

DONATION AGREEMENT

This Donation Agreement (“Agreement”) is made by and between the **WHEATON PARK DISTRICT**, an Illinois unit of local government (“Park District”) and **J. P. CARNEY** (“Donor”). The Park District and Donor are hereinafter sometimes referred to individually as a “Party” and together as the “Parties.”

Recitals

WHEREAS, Donor desires to donate to the Park District for use as public art an item which is more specifically described in Exhibit A attached to and incorporated into this Agreement (the “Sculpture”); and

WHEREAS, Park District has made no promises, representations or covenants to Donor concerning the use to which the Sculpture will be put nor has the Park District agreed to retain ownership of the Sculpture after the donation; and

WHEREAS, Park District desires to accept and receive the donation of the Sculpture from Donor for such purposes and other uses to which the Sculpture may be put in the future; and

WHEREAS, donations to a unit of local government such as the Park District to be used in furtherance of their public purposes are tax deductible to the extent permitted by law; and

WHEREAS, the Parties acknowledge that the fair market value of the Sculpture has been appraised at \$10,800.00 for the calendar year 2022; and

WHEREAS, Donor does not rely on Park District for any tax advice.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement, and made a part hereof, and all covenants, terms, conditions and provisions hereinafter contained shall be interpreted and construed in accordance therewith.
2. **Donation by Owner.** The Donor hereby irrevocably donates and conveys title to the Sculpture to the Park District effective on the Date of Acceptance (defined below).
3. **Certification.** The Donor certifies that the Sculpture is free of encumbrances and does not infringe upon any copyrights.

4. Discretion of Park District. The Park District may remove the Sculpture at its sole discretion. The Park District will give the Donor right of first refusal to reacquire the donated Sculpture pursuant to the terms and conditions established by the Park District.

5. Compliance. The Donor agrees to comply with any requested Park District requirements including but not limited to; installation, inspection, liability insurance during installation, and safety measures.

6. Termination. The Park District may terminate this Agreement at any time before or after donation of the Sculpture.

7. Severability. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

8. Dispute. The parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

9. Covenants. The parties expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to the Agreement, or pursuant to any other state or federal statute.

10. Miscellaneous Provisions.

A. This Agreement shall remain in full force and effect after its execution by both Parties.

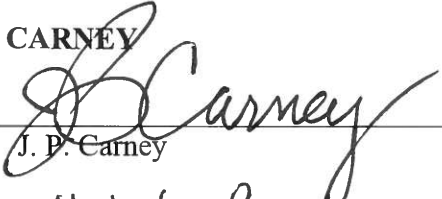
B. This Agreement shall be binding on and inure to the benefit of the Parties, their respective personal representatives, successors and assigns as well as their respective successor in title to the Property.

C. The captions of the paragraphs of this Agreement are for convenience only and do not affect the interpretation of, and are not to be interpreted as part of, this Agreement.

D. This Agreement constitutes the entire contract between the Parties with respect to the subject matter of this Agreement and all prior negotiations and representations are without legal effect. This Agreement may not be modified except by an instrument in writing signed by all the Parties and dated on a date subsequent to the date of this Agreement. The Parties acknowledge that although this Agreement may have been drafted by one Party, it is the result of both Parties' efforts and any rule of strict construction against the party drafting an instrument shall not be applied.

- E. The enforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions unenforceable or invalid.
- F. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.
- G. Park District's failure, at any time and from time to time, to exercise and enforce the terms and conditions of this Agreement shall in no event be construed as a waiver of Park District's rights herein nor its right to exercise and enforce such terms and conditions at any time thereafter.
- H. This Agreement is entered into solely for the benefit of the Donor and the Park District, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement other than the successors in title to the Donor and the Park District.
- I. Nothing contained in or implied from any provision of this Agreement shall constitute a waiver by the Park District of any rights, defenses or immunities from liability which it may now or hereafter possess or have under applicable law, whether by statute, common law or otherwise, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

IN WITNESS WHEREOF, that each of the Parties has caused this Agreement to be executed by himself, in the case of the Donor, or, in the case of the Wheaton Park District, by a duly authorized officer thereof, as of the date written below and with the intent to be legally bound hereby.

J. P. CARNEY
By: 
J. P. Carney
Dated: November 9, 2021

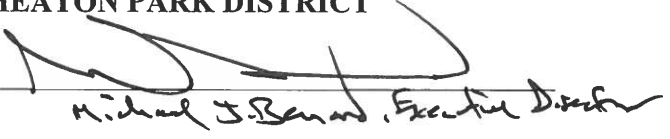
WHEATON PARK DISTRICT
By: 
Michael J. Bernard, Executive Director
Dated: November 9, 2021
("Date of Acceptance")

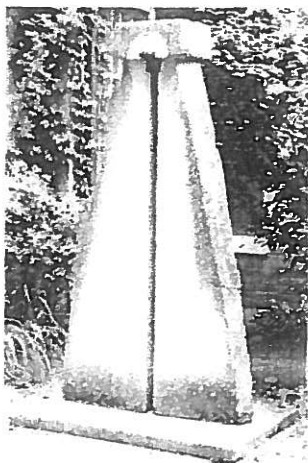
EXHIBIT A

Appraisal and Property Description

Appraisal Report

106.

Fair Market Value: \$ 10,800.00



Artist: Enochs, Dale

Title: At the Heart

Date: 1991

Medium: Limestone and copper

Edition/Unique: Unique

Dimension: 81 x 14 x 44 in.

Description: Carved limestone sculpture in a triangular shape. The sculpture has two triangular panels placed together with an opening in the middle. A square limestone brick rests on the top, holding the pieces together. The entire sculpture is wide at the base and narrow at the top.

Condition: One of the copper pieces at the top of the sculpture is missing.

Value Basis: Most Common and Usual Market:
The Most Common and Usual Market is retail.

Analysis:

The Appraiser researched auction records for works by the Artist on the online auction databases Artnet and Askart, and found no sales records for the Artist's works. The Artist is the source for establishing Fair Market Value and based on recent sales of similar sculptures, the current value of the Subject Property is below.

FMV: \$12,000 less 10% Discount=\$10,800