**NON-EXCLUSIVE PAYROLL DEDUCTION PLAN AGREEMENT**

**THIS NON-EXCLUSIVE PAYROLL DEDUCTION PLAN AGREEMENT** (this ***“Agreement”***) and is entered into on \_\_\_\_\_\_\_\_\_\_\_­­­­­­­­­\_\_\_\_\_\_\_, 2014 by and between the City of Dania Beach, Florida, a Florida Municipality, (the “*Employer*” or “City”), and BMG Money, Inc., a Delaware corporation, authorized to transact business in the State of Florida, (“***BMG Money***” or “Contractor”). Employer desires to offer as a benefit to its employees BMG Money’s LoansAtWork Program and BMG Money desires to loan money to such employees, in each case to be evidenced by a promissory note with the applicable employee (collectively, as amended or otherwise modified from time to time, the “***Notes***”).

**Employer Acknowledgment.** Employer acknowledges and agrees that it will comply with its employees’ requests set forth in the Notes to (a) deduct from their wages, salary, commissions or other similar compensation (collectively, ***“wages”***) the amounts to be so deducted as described in the respective Notes and (b) remit such amounts to BMG Money, in each case, solely to the extent of the maximum available wages of the applicable employee and in accordance with applicable laws, rules, regulations and orders (collectively, the “***Program***”).

 **Payment Instructions.** Employer agrees to remit to BMG Money monthly by check funds deducted from employees' wages pursuant to the Program together with the corresponding register of deduction amounts as promptly as practicable following the calendar month in which the applicable wages were paid.

 **Marketing.** Employer agrees to provide BMG Money with opportunities to market the Program to eligible employees and to educate such employees about the Program. Subject to applicable law and Employer's discretion, marketing opportunities may include, without limitation, in person meetings with employees, direct mail to employees, bulletin board postings, information made available through the Internet and emails to employees. Under no circumstances shall BMG Money state, indicate, imply or lead the employee to reasonably infer an official relationship between it and Employer, that the loan is being made directly by Employer, or that the Employer endorses the Program.

 **Notice.** Employer shall notify BMG Money as soon as reasonably practicable if any employee requests revocation of his or her payroll deduction request, ceases to be employed by Employer or changes his or her employment status.

 **Further Assurances.** Employer agrees to provide BMG Money with access to all non-exempt and non-confidential, pursuant to Florida law, public records (or copies thereof) necessary for BMG Money to implement or effectuate the provisions of this Agreement and/or the Program. Should BMG Money, at any time during the term of this Agreement, offer the same program to employees of any other governmental entity in the State of Florida at prices below those offered to employees of Employer, BMG Money shall immediately make available such lower prices to employees of Employer who enroll in the Program after such time.

**Public Records.** Employer may be subject to Chapter 119 of the Florida Statutes, otherwise known as the Public Records law. This Agreement and all other documents and agreements flowing therefrom, including those executed by any employee, are subject to disclosure to the extent required by Chapter 119.

 **Indemnification.** BMG Money agrees to defend at BMG Money's expense, and indemnify Employer and Employer's officers, employees, and agents against, and hold it harmless from, any and all losses, liabilities, claims, costs, expenses, penalties, fines, judgments, settlements, and damages of any nature, including any award of attorney fees and any award of costs, in any way arising out of or occasioned by any act or omission by BMG Money or BMG Money' employees, agents, or subcontractors, or any breach of BMG Money's obligations under this Agreement. Notwithstanding the foregoing, BMG Money shall not be liable to Employer for any special, indirect, exemplary or consequential damages. The indemnification obligation under this paragraph shall survive termination of this Agreement. Employer does not guarantee BMG Money against any risk of credit losses and has no obligations other than as expressly set forth in this Agreement.

 **Assignment.** BMG Money and its assignees may assign all or any of BMG Money's rights, but none of its obligations, under this Agreement in connection with any financing of Notes or of the loans evidenced by such Notes or otherwise, provided, however*,* that Employer shall, notwithstanding any such assignment, be entitled to deal solely and directly with BMG Money in connection with Employer's rights and obligations under this Agreement. This Agreement shall be binding upon the parties to it and their respective successors and assigns. Notwithstanding any such assignment, Employer's obligations, rights and responsibilities shall be governed exclusively by this Agreement.

 **Termination.** Employer and BMG Money may terminate this Agreement upon sixty (60) days’ prior written notice to the non-terminating party, at the address shown below. Notwithstanding any termination of this Agreement, this Agreement shall survive as to any Notes outstanding as of such termination until final payment in full of such Notes.

 **Miscellaneous.** This Agreement supersedes any prior agreements with respect to the subject matter of it and may only be amended or otherwise modified in writing, signed by both parties. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, this will not affect the validity or enforceability of any other provision. Any provision of this Agreement that conflicts with any mandatory provision of applicable law shall be deemed to be amended to conform with such applicable law. Time is of the essence under this Agreement.

 **Waiver of Trial by Jury.** Each party, as a crucial and material inducement to the other to execute this Agreement, on behalf of itself, its agents, successors and/or assigns waives trial by jury of any and all matters triable by right arising from, through or as a result of this Agreement.

 **Governing Law.** **Venue.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES PROVIDING FOR THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION). Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

 **Insurance.** The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the term of this Agreement. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Dania Beach, a Florida municipal corporation, as an additional “named” insured. This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as an additional “named” insured shall be at the BMG Money's expense. BMG Money shall ensure that any and all of its successors or assignees comply with these insurance requirements.

 The City of Dania Beach shall be given notice ten (10) days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the City Manager’s Office.

 The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

 **Workers' Compensation and Employers' Liability Insurance**

 Limits: Insurance shall be maintained by BMG and during the life of this Agreement, and it is to apply to all “statutory employees” of BMG (as that phrase is defined by Chapter 440, Florida Statutes), in compliance with the “Workers’ Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of BMG, its employees, statutory limits Part A, and no less than and One Million Dollars ($1,000,000.00) employers’ liability limits Part B.

 Any firm performing work for or on behalf of the City of Dania Beach must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed, by the City's Risk Manager, if they are in accordance with Florida Statutes.

 **Commercial General Liability Insurance**

 Covering premises-operations, products-completed operations, independent contractors and contractual liability.

 Limits: Combined single limit bodily injury/property damage $1,000,000.00

 This coverage must include, but not limited to:

1. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
2. Coverage for Premises/Operations
3. Products/Completed Operations
4. Broad Form Contractual Liability
5. Independent Contractors

 **Automobile Liability Insurance**

 Covering all owned, hired and non-owned automobiles.

 Limits: Bodily injury One Million Dollars ($1,000,000.00) each person,

One Million Dollars ($1,000,000.00) each occurrence

Property damage: One Million Dollars ($1,000,000.00) each occurrence

Certificate holder should be addressed as follows:

 City of Dania Beach

 100 W. Dania Beach Blvd.

 Dania Beach, FL 33004

 **Non-discrimination.** The Contractor shall not discriminate in any of its activities on the basis of race, color, religion, national origin, disability, age, gender, sexual orientation, or marital status.

**IN WITNESS WHEREOF,** the parties have set their hands and seals on the date first written above.

**ATTEST:** **CITY OF DANIA BEACH, FLORIDA**

a Florida Municipal corporation

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Louise Stilson, CMC Robert Baldwin, City Manager

City Clerk Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014

**APPROVED AS TO FORM AND CORRECTION:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Thomas J. Ansbro

City Attorney

**WITNESSES:**  **BMG MONEY, INC., a Foreign Corporation,**

 **authorized to conduct business in Florida**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Thomas C. McCormick

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Chief Operating Officer

**PRINT** Name Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PRINT** Name

**STATE OF FLORIDA**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

BEFORE me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of BMG Money, Inc., who acknowledged execution of the foregoing Agreement for the use and purposes mentioned in it, and that the instrument is the act and deed on behalf of BMG Money, Inc. Such person is personally known to me or produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: