

GIFT AGREEMENT
Shawar
(GH 12-14-17, CAO 245613)

THIS GIFT AGREEMENT, dated as of January _____, 2018 (the “**Effective Date**”), is made and entered into by and between Rabeeha Shawar (“**RS**”) and the City of Milwaukee (“**City**”), for good and valuable consideration, receipt and sufficiency of which are acknowledged.

1. Agreement to Gift. RS agrees to give and donate to City, and City agrees to accept from RS, on the terms and conditions herein, all of RS’s right, title, and interest in and to:

- **Address:** 3801-3803 W. North Avenue, Milwaukee, WI, including all buildings, fixtures and appurtenances located thereat (the “**Store**”)
- **TIN:** 348-0967-000

2. Closing. “**Closing**” on the gift conveyance of the Store from RS to City shall be *within 15 days after* the City’s Common Council and Mayor have approved a Common Council Resolution authorizing this agreement and City acceptance of the gift. MCO 308-22-2-c and h and 304-24, but the Deed (see below shall be dated and effective as of December 31, 2017). *If the Common Council and Mayor do not approve such a resolution, City shall not sign this agreement, City will have no duty to accept the gift, and City will have no duties hereunder.*

Closing shall take place at the Milwaukee City Attorney’s Office, 841 North Broadway, 7th Floor, Milwaukee, at a mutually acceptable time and date within the above 15-day period (subject to the terms and conditions herein).

3. Store Condition. The Store is being gifted to City on an AS-IS, WHERE-IS BASIS.

The Store has a \$53,000 City-assessed value for year 2017. The parties acknowledge that the Store is subject to a City Raze Order (recorded 8-8-2017 as ROD Document # 10699868), and that the Store shares a common roof with the adjoining City-owned, unoccupied, and boarded, parcel to the West, 3805-3807 W. North Avenue, TIN 348-0968-000 (the “**City Parcel**”). The building on both parcels (that straddles the lot line between the two parcels) is in poor condition and would require considerable expenditure of funds to correct, rendering rehab cost-prohibitive. Given the existing conditions, and for RS to avoid costly demolition expense due to the raze order, RS voluntarily agrees to donate and give the Store to the City, so that the City may become owner of the Store, and so that the City may, at its expense, demolish the one building that straddles both parcels and that exists on the Store parcel and on the City Parcel, in City’s discretion and at a time of City’s choosing. City demolition of the structure on both parcels will then allow the City to assemble the two parcels into one larger, vacant lot, and it will end the unusual existing condition of the one structure, on different lots in different ownership, sharing a common roof, and straddling the lot line.

4. **Transfer Fee/Return.** The parties agree that pursuant to Wis. Stat. 77.25 (2g) this transfer of the Store to the City is exempt from the Wisconsin Real Estate Transfer Fee. Prior to Closing, RS shall provide information to City to enable completion of an electronic real-estate-transfer return regarding RS's conveyance to City, and RS will cooperate with City regarding an electronic return filing.

5. **Tenant and Existing Lease.** RS informs City that the only lease affecting the Store is a "Commercial Lease Agreement" between RS as landlord, and "Kashmier McCain, North Ave Mart LLC" as tenant ("**Tenant**"), dated as of October 1, 2015 (the "**Lease**"), with a 5 year term. As a condition to Closing and to City accepting this gift, RS will ensure that, prior to Closing, the Tenant has ceased operations at and vacated the Store, removed Tenant's personal property, and signed the "**Tenant Termination**" attached hereto as **EXHIBIT A**. City has no duty to pay Tenant any money, and no duty to move or relocate Tenant. *If RS has not provided the Tenant Termination to City (signed by Tenant) on or before Closing, City may, at its sole discretion, terminate this Agreement in which case City shall have no duty to accept the gift, and no duties hereunder.* At Closing, the Store must be conveyed to City not subject to any leases or other tenancy.

6. **Personal Property; Permitted Removals.** All personal property, whether owned by RS, Tenant, or others, must be removed from the Store at no expense to City prior to Closing and prior to the **Final Walkthrough** (see below). RS takes all responsibility for any third-party-owned personal property and indemnifies and holds City harmless concerning same. Notwithstanding the foregoing, the following (whether a fixture or not) are "**Permitted Removals**" and they too must be removed from the Store at no expense to City prior to Closing and prior to the **Final Walkthrough**:

RS "**Permitted Removals**": _____ and

- Computer
- Cash register
- Inventory and personal property of North Ave Mart LLC
- Security camera system.
- Freezers and refrigerators.
- All ATM equipment.
- Shelving.
- Any other item(s) that RS has secured advance written permission from CITY to remove prior to Closing (permission in CITY's discretion).

