

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
OCTOBER 6, 2009 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
First Amendment to the Redevelopment Agreement for Acadia on the Green	<ul style="list-style-type: none"> ✓ Resolution ✓ Ordinance Motion Discussion Only 	David Fieldman Village Manager

SYNOPSIS

An ordinance and resolutions have been prepared for an amendment to the redevelopment agreement between the Village and Acadia OTG LLC. The amendment would

- provide a credit from the purchase price for the Phase III property for improvements made by the developer above and beyond the requirements of the redevelopment agreement
- extend the schedule for the developer’s purchase of the final phase of the development
- accept certain public improvements and reduce the letter of credit posted by the developer
- accept a grant of easement for public alley purposes
- grant an easement to the developer for the maintenance of the village green space
- approve the lease of first floor tenant space to ATI physical therapy and fitness center

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2008-2013 identified *Authentic Downtown – The Heart of Our Community* and *Strong Diverse Local Economy*.

FISCAL IMPACT

The addendum would allow for a credit on the purchase price of the property at 5117 Main Street in the amount of \$25,000 for specific improvements made by the developer above and beyond the improvements required to be constructed per the terms of the redevelopment agreement. With the application Acadia OTG LLC would pay \$461,000 for this property. The funds would be deposited in the Downtown Tax Increment Financing fund.

UPDATE & RECOMMENDATION

This item was discussed at the September 8, 2009 workshop. During that meeting, the Village Council requested additional information related to the item from the petitioner. Please review the attached letter from the petitioner for additional information pertaining to this item.

Staff recommends approval on the October 6, 2009 active agenda.

BACKGROUND

In 2005 the Village and Acadia OTG LLC executed a redevelopment agreement for the Acadia on the Green development located at the southeast corner of Main Street and Burlington Avenue.

Credit for the Purchase Price of the Phase III Property

The developer has substantially completed the development. In addition to completing the improvements required by the redevelopment agreement, the developer constructed a retaining wall near a ComEd utility appurtenance and paved the private portions of the alley located west of the development behind the

Heritage House Florist property. The retaining wall was required for the Village to complete the burial of the overhead utilities. The paving of the private portion of the alley was not required by the redevelopment agreement, however, the Village and developer were working cooperatively with the alley owners to pave this area to improve its appearance and function. These improvements cost the developer approximately \$25,000 (\$10,000 for the retaining wall and \$15,000 for the alley paving). The amendment states that the Village would provide a credit to the developer for the purchase of the property at 5117 Main Street in the amount of \$25,000 to compensate the developer for the construction of the retaining wall and the paving of the private portions of the alley.

Schedule for Purchasing the Phase III Property

The redevelopment agreement states that the developer must purchase the property located at 5117 Main Street no later than November 2009. The addendum would extend the purchase date to November 2010.

Acceptance of Public Improvements

The redevelopment agreement requires the developer to complete all public improvements associated with the development. To date, the developer has completed all elements of the public improvements except for portions of the street lighting system. The amendment accepts the public improvements completed to date, reduces the public improvement letter of credit accordingly and requires that the remaining improvements to the street lighting system be completed within 60 days. A separate resolution has been prepared authorizing acceptance of public improvements and reducing the letter of credit.

Acceptance of a Grant of Easement

There is an existing alley located west and south of building 1, adjacent to the Heritage House Florist property. This alley is owned by the developer. The amendment requires the developer to grant an easement for public alley purposes over a portion of the alley. The easement is intended to improve the functionality of the alley.

Granting an Easement

Pursuant to Section 9.7 of the redevelopment agreement, the Village shall grant an easement to the developer for the maintenance of the village green area near the southeast corner of Mochel and Burlington. The easement would be granted as part of this action. A separate resolution has been prepared granting this easement.

Approval of the Lease of First Floor Space to ATI Physical Therapy and Fitness Center

The redevelopment agreement states that unless the Village approves otherwise in advance in writing, not less than 90 percent of all leased first floor area shall be leased to retail sales tax producing tenants. The developer has requested that approximately 10,000 square feet of tenant space in Building 1 fronting on Mochel Drive and Burlington Avenue be leased to ATI Physical Therapy and Fitness Center. The proposed operations are described in the attached letter from ATI. The term of the lease would be 10 years with two five-year options to extend the lease. When evaluating the request, Village staff considered the impact of ATI on equalized assessed valuation, sales tax revenue, tenant mix and parking.

