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Document Title: Grant Deed of Conservation Easement

Grantor(s): Arthur R. Kruckeberg, a single person

Donee(s): E.B. Dunn Historic Garden Trust, a Washington nonprofit corporation

Abbreviated Legal Description: Ptn. of S 1/2 of NW 1/4 of NW 1/4 of NW 1/4 of S 01, T26N, R03E
Complete legal description is on Exhibit A.

Assessor's Property Tax Parcel/Account Number(s): 012603-9378-01, 012603-9219-04

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made by and between ARTHUR R. KRUCKEBERG, a single person, whose address is 20312 - 15th Avenue NW, Shoreline, Washington, 98177 (the "Grantor"), and E.B. Dunn Historic Garden Trust, a Washington nonprofit corporation, with a mailing address of P.O. Box 77126, Seattle, Washington, 98177 (the "Donee").

**ARTICLE I.
RECITALS**

A. Grantor is the owner in fee simple of certain real property (the "Property") in King County, Washington, legally described on Exhibit A (legal description) and shown on Exhibit B (site plan), which are attached hereto and incorporated herein by this reference. The Property, as described by the legal description and shown on site plan, contains two parcels. Parcel 1 is the larger, easterly portion of the Property, which contains limited improvements, and is referred to as the "Conserved Parcel" herein and on the site plan. Parcel 2 is the westerly parcel of the Property, lying adjacent to and just east of 15th Avenue NW, and is referred to as the "Developed Parcel" herein and on the site plan.

B. Arthur Kruckeberg had a distinguished career as a professor of botany at the University of Washington, with numerous professional accomplishments including the publication of three books on Northwest flora and vegetation. Grantor's deceased spouse, Mareen Kruckeberg, studied botany and horticulture at the University of Washington, and continued to pursue her interest in native plants and trees since moving to the Property in 1958. The Grantor and Mareen Kruckeberg dedicated their lives to creating a unique natural Northwest garden through preserving and enhancing the native plant collection and introducing rare plant species to the collection. The unique collections of plants have been created and sustained in an undeveloped natural area that possesses open space, educational, natural, and scenic values (the "Conservation Values", as further described below in Paragraph F of this Article) of great importance to Grantor, to the Donee, and to the people of the Shoreline and Richmond Beach communities, King County, and the State of Washington.

C. The Property, nestled in the residential community of Richmond Beach, would be extremely desirable for additional residential development because of its location, orientation, and accessibility. In the absence of a grant deed of conservation easement, the Property could be developed in a manner that would destroy or significantly degrade the Conservation Values of the Property.

D. Grantor and the Donee have the common purpose of the conservation and protection in perpetuity of the Property (1) to preserve the land as open space for the scenic enjoyment of the general public; (2) to protect the land as a relatively natural habitat for wildlife and the botanical collection contained within the Property; and (3) to preserve the land and botanical collection to provide an opportunity for the education of the general public on a limited basis, pursuant to § 170(h)(4)(A)(i)-(iii) of the Internal Revenue Code of 1986, as amended ("IRC"), and the regulations promulgated pursuant thereto ("Treas. Regs."), by placing voluntary restrictions upon the use of the Property. As set forth in this grant, Grantor has the affirmative right to preserve and protect the Conservation Values of the Property in perpetuity, and convey to Donee the right to enforce the prohibition of uses that are inconsistent with the preservation and protection of the Conservation Values.

E. Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of the uses (including the maintenance of the plant collections of unusual botanical interest, limited public tours of the garden, limited commercial uses such as gardening classes, weddings, receptions, memorial services, and nursery activities including plant sales) that currently occur on the Property and that do not significantly impair or interfere with those values. Additionally, current uses include the personal use of two separate residential structures. Grantor intends that the Developed Parcel maintain its residential character or, if the Property is purchased by a nonprofit organization, be developed into a facility to be used by the public for educational purposes and by such organization for administrative purposes.

