

NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

This **NON-DISCLOSURE and NON-COMPETITION AGREEMENT**, effective as of _____, by and between The Fortress Trust (a business trust), a private membership organization, with offices at 11022 Southwest Highway, Palos Hills, Illinois (hereinafter **Company**); and _____, individually and on behalf of _____ (company name), with offices at _____ (hereinafter **Confidant**).

1. **Purpose**

The parties to this Agreement (as specified above) desire to engage in discussions regarding present and/or potential business relationships. This Agreement combines a non-disclosure agreement, with a non-competition agreement. The parties intend to engage in substantive discussions and sharing of confidential information regarding certain new and useful business opportunities, trade secrets, business entity formation and structuring, and tax benefits. In connection with these discussions, it may be necessary and/or desirable for the Company to provide the Confidant with, or allow access to, proprietary, technical, or business data, and/or other confidential information of the Company. Therefore the Confidant, individually and on behalf of those they represent, agree that they are under an obligation of confidentiality (collectively referred to as "**Confidential Information**"). The Company believes, and the Confidant agrees that the Company's Confidential Information has significant commercial value that would be diminished by unauthorized disclosure. Accordingly, the commitments of confidentiality in this Agreement are a condition to the Confidant's willingness to engage in the contemplated business discussions and planning. The Confidant agrees that it shall not use any advantages derivable from such information in its own business or affairs, unless the same is pursuant to a new agreement with all other signatories to this document. Each party signed shall be held responsible and liable in case of breach of this Agreement both in their professional and their personal capacity.

2. **Confidential Information**

"**Confidential Information**" shall be deemed to include all information conveyed by the Company to the Confidant orally, in writing, by demonstration, or by other media. Confidential Information shall be considered as such at the time of transmittal. Confidential Information may include, by way of example but without limitation data, know-how, contacts, contracts, software, formulas, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, information obtained from previous or current participants in programs of the Company, and information relating to transactional procedures.

However, Confidential Information shall not include information, which can clearly

demonstrated to be:

- a. generally known or available to the public, through no act or omission on the part of the receiving party; **or**
- b. provided to the receiving party by a third party without any restriction on disclosure and without breach of any obligation of confidentiality to a party to this Agreement; or independently developed by the receiving party without use of the Confidential Information.

3. Obligation of Confidentiality

The Confidant agrees that when receipt of any Confidential Information has occurred;

- a. The Confidant shall not disclose or communicate Confidential Information to any third party, except as herein provided. Confidant shall protect such information from disclosure by reasonable means, including but not limited to at least the same minimal level of security that Confidant uses for its most crucial proprietary and trade secret information.
- b. Confidant shall reasonably protect the Confidential Information with not less than the same degree of care exercised by its own personnel to protect its own or publications of its own most valuable confidential and proprietary information.
- c. The Company shall permit access to its Confidential Information to the Confidant's agents or employees or third parties only if such disclosure is reasonably believed to be necessary to the purposes of the Confidant evaluating, contemplating, recommending, or engaging in any program or service offered by the Company or for the purpose of entering into a business relationship with the Company, and only if said agents, employees, or third parties,
 - 1. reasonably require access to the Confidential Information for purposes approved by this Agreement, and
 - 2. have undertaken a binding written obligation of confidentiality with respect to the trade secrets of others entrusted to them, and
 - 3. have been apprized of this Agreement, and the Confidant's obligations to maintain the trade secret status of Confidential Information and to restrict its use as provided by this Agreement.

4. Obligation of Non-Competition

The non-competition provisions of this Agreement are an essential part of the total agreement, by which the Confidant agrees it shall not use any advantages derivable from such confidential information in its own business or affairs, unless the same is pursuant to a new agreement executed by all signatories to this document.

5. No Representations

The Confidant understands that the Company makes no representation or warranty as to the accuracy or completeness of the information it provides to the Confidant hereunder. The Confidant agrees that neither the Company, nor any of its advisers, representatives, agents, or employees shall be held liable for utilization of Confidential Information which results from the Confidant's use of said information.

6. Miscellaneous

- a. As used in this Agreement, the following terms shall have the following meanings:
 1. "Agents or employees" includes the directors, officers and employees of any of the parties, it also includes the Confidant, any corporation, partnership, association, business trust, contractual organization, group, or other entity of which the Confidant is a member, officer, director, agent, trustee, beneficiary, or has a position similar to the aforementioned.
- b. Except for the limited right to use granted in 3.c hereof, no right or license, either express or implied, under any patent, copyright, trade secret or other intellectual property right is granted hereunder.
- c. No agency or partnership relationship is created between the parties by this Agreement.
- d. No party has an obligation under this Agreement to purchase any service or item from any of the other parties, or to offer any service or item for sale to any of the other parties and that any agreement to have a business relationship between the parties will exist only when such agreement is in writing and duly executed by all the parties hereto.
- e. ***ANY*** and ***ALL*** ***additions, modifications, and waivers*** of this Agreement must be made in writing and signed by all parties. However, the failure of a party to insist on full compliance with any provisions of this Agreement in a particular instance shall not preclude it from requiring full compliance thereafter.
- f. This Agreement is made and shall be governed and construed in accordance with the laws of the State of Illinois. The proper venue for any action arising from or in connection to the interpretation or enforcement of this Agreement shall be decided by the Company.
- g. If any portion of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are to be and shall be deemed severable. If any party hereto incurs any legal fees, whether or not action is instituted, to enforce the terms of this Agreement or to recover damages or injunctive relief for breach of this Agreement, it is agreed that the successful or prevailing parties shall be entitled to reasonable attorney fees and other costs in addition to any other relief to which it or they may be entitled.
- h. This Agreement constitutes the entire understanding between all the parties and supersedes all previous understandings, agreements, communications and

representations, whether written or oral, concerning the discussions by and between the parties hereto and the Confidential Information.

IN WITNESS WHEREOF, the parties hereto have caused and duly authorized their representatives to execute and deliver this Agreement in duplicate originals as of the date first written above.

AGREED TO AND ACCEPTED BY:

THE FORTRESS TRUST (COMPANY)

by: _____
Michael A. Vallone, Executive Director

Date _____

CONFIDANT

Signed: _____
Print Name: _____
Title: _____
On Behalf of: _____

Date _____