

**PRELIMINARY AGREEMENT FOR ISSUANCE OF REVENUE BONDS**

This Agreement is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “Commencement Date”) between the City of Pompano Beach, Florida (the “City”), a Florida municipal corporation, and John Knox Village of Florida, Inc., a Florida not-for-profit corporation (the “Company”).

**WITNESSETH:**

1. Preliminary Statement. Among the matters of mutual understanding which have resulted in the execution of this Agreement are the following:

a. The Florida Constitution, the City Charter of the City, Chapter 166, Florida Statutes, as amended, the Florida Industrial Development Financing Act (Section 159.25 et seq., Florida Statutes), as amended and other applicable law (collectively, the “Act”) provide that the City may issue revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, to finance and refinance the costs of certain qualifying facilities and improvements.

b. The Company currently provides independent living, assisted living and health care facilities within the City (the “Facilities”) to senior citizens. The Company has requested that the City issue its revenue bonds on a tax-exempt basis, in one or more series, or on a tax-exempt and taxable basis, in two or more series, in an aggregate principal amount of not exceeding \$90 million (the “Bonds”), for the principal purpose of (i) refunding and defeasing all of the City’s Health Facilities Revenue Refunding Bonds (John Knox Village of Florida, Inc. Project), Series 2010 (the “2010 Bonds”) that are outstanding as of the date of issuance of the Bonds and refinancing a line of credit of the Company issued by a financial institution (the “Line”), the proceeds of which 2010 Bonds and Line financed and refinanced various capital improvements to the Facilities (as such capital improvements will be more fully described in the hereinafter defined Loan Agreement) (the “Prior Projects”); and (ii) financing, or reimbursing the Company for, the cost of certain capital improvements for or to the Facilities, including, without limitation, a new community pavilion that will be used for cultural and entertainment purposes and related amenities, dining facilities and other improvements (as such capital improvements will be more fully described in the hereinafter defined Loan Agreement) (collectively, the “New Projects” and, together with the Prior Projects, the “Project”). Proceeds of the Bonds will also be used to fund any necessary reserves for the Bonds and pay costs associated with the issuance of the Bonds. The City will make a loan of the proceeds of the Bonds to the Company in accordance with the Act (the “Loan”) pursuant to a written loan agreement to be entered into by the City and the Company contemporaneously with the issuance of the Bonds (the “Loan Agreement”).

c. The City and the Company now desire to enter into this Agreement to set forth the basis on which the Bonds are contemplated to be issued by the City and as an inducement to the City to issue the Bonds.

2. Undertakings on the Part of the City. Subject to the terms and conditions hereof, the City agrees as follows:

a. Subject to subsequent action of the City required by the Act and the Internal Revenue Code of 1986, as amended (the “Code”), including the enactment of a resolution authorizing the Bonds and the conduct of a public hearing with respect to the tax-exempt Bonds for purposes of the Code, the City will cause the City Commission of the City (the “City Commission”) to consider the authorization of the issuance of the Bonds in an aggregate principal amount necessary and sufficient to finance the cost of the Project, but not in excess of \$90 million. The final aggregate principal amount of the Bonds shall be agreed upon by the City and the Company and set forth in the Loan Agreement.

b. Assuming the City Commission authorizes the issuance of the Bonds, the City will cooperate with the Company and with the underwriter(s) or purchaser(s) of the Bonds and the Company’s Bond Counsel, to the extent reasonably necessary and without requiring the expenditure of its funds except as contemplated herein, with respect to the issuance and sale of the Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the City and the Company for the authorization, issuance and sale of such Bonds and the use of the proceeds thereof to finance and refinance the Project and for the other purposes related to the Bonds mentioned herein.

3. Undertakings on the Part of the Company. The Company represents and warrants to the City, and subject to the terms and conditions hereof the Company agrees, as follows:

a. The Company represents that (i) it is financially capable and willing (1) to fulfill its obligations to repay the Loan in the amounts and at the times to be required by the Loan Agreement, (2) to operate, repair and maintain the Facilities and the Project at its own expense, and (3) to fulfill any other obligations and responsibilities imposed on it under any agreements between the Company and the City relating to the Loan, at its own expense, and (ii) the Project shall make a significant contribution to economic growth of the City, including the provision of gainful employment, and advances the public health and general welfare of the City and its residents. The Company represents that each component of the Project is permitted by the Act.

b. Prior to the date the resolution authorizing the issuance of the Bonds is submitted for consideration by the City Commission, the Company shall obtain the written approval from the City Manager of the City (which approval may be sent by e-mail to the attention of the Company’s Chief Financial Officer) of the law firm to serve as the

Company's bond counsel in connection with the Bonds, which firm shall be experienced in public finance, including matters relating to the issuance of tax-exempt municipal bonds, and listed in the most recent edition of The Bond Buyer's Municipal Marketplace "Red Book."

