CITY CLERK
ORIGINAL

CITY OF GLENDALE PUBLIC ART GIFT ACCEPTANCE AGREEMENT

This GIFT ACCEPTANCE AGREEMENT ("Agreement") is entered into on April 26, 2016 (The "Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City"), and Linda L. Whitney and Richard H. Whitney, ("DONORS").

RECITALS

WHEREAS, CITY agrees to accept a gift from DONORS, a Corten steel sculpture by ARTIST Michael Anderson, hereinafter referred to as WORK, for the aesthetic enrichment of CITY generally and for enhancement for the immediate geographic area in which it will be situated; and

WHEREAS, DONORS wish to donate the WORK to CITY pursuant to the terms and conditions contained herein, and

WHEREAS, with City Council approval, the City Manager is authorized to approve and execute this AGREEMENT, and

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE COVENANTS HEREINAFTER SET FORTH, IT IS AGREED AS FOLLOWS:

1. DONORS agree to donate to CITY the WORK and CITY agrees to accept the WORK attached hereto and incorporated by reference herein as Exhibit A, a photograph of the WORK. The WORK is "untitled," a 7' by 3' Corten steel sculpture by Michael Anderson (1976).

2. DONORS shall provide CITY with a notarized Gift Deed for the WORK attached hereto and incorporated by reference herein as Exhibit B.

3. DONORS shall provide CITY with a Certified Fine Art Appraisal Report conducted by an accredited appraiser through the American Society of Appraisers. The Appraisal Report must have been conducted within the last 12 months from the date of this AGREEMENT. Said document shall be attached hereto and incorporated by reference herein as Exhibit C.

4. Title to WORK shall vest in CITY upon execution of AGREEMENT. The CITY may reproduce faithful images of the WORK for non-commercial use, including, but not limited to, public information, educational and catalog purposes without written consent of DONORS.

5. CITY shall be responsible for removal, relocation and installation of WORK upon execution of this AGREEMENT.

6. CITY shall provide a permanent plaque, which shall include the name of the WORK and the ARTIST; the date of the installation; the names of the DONORS and the dedication to Maude and Clarence Whitney.

7. CITY shall clean and maintain the WORK in accordance with DONORS' written recommendations for the care, maintenance, preservation and handling of the WORK. CITY shall, however, have sole discretion to determine when and if maintenance is required and the extent of such maintenance.

8. CITY shall have the right to determine when and if repairs and restorations to the WORK will be made.

9. The parties agree that the WORK is not specific to any site. CITY, in its sole discretion, shall determine where the WORK will be situated. CITY has the right to remove the WORK from the site where it has been installed at any time. If CITY removes the WORK, it will make reasonable efforts to place the WORK on other suitable property of CITY. If WORK is to be relocated within CITY, DONORS or their agents will be notified in advance.

10. COMMUNICATIONS. Any communications and/or deliverables required under this Agreement shall be deemed sufficiently given when personally delivered or mailed via US Certified Mail, return receipt requested, and addressed as follows (or to any other address agreed upon in writing by both parties):

To City: City of Glendale
Public Art Program
5959 West Brown Street
Glendale, Arizona 85302

With copy to: City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

To Donors: Linda L. Whitney and Richard H. Whitney
5735 North Harding Drive
Paradise Valley, Arizona 85253

11. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the CITY and DONORS. No oral representation has been made by any of the parties. This AGREEMENT may not be amended, changed, modified or rescinded except in writing signed by all parties and any attempt at oral modification of this Agreement shall be void and of no effect.

12. GOVERNING LAW. This AGREEMENT shall be governed by and construed under the laws of the State of Arizona and any court actions related to this AGREEMENT shall be filed in Maricopa County, Arizona.

13. FULL FORCE AND EFFECT. This AGREEMENT shall be in full force and effect only when it has been executed by the duly authorized representatives of the DONORS and the CITY.

CITY OF GLENDALE,
an Arizona municipal corporation

for Kevin K. Phelps

Kevin Phelps, City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

DONORS:

Linda L. Whitney

Richard H. Whitney

EXHIBIT A

Artwork

Untitled Sculpture by Michael Anderson
Dimensions: 7' x 3'
Materials: Corten Steel
Year: 1976

