceeding, inquiry, or investigation based upon or relating to any use of the Parking Lot during the term of the lease.

## VII. NOTICES

All notices which may be proper and necessary to be served hereunder shall be in writing and shall be served by personal delivery or by certified mail. Any such correspondence shall be sent to the following addresses:

**To the City:**

Office of the Mayor  
City of Medina  
132 North Elmwood Avenue  
Medina, OH 44256

**To Mark Klaus Properties, LLC:**

Mark Klaus, Member  
Mark Klaus Properties, LLC  
260 South Court Street  
Medina, OH 44256

## VIII. FORCE MAJUERE

Neither City nor Mark Klaus Properties, LLC, shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of government authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which it is not responsible and which are not within its control; provided that this provision shall not prevent either party from exercising its right of termination under this agreement.

Signed in the presence of:

Gabe Richmond  
Kara Kinzel

MARK KLAUS PROPERTIES LLC,  
an Ohio Limited Liability Company

By: Mark Klaus  
MARK KLAUS, Member

STATE OF OHIO            )  
  )  
COUNTY OF MEDINA    )ss:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Mark Klaus Properties, LLC, by Mark Klaus, its Member, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said company and his voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 28th day of April, 2023.



MARIELENA WALLACE  
Notary Public, State of Ohio  
My Comm. Expires May 02, 2026

Marielena Wallace  
NOTARY PUBLIC

Document & Form Approved by:

Greg A. Huber  
GREGORY A. HUBER, Law Director  
City of Medina

Signed in the presence of:

CITY OF MEDINA,  
an Ohio Municipal Corporation

Henry Patton, Clerk  
Sherry A. Crow

By: Dennis Hanwell  
DENNIS HANWELL, Mayor 5/9/2023

STATE OF OHIO                    )  
  )ss:  
COUNTY OF MEDINA         )

Before me, a Notary Public in and for said County and State, personally appeared the above-named City of Medina, an Ohio municipal corporation, by Dennis Hanwell, its Mayor, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said City and his voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 9th day of May, 2023.

Sherry A. Crow  
NOTARY PUBLIC

SHERRY A. CROW  
Notary Public  
State of Ohio, Medina County  
My Commission Expires 5-27-24