F. The Conservation Values of the Property include the following features:

1. Open space, pursuant to chapter 84.34 Revised Code of Washington ("RCW"), including for the scenic enjoyment of the public.
2. Botanical garden, containing collections of rare and unusual mature trees and shrubs, and herbaceous plants, both native and non-native.
3. Park-like and wooded areas, containing old second-growth Douglas fir, other conifers and other woody species.
4. Educational opportunities for the public, including high school and college students,

horticulturists and gardeners.

The Conservation Values of the Property are more specifically documented in an inventory of relevant features of the Property, dated Oct 14 2003, on file at the offices of Donee and incorporated herein by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantor and Grantee further agree that, within three (3) months of the execution hereof, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof.

G. The Property provides a relatively large block of undeveloped land in a substantially developed suburban area, which continues to lose its remaining pockets of undeveloped land to further residential development. The public's opportunities to enjoy the scenic views of the Property are provided by its location along a busy, local arterial and by the access allowed to the Property. The scenic views of the Property are created by not only the Property's generally undeveloped state, but its unique topographic, botanical, and park-like condition.

H. Grantor, owner in fee of the Property, has the right to preserve and protect in perpetuity the Conservation Values of the Property, and the plant collection and other natural attributes contained therein, subject to and in accordance with the terms and conditions set forth in this document and desires to transfer such rights to Donee. This grant, however, shall not be interpreted to deprive Grantor of the ability to also protect and preserve such Conservation Values. Such rights that are retained by the Grantor under this Easement, including, without limitation, all retained rights under Article VI below, shall also be retained by the Grantor's successors and assigns.

I. The Donee is organized and exists as a nonprofit, tax-exempt charitable organization to, among other things, conserve the Dunn Gardens and other historically and horticulturally significant gardens in the Northwest, in accordance with the provisions of IRC § 501(c)(3). The Donee is a private organization qualified under RCW 64.04.130 and RCW 84.34.250 and under IRC § 170(h)(3), to acquire and hold conservation easements.

J. The State of Washington has recognized the necessity and importance of private efforts regarding the preservation of natural areas for open space and scenic purposes, as set forth in Ch. 84.34 RCW et seq. Ch. 84.34 RCW provides that it is in the best interest of the State to maintain, preserve, conserve and otherwise continue in existence, adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the State and its residents.

K. The Donee agrees by accepting this grant to honor the intentions of Grantor as herein stated and to preserve and to protect in perpetuity the Conservation Values of the Property for the benefit of those current and future generations of citizens.

ARTICLE II. GRANT

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained in this document, Grantor hereby voluntarily grants, conveys, and warrants to the Donee a conservation easement in perpetuity over the Property, subject only to the restrictions set forth herein (hereinafter the "Easement").

B. This conveyance is a conveyance of Grantor's interest in real property under RCW 64.04.130, and is made as an absolute, unconditional, and completed gift subject only to title matters of record as of the date of recording of this Easement and the mutual covenants, terms, conditions, and restrictions set forth in this Easement, and for no other consideration whatsoever.

C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

D. The recitals set forth in Article I above are incorporated into this Easement by this reference.

ARTICLE III. PURPOSE

A. It is the purpose of this Easement to assure that the Conserved Parcel of the Property will be retained forever primarily as open space and in its undeveloped and scenic, park-like condition by preventing any uses of, or activities on, the Property that will significantly impair or interfere with the Conservation Values of the Property (the "Purpose"). As provided for herein, the parties shall endeavor to retain, and if possible maintain and enhance, the unique plant collection on the Conserved Parcel.

B. Grantor intends that this Easement will confine the use of the Property to such activities that are consistent with the Purpose of this Easement. Except as specifically provided for in Articles IV and X herein, this Easement shall not be construed as affording to the general public physical access to the Property.

