

**TOWN OF WINCHESTER
WINNEBAGO COUNTY, WISCONSIN**

RESOLUTION NO. 2026-02

**A RESOLUTION AUTHORIZING AND DIRECTING THE COMMENCEMENT OF
LEGAL PROCEEDINGS**

WHEREAS, on January 5, 2004, Paul Larsen recorded Restrictive Covenants against Lot One of Certified Survey Map No. 4321 (the “Property”) in the Office of the Register of Deeds for Winnebago County (the “Restrictive Covenants”) prior to conveying the Property to the Winchester Area Historical Society, Inc. (the “Historical Society”); and

WHEREAS, the Restrictive Covenants are binding upon all subsequent owners of the Property or any portion thereof; and

WHEREAS, the Restrictive Covenants, among other things, (a) require that the Property be used for a public purpose, including an open space or similar purpose conducted by a governmental body or a recognized organization exempt under Section 501(c)(3) of the Internal Revenue Code, (b) prohibit the use of the Property for residential, commercial, or industrial purposes, and (c) prohibit the division of the Property into smaller parcels; and

WHEREAS, the Restrictive Covenants further provide that in the event the Historical Society violates or attempts to violate any of the Restrictive Covenants, the Historical Society shall give the Town of Winchester an opportunity to purchase the Property; and

WHEREAS, in 2021, the Historical Society divided the Property and conveyed a portion of it (the “Residential Parcel”) to a private third party for residential use, and the Residential Parcel has since been occupied and used as a private single-family residence, while the remainder of the Property remains owned by the Historical Society; and

WHEREAS, the Historical Society additionally granted to the purchaser of the Residential Parcel a purported option to purchase and right of first refusal as to the remainder of the Property, the exercise of which would result in further violations of the Restrictive Covenants; and

WHEREAS, the Town Board finds that the division of the Property, the conveyance of a portion of the Property for residential use, the residential use of the Residential Parcel, the grant of the purported option and right of first refusal, and the failure of the Historical Society thereafter to give the Town its opportunity to purchase the Property each constitute violations of the Restrictive Covenants, and that had the Restrictive Covenants been observed, no portion of the Property would be divided or used for residential purposes and the Town would have been afforded the opportunity to purchase the entire Property; and

WHEREAS, the Town is an intended third-party beneficiary of the Restrictive Covenants, the Restrictive Covenants having been made in part for the Town’s benefit, and under applicable law,

covenants designed to benefit a third party may not be rescinded or modified without the consent of that third party; and

WHEREAS, for over a year, the Town has pursued a negotiated resolution of the foregoing matters and has caused to be prepared and delivered to all interested parties and their counsel a complete package of settlement documents; and

WHEREAS, notwithstanding the Town's efforts, the settlement documents remain unexecuted; and

WHEREAS, the Town Board finds that further delay is contrary to the interests of the Town and its residents, that continued negotiation is unlikely to produce a resolution in the absence of the commencement of legal proceedings, and that the commencement of legal proceedings is necessary to preserve and enforce the Town's rights and the public purposes for which the Restrictive Covenants were created; and

WHEREAS, the Town Board is authorized under Wis. Stat. § 60.22 (1) and (2) to have charge of all affairs of the Town not committed by law to another body or officer and to have charge of any action or legal proceeding to which the Town is a party and is further authorized under Wis. Stat. § 60.22 (5) and § 60.23 to pursue claims of the Town.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Winchester, Winnebago County, Wisconsin, as follows:

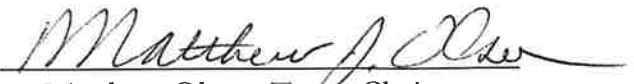
1. **Authorization and Direction to Commence Action.** The Town Board hereby authorizes and directs the Town Attorney to commence, on behalf of the Town, one or more civil actions or proceedings in a court of competent jurisdiction to enforce the Restrictive Covenants, to enforce the Town's rights as an intended third-party beneficiary of the Restrictive Covenants, and to obtain such other and further relief as relates to the subject matter described above. Such action shall be commenced on or before August 31, 2026, unless prior to that date the Town has received fully executed settlement documents in a form approved by the Town Attorney, or unless the date for commencement is extended by the Town Chairperson.
2. **Scope of Authority.** The Town Attorney is authorized to name as parties to such action all persons and entities that the Town Attorney determines to be necessary, proper, or appropriate, including, without limitation, the record owners of the Residential Parcel, the Historical Society, Paul Larsen, any holder of a mortgage, lien, option, right of first refusal, easement, or other interest in any portion of the Property, any predecessor in title, any party to or beneficiary of the Restrictive Covenants, and such other parties as the Town Attorney determines to be necessary or appropriate; and to add, join, substitute, realign, or dismiss parties as the Town Attorney determines to be necessary or appropriate as the action proceeds.
3. **Claims and Remedies.** The Town Attorney is authorized to assert on behalf of the Town any and all claims, causes of action, counterclaims, cross-claims, and requests for relief, whether legal or equitable, that the Town Attorney determines to be supported by the facts and available at law, including without limitation claims for declaratory judgment; injunctive

relief; specific performance; enforcement of the Town's rights as an intended third-party beneficiary; enforcement or construction of the Restrictive Covenants; a declaration that any purported modification, release, or termination of the Restrictive Covenants made without the Town's consent is void or a nullity; a declaration that the purported option to purchase and right of first refusal granted as to the remainder of the Property is void or unenforceable; enforcement of the Town's opportunity and right to purchase the Property in whole or in part; quiet title; ejectment; abatement of prohibited uses; reversion or forfeiture of title; breach of contract; unjust enrichment; damages; and the recovery of costs, disbursements, and actual attorney fees to the extent recoverable; and to pursue such other and further claims, causes of action, and remedies as the Town Attorney determines to be necessary or appropriate. The claims and remedies enumerated in this Resolution are illustrative and not exclusive, and nothing in this Resolution shall be construed to limit the claims, causes of action, remedies, parties, theories, or relief that the Town may assert or pursue in the action.

4. **Conduct of the Litigation.** The Town Attorney shall have charge of the conduct of the action, subject to the general oversight of the Town Board, and is authorized to take all action as the Town Attorney determines to be necessary or appropriate to prosecute the action to conclusion. The Town Attorney is further authorized to coordinate the prosecution of the action with any other person or entity whose interests are aligned with those of the Town.
5. **Continued Settlement Efforts.** Nothing in this Resolution shall be construed to prohibit or discourage continued efforts to resolve this matter without litigation. Any settlement of the action shall be subject to approval by the Town Board.
6. **Execution of Documents.** The Town Chairperson and the Town Clerk are authorized to execute, on behalf of the Town, such verifications, affidavits, and other documents as may be necessary or appropriate to carry out the purposes of this Resolution.
7. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

Dated this 3rd day of August, 2026.

TOWN OF WINCHESTER

By: 
Matthew Olson, Town Chairman

Attest: 
Holly Stevens, Town Clerk