c. The Company will use reasonable efforts to ensure that the Bonds in an aggregate principal amount not exceeding \$90 million are sold; provided, however, that the terms of such Bonds and of the sale and delivery thereof shall be in compliance with the Act and this Agreement.

d. Prior to the issuance of the Bonds, the Company will enter into the Loan Agreement with the City, the terms of which shall be mutually agreeable to the City and Company, providing for the Loan and the use of the proceeds of the Bonds to finance and refinance the Project and for the other purposes related to the Bonds mentioned herein.

e. The Company shall, in addition to paying the amounts set forth in the Loan Agreement, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

f. The Company holds the City, the members of the City Commission of the City, and the City's officers, agents and employees free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project. The Company further holds the City, the members of the City Commission of the City, and the City's officers, agents and employees, harmless from any and all cost, expense, charges or liability, including payment of all applicable costs and reasonable attorneys' fees, arising out of or attributable to the City's execution of this Agreement and the authorization and/or issuance of the Bonds, including but not limited to the repayment of principal of and interest or penalty on the Bonds and payment or reimbursement of any costs, fees, charges or other amounts that may become payable in any manner whatsoever relating to the Bonds, or relating to or arising on account of the City's execution of this Agreement and the authorization and/or issuance of the Bonds.

g. The Company shall be responsible for all fees and expenses associated with the issuance of the Bonds, including, without limitation, underwriter's discount, fees of agencies rating the Bonds and the fees and expenses of any trustee. The Company will pay to the City (or cause to be paid to the City from the proceeds of the Bonds to the extent available therefor) the following: (i) an administrative expense fee of \$3,500 (the "Administrative Expense Fee"), (ii) a closing fee equal to .1% of the original aggregate principal amount of the Bonds (the "Closing Fee"), (iii) the fees and expenses of Greenspoon Marder LLP, the City's Bond Counsel (including the fees and expenses of McCarter & English, LLP, special tax counsel to the City's Bond Counsel) (the "City Bond Counsel Fees"), based on hourly rates in effect from time to time and actual out of pocket expenses incurred in connection with rendering services to the City in connection with the Bonds; and (iv) all other reasonable fees and expenses of the City incurred in connection with the issuance of the Bonds, including, without limitation, costs of publishing necessary notices of

public hearings required by the Code and the fees and expenses of the City's Financial Advisor in providing advice, if any, to the City that the City deems necessary to obtain in connection with the Bonds (collectively, the "Out-of-Pocket Expenses"). The Administrative Expense Fee shall be due and payable in full within ten (10) business days following the date on which the City adopts the resolution authorizing the issuance of the Bonds and shall be owed regardless of whether the Bonds are issued. The Closing Fee shall be due and payable in full on the date of issuance of the Bonds, and shall be owed only in the event that the Bonds are issued and sold. The City Bond Counsel Fees and the Out-Of-Pocket Expenses shall be due and payable in full on the date of issuance of the Bonds; provided that if the Bonds are not issued by November 30, 2020 for any reason, the City Bond Counsel Fees and Out-Of-Pocket Expenses incurred through that date shall be due and payable in full within thirty (30) days from the date thereof (December 30, 2020).

#### 4. General Provisions

a. The City's execution of this Agreement and the approval by the City Commission of the authorization of the Bonds and/or the issuance of the Bonds shall not be construed as an approval of any zoning application, nor approval or acquiescence to the alteration of existing zoning or land use or approval of any regulatory permits in connection with the Project or any other portion of the Facilities as creating any vested rights with respect to any land use regulations, and the City shall not be construed by virtue of its execution of this Agreement or authorization and/or issuance of the Bonds to have waived, or be estopped from asserting, any authority or responsibilities it may have in that regard.

b. The Company understands that the City has not done any due diligence on the Company, the Project or the Bonds; and the Company shall make no representations to the contrary. The City makes no representation as to (i) the exclusion from gross income for federal income tax purposes of interest on the Bonds issued as tax-exempt bonds, (ii) the creditworthiness of the Company or the financial viability of the Project, or (iii) the likelihood of the repayment of the debt service on the Bonds and shall make no representation regarding these matters in Loan Agreement or any documentation relating to the Bonds to which it is a party. Additionally, the City's execution of this Agreement and the approval by the City Commission of the authorization of the Bonds and/or the issuance of the Bonds shall not be construed as a recommendation to any prospective purchaser of the Bonds, or approval by the City of the financial feasibility of the Project or of any financial matters with respect to the Project, the Company or the Bonds; and the Company shall make no representation to the contrary.

c. The City's execution of this Agreement and the approval by the City Commission of the authorization of the Bonds shall not be deemed to create any obligation or liability, pecuniary or otherwise, of the City in any respect whatsoever, including with respect to the issuance or sale of the Bonds or the refinancing, financing, acquisition, construction or operation of the Project.

