

# Susman Godfrey I.L.P.

a registered limited liability partnership

NEW YORK, NEW YORK 10065-8404

FAX

Houston, Texas 77002-5096

Dallas, Texas 75202-3775

Los Angeles, California 90067-6029

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Stephen D. Susman  
Direct Dial

Direct Dial Fax  
E-Mail

**DRAFT**

December 8, 2009

VIA E-MAIL

Jeffrey E. Epstein  
Financial Trust Company, Inc.  
457 Madison Avenue, 4<sup>th</sup> Floor  
New York, New York 10022

Re: D.B. Zwirn Special Opportunities Fund, L.P.

Dear Jeffrey:

This Agreement describes the terms and conditions of the relationship between you as client and us as lawyers. Susman Godfrey L.L.P. ("SG", "we", or "us") (which includes any successor to the partnership of SG) will represent Financial Trust Company, Inc., Jeepers, Inc., and Jeffrey Epstein ("Client" or "you") in connection with all claims you have against Daniel Zwirn, D.B. Zwirn Special Opportunities Fund, L.P. ("Fund"), D.B. Zwirn Partners, LLC, D.B. Zwirn & Co., L.P., Zwirn Holdings, LLC, Glenn Dubin, Highbridge Capital Management, Dubin & Swieca Asset Management, and any of their successors or predecessors in interest for damages arising out of your investments in the Fund (all such claims are collectively referred to as "Claims"). If this Agreement is acceptable to you, please sign and return an executed copy to me. We must receive an executed copy of this Agreement and any applicable cost deposit before we can begin this representation.

### **SCOPE OF ENGAGEMENT**

Subject to the terms and conditions of this Agreement, we will represent Client on the Claims described above. Unless specifically requested by you and agreed to in writing by us, you agree that we do not represent you in any other legal matter. You also agree that we do not represent persons or entities related to Client such as corporate officers, parents, subsidiaries or affiliates unless a separate written engagement agreement exists setting forth the scope, terms and conditions of that separate representation.

### **CONTINGENT FEE**

We will receive five percent (5%) of the gross sum recovered by you on all amounts up to and including \$60 million. In addition, we will receive twenty-five percent (25%) of the gross sum recovered by you on all amounts in excess of \$60 million. The term "gross sum recovered" means all money or other things of value, including the value of any business accommodation recovered by you whether by settlement, judgment, or payment of your capital account in the Fund, including any attorney's fees awarded by the court or arbitrator(s), without deducting any costs or expenses of litigation.

You authorize us to require that any settlement check or distribution payment from the Fund be made payable jointly to you and us or, alternatively, that any payment be made by electronic transfer to our trust account. You also agree that you will endorse any such settlement or distribution check and will allow us to cash the same and make payment to you of your portion of the recovery from the proceeds or, in the case of an electronic transfer, from our trust account. The contingent fee percentages and other compensation terms set forth in this Agreement are not set by law but were negotiated between Client and SG.

### **NONCASH SETTLEMENTS**

If the Claims are settled in whole or in part by your receipt of anything of value other than cash, we shall be entitled to demand and receive, at our option: (a) payment for all time at normal hourly rates in effect at the time of settlement; (b) payment in cash, under the preceding paragraph on Contingent Fee, of our applicable contingent percentage of (i) the present value of any noncash consideration plus (ii) any cash received upon settlement; or (c) an undivided interest in any property received by you, equal to our applicable contingent percentage as identified in the preceding paragraph on Contingent Fee, plus payment of our applicable contingent percentage of any cash received as a result of settlement.

### **EXPENSES**

Client agrees to pay all costs and expenses of litigation monthly. Charges for certain types of in-house expenses are contained in Exhibit A. Payment is due within thirty (30) days of your receipt of each bill from us.

When your case requires the services of a court reporter, experts, hotels or other outside vendors, you agree to contract with them directly and to inform them that they are to look to you, not us, for payment. If they nonetheless send us the bill, we will forward these bills to you for payment directly to the vendor. We are not responsible for paying invoices for you. Please be sure to pay vendors' bills promptly because slow payment may interfere with our ability to arrange for these necessary services on your behalf and late payment may subject you to additional charges.

### **COST DEPOSIT**

Client also agrees, upon execution of this Agreement, to pay to SG an initial cost deposit of \$25,000 to cover certain necessary expenses of litigation, such as travel, telephone, messenger service and photocopying, that we may advance on Client's behalf, plus any hourly attorney's fees Client may be required by this Agreement to pay. We will place these funds in an interest-bearing trust account. The cost deposit will be applied to our final statement for expenses, or, in our discretion, to a past due monthly expense statement. Client is obligated to maintain the cost deposit at its initial amount. Upon the termination of our services, we will promptly refund the balance, less payment of any fees or expenses unpaid as of the date of our final bill.

- A. Our agreement to provide legal representation in this matter is conditioned upon payment and maintenance of the requested cost deposit.
- B. We retain the discretion to request a supplemental cost deposit, over and above the cost deposit required prior to our commencement of the engagement, in the event of an increase in our anticipated expenses during the course of litigation, especially as trial or arbitration approaches. You agree to provide such a required supplemental cost deposit within thirty (30) days of our request.

### **NONPAYMENT**

By your execution of this Agreement, you agree that we are relieved from the responsibility of performing any further work should you fail to pay

any monthly statement for expenses (including bills for expenses received from third parties), or for supplemental cost deposits, within thirty (30) days of receipt of such statements. In such event, you agree that we may move to withdraw as your counsel in any case where we have made an appearance on your behalf, and that you will promptly execute any withdrawal motions or other documents required to accomplish this. To the extent we exercise our right to withdraw because of nonpayment, you agree that we have the right to receive from you both the full value of our time (as measured by our hourly billing rates in effect at the time when the services were provided) and our unpaid expenses from any recovery you may receive in the future on the Claims. Upon withdrawal, we will cooperate with you in transferring the file to you or your other selected counsel, subject to the other terms of this Agreement. As an alternative to exercising our right to withdraw for nonpayment, you agree that we have the option to increase each of our contingent fee percentages by five percent (5%).

#### **LIEN**

To the extent permitted by applicable law, you hereby grant us a lien on any and all Claims. Our lien will be for any sums owing to us at the conclusion of our services for any attorney's fees and unreimbursed expenses we advanced or incurred on your behalf. The lien will attach to any recovery you obtain, whether by arbitration award, judgment, settlement or otherwise. You further agree that we have the right to notify defending parties and other, interested third parties of our lien and the right to enforce this lien through any valid mechanism.

#### **ESTIMATES**

You understand that any estimates provided by us of the magnitude of the expenses that may be required at certain stages of any litigation are not precise, and that the kinds and amounts of expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which the opposition files pretrial motions and engages in its own discovery.

#### **OWNERSHIP OF THE CLAIMS**

You hereby warrant that you are the sole owner of the Claims. You shall not assign or otherwise create any lien against the Claims subject to this Agreement.

### **TERMINATING THIS REPRESENTATION**

Subject to limitations on withdrawal imposed by an applicable code governing lawyer's conduct, we may withdraw from representing you for any reason recognized in such a code, including but not limited to any of the grounds described in this section. Subject to the terms of this Agreement, you may discharge us for any reason at any time.

- A. Should you abandon any litigation asserting the Claims, should your conduct seriously prejudice the prospects of successful prosecution of such litigation (including, but not limited to, a change in your ownership or the filing of a bankruptcy proceeding involving you or your company), should your failure either to disclose material facts or accurately to describe such facts seriously prejudice the continued prosecution of such litigation, or should you materially breach this Agreement, then we shall have the right to withdraw from this representation. To the extent we exercise our right to withdraw under this paragraph A, you agree that we have the right to receive from you the full value of our time (as measured by our hourly billing rates in effect at the time when the services were provided) and all unreimbursed expenses we advanced or incurred on your behalf.
- B. (1) You shall have the sole and exclusive right to accept or reject any offers for settlement of the Claims. In making that determination, you shall weigh fully our opinions concerning whether a settlement proposal represents a fair and reasonable basis for the disposition of the Claims.
- (2) In an unusual situation, you may decide to withhold your consent to a settlement, notwithstanding our opinion that the settlement offer is the best offer likely to be received and that rejecting the settlement and risking a trial or similar proceeding would pose a substantial adverse risk to you of no recovery or a materially smaller recovery. In such circumstances, we have the right to withdraw from your representation, so long as time remaining before trial allows your retention of other counsel.
- (3) To the extent we exercise our right to withdraw from this representation under this paragraph B, you agree that we have the right, at our option, to receive immediately from any recovery on the Claims you may receive following our withdrawal either (i) the full value of our time (as measured by our hourly billing rates in effect at the time when the services were provided) and all

