ORDINANCE NO. 02-56 AC CMS

AN ORDINANCE APPROVING A LOAN TO JAMES DAWSON OF OBERLIN MUSIC FROM THE OBERLIN BUSINESS ASSISTANCE LOAN PROGRAM

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the proposed loan between the City of Oberlin, Ohio, and James Dawson of Oberlin Music, as approved by the Oberlin Community Improvement Corporation as agent of the City for the Oberlin Business Assistance Revolving Loan Program, and as embodied in the Loan Agreement attached hereto as Exhibit A, is hereby approved, said loan being in an amount up to $40,000.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading – May 6, 2002 (E)
2nd Reading –
3rd Reading –

ATTEST:

Eugene F. Simon
CLERK OF COUNCIL

William J. Jordan
CHAIR OF COUNCIL

POSTED: May 7, 2002

EFFECTIVE DATE: May 7, 2002

a /ORD02-56OberlinMusic

SECURITY AGREEMENT

THIS AGREEMENT between **W. JAMES DAWSON**, hereinafter called "Debtor", and the **CITY OF OBERLIN, OHIO**, its successors and assigns, hereinafter called "Secured Party."

Debtor hereby grants to Secured Party, a security interest in the Debtor's property described in Exhibit "A" attached hereto and made a part hereof, together with any other assets, machinery, equipment, furniture and fixtures used in the business of Debtor now located at 13 South Main Street, Oberlin, Ohio 44074, and known as "Oberlin Music", whether now owned or hereafter acquired, (hereinafter called "Collateral"), to secure the payment of Forty Thousand Dollars ($40,000.00) as provided in a note of even date herewith, and also to secure the payment and performance of any and all obligations due or to become due hereafter, arising out of a certain Loan Agreement by and between the Debtor and the Secured Party on the 15th day of May, 2002.

Debtor warrants and agrees that:

1. The Collateral will be kept at 13 South Main Street, Oberlin, Ohio. Debtor will notify Secured Party of any change in the location of the Collateral within Ohio and will not remove the Collateral from Ohio without the prior written consent of the Secured Party. The Secured Party may examine the Collateral at any time, wherever located.

2. The Collateral is to be used primarily for Debtor's business purposes.

3. The Debtor's place of business in Ohio is 13 South Main Street, Oberlin, Ohio 44074.

4. Except for the security interest granted herein, and the prior lien securing an obligation of Forty Thousand Dollars ($40,000.00). Debtor is, and as to Collateral to be acquired after the date hereof, shall be, the owner of the Collateral free from any lien, security interest or encumbrance except the first lien and security interest of Lorain National Bank, and the Debtor shall defend the Collateral and proceeds thereof against all claims and demands of all persons at any time claiming the same or any interest therein adverse to Secured Party.

5. Debtor will not sell, offer to sell or otherwise transfer or encumber the Collateral other than in the normal course of business without the prior written consent of the Secured Party, and will keep the Collateral in good order and repair and will not waste or destroy the Collateral.

6. With the exception of the financing statement referred to above securing a loan to Lorain National Bank, no financing statement covering the Collateral is on file in any public office, and upon the request of the Secured Party, Debtor will join with the Secured Party in executing one or more financing statements pursuant to the Ohio Uniform Commercial Code in a form satisfactory to Secured Party and will pay the cost of filing the same in all public offices wherever filing is deemed necessary or desirable by Secured Party.

7. Debtor will keep the Collateral insured at all times against loss by fire and/or other hazards concerning which, in the judgment of the Secured Party, insurance protection is reasonably necessary, in a company or companies satisfactory to Secured Party and in

amounts sufficient to protect Secured Party against loss or damages to said Collateral that such policy or policies of insurance will be delivered to Secured Party, together with loss payable clauses in favor of Secured Party as their interest may appear, in form satisfactory to Secured Party.

8. At its option. Secured Party may discharge taxes, liens, or security interests or other encumbrances at any time levies are placed upon the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization. Until default, Debtor may have possession of the Collateral and use it in any lawful manner not inconsistent with this Agreement and not inconsistent with any policy of insurance thereon.

9. Upon the happening of any of the following events or conditions, namely, (i) default in the payment or performance or obligation or of any covenant or liability contained or referred to herein or in any Promissory Note evidencing any of the obligations, (ii) any warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor in connection with his Agreement or to induce Secured Party to make a loan to Debtor proving to have been false in any material respect when made or furnished; (iii) loss, theft, substantial damage, destruction, sale or encumbrance of any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon; (iv) death, dissolution termination of existence, insolvency, business failure, appointment of a receiver, assignment

for the benefit of any creditor, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, Debtor or any guarantor or surety for Debtor, thereupon, or at any time thereafter (such default not having been previously cured) Secured Party at their option may declare all of the obligations to be immediately due and payable and shall then have the remedies of a secured party under the laws of the State of Ohio, including, without limitation thereto, the right to take possession of the Collateral, and for that purpose, Secured Party may, so far as Debtor can give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and to remove the same therefrom. Secured Party may require Debtor to make the Collateral available to Secured Party at place to be designated by Secured Party which is reasonably convenient to both parties Secured Party will give Debtor at least five days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made, and at any such public or private sale Secured Party may purchase the Collateral.

10. This Agreement and the security interest in the Collateral created hereby shall terminate when the obligations have ben paid in full. No waiver by Secured Party of any default shall be effective unless in writing nor operate as a waiver of any other default of or of the same default on a future occasion. All rights of Secured Party shall inure to the benefit of heirs, executors, administrators, successors and assigns of Secured Party, and all obligations of Debtor shall bind the heirs, executors, administrators, successors and assigns

of Debtor. If there be more than one Debtor, their obligations hereunder shall be joint and several This Agreement shall take effect when signed by Debtor.

11. This Security Agreement contains the entire agreement between the parties; and no oral agreements shall be binding.

This Security Agreement made and entered into this 15th day of May, 2002.

In the presence of:

DEBTOR:

W. James Dawson

W James Dawson

Frank L. Carlson

SECURED PARTY:

Frank L. Carlson

THE CITY OF OBERLIN, OHIO

Sharon Pearson

By: Robert DiSpirito

Robert DiSpirito, City Manager

EXHIBIT A

All inventory, stock-in-trade, including but not limited to books, sheet music, compact discs, music equipment and supplies, and replacements and proceeds thereof

All furniture, furnishings, equipment and fixtures, including replacements and proceeds thereof.

All accounts receivable of the business known as "Oberlin Music"

PROMISSORY NOTE

$40,000.00 May 15, 2002

For value received, **W. JAMES DAWSON**, hereinafter referred to as "Maker", promises to pay to the order of the **CITY OF OBERLIN, OHIO**, hereinafter referred to as "Holder", at its principal office located at 85 South Main Street, Oberlin, Ohio, or such other place as the Holder hereof shall designate, the sum of Forty Thousand Dollars ($40,000 00), derived from monies received from the Oberlin Business Assistance Revolving Loan Program, as approved by the Ohio Department of Development, pursuant to the Ohio Small Cities Community Development Block Grant Program, or so much of said proceeds as shall be actually advanced to Maker pursuant to that certain Loan Agreement of even date herewith between the Maker and the Holder, said Agreement being incorporated herein by reference, and being made a part hereof

The term of the loan shall be ten (10) years from the date of the closing of the loan, which shall be designated as thirty (30) days from the date that Maker receives the monies from Holder for payment of the eligible expenses incurred in the project as set forth in the Agreement mentioned hereinbefore.

The money shall be repayable in One Hundred Twenty (120) monthly installments as outlined in the attached "Loan Payment Schedule", such including interest at the rate of five percent (5%) per annum, or such lesser amount as will fully amortize the actual amount of the loan (if less than $40.000 00) over ten (10) years, including five percent (5%) interest per annum. At any time during the life of the loan, the entire outstanding balance may be paid in full without Makers incurring a penalty.

In the event that Maker sells, transfers, or assigns the business now known as "Oberlin Music", or should there be a foreclosure upon or other disposition of the assets of the business transferred to Maker, the balance of the loan monies evidenced by this Note shall be immediately due and payable

It is expressly agreed that if default be made in the performance of any covenant or condition of this Note and the Payment Schedule attached hereto, or in the Agreement between the Maker and the Holder as mentioned hereinbefore, or the mortgage or Security Agreement securing payment of this Note, and such default remains uncured for more than thirty (30) days after notice thereof, then, and in that event, the unpaid balance of the aforesaid principal sum, plus all accrued interest, shall at the option of the Holder, at once become and be due and payable, anything hereinabove contained to the contrary not withstanding.

Maker for himself, his successors and assigns, in the event of default hereunder, hereby waives all exemption laws of the State of Ohio, or any other state or territory of the United States insofar as the laws of such state or territory may permit, and hereby irrevocably authorizes any attorney or any Court of record to appear for it in any Court, whether it be a Court of law or of equity in the State of Ohio or any other state or territory of the United States, and confess judgment against Maker, his assigns, in favor of the Holder hereof for the amount appearing due and payable thereon after maturity, and reasonable attorney's fees on such amount unpaid hereon and cost of suit, and release all errors and waive all rights of appeal and stay of execution.

The Maker and Endorsers hereof do hereby jointly and severally waive presentment, protest and demand, notice of protest, notice of demand and of dishonor and non-payment of this Note, and expressly agree that this Note or any payment thereunder may be extended from time to time without in any way affecting the liability of the Maker and the Endorsers.

The rights and remedies of the Holder, as provided herein, shall be cumulative and concurrent and may be pursued singularly, successively or together at the sole discretion of the Holder and may be exercised as often as occasion theretofore shall occur, and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same

Any required notice shall be sent certified mail to Maker at the following address:

13 South Main Street
Oberlin, Ohio 44074

Maker for himself, and his successors and assigns, in the event of default hereunder, hereby waives all exemption laws of the State of Ohio, or any other state or territory of the United States insofar as the laws of such state or territory may permit, and hereby irrevocably authorizes any attorney or any Court of record to appear for it in any Court, whether it be a Court of law or of equity in the State of Ohio or any other state or territory of the United States, and confess judgment against Maker or his assigns, in favor of the Holder hereof for the amount appearing due and payable thereon after maturity, and reasonable attorney's fees on such amount unpaid hereon and cost of suit, and release all errors and waive all rights of appeal and stay of execution.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned W. JAMES DAWSON on the day and year above written.

WARNING BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU OR YOUR EMPLOYER REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

W James Dawson

W James Dawson

MAKER

LOAN AGREEMENT

This Agreement is made and entered into on this 15th day of May, 2002, by and between the **CITY OF OBERLIN, OHIO**, an Ohio Charter Municipality, hereinafter referred to as the "City", and **W. JAMES DAWSON**, hereinafter referred to as "Dawson", under the following terms and conditions.

WITNESSETH:

WHEREAS, the City has established a Business Assistance Revolving Loan Program which is funded by the interest accruing upon State of Ohio Small Cities Community Development Block Grant funds which the City previously received from the State; and,

WHEREAS, Dawson is the participating party in said Oberlin Business Assistance Revolving Loan Program and desires to borrow Forty Thousand Dollars ($40,000 00) from the City, and,

WHEREAS, the City desires to lend said Forty Thousand Dollars ($40,000.00) in Oberlin Business Assistance Revolving Loan Program funds to Dawson under certain conditions.

NOW, THEREFORE, in consideration of the foregoing, and subject to the conditions contained herein, the City and Dawson do hereby mutually agree as follows:

1. The City will loan to Dawson, consistent with the Oberlin Business Assistance Revolving Loan Program guidelines and all pertinent and applicable Federal, State, and local laws, the sum of Forty Thousand Dollars ($40,000.00) cash. Said monies will be advanced to Dawson immediately upon the execution and delivery to the City of the Promissory Note

referred to below in that same amount, and the recordation of financing statements and security agreements required to be executed by Dawson pursuant to the loan application, the loan agreement and the approval for the loan given by the Oberlin Community Improvement Corporation, agent for the City concerning said Oberlin Business Assistance Revolving Loan Program. Said monies represent funds for construction and renovation of the business premises, the acquisition of equipment, fixtures and furniture, and operating capital for the retail business known as "Oberlin Music" located at 13 South Main Street, Oberlin, Ohio, and will be fully due and payable ten (10) years from that date which is thirty (30) days subsequent to the receipt by Dawson of said loan monies The debt represented by said loan money shall take the form of a Promissory Note signed by Dawson personally and shall be payable to the City in payments as outlined in the attached "Loan Payment Schedule", sufficient to amortize said loan over said ten (10) year period. Said Promissory Note shall draw interest at the rate of five percent (5%) per annum. At any time during the life of this loan, the entire outstanding balance may be paid in full without Dawson incurring a penalty. A copy of the Promissory Note to be signed is attached hereto as "Exhibit A", and incorporated herein by reference.

2 The funds provided by the City to Dawson are to be used for the project as set forth in the application for funding and its attachments which was filed by Dawson with the Oberlin Community Improvement Corporation, the agent for the City concerning said Oberlin Business Assistance Revolving Loan Program. The recitals and conditions set forth in said application and all exhibits attached thereto are incorporated herein by reference.

Pursuant to said application and its exhibits, Forty Thousand Dollars ($40,000.00) is to be used by Dawson for construction and renovation of the business premises, the acquisition of equipment, fixtures and furniture, and operating capital.

3 Dawson agrees that the funds received by him pursuant to this Agreement shall only be used for those eligible activities set forth in the Oberlin Business Assistance Revolving Loan Program guidelines, as may further be restricted by the State of Ohio, Department of Development, in the original Grant Agreement between the City and the State of Ohio, Department of Development, which allowed the City to initiate the program, all of which are incorporated herein by reference.

4 Prior to the receipt of the loan funds, Dawson agrees that the City shall receive, as security for the loan a security interest in all equipment, furniture, inventory and accounts receivable as identified in the Security Agreement attached hereto The lien and security interest shall be in the amount of Forty Thousand Dollars ($40,000.00). The Security Agreement, by which such lien and security interest is created, shall be in the form attached hereto as "Exhibit B" and incorporated herein by reference.

5. As further conditions for said loan, Dawson agrees to provide the City with the following:

A. A copy of the executed lease to the business premises currently known as Oberlin Music, a copy of the memorandum thereof, and proof of filing of such lease/memorandum with the Lorain County Recorder;

B. Satisfactory evidence of ownership of furniture, furnishings and equipment currently located at the business address;

C Loan commitment, or other documents evidencing the loan from Lorain National Bank in the amount of $130,000;

D. Proof satisfactory to counsel for OCIC of Dawson's "equity" commitment to the project in the amount of Twenty-Five Thousand Dollars ($25,000.00).

6. Closing of the loan shall occur at the Economic Development Office, 69 South Main Street, Oberlin, Ohio, on or about the 15th day of May, 2002, or at such later time as the parties may agree. Closing shall not occur until all conditions of this agreement have been met

7. Dawson agrees and understands that this project and the funds expended by the City for same may be audited by the Federal government and the State of Ohio for compliance with all applicable statutes and regulations. Dawson agrees and understands that all finding or findings for the recovery of these monies, if any, made against the City as a result of said audit or audits will be the direct and full responsibility of Dawson. In that regard, Dawson agrees to prepare and retain, and permit the City to inspect as it deems necessary, original invoices, canceled checks, and other evidences of the expenditure of the monies being loaned herein, and will cooperate with the City throughout the life of the loan and will ensure the cooperation of his employees in such efforts.

8. Dawson agrees to save the City harmless from any and all liabilities and claims caused by or resulting from Dawson's obligations or activities in furtherance of any work or purchases described in the application filed with the Oberlin Community Improvement Corporation, as agent for the City, concerning this project. Further, Dawson will reimburse

the City for any judgments which may be obtained against the City resulting from any work that may be performed by Dawson pursuant to the application, or the use of any work product of Dawson, including judgments for infringement of patent or copyrights. Further, Dawson agrees to defend against any such claims or legal actions if called upon by the City to do so, at Dawson's sole cost and expense

9. Dawson understands and agrees that one of the conditions of the Oberlin Business Assistance Revolving Loan Program, established pursuant to authority received from the State of Ohio, Department of Development, pursuant to the Ohio Small Cities Community Development Block Grant program, is the creation or retention of jobs. In that regard, Dawson stipulates and agrees that he will use his best efforts to create, or cause to be created, at least two (2) additional full-time equivalent employment positions, and to retain two (2) full-time equivalent employment positions, as a result of the completion of the project contemplated in the Application and the Agreement set forth herein, consistent with representations made in the Application. Further, Dawson stipulates and agrees to use his best efforts to ensure that fifty-one (51) percent of said jobs created or retained will be filled by persons of low and moderate income. Dawson shall permit the City to review employment practices and records to monitor compliance with this Agreement

10. It is understood and agreed by Dawson that the City shall not have any obligation to disburse any funds pursuant to this Agreement, or pursuant to any documents executed in connection with the subject matter of this Agreement, should, for any reason, the State of Ohio Small Cities Community Development Block Grant funds, or any portion

thereof, which constitutes the funding received by the City for said loan, are revoked or ordered returned to the State of Ohio.

11. Neither approval by the City of this loan, Loan Agreement, or any other documents associated therewith, shall constitute a warranty or representation by the City, or any of their agents, representatives, or employees, as to the technical sufficiency, adequacy, or safety of the equipment being purchased, or of any improvements made, constructed and installed with said loan proceeds, nor shall any such action or approval by the City, the Oberlin Community Improvement Corporation, as agent for the City, or any other action by the City or its agents, constitute a warranty or representation as to the structural soundness of the building involved in the business of Dawson or any other physical condition or feature pertaining to the business of Dawson. All acts, including any failure to act, relating to this project by any agent, representative, or employee of the City, and the Oberlin Community Improvement Corporation are performed solely for the benefit of the City and the Oberlin Community Improvement Corporation to assure proper allocation and use of the funds advanced pursuant to this Agreement, and are not intended for the benefit of Dawson, their agents, employees, tenants, nor any other third party.

12. No failure by the City to exercise and no delay in exercising any right, power, or privilege under or pursuant to this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

13. This Agreement may be executed in any number of counterparts, and each

counterpart shall be deemed to be an original

14. This Agreement is made, executed, and delivered in the State of Ohio, and Ohio laws shall govern its interpretation, performance and enforcement.

15. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested.

16. All notices, requests, and demands upon the respective parties hereto shall be deemed to have been given or made when deposited in the United States Mail, postage pre-paid, and addressed as follows:

To the City: Economic Development Office
Oberlin Municipal Building
69 South Main Street
Oberlin, Ohio 44074-1684

To Dawson: 13 South Main Street
Oberlin, Ohio 44074

17. If there be any conflict between the terms and conditions of this Agreement and the terms and conditions set forth in the guidelines for the Oberlin Business Assistance Revolving Loan Program, the terms and conditions of the Oberlin Business Assistance Revolving Loan Program shall prevail.

18. It is a further condition of this loan, in addition to those conditions set forth in

Section 5 above, that all public comment period(s) will be met and the Ohio Department of Development will authorize the "Request for Release of Funds" form submitted by the City of Oberlin; and

19. This agreement shall be binding upon Dawson's executors, personal representatives and assigns, including any corporation to which the business or its assets, including the assets listed as an attachment to Exhibit B, have been assigned In the event of assignment to a corporation, Dawson and the corporation agree that no dividends shall be issued to the shareholders until the Promissory Note is paid in full.

20. All of Dawson's commitments as contained herein shall survive closing.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date as above written.

In the presence of:

Sharon Pearson
____

Bernadette O'Con
____

CITY OF OBERLIN, OHIO

by: ______________________
Robert DiSpirito, City Manager

In the presence of:

Frank S. Carlson
____

____

James Dawson
____
James Dawson

Approved as to form:

Eric R. Severs, City Solicitor