

ORDINANCE NO. 2010-37

INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN EMERGENCY ORDINANCE
AUTHORIZING AND DIRECTING THE MAYOR
TO ENTER INTO AMENDMENT NO. 1 TO THE
DEVELOPMENT AGREEMENT ENTERED INTO WITH
PROGRESSIVE CASUALTY INSURANCE COMPANY.**

WHEREAS, on or about March 27, 1998, pursuant to Ordinance No. 1998-10, and subsequently amended thereafter on or about July 7, 1998, pursuant to Ordinance No. 1998-14, Mayfield Village entered into a Development Agreement with Progressive Casualty Insurance Company regarding the development of what is now more commonly known as Campus 2; and

WHEREAS, pursuant to that Development Agreement, the parties contemplated Progressive's construction of a Fitness Center and Progressive allowing residents of the Village to use the Fitness Center subject to any conditions and limitations of a type customarily imposed by owners and operators of fitness facilities; and

WHEREAS, at this time, Progressive has requested a modification to the Development Agreement, specifically to identify certain other conditions and limitations upon the use of the facility by Mayfield Village residents in order to correspond with Progressive's Human Resource Policy on access to the Progressive facility for employees following termination from employment; and

WHEREAS, the Village deems it in the best interest of the Village to authorize entering into Amendment No. 1.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

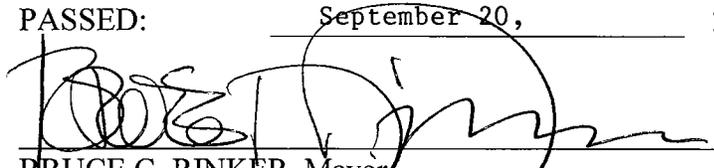
SECTION 1. That the Mayor and President of Council are hereby and herein authorized and directed to entered into Amendment No. 1 to the Development Agreement as more fully set forther in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

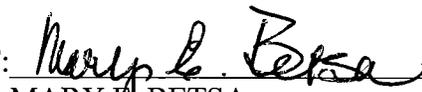

WILLIAM BUCKHOLTZ
Council President

First Reading: September 20, 2010
Second Reading: Suspended 2010
Third Reading: Suspended 2010
PASSED: September 20, 2010


BRUCE G. RINKER, Mayor

APPROVED AS TO FORM:


JOSEPH W. DIEMERT, JR.
DIRECTOR OF LAW

ATTEST: 
MARY E. BETSA,
Clerk of Council

AMENDMENT 1

This Amendment 1 is made by and between Mayfield Village, a municipal corporation which is a political subdivision of the State of Ohio ("Village"), with offices at 6621 Wilson Mills Road, Mayfield Village, Ohio 44143, and Progressive Casualty Insurance Company ("Progressive"), with offices at 6300 Wilson Mills Road, Mayfield Village, Ohio 44143, with reference to a Development Agreement between the parties, effective August 8, 1998 (the "Agreement"). The parties hereby agree to amend the Agreement as follows:

1. In the event of any conflict between the provisions of this Amendment 1 and those of the Agreement, the provisions of this Amendment 1 shall control.
2. Words or terms that are capitalized but not otherwise defined in this Amendment 1 shall have the meaning ascribed to them in the Agreement.
3. The following new sentence is hereby inserted after the third sentence, and before the fourth sentence, of Section 2 of the Agreement:

Progressive also retains the right to restrict all or any part of a Village resident's access to, or usage of, the fitness center for any of the following reasons: the resident is a former employee, or former independent contractor, of Progressive or any of its corporate affiliates within The Progressive Group of Insurance Companies; the resident fails to pay the membership fee; the resident violates any fitness center rule, safety guideline, or policy; or Progressive otherwise determines, in its sole reasonable discretion, that the resident presents a risk to Progressive or to property or persons in or around the fitness center.

In Witness Whereof, the parties have caused this Amendment 1 to be signed by their duly authorized representatives as of _____.

Progressive Casualty Insurance Company

Mayfield Village

By: _____

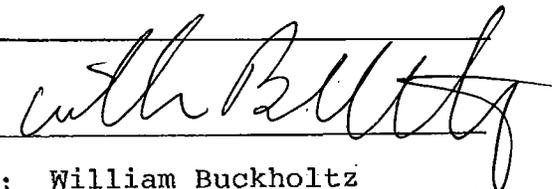
By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: 

Name: William Buckholtz

Title: Council President

APPROVED AS TO FORM:

By: _____

Name: Joseph W. Diemert, Jr.