If personal property and Permitted Removals have not been removed from the Store prior to Closing and the Final Walkthrough, City may, at its discretion, terminate this Agreement in which case City shall have no duty to accept the gift, and no duties hereunder, or City may require compliance.

7. Warranty Deed; Deed Does Not Merge.

A. **Deed.** RS shall at Closing convey marketable title to the Store to City by Warranty Deed, in form and substance of that attached hereto as **EXHIBIT B** (the “**Deed**”) dated as of December 31, 2017, subject only to the “**Permitted Encumbrances**” referred to in the Deed.

B. **Knight Barry Letter Report; Title Insurance.** RS has reviewed Knight Barry Letter Report # 919794L, last revised on 12-7-2017 (the “**Letter Report**”). RS shall not allow any liens or encumbrances to exist or to be recorded against the Store other than as already reported in the Letter Report. RS shall not allow conditions that could give rise to any such liens or encumbrances existing or being recorded. City reserves the right to obtain, at its expense, an updated Letter Report or title insurance prior to Closing. If City elects to obtain title insurance prior to Closing, RS shall cooperate with City and the title company including signing of standard title company affidavits consistent with this Agreement. Any title report, title insurance or title policies desired by the City for the Store shall be at City’s sole cost and expense.

If City, prior to Closing, becomes aware of liens or encumbrances other than Permitted Encumbrances, and if City informs RS of same and RS does not cause them to be removed or satisfied to City’s reasonable acceptance by Closing, *City may terminate this agreement, in which case it shall have no duty to accept the gift, and no duties hereunder, or City may require compliance.*

C. **Payment of 2017 Taxes and Lien.** RS shall pay the municipal lien listed in the Letter Report and all amounts on the 2017 tax bill regarding the Store in full prior to Closing, and provide City with evidence of payment, as a condition to City Closing and accepting the conveyance. If RS does not, *City may terminate this agreement, in which case it shall have no duty to accept the gift, and no duties hereunder, or City may require compliance.*

D. **Faisal.** Faisal Shawar was RS’s husband. He is deceased, and RS is a widow, having not remarried after Faisal’s death. Prior to Closing, RS shall take appropriate steps and make a recording with the Register of Deeds Office (meeting City’s prior approval) to remove Faisal Shawar’s name from title. RS informs City that his interest passed at death in full to RS. As a condition to Closing, RS must alone have authority to sign the Deed to City. If RS fails to satisfy this condition, *City may terminate this agreement, at its discretion, in which case it shall have no duty to accept the gift, and no duties hereunder, or City may require compliance.*

E. **Occupancy, Possession.** At Closing, RS shall deliver occupancy and physical possession of the Store to City, free from: any tenant or occupant interest; any lease; any license allowing use; and any third-party right/interest or encumbrance other than Permitted Encumbrances.

8. No Broker. RS does not have the Store listed with any broker, and has not contracted with any broker regarding the gifting, conveyance, or sale of the Store, or this transaction.

9. Utilities. RS shall be responsible for paying, on or before Closing, amounts shown on “special letters” that the City shall obtain and provide to RS prior to Closing, including any outstanding or prorated amount due for sewer or water. City is not responsible for payment of

any utilities provided to the Store on or before Closing (such as internet, electricity, water, cable, phone, commercial garbage pick-up) and RS shall inform respective utility companies and service providers of Closing and termination of utilities and services as of the date of Closing.

10. Closing Proration. There shall be no prorations for 2018 real estate taxes, utilities, or rents.

11. CITY Records Deed. The Deed shall, promptly after Closing, be recorded by City at City's expense.

12. Final Walkthrough. City has the right, from time to time, prior to Closing to visually inspect the Store including the interior, and RS shall allow access for such purpose upon reasonable notice by City to RS. City also has the right, prior to Closing, to do a final walkthrough interior inspection (the "**Final Walkthrough**") to confirm that RS is acting in accordance with her duties hereunder (including removal of personal property and Permitted Removals from the Store, and cessation of occupancy and operations. If the Final Walkthrough reveals conditions not meeting this agreement (such as failure of Tenant to depart, failure to remove personal property, etc.), *City may terminate this agreement (in which case City shall have not duty to accept the gift, and no duties hereunder) or to require compliance in order for City to Close.*

13. Successors and Assigns. This agreement binds and inures to the benefit of the parties hereto and their successors and assigns. Notwithstanding the foregoing, however, unless RS first obtains City's prior written consent, RS may not assign or transfer her interest hereunder, and RS may not convey any right, title, or interest in the Store, other than to the City under this agreement.

