

VILLAGE OF ARLINGTON HEIGHTS

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONSENT DECREE BETWEEN
THE VILLAGE AND DAVID E. WILLY TO SETTLE
THE UNSAFE PROPERTY ACTION CONCERNING 1401 WEST PALATINE ROAD

WHEREAS, David E. Willy ("*Owner*") is the record title owner of the property located at 1401 West Palatine Road in the Village ("*Property*"); and

WHEREAS, the Property is improved with a dilapidated and unoccupied single-family residence, and several accessory structures (collectively, "*Structures*"), in violation of Chapters 19, 26, and 28 of the "Municipal Code of the Village of Arlington Heights, Illinois, 1995," as amended; and

WHEREAS, on December 30, 2021, the Village filed a complaint against the Owner under Section 11-31-1 of the Illinois Municipal Code, 65 ILCS 5/11-31-1, requesting an order authorizing the Village to take all necessary steps to cause the demolition, repair, or remediation, of the Structures and the Property; and

WHEREAS, the Village and the Owner have negotiated an agreement to resolve the Village's claims, whereby the Owner would authorize the Village to demolish the Structures, remediate the Property, and file a lien for related expenses, and the Village would waive certain litigation costs and delay foreclosure of the lien for its expenses ("*Consent Decree*"); and

WHEREAS, the Village President and Board of Trustees have determined that entering into the Consent Decree with the Owner will serve and be in the best interest of the Village;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS, COOK COUNTY, ILLINOIS, as follows:

SECTION 1: RECITALS. The facts and statements contained in the preamble to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

SECTION 2: APPROVAL OF CONSENT DECREE. The Consent Decree by and between the Village and Owner is hereby approved in substantially the form attached to this Resolution as Exhibit A, and in a final form to be approved by the Village Manager and the Village Attorney.

SECTION 3: EXECUTION OF CONSENT DECREE. The Village Attorney is hereby authorized and directed to execute and attest, on behalf of the Village, the Consent Decree upon receipt by the Village Clerk of at least one original copy of the Consent Decree executed by the Owner; provided, however, that if the executed copy of the Consent Decree is not received by the Village Clerk within 60 days after the effective date of this Resolution, then this authority to execute and attest will, at the option of the President and Board of Trustees, be null and void.

SECTION 4: EFFECTIVE DATE. This Resolution will be in full force and effect upon its passage and approval as provided by law.

[SIGNATURE PAGE FOLLOWS]

AYES:

NAYS:

PASSED AND APPROVED THIS 19th day of September, 2022

Village President

ATTEST:

Village Clerk

EXHIBIT A
CONSENT DECREE

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, THIRD DISTRICT**

VILLAGE OF ARLINGTON HEIGHTS)	
)	
Plaintiff,)	
)	
v.)	Case No. 21 M3 007277
)	
)	
)	Hon. Martin S. Agran
DAVID E. WILLY, AS REPRESENTATIVE OF)	
THE ESTATE OF JOSEPH P. HUTCHING,)	
COMMONWEALTH EDISON COMPANY,)	
AND UNKNOWN OWNERS AND)	
NONRECORD CLAIMANTS)	
)	
Defendants.		

CONSENT DECREE

Plaintiff, the Village of Arlington Heights (“*Village*”), and Defendant, David E. Willy, as representative of the Estate of Joseph P. Hutching (“*Owner*”) (collectively, the Village and Owner are the “*Parties*”), have agreed to enter into this Consent Decree (“*Consent Decree*”).

I. BACKGROUND

1. The Village is an Illinois home rule municipal corporation duly organized and existing under the laws of the State of Illinois, and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and other applicable statutes of the State of Illinois.

2. The Owner is the record title owner of the property located at 1401 West Palatine Road in the Village and legally described in Exhibit A to this Consent Decree (“*Property*”).

3. The Village is informed and believes that Commonwealth Edison Company may have an interest in the Property concerning a utility easement previously granted to the Public Service Company of Northern Illinois.

4. The Village believes that JP Morgan Chase Bank, N.A. may have an interest in the Property.

5. Despite a diligent search, the existence of any other interest holders or owners of the Property remains unknown.

6. The Property is improved with a dilapidated and unoccupied single-family residence, and several accessory structures (collectively, “*Structures*”).