ARTICLE IV. RIGHTS CONVEYED TO DONEE

To accomplish the Purpose of this Easement, the following rights are hereby conveyed by Grantor to the Donee:

A. Protection. To preserve and to protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Property.

B. Access. To enter the Property at least annually at mutually agreeable times and upon prior written notice to the Grantor, for the purpose of making a general inspection to assure Grantor's compliance with this Easement. Additionally, Donee may enter the Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for purposes of enforcing the provisions of this Easement.

C. Educational use. For the benefit of the public, to allow persons or groups to enter upon the Property for educational purposes, all as further and more specifically provided in Article X below.

D. Injunction and restoration. To prevent or enjoin any activity or use of the Property that is inconsistent with the Purpose of this Easement, including trespass by members of the public, and to require the restoration of such areas or features of the Property that may be damaged by any such inconsistent activity or use; provided that this Easement shall not be interpreted to impose an affirmative obligation on Donee to maintain or enhance the plant collection on the Property.

E. Assignment. To assign, convey or otherwise transfer Donee's interest in the Property in

accordance with Subparagraph D(1) of Article XII below.

F. Enforcement. To enforce the terms of this Easement, consistent with Article IX below.

ARTICLE V. PROHIBITED USES

Any activity or use of the Property that is inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of this prohibition, this prohibition includes the following described activities and uses:

A. Subdivision. The Property shall not be subdivided into smaller lots, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Property is divided into lots, nor shall title to different portions of the Property be held by different owners. Although the legal description of the Property describes more than one parcel of land that could, but for this term, be conveyed separately, the Grantor covenants and agrees that all of the Property shall be held by the same owner(s) as a single undivided tract of land. The Grantor shall also not indirectly subdivide all or any part of the Property through the allocation of property rights among partners, shareholders, or members of an entity, the creation of a horizontal property regime, leasing, or any other means.

B. Uses/Activities. The Property shall not be used for residential, agricultural, or commercial purposes except as specifically permitted in Article VI below. The Property shall not be used for any industrial purposes.

C. Construction. The installation, construction, or placement of any additional structures or improvements on the Property, including but not limited to houses, garages, decks, satellite dishes or antennae, except as specifically permitted in Article VI, is prohibited.

D. Erosion or water pollution. Any use or activity that causes or is likely to cause more than insignificant soil degradation or erosion or pollution of any surface or subsurface waters is prohibited. Grantor and Donee agree that this prohibition shall not be interpreted to preclude any use or activity specifically permitted in Article VI below.

E. Removal of trees or other vegetation. The destruction or removal of live and dead trees and other vegetation located in the Property is prohibited unless such activity is specifically permitted under Article VI below or otherwise deemed necessary by Donee to preserve or protect the Conservation Values of the Property.

F. Signs. The placement of commercial signs, billboards, or other advertising material on the Property is prohibited, except those limited signs necessary for identification of plants, location of nursery or garden areas, or as may otherwise be necessary to conduct activities consistent with the Easement Purpose. One permanent sign of natural materials may be installed and maintained on the western boundary of the Property, near the driveway entrance, to identify the Botanic Garden and MsK Rare Plant Nursery (or its successor). Grantor may also place signs on the Property to advertise for sale or rent or to state the conditions of access to the Property, provided that such signs are located to minimize the adverse affects on the Conservation Values of the Property.

G. Mining. The exploration for, or development and extraction of, oil, gas, coal, limestone, fossils, metals, geothermal resources, sand, gravel, or rock of any type on or below the surface of the Protected Property is prohibited.

H. Alteration of land. The permanent alteration of the surface of the land, including, but not limited to, the excavation or removal of soil, sand, gravel, rock, peat or sod is prohibited, except as incidental to the permitted uses described in Article VI below, or as deemed necessary to preserve or protect the Conservation Values of the Property. Temporarily disrupted soil surfaces shall be restored in a manner consistent with the Conservation Values of the Property and within a reasonable period of time after construction. The exceptions listed in this Article V, Paragraph H shall not be interpreted to permit any extraction or removal of surface materials inconsistent with Section 170(h)(5) of the Code and the applicable Treasury Regulations.