Title: Director of Law

ORDINANCE NO. 98-14
INTRODUCED BY: Mayor Rinker and Council as a Whole

AN EMERGENCY ORDINANCE
AMENDING ORDINANCE NO. 98-10 RELATIVE TO THE
DEVELOPMENT AGREEMENT WITH PROGRESSIVE

WHEREAS, on February 16, 1998, this Council authorized a Development Agreement with Progressive which has since been modified by further negotiations; and

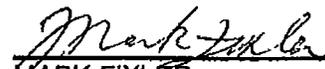
WHEREAS, Council is in agreement with the changes as made in subsequent negotiations, and does hereby approve the development agreement as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. That Ordinance 98-10 is hereby and herein amended to substitute for Exhibit "A" to that ordinance, the Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

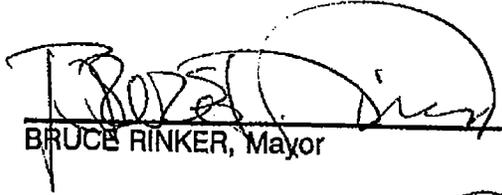


MARK FIXLER
Council President

First Reading: March 16, 1998
Second Reading: Suspended, 1998
Third Reading: Suspended, 1998

PASSED: March 16, 1998

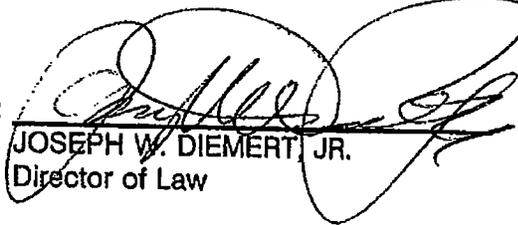
ORDINANCE NO. 98- 14
PAGE TWO



BRUCE RINKER, Mayor

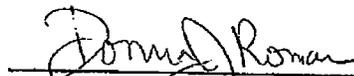
DATE: 7/7/78

APPROVED AS TO FORM:



JOSEPH W. DIEMERT, JR.
Director of Law

ATTEST:



DONNA J. ROMAN
Clerk of Council

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made by and between Mayfield Village, a municipal corporation which is a political subdivision of the State of Ohio, having an address at 6621 Wilson Mills Road, Mayfield Village, Ohio 44143 ("Village") and Progressive Casualty Insurance Company, an Ohio corporation, having an address at 6300 Wilson Mills Road, Mayfield Village, Ohio 44143 ("Progressive").

WHEREAS, Progressive and Village will enter into Purchase Agreements dated simultaneously herewith ("Purchase Agreement") under which Progressive will purchase from Village a parcel of real property located on SOM Center Road, Mayfield Village, Ohio and more particularly described in the Purchase Agreement ("Property"), and Mayfield will be simultaneously acquiring property from Progressive for municipal recreation purposes; and

WHEREAS, Progressive intends to construct two or more office buildings and/or other facilities on the Property for use in its business operations (collectively the "Development"); and

WHEREAS, the parties wish to make provision for various matters relating to the Development.

NOW, THEREFORE, Progressive and Village hereby agree as follows:

1. COMMENCEMENT OF DEVELOPMENT.

Promptly following execution of this Agreement, Progressive shall prepare and submit to Village plans for the construction of the Development. Village agrees to approve these plans as promptly as possible, subject to all applicable zoning and regulatory requirements. Subject to timely performance of Village's obligations under the other provisions of this Agreement, Progressive shall commence construction promptly following receipt of all necessary approvals and permits, and will construct on a continuous basis for the first three buildings, including the fitness center. Progressive commits to a minimum construction cost investment in the first three buildings that will be not less than \$30,000,000. Progressive shall use its best efforts, consistent with its business needs, to ensure that Progressive and its affiliated entities employ in the facilities to be constructed on the Property at least 600 workers by the end of the first year following completion of construction and 1000 workers by the end of the third year following such completion. However, these commitments are conditioned upon the construction of a roadway accessing the site with a curb on SOM Center Road by 12/31/98, and a curb cut to White Road by 12/31/00.

2. FITNESS AND SWIMMING FACILITIES.

As part of the Development, Progressive will construct a fitness center on the Property of not less than 15,000 square feet. Progressive shall determine the design and location of the fitness center and pay all costs of construction. Progressive shall allow residents of the Village to use the fitness center subject to any conditions and limitations of a type customarily imposed by owners and operators of fitness facilities. Progressive shall

determine the center's schedules and hours of operation and may impose usage, membership and other fees. However, during the first 60 days of operation, the Village will not be charged a fee for its residents' use. Thereafter, a prorata fee not in excess of that charged to Progressive employees will be passed on to the Village on a usage basis formula to be negotiated before opening of the facility. Fitness Center usage and fees will be applied equally to Progressive employees and Village residents.

The Village will construct a swimming facility and appurtenances (e.g. parking lot, landscaping, pedestrian walkway and decks) on property adjacent to the Development in a manner exemplified in the architectural rendering attached here as Exhibit "A". Village shall determine the design and location of the swimming facility and be responsible for all construction. The Village shall pay all costs of construction of parking areas appurtenant to the swimming facility as such costs are incurred. All other costs of constructing facility (including the pool, bath house, decks, walkway and landscaping) shall be paid by Progressive as they are incurred, provided that the Village shall reimburse Progressive for the amount by which such other costs exceed \$1,000,000.00. The principal amount of this reimbursement plus interest at a fixed rate equal to the five-year Treasury note rate shall be made within five years after commencement of construction. Interest will compound semi-annually. Prepayment of the entire outstanding balance of principal accrued interest may be made at any time without penalty. The applicable five-year Treasury note rate shall be determined, and interest shall begin to accrue, on the date construction is substantially completed; however, if construction is not substantially completed within four months after commencement of construction, then the rate shall be determined, and interest shall begin to accrue, at the end of such four-month period based on construction costs paid during that period and, thereafter, interest at such rate shall accrue on all additional construction costs as they are incurred. The Village shall execute one or more promissory notes reflecting the above terms as requested by Progressive.

The Village shall allow employees of Progressive within a radius of five miles to use the swimming facility subject to any conditions and limitations of a type customarily imposed by owners and operators of swimming facilities. (Inclusive of 20 annual passes designated for Progressive employees' guests). The Village shall determine the swimming facility's schedules and hours of operation and may impose usage, membership and other fees for all users. Pool usage and fees will be applied equally to Progressive employees and Village residents.

3. CONSTRUCTION OF ROADWAY.

Promptly following execution of this Agreement, Village shall commence and pursue diligently to completion all action necessary to construct a roadway and utilities to service the Development ("Roadway"). The Roadway shall have at least one curb cut on SOM Center Road and one curb out on White Road and shall be constructed at the location shown on Exhibit "B". Village shall acquire by "Quick Take" or other expeditious means any and all property needed for the Roadway's curb cut access from White Road. Village shall complete this acquisition within one year from the date of this Agreement. Village shall also apply promptly to the Ohio Department of Development ("ODOD") for funding of all or a portion of the cost of the Roadway. Progressive and Village shall share equally

all expenses for the portion of the Roadway from White Road and SOM Center to the southern end of the Progressive parcel formerly owned by Friedman. (However, the Village and Progressive agree that the expenses to be shared do not and will not include any expenses related to the delineation or mitigation of wetlands on the parcel formerly owned by Friedman). Such sharing of costs will be 50/50 regardless of whose property abuts the Roadway and/or utilities. However, the Village and Progressive agree to enter into a separate "Restrictive Covenant" agreement with reference to the final phase of the Roadway and utilities going to the southern boundary of the Friedman property so as to provide for a contribution from the adjacent property owners for a portion of this final phase before connecting, based upon their proportionate anticipated use of same as determined by the Village's consulting engineer for this phase of the project. The costs for all improvements assumed by Progressive will be assessed to Progressive and will be net of any ODOT or other financing assistance and will include costs of utilities infrastructure for that portion, including electric, gas, telephone, water and sewer.

The Village shall diligently endeavor to complete construction of the Roadway's SOM Center Road curb cut and that portion of the Roadway needed for access to the Development no later than December 31, 1998. However, failure to meet this deadline will not permit termination of the other obligations in this agreement.

As to Progressive's obligations under Section 3 for all aforementioned public improvements, Progressive will have the option of paying its obligation when due or having same assessed against the Progressive property.

4. TEMPORARY ACCESS.

Commencing on the date of this Agreement and continuing until Village has completed construction of the Roadway, Village hereby grants to Progressive and its agents and contractors the right to construct and use a temporary access road and temporary utility lines from SOM Center Road to the Development site across Village's property at the location set forth in Exhibit "B" or as agreed upon by the Village, and provided that the property is left in the same or better condition when construction is completed.

5. PURCHASE PRICE ADJUSTMENTS.

Progressive and the Village agree that the exchange of properties results in a credit due to Progressive from the Village in the amount of \$197,975.00. Progressive will be given credit in the form of "in kind services" at some point during the Development, and whatever portion is not credited as mutually agreed upon between the parties, will come off the top of any special assessments which are due from Progressive to the Village at the time they are finalized.

6. SEVERABILITY.

Each paragraph herein shall be severable from the others, and separately enforceable. Breach of any paragraph will not allow rescission or termination of the entire agreement, but will entitle the other party to specific performance and related damages, including attorneys fees.

7. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings and arrangements concerning such subject matter.

IN WITNESS WHEREOF, Progressive and Village have hereunto caused this Agreement to be executed by their duly authorized representatives on this ____ day of _____, 1998.

