

When Recorded, Return to:

PLANTAMNESTY
Attn: Heritage Tree Program
PO Box 15377
Seattle, WA 98115

TREE CONSERVATION EASEMENT AND AGREEMENT

Grantor: 1) _____

Additional on page ____

Grantee: 1) PLANTAMNESTY

Additional on page ____

Legal Description (abbreviated): _____

Additional on : Exhibit A

Assessor's Tax Parcel ID #: _____

Reference Nos. of Documents Released or Assigned: N/A

This Tree Conservation Easement and Agreement ("Agreement") is made as of this ____ day of _____, _____, by and between _____ ("Grantor"), an unmarried person, and **PLANTAMNESTY** ("Grantee"), a Washington nonprofit corporation, for the purpose of conservation in perpetuity of the natural character, scenic qualities, and environmental significance of that certain _____ tree located on Grantor's Property ("Heritage Tree").

RECITALS

A. Grantor is the owner in fee simple of that certain real property located in the City of Seattle that is legally described in **EXHIBIT A** ("Grantor's Property").

B. The Heritage Tree is a _____, approximately ____ feet tall, and is located within Grantor's Property in the approximate location depicted in **EXHIBIT B**. The Heritage Tree is of sufficient age, size, and rarity that it constitutes a significant scenic and natural resource. The Heritage Tree may be readily viewed and appreciated from outside the Grantor's Property and is an important element of the local

natural landscape. The Heritage Tree's natural and scenic value is of importance to the Grantor, the Grantee, and the general public of the State of Washington.

C. Preservation of the Heritage Tree is consistent with and implements the policies of the State of Washington and the City of Seattle. Seattle Comprehensive Plan Goal EG20 "seek[s] to protect and retain trees and groups of trees of significant . . . horticultural, environmental, and aesthetic value in order to enhance Seattle's character and protect Seattle's natural heritage." Seattle Comprehensive Plan Policy E31 encourages private landowners to "protect selected trees, utilize proper pruning and tree care, and improve conditions in order to achieve long-term benefits from the urban forest." The Washington State Legislature has declared that "it is in the best interest of the state to maintain, preserve, conserve . . . adequate open space lands . . . to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens." RCW 84.34.010.

D. Grantor, as owner of the Heritage Tree, is granting the property interests described in this Agreement to Grantee for the purpose of assuring that the significant natural, environmental, and scenic values of the Heritage Tree are protected, preserved, and maintained forever. These interests constitute real property under RCW 64.04.130.

E. Grantee is a nonprofit nature conservancy corporation as defined in RCW 64.04.130 and RCW 84.34.250, qualifies for tax exemption under 26 U.S.C. § 501(c), and is a "qualified conservation organization" under 26 U.S.C. § 170(h). One of Grantee's principal purposes is the conservation of natural resources for the enjoyment of the general public. Grantee desires to enforce the conservation purposes of this Agreement and possesses the resources necessary to enforce the rights and obligations granted and created herein.

NOW, THEREFORE, in consideration of the promises made in this Agreement and pursuant to the statutory authority in RCW 64.04.130, Grantor hereby grants and conveys to the Grantee and the Grantee accepts, a perpetual conservation easement on the Grantor's Property under the terms and conditions set forth herein, for the purposes of protecting, preserving, maintaining, and conserving in perpetuity the significant natural, environmental, and scenic values of the Heritage Tree.

1. GRANTEE'S RIGHTS

A. The Grantee shall have the right to protect, preserve, maintain, and conserve in perpetuity the significant natural, environmental, and scenic values of the Heritage Tree for the benefit and enjoyment of the general public. Such right shall include, without limitation, the right to require Grantor to comply with the terms of this Agreement, using the remedies set forth herein. Enforcement of the terms of this Agreement shall be in

the discretion of the Grantee, and any decision not to enforce these terms shall not be construed to be a waiver of the Grantee's rights.

- B. The Grantee shall have the right to enter upon the Grantor's Property annually, ten days after receipt of written notice to the Grantor, for the purpose of making an inspection of the Heritage Tree to assess its condition and to assure compliance with this Agreement. The Grantee shall also have the right to enter upon the Grantor's Property at other times, with or without notice, as are necessary to assure compliance with this Agreement if Grantee has reason to believe that a violation of this Agreement is occurring or has occurred.

2. GRANTOR'S RIGHTS AND OBLIGATIONS

- A. Grantor reserves the right to use the Grantor's Property and the Heritage Tree for all uses that are consistent with the purposes of this Conservation Easement and Agreement and shall not use the Grantor's Property for any purposes that are inconsistent with those purposes.
- B. Grantor shall continue to be responsible for the maintenance of the Heritage Tree, including, without limitation, pruning, watering, and protection of the root zone as necessary for the continued health of the Tree. Grantor agrees to maintain the Heritage Tree in a manner that (1) prevents personal injury and property damage, (2) maintains the natural and scenic appearance of the Heritage Tree, and (3) otherwise ensures the healthy growth of the Heritage Tree. Any maintenance or pruning necessary to comply with these obligations shall be conducted according to the Standard Practices for Trees, Shrubs and Other Woody Plant Maintenance set forth in ANSI A300, attached hereto as **EXHIBIT C**. The Heritage Tree may be removed only under circumstances described in Section 3 of this Agreement.
- C. To assist the Grantee in monitoring the condition of the Heritage Tree, the Grantee shall annually supply the Grantor with a Tree Condition Report, which the Grantor shall promptly complete and return to the Grantee.
- D. Other than as specified herein, this Agreement is not intended to impose any legal, financial, or other responsibility on the Grantee or its members, directors, officers, employees, agents, and contractors, or in any way transfer to Grantee any existing obligation of the Grantor as owner of the Heritage Tree.

3. REMOVAL OF TREE

In the event an Act of God or other natural cause kills or substantially damages the Heritage Tree such that the Heritage Tree no longer possesses the values intended to be preserved by this Agreement, or if such event creates a substantial risk of personal injury or of significant damage to property, the Heritage Tree may be removed at the Grantor's expense, fifteen (15) days after receipt of written notice to Grantee. Pruning and restoration alternatives that will protect people and property while preserving the natural and scenic values of the Heritage Tree are preferred to removal and shall be duly considered prior to removal and implemented where feasible.

4. REMEDIES

- A. If a dispute arises between the Grantor and the Grantee concerning the consistency of any action or inaction with the purpose of this Conservation Easement and Agreement, the parties shall meet to discuss the dispute and to attempt resolution. If the parties cannot agree on a resolution, Grantor and Grantee agree to settle the dispute by arbitration according to the Washington arbitration statute in effect at that time. After being notified of a dispute orally or in writing, the parties agree not to proceed with the disputed action and to take steps necessary to preserve the status quo and the health of the Heritage Tree until the dispute is resolved in accordance with this Agreement.
- B. The remedies appropriate for resolution of the dispute shall be determined by the arbitrator. Remedies shall include, but not be limited to, a temporary or permanent injunction of the disputed action or inaction, an order requiring restoration of the Heritage Tree to the extent possible to the condition and appearance required under this Agreement, and, in the event of intentional or reckless damage to the Heritage Tree, money damages in an amount equal to three times the assessed value of the tree prior to the damage. If the assessed value of the Grantor's Property or the value of nearby property appreciates as a direct result of the intentional or reckless damage to the Heritage Tree, that assessed value will be included in the monetary damages awarded as a deterrent to tree removal or topping.
- C. The substantially prevailing party shall be entitled to a reasonable sum for all its costs and expenses related to such arbitration, including the fees and expenses of the arbitrator and attorneys. This amount shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award.

5. TRANSFERS OF INTERESTS

- A. The provisions and covenants of this Conservation Easement shall run with the Grantor’s Property in perpetuity, and shall be binding upon and benefit the heirs, successors, and assigns of all parties to this Agreement.
- B. Grantee shall have the right to transfer the Conservation Easement created by this Agreement to any public agency or nonprofit corporation as described in RCW 64.04.130 and RCW 84.34.210, and also in 26 U.S.C. §§ 501(c)(3) and 170(h), if such agency, organization, or corporation expressly agrees to carry out the conservation purposes of this Conservation Easement and to assume the responsibilities imposed on the Grantee by this Agreement.
- C. Grantor agrees to record this Agreement in the records of King County, Washington. Grantor further agrees to incorporate the terms of this Agreement in any deed or legal instrument by which Grantor divests itself of any interest in all or a portion of Grantor’s Property, including but not limited to, a leasehold interest and shall notify Grantee in writing of any such transfer. The failure of Grantor to perform any act required by this Paragraph C shall not impair the validity of this Conservation Easement and Agreement or limit its enforceability in any way.

6. MISCELLANEOUS

- A. *Severability.* If any provision of this Agreement is found to be invalid, illegal, or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- B. *Notice.* Except for the oral notice authorized in Paragraph 4.A, any notices required by this Agreement shall be in writing and shall be personally delivered or sent by first class mail to the appropriate party at the following addresses, unless a party has been notified by the other of a change of address or designee:

To the Grantor: _____

To the Grantee: PlantAmnesty
 ATTN: Heritage Tree Program
 PO Box 15733
 Seattle, WA 98115

- C. *Interpretation.* This Agreement shall be interpreted under the laws of the State of Washington, resolving any ambiguities and questions regarding the validity or meaning of specific provisions so as to give maximum effect to its conservation purposes.
- D. *Incorporation of Exhibits.* The Exhibits attached to this Agreement are hereby incorporated into this Agreement and made a part hereof.
- E. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all prior written or oral agreements and understandings between them respecting the subject matter hereof.

EXECUTED the day and year first above written.

GRANTOR:

Signature

Name: _____

GRANTEE:

PlantAmnesty

Signature

Name: _____

Title: _____

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me _____, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of _____, 2005.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me _____, to me known to be the _____ of PLANTAMNESTY, the nonprofit corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such non-profit corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of _____, 2005.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A

Legal Description of Grantor's Property

EXHIBIT B

Approximate Location of Heritage Tree

EXHIBIT C

Standard Practices for Trees, Shrubs and Other Woody Plant Maintenance: ANSI A300