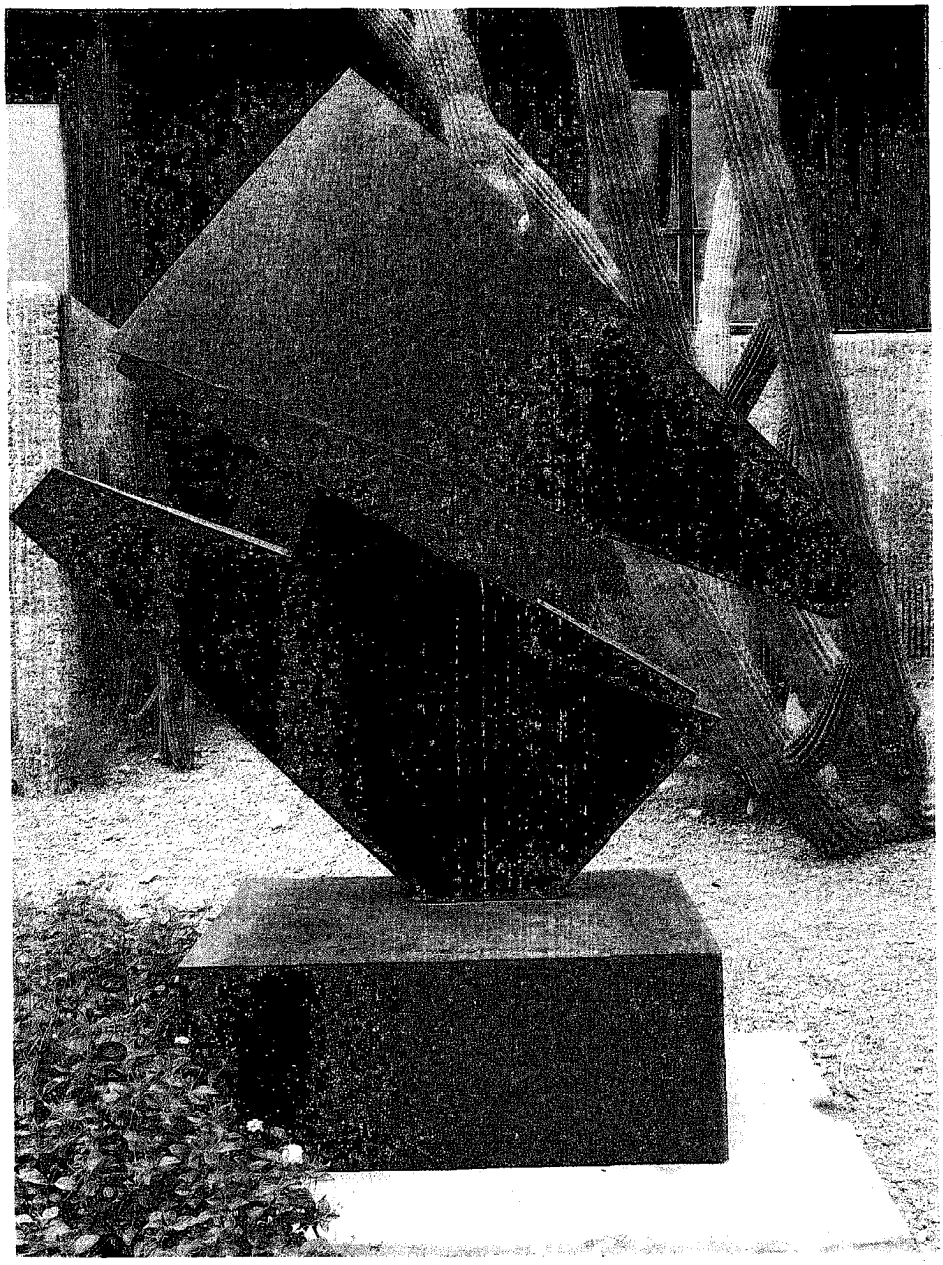

EXHIBIT B

Gift Deed

GIFT DEED

Linda L. Whitney and Richard H. Whitney hereby give the following personal property to the City of Glendale, Arizona, in memory of Clarence and Maude Whitney:

1976 Corten Sculpture by Michael Anderson; 7' x 3'.

Dated this 28th day of December, 2015.

Linda L. Whitney

Richard H. Whitney

State of Arizona

County of Maricopa

The foregoing Gift Deed was acknowledged before me this 28th day of December, 2015, by Linda L. Whitney and Richard H. Whitney.

(Seal and Expiration Date)

ANNETTE G. BENNEY
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
December 14, 2017

Notary Public

RHW:agb 2518593.1 12/29/2015

EXHIBIT C

Certified Fine Art Appraisal Report

Allison Gee Fine Art Appraisals

14325 West Verde Lane
Goodyear, Arizona USA 85395
623.535.0631
allisongee@msn.com
allisongee.com

FINE ARTS APPRAISAL REPORT

for

ONE WORK OF ART

DATE OF REPORT: 25 JANUARY 2016

EFFECTIVE DATE OF VALUATION: 31 DECEMBER 2015

DATE OF INSPECTION: 04 JANUARY 2016

TYPE OF VALUE: FAIR MARKET VALUE

INTENDED USE: CHARITABLE DONATION TO:

CITY OF GLENDALE
PUBLIC ART PROGRAM
5959 WEST BROWN STREET
GLENDALE, ARIZONA 85302

THE PROPERTY OF:

MR. and MRS. RICHARD and LINDA WHITNEY
5735 NORTH HARDING DRIVE
PARADISE VALLEY, ARIZONA 85253

APPRAISED BY:

ALLISON D. GEE, M.A.
ACCREDITED SENIOR APPRAISER IN FINE ARTS, AMERICAN SOCIETY OF APPRAISERS
EIN 272540881

Allison Gee Fine Art Appraisals

14325 West Verde Lane
Goodyear, Arizona USA 85395
623.535.0631
allisongee@msn.com
allisongee.com

TABLE OF CONTENTS
for **WHITNEY** report

TITLE PAGE 1st page

TABLE OF CONTENTS 2nd page

TRANSMITTAL LETTER 3rd - 5th pages

TYPE OF REPORT 6th page

INTENDED USE 6th page

INTENDED USERS 6th page

TYPE OF VALUE 6th page

DEFINITION OF VALUE 6th page

APPROACHES TO VALUE 7th page

LIMITING CONDITIONS and ASSUMPTIONS 8th - 9th pages

APPRAISER'S CERTIFICATION 10th page

PRIVACY STATEMENT 11th page

NARRATIVE 12th - 17th pages

Anderson, Michael, Untitled
Description, photographs, market analysis

APPRAISER'S CREDENTIALS 18th page

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14325 West Verde Lane
Goodyear, Arizona USA 85395
623.535.0631
allisongee@msn.com
allisongee.com

25 January 2016

Mr. and Mrs. Richard and Linda Whitney
5735 North Harding Drive
Paradise Valley, Arizona 85253

Dear Mr. and Mrs. Whitney:

Enclosed you will find the appraisal report on **one (1) work of art** as described in this report. The appraisal is intended for the function of a charitable donation to the City of Glendale, Public Art Program, 5959 West Brown Street, Glendale, Arizona.

I was advised that you are the 100-percent owners of the artwork. It is applicable to identify any ownership rights or interests in the property to be valued or any known ownership restrictions, encumbrances, leases, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature, and I was advised that you are the 100-percent owners of the property.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

I was further advised that the intended users of this appraisal report are you and your delegated representatives.

I inspected and photographed the artwork on 04 January 2016 at your home at 5735 North Harding Drive, Paradise Valley, Arizona.

I have researched and analyzed the artist's market and produced this report as of 25 January 2016. I have included the *Fair Market Value*, that is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. If the contribution is made in a property that of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he commonly sells, at the time and place of the contribution, and, in the case of a contribution of goods in quantity, the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers. If the donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have expected to realize its usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of its contribution." Source: 26 CFR§1.170A-1 c (2).

This definition is provided by the Personal Property Committee of the American Society of Appraisers.

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14325 West Verde Lane
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allisongee@msn.com
allisongee.com

The *fair market value* of the artwork is in the total of **$18,000.00 (eighteen thousand dollars)** as of the effective date of valuation, 31 December 2015.

I hereby certify that, to the best of my knowledge and belief, the statements of fact contained in the appraisal are true and correct and that the report has been prepared in accordance with the *2016-2017 Uniform Standards of Professional Appraisal Practice* of The Appraisal Foundation and the Principles of Appraisal Practice and the Code of Ethics of the American Society of Appraisers.

Furthermore, my analysis, opinions and conclusions were developed and this report has been prepared in conformity with the applicable Internal Revenue Service Guidelines.

As required under § 1.170A-13(c)(5)(I), I understand that "a substantial or gross valuation misstatement resulting from an appraisal of the value of property that the appraiser knows, or reasonably should have known, would be used in connection with a return or claim for refund, may subject the appraiser to a civil penalty under § 6695A."

I am a qualified appraiser, as defined as "an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations proscribed by the Secretary; (2) regularly performs appraisals for which the individual receives compensation; and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance. (Section 170(f)11(E)(ii) of the Internal Revenue Service Code.

I have retained a copy of this report and the original notes from which it was prepared. These records are confidential; I will not permit access to them by anyone without your specific written authorization. The appraisal report and all related work files remain the property of the appraiser and is retained for the appropriate time thereafter that such records are required to be maintained by USPAP and consistent with the ASA Code of Ethics. After this required period of record retention, all such information will be destroyed in a manner consistent with providing you confidentiality.

The completion of this appraisal report concludes the work as originally agreed. Should you desire additional work, a new agreement and additional fees will be required.

This report consists of 18 pages. Possession of this report or any copy does not carry with it the right of publication, nor may the same be used for any function by anyone but the above named individuals without the previous written consent of the appraiser, and in any event, only in its entirety and with the proper qualifications. No change of any item in the appraisal report shall be made by anyone other than the appraiser, and the appraiser shall have no responsibility for any unauthorized change.

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14325 West Verde Lane
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It has been my pleasure working for you, and please do not hesitate to contact me if I can be of further assistance.

Respectfully submitted,

Allison D. Gee, M.A.
Accredited Senior Appraiser Designated in Fine Arts

Allison Gee Fine Art Appraisals

14325 West Verde Lane
Goodyear, Arizona USA 85395
623.535.0631
allisongee@msn.com
allisongee.com

TYPE OF REPORT

This appraisal is communicated in an Appraisal Report.