A comparison of the current and proposed tenant mix is provided below:

Tenant Mix	Current		Proposed	
	Square Footage	% of Total	Square Footage	% of Total
Retail	13,378	47%	13,378	47%
Non-Retail	1,846	7%	11,846	42%
Vacant	13,078	46%	3,078	11%
TOTAL	28,302	100%	28,302	100%

The primary source of revenue for the Downtown Tax Increment Financing District is property tax receipts. The amount of property tax revenue received is based on the Equalized Assessed Value of the properties located within the district. The 10,000 square foot tenant space is expected to generate approximately \$50,000 per year in property tax revenue.

If ATI occupies the tenant space, very little retail sales tax would be generated. Typical retail tenants in the downtown generate about \$150 per square foot in annual retail sales. If the space were occupied by retail tenants, the Village would expect approximately \$26,250 per year in annual sales tax revenue.

In some cases, non-retail tenants tend to attract other non-retail tenants within the same or nearby tenant spaces. Since the redevelopment agreement states that the Village must approve non retail sales tax producing uses in excess of 10% of the tenant space, the Village would be able to individually consider all non retail sales tax producing tenants that would like to occupy Acadia on the Green.

ATI has indicated that their customers will likely be physical therapy patients referred to ATI from physicians throughout the community, people residing in or around the downtown area, commuters that park in the nearby parking deck and employees of the downtown businesses. These customers are likely to patronize other downtown businesses during their trip to ATI or other separate trips to the downtown area. These customers are not likely to negatively impact other downtown businesses.

The expected parking demand for ATI is the same as the parking demand for general retail uses. Both uses require approximately 3.5 spaces per thousand square feet. Since the parking demand for ATI is the same as general retailers, there should be no negative impact on parking within the downtown system.

ATTACHMENTS

Resolution Granting an Easement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Manager **DATE:** September 15, 2009
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING A GRANT OF EASEMENT TO ACADIA ON THE GREEN, LLC.", as presented.

SUMMARY OF ITEM:

Adoption of this resolution shall authorize a grant of easement to Acadia on the Green, LLC.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING A GRANT OF EASEMENT
TO ACADIA ON THE GREEN, LLC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Grant of Easement (the “Easement”), between the Village of Downers Grove (the “Grantor”) and Acadia on the Green, LLC. (the “Grantee”), for the construction, maintenance and repairs of the Village Green improvements, as set forth in the form of the Easement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Easement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Easement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

EASEMENT GRANT

Address: 5101 Mochel Drive,
Downers Grove, IL

PIN: 09-08-130-028

FOR AND IN CONSIDERATION OF THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation (“Grantor”), does hereby grant and convey unto ACADIA OTG, LLC, an Illinois limited liability company (“Grantee”), and unto its successors and assigns, an easement to construct, maintain, improve and repair the Village Green improvements described in Exhibit “B” attached hereto and made a part hereof, on the real estate described in Exhibit “A” attached hereto, situated in the Village of Downers Grove, in the County of DuPage, and State of Illinois (the “Real Estate”).

And Grantor does expressly covenant that it is the owner in fee of the Real Estate, and has good right to grant said easement and that Grantee, its employees, agents, assigns and lessees shall at all times have free access to and egress from and over the Real Estate to construct, maintain, improve and repair the said Village Green improvements.

Grantor retains all of its rights to the use and occupation of the Real Estate not inconsistent with the use by the Grantee, its successors and assigns, of the easement herein granted for the purposes aforesaid.

Grantee agrees to save and hold Grantor harmless from all claims, causes of action, suits, damages or demands that arise directly from Grantee’s use, installation and maintenance of the improvements on the Real Estate.

Grantor shall have the right to revoke, terminate and cancel this Grant of Easement in the event that the Grantee has materially failed to perform its obligation under the Restrictive Covenant between Grantee and Grantor, dated as of May 1, 2007, and recorded with the DuPage County Recorder of Deeds as Document No. R2007-102653, and Grantee has failed to cure such failure within sixty (60) days of written notice from the Grantor to Grantee specifying such failure.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed and its corporate seal to be hereto affixed by the proper corporate officers thereunto duly authorized, as of this ____ day of _____, 2009.

