

.....April 21, 2008.....

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**Date**.....

**APPROVAL OF INSTALLATION OF SCULPTURE IN THE BOTANICAL CENTER HERB GARDEN**

WHEREAS, on December 12, 2003, by Roll Call No. 03-2834, the City Council approved a Chapter 28E Agreement By and Between the City of Des Moines, Iowa and the Board of Water Works Trustees of the City of Des Moines, Iowa (“the 28E Agreement”) for the operation and management of the City of Des Moines Botanical Center, including adjacent grounds, by the Board of Water Works Trustees of the City of Des Moines, Iowa (“Des Moines Water Works”); and

WHEREAS, the 28E Agreement provides that the Des Moines Water Works must receive the City’s approval for all construction; and

WHEREAS, the City of the City of Des Moines has established a public art program, and by Roll Call No. 03-2902 on December 22, 2003, authorized an agreement with the Greater Des Moines Community Foundation to carry out the goals of building a public art collection via the Public Art Foundation; and

WHEREAS, included in the duties of the Public Art Foundation is the authority to evaluate proposed art pieces that may be placed within the City on public property for quality control and from an aesthetic perspective; and

WHEREAS, the Des Moines Herb Study Group, a non-profit Iowa corporation, desires to install, display and maintain a bronze sculpture created by Mark LaMair in the Herb Garden on the grounds of the Botanical Center to be exhibited for the enjoyment of the general public; and

WHEREAS, the Des Moines Herb Study Group shall be responsible for maintenance of such sculpture and shall retain ownership of it; and

WHEREAS, the Public Art Foundation has reviewed the proposed sculpture and it does not oppose the installation of the art work in the Herb Garden at the Botanical Center as stated in its letter to the Des Moines City Council dated January 28, 2008; and

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Date: NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa hereby approves the installation and display of the above described sculpture in the Herb Garden of the Botanical Center and authorizes the Des Moines Water Works to allow such installation and display, subject to the following:

1. An agreement between the Des Moines Herb Study Group and the Des Moines Water Works must be submitted for approval by the City Manager and the Legal Department in which the Des Moines Herb Study Group agrees to pay all expenses of and be responsible for maintenance and prompt repair of the sculpture, to timely remove the sculpture upon request at its expense, to promptly remove graffiti, and that the artist will waive his rights, if any, regarding location and surrounding grounds.
2. The Des Moines Water Works shall be responsible for the maintenance and removal of the sculpture in the event that the Des Moines Herb Study Group does not fulfill such responsibilities.
3. The Des Moines Water Works must submit the plans and specifications for the construction of the sculpture and its base to the Park and Recreation Department Director for review and approval.
4. The right to display the sculpture shall not extend beyond the term that the Des Moines Water Works' is responsible for the operation and management of the Botanical Center.
5. The Des Moines Water Works must comply with insurance coverage as determined by the City Risk Manager prior to construction and installation of the sculpture or its base. If the Des Moines Water Works, or the Des Moines Herb Study Group with the approval of the Des Moines Water Works, contracts for site preparation or sculpture installation, the Des Moines Water Works shall require that the contractor meet the insurance and indemnification requirements determined by the City Risk Manger.

(Council Communication No. 08- 226 )

MOVED by \_\_\_\_\_ to approve.

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

.....  
Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk