**SAMPLE** **LAND** **TRUST,** **INC.** **(SLT)**

**CONSERVATION** **RESTRICTION** **AMENDMENT** **POLICY**

1. **Introduction**

Sample Land Trust, Inc. (SLT) acquires and holds conservation restrictions, also commonly known as “conservation easements,” in order to protect open space, ecological, recreational, forestry, wildlife and agricultural values for the benefit of present and future generations. SLT’s conservation restriction stewardship program is designed to:

* + uphold the terms of conservation restrictions,
  + maintain positive relationships with landowners,
  + comply with IRS requirements,
  + protect SLT’s tax-exempt status,
  + fulfill requirements of entities and individuals providing funding,
  + manage the program in a fiscally responsible manner, and
  + fulfill SLT’s mission to protect the rural character, scenic beauty, and natural resources of Sample Town.

Because conservation restriction acquisitions are accomplished through voluntary agreements with landowners, the success of the program depends upon the confidence of these owners that SLT will meet its obligations to monitor and enforce the agreements in perpetuity. This confidence would be seriously eroded if SLT allowed inappropriate amendments of its conservation restrictions. Amendments could also raise issues, both for SLT in terms of its tax- exempt status and for donors of conservation restrictions in relation to any charitable deductions that may have been claimed.

Therefore, it is the policy of SLT to hold and enforce its conservation restriction agreements as written. Any request for an amendment will be reviewed according to the procedures set forth in this policy statement and generally will be approved only where the Board of Directors determines that:

1. the requested amendment is consistent with SLT’s goals and will not undermine SLT’s obligation to monitor and enforce conservation restrictions it has accepted;
2. the amendment is warranted under one or more of the purposes set forth below;
3. there are no feasible alternatives available to achieve that purpose; and
4. the amendment is the minimum change necessary to achieve that purpose.

Because every property is unique, no decision by SLT with respect to an amendment of a conservation restriction shall constitute a precedent with respect to any other request for an amendment. Although this amendment policy sets forth certain guidelines and procedures, nothing herein shall be deemed to impair the sole and absolute discretion of the Board of Directors to determine whether any proposed amendment is acceptable to SLT.

1. **Purpose** **of** **Requested** **Amendment**

SLT will consider amendments to its conservation restrictions generally in the following circumstances:

1. Prior Agreement. If the original conservation restriction has included a specific provision allowing modification of the restrictions at a future date under specified circumstances. The amendment should be consistent with the terms and conservation intent of the original restriction.
2. Correction of an Error or Ambiguity. SLT may authorize an amendment to correct an obvious error or oversight made at the time the conservation restriction was created. This may include a correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of an ambiguity in the terms of the restrictions in order to avoid litigation over the interpretation of the document in the future.
3. Settlement of Condemnation Proceedings. Conservation restrictions held by SLT are subject to condemnation for public purposes, such as for highways and schools. Where it appears that the condemnation power would be properly exercised, SLT may enter into a settlement agreement with the condemning authority. In reaching such an agreement, SLT shall attempt to preserve the intent of the original conservation restriction to the greatest extent possible.
4. Minor Modifications Consistent with Conservation Purpose. SLT may authorize minor amendments to conservation restrictions where (a) the amendment is not inconsistent with the intent of the principal parties of the original conservation restriction; (b) the amendment is substantially equivalent to or enhances the conservation goals of the original conservation restriction; (c) the amendment does not foster new land uses that are incompatible with the conservation purposes of the original conservation restriction; and (d) the amendment will have a *de* *minimus* effect on the conservation restriction’s provisions.

**3. Criteria** **for** **Consideration** **of** **Amendment**

As a matter of policy, and subject as aforesaid to the discretion of the Board of Directors, SLT may (but shall not be obligated to) agree to an amendment where it determines that, to a substantial degree, the following criteria have been met:

1. The amendment is consistent with SLT’s mission.
2. The amendment is not inconsistent with the intentions of the original parties thereto.
3. There is no reasonable and feasible alternative to amendment.
4. Except for (i) an amendment mandated by the conservation restriction itself or by law, and (ii) an amendment made necessary by circumstances beyond the control of the landowner and SLT, such as condemnation proceedings, the amendment is consistent with the conservation purposes of the existing conservation restriction. If the amendment entered into pursuant to the criteria set forth in this clause D and cannot be consistent with the conservation purposes of the existing restriction, it should be as consistent with those purposes as is reasonable and feasible.  
     
   In addition:  
   1. If SLT initiates the amendment, it should be conservation neutral or provide a net conservation benefit; or
   2. If the landowner initiates the amendment, it should provide a net conservation benefit (See IRS Regulation 1.170A-14(h)(3)(I)) considering both the restricted property and property abutting the restricted property; and,
   3. In either case, the amendment should not materially increase the appraised value of the restricted property, as determined by a qualified, independent appraiser through a full appraisal report, or for minor amendments, a letter of advice from such an appraiser, unless the benefitted landowner has paid to SLT an amount equal to or greater than the value of the increase.
5. No amendment will provide private inurement for members of the Board of Directors or Insiders (as defined in SLT’s Conflicts of Interest Policy) or private benefits to other parties, as prohibited by applicable Treasury Regulations (see IRS Reg. 1.501(c)(3)-1(c)(2)).
6. SLT should identify and resolve any other conflicts of interest affecting the amendment request before the Board of Directors grants approval and the amendment and its outcomes should be in compliance with SLT ‘s Conflict of Interest Policy.
7. SLT will give weight to (but will not be bound by) carrying out the original intentions of the grantor as expressed in the conservation restriction. SLT may, but is not required to, consult with the principal parties to the original transaction, including the landowner who donated/sold the restrictions, any town or entity that contributed funds to the acquisition, or any persons who supported the acquisition through financial gifts, pledges or other charitable contributions.
8. The amendment should not (i) effect a termination of the existing conservation restriction unless the terminated conservation restriction is immediately replaced by an amended conservation restriction consistent with this policy, or (ii) cause the perpetual duration of an existing conservation restriction to be terminable.
9. The amendment should not be reasonably likely to result in the conservation restriction failing to qualify under the Internal Revenue Code or other applicable laws.
10. If the original conservation restriction requires notification or approval of amendments by any other parties, these requirements shall be met before the Board of Directors grants approval.
11. An amendment should not hinder SLT’s ability to steward, defend or enforce the conservation restriction, or increase SLT’s costs in monitoring the conservation restriction without an accompanying payment by the requestor to offset such costs.
12. The amendment should not undermine the public’s confidence in SLT to protect conservation values in perpetuity.
13. The applicable policies and procedures of SLT with respect to evaluating and negotiating a new conservation restriction are to be applied to any amendment.

**4.** **Amendment** **Procedures**

Amendment is an extraordinary procedure and is not available to a landowner as a matter of right, unless the conservation restriction itself or Federal, state or local law mandates that a particular amendment must be adopted. Any landowner seeking an amendment to an existing conservation restriction agreement shall file a request in writing with SLT stating what change is being sought and the specific reasons why it is needed or warranted. Where appropriate, the request shall also be accompanied by a map and other documentation. Unless specifically waived by the Board of Directors in writing, the request shall also be accompanied by an administrative fee of $500 (or such other amount as the Board determines from time to time as the amendment administrative fee), and in addition the landowner shall be responsible for all out-of-pocket costs of SLT, whether or not the request is approved.

Upon receipt, representatives of the Board or of a special committee designated by the Board will review the amendment request and documentation, conduct a site visit and, if such activities have been undertaken by a committee appointed by the Board, such committee shall provide a recommendation to the Board of Directors. In conducting its evaluation and

developing its recommendation, SLT representatives will, at a minimum, consider the criteria listed in Section 3. The review and recommendation shall be documented.

No amendment shall be accepted without prior authorization by an affirmative vote of a two thirds majority of the full Board. The Board of Directors may approve, approve with modification or reject the request for amendment at its next regularly scheduled meeting or at a special meeting convened for that purpose. A record of the approval vote will be included in the full Board meeting minutes, a copy of which will be filed with SLT’s property records along with the written review and recommendation and pursuant to its recordkeeping policy and practices.

If the terms of the amendment are approved, SLT will review the title status of the property to determine whether further title insurance and subordination of lenders is required to assure that the amended conservation restriction is covered by any policy and that any lenders will be subject to the amendment.

**5.** **Endowment**

If an amendment requested by a landowner will increase the administrative burden on SLT for future monitoring of compliance and/or enforcement of the conservation restriction, SLT will advise the requestor of the estimated amount of additional stewardship cost and suspend the processing of the amendment until and unless the requestor has pledged the additional amount in the event SLT approves the amendment.

**6.** **Documentation**

If the full Board approves an amendment of an existing conservation restriction, the amendment will be set forth in a document reviewed and approved by legal counsel to SLT, signed by all necessary parties, and recorded in the Town Clerk’s office where the existing conservation restriction is recorded. During this process, the Board and counsel may decide whether a restated and amended conservation restriction is preferable to a separate amendment agreement. Original property records and other irreplaceable property documents created in connection with the amendment shall also be filed and safeguarded pursuant to SLT’s recordkeeping policy and practices.