

# Donation Agreement

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This AGREEMENT is made and entered into this 28th day of February, 2017, by and between Lee and Sandra McMannis of 3624 Sunrise Dr., Key West, FL 33040, hereafter referred to as the "DONOR", the City of Key West, Florida, a municipal corporation of the State of Florida, whose address is 1300 White St., Key West, Florida 33040, hereafter referred to as the "CITY". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT.

WHEREAS, DONOR desires to donate to the CITY the John Martini sculpture titled, "Orange Head" for installation in a location to be determined based on the recommendation of the AIPP Board and the approval of the City Commission, and details of which are as follows:

1. The item proposed to be donated is a steel sculpture by John Martini, titled "Orange Head". It has been on display at 540 Greene Street during the time Donors owned the retail complex. The property has been sold and the sculpture was not sold as part of the transaction. The sculpture was originally displayed to instill a bit of enjoyment and humor to the area and provide a sense of place. It is a clue in a historic scavenger hunt on the island, and is known and photographed by numerous residents and visitors to the island.
2. The sculpture was created by John Martini c. 2007 in his studio on Emma Street (the original African American movie theatre) here on the island, and utilized one of the last steel i-beams discarded by the Navy that were characteristic of John's earlier sculptures. It features one of the artist's thematic, iconic and enigmatic heads mounted on a platform and presented on an i-beam.
3. Donors are advocates and proponents public art, and originally acquired the piece on May 1, 2008, specifically for public display to create an oasis atmosphere in front of the 540 Greene St. retail complex.
4. This piece is an iconic Martini work, and illustrative of his evolution to larger, enigmatic, and precisely balanced pieces. It is truly a treasure, and deserves to be on public display, perhaps in the new Waterfront Park, or other small public area where it can continue to be enjoyed by all on the island. The sculpture is roughly 11 feet tall, a stands on a 20" square steel base.

and

WHEREAS, CITY desires to accept the donation of the John Martini sculpture titled, "Orange Head" as described in detail above. As stated above the location of the installation is TBD, and based on the final determination of the installation location, a cost analysis will be developed to itemize and document the cost of installation. At such

**time, the donor will review the installation cost analysis and determine whether or not to provide sponsorship of a percentage portion of such costs.**

WHEREAS, the parties wish to reduce to writing the rights and responsibilities of the parties.

IN CONSIDERATION of the mutual promises and covenants contained herein, the parties agree as follows:

## **Article 1. Obligations of the Donor**

1. DONOR, at his sole cost and expense, will **donate a properly cleaned and conserved steel metal sculpture, namely the John Martini work titled "Orange Head"**. Prior to installation, the location, design, and scope of the Public Art **Sculpture** and commemorative plaque/monument will be approved by the CITY and the Art in Public Places Board.
2. In addition to the **Sculpture** and commemorative plaque/monument, the DONOR shall consider sponsorship of a percentage portion of the costs of installation, as determined by the City, at the time those costs are fully ascertained based on the location recommended by the AIPP Board and approved by the City.

## **Article 2. Obligations of the City**

3. Upon the CITY's acceptance of the **Sculpture** referred to in paragraph 2 above, the **Sculpture** and commemorative plaque/monument shall become the sole property of the CITY. Thereafter, CITY shall be solely responsible for all expenses associated with operating and maintaining the **Sculpture**, and DONOR shall have no further responsibility or liability for those expenses; **except as determined through the cost analysis of the installation and any agreed upon funds associated with such installation as set forth in Article 1, Paragraph 2.** Further, upon the CITY's acceptance of the **Sculpture** referred to in paragraph 2 above, the CITY shall have the unfettered right, in CITY's sole discretion, to alter or remove the **Sculpture** and commemorative plaque/monument.
4. In connection with the **Sculpture**, DONOR shall provide detailed specifications of the Art and its history to be used by AIPP as needed for educational and promotional purposes on the website <http://www.cityofkeywest-fl.gov/AIPP> which may include text, photos, and audio and/or video clips with information regarding the donation to the City. This website shall be maintained by the AIPP Administrator.

### Article 3. General Legal Provisions

5. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
6. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

### Article 4. Signatures

This AGREEMENT constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

CITY OF KEY WEST, FLORIDA

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

James Scholl, City Manager

ATTEST:

\_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_  
Cheryl Smith, City Clerk

\_\_\_\_\_  
\_\_\_\_\_

Lee and Sandra McMannis  
Key West, Florida

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_