INTENDED USE

The intended use of this appraisal report is solely for a charitable donation to the City of Glendale, Public Art Program, 5959 West Brown Street, Glendale, Arizona. This report is not intended for any other use.

INTENDED USERS

The intended users are Mr. and Mrs. Richard and Linda Whitney and their delegated representatives. This report is not intended for any other users.

TYPE OF VALUE

This appraisal concludes *Fair Market Value*.

DEFINITION OF VALUE

The definition for *Fair Market Value* is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. If the contribution is made in a property that of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he commonly sells, at the time and place of the contribution, and, in the case of a contribution of goods in quantity, the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers. If the donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have expected to realize its usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of its contribution." Source: 26 CFR§1.170A-1 c (2).

This definition is provided by the Personal Property Committee of the American Society of Appraisers.

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APPROACHES TO VALUE

There are three Approaches to Value for appraising personal property; all approaches were considered in preparing this appraisal.

The Cost Approach to Value

A procedure to estimate the current costs to reproduce or create a personal property with another of comparable use and marketability.

This approach to value was considered and not used because the subject property cannot be reproduced.

The Income Approach to Value

A procedure to conclude an opinion of present value by calculating the anticipated monetary benefits (such as stream of income) for an income-producing property.

This approach to value was considered and not used because the subject property is not income generating.

The Sales Comparison Approach to Value

A procedure to conclude an opinion of value for a property by comparing it with similar properties that have been sold or are for sale in the relevant marketplace by making adjustments to prices based on marketplace conditions and the properties' characteristics of value.

The Sales Comparison Approach is used because there is a sufficient number of properties in the relevant marketplace comparable to the subject properties on which to base a credible value conclusion.

The aforementioned definitions are as stated in *The Appraisal of Personal Property Principles, Theories and Practice Methods for the Professional Appraiser* published by the American Society of Appraisers.

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LIMITING CONDITIONS AND ASSUMPTIONS

This appraisal report has been prepared subject to the following limiting conditions and assumptions:

This appraisal report has been prepared for the intended use, the intended users and the type of value as stated herein.

The opinion of value is valid only for the effective date of the appraisal.

The appraisal report is only valid in its entirety of 18 pages and is not valid if any page of the report is missing. Reproduction of the report must be done in its entirety.

Ownership of the property was stated to the appraiser. This appraisal is not a certificate of title or a warranty of ownership. Ownership was neither researched nor confirmed.

Information used in the preparation of this report has been obtained from a variety of sources. These sources are assumed to be reliable and accurate. The appraiser assumes no responsibility for errors or omissions provided by these sources.

No change to this report shall be made by anyone other than the appraiser. The appraiser retains the right to amend this appraisal report.

Sales quoted in this report, regardless of origin, do not include any taxes. Auction sales quoted in this report include the standard buyer's premium of that auction house, as of the date of sale (unless otherwise noted).

This appraisal makes no warranty as to the authenticity of the property appraised. Absolute identity is sometimes possible through scientific testing. The property in this appraisal has not been subjected to scientific testing. The role of the appraiser is to witness the existence of the property, identify its nature and condition and conclude its value. The appraiser is giving an opinion of authenticity based on due diligence and the process specified in the report. The Principle of Identification states that if a subject property possesses the same characteristics as an acknowledged genuine property, then the subject property is believed to be genuine.

This appraisal assumes that there are no undisclosed conditions of the subject property that would have a material and/or adverse effect on the value conclusions.

Dimensions are listed as height X width X depth and are listed in inches.

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Photographs used by the appraiser are not considered to be professional in nature, may not be suitable for use in court and are included solely to serve as an adjunct to the descriptions included in this report.

Fees charged for this appraisal are based solely on the length of time expended in appraising the property and are not related to the value of the property appraised. It is understood that the fees paid for this appraisal do not include the services of the appraiser for any other matter whatsoever. In particular, fees paid for this appraisal do not include any of the appraiser's time or services in connection with any statement, testimony or other matters in connection with the property.

This appraisal report is confidential. No part of this report shall be disseminated to the public in any form without the prior written consent of the appraiser. Access to confidential information or the value conclusion will not occur without the expressed written consent of the client, unless ordered by a court of appropriate and competent jurisdiction and/or regulation, or a duly authorized panel of a professional organization.

The values reported in this appraisal is warranted by the appraiser to be valid only on the effective date of the appraisal. Normal fluctuations in the art market may affect the values stated in this report after the effective date.

The reported analyzes, opinions and conclusions of the appraiser are limited by the reported assumptions and limiting conditions, and are the appraiser's personal, unbiased professional analyzes, opinions and conclusions.

The appraiser assumes no responsibility for changes in market conditions nor the inability to locate a potential buyer, at the appraised value, if such is attempted by the owner or another person.

Allison Gee Fine Art Appraisals retains a copy of this appraisal report, together with the assignment workfile for a minimum of five (5) years or two (2) years following the conclusion of any legal proceeding in which the appraiser has given testimony regarding the appraised property, whichever is longer.

The submission of this report concludes this appraisal assignment. Any additional services related to this appraisal shall constitute a new assignment and shall be invoiced according to the appraiser's current fee schedule at the time of the new assignment.

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APPRAISER'S CERTIFICATION

Statements of Fact

To the best of my knowledge and belief, the statements of fact contained in this report are true and correct. The reported analyzes, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyzes, opinions and conclusions.

Ethical Standards

These are my personal, unbiased professional analyzes, opinions and conclusions. These and the report were developed in conformity with the Principles of Appraisal Practice as well as the requirements of the *2016-2017 Uniform Standards of Professional Appraisal Practice* promulgated by The Appraisal Foundation and the Code of Ethics of the American Society of Appraisers.

Inspection of Property

I have made a personal inspection of the property that is the subject of this report.

Professional Assistance

No one provided any significant professional assistance to the person signing this certification.

Appraiser Interest

I have no present or prospective interest or bias in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

I have performed no services as an appraiser or in any other capacity, regarding the property that is the subject of this report, within the three-year period immediately preceding the acceptance of this assignment.

Contingent Fees

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the valuation, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.

25 Jan 2016
Date

Allison D. Gee, M.A., A.S.A.

Allison Gee Fine Art Appraisals

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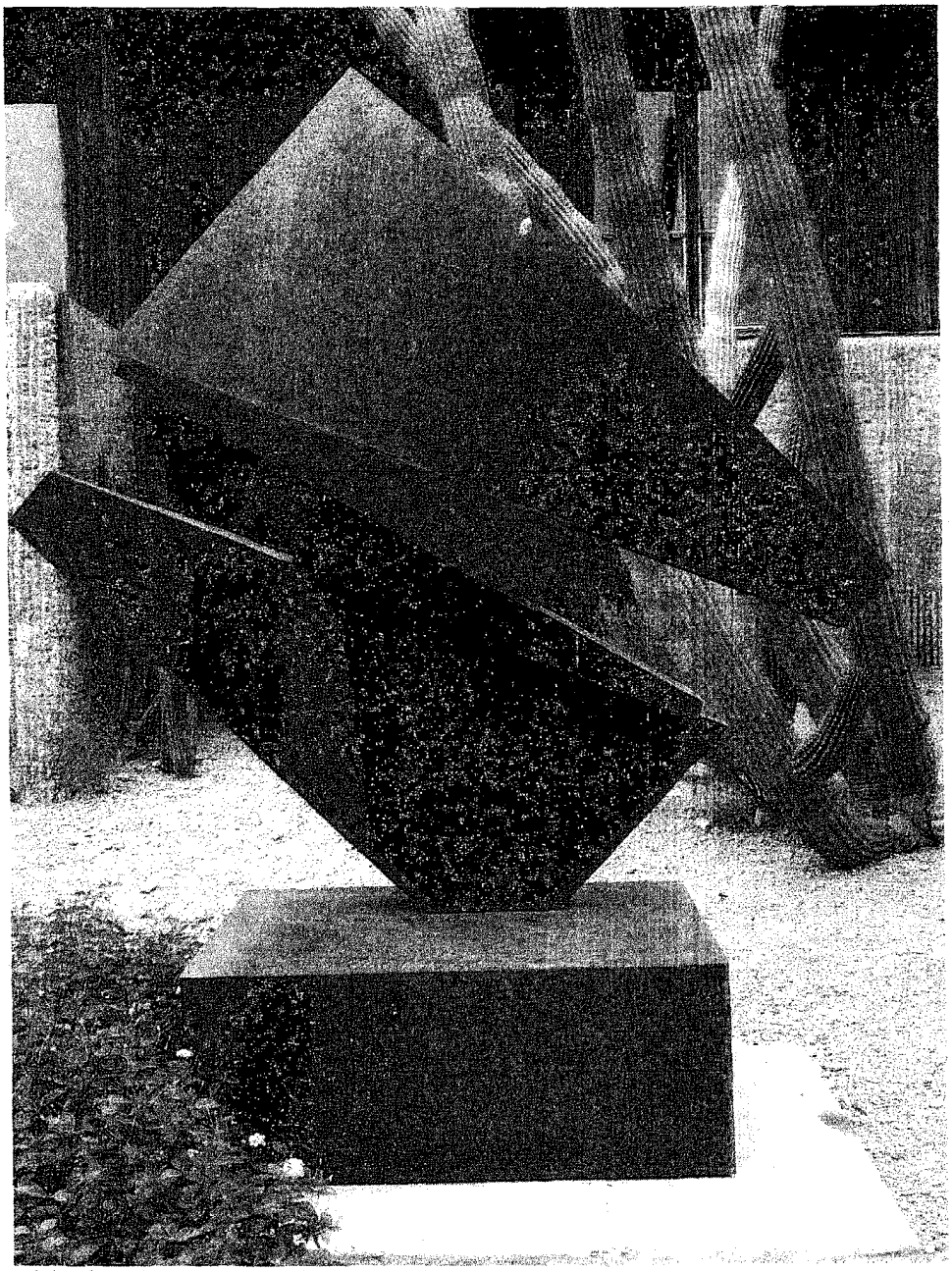

Michael Anderson. Untitled corten steel.