unreimbursed expenses we advanced or incurred on your behalf or (ii) the amount of our contingent fees and all unreimbursed expenses we advanced or incurred on your behalf as set out in the preceding paragraphs on Contingent Fee and Expenses and that we would have earned if you had accepted the recommended offer less only the reasonable portion of that fee that might be charged by your successor counsel as measured by the amount of work that such counsel reasonably expends in completing this matter and the relative amount of risk that your successor counsel necessarily assumed.

- C. Should it become our opinion at any time that your Claims lack merit (for example, because of inability to verify your claims through witnesses, because of adverse developments in the law or because of a materially adverse change in the financial condition of the defendant), then we shall have the option to withdraw from this representation and be relieved of any obligation to participate in any pending litigation involving the Claims. If that happens, you shall be liable only to us only for unreimbursed expenses we have advanced or incurred on your behalf, payable when and if you continue to pursue Claims and obtain a recovery sufficient to pay such expenses.
- D. In the event we file any motion to withdraw under paragraphs A-C above, you agree to execute all documents necessary to facilitate our withdrawal, such as documents necessary to obtain the court's approval of the withdrawal. Upon withdrawal, we will cooperate with you in transferring the file to you or your other selected counsel, subject to the other terms of this Agreement.
- E. You agree that, should you exercise your right to discharge us, we have, at our option, the right to receive immediately from any recovery on the Claims you may receive following our discharge either (i) the full value of our time (as measured by our hourly billing rates in effect at the time when the services were provided) and all unreimbursed expenses we advanced or incurred on your behalf or (ii) compensation in the amount of our contingent fees and all unreimbursed expenses we advanced or incurred on your behalf as set out in the preceding paragraphs on Contingent Fee and Expenses and that we would have earned if we had completed this matter, less only the reasonable portion of that fee that might be charged by your successor counsel as measured by the amount of work that such counsel reasonably expends in completing this

matter and the relative amount of risk that your successor counsel necessarily assumed.

- F. To the extent we exercise our right to withdraw for any reason provided for in this Agreement or you exercise your right to discharge us, you agree that we have the right to secure any payment obligations owed to us under this Agreement through any valid mechanism including, where applicable, a lien on any future settlement, judgment, or other recovery, and the right to notify defending parties and your successor counsel of our lien. You specifically understand and agree that the amount that you may be required to pay successor counsel shall not (except as otherwise provided here) diminish or otherwise adversely affect our right to recover our fees and expenses as agreed to here.

#### **ASSOCIATION OF COCOUNSEL**

You understand that we may, at our expense, contract with other attorneys for the performance of certain work and that we may pay part of the fees we receive under this Agreement to such attorneys for the services rendered by them. In that event, we will seek your agreement to the engagement of such other attorneys and to the division of fees between us and them, and you agree that such consent will not be unreasonably withheld.

#### **EXCLUDED CLAIMS**

Filing of litigation on your behalf may subject you to cross-claims, counterclaims, third-party claims and other such claims filed in the same or another action. You understand that this Agreement shall not cover the defense of any claims, counterclaims or cross-claims asserted against you in any litigation involving the Claims or in any other case. Should any such claims be filed against you, the parties hereto shall discuss and attempt to negotiate a separate or supplemental agreement concerning our representation of you with regard to those claims.

#### **YOUR INDEMNITY**

You agree to indemnify and hold us harmless for and against any demands or claims asserted by others to any portion of the Claims subject to this Agreement.

### **CONSENT TO ADVERSE REPRESENTATION**

You acknowledge that we are engaged in a nationwide practice involving clients in many industries and with extensive legal needs. In the event that we should determine in the future that the needs of another of our clients (whether a continuing client or a new one) require our services in a matter other than one in which we represent you, you agree that we may undertake the representation, even if adverse to you (including any of your parents, subsidiaries or affiliates), so long as it involves a factually unrelated matter. You agree that such a representation may involve both adverse litigation as well as non-litigation adverse representation, such as negotiating a transaction with you.

### **DISPUTE RESOLUTION**

Any dispute arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement—including any claim of legal malpractice, breach of fiduciary duty or similar claim and any claim involving fees or expenses—shall be resolved by final and binding arbitration conducted in New York City, New York, administered by and in accordance with the then-existing JAMS Streamlined Arbitration Rules and Procedures, and any judgment upon any award rendered by the arbitrator may be entered by any state or federal court having jurisdiction to do so.

By so agreeing, you and we are waiving the right to a jury trial. You understand that arbitration provides only limited discovery and that courts will enforce an award in arbitration without reviewing it for errors of fact or law.

### **NO GUARANTEES**

You acknowledge that we have made no guarantees and given no assurances regarding the outcome of this matter. You understand that all expressions about the outcome are only opinions.

### **CHOICE OF LAW**

In any proceeding (whether in arbitration, in court or in any other tribunal), concerning the rights and obligations of you or us under this Agreement, all questions that are determined to be governed by the law of a state shall be resolved in accordance with the law of the State of New York, including the then-prevailing New York Rules of Professional Conduct. You acknowledge that selecting the law of New York is reasonable in view of the location of our offices there, and application of

the New York Rules to many of the lawyers who may work on your matter.

### **WORK PRODUCT**

We typically maintain a file of documents during the representation. You agree that work product prepared for internal use of our lawyers, such as drafts, notes, internal memos, emails, spreadsheets and all legal and factual investigations, remain our property. You also agree that any right you have to obtain copies of the contents of our file shall not extend to such internal working papers. At the conclusion of our representation, you agree that all materials (electronic and hard copy) we have in the file received from any source may be handled and ultimately destroyed in accordance with our record retention policy then in effect. Any privilege that applies to such materials belongs to us.

### **COURT AWARDED FEES OR EXPENSES**

You agree that any award of fees, expenses, or sanctions awarded against you as a result of court or arbitration order that are not the result of our conduct shall be payable solely by you and that you shall not look to SG to reimburse you for the amount awarded.

### **INTEGRATION**

This Agreement represents the final and mutual understanding of the parties. It replaces and supersedes any prior agreements or understandings, whether written or oral. This Agreement may not be modified, amended, or replaced except by another signed written agreement.

### **SEVERABILITY**

If any part of this Agreement shall for any reason be found unenforceable, the parties agree that all other portions shall nevertheless remain valid and enforceable.

### **CLIENT'S ACKNOWLEDGMENT**

You acknowledge that we have encouraged you to consult independent counsel concerning the negotiation of this Agreement and its terms (including the section on Dispute Resolution), that you have made sufficient investigation and inquiry to determine that this Agreement is fair and reasonable to you, and that this Agreement was the product of arm's length negotiation with us. You warrant to us that you have either

Jeffrey E. Epstein  
December 8, 2009  
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consulted such independent counsel or, having had an adequate opportunity to seek such advice, have declined to follow our advice that you do so.

We discuss the terms and conditions of our engagement so candidly because we believe that you are entitled to know our policies and that this type of frank discussion will avoid any misunderstandings later. Please sign a copy of this Agreement in the space provided below indicating your agreement to the terms and conditions set forth above. When we receive this Agreement signed by you and any applicable cost deposit, we will commence our representation in the above-described matter.

Sincerely yours,

SUSMAN GODFREY L.L.P.

\_\_\_\_\_  
Stephen D. Susman

Exhibits:

- Exhibit A – In-House Charges
- Exhibit B – Policy on Outside Vendors

**AGREED TO AND ACCEPTED:**

Financial Trust Company, Inc.  
Jeepers, Inc.  
Jeffrey Epstein

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

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

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

Date: \_\_\_\_\_

EIN Number: \_\_\_\_\_

(Please provide this number for bank use in establishing trust account)

cc: Accounting