ATTEST:

By: _____

Dated: _____

GRANTOR:

VILLAGE OF DOWNERS GROVE, an Illinois
Municipal corporation

By: _____

State of Illinois)
) SS:
County of DuPage)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY, that _____, the _____ of Village Of Downers Grove, an Illinois Municipal corporation and _____, the _____ of Village of Downers Grove, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____ respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2009.

Commission expires:

_____ NOTARY PUBLIC _____

This instrument was prepared by:
Enza Petrarca
Village of Downers Grove Legal Department
801 Burlington Avenue
Downers Grove, IL 60515

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

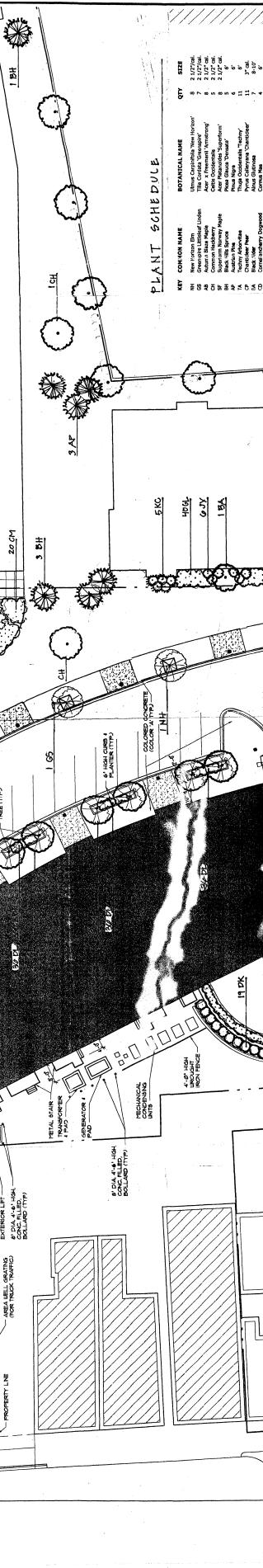
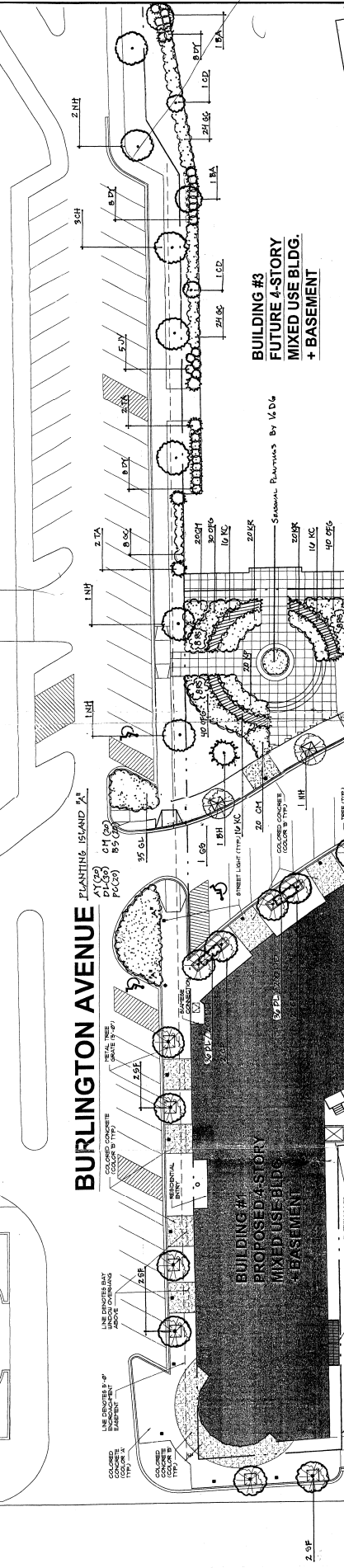
OUTLOT C IN ACADIA ON THE GREEN, BEING A SUBDIVISION OF PART OF THE WEST ½ OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 16, 2005 AS DOCUMENT NO. R2005-279310, IN DUPAGE COUNTY, ILLINOIS.