MAYFIELD VILLAGE, a municipal corporation which is a political subdivision of the State of Ohio

BY: _____

Title: _____

PROGRESSIVE CASUALTY INSURANCE COMPANY, an Ohio corporation

BY: _____

Title: _____

Approved as to legal form:

Joseph W. Diemert, Jr.
Director of Law

ORDINANCE NO. 98- 10

INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN EMERGENCY ORDINANCE
AUTHORIZING AND DIRECTING THE MAYOR TO ENTER
INTO A DEVELOPMENT AGREEMENT WITH PROGRESSIVE
CASUALTY INSURANCE COMPANY RELATIVE TO THE
NORTHWEST QUADRANT**

WHEREAS, the Village and Progressive desire to enter into an agreement involving the exchange of certain properties, and the development of same which will be best suited for the protection of the environment and the citizens of the Village of Mayfield, and which will enhance the health, safety and welfare of the entire community; and

WHEREAS, Progressive will be developing certain acres within the Northwest Quadrant involving the receipt of certain properties from the Village of Mayfield, and the granting of certain properties from Progressive to the Village of Mayfield, and appropriate compensation as well; and

WHEREAS, the parties have agreed to certain elements which will reflect the representations and agreement of the parties involving increased employment within the Village, fitness and swimming facilities, participation in the construction of a public roadway, and other miscellaneous items referred to in Exhibit "A", and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. That the Mayor and Director of Finance are authorized and directed to enter into the development agreement with Progressive Casualty Insurance Company in a form substantially similar to that set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

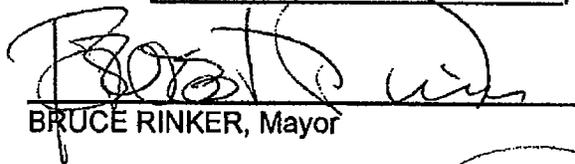
SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

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MARK FIXLER
Council President

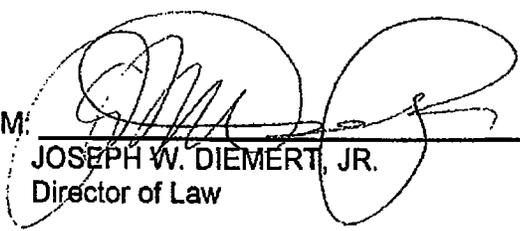
First Reading: February 16, 1998
Second Reading: Suspended, 1998
Third Reading: Suspended, 1998

PASSED: February 16, 1998

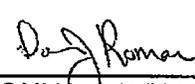

BRUCE RINKER, Mayor

DATE: 2/16/98

APPROVED AS TO FORM:


JOSEPH W. DIEMERT, JR.
Director of Law

ATTEST:


DONNA J. ROMAN
Clerk of Council

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WHEREAS, Progressive intends to construct two or more office buildings and/or other facilities on the Property for use in its business operations (collectively the "Development"); and

WHEREAS, the parties wish to make provision for various matters relating to the Development.

NOW, THEREFORE, Progressive and Village hereby agree as follows:

1. COMMENCEMENT OF DEVELOPMENT.

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determine the center's schedules and hours of operation and may impose usage, membership and other fees. However, during the first 60 days of operation, the Village will not be charged a fee for its residents' use. Thereafter, a prorata fee not in excess of that charged to Progressive employees will be passed on to the Village on a usage basis formula to be negotiated before opening of the facility. Fitness Center usage and fees will be applied equally to Progressive employees and Village residents.

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all expenses for the portion of the Roadway from White Road and SOM Center to the southern end of the Progressive parcel formerly owned by Friedman. (However, the Village and Progressive agree that the expenses to be shared do not and will not include any expenses related to the delineation or mitigation of wetlands on the parcel formerly owned by Friedman). Such sharing of costs will be 50/50 regardless of whose property abuts the Roadway and/or utilities. However, the Village and Progressive agree to enter into a separate "Restrictive Covenant" agreement with reference to the final phase of the Roadway and utilities going to the southern boundary of the Friedman property so as to provide for a contribution from the adjacent property owners for a portion of this final phase before connecting, based upon their proportionate anticipated use of same as determined by the Village's consulting engineer for this phase of the project. The costs for all improvements assumed by Progressive will be assessed to Progressive and will be net of any ODOD or other financing assistance and will include costs of utilities infrastructure for that portion, including electric, gas, telephone, water and sewer.

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4. TEMPORARY ACCESS.

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6. SEVERABILITY.

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7. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings and arrangements concerning such subject matter.

IN WITNESS WHEREOF, Progressive and Village have hereunto caused this Agreement to be executed by their duly authorized representatives on this 27 day of March, 1998.

MAYFIELD VILLAGE, a municipal corporation which is a political subdivision of the State of Ohio

BY: Philip M. Burt

Title: DIA OF FINANCE

PROGRESSIVE CASUALTY INSURANCE COMPANY, an Ohio corporation

BY: Charles B. Chokel

Title: Treasurer

Approved as to legal form:

Joseph W. Diemert, Jr.
Director of Law