



## **POLICY ON EASEMENT MAINTENANCE AND LEGAL DEFENSE FUNDS**

Approved by the Board of Directors February 11, 2017  
Amended June 3, 2017

Geneva Lake Conservancy (“GLC”) believes in the importance of establishing and maintaining a conservation easement stewardship program that can be expected, in perpetuity, to uphold its conservation easements, build strong partnerships with easement landowners and provide a basis for continued community support for the GLC’s conservation easement program. To this end, the Easement Maintenance Fund and the Easement Legal Defense Fund have been established, to ensure that there are dedicated and sufficient resources, to monitor and enforce the GLC’s conservation easements and to administer the GLC’s stewardship responsibilities in a professional, timely and responsive manner.

GLC has entered into two Non-Endowed Charitable Agency Fund Agreements with the Community Foundation of Southern Wisconsin (CFSW). Copies of the Agency Fund Agreements are attached as Exhibits A and B.

1. Geneva Lake Conservancy Easement Maintenance Fund “Maintenance Fund”
  - The purpose of this Fund is to create a reserve fund to support maintenance of the easements of the Geneva Lake Conservancy, Inc. of Walworth County, Wisconsin. (See Exhibit A)
2. Geneva Lake Conservancy Easement Legal Defense Fund “Legal Defense Fund”
  - The purpose of this Fund is to create a reserve fund for the defense of the easements and fee-owned properties of the Geneva Lake Conservancy, Inc. of Walworth County, Wisconsin. (See Exhibit B)

It is GLC policy to request, but not to require, a donation to the Funds from all donors of property and conservation easements. GLC also encourages and actively solicits contributions to the Funds from its membership and its larger community of potential supporters. The GLC seeks Contributions from the following sources, as appropriate to the project: such as the easement donor, major donors, and grants. Any exceptions to this provision must be made by action of the GLC Board of Directors.

GLC expects that every easement will be accompanied by an adequate Contribution at or before the recording of the easement. If an easement is not accompanied by the Contribution, GLC must have a secure source for obtaining the contribution within one year or a plan in place for otherwise obtaining the necessary funding to support maintenance of that easement. The source, amount and timing of the maintenance funding will be a factor in the project selection and approval process.

This document does not address the need to obtain the funds necessary to consider and to accept a conservation easement project. Such project activities generally include initial landowner meetings, correspondence with the landowner and their legal counsel regarding the terms of the easement, drafting the easement document, performing title and environmental research on the property, preparing the baseline documentation report, legal support for the land trust, and project closing expenses. Costs to perform these activities currently range from \$5,000 to \$8,000 per easement project, and

funds to cover these expenses are generated through fund raising efforts of GLC.

### **Stewardship Funds Management**

The assets of the Agency Funds' are owned by the CFSW, and the investment decisions are in the discretion of the CFSW investment committee. GLC believes that outsourcing the investment decisions to the CFSW provides a level of professional management not otherwise available or affordable, given the amounts in the Maintenance and Legal Defense Funds. The Board also believes the professional management of the funds is beneficial to fund raising efforts.

To date, GLC has not requested distributions of income or principal from the Maintenance Fund, but, rather, has funded the Maintenance costs from annual fund raising efforts. In accordance with the terms of the Maintenance Fund, GLC may suggest grants consisting of income, principal, or both be made for the purpose of funding easement maintenance activities. If the board uses principal from the Maintenance Fund for the purposes designated, however, it must develop a plan to replace these funds in a reasonable time period. It will also periodically review the calculations to meet and maintain reserve requirements.

Conservation easements are perpetual, running with the land over time and through changes in ownership. GLC recognizes that its primary responsibility, as easement holder, is to use its best efforts to see that the conservation values of the property are protected, over time, and that GLC's ability to protect those values is not diminished with the passing of time. To that end, GLC seeks to maintain and strengthen landowner relationships and its rights, as easement holder, through the implementation of its Easement Maintenance Program. Typical easement maintenance activities, referred to as Stewardship activities by the Land Trust Alliance (LTA), include annual easement monitoring and reporting, maintaining landowner relations through correspondence and special events, and responding to owner inquiries regarding their easement terms and their exercise of reserved rights. For a more thorough description of the easement program, see GLC's *Conservation Easement Stewardship Program Overview* document. These maintenance activities promote communication and reduce easement violations due to the actions of the easement-property owners or the neighboring property owners. It is therefore vital that GLC has the financial resources necessary to carry out its easement maintenance program.

The Legal Defense Fund is available to the GLC to fund any legal expenses applicable to defense of its easements. In accordance with the terms of the Legal Defense Fund, GLC may suggest grants consisting of income, principal, or both be made for the purpose of easement legal defense expenses. If the board uses principal from the Legal Defense Fund for the purposes intended, it must develop a plan to replace the funds in a reasonable time period. It will also periodically review the calculations to meet and maintain the reserve requirements.

## **Donation Calculation**

### **Maintenance Fund**

The GLC staff is expected to prepare, annually, an estimate of the annual time and other expenses required for Annual Monitoring of its easements. This estimated cost is then divided by an annual target return which GLC anticipates will be about 4%. GLC staff is expected to prepare an analysis of the time involved in responding to owner's inquiries and administering their exercise of reserve rights. This analysis should be prepared on an easement by easement basis and may include a discount or premium for developments that, reasonably can be expected. The average annual cost of these estimates is then divided by the then anticipated annual target rate of return. The quotient derived from the Annual Monitoring formula and the owner inquiry and exercise of reserve rights formula are then combined to determine the necessary Maintenance Fund balance.

The above cost calculations are applicable to easements that incorporate GLC's general covenants, with provisions that allow for native landscape restoration, timber harvesting, agriculture, hiking trails and other non-intensive non-motorized private recreational uses and for easements that contain no more than one (1) buildable/development area. Easements that incorporate owner's rights in addition to the above, will require more staff time to manage. As such, the requested donation amount will increase with the increased level of expected staff involvement. Properties in close proximity to high-density development, whether residential or urban, will require additional financial resources to manage effectively.

The Board of Directors shall periodically review the methodology for calculating Contributions to the Maintenance Fund in an effort to ensure that it adequately reflects the GLC's immediate and long-term maintenance costs.

See Exhibit C for the most recent calculation of the required Maintenance Fund reserves.

### **Legal Defense Fund**

The Legal Defense Fund requirement is calculated using the LTA suggested requirements as a base and may be situationally increased beyond the suggested amount based on the facts and circumstances available to GLC at the time of the easement donation.

GLC supplements the Legal Defense requirements through participation in a sponsored insurance program.

The Board of Directors shall periodically review this methodology for calculating Contributions to the Legal Defense Fund in an effort to ensure that it adequately reflects the GLC's immediate and long-term legal costs.

See Exhibit D for the most recent calculation of the required Legal Defense Fund reserves.

Exhibit A

**Charitable Agency Fund Agreement (Non-endowed)**

**Geneva Lake Conservancy, Inc.** (the Donor),

Irrevocably gives and transfers to

the **Community Foundation of Southern Wisconsin, Inc.**, a public charitable nonprofit Wisconsin Corporation ("the Community Foundation")

**\$ 69,498.60 Cash**

to establish the **Geneva Lake Conservancy Easement Maintenance Fund**

to be used as follows:

For charitable projects and programs serving Walworth County, Wisconsin and other such locations as identified from time to time by the Donor (see attached Schedule B).

This contribution, and all additions, shall be credited to the **Geneva Lake Conservancy Easement Maintenance Fund** (the "Fund") which shall be maintained, administered, and distributed in such a manner as is consistent with the Community Foundation's status as an organization exempt from federal income taxes under Section 501(c)(3) and 170(b) of the Code.

All assets of the Fund shall be the assets of the Community Foundation and not a separate trust. The Fund shall be held and administered subject to the provisions of the Community Foundation's Articles of Incorporation and Bylaws as presently in effect or as each may from time to time be amended, including those provisions which may permit the Board of Directors to amend, modify or vary any of the purposes, directions, restrictions or conditions set forth in this Agreement.

Grant distribution may be in excess of the Community Foundation's spending policy as in effect at the time of each grant award for the charitable purposes for which the **Geneva Lake Conservancy Easement Maintenance Fund** was established.

The effective date of this gift shall be the date that this document, signed by the Donor and control of the contribution is received and accepted by the Community Foundation.

Signature of Representative Charles L. Colman, as Chairman John K. Notz, Jr., As Secretary

Address of Donor: PO Box 588, Fontana, WI 53125

Date signed: June 6, 2014 June 6, 2014

**Acceptance**

The Community Foundation accepts this gift and the purposes for which it is made.  
Community Foundation of Southern Wisconsin, Inc.

By: June Corleas Date signed: 6-11-14

Board approved June 11, 2014

## **Schedule B**

(description of restrictions by the Geneva Lake Conservancy, Inc. (Organization))

### **Purpose**

The purpose of this Fund is to create a reserve fund to support maintenance of the easements of the Geneva Lake Conservancy, Inc. of Walworth County, Wisconsin.

### **Distribution**

The Organization shall from time to time make suggestions to the Community Foundation concerning grants from the Fund (exclusively for charitable uses and purposes). Such suggestions may be accepted or rejected, in whole or in part, by the Community Foundation in its sole and absolute discretion. The Organization will be asked to report on the specific use of the grants.