7. Owner was at all materials times required to comply with the codes and ordinances of the Village governing the use and maintenance of the Property and the Structures, including, without limitation, Chapters 19, 26, and 28 of the “Municipal Code of the Village of Arlington Heights, Illinois, 1995,” as amended (“*Village Code*”). Pursuant to the authority granted by the Illinois Municipal Code, including, without limitation, 65 ILCS 5/1-3-1 *et seq.*, Chapters 19, 26, and 28 adopt by reference certain health and sanitation, property maintenance, and zoning regulations, including, without limitation, the 2018 International Property Maintenance Code (“*IPMC*”).

8. On June 16, 2020, August 26, 2020, November 9, 2020, and April 12, 2021, the Village conducted visual inspections of the Property and the exterior of the Structures. The Village’s investigation revealed that Structures were being kept in an unsafe and unsanitary condition.

9. On October 25, 2021, the Village prepared a property inspection report, based on the Village’s exterior inspection of the Property, which detailed numerous violations of the Village Code, including, without limitation, violations of Sections 19-203(d) and 28-6.5-2 of the Village Code and Section 301.3, 302.7, 304.1.1.8, and 304.2 of the IMPC (the “*Violations*”).

10. On October 27, 2021, pursuant to, and in accordance with the requirements of, Section 11-31-1 of the Illinois Municipal Code, 65 ILCS 5/11-31-1 (the “*Unsafe Property Statute*”), and Chapter 26 of the Village Code, the Village issued a notice to the Owner that the Property has been and is in a dangerous and unsafe condition that must be corrected.

11. On December 30, 2021, the Village initiated this lawsuit, alleging that the Property and Structures were being maintained in a dangerous and unsafe condition, thereby qualifying for relief under the Unsafe Property Statute. The Complaint alleged that the Property is in violation of at least six separate sections of the Village Code, in a manner that adversely affects public health and safety.

12. The Complaint seeks an order authorizing the Village to take all necessary steps to remediate the Violations or requiring that the Owner cause the demolition, repair, or remediation, of Structures and the Property in order to bring the Property into compliance with the IPMC and Village Code including, if necessary, to repair or otherwise remediate the Property. Further, the Complaint seeks an order requiring that the Village’s costs be recovered from any owner of the Property, and be made a first lien upon the Property superior to all prior existing liens and encumbrances, except taxes, as provided by the Unsafe Property Statute.

13. To date, the Owner has not remediated the Violations described in the Village notice dated October 27, 2021.

14. The Owner has informed the Village that he is incapable of providing for the demolition, repair, or remediation of the Property and Structures as required under the IMPC and Village Code.

15. The condition of the Property and of the Structures remains dangerous and unsafe.

16. Jurisdiction and venue are proper in this county pursuant to § 2-101 of the Illinois Code of Civil Procedure, 735 ILCS §5/2-101 *et seq.*, and the Unsafe Property Statute, because the Property is located in Cook County, Illinois. Venue is proper before this Court pursuant to Cook County General Order No. 1.2,2.3.

II. RESOLUTION OF DISPUTED CLAIMS

17. This Consent Decree is a compromise and settlement of the Village's claims. The Parties enter into this Consent Decree for the purpose of avoiding the risks, burdens and expenses of litigation. Entry of this Consent Decree is in the public interest, because expediting resolution of the claims avoids unnecessary delays that would increase the public's exposure to the hazards on the Property.

18. This Consent Decree has been entered into by the Parties freely and of their own volition, without duress, and with a full understanding of, and agreement with, the terms and conditions stated.

19. This Consent Decree constitutes a final resolution of all claims arising out of the Violations alleged in the Complaint, and will be binding on the Parties, as well as their officers, owners, shareholders, employees, representatives, successors, heirs and assigns. This Consent Decree is to be recorded against the Property in the Office of the Cook County Recorder of Deeds, and will be binding on all current and future owners of record of the Property; provided, however, that no change in ownership of the Property or the Structures, or other change in the legal status of Owner (including, without limitation, any transfer of assets or real or personal property), will relieve Owner of any obligation imposed pursuant to this Consent Decree.

III. IMPLEMENTATION PROVISIONS

NOW, THEREFORE, upon consent of the Parties and approval of this Court, IT IS HEREBY ORDERED, FOUND, ADJUDGED AND DECREED as follows:

A. Demolition of the Structures; Waiver of Fees

20. The Court finds, based on the condition of the Property and Structures, that Owner has neither put the Property and Structures in a safe condition nor caused the Structures to be demolished. The Court further finds that, in accordance with the Unsafe Property Statute and the Village Code, demolition of the Structures is appropriate and required.