I. Trash. The dumping on the Property of trash or other unsightly or offensive materials is prohibited.

J. Utilities. The placement of overhead utility wires on the Conserved Parcel is prohibited.

K. Commercial Recreational Use. More than a *de minimis* use for a commercial recreational activity, as such terms are defined by Section 2031(c)(8)(B) of the Code, is prohibited.

ARTICLE VI. PERMITTED USES AND ACTIVITIES

Grantor hereby reserves to himself and to his personal representatives, heirs, devisees, assigns, and successors in interest hereof, all rights accruing from the ownership of the Property in fee simple absolute, and any uses of or activities on the Property that are not inconsistent with the Purpose of this Easement. The following enumerated rights are expressly reserved by the Grantor and do not limit the generality of this reservation.

A. Residential buildings.

1. At the time of this grant, all buildings and major improvements to the Property are located in the Developed Parcel (Parcel 2 of the legal description, Exhibit A hereto) of the Property. These improvements include (a) a two-story single-family residence of approximately 2,430 square feet ("Residence"), (b) a nearby one-story guest cottage of approximately 750 square feet ("Cottage"), (c) a free standing Lord and Burnham covered greenhouse ("Greenhouse"), (d) a lean-to plant conservatory located on and attached to the south side of the larger residence ("Conservatory"), (e) a shed located on the back of and attached to the guest cottage ("Attached Shed"), (f) the soil storage sheds, and (g) a concrete slab patio located between the Residence, Cottage, and Greenhouse ("Patio").

2. Grantor may use, maintain, renovate, and repair the improvements described in Section VI(A)(1) above.

3. Grantor may also enlarge the Residence, Cottage, Greenhouse, Conservatory, Attached Shed, and Patio (collectively "Residential Structures") and/or replace some or all of the Residential Structures with one or more new structures, including, but not limited to, a single family residence, *provided*, that the resulting footprint (*i.e.*, the area directly beneath a structure) of (a) the Residential Structures; (b) any enlargement(s) of the Residential Structures; and (c) any replacement(s) of the Residential Structures shall be limited to (i) the footprint of the Residential Structures existing at the time of this grant and (ii) the "Expansion Area" (collectively the "Allowable Residential Footprint" and shown on the attached site plan). The Expansion Area is the area bounded by the southerly wall of the Conservatory, the southerly boundary of the Property, a line representing the southerly extension of the westerly wall of the Conservatory, and a line representing the southerly extension of the easterly wall of

the Conservatory (all as existing at the time of this grant), and as limited by the property-line setback as may be required from time-to-time by the City of Shoreline.

4. Grantor must notify Donee, in accordance with Article VII herein, prior to undertaking any enlargement or replacement of buildings, structures, or physical improvements in the Developed Area to permit Donee to make an informed judgment as to the consistency of such action with the Purpose and terms of this Easement.

5. The purpose of Section VI(A)(3) is to provide Grantor flexibility in Grantor's residential use of the Property without jeopardizing the botanical collection. The inclusion of Section VI(A)(3) shall not be interpreted to override or limit any other term of this Easement.

B. Other structures. Grantor may construct, maintain, repair, and replace the following structures or physical improvements intended to facilitate maintenance and public use of the Conserved Parcel: (a) a gazebo or similar structure in the lower meadow area of the Conserved Parcel, to be used as shelter for visitors and for other allowed activities, (b) a wooden shed in the lower meadow area of the Conserved Parcel, for storage of garden tools and equipment, (c) a wooden shed in the lower meadow area of the Conserved Parcel, for use in treatment of existing plants, propagation of new plants, and educational or training classes, (d) a restroom facility in the lower meadow area of the Conserved Parcel, (e) a restroom facility in the Developed Parcel, associated with, but accessible from outside of, an existing structure, and (f) such other structures or physical improvements that both Grantor and Donee determine to be reasonably necessary for maintenance and public use of the Conserved Parcel. Grantor must notify Donee, in accordance with Article VII herein, prior to undertaking any such action to permit Donee to make an informed judgment as to the consistency of such proposed action with the Purpose and terms of this Easement

