

**EXHIBIT A**

*Fell Through*

**LOAN AGREEMENT**

THIS AGREEMENT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY OF OBERLIN, OHIO**, an Ohio Charter Municipality, hereinafter referred to as the "City", **COMMON GOODS, LLC**, an Ohio Limited Liability Company, hereinafter referred to as "Common Goods", and **JOSEPH WALTZER**, as guarantor, hereinafter referred to as "Guarantor", under the following terms and conditions:

**WITNESSETH:**

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

WHEREAS, Common Goods is the participating party in said Oberlin Business Assistance Revolving Loan Program and desires to borrow **Fifty Thousand Dollars (\$50,000.00)** in Oberlin Business Assistance Revolving Loan Program funds under certain conditions.

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

1. The City will loan to Common Goods, consistent with the Oberlin Business Assistance Revolving Loan Program guidelines and all pertinent and applicable Federal, State, and local laws, the sum of **Fifty Thousand Dollars (\$50,000.00)**. Said monies will be advanced to Common Goods, immediately upon the execution and delivery to the City of the Promissory Note referred to below in that same amount, the mortgage deed securing said note, the execution of the Security Agreement and the recordation of the financing statement required pursuant to the Loan Application and this Agreement, and the approval for the loan given by the Oberlin

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Community Improvement Corporation, agent for the City concerning said Oberlin Business Assistance Revolving Loan Program, and approval by Oberlin City Council by duly passed ordinance. Said monies represent funds for the acquisition of equipment, fixtures and furniture for the business known as “**Common Goods**” located at **297 South Main Street**, Oberlin, Ohio and shall be fully due and payable ten (10) years from that date which is thirty (30) days subsequent to the receipt by Common Goods of said loan monies. The debt represented by said loan monies shall take the form of a Promissory Note signed by the authorized agent of Common Goods, and by Guarantor, and shall be payable to the City in monthly payments as set forth in a loan payment schedule to be attached to the Promissory Note at the time of its execution, such being sufficient to amortize said loan over said ten (10) year period, with interest only due for the first six (6) months. The Promissory Note shall draw interest at the U.S. Prime rate as listed in the Eastern print edition of the Wall Street Journal as of the effective date of this agreement, minus one percent (1%) per annum. At any time during the life of this loan, the entire outstanding balance may be paid in full without Common Goods, 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 Common Goods, are to be used for the project as set forth in the application for funding and its attachments which was filed by Common Goods, 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, **Fifty Thousand Dollars (\$50,000.00)** is to be used by Common Goods for the acquisition of equipment, fixtures and furniture.

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3. Common Goods agrees that the funds received by it 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, Common Goods 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 **Fifty Thousand Dollars (\$50,000.00)**. 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, Common Goods, agrees to provide the City with the following:

- (a) A copy of the executed lease to the business premises previously known as Missler's Super Value and located at 297 South Main Street, Oberlin, Ohio, a copy of the memorandum thereof, and proof of filing of such lease/memorandum with the Lorain County Recorder;
- (b) Proof satisfactory to counsel for OCIC of funds or loan commitments for construction, renovation, machinery, equipment, furniture, fixtures, leasehold improvements, and contingencies as set forth in the Loan Application;
- (c) Proof satisfactory to counsel for OCIC of Common Goods separate "equity" commitment to the project in the amount of **Fifty Thousand Dollars (\$50,000)**.

6. Closing of the loan shall occur at the City's Planning and Development Office, 69 South Main Street, Oberlin, Ohio, on or about the \_\_\_ day of \_\_\_\_\_, 2010, or at such later date as the parties may agree. Closing shall not occur until all conditions of this agreement have been met.

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7. Common Goods 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. Common Goods 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 Common Goods. In that regard, Common Goods 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 its employees in such efforts.

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

9. Common Goods 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, Common Goods stipulates and agrees that it will use its commercially reasonable best efforts to create, or

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cause to be created, at least three (3) additional 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, Common Goods stipulates and agrees to use its best efforts to ensure that fifty-one percent (51%) of said jobs created or retained will be filled with persons of low and moderate income. Common Goods shall permit the City to review employment practices and records to monitor compliance with this Agreement.

10. Common Goods, understands and agrees that the entire balance of the outstanding principal and all accrued interest and charges shall, at the option of the City, become immediately due and payable upon the relocation of Borrower's primary Oberlin business facility to any location outside the corporate limits of the City of Oberlin, Ohio, or as a result of any default by Common Goods of any of the terms and conditions of this agreement or any documents executed pursuant thereto.

11. It is understood and agreed by Common Goods 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.

12. 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 with said loan proceeds, nor shall any such action or approval

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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 Common Goods, or any other physical condition or feature pertaining to the business of Common Goods, . 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 to assure proper allocation and use of the funds advanced pursuant to this Agreement, are not intended for the benefit of Common Goods, their agents, employees, tenants, or any other third party.

13. 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.

14. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original.

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

16. 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 or she is directly or indirectly interested.

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17. 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 prepaid and addressed as follows:

To the City:	Planning and Development Office Oberlin Municipal Building 69 South Main Street Oberlin, Ohio 44074-1684
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To Common Goods:	291 South Main Street Oberlin, Ohio 44074
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18. 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.

19. 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 must authorize the "Request for Release of Funds" form submitted by the City of Oberlin.

20. This agreement shall be binding upon Common Good's successors and assigns, including any other corporation to which all or substantially all of the business or its assets, including the assets listed as an attachment to Exhibit B, have been transferred or assigned outside of transfers or assignments made in the ordinary course of business.

21. All of Common Good's commitments as contained herein shall survive closing.

22. The undersigned Guarantor agrees to guarantee payment of the Promissory Note, and in addition, represents and warrants that the officer of Common Goods signing on behalf of that company has authority to bind the corporation to the terms of this agreement pursuant to

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action duly taken by the shareholders, directors and/or officers of the corporation, who, pursuant to the organizational documents and pursuant to law have authority to delegate such authority.

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

**CITY OF OBERLIN, OHIO**

\_\_\_\_\_  
Eric Norenberg, City Manager

**COMMON GOODS, LLC**

By: \_\_\_\_\_,  
Joseph Waltzer, its President CEO

**GUARANTOR**

\_\_\_\_\_  
Joseph Waltzer

Approved as to form:

\_\_\_\_\_  
Eric R. Severs  
Oberlin Law Director