

ORDINANCE NO. 61-17

AN ORDINANCE REPEALING & REPLACING ORDINANCE NO. 150-16, PASSED OCTOBER 27, 2016 PERTAINING TO THE AGREEMENT WITH MARK KLAUS, LLC AND THE UNITED METHODIST CHURCH FOR THE USE OF PARKING LOT AREAS LOCATED ON SOUTH COURT STREET, AND DECLARING AN EMERGENCY.

WHEREAS: Ordinance No. 150-16, passed October 27, 2016, authorized an Agreement between the City of Medina, Mark Klaus, LLC and the United Methodist Church for the use of parking lot areas located on South Court Street; Permanent Parcel No. 028-19B-20-103, including the sidewalks thereon; and

WHEREAS: The Agreement has been renegotiated due to changes to the terms.

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

- SEC. 1:** That Ordinance No. 150-16, passed October 27, 2016 is hereby repealed.
- SEC. 2:** That a copy of the new 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 that work is currently underway; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: April 24, 2017

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: April 25, 2017

SIGNED: Dennis Hanwell
Mayor

AGREEMENT

This Agreement is hereby entered into this 25th day of April, 2017, 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 the **MEDINA UNITED METHODIST CHURCH**, located at 4747 Foote Road, Medina, Ohio 44256, (hereinafter referred to as "Church"), and **MARK KLAUS, LLC**, 260 Wakefield Run, Hinckley, Ohio 44233.

WITNESSETH:

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

WHEREAS, the Medina United Methodist Church is selling the subject property to Mark Klaus, LLC, 260 Wakefield Run, Hinckley, Ohio 44233 pursuant to a Land Installment Contract dated December 22, 2013, which contract has been recorded with the Medina County Recorder at Official Record 2014OR001052; and

WHEREAS, the City of Medina desires to use the parking lot area located on Permanent Parcel Nos. 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, Church, and Mark Klaus, LLC, their successors and assigns, hereby covenant, promise, and agree as follows:

I. PREMISES

The Church and Mark Klaus, LLC hereby jointly grant 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, LLC, 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.

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. The Church and Mark Klaus, LLC, 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.

The parties hereto specifically recognize that the Parking Lot known as Permanent Parcel No. 028-19B-20-103 located directly to the south of the Church building will be milled and repaved pursuant to the terms of the Crossroads Asphalt Recycling, Inc., proposal, attached hereto and incorporated herein as "Exhibit A," where there shall be a milling and repavement to the depth of two inches (2") and base stabilization for an estimated cost not to exceed Fifty-five Thousand Dollars (\$55,000). In consideration of the monies expended for this repaving, the Church and Mark Klaus, LLC, specifically agree to a term of public use of said Parking Lot described herein for a term of six (6) years.

III. TERM

The term of this Agreement shall be valid commencing on the date of full execution of this Agreement and end on the date six (6) years from the date the City of Medina completes the repaving of the Lot known as Permanent Parcel No. 028-19B-20-103 as outlined hereinabove.

The repaving described herein shall be completed as soon as reasonably possible after Medina County asphalt plants open in the spring of 2017, and the asphalt repavers that are utilized to complete the repaving can reasonably schedule the project.

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, 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 the Church and Mark Klaus, LLC, 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 after the commencement date of this Lease and while the City is in possession of or has the right to possession of the Parking Lot pursuant to this Lease.

VII. TERMINATION

This Agreement may only be terminated by any party for reasons of just cause or as agreed upon by the parties or as agreed upon by a court of law should the matter of termination be an issue that is not agreed upon as between the parties. In any event, this Agreement shall terminate at the expiration of the term described herein above in Section III.

VIII. 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 the Church:

ATTN: Trustees
Medina United Methodist Church
4747 Foote Road
Medina, OH 44256

To Mark Klaus, LLC:

Mark Klaus, Member
Mark Klaus, LLC
260 Wakefield Run
Hinckley, Ohio 44233

IX. FORCE MAJUERE

Neither City nor Church nor Mark Klaus, 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:

**CITY OF MEDINA,
an Ohio Municipal Corporation**

Kathy Patton
Sherry A. Crow

By: Dennis Hanwell
DENNIS HANWELL, Mayor

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 23rd day of May, 2017.

Sherry A. Crow
NOTARY PUBLIC

SHERRY A. CROW
Notary Public
State of Ohio, Medina County
My Commission Expires 5-27-19

Signed in the presence of:

MEDINA UNITED METHODIST CHURCH

[Signature]
Sherry A. Crow

By: [Signature]
Its: Trustee

STATE OF OHIO)
)
COUNTY OF MEDINA)ss:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Medina United Methodist Church by Jason Sharrett, its Trustee, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said Church and his/her voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 12th day of May, 2017.

Kimberly A. Walter
NOTARY PUBLIC

Kimberly A. Walter
Notary Public
State of Ohio
My Comm Expires Aug. 3, 2018

Signed in the presence of:

Mr. Pucich
Sherry A. Crow

**MARK KLAUS, 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, 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 23rd day of May, 2017.

Sherry A. Crow
NOTARY PUBLIC

SHERRY A. CROW
Notary Public
State of Ohio, Medina County
My Commission Expires 5-27-19

Document & Form Approved by:

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