21. Pursuant to and in conformance with the Unsafe Property Statute, the Court hereby immediately authorizes the Village, or its agents, contractors, or other representatives, to enter upon the Property, at any time and without providing any further notice to the Court or the Owner, in order to: (a) demolish all of the Structures; (b) remove or cause the removal of garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from the Property; and (c) otherwise bring the Property into complete compliance with the Village Code, IPMC, and other applicable Village ordinances (collectively, “*Demolition Work*”), including, without limitation, remediation of each and all of Violations cited in the Complaint. This Order constitutes all license and authorization necessary for the Village to enter upon the Property and to perform the Demolition Work.

22. The Owner may not in any way interfere with or delay the Demolition Work including, without limitation: (a) withholding any records related to the Property or Structures, as may be reasonably requested by the Village to complete the Demolition Work; or (b) permitting any materials, equipment, or other conditions to remain on the Property after the date of this Consent Decree that would interfere with or prevent the Demolition Work.

23. Owner acknowledges and agrees that: (a) the Demolition Work may be performed any time after the date of this Consent Decree; and (b) the Demolition Work may include the demolition of each and every building and structure on the Property.

24. The Parties agree that if the Owner permits and facilitates the completion of the Demolition Work as required under this Consent Decree, the Village will waive all fees associated with all attorneys' fees, legal, and administrative costs, incurred by the Village in connection with this Unsafe Property Statute action (collectively, "*Pre-Demolition Expenses*"). The Pre-Demolition Expenses do not include, and the Village does not waive its right to collect (in accordance with Paragraph 21 of this Consent Decree), any costs incurred by the Village to perform or otherwise provide for the Demolition Work (collectively, "*Demolition Expenses*").

25. The Village is authorized to perform or otherwise provide for the Demolition Work at Owner's sole cost and expense, and to file a lien upon the Property for all Demolition Expenses. As provided in the Unsafe Property Statute, the lien filed pursuant to this Paragraph 25 will be superior to all prior existing liens and encumbrances upon the Property, except tax liens, if the notice of lien is filed within 180 days after completion of the Demolition Work.

26. If the Owner fails to comply with the provisions of this Consent Decree, the Owner agrees and consents, and the Court hereby directs and authorizes, that all Pre-Demolition Expenses, and any expenses related to this lawsuit incurred by the Village after completion of the Demolition Work (collectively, "*Post-Demolition Expenses*"), will be included as part of the ultimate lien against the Property that is filed by the Village.

27. The Village agrees not to initiate foreclosure proceedings or take other action to enforce a lien for any expenses incurred in connection with this Unsafe Property Statute action before the earlier of: (a) the date on which the Owner sells or transfers any ownership rights to all

or any portion of the Property to a third-party purchaser; or (b) two years after the date on which the Court enters this Consent Decree.

28. The Owner acknowledges that the Village currently has the right to provide for the Demolition Work, and that the Village is only reluctantly agreeing to this Consent Decree, based on the Owner's representations and agreements to take no action, directly or indirectly, to prevent or delay the Demolition Work.

29. The Owner acknowledges and agrees that the only way it can prevent the Village from demolishing the Structures after the date of this Consent Decree is to obtain a court order (as opposed to filing a motion, *etc.*) finding that all violations cited in the Complaint have been fully and completely remediated, and that the Property is in complete compliance with the IMPC, Village Code, and all other Village ordinances, codes, and regulations (the "*Code Compliance Court Order*"). Without such Code Compliance Court Order, the Village's right to demolish, repair, or enclose the Structures, as more fully described in the following sections of this Consent Decree, will remain in full force and effect, notwithstanding any allegation that may be advanced that all existing IMPC and Village Code violations have been remedied.

30. The Owner hereby consents and agrees that the Village, in its sole discretion and without any obligation to the Owner, will have the right to salvage, keep, or otherwise utilize or dispose of in any manner whatsoever, any and all materials, equipment, improvements, fixtures or any other objects or things that are contained in, affixed to, or are a part of, the Structures or the Property after the date of this Consent Decree.

B. Access to and Security of the Structures Prior to the Demolition Deadline

31. The Village, along with its agents, assigns, contractors, or other representatives, upon telephonic, electronic, or written notice to the Owner, will have full and complete access to

the Property and Structures for the purpose of inspecting the Property or Structures or performing the Demolition Work.

32. Unless and until the Demolition Work is complete, the Owner will cause the Structures to remain in a vacant and unoccupied condition, and will fully secure the Structures from entry by unauthorized individuals, at his sole cost and expense.

IV. GENERAL PROVISIONS

33. The persons signing this Consent Decree represent and warrant that they are duly authorized to execute this Consent Decree and to bind the parties represented.

