MASTER AGREEMENT

by and between

SOUTHERN METHODIST UNIVERSITY

and

THE GEORGE W. BUSH
PRESIDENTIAL LIBRARY FOUNDATION

February 22, 2008
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MASTER AGREEMENT

THIS MASTER AGREEMENT (hereinafter called this "Agreement") made this 22nd day of February, 2008, by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation (together with any person or entity to which this Agreement is assigned collectively called "SMU"), and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas nonprofit corporation (hereinafter called the "Foundation");

WITNESSETH

WHEREAS, because of SMU's excellent reputation and academic environment and its presence in Dallas, Texas, the Foundation desires to locate at SMU's campus (a) the George W. Bush Presidential Library (the "Library") and the related museum (the "Museum") that will be the depository for the Presidential records and artifacts of President George W. Bush and his administration under the custody and management of the National Archives and Records Administration of the United States ("NARA"), in accordance with the Presidential Records Acts; and (b) the Foundation's executive and administrative offices (the "Offices") and its institute (the "Institute") for scholarship and research (the facilities housing the Library, the Museum, the Offices and the Institute and all ancillary facilities (such as parking and gardens) are herein collectively called the "Library Center Facilities");

WHEREAS, because the Library Center Facilities will (a) enhance SMU's academic reputation; (b) increase its stature and visibility nationally and internationally; (c) increase the research and learning opportunities of its students and other constituents; and (d) provide SMU with a unique opportunity by which to serve the City of Dallas, the State of Texas and the United States, SMU desires for the Library Center Facilities to be located at SMU;

WHEREAS, SMU and the Foundation desire that SMU and the Institute work together in developing academic programs of distinction that will advance the mission of each organization; and

WHEREAS, SMU and the Foundation desire to set forth in this Agreement and in the Ground Lease (as defined in Subparagraph 16(a)(i) of this Agreement) and the Ancillary Agreements (as defined in Subparagraph 6(i) of this Agreement) the terms and conditions on which (a) the Library Center Facilities will be planned, designed, constructed and operated by the Foundation at SMU; (b) certain academic and research programming will be developed and operated (i) by SMU and the Institute and (ii) by the Institute; and (c) certain fund raising activities of the Foundation shall be conducted;

NOW, THEREFORE, in consideration of the above premises and the mutual representations, covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, and intending to be bound hereby, the parties do hereby agree as follows:
1. The Library Center Property.

(a) The property which shall be the subject of the Ground Lease shall be one (the "Selected Site") of the sites (collectively, the "Sites" and individually a "Site") described in Exhibits A-1 and A-2 attached hereto together with all and singular the rights and appurtenances pertaining to the Selected Site, including any and all easements and other rights as may be necessary for ingress and egress and maintenance of said property, and any right, title and interest of SMU in and to adjacent streets, alleys or rights-of-way. On or before June 30, 2010, by written notice (the "Site Selection Notice") thereof given by the Foundation to SMU and the Title Company, the Foundation shall choose the Selected Site; provided, however, if the Foundation fails to timely give the Site Selection Notice, the Foundation shall be deemed to have selected the Site identified on Exhibit A-1. Prior to the date that the Selected Site is chosen by the Foundation, the term "Library Center Property" shall mean, each time it is used in this Agreement, collectively, both of the Sites described in Exhibits A-1 and A-2, including any and all easements and other rights as may be necessary for ingress and egress and maintenance of the Sites, and any right, title and interest of SMU in and to adjacent streets, alleys or rights-of-way. From and after the date that the Foundation gives the Site Selection Notice, each and every time the term "Library Center Property" is used in this Agreement such term shall mean only the Selected Site.