The Organization may, in the future, make recommendation as to a succeeding Advisor for this Fund or may leave distribution responsibility to the discretion of the Board of Directors of the Community Foundation.

All distributions from this Fund shall be designated: "from the **Geneva Lake Conservancy Easement Maintenance Fund**, a component fund of the Community Foundation of Southern Wisconsin, Inc."

It is the intention of the Donor that principal may be distributed, along with net income.

### **Termination**

This agreement shall be terminated upon the determination that either the Community Foundation or the Organization is no longer tax exempt under Section 501(c)(3) or 170 (c) of the IRS Code. If the Community Foundation loses such exemption, all assets remaining in the Fund shall be distributed to the Organization. If the Organization loses its tax exemption, the Community Foundation will retain the assets of the Fund for similar uses and benefits within the geographical area for which it was established but shall no longer be directed or guided by the Organization.

### **Fees**

The Fund shall be charged the standard administrative and investment management fees being charged by the Foundation at the time the fee is assessed. At present, the administrative fee is 1.25% per annum of the fair market value of the Fund. Twenty-five percent of the annual fee is charged quarterly based on the Fund's average market value using 12 trailing quarters. Funds are allocated proportionate investment management fees relative to the percent of the fund balance to the investment pool. The investment management fees are charged on a monthly basis based on agreements with the Foundation's investment managers.

**Exhibit B**

**Charitable Agency Fund Agreement (Non-endowed)**

**Geneva Lake Conservancy, Inc.** (the Donor),

Irrevocably gives and transfers to

the **Community Foundation of Southern Wisconsin, Inc.**, a public charitable nonprofit Wisconsin Corporation ("the Community Foundation")

**\$ 35,500.00 Cash**

to establish the **Geneva Lake Conservancy Easement Legal Defense Fund**

to be used as follows:

For charitable projects and programs serving Walworth County, Wisconsin and other such locations as identified from time to time by the Donor (see attached Schedule B).

This contribution, and all additions, shall be credited to the **Geneva Lake Conservancy Easement Legal Defense Fund** (the "Fund") which shall be maintained, administered, and distributed in such a manner as is consistent with the Community Foundation's status as an organization exempt from federal income taxes under Section 501(c)(3) and 170(b) of the Code.

All assets of the Fund shall be the assets of the Community Foundation and not a separate trust. The Fund shall be held and administered subject to the provisions of the Community Foundation's Articles of Incorporation and Bylaws as presently in effect or as each may from time to time be amended, including those provisions which may permit the Board of Directors to amend, modify or vary any of the purposes, directions, restrictions or conditions set forth in this Agreement.

Grant distribution may be in excess of the Community Foundation's spending policy as in effect at the time of each grant award for the charitable purposes for which the **Geneva Lake Conservancy Easement Legal Defense Fund** was established.

The effective date of this gift shall be the date that this document, signed by the Donor and control of the contribution is received and accepted by the Community Foundation.

Signature of Representative: Charles L. Colman Charles L. Colman, As Chairman John K. Notz, Jr. John K. Notz, Jr., As Secretary

Address of Donor: PO Box 588, Fontana, WI 53125

Date signed: June 6, 2014

**Acceptance**

The Community Foundation accepts this gift and the purposes for which it is made.  
Community Foundation of Southern Wisconsin, Inc.

By: Sue Corley

Date signed: 6-11-14

Board approved - 3<sup>rd</sup> /c, lft--

## **Schedule B**

(description of restrictions by the Geneva Lake Conservancy, Inc. (Organization))

### **Purpose**

The purpose of this Fund is to create a reserve fund for the defense of the easements of the Geneva Lake Conservancy, Inc. of Walworth County, Wisconsin.

### **Distribution**

The Organization shall from time to time make suggestions to the Community Foundation concerning grants from the Fund (exclusively for charitable uses and purposes). Such suggestions may be accepted or rejected, in whole or in part, by the Community Foundation in its sole and absolute discretion. The Organization will be asked to report on the specific use of the grants.

The Organization may, in the future, make recommendation as to a succeeding Advisor for this Fund or may leave distribution responsibility to the discretion of the Board of Directors of the Community Foundation.

All distributions from this Fund shall be designated: "from the **Geneva Lake Conservancy Easement Legal Defense Fund**, a component fund of the Community Foundation of Southern Wisconsin, Inc."

It is the intention of the Donor that principal may be distributed, along with net income.

### **Termination**

This agreement shall be terminated upon the determination that either the Community Foundation or the Organization is no longer tax exempt under Section 501(c)(3) or 170 (c) of the IRS Code. If the Community Foundation loses such exemption, all assets remaining in the Fund shall be distributed to the Organization. If the Organization loses its tax exemption, the Community Foundation will retain the assets of the Fund for similar uses and benefits within the geographical area for which it was established but shall no longer be directed or guided by the Organization.

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