

COUNCIL WORKSHOP ITEM

ITEM: A Resolution Amending an Agreement between the Village of Downers Grove, DuPage County and Certain Participating Companies and an Ordinance amending Ordinance No. 4524 establishing procedures for providing water service to areas located in unincorporated DuPage County

DATE: September 15, 2003

PREPARED BY: Enza Petrarca, Village Attorney

PURPOSE: To amend the water service agreement, which is Attachment D of the agreement between the Village of Downers Grove, DuPage County and Certain Participating Companies and Exhibit B of Ordinance No. 4524, entitled an ordinance establishing procedures for providing water service to areas located in unincorporated DuPage County.

DISCUSSION:

The amended water service agreement basically revises paragraph 5 to make clear that the residents do not waive their claims against the Village, the County or the PRPs for claims: (a) regarding personal (bodily) injury or property damage; (b) seeking recovery of the \$2000 Village special water service charge; or (c) seeking recovery of costs incurred by the Owner(s) prior to August 15, 2003. The residents refused to sign the previous version of the agreement because it was not clear that they could sue to recover the \$2000. The Village, the County, and the USEPA worked together to draft language that would protect the rights of the residents, as well as the rights of the Village and the County. Also, the previous version included language regarding access rights for the County and the contractor. However, the County has decided to create their own separate agreement which deals solely with access and the work that will be performed by the contractor.

Since the water service agreement is an exhibit to both the Agreement between the Village of Downers Grove, DuPage County and Certain Participating Companies, dated July 8, 2003, and Ordinance No. 4524 establishing procedures for providing water service to areas located in unincorporated DuPage County, we are requesting that the Council approve both a resolution amending the agreement and an ordinance amending Ordinance No. 4524. We are also requesting that the Council waive the one week waiting period and approve the resolution and the ordinance on the September 23, 2003.

ATTACHMENT:

A Resolution Amending an Agreement between the Village of Downers Grove, DuPage County and Certain Participating Companies;

An Ordinance amending Ordinance No. 4524 establishing procedures for providing water service to areas located in unincorporated DuPage County

RECOMMENDATION:

Place on September 23, 2003 Workshop Agenda – waive one week waiting period.

RESOLUTION NO. _____

A RESOLUTION AMENDING AN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY AND CERTAIN PARTICIPATING COMPANIES

WHEREAS, the Downers Grove Village Council adopted Resolution No. 2003-61, authorizing an agreement between the Village of Downers Grove, DuPage County and certain participating companies for the implementation of water service to areas of DuPage County.

WHEREAS, it is in the best interest of the parties that Attachment D (Water Service Agreement) be replaced with a revised version of Attachment D dated September 23, 2003.

NOW, THEREFOR, 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 amended Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and DuPage County (the "County") and certain Participating Companies (the "PRPs"), as set forth in the form of the amended Agreement 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 amended Agreement, 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 Agreement.

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

WATER SERVICE AGREEMENT

This Agreement made and entered into this ____ day of _____, 2003, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as the "Village") and _____ the owner(s) of record of the property located at _____, Downers Grove, Illinois, (hereinafter referred to as the "Owner(s)").

WHEREAS, the Owner(s) are the owners of record of certain real estate legally described as follows:

(PIN: _-_-_-_-)

(PIN: _-_-_-_-)

(Common Address: _____ Downers Grove, Illinois)

(hereinafter referred to as the Property);

WHEREAS, the Village has previously adopted a Village Council Policy establishing procedures for providing water service to the areas commonly known as Downers Grove Gardens, Belmont Park, North Belmont Park, Maple Hill and other areas in DuPage County where there is believed to be contaminated water wells (collectively referred to as "the Primary Service Area", as more accurately depicted in Ordinance No. 4524);

WHEREAS, the Property is located within the aforementioned area;

WHEREAS, the Owner(s) desire that the Property be connected to the Village water system in accordance with the Village Council Policy;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Parties agree as follows:

1. The Village shall connect the Property to the Village water system upon the execution of this Agreement; the submittal of a properly executed New Water Service Permit Application and the submittal of a properly executed DuPage County Installation Agreement.
2. The Owner(s) shall pay to the Village a Special Water Service Charge of Two-Thousand Dollars (\$2,000.00). If the Property is located within the area commonly known as North Belmont Park, the Owner(s) shall not be required to pay said Special Water Service Charge.
 - i. At the option of the Owner(s), the Special Water Service Charge may be paid, without interest, over a ten (10) year period in sixty (60) equal installments as a surcharge on the bi-monthly water consumption invoice.

- ii. In the event the Owner(s) elect to pay the Special Water Service Charge by means of a surcharge on the water consumption invoice, the Village shall file with the DuPage County Recorder of Deeds Office, a Notice of Special Water Service Charge covering the amount of unpaid water system service charges, which notice shall contain a description of the property benefited by such water system connection sufficient for identification thereof; the date of connection to the water system; and the existence of a surcharge on water service. Upon payment of the balance due, the Village shall issue a release of such Notice of Special Water Service Charge, which may be filed by the Owner(s) in said recorder's office.
 - iii. In the event the Owner(s) sell the Property prior to the Special Water Service Charge being paid in full, the remaining balance due shall become due and owing to the Village, unless such obligation is assigned and accepted by, in writing, to the subsequent purchasers of the Property. The Special Water Service Charge is a personal obligation and does not run with the land.
 - iv. In the event Owner(s) default on any payment owed to the Village in connection with the Owner(s) water consumption invoice, the full outstanding balance shall become due and owing to the Village. The Village may bring any legal action it deems appropriate to collect any amount(s) owed, after giving notice of such default, including but not limited to water shut-off. The Village shall be entitled to reasonable attorney's fees as part of any judgment rendered in its favor.
3. Owner(s) shall permit the Village, the County of DuPage (County), and their officers, directors, employees, agents, contractors and subcontractors authority to enter onto the Property, including access to any structure thereon, for the purpose of undertaking any inspections, measurements, surveys, investigations, tests, observations, excavations, work, repairs, maintenance, restoration or any other activity related to the connection of the Property to the Village water system, including but not limited to, installing the water service line, the water meter, the sealing of the existing well, etc.
4. The Village, the County and their agents and contractors shall perform any work hereby authorized with reasonable care, skill and diligence. Work shall be performed in such a way as to avoid harm to improvements adjacent to the work. In the event the work negatively disturbs the Owner's (s') property, the disturbed area shall be restored to the condition that existed before the disturbance thereof.
5. The Owner(s) on behalf of all owners and occupants of the Property, waives and releases the Village, the County of DuPage, and each of the participating companies providing funding for the water connection, from all claims pertaining to any such connection and/or groundwater contamination or condition, if any, except for any potential claims: (a) regarding personal (bodily) injury or property damage; (b) seeking recovery of the \$2000 Village special water service charge; or (c) seeking recovery of costs incurred by the Owner(s) prior to August 15, 2003.

6. Owner(s) agree to abide by all Village rules and regulations regarding water usage and consumption, including all ordinances, as provided for in Chapter 25 of the Downers Grove Municipal Code, as now or hereafter amended (except Section 25-40 as it relates to connection fees, as the connection fees shall be governed by this Agreement).

OWNER(S)

VILLAGE OF DOWNERS GROVE

By: _____

By: _____

Village Manager

(print name)

Attest: _____

By: _____

(print name)

Date: _____

Please select your payment option:

____ Enclosed is the \$2,000.00 Special Water Service Charge.

____ I elect to pay the Village the \$2,000.00 Special Water Service Charge in sixty (60) equal installment payments, in accordance with Paragraph 2 of this Agreement.

____ My property is located within the area commonly known as North Belmont Park.

1/mw/agr.03/waterservice2

Dated: September 23, 2003

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO. 4524 ESTABLISHING REVISED PROCEDURES FOR PROVIDING WATER SERVICE TO AREAS LOCATED IN UNINCORPORATED DUPAGE COUNTY

WHEREAS, the Council of the Village of Downers Grove adopted Ordinance No. 4524, revising previously established procedures for providing water service to properties within the territory commonly known as Downers Grove Gardens, Belmont Park, and Maple Hill, upon the execution of an annexation agreement with the owners of record of the property; and

WHEREAS, certain areas of DuPage County, including Downers Grove Gardens, Belmont Park, North Belmont Park and Maple Hill (collectively referred to as the “Primary Service Area”, as depicted in Exhibit A, attached hereto and incorporated herein by reference) have been affected by contaminated water, which poses a significant threat to the health and safety of numerous individuals; and

WHEREAS, it has been determined to be in the best interest of the parties involved to amend the Water Service Agreement referenced as Exhibit “B” contained in Ordinance No. 4524.

WHEREAS, the Village, the DuPage Water Commission and DuPage County have previously entered into intergovernmental agreements for the provision of Lake Michigan Water to areas of DuPage County affected by contamination; and

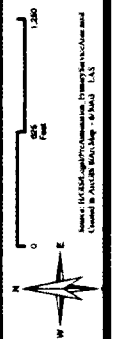
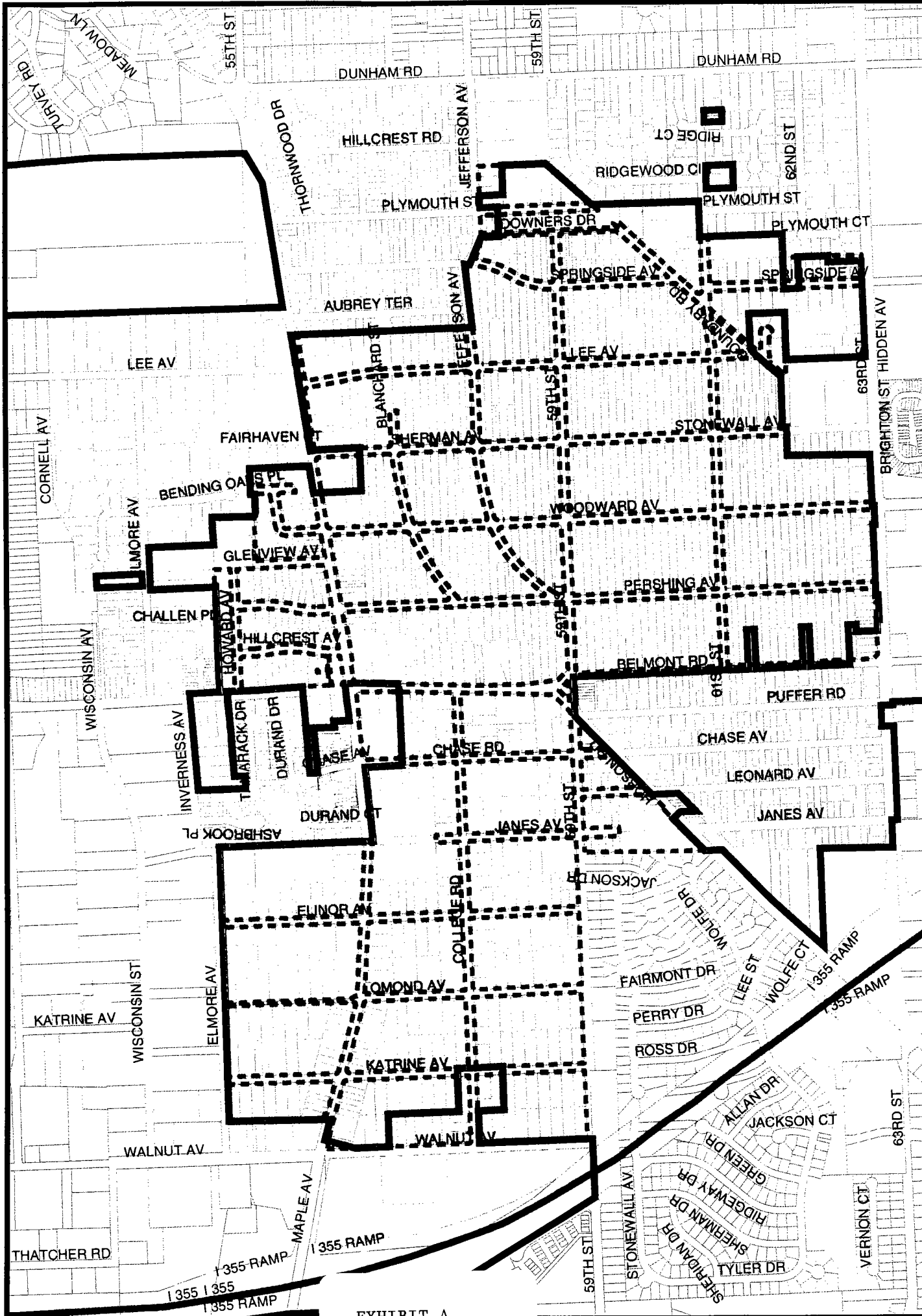
WHEREAS, pursuant to the aforementioned intergovernmental agreements, the Village has agreed to provide Lake Michigan water to the Primary Service Area under certain terms and conditions; and

WHEREAS, the Village has agreed to provide Lake Michigan water to the Primary Service Area without requiring the execution of an annexation agreement.

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

SECTION 1. That the Village hereby offers to connect properties located in the Primary Service Area to the Village water system. Owners of record of the subject property may apply for water service upon entering into a Water Service Agreement with the Village and upon payment of all the required fees and costs.

SECTION 2. Upon submittal of a properly executed Water Service Agreement (attached hereto and incorporated herein by reference as Exhibit B - dated September 23, 2003) and a New Water Service Permit Application by the owners of record of the subject property, the owners may apply for water



Primary Service Area Exhibit A

- Legend**
- 2003 VDG Boundary
 - Belmont Park Area
 - N. Belmont Park Area
 - Primary Service Area
 - Maple Hill Area
 - DG Gardens Area

EXHIBIT A

WATER SERVICE AGREEMENT

This Agreement made and entered into this ____ day of _____, 2003, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as the "Village") and _____ the owner(s) of record of the property located at _____, Downers Grove, Illinois, (hereinafter referred to as the "Owner(s)").

WHEREAS, the Owner(s) are the owners of record of certain real estate legally described as follows:

(PIN: __-__-__-__)

(PIN: __-__-__-__)

(Common Address: _____ Downers Grove, Illinois)

(hereinafter referred to as the Property);

WHEREAS, the Village has previously adopted a Village Council Policy establishing procedures for providing water service to the areas commonly known as Downers Grove Gardens, Belmont Park, North Belmont Park, Maple Hill and other areas in DuPage County where there is believed to be contaminated water wells (collectively referred to as "the Primary Service Area", as more accurately depicted in Ordinance No. 4524);

WHEREAS, the Property is located within the aforementioned area;

WHEREAS, the Owner(s) desire that the Property be connected to the Village water system in accordance with the Village Council Policy;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Parties agree as follows:

1. The Village shall connect the Property to the Village water system upon the execution of this Agreement; the submittal of a properly executed New Water Service Permit Application and the submittal of a properly executed DuPage County Installation Agreement.
2. The Owner(s) shall pay to the Village a Special Water Service Charge of Two-Thousand Dollars (\$2,000.00). If the Property is located within the area commonly known as North Belmont Park, the Owner(s) shall not be required to pay said Special Water Service Charge.
 - i. At the option of the Owner(s), the Special Water Service Charge may be paid, without interest, over a ten (10) year period in sixty (60) equal installments as a surcharge on the bi-monthly water consumption invoice.

- ii. In the event the Owner(s) elect to pay the Special Water Service Charge by means of a surcharge on the water consumption invoice, the Village shall file with the DuPage County Recorder of Deeds Office, a Notice of Special Water Service Charge covering the amount of unpaid water system service charges, which notice shall contain a description of the property benefited by such water system connection sufficient for identification thereof; the date of connection to the water system; and the existence of a surcharge on water service. Upon payment of the balance due, the Village shall issue a release of such Notice of Special Water Service Charge, which may be filed by the Owner(s) in said recorder's office.
 - iii. In the event the Owner(s) sell the Property prior to the Special Water Service Charge being paid in full, the remaining balance due shall become due and owing to the Village, unless such obligation is assigned and accepted by, in writing, to the subsequent purchasers of the Property. The Special Water Service Charge is a personal obligation and does not run with the land.
 - iv. In the event Owner(s) default on any payment owed to the Village in connection with the Owner(s) water consumption invoice, the full outstanding balance shall become due and owing to the Village. The Village may bring any legal action it deems appropriate to collect any amount(s) owed, after giving notice of such default, including but not limited to water shut-off. The Village shall be entitled to reasonable attorney's fees as part of any judgment rendered in its favor.
3. Owner(s) shall permit the Village, the County of DuPage (County), and their officers, directors, employees, agents, contractors and subcontractors authority to enter onto the Property, including access to any structure thereon, for the purpose of undertaking any inspections, measurements, surveys, investigations, tests, observations, excavations, work, repairs, maintenance, restoration or any other activity related to the connection of the Property to the Village water system, including but not limited to, installing the water service line, the water meter, the sealing of the existing well, etc.
4. The Village, the County and their agents and contractors shall perform any work hereby authorized with reasonable care, skill and diligence. Work shall be performed in such a way as to avoid harm to improvements adjacent to the work. In the event the work negatively disturbs the Owner's (s') property, the disturbed area shall be restored to the condition that existed before the disturbance thereof.
5. The Owner(s) on behalf of all owners and occupants of the Property, waives and releases the Village, the County of DuPage, and each of the participating companies providing funding for the water connection, from all claims pertaining to any such connection and/or groundwater contamination or condition, if any, except for any potential claims: (a) regarding personal (bodily) injury or property damage; (b) seeking recovery of the \$2000 Village special water service charge; or (c) seeking recovery of costs incurred by the Owner(s) prior to August 15, 2003.

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OWNER(S)

VILLAGE OF DOWNERS GROVE

By: _____

By: _____

Village Manager

(print name)

Attest: _____

By: _____

(print name)

Date: _____

Please select your payment option:

___ Enclosed is the \$2,000.00 Special Water Service Charge.

___ I elect to pay the Village the \$2,000.00 Special Water Service Charge in sixty (60) equal installment payments, in accordance with Paragraph 2 of this Agreement.

___ My property is located within the area commonly known as North Belmont Park.

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Dated: September 23, 2003