C. Nursery activities. Grantor may continue operation of MsK Rare Plant Nursery, or its successor, on the Property. Currently, the nursery propagates from seeds and cuttings many of the plants in the garden, and offers plants for sale to the general public. New plant acquisitions are propagated for planting in the collection and for the nursery. Approximately 1/4 acre of the garden is devoted to the nursery activities, including two greenhouses, holding beds and nursery beds of plants in containers. Sales to the general public occur at the Annual Mother's Day Open House and Plant Sale and during the year by appointment. Grantor may, but is not required to, continue to operate the nursery and conduct plant sales.

D. Other activities. Grantor may engage in educational and other uses and activities that are considered compatible with the garden environment and surrounding neighborhood, provided they do not adversely affect the Conservation Values of the Property. Such uses and activities include, but are not limited to, the following:

1. Workshops, classes and seminars;
2. Weddings and receptions;
3. Memorial services;
4. Day meetings ("retreats") for small groups;
5. Musical recitals, presentations, and literary readings; and

6. Operation of a gift shop.

E. Removal, addition, replacement, and management of plants and trees. Grantor may remove, add and replace trees and plants to protect the Conservation Values of the Property and conduct other plant management-related activities consistent with the Purpose of this Easement, including:

1. Maintaining and safeguarding the current and future improvements;
2. Introducing new plants and species that may enhance or support the current unique nature of the botanical collection;
3. Conducting horticultural education consistent with the Purpose and terms of this Easement;
4. Removing trees and plants that may pose a threat of personal injury or property damage;
5. Pruning and removing live or dead trees and other vegetation, whether because such trees or plants are diseased or otherwise may pose risks to the other trees or plants in the collection, or as necessary to enhance the aesthetic values of the collection;
6. Mowing and otherwise maintaining grass, lawn-like areas, and ground cover; and
7. Using fertilizers, herbicides, insecticides, fungicides, and other chemicals, provided that such chemicals are used only in the amounts and with the frequency constituting the minimum necessary to accomplish reasonable management objectives.

F. Garden areas, footpaths and driveways. Grantor may establish and maintain unpaved footpaths, trails and walkways throughout the Property, including within the Conserved Parcel, as may be necessary to provide access to and through the Property. Grantor may maintain the current paved driveway within the Developed Parcel. Additionally, Grantor may establish and maintain natural-like water features such as ponds on the Property. Notwithstanding the foregoing, such additions of footpaths, driveways, and water features shall be designed and located in a manner that does not adversely impact the Conservation Values of the Property.

G. Parking.

1. Grantor may construct and maintain within the Developed Parcel, directly east of 15th Avenue NW, a parking area for passenger vehicles that complies with the Shoreline Municipal Code. Since angle parking will maximize the utility of this limited space, and thus facilitate visitor access, Grantor may relocate the fencing as necessary and may move affected plants to other locations on the Property.
2. It is conceivable that one or more parcels of adjacent residential property may in the future be acquired by the Grantor. Nothing in this Easement should be construed to prevent the use of such adjacent property as a parking area, assuming any such action is in compliance with pertinent land use ordinances.
3. The use of permeable paving materials to pave these parking areas is permitted.

H. Domestic animals. Grantor may keep domestic animals, other than grazing animals such as horses, llamas, goats and the like, as pets on the Property.

I. Fences. The Property is fully fenced at the time of this Grant. Grantor may construct and maintain such fences within and around the Property provided that their design and location shall not adversely impact the Conservation Values of the Property.