14. Counterparts. This agreement may be signed in one or more counterparts and facsimile and/or PDF/email signatures shall be accepted as originals.

15. Entire Agreement; Amendment. This agreement constitutes the entire agreement between the parties and all prior statements, written or oral, are terminated and of no effect. This agreement may only be amended by a written agreement signed by all the parties hereto.

16. Severable. The terms and provisions of this agreement are separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.

17. Notices. All notices permitted or required hereunder shall be considered given **(i)** upon delivery if hand-delivered by commercial courier or otherwise personally delivered, **(ii)** upon sending if sent by e-mail per the below information, so long as no "error" or "inability to deliver" response is generated from such sending, and **(iii)** within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

<p>If to City</p> <p>Amy E. Turim Milw. Dept. of City Development 809 N. Broadway, 2nd Floor Milwaukee, WI 53202 Phone: 414-286-5732 Email: aturim@milwaukee.gov</p> <p>With a Copy to: Gregg C. Hagopian Assistant City Attorney Office of the City Attorney Milwaukee City Hall Suite 800 200 East Wells Street Milwaukee, WI 53202 Phone: 414-286-2601 Email: ghagop@milwaukee.gov</p>	<p>If to RS</p> <p>Rabeeha Shawar c/o Nick Boerke Von Briesen & Roper 411 E. Wisconsin Ave. Suite 1000 Milwaukee, WI 53202 Phone: 414-287-1460 Email: nboerke@vonbriesen.com</p>
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Notice information (such as recipients and email addresses) may be changed by sending notice per this paragraph.

18. Headings. The headings used herein are for convenience only.

19. Remedies. In the event of breach of this agreement, the non-breaching party shall have all rights available at law and in equity against the breaching party, including, where applicable, specific performance. City retains all rights under Wis. Stat. 893.80.

20. Limitation on Further Encumbrances; Insurance & Maintenance. RS agrees that, after the Effective Date, and during the pendency of this agreement, unless City consents otherwise, RS shall not:

- agree to or impose any additional liens, encumbrances, leases, occupants, license agreements, easements, covenants, or restrictions on or against the Store or any part thereof;
- convey, lease, mortgage, or hypothecate any interest in the Store to anyone, other than the City;
- enter into any agreement giving any third-party any right affecting the Store.

RS further agrees, during the pendency of this agreement, at her expense, to maintain property and liability insurance coverage concerning the Store and to be responsible for maintenance of the Store, including sidewalk snow shoveling.

21. Anti-Merger. The terms and provisions herein shall survive RS's execution and delivery of the Deed to the City.

22. No Eminent Domain. RS acknowledges that this is a gift to the City, and that City is not using or threatening eminent domain to acquire any interest in the Store (whether fee interest or leasehold interest). This transaction is a voluntary and negotiated transaction, not brought under or using, in any way, eminent domain power. RS had been discussing with Tenant on her own (a) Tenant's voluntary departure from the Store, and (b) Tenant and RS voluntarily terminating the Lease.

IN WITNESS WHEREOF, the parties caused this Agreement to be entered into and executed as of the Effective Date written above.

CITY OF MILWAUKEE By: _____ Amy Turim, Sp. Deputy Commissioner Common Council Resolution # _____	RS: _____ Rabeeha Shawar
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EXHIBIT A
TENANT TERMINATION AND MUTUAL RELEASE AGREEMENT

WHEREAS, Kashmier McCain is the managing member of North Ave Mart LLC (“**Tenant**”), and Tenant and Rabeeha Shawar (“**RS**”), the owner of 3801-3803 W. North Avenue, Milwaukee (the “**Store**”), have been in discussions about voluntarily terminating the “Commercial Lease Agreement” between RS, as landlord, and “Kashmier McCain, North Ave Mart LLC,” as Tenant, dated as of October 1, 2015 (the “**Lease**”); and

WHEREAS, the Lease is the only lease or other agreement between Tenant and RS, and the Lease has not been amended; and

WHEREAS, Tenant and RS have also discussed the City of Milwaukee’s (“**City**”) Raze Order (Order to Raze and Remove Building, recorded in the Milwaukee County Register of Deeds Office on August 8, 2017 as Document # 10699868) and the December 10, 2017 murder of Ala Mahmoud in the Store and the 2010 murder of Faisal Shawar in the Store; and

WHEREAS, Tenant and RS desire to terminate and cancel the Lease on the terms set forth below, and both parties desire to release one another from all obligations under the Lease, except as hereinafter specifically reserved, and release one another of and from any and all claims, demands, or causes of action of whatsoever nature.

NOW THEREFORE, for good and valuable consideration, Tenant and RS hereby voluntarily and mutually agree as follows:

1. Termination. The Lease is hereby forever terminated effective as of **December 31, 2018** (the “**End Date**”). Tenant shall stop operations at, and forever leave, the Store on or before the End Date. Tenant shall continue paying RS rent up to and including the End Date.

On or before the End Date, Tenant shall remove all personal property, all shelving, and all garbage from the Store, and sweep out the Store premises. On or before the End Date, Tenant will return all keys to the Store to RS. RS is not holding any security deposit, so there is no security deposit to return.

2. Mutual Releases.

(a) RS hereby releases and forever discharges Tenant, its officers, directors, members, parent, affiliates, agents, successors, assigns, and all other persons connected with or to Tenant (collectively “**Tenant Releasees**”) from any and all claims, demands, causes of action, suits, and damages that RS ever had or now has arising from any matter, cause, or thing through the End Date, whether known or unknown, including the obligations under the Lease.

(b) Tenant, on behalf of itself and each of its past, present, and future officers, directors, members, employees, parent, affiliates, agents, successors, and assigns

(collectively “**Tenant Releasors**”), hereby releases and forever discharges RS from any and all claims, demands, causes of action, suits, and damages that Tenant Releasors ever had or now has arising from any matter, cause, or thing through the End Date, whether known or unknown, including the obligations under the Agreement.

3. City. RS shall provide a copy of this document to City, and Tenant informs City and RS that Tenant voluntarily agreed to this termination, and that Tenant will not seek any funds or payment from the City or from RS associated with the Store, the Lease, or this Termination. The Store is under a Raze Order and eventually the Store will be demolished in any event. The City did not use eminent domain to acquire the Lease or the Store. RS the landlord, and Tenant, want to end the Lease, and they do end and terminate the Lease and Tenant’s leasehold rights as of the End Date.

Agreed as of this ____ day of December, 2017.

NORTH AVE MART LLC

By: _____
Kashmier McCain, managing member
New address: _____
Phone: _____
Email: _____

RS:

Rabeeha Shawar

EXHIBIT B

Document Number	Document Title	
	WARRANTY DEED	
<u>Drafted By:</u> Gregg C. Hagopian		
<p>THIS WARRANTY DEED is made by Rabeeha Shawar (“RS”), as the Grantor, to the City of Milwaukee (“City”), as the Grantee.</p>		Recording Area
WITNESSETH:		Name and Return Address:
		Gregg C. Hagopian Office of the City Attorney Milwaukee City Hall Suite 800 200 East Wells Street Milwaukee, WI 53202
		PIN:
		348-0967-000

1. **Conveyance of Parcel.** RS, as sole owner, hereby conveys to City, the real estate, in the City and County of Milwaukee, State of Wisconsin, described below (the “**Store**”), together with all of RS’s right, title and interest in and to the Store, and all rights and privileges appurtenant to the Store, including all buildings and fixtures and appurtenances now located thereon:

- Address: 3801-3803 W. North Avenue, Milwaukee
- TIN: 348-0967-000
- Legal: Lot 1, in Block 4, in Logan Park, in the NW ¼ of Section 24, Township 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin

2. **Warranty.** This is not homestead property. RS conveys the Store together with all and singular the hereditaments and appurtenances thereunto belonging; and, RS warrants that the title is good, indefeasible in fee simple and free and clear of encumbrances except for the following “Permitted Encumbrances,” and RS will warrant and defend the same:

- Order to Raze and Remove Building recorded August 8, 2017 as Document # 10699868
- matters that would be disclosed by an accurate survey
- municipal and zoning ordinances