PIN: 09-08-130-028

ADDRESS: 5101 MOCHEL DRIVE
DOWNERS GROVE, IL 60515

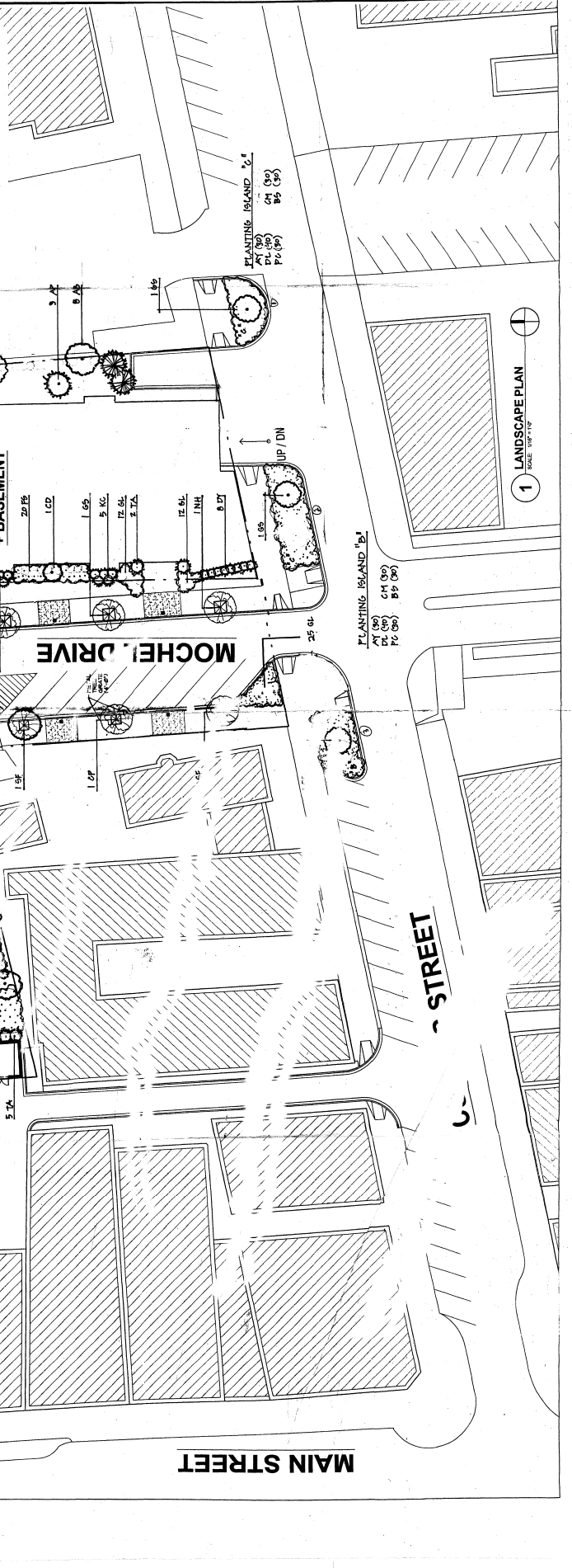
EXHIBIT "B"

DESCRIPTION OF VILLAGE GREEN IMPROVEMENTS



PLANT SCHEDULE

KEY SYMBOL	BOTANICAL NAME	SIZE	QTY
1 BH	Black Hawthorn	2 1/2" DB	1
3 BH	Black Hawthorn	3 1/2" DB	3
1 LH	Lamb's Ear	8" DB	1
3 LH	Lamb's Ear	8" DB	3
1 CA	Calluna	8" DB	1
2 CA	Calluna	8" DB	2
1 CH	Chamaecyparis	8" DB	1
2 CH	Chamaecyparis	8" DB	2
1 SC	Scilla	8" DB	1
2 SC	Scilla	8" DB	2
1 AT	Aspidistra	8" DB	1
2 AT	Aspidistra	8" DB	2
1 PL	Poa	8" DB	1
2 PL	Poa	8" DB	2
1 PC	Picea	8" DB	1
2 PC	Picea	8" DB	2

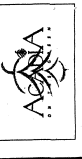


receives
 w/ Building
 3 plans
 Nov 8 2007

NO.	DATE	DESCRIPTION

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ACADIA ON THE GREEN
 ACADIA OTG, LLC



DOWNERS GROVE, IL
SITE PLAN
LANDSCAPE PLAN