

SOUTHERN TRUST COMPANY, INC.
6100 Red Hook Quarter, B3
St. Thomas, USVI 00802

August 29, 2013

Mortimer B. Zuckerman
c/o Boston Properties
599 Lexington Avenue, Suite 1800
New York, NY 10022

Re: Proprietary Services

Dear Mort:

Southern Trust Company, Inc., a Virgin Islands corporation ("STC"), has agreed to collaborate with you, Mortimer B. Zuckerman ("Mr. Zuckerman"), using STC's database of financial information, regarding estate planning matters in respect of Mr. Zuckerman's assets and estate ("Estate Planning") and in connection therewith, using that financial database, will provide proprietary services to Mr. Zuckerman including analyzing, evaluating, planning and other services relating to Mr. Zuckerman's financial estate ("Proprietary Services"). The purpose of this letter agreement (this "Agreement") is to set forth the terms upon which STC will provide Proprietary Services in connection with the implementation of advice derived from that financial database, which shall include Estate Planning, to and for the benefit of Mr. Zuckerman. The Proprietary Services provided to Mr. Zuckerman may also relate to any and all affiliated corporations, trusts, partnerships, limited partnerships, and limited liability companies of, and any other entities affiliated with Mr. Zuckerman, including, without limitation, those relating to the The Daily News, U.S. News & World Report and Boston Properties (collectively, "Affiliates").

1. SERVICES TO BE PROVIDED. STC, using its database, shall provide to Mr. Zuckerman Proprietary Services deemed appropriate by STC and Mr. Zuckerman for a term commencing on September 3, 2013 and ending on September 2, 2014.

2. FEE.

(a) **Fee.** In consideration for STC's provision of the Proprietary Services, Mr. Zuckerman shall pay to STC a total fee in the amount of Thirty Million Dollars (\$30,000,000.00) (the "Fee").

(b) **Payment of Fee.** Mr. Zuckerman shall pay STC the Fee in accordance with the following payment schedule:

(i) Twenty Million Dollars (\$20,000,000.00) promptly upon execution of this Agreement by the parties hereto; and

(ii) Ten Million Dollars (\$10,000,000.00) on or before March 1, 2014, subject to the Second Payment Election (as hereinafter defined) by Mr. Zuckerman.

(c) **Second Payment Election.** By no later than February 15, 2014, Mr. Zuckerman and STC's president, Jeffrey Epstein ("Mr. Epstein"), shall review STC's performance under this Agreement, and thereafter, only upon written notice given by Mr. Zuckerman to STC by not later than March 1, 2014, specifying the reasons therefor, Mr. Zuckerman may, in his discretion, elect to decline to pay all or part of the second Fee payment provided for in Section 2(b)(ii) hereof (the "Second Payment Election").

(d) **Mr. Zuckerman's Death.** In the event of Mr. Zuckerman's death at any time during the term of this Agreement, notwithstanding anything to the contrary contained in this Agreement, Mr. Zuckerman's estate shall be liable for all Fee payments due and payable hereunder. The right to make the Second Payment Election under Section 2(c) hereof shall be personal to Mr. Zuckerman and may not be exercised by his estate, heirs, personal representatives, successors or assigns.

(e) **Mr. Epstein's Death.** In the event of Mr. Epstein's death at any time during the term of this Agreement, notwithstanding anything to the contrary contained in this Agreement, all Fee payments made prior to Mr. Epstein's death shall be returned to Mr. Zuckerman, no further Fee payments shall be due and payable, and STC shall have no further obligation to provide any Proprietary Services.

(f) **Payment by Wire Transfer.** All payments of the Fee shall be made by wire transfer to STC's account in accordance with wire transfer instructions to be provided by Mr. Epstein to Mr. Zuckerman.

3. CONFIDENTIALITY OF MR. ZUCKERMAN'S INFORMATION. Any and all information concerning Mr. Zuckerman or any of his Affiliates obtained by STC (for purposes of this Section 3 and Sections 4, 5, and 6 hereof, the terms "STC" being deemed to include all officers, directors, employees, representatives, agents, and entities affiliated with STC) in performing the Proprietary Services will be held in strictest confidence and will not be used by STC or disclosed to any person or entity, except in the course of performing the Proprietary Services in furtherance of the Estate Planning. STC is being retained to assist Mr. Zuckerman's lawyers, Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Legal Counsel"), in providing legal advice to Mr. Zuckerman in connection with Estate Planning. It is Mr. Zuckerman's intention and position that any work performed by STC in connection with the Proprietary Services will be covered by all applicable evidentiary privileges, including but not limited to the attorney-client privilege and work product privileges. In connection with this retention, all communications between STC, on the one hand, and Mr. Zuckerman's Legal Counsel or Mr. Zuckerman, on the other hand, regarding Estate Planning shall be regarded as confidential and made solely for the purpose of assisting Mr. Zuckerman's Legal Counsel in giving legal advice to Mr. Zuckerman. In order for STC to carry out its responsibilities, it may be necessary for Mr. Zuckerman's Legal Counsel or Mr. Zuckerman to disclose to STC privileged information and lawyers' work product, and other confidential information regarding Mr. Zuckerman and his Affiliates. Except as authorized by Mr. Zuckerman's Legal Counsel or Mr. Zuckerman during and after the period of this retention, STC will not disclose to any person or entity any such privileged or confidential information, lawyers' work product, opinions, facts, data or other confidential information so disclosed to Mr. Epstein or STC in connection with the Estate Planning.

4. DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND GUARANTEES. Mr. Zuckerman, for and on behalf of himself, and for and on behalf of his

Affiliates, hereby acknowledges and agrees as follows:

(a) Neither Mr. Epstein nor STC has any authority to, nor shall Mr. Epstein or STC, bind Mr. Zuckerman or any of his Affiliates, in contract or otherwise, or make any decisions or take any actions whatsoever on behalf of Mr. Zuckerman or any of his Affiliates under this Agreement, and neither Mr. Epstein nor STC is serving in any fiduciary capacity whatsoever to, for or on behalf of Mr. Zuckerman or any of his Affiliates.

(b) The use of any and all information and materials obtained from Mr. Epstein or STC in connection with the Proprietary Services, which information and materials are proprietary to STC, is at the sole risk of Mr. Zuckerman and his Affiliates, and each of Mr. Zuckerman and each of his Affiliates assumes the full risk and responsibility for any and all actions and decisions taken, or omitted to be taken, by or on behalf of Mr. Zuckerman or such Affiliates in connection with the Proprietary Services and any and all information and materials obtained from Mr. Epstein or STC in connection with the Proprietary Services.

(c) The Proprietary Services are provided without warranty of any kind, and each of Mr. Epstein and STC hereby expressly disclaims all representations, warranties, and guarantees with respect to the Proprietary Services and all information and materials provided by Mr. Epstein and STC in connection therewith, whether express or implied or statutory, including, but not limited to, the implied warranties of merchantability, of satisfactory quality, of fitness for a particular purpose and of accuracy.

(d) Neither Mr. Epstein nor STC will under any circumstances be liable to Mr. Zuckerman or any of his Affiliates for any loss that Mr. Zuckerman or any of his Affiliates may incur as a result of any decisions or actions taken, or omitted to be taken, in connection with the Proprietary Services and any and all information or materials obtained in connection with the Proprietary Services. Without in any way limiting the foregoing, neither Mr. Epstein nor STC shall have any liability to Mr. Zuckerman or any of his Affiliates in connection with the Proprietary Services or any such information or materials, except for a loss solely and directly caused by Mr. Epstein's or STC's gross negligence, willful misconduct or breach of this Agreement; provided, however, that in no event shall the aggregate amount of Mr. Epstein's and STC's joint and several liability for any such gross negligence, willful misconduct or breach exceed the total amount of Fee payments actually received by STC under this Agreement. Mr. Zuckerman agrees that the values of the assets and the amounts involved with respect to the Estate Planning, in and of themselves, do not elevate Mr. Epstein's or STC's standard of care so that any type negligence would equate to gross negligence.

(e) In no event shall Mr. Epstein or STC be liable for any incidental, special, indirect or consequential damages whatsoever, arising out of or related to the Proprietary Services or the use or failure to use any information or materials provided in connection with the Proprietary Services, however caused, regardless of the theory of liability (contract, tort or otherwise), and even if Mr. Epstein or STC has been advised of the possibility of such damages.

5. INDEMNIFICATION.

(a) **Indemnity.** Mr. Zuckerman agrees to indemnify Mr. Epstein and STC and hold Mr. Epstein and STC harmless from and against any and all claims, liabilities, losses, damages, and third party costs, fees and expenses (including, without limitation, reasonable attorneys' fees and disbursements, but excluding the business and operating expenses incurred by STC in performing the

Proprietary Services) arising out of, or relating to, or connected with the Proprietary Services (except for any claim, liability, loss, damage, cost, fee or expense arising out of, or resulting from, any action or failure to act by Mr. Epstein or STC that constitutes fraud, bad faith, gross negligence, or willful misconduct on the part of Mr. Epstein or STC). Mr. Zuckerman agrees that the values of the assets and the amounts involved with respect to the Estate Planning, in and of themselves, do not elevate Mr. Epstein's or STC's standard of care so that any type negligence would equate to gross negligence.

(b) **Notice of Claim for Indemnity.** Mr. Epstein and/or STC, as the case may be, shall advise Mr. Zuckerman of any such claims, liabilities, losses, damages, costs, fees or expenses as to which indemnification may be required under the provisions of Section 5(a) hereof promptly after receipt of notice thereof, specifying, to the extent known, the facts constituting the basis therefor and the amount asserted to be owed with respect to the same; provided, however, that Mr. Epstein's and STC's right to indemnification hereunder shall not be limited by their failure to promptly advise Mr. Zuckerman of any such liability or claim, except to the extent that Mr. Zuckerman is materially prejudiced by such failure.

(c) **Coverage of Indemnity.** The coverage of the indemnification and hold harmless provided for in this Section 5 includes, without limitation, claims, liabilities, losses, damages, and third party fees, costs and expenses (including reasonable attorneys' fees and disbursements) in connection with claims, causes of action or liabilities asserted against Mr. Epstein and/or STC by any of Mr. Zuckerman and/or any of his Affiliates arising out of, relating to, or connected with, the Proprietary Services. The indemnification provided in this Section 5 shall survive the death, disability or incompetency of Mr. Zuckerman and shall be binding upon his estate and his personal representatives.

(d) **Defense of Indemnified Claims.** Mr. Zuckerman may, at his option, assume and take over the control of the defense and settlement of any such liability or claim, at his sole cost and expense with counsel of his choice (subject to any reasonable objections to such choice of counsel asserted by Mr. Epstein and STC); provided, however, that Mr. Zuckerman shall not be entitled to assume or control the defense of a liability or claim if the interests of Mr. Epstein and/or STC, on the one hand, and of Mr. Zuckerman and/or any of his Affiliates, on the other hand, with respect to such liability or claim are in conflict with one another and, as a result, one firm or attorney could not ethically or legally represent both the interests of Mr. Epstein and/or STC and the interests of Mr. Zuckerman and/or such Affiliates, in connection with such liability or claim. If Mr. Zuckerman assumes the defense of such liability or claim, Mr. Epstein and STC may participate in the settlement or defense thereof, at their sole expense through counsel chosen by them. Mr. Zuckerman agrees that Mr. Epstein and STC shall have the right to be consulted in connection with Mr. Zuckerman's settlement or defense of such liability or claim. In all events, Mr. Zuckerman shall control the defense and settlement of such liability or claim. Neither Mr. Epstein nor STC may pay, settle or compromise any liability or claim for which either or both of them may claim an indemnification right hereunder without Mr. Zuckerman's consent. Each of Mr. Epstein, STC and Mr. Zuckerman shall act towards each other in good faith in responding to, defending against, settling or otherwise dealing with any such claim or liability, and reasonably cooperate with each other in any such defense and give each other reasonable access to all information relevant thereto. Any settlement of a claim or liability by Mr. Zuckerman for which Mr. Epstein and/or STC are entitled to indemnification under the provisions of this Section 5 shall contain an unconditional release of such claim or liability in favor of Mr. Epstein and STC.

6. **NO INVESTMENT ADVICE.** Mr. Zuckerman acknowledges and agrees that in

connection with the Proprietary Services, neither Mr. Epstein nor STC is acting in any way as an "investment advisor" (as such term is defined in and interpreted in accordance with the provisions of the Investment Advisors Act of 1940, as amended, the regulations promulgated thereunder, and the interpretive releases issued in connection therewith) to Mr. Zuckerman or to any of his Affiliates, as Mr. Zuckerman's nephews, Jamie Gertler and Eric Gertler, will be fulfilling that role, and neither Mr. Epstein nor STC is holding himself or itself out in any way whatsoever as being engaged in any business which directly or indirectly provides advice, recommendations, publications, writings, reports or analyses regarding any matter or thing which might cause either of them to be deemed an "investment advisor" as such term is so defined. Mr. Zuckerman further acknowledges and agrees that no part of the Proprietary Services constitutes or will constitute any advice, recommendations, publications, or writings whatsoever regarding: (a) the value of securities or the advisability of investing in, purchasing, or selling securities, (b) the relative advantages or disadvantages of investing in securities in general as compared to other investments; (c) any other matters relating to any specific securities or securities in general; (d) the selection of investment managers, or investment funds or entities; (e) the allocation of certain percentages of assets to specific classes of securities, investment funds, or investment managers; or (f) any other activities or matters similar to those set forth in clauses (a) through (e) above.

7. NOTICES. All notices, requests, permissions or other communications which any party hereto may be required or desire to give to any other party hereto under this Agreement must be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, (b) telecopy, facsimile or email (with a copy sent by first class U.S. certified or registered mail, return receipt requested, with postage prepaid), or (c) express mail or courier (for either same day or next Business Day delivery). A notice or other communication sent in compliance with the provisions of this Section 7 shall be deemed given and received on (x) the fifth (5th) Business Day following the date it is deposited in the U.S. mail, (y) the date of confirmed transmission to the intended recipient if sent by facsimile, telecopy or email (provided that a copy thereof is sent by mail the same day in the manner provided in clause (b) above), or (z) the date it is delivered to the other party's address if sent by express mail or courier.

All notices, requests, permissions and other communications to STC shall be addressed to:

Southern Trust Company, Inc.
6100 Red Hook Quarter, B3
St. Thomas, USVI 00802
Facsimile No.: [REDACTED]
email: [REDACTED]
Attention: Mr. Jeffrey E. Epstein, President

with a copy to (which shall not constitute notice to STC):

Darren K. Indyke, Esq.
Darren K. Indyke, PLLC
575 Lexington Avenue, 4th Floor
New York, NY 10022
Facsimile No.: [REDACTED]
email: [REDACTED]

All notices, requests, permissions and other communications to Mr. Zuckerman shall be addressed to:

Mortimer B. Zuckerman
c/o Boston Properties
599 Lexington Avenue, Suite 1800
New York, NY 10022
Facsimile No.: [REDACTED]
email: [REDACTED]

with a copy to (which shall not constitute notice to Mr. Zuckerman):

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Facsimile No.: [REDACTED]

Any party hereto may designate another addressee or change his or its address for notices and other communications hereunder by a notice given to the other parties hereto in the manner provided in this Section 7.

8. MISCELLANEOUS.

(a) **Governing Law; Arbitration.** This Agreement and any disputes hereunder shall be governed by, and construed and enforced in accordance with, the laws of the United States Virgin Islands, other than principles of law that would apply the law of another jurisdiction.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior understandings, agreements, representations and warranties by or among the parties hereto or their affiliates, written or oral, with respect to such subject matter, which prior understandings, agreements, representations and warranties are hereby canceled.

(c) **Amendment.** This Agreement may not be amended, modified or supplemented other than in writing signed by all the parties hereto.

(d) **Waiver.** Any waiver of any provision hereof must be in writing and shall be effective only in the specific instance and for the specific purpose for which such waiver is given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(e) **Binding Effect; Assignability.** Mr. Zuckerman agrees that this Agreement is binding on himself, individually, and his estate, personal representatives, successors, and permitted assigns. This Agreement (including the rights and obligations hereunder) shall not be assignable by any party hereto except with the prior written consent of the other parties hereto.

(f) **Severability.** If any of the covenants, terms, conditions or provisions of this

Agreement are held invalid for any reason, such invalidity shall not affect the other covenants, terms, conditions and provisions hereof which can be given effect without the invalid covenant, term, condition or provision, as the covenants, terms conditions and provisions of this Agreement are intended to be and shall be deemed severable.

(g) **Counterparts; Delivery.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by delivery of a facsimile copy of an executed signature page or counterpart hereof or by e-mailing a PDF version of a signed signature page or counterpart hereof, and each shall have the same force and effect as the delivery of an originally executed signature page or counterpart hereof.

(h) **Construction.** This Agreement shall be deemed to have been prepared, and negotiations shall be deemed to have occurred in connection with such preparation, pursuant to the joint efforts of all of the parties to this Agreement. This Agreement therefore shall be construed simply and fairly and not strictly for or against any party to this Agreement.

If you are in agreement with the foregoing, please sign, date and return one copy of this Letter Agreement.

Very Truly Yours,

SOUTHERN TRUST COMPANY, INC.

By: _____
Jeffrey Epstein, President

Agreed to and Accepted this
____ day of September, 2013:

MORTIMER B. ZUCKERMAN