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June 7, 2011

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BY EMAIL AND BY HAND

The Honorable Anthony J. Carpinello (Ret.)  
Arbitrator, JAMS  
620 Eighth Avenue, 34th Floor  
New York, NY 10019

VRF I LLC v. Jeepers, Inc., JAMS Ref. No. 1425006537

Dear Judge Carpinello:

On behalf of Claimants VRF I LLC and Fortress Value Recovery Fund I LLC (together, "Claimants"), we write to respond to the letter to you from Respondents Financial Trust Company, Inc. and Jeepers, Inc. (together, "FTC"), dated June 3, 2011, requesting (a) an opportunity to take Chris Suan's testimony separate from and prior to the arbitration hearings and (b) an order compelling production of certain spreadsheets in native format without the redaction of the names of the Fund's other investors. Claimants oppose the first request because they see no reason for treating Mr. Suan differently than any other hearing witness; as to the second request, Claimants have no problem with providing the information at issue in native format, but do continue to request that the names of other investors be removed.

## **I. Pre-Hearing Testimony from Chris Suan**

Claimants oppose FTC's request to take testimony from Chris Suan apart from and prior to the hearings scheduled in this matter because it would amount to unjustified special treatment for a single witness.

As you may recall, the parties have already had similar issues with two other third-party witnesses, Messrs. Gruss and Dubin (although we continue to believe Mr. Dubin is in fact under FTC's control for purposes of this proceeding). In any event, the resolution ultimately reached as to both of those witnesses was that because, as a matter of law, you would have to be present for their testimony, it did not make sense to have a separate "pre-hearing hearing," and FTC could simply call these individuals as witnesses during the arbitration hearings. We do not see why Mr. Suan should be treated any differently.

Further, at this point, taking testimony pre-hearing from only one witness can serve only to prejudice the other parties. Unlike testimony taken at the hearing, Mr. Suan's testimony would be uniquely singled out and given undue prominence. We certainly do not doubt your ability to weigh and consider all of the testimony whenever received, but there appears to be no reason here to warrant taking Mr. Suan's testimony out of order or otherwise giving it some prominence it would not otherwise have.

FTC offers no real reason for any of the special treatment it seeks here. FTC argues that, unlike Mr. Gruss, who has already given testimony in other matters, Mr. Suan is a "clean slate," and that taking his testimony at the hearing "will consume time, which will be tight." FTC makes no effort to distinguish Mr. Dubin's testimony, however, or explain why Mr. Suan's testimony would take up an inordinate amount of time relative to time spent on other witnesses. Barring a stronger showing of why taking Mr. Suan's testimony at the hearing would present some substantial burden, we see no reason for treating him any differently from any other hearing witness, and oppose taking his testimony at a prior hearing session.

## **II. Production of Spreadsheets Without Redaction of Investor Names**

We oppose FTC's request for an order compelling production of the spreadsheets unredacted. (We have no objection to producing the spreadsheets in native format, and, as FTC has already noted, have offered to do so.) Claimants have obligations under both consumer privacy laws and the subscription agreement executed by the Fund to attempt to maintain the privacy of their other investors. Accordingly, we continue to object to the disclosure of those investors' names. Although admittedly the Zwirn parties may have produced documents indicating the names of the other investors, Claimants should not be held responsible for the Zwirn parties' conduct in this regard.

The Honorable Anthony J. Carpinello (Ret.)

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We recognize that it is relevant for this matter whether other investors were treated like FTC – and in particular whether their “lockups” operated on a “by investment” (or a “by tranche”) basis, or whether, as FTC asserts, each investor should be subject to a single “lockup” applicable to all of its investments. Nonetheless, we believe such information can be determined from the materials already produced.

Finally, if you are at all inclined to grant this request, Claimants urge that you make absolutely clear that any production of such information be subject to the confidentiality agreement the parties have been following for this proceeding.

Thank you for your attention to this matter.

Respectfully submitted,



Allan J. Arffa

AJA:aeb

cc: Harry Susman (counsel for Financial Trust Company, Inc. and Jeepers, Inc.)  
John Siffert and Daniel Reynolds (counsel for Daniel B. Zwirn)  
William Schwartz and William O'Brien (counsel for D.B. Zwirn Partners, LLC;  
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