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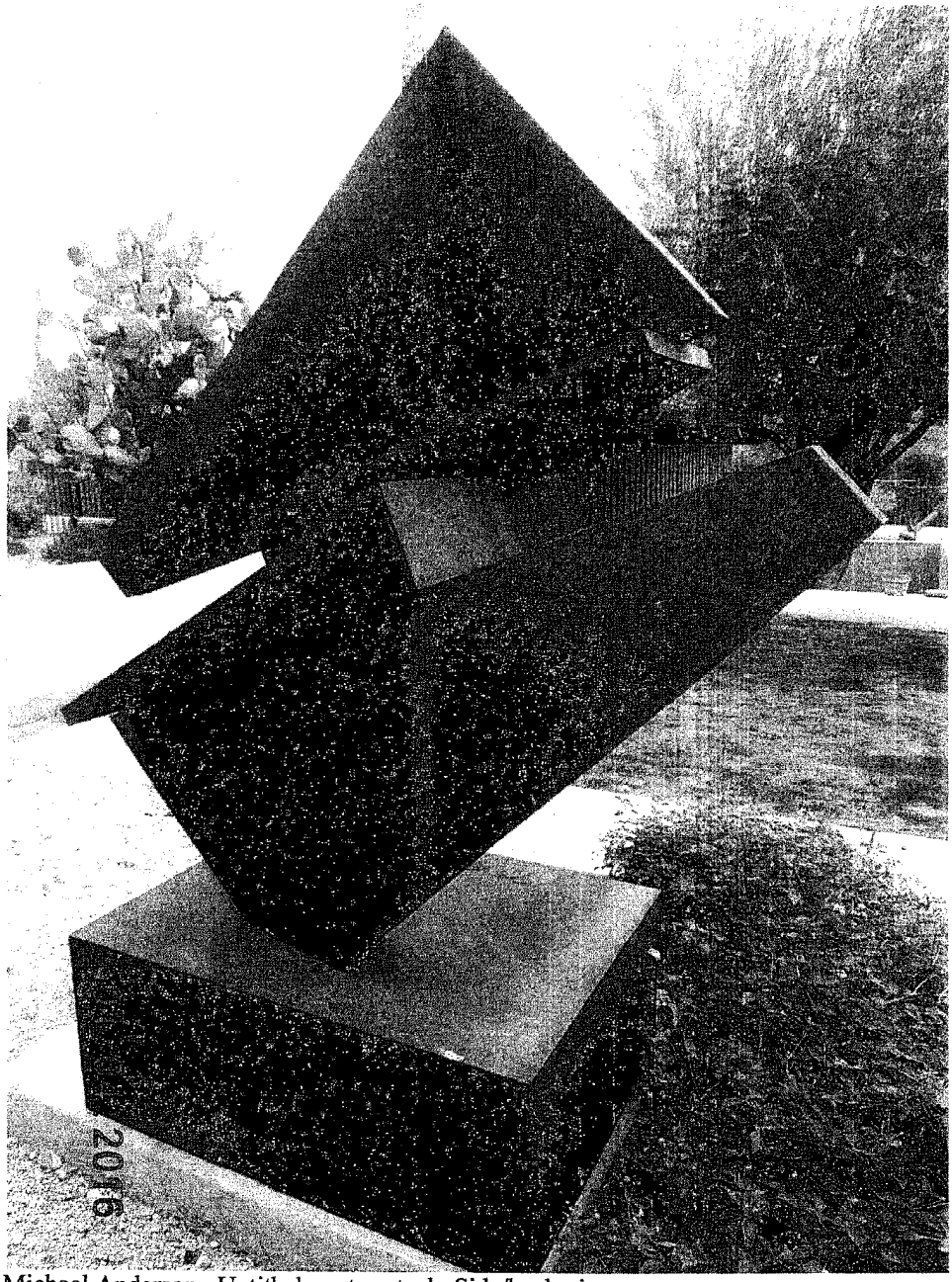
623.535.0631
allisongee@msn.com
allisongee.com



Michael Anderson. Untitled, corten steel. Side/back view.

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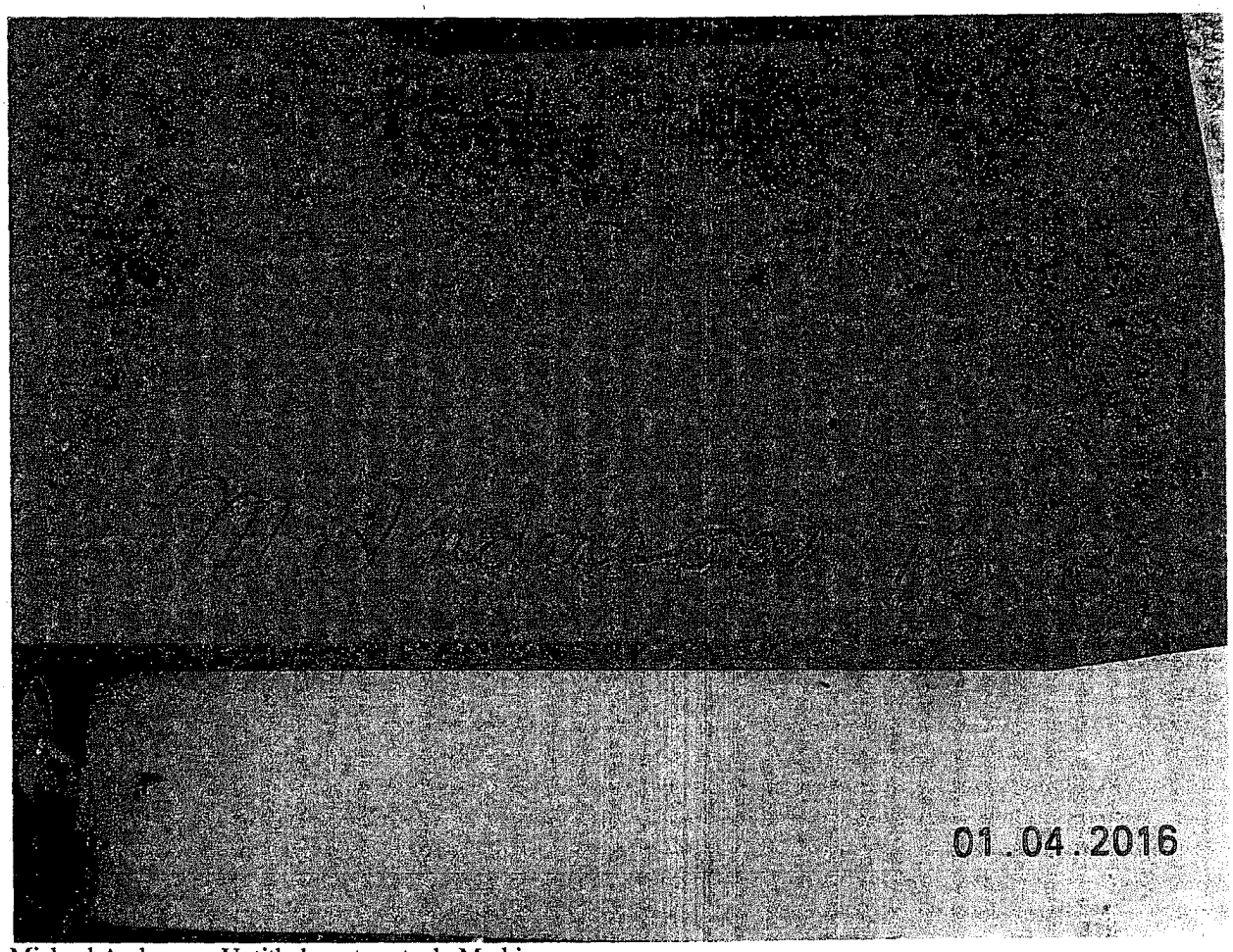
14325 West Verde Lane
Goodyear, Arizona USA 85395
623.535.0631
allisongee@msn.com
allisongee.com



Michael Anderson. Untitled, corten steel. Markings.

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623.535.0631
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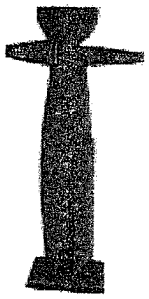
allisongee.com



Conception
Steel
78" height X 38" width X 16" depth
Larsen Gallery, Scottsdale, Arizona
Currently offered for $17,000.00

Weight Piece #1
Steel
69" height X 12" width X 12" depth
Larsen Gallery, Scottsdale, Arizona
Currently offered for $11,000.00

Untitled
Steel, 1976
93" height X 39" width X 24" depth
Bonhams, San Francisco, 22 May 2011, Lot 7088
Sold $5,124.00

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allisongee@msn.com
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Market Analysis

Michael Anderson was born in California in 1945 and grew up in Texas and Nebraska. After moving to Arizona in 1964, he studied fine arts at Phoenix College and Arizona State University. Anderson entered a carpenter's apprenticeship program and built houses and apartment complexes before becoming a professional sculptor in the early 1970s. He has converted a warehouse in downtown Phoenix to use as his studio. Anderson's sculpture can be seen locally at Sky Harbor International Airport, Biltmore Office Park, Scottsdale Center for the Arts, the American Express headquarters and the Tucson Museum of Art. His work also is found in public and private collections across the United States, as well as Canada, Mexico, Switzerland, Australia, the United Arab Emirates and Zaire.