J. Utilities. Grantor may construct, install, use, maintain and repair underground utility lines, including, but not limited to, cable, water, sewer, telephone and electricity, necessary for the reasonable use and enjoyment of the existing and otherwise allowed improvements on the Property, subject to the following limitations:

1. Future utility lines are located with the intent to minimize disturbance of the Property and that, where possible, such utility lines are consolidated in a single trench on the Developed Parcel; and
2. Grantor must notify Donee and receive Donee's approval, in accordance with Article VII herein, prior to installing future utility lines, so as to ensure that the permitted use or activity is consistent with the Purpose and terms of this Easement.

K. Commercial Activities. Grantor may conduct non-industrial business activities on the Property in compliance the Shoreline Municipal Code and other applicable law.

L. Use as Collateral. Grantor may use the Property as collateral for current and future financing, provided that any lender's or creditor's interest in the Property shall be subordinated to this Easement.

M. Emergencies. Grantor may undertake any emergency activities necessary to protect health, safety and permitted improvements on the Property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, subject to the following limitations:

1. Any such activity shall be conducted so as to avoid or minimize any adverse impact on the Conservation Values of the Property; and
2. Grantor shall notify Donee in accordance with Article VII, Paragraph D herein.

N. Public Access. Grantor may allow the general public to enter the Property in furtherance of any activity or use specifically permitted under Article VI hereof or for any other activity or use that is not inconsistent with the Purpose of this Easement.

ARTICLE VII. NOTICE AND APPROVAL

A. Notice. Recognizing that it may be possible to adversely affect the Conservation Values of the Property unintentionally while exercising rights reserved hereby, Grantor will notify Donee prior to undertaking those activities specifically identified under Article VI, Paragraphs A, B, J, and M above. Whenever notice is required, Grantor will notify Donee in writing not less than 45 days prior to the date Grantor intend to undertake the activity in question. The notice will specifically describe the nature, scope, design, location, and timetable, as well as any other material aspect of the proposed activity in sufficient detail to permit Donee to make an informed judgment as to its consistency with the Purpose

and terms of this Easement.

B. Prior approval of activities. Where prior approval is specifically required under Article VI, Paragraph J above, Donee shall grant or withhold its approval in writing within 30 days of receipt of a Grantor's written request therefore. Failure of Donee to respond to such request within 30 days of receipt may be construed as approval of the permitted use or activity in question. Donee's approval may be withheld only upon a reasonable determination by Donee that the proposed activity would be inconsistent with the Purpose of this Easement. Donee's approval may include reasonable conditions which must be satisfied in undertaking the proposed use or activity.

C. Addresses. Any notice or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Arthur Kruckeberg
20312 - 15th Ave NW
Shoreline, WA 98177

To Donee:

E.B. Dunn Historic Garden Trust
P.O. Box 77126
Seattle, Washington 98177

or to such other address as either party from time to time shall designate by written notice to the other.

D. Emergency Action. If Grantor must undertake emergency action to protect health, safety or permitted improvements on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without notice to Donee only in such circumstances where Grantor cannot reasonably notify Donee prior to taking such action.

**ARTICLE VIII.
DISPUTE RESOLUTION**

If a dispute arises between Grantor and Donee concerning either the consistency of any proposed action, activity or use with the Purpose or terms of this Easement, the parties shall meet together to discuss the dispute and attempt resolution. If the dispute is not resolved through preventive discussions, Grantor and Donee may, by mutual agreement, submit the matter to mediation or arbitration as Grantor and Donee may agree; during which time the parties agree not to proceed with the proposed action, activity or use pending resolution of the dispute.

**ARTICLE IX.
DONEE'S REMEDIES**

A. Notice of easement violation. If Donee determines that Grantor is in violation of the terms of this Easement or that a violation by Grantor is threatened, Donee shall give written notice thereof to Grantor and demand corrective action to cure the violation and, in the event the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement,