

Draft Agreement Between
the United States of America,
the [S Institution], and
LMH Company

This is a draft proposal. The inclusion of any term below does not signify that any party has waived any rights, obligations, or privileges that it might otherwise have. Bolded provisions, standing alone, are changes from the August 2 Zapruder draft to which the ARRB staff believes Zapruder will not object. Bracketed portions are terms that the ARRB staff believes should be included but where there may be a difference among the parties.

This agreement made this _ day of September, 1996 (the Agreement) between the **United States of America, the S Institution,** and the LMH Company.

Subject of the Agreement, Parties, Definitions

1. The subject of the agreement is the out-of-camera original film of the assassination of President John F. Kennedy taken by Abraham Zapruder on November 22, 1963 (the Zapruder Film).

The following are parties to the Agreement:

- a. The United States of America as represented by the United States Department of Justice.
- b. The S Institution, a library or institution affiliated with the US Government that has the ability to store the Zapruder Film properly.
- c. LMH Company, a partnership organized and operated under the law of the State of Texas, including its successors in interest, heirs, and assigns.

The following definitions shall apply:

the "Storage Agreement"

the "National Archives and Records Administration"

the "President John F. Kennedy Assassination Records Collection" (JFK Collection)

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“Assassination film materials” (which does not include the Zapruder Film) (see attachment A).

Purposes of the Agreement

[Deleted]

Storage Agreement, JFK Act and Ruling

3. On or about July 10, 1978, a storage agreement (attached hereto as Attachment A) was entered into by LMH and NARA. The Zapruder Film was thereupon delivered to NARA where it has remained to this day.
4. On October 26, 1992 Congress enacted the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. Sect 2107 (Supp. V 1994) (the JFK Act), a copy of which (as amended) is attached hereto as Attachment B.
5. The Assassination Records Review Board has determined, in light of the provisions of the agreement and the purposes and provisions of the JFK Act, to issue a ruling containing the provisions set forth on Attachment C hereto to the effect that the Assassination Film Materials and certain subsequently produced materials to meet researcher needs as set forth herein will be included as part of the JFK Collection and the Zapruder Film will not be so included.

[The parties to this Agreement stipulate that the JFK Act, in light of this Agreement and the decision of the Review Board to accept a copy of the Zapruder Film under the terms and conditions of this agreement, does not affect the rights of LMH to demand a return of the Zapruder Film from NARA under the Storage Agreement.]

Provision of Assassination Film Materials; Grant of Royalty free license

6. LMH agrees that following the execution of this agreement it will expend up to twenty thousand dollars (\$20,000) **[ARRB may need to consider adequacy of this amount]** towards the S Institution’s acquisition of any or all of the materials set forth in Attachment A for delivery to NARA for the inclusion in the JFK Collection prior to January 1, 1997.
7. LMH hereby grants to the S Institution a non-exclusive royalty free license to reproduce and distribute Copies (as defined in paragraph 8 below) of the Zapruder Film in perpetuity throughout the world, subject to the limitations set forth in paragraph 8.

8. The S Institution shall comply and cause compliance with the following limitations:
- a. The term Copies shall mean and refer to tangible motion picture copies in VHS video format and to tangible 35 mm slides of single frames from the Zapruder Film and still photographic prints of single frames from the Zapruder Film. **[Digital copies may be appropriate. Can a digital copy be made that would include a code that would uniquely identify the "original" Z-film? Regardless of digitization, there should be a provision that would permit other forms of copies as technology changes.]** The term Copies shall not include any copy of the Zapruder Film or any portion thereof in any media or form not expressly herein identified. **[This provision may need to be altered.]**
 - b. The S Institution shall deliver Copies to an individual or an entity only in response to a specific written request by such individual or entity. Delivery shall be made only by delivery of the tangible Copies and not by electronic, telecast, micro-wave, satellite, wire, fiber optic or other or similar means whether now existing or later developed.
 - c. **The S Institution** shall not create an inventory of Copies other than to the extent necessary in order to respond to written requests for Copies pursuant to the license granted in paragraph 7 hereof and shall not offer for sale or sell Copies through any bookstore, shop, or retail outlet. **[Museum store at Smithsonian/LOC.]**
 - d. For the purpose of this Agreement the recipient's right in any Copy received shall be limited to those afforded under Title 17, Sect. 109 (d) to individuals and entities who acquire Copies by rental, lease, loan, or otherwise without acquiring ownership of the Copies, and who are not authorized by a copyright owner to exercise the privileges prescribed by Title 17, Sects. 109 (a) and (c) as in effect with revisions to September 30, 1994 and as amended by amendatory acts of October 18 and December 8, 1994 (Attachment E) and notwithstanding any modifications which may be hereinafter enacted. **[This paragraph must be approved by DOJ. The paragraph should not provide for expanding any rights of LMH beyond what it already possessed prior to the JFK Act.]**
 - e. The rights and permissions herein granted are expressly conditioned upon the affixation to all Copies of the Notice "Copyright 1967 (Renewed 1995) LMH Company. All Rights Reserved. By receipt of this Copy the recipient agrees that the privileges appurtenant to this Copy are subject to the limitations and restrictions imposed upon individuals and entities who acquire Copies by rental, lease, loan, or otherwise without acquiring ownership as set forth in Title 17, Sect. 109 (d) (1994)." **[This paragraph must be approved by DOJ. The paragraph should not provide for**

expanding any rights of LMH beyond what it already possessed prior to the JFK Act.]

- f. Nothing contained herein shall be interpreted as a waiver. **[This paragraph must be approved by DOJ. The paragraph should not provide for expanding any rights of LMH beyond what it already possessed prior to the JFK Act.]**

Storage

9. LMH shall continue storage of the Zapruder Film **either with NARA under the Storage Agreement or with the S Institution pursuant to a new storage agreement** as provided in paragraph 14.
10. While in storage with the S Institution, the S Institution shall archive the Zapruder Film under the best reasonable archival conditions at its facilities in Washington, D.C.
11. The S Institution shall insure the Zapruder Film against loss, damage, destruction, harm and impairment in full amount of its fair market value. LMH shall be the named insured under the policy of insurance and the S Institution shall reimburse LMH for any loss attributable to any damage to the Zapruder Film while in storage with the S Institution to the extent not fully covered by insurance proceed received by LMH. **[ARRB has no independent objection to this paragraph; however, it is ARRB's understanding that such a paragraph may not be in conformity with U.S. law and with the policies and practices of Federal institutions. S institution or other entity must approve.]**
12. LMH agrees that, as long as the Zapruder Film is in storage with NARA or with the S Institution, the United States may conduct any and all reasonable forensics test of the Zapruder Film provided that not test shall materially alter or destroy any images on the Zapruder film. **[The United States may, however, alter or destroy a small portion of the leader of the Zapruder Film if such alteration or destruction is made in accordance with sound forensic practice and exercises all reasonable efforts to preserve the greatest integrity of the film possible.]** The S Institution agrees to exercise diligence in the handling of the Zapruder Film and that any damage to the Zapruder Film beyond immaterial alteration permitted pursuant to the first sentence hereof shall be subject to the reimbursement provisions of paragraph 11. **[Paragraph 11 may be amended.]**
13. LMH and the S Institution agree that during the entire period the Zapruder Film is in storage with NARA or the S Institution or owned by LMH, no party shall intentionally alter, destroy, or impair the Zapruder Film in connection with testing, research, or in any other pursuit or for any other purpose **except as expressly provided in this Agreement.**

United States Acquisition of the Zapruder Film

14. Sale and Contribution.

- a. LMH intends to enter into discussions with the United States providing it with an opportunity to acquire it for the S Institution at a price lower than the fair market value thereof. LMH agrees to leave the Zapruder Film on **continuing deposit at NARA or** deposit at the S Institution during those discussions or at least until January 1, 1998 **[2000]** (whichever period ends earlier). In the event the United States has not acquired the Zapruder Film on or before January 1, 1998 **[2000]**, the S Institution agrees to return the Zapruder Film to LMH promptly upon written request, provided, however, that nothing contained herein shall be interpreted as requiring LMH to provide such written notice for removal of the Zapruder Film from the deposit with the S Institution and the S Institution agrees to maintain the Zapruder Film on deposit under the terms and conditions or paragraphs 9-13 of this agreement for so long a LMH has not provided such requests and provided further that nothing contained herein shall be interpreted as requiring the United States or LMH to purchase or sell the Zapruder Film to each other.

15. Notice of intent to sell

LMH **[may]** sell the Zapruder Film to someone other than the United States only: (a) after providing the United States with an adequate opportunity to obtain an appropriation pursuant to the federal legislative process (as hereinafter set forth) and (b) after providing the United States with an opportunity to purchase the Zapruder Film (as hereinafter set forth).

- a. LMH shall be deemed to have provided the United States with an adequate opportunity to attain an appropriation pursuant to the federal legislative process as referred to above if LMH has provided written notice to the Archivist of the United States of its intention to offer the Zapruder Film for sale at least six months **[perhaps longer period, depending upon outcome of discussions]** prior to concluding a sale to any party.
- b. LMH shall be deemed to have provided the United States with an opportunity to purchase the Zapruder Film as referred to above if LMH either:
 - i. provides the Archivist of the United States **[presumably some other entity must be named]** with written notice of the time and place of an auction at least thirty (30) days prior to such auction **[presumably should be extended--depending, in part, on resolution of date provisions in paragraph 14a. above], [and provides the United States with a right of first refusal for**

the Zapruder Film for the same amount bid in the auction (plus one dollar) provided that the United States tender a bona fide offer to LMH within x weeks of the auction.] or

- ii. provides the Archivist of the United States [or other entity] with a written copy of a bona fide contract for the purchase of the Zapruder Film together with an offer to the United States to purchase the Zapruder Film upon the same terms and conditions as provided for in aid contract which offer shall remain open for acceptance by the United States at any time during a period 30 days [extend time period] from the date of such written notice

The United States undertakes to keep LMH advised concerning whether it is seeking an appropriation and is considering acquisition of the Zapruder Film pursuant to the foregoing opportunities and to notify LMH promptly and execute a waiver if it determines not to exercise such rights.

Storage Agreement; Ownership rights

16. The United States has not disputed and will not dispute that LMH is the legal owner of the Zapruder Film and possesses all copyright and other ownership rights. [This appears too broad, and TJG would prefer not including this sentence in the Agreement. What purpose does it serve by including? Perhaps as an alternative: Based upon the information now known by the United States, it does not dispute that LMH is the legal owner of the Zapruder Film. The United States acknowledges that LMH asserts that it possesses copyright and other ownership rights in the Zapruder film.] The Storage Agreement remains in full force and effect except as altered or affected by the terms of this Agreement.
17. The undersigned warrant and represent that they have the authority to enter into this agreement.
18. LMH Company recognizes that the Zapruder Film is a valuable evidentiary record of the assassination of President Kennedy and, accordingly, the United States and the people of the United States have an interest in the Zapruder Film's being preserved in a manner that best protects the physical integrity of the Zapruder Film. Accordingly, LMH agrees that it will never knowingly, intentionally, or with reckless disregard allow the Zapruder Film to be cut, destroyed, mutilated, or altered in any way that would effect its evidentiary value. LMH further agrees that should it sell, donate, or otherwise transfer any ownership rights in the Zapruder Film to any other person or entity, that it will include as a provision in any such transfer the following provision:

Any person or entity that should ever own part or all of the Zapruder

Film agrees not intentionally, knowingly, or with reckless disregard to cut, destroy, alter, or mutilate the Zapruder Film. Any person or entity that purchases part or all of the Zapruder Film agrees that it will purchase the Zapruder Film subject to this paragraph. include as a necessary term. Further, any person having an ownership interest in the Zapruder Film agrees to include this paragraph as a necessary condition of the sale of the Zapruder Film and that no other portion of an agreement to purchase or sell the Zapruder Film can include any other provision of an agreement to sell the Zapruder Film a provision that would alter or effect in substance the terms of this paragraph. Recognizing the interest of the United States and the American people in the preservation of the integrity of this Zapruder Film, any person (including any subsequent purchaser or seller of the Zapruder Film) who shall intentionally, knowingly, or with reckless disregard allow the Zapruder Film to be cut, destroyed, altered, or mutilated shall agree to pay to the United States the full value of the Zapruder Film. Such value of the Zapruder Film shall be determined by including such factors as the most recent sale price of the Zapruder Film, expert evaluation of the value of the Zapruder Film, and other such means as the United States shall reasonably propose. All subsequent purchasers or sellers of the Zapruder Film shall agree to submit to the jurisdiction of the United States courts in the District of Columbia or at such other place as the United States and the subsequent purchaser or seller shall agree.

[All rights included herein and all claims resolved]

In witness whereof the parties set their hand and seals they _____ day of _____ first above written.

For the United States of America:

U.S. Department of Justice

Date:

For LMH Company:

Henry Zapruder
Date:

For [S Institution]

Date:

[Attachment A]

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