d. The City shall not undertake any continuing disclosure obligations with respect to the Bonds for purposes of Rule 15c2-12 of the Securities and Exchange Commission. The City's representations and warranties in any federal tax certificate to be executed by the City in connection with the Bonds will reflect that the same are based solely on the representations and warranties made by the Company to the City with respect to the Project and the Bonds and advice of the Company's bond counsel, including, without limitation, with respect to any matters relating to the hearing required to be conducted pursuant to the Code with respect to tax-exempt Bonds. Any filings relating to rebate required by the Code to be made by the City with respect to the tax-exempt Bonds will be at the Company's sole expense, and will indicate that the information therein is provided by the Company and that the City makes no representation or warranty with respect thereto.

e. The Bonds shall have an investment grade rating at the time of issuance thereof from any one or more of the following: Fitch Ratings, S&P Global Ratings, a division of S&P Global Inc., or Moody's Investors Services, Inc.

f. In connection with the Bonds, the City shall deliver a customary conduit issuer's legal opinion rendered by the City Attorney, which shall be substantially in the form of the legal opinion delivered by the City Attorney in connection with the 2010 Bonds. The City shall have no obligation to deliver any other legal opinions, or to cause its bond counsel to deliver any legal opinions, in connection with the Bonds. The City shall be an addressee of legal opinions (or reliance opinions) rendered in connection with the Bonds by counsel selected by the Company, including the Company's bond counsel, and counsel to the underwriter(s) or purchaser(s) of the Bonds.

5. Additional Matters Relating to the Loan Agreement and Other Financing Instruments and Documents.

a. The Loan Agreement between the City and the Company shall, under terms agreed upon by the parties, provide for payments to be made by the Company in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable and all other expenses related to the issuance and delivery of the Bonds.

b. In the Loan Agreement and other financing instruments and documents related to the Bonds to which the City is a party, the City will make no warranty, either expressed or implied, that the proceeds of the Bonds will be sufficient to pay all costs of financing and refinancing the Project or that those facilities encompassed by the Project will be suitable for the Company's purposes or needs. The Company will agree in the Loan Agreement that if the cost of financing or refinancing the Project exceeds the amounts allocated therefor from proceeds of the Bonds, it shall be responsible for the payment of such excess costs and shall not be entitled to any reimbursement for any such excess either from the City, the bondholders or the trustees for the bondholders.

c. The Bonds, the Loan Agreement and the other financing documents and instruments relating to the Bonds will affirmatively state that the Bonds (i) do not constitute and will not be construed as a debt, liability, or obligation of the City, the State, or any subdivision thereof; (ii) do not constitute and will not be construed as a pledge of the faith and credit or any taxing power of the City or the State or any subdivision thereof; and (iii) will be limited obligations of the City payable solely from and secured by a pledge of payments made by the City and other funds provided therefore. No covenant or agreement contained in this Agreement, the Loan Agreement or other financing instruments and documents relating to the Bonds to which the City is a party shall be deemed to be a covenant or agreement of any member of the City Commission of the City or any officer, agent or employee of the City in his or her individual capacity and no member of the City Commission of the City and no officer, agent or employee of the City shall be personally liable with respect thereto or be subject to any personal liability or accountability by reason of the execution on behalf of the City thereof.

d. The Company shall agree in the Loan Agreement to pay all periodically recurring or on-going administrative and other expenses, and any extraordinary fee or expense, incurred by the City with respect to the Bonds or the Project for so long as any of the Bonds remains unpaid.

e. Any offering document, official statement, prospectus or similar document used in marketing the Bonds will include a statement to the effect that owners of the Bonds may not look to the City for payment of the Bonds and interest or premium thereon or other payments in respect thereto and will not otherwise reference the City in any context, except as approved by the City Attorney of the City, in consultation with the City's bond counsel.

f. Any bond purchase agreement among the City, the Company and the underwriter(s) of the Bonds shall contain customary indemnification of the City by the Company and such underwriter(s), including with respect to any claims or liabilities arising in connection with the public offering of the Bonds.

6. Term. The term of this Agreement (the "Term") shall commence on the Commencement Date and continue until December 31, 2020, subject to extension in writing by the mutual agreement of the parties hereto. The obligations of the Company set forth herein shall survive the termination of the Term of this Agreement and the issuance of the Bonds.

7. Third Party Beneficiaries; Binding Effect. All covenants and agreements herein contained by or on behalf of the City and the Company shall bind and inure to the benefit of the respective successors and assigns of the City and the Company whether so expressed or not. Notwithstanding the foregoing or anything to the contrary herein, the City's Bond Counsel shall be an express third party beneficiary of the provisions of this Agreement relating to the payment of the fees and expenses of such party and of McCarter & English, LLP and shall be entitled to seek

enforcement of such provisions. Except as provided in this subsection, this Agreement is not intended to create any right of a third party beneficiary.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Commencement Date.

CITY OF POMPANO BEACH, FLORIDA

\_\_\_\_\_  
By: Mayor

ATTEST:

\_\_\_\_\_  
By: City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
City Attorney

JOHN KNOX VILLAGE OF FLORIDA,  
INC.

By: Bruce Chittenden  
Name: Bruce Chittenden  
Title: CFO