

## REAL PROPERTY DONATION AGREEMENT

This Real Property Donation Agreement ("Agreement") is made between \_\_\_\_\_ ("Donor(s)") and Basin Wide Foundation ("Foundation"). The parties to this Agreement may be referred to herein collectively as "Parties" or individually as "Party."

### RECITALS

- A. The contact information of the Parties to this Agreement are as follows:

<u>Foundation</u>	<u>Donor(s)</u>
Basin Wide Foundation	_____
Attention: Foundation President	_____
California Welcome Center Building	<u>Address:</u> _____
56711 Twentynine Palms Highway	_____
Yucca Valley, California 92284	_____
Phone: 760-365-7219	<u>Phone:</u> _____
Fax: 760-365-5770	<u>Fax:</u> _____
Email: kcarson@basinwidefoundation.com	<u>Email:</u> _____

- B. Donor(s) are the sole owners of certain real property located at \_\_\_\_\_ consisting of approximately \_\_\_\_\_ acres of land, having the assessor's parcel number of \_\_\_\_\_, and more particularly described in **Exhibit A** (the "Land"). The Land, together with any and all improvements located thereon and all privileges, rights, easements appurtenant to the Land, including without limitation all minerals, oil, gas, and other hydrocarbon substances on and under the Land; all development rights, air rights, water, water rights relating to the Land; all right, title, and all interests of Donor(s) in and to any streets, alleys, passages, water and sewer taps, sanitary or storm drain capacity or reservations and rights under utility agreements, and other easements and other rights-of-way included in, adjacent to, or used in connection with the beneficial use and enjoyment of the Land shall be collectively referred to in this Agreement as the "Property."
- C. The Foundation is a non-profit public benefit corporation and is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The Foundation is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code. Upon request, the Foundation shall provide Donor(s) with a copy of its IRS exemption determination letter.
- D. Donor(s) intend that the fair market value of the Property shall be a charitable contribution to the Foundation. Donor(s) understand and acknowledge that the Foundation makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Donor(s) will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code.

NOW THEREFORE, the Parties agree as follows:

1. Donation of Property. Donor(s) agree to gift to the Foundation the Property by donation on the terms and conditions set forth in this Agreement. The Foundation shall not be obligated to accept title to the Property if the Foundation's Board of Directors fails to approve this transaction or if the Foundation does not approve of the title or condition of the Property.

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DONOR(S) \_\_\_\_\_/\_\_\_\_\_

FOUNDATION \_\_\_\_\_/\_\_\_\_\_

2. Donor(s) Estimated Value of the Property. Donor(s) estimate that the current fair market value of the Property is \$\_\_\_\_\_. Donor(s) understand that the gift being made under this Agreement is irrevocable and that the Foundation may immediately resell the property after closing and apply the proceeds to support its charitable purposes.

3. Appraisal; Charitable Deduction. Donor(s) shall obtain, at Donor(s) sole cost and expense, an appraisal, unless otherwise agreed in writing. The IRS requires an appraisal if property is valued more than \$5,000. The appraisal of the Property shall be completed by a qualified licensed appraiser to substantiate its current fair market value. It is understood that Donor(s) intend to claim the value of the Property as a noncash charitable contribution for tax purposes. The Foundation will sign the acknowledgment section of IRS Form 8283 that is correctly completed by Seller and Seller's appraiser. In the event the Foundation sells the Property within three years of the donation, then the Foundation shall be responsible for completing and filing IRS Form 8282 and will send a copy of that form to Donor(s). Donor(s) shall be solely responsible for any audits, costs, or liabilities that may arise from the charitable deduction claimed by Donor(s) in this transaction and shall hold the Foundation harmless for any claims related to the same. Donor(s) are advised to seek its own legal and/or tax counsel of the gift contemplated in this Agreement and has not relied on any representation from the Foundation related to the gift provided in this Agreement. The Foundation makes no representation regarding the fair market value of the Property or any tax related consequences of the transaction contemplated in this Agreement.

4. Escrow; Closing. The Parties shall open an escrow with \_\_\_\_\_ ("Escrow Holder") for the purpose of closing the conveyance of the Property. Donor(s) shall deliver to Escrow Holder a grant deed (the "Deed") in a form approved by the Foundation transferring good and marketable fee simple title to the Property from Donor(s) to the Foundation subject to the title requirements set forth in Section 6 below and inspection rights set forth in Section 9 below. Escrow Holder shall hold the Deed until the Foundation accepts the gift by delivering written notice to Escrow Holder and Donor(s). In the event the Foundation does not deliver written notice to Escrow Holder of its intent to accept the gift within forty five (45) days after escrow is opened (unless further extended by the Parties in writing), this Agreement shall automatically terminate and the Parties shall be relieved from any further obligations to each other.

5. Prorations and Fees. Real property taxes on the Property shall be prorated as of the close of escrow based upon the latest available tax bill. The escrow fee, any documentary tax or real property transfer tax arising out of the conveyance of the Property, the premium for a title insurance policy and any other fees and charges (except for an appraisal as provided in Section 3 above) shall be paid by the Foundation.

6. Title. Donor(s) shall convey title to the Property to the Foundation subject only to the following title exceptions: (i) exceptions for a lien for local real estate taxes and assessments not yet due or payable; (ii) the standard preprinted exceptions and exclusions listed on a title commitment or preliminary title report ("Title Report") issued by a reputable title company acceptable to the Foundation; and (iii) any other exception shown on the Title Report, other than exceptions for monetary liens, which Buyer does not object to by written notice. The Foundation shall examine the Title Report and shall have thirty (30) days to furnish to Donor(s) a written statement of any objections to title. If Donor(s) are unable or unwilling to satisfy all of the stated title objections by the date set for closing, the Foundation may, at its options: (a) waive the title objections and proceed to close; (b) proceed to closing with respect to the portion(s) of the Property not affected by the stated title objections; (c) at the Foundation's expense, cure such title defects as may be cured by the payment of money; or (d) terminate this Agreement, in which case Donor(s) and the Foundation shall have no further rights, obligations or duties hereunder.

7. Title Insurance. Donor(s) shall provide the Foundation, at the Foundation's expense, an owner's policy of title insurance in full amount of the fair market value of the Property insuring that title to the Property is vested in the Foundation upon close of escrow subject only to the exceptions accepted by the Foundation as provided in Section 6 above.

8. Property/Conditions:

Boundary, access, and/or property use by others (easements, disputes, roads, driveways, leases, permits, etc.) Yes/No

Environmental Issues (hazardous waste, pests, odors, gases, debris, etc.) Yes/No

Geological Conditions (fault, caves, mines, soil conditions, etc.) Yes/No

Water Issues (flooding, etc.) Yes/No

Title, Ownership, Insurance, Legal Claims, etc. Yes/No

Utilities & Service – Please check all that apply:

☐ Well ☐ Sewer ☐ Water ☐ Gas ☐ Electric ☐ Cable ☐ Television

9. Right to Inspect Property. In addition to examining the Title Report, as part of its due diligence, the Foundation may require and/or conduct inspections, tests, and studies with respect to the physical and environmental condition of the Property. The Foundation and its consultants, agents, engineers, inspectors, contractors, and employees must be given reasonable access to the Property for the purpose of performing such due diligence. The Foundation shall not conduct any intrusive or destructive inspections or borings without Donor(s) prior written consent, which consent shall be at Donor(s) sole and absolute discretion. If the Foundation determines, in its sole discretion, that the physical or environmental condition of the Property is unacceptable to the Foundation, then the Foundation shall notify Donor(s) and Donor(s) may elect to remove such unacceptable condition. In the event Donor(s) are unwilling or unable to remove any unacceptable conditions, the Foundation may elect to terminate this Agreement in which case the Foundation shall have no obligation to accept title to the Property.

10. Donor(s) Promise not to Further Encumber. Donor(s) shall not do any of the following without the prior written consent of the Foundation: (i) make or extend any leases, contracts, options or agreements whatsoever affecting the Property; (ii) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the Property; or (c) permit any mortgage, deed of trust or other lien to be foreclosed upon due to Donor(s) actions or omission, including failure to make a required payment, or (d) convey any interest in the Property, including but not limited to conveyances of title and transfers of development rights.

11. Donor(s) Representations. Donor(s) represent the following:

a. Authorization. Donor(s) have full power and authority to enter into this Agreement and to convey title to the Property in accordance with this Agreement. No consent or authorization from any other person, entity or government agency is required for Donor(s) to enter into and perform Donor(s) obligations under this Agreement except as has already been obtained. The execution of the Agreement will not constitute a breach or default under any agreement to which Donor(s) are bound and/or to which the Property is subject.

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b. Compliance with Laws. The Property and its current use does not in any way violate any applicable laws, ordinances, rules, regulations, judgments, orders, or covenants, conditions and restrictions, whether federal, state, local, foreign, or private.

c. Title to Property. Donor(s) have good and marketable title to the Property. Donor(s) have no actual knowledge of any unrecorded or undisclosed legal or equitable interest in the Property owned or claimed by anyone other than Donor(s). Donor(s) have no knowledge that anyone will, at the closing, have any right to possession of the Property, except as disclosed in writing to the Foundation. There are no unsatisfied mechanics' or materialmen's lien rights on the Property. No assessment lien or bond encumbers the Property, and no governmental authority has undertaken any action that could give rise to an assessment lien affecting the Property.

d. Litigation. There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened against Donor(s) which could affect Donor(s) title to the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.

e. Other Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Donor(s) or Donor(s) interest in the Property, nor are any such proceedings contemplated by Donor.

f. Governmental Action. Donor(s) have no knowledge of, nor have Donor(s) received written notice of, any plan, study, or effort by any agency or party that in any way would materially affect the use of the Property or any portion of it for its current use, or of any intended public improvements that would result in any charge being levied against, or any lien assessed on, the Property. Donor(s) have no knowledge of any existing, proposed, or contemplated plan to widen, modify, or realign any street or highway contiguous to the Property. Donor(s) have received no notice of any currently pending or contemplated special assessments or proceedings to condemn or demolish the Property or any part of it or any proceedings to declare the Property or any part of it a nuisance.

g. Hazardous Wastes. The Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to the environmental conditions on, under, or about the Property, including but not limited to soil and groundwater conditions. There are no environmental, health, or safety hazards on, under, or about the Property, including but not limited to soil and groundwater conditions. Neither Donor(s) nor any third party (including but not limited to Donor(s) predecessors in title to the Property) has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Property or transported to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials.

Each of the above representations is material and is relied upon by the Foundation. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

12. Remedies Upon Default. In the event Donor(s) default in the performance of any of Donor(s) obligations under this Agreement, the Foundation shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Donor(s). IN THE EVENT THE FOUNDATION DEFAULTS IN THE PERFORMANCE OF ANY OF ITS

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FOUNDATION \_\_\_\_\_/\_\_\_\_\_

OBLIGATIONS UNDER THIS AGREEMENT, DONORS SHALL BE ENTITLED TO ONE HUNDRED DOLLARS (\$100.00) AS LIQUIDATED DAMAGES AS DONOR(S) SOLE AND EXCLUSIVE REMEDY AGAINST THE FOUNDATION which sums are presumed to be a reasonable estimate of the amount of actual damages sustained by Donor(s) because of a breach of this Agreement by the Foundation. The Parties acknowledge that it would be impracticable and extremely difficult to fix the actual damages that Donor(s) would sustain if the Foundation breaches its obligations under this Agreement and agree that the liquidated damages provided in this Section are appropriate.

13. Risk of Loss. All risk of loss shall remain with Donor(s) until closing. In the event the Property is destroyed or damaged prior to close of escrow, the Foundation may rescind this Agreement. If the Property contains improvements, Donor(s) agree that upon close of escrow such improvements shall be in the same order and condition as on the date of this Agreement, except for reasonable wear and tear, and Donor(s) shall maintain in full force a policy of all-risk hazard insurance, insuring against loss of or damage to said improvements.

14. Notices. All notices pertaining to this Agreement shall be in writing delivered to the Parties hereto personally by hand, courier service or express mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The Parties may, by notice as provided above, designate a different address to which notice shall be given.

15. Attorney Fees. If any legal action is brought by either Party to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.

16. Time of the Essence. Time is of the essence in this Agreement.

17. Binding on Successors. This Agreement shall inure to the benefit of and be binding on the Parties to this Agreement and their respective successors and assigns.

18. Additional Documents. Donors and the Foundation shall execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

19. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No Supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the Parties.

20. Severability. If any provision of this Agreement as applied to either Party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

21. No Merger. This Agreement, each provision of it, and all warranties and representations in this Agreement shall survive the Closing and shall not merge in any instrument conveying title to the Foundation. All representations, warranties, agreements, and obligations of the Parties shall, despite any investigation made by any party to this Agreement, survive Closing, and the same shall inure to the benefit of and be binding on the Parties' respective successors and assigns.

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22. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be acceptable as evidence of execution of this Agreement, without the need for sending or receiving the original, executed, document. Facsimile signatures are deemed to be original signatures.

23. Assignability. The Foundation may freely assign this Agreement but only to an organization recognized under Section 501(c)(3) of the Internal Revenue Code of 1986 as a charitable organization, or to a public agency.

24. Governing Law. This Agreement will be governed by the laws of the State of California.

25. Waiver. The failure of either Party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

26. Board Approval Contingency. The Foundation's performance of its obligations under this Agreement is subject to and contingent upon the Foundation obtaining approval of the transaction by the Foundation's Board of Directors.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated below.

**DONOR(S)**

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**FOUNDATION**

Basin Wide Foundation, a California nonprofit public benefit corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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**EXHIBIT A**  
[Legal Description]