

## **CONFIDENTIALTY AND NON-CIRCUMVENTION AGREEMENT**

This Confidentiality and Non-Circumvention Agreement (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Focus SH I REIT LLC (“Focus”), having an address at 200 W. Madison, Suite 2650, Chicago, IL 60606, and \_\_\_\_\_ (“the Company”), having an address at \_\_\_\_\_; Focus and Company are hereinafter collectively referred to as the “Parties” or individually a “Party”.

Whereas, the Company has requested that Focus provide the identity of a senior housing facility (the “Property”) and certain Confidential Information related to the Property, as that term is hereinafter defined; and

Whereas, the Parties acknowledge and agree that the Confidential Information is a valuable asset of Focus, has competitive value and is of a confidential nature; and in transacting prospective business dealings it is essential that Focus mandate specific provisions pertaining to confidentiality and non-circumvention of Focus’ business efforts; and

Whereas, to effect such confidentiality and non-circumvention, Focus has agreed to provide the foregoing to the Company upon and subject to certain terms and conditions and the Company has agreed to said terms and conditions and the Parties desire to memorialize same by this writing.

Now therefore, in consideration of these premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. “Confidential Information” shall include any and all information provided by Focus to the Company, whether verbally or in written form and whether prepared by Focus or by others, for the purpose of the Company evaluating a transaction with Focus regarding the Property, including, without limitation, financial, technical, marketing or other information, business plans and customer lists. It shall not include information which (i) is already in Company’s possession, provided that such information is not known by Company to be subject to any confidentiality obligations with, or other obligation of secrecy to, Focus or another party, or (ii) becomes generally available to the public other than as a result of a disclosure by the Company or its directors, officers, employees, agents or advisors, or (iii) becomes available to the Company on a non-confidential basis from a source other than Focus, provided that such source is not known by you to be bound by a confidentiality agreement with or other obligation of secrecy to Focus or another party, or (iv) is independently developed by the Company.
2. The Company agrees that the Confidential Information and the Company’s knowledge of Focus’ intent to sell the Property will be used solely for the purpose of evaluating a possible transaction with Focus and not in any way that could damage the business prospects of the Property or Focus, and that such information will be kept confidential by the Company; provided, however, that (i) any of such information may be disclosed to Company’s directors, officers and employees and

representatives of Company's advisors (collectively, "Company's Representatives") who need to know such information solely for the purpose of evaluating any such possible transaction (it being understood that all of such Company's Representatives shall be informed by Company of the confidential nature of such information and shall be directed by Company to treat such information confidentially), and (ii) any disclosure of such information may be made with the prior written consent of Focus. Company further agrees that the Confidential Information or any portion thereof may not be duplicated except as necessary to further the evaluation of a possible transaction with Focus. Company agrees to protect the Confidential Information received from Focus from unauthorized use and disclosure with at least the same degree of care that it utilizes with respect to its own similar proprietary information but in no event less than a reasonable standard of care. In any event, Company will be fully responsible for any actions by Company's Representatives which are not in accordance with the provisions hereof and Company shall, at its own expense, take all reasonable measures to restrain Company's Representatives from prohibited or unauthorized disclosure or use of the Confidential Information.

3. Without the prior written consent of Focus, the Company will not, and will direct Company's Representatives not to, disclose to any person the existence of this Agreement or the fact that discussions are taking place with Focus regarding the Property or any of the terms, conditions or other facts with respect to any such possible transactions, including the status thereof.
4. In the event that Company is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, Company will unless otherwise prohibited by law or regulation promptly notify Focus of such request so that Focus may seek a protective order or other appropriate remedy, or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained and Company is legally compelled to disclose Confidential Information, or if Focus waives compliance with this Agreement, Company or Company's Representatives shall furnish only that portion of Confidential Information legally required.
5. Without the prior written consent of Focus, the Company will not, and will direct Company's Representatives not to, visit the Property, directly or indirectly contact any of the Property's employees or residents.
6. If the Company violates this Agreement, it shall be liable to Focus for (i) all damages, as may be allowed by law and (ii) specific performance and injunctive relief by any court of competent jurisdiction. It shall not be necessary that Focus prove an inadequate remedy at law or the unavailability of money damages as a pre-condition or prerequisite to obtain injunctive or equitable relief. Such remedies shall not be deemed to be the exclusive remedies for the breach of this Agreement, but shall be in addition to all other remedies at law or in equity. The prevailing party in any litigation in connection with the interpretation or enforcement of this Agreement shall be awarded its attorneys' fees.

7. In the event that the Company does not proceed with the transaction which is the subject of this Agreement, Company shall promptly destroy or, at Focus' request, redeliver to Focus all Confidential Information and will not retain any copies, extracts or other reproductions in whole or in part thereof. All documents, memoranda, notes and other writings whatsoever prepared by the Company or its advisors based on the information in the Confidential Information shall be destroyed, and such destruction shall be certified in writing to the Company by an authorized officer supervising such destruction.
8. The Company acknowledges it will conduct its own analyses and due diligence and agrees that Focus and its representatives (i) make no representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information and (ii) shall have no liability to the Company or any other person resulting from their use of the Confidential Information.
9. If any portion of this Agreement is deemed to be held unenforceable for any reason, it shall not affect the enforceability or validity of any other provision. The foregoing recitals are hereby incorporated as if fully rewritten. This Agreement embodies the entire understanding between the Parties and no modification or amendment to this Agreement shall be considered valid or effective unless and until it is signed by all of the Parties. It shall be binding on and inure to the benefit of the Parties, hereto and their respective successors and assigns.
10. No failure or delay by Focus in exercising any of its rights, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
11. The term of this Agreement shall be one (1) year from the date this Agreement is fully executed.
12. This Agreement shall be governed and construed according to the laws of the State of Illinois. Any court action taken by any Party shall be filed in the Circuit Court of Cook County, Illinois.
13. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Confidentially and Non-Circumvention Agreement as of the date first above written.

**FOCUS**

**COMPANY**

FOCUS SH I REIT LLC

\_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_