To conclude the *fair market value* of this artwork, I began by researching the artist's markets to find the most common market where one of his works would sell. Because the majority of Anderson's sculptures are large scale, and oftentimes public artworks, there are few auction sales for comparable properties. Bonhams San Francisco sold one of Anderson's steel sculptures in May 2011 for $5,124.00. This untitled piece was created the same year as the Whitney sculpture, 1976, and it measures 93" height X 39" width X 29" depth. Although it is a large sculpture, it is not as deep as the Whitney property, and the symmetry of the Whitney sculpture lends a graceful elegance to the piece. Therefore, I rank the Whitney property higher than the property sold at Bonhams. An additional factor in this sale is the fact that it took place in 2011 when the art market was much weaker than it was in December 2015.

Although Anderson has been working as a sculptor for over thirty years, there is only one sculpture sold at auction that is comparable to the Whitney untitled piece. A willing and knowledgeable buyer would most likely acquire one of the artist's sculptures directly from Anderson or at a gallery such as the Larsen Gallery in Scottsdale, Arizona. The Larsen Gallery currently offers four sculptures by Anderson, and two are larger in scale. *Conception* is steel and measures 78" height X 38" width X 16" depth. It is offered for $17,000.00. *Weight Piece #1* also is steel and measures 69" height X 12" width X 12" depth. It is offered for $11,000.00. Both properties share characteristics of value such as medium and style with the Whitney sculpture, but, despite their large size, they are still smaller than the Whitney piece and are not as complex as the subject sculpture.

I also consulted directly with the artist about the untitled piece, and he advised me that he would sell it for approximately $20,000.00. I took this information into consideration, along with the asking prices at the Larsen Gallery, and I made adjustments, including a standard collector discount, and concluded the *fair market value* to be $18,000.00.

****

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allisongee.com

Allison D. Gee Professional Credentials

In the State of Arizona, Allison D. Gee is one of only three Accredited Senior Appraisers designated and tested in Fine Arts through the American Society of Appraisers. She also earned a Certificate in Appraisal Studies in Fine and Decorative Art from the University of California, Irvine. She has successfully completed the *Principles of Valuation* courses required by the American Society of Appraisers: *Introduction to Personal Property Valuation; Personal Property Valuation Methodology - Research and Analysis; Personal Property Valuation - Report Writing; Personal Property Valuation - The Legal and Commercial Environment;* and *Uniform Standards of Professional Appraisal Practices.* Ms. Gee is in compliance with the Code of Ethics promulgated by the American Society of Appraisers.

In the past eight years, Ms. Gee has completed three IRS symposiums offered by the American Society of Appraisers on valuation issues involving laws and regulations in estate taxes and charitable donations. These symposiums featured several speakers from the IRS, including Ruth Vriend, Director of Appeals for the Art Appraisal Services of the IRS; Karen Carolan, past Chief of the Art Appraisal Services in the Commissioner's Art Advisory Panel Department of the Treasury, IRS; and Joseph Bothwell, past Director of IRS Art Appraisal Services.

Ms. Gee earned a Masters of Art in Art History from Arizona State University in Tempe, Arizona. Her thesis, titled *Beyond the Sensation: The French Embassy's Statue Attributed to Michelangelo*, was published by Arizona State University. She was a Teaching Assistant in the School of Art for five semesters and holds a lifetime teaching certificate in Art History from the Arizona Community Colleges system. She is an Adjunct Faculty member teaching Art History and Humanities for Rio Salado College, where she was awarded Outstanding Adjunct Faculty for 2008.

Ms. Gee recently completed her second term to an elected position on the prestigious International Personal Property Discipline Committee of the American Society of Appraisers. From 2009-2011, she was elected to serve a two-year term on the Executive Board of the International Personal Property Discipline Committee. She is active in the Phoenix-Metro Chapter of the American Society of Appraisers (ASA), and she was elected to serve as an officer of the local chapter for the 2002-2003, 2003-2004 and 2004-2005 years. She was President of the chapter from 2005-2007.

Ms. Gee has studied art and conducted research at many of the world's finest museums, including the Metropolitan Museum of Art in New York and the Casa Buonarroti in Florence, Italy. Prior to opening her own practice, Ms. Gee worked as an art appraiser at Corinne Cain, Ltd. in Phoenix, Arizona.

She is involved in the local arts community and is a member of the Phoenix Art Museum Circles of Support and the Scottsdale Museum of Contemporary Art. She was a Founding Member of the Advocacy for the Arts at the Arizona State University College of Law. Ms. Gee is a past Board Member of Art Link, the oldest all-volunteer arts organization in downtown Phoenix.