34. Nothing in this Consent Decree will be construed to prohibit the Village from using its police powers to effectuate the terms of this Consent Decree, or to protect the public from any danger or hazard with respect to the conditions of the Property.

35. The Village agrees to record against the Property a file-stamped copy of this Consent Decree in the office of the Cook County Recorder of Deeds within 14 days after the Consent Decree is entered.

36. The Owner agrees to promptly notify the Village of any change in the ownership of the Property or Structures. If the Owner ceases to have full control over the Property or any Structure for any reason, including, without limitation, the granting of a mortgage or other security interest in the Property, the creation of a leasehold interest in the Property or any structure, the filing of a lien against the Property, or the commencement of any legal proceedings against the Owner relating to his ownership or control over the Property, the Owner agrees to notify the Village promptly. The Owner further agrees to promptly notify the Village of any action or circumstance that may impair his ability to comply with this Consent Decree, including, without

limitation, the commencement of bankruptcy or lien foreclosure proceedings involving the Property.

37. All notices required or permitted to be given under this Consent Decree will be given by the Parties by: (i) personal delivery; (ii) e-mail; (iii) deposit in the United States Registered Mail, return receipt requested, enclosed in a sealed envelope with first class postage thereon; or (iv) deposit with a nationally recognized overnight delivery service, addressed as stated in this Paragraph. E-mail notices will be deemed valid and received by the addressee only upon explicit or implicit acknowledgment of receipt by the addressee. The address of any party may be changed by written notice to the other Parties. Any mailed notice will be deemed to have been given and received within 10 days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received within 24 hours after deposit. Notices and communications to the Parties will be addressed to, and delivered at, the following addresses:

As to the Owner:

David E. Willy
14205 N. Driftwood Ct.
Sun City, AZ 85351
E-mail: dewdew357@comcast.net

As to Village of Arlington Heights:

Village of Arlington Heights
33 South Arlington Heights Road
Arlington Heights, IL 60005
Attn: Village Manager
E-mail: rrecklaus@vah.com

with a copy to

Hart M. Passman
Elrod Friedman LLP
325 N. LaSalle Street
Suite 450

Chicago, IL 60654
E-mail: hart.passman@elrodfridman.com

38. This Consent Decree constitutes the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge and agree that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

39. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

40. Any party that prevails in an action to enforce this Consent Decree will be entitled to an award of all costs, including attorneys' fees, from the party in breach of the obligations imposed herein. Prior to commencing such an enforcement action, the party claiming a breach will first give 10 days' written notice to the other party. If the breach is not cured within the notice period, the enforcement action may be commenced.

V. RETENTION OF JURISDICTION

41. The Court retains jurisdiction over the subject matter of this litigation for purposes of enforcing this Consent Decree.

42. Subject to the terms and obligations contained in this Consent Decree, the Complaint is hereby dismissed with prejudice.

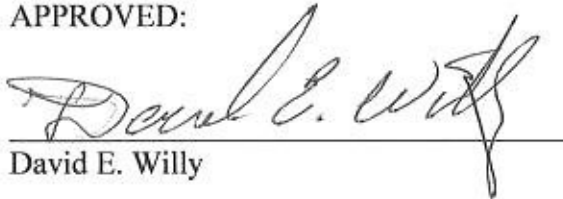
[SIGNATURES ON FOLLOWING PAGE]

SO ORDERED this _____ day of _____, 2022.

By:

Cook County Circuit Court Judge

APPROVED:



David E. Willy

One of the Attorneys of the Village of Arlington Heights

David E. Willy
14205 N. Driftwood Court
Sun City, AZ 85351

Hart M. Passman
Elrod Friedman LLP
325 N. LaSalle Street, Suite 450
Chicago, IL 60654
(312) 528-5193

Hart M. Passman
Braeden E. Lord
Elrod Friedman LLP
325 N. LaSalle St., Suite 450
Chicago, IL 60654
312.528.5206
Firm ID# 64467
hart.passman@elrodfriedman.com
braeden.lord@elrodfriedman.com

EXHIBIT A

LEGAL DESCRIPTION

THE EAST HALF OF THE WEST 267.71 FEET (EXCEPT THE EAST 75 FEET OF THE NORTH 329.81 FEET THEREOF) OF THE EAST 309.21 FEET OF THE NORTH 659.62 FEET OF THE EAST HALF OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 03-19-100-009-0000

Commonly known as: 1401 West Palatine Road, Arlington Heights, Illinois 60004.