(b) SMU shall have the right to construct and/or install intramural/athletic fields (the "Fields") that include lighting, scoreboards, irrigation and other equipment and fixtures incidental to the operation and use of the Fields, on the Sites described and set forth on Exhibit A-1 and Exhibit A-2. If at the Closing any portion of the Library Center Property includes the Fields or any portion thereof, the Foundation shall defer the Closing (as defined in Paragraph 16 of this Agreement) insofar as it covers said portion of the Library Center Property (hereinafter called the "Field Closing Portion") until the completion of a period expiring 90 days after the end of the then current academic year, during which period (the "Period of Use") SMU shall have the right to use the Field Closing Portion for the purposes described above. At the end of the Period of Use, SMU shall cease all activities and shall have removed all improvements from the Field Closing Portion. The Closing with respect to the Field Closing Portion shall take place in accordance with this Agreement on a date selected by the Foundation which is within 15 days after the end of the Period of Use. If this Section is applicable: (i) the Closing would proceed in accordance with this Agreement as to the Library Center Property other than the Field Closing Portion; (ii) all of the terms and provisions of this Agreement shall remain applicable to the Field Closing Portion; and (iii) a recordable document executed and acknowledged by SMU and the Foundation evidencing the agreement to convey the Field Closing Portion shall be filed of record contemporaneously with the Closing of the initial Library Center Property.

2. SMU's Representations. SMU represents to the Foundation as follows (which representations shall be deemed also made by SMU to the Foundation as of the Closing Date (as defined in Paragraph 16 of this Agreement):

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(a) **Title.** SMU has good and indefeasible title to the Library Center Property, subject only to the encumbrances (hereinafter collectively called the "Outstanding Encumbrances") described in the title commitments (hereinafter called the "Title Binders") prepared by Republic Title Company of Texas, Inc., Dallas, Texas (hereinafter called the "Title Company") covering the Library Center Property and heretofore delivered to the Foundation. On the Closing Date, SMU shall have good and indefeasible title to the Library Center Property subject only to general real estate taxes on the Library Center Property for the current year, if any, and encumbrances (including Outstanding Encumbrances) accepted by the Foundation as provided herein (said taxes and accepted encumbrances hereinafter collectively called the "Permitted Encumbrances").

(b) **Parties in Possession.** There are no parties in possession of any portion of the Library Center Property as lessees, tenants at sufferance or trespassers except under the leases (hereinafter called collectively, the "SMU Leases") as specified in Exhibit E attached hereto.

(c) **Proceeding by Governmental Authority.** There is no pending or, to SMU's knowledge, threatened condemnation or similar proceeding or special assessment affecting the Library Center Property, or any part thereof, nor to SMU's knowledge is any such proceeding or assessment contemplated by any Governmental Authority. As used herein, the term "Governmental Authority" shall mean the United States, the State of Texas, the County of Dallas, the City of University Park, the Town of Highland Park, the City of Dallas, and any agency, department, commission, board, bureau or instrumentality of any of them.

(d) **Applicable Laws.** To the knowledge of SMU, the Proposed Use (as defined in Subparagraph 2(i) of this Agreement) of the Library Center Property as provided herein would not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, including applicable zoning ordinances (except to the extent such zoning ordinances are to be changed as provided in Paragraph 10 of this Agreement) and building codes, flood disaster laws, health laws, regulations of any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Library Center Property (all of the foregoing laws, statutes, ordinances, rules, regulations, orders or determinations hereinafter sometimes collectively called "Applicable Laws"), except as specified in Exhibit F attached hereto.

(e) **Environmental.** Without in any way limiting the representations contained in Subparagraph 2(d), to SMU's knowledge (which does not include the knowledge of Thompson and Knight LLP in its capacity as environmental counsel to SMU but does include and is not limited to all environmental investigations and reports conducted by, commissioned by, supplied to or reviewed by SMU, its other attorneys or consultants, or information supplied to SMU by the Foundation prior to SMU and the Foundation entering into the Ground Lease), except as disclosed to the Foundation in Exhibit F to this Agreement, the Library Center Property: (i) is not in violation of any Applicable Environmental Law (as defined in this Subparagraph 2(e)); (ii) is not subject to any remedial obligations under any Applicable Environmental Law; (iii) has not been
proposed for nor subject to any voluntary clean-up program or municipal setting designation; (iv) is not subject to any institutional controls limiting the uses to which the Library Center Property can be put or how construction can occur at the Library Center Property; (v) is not subject to any pending or threatened investigation or enforcement action under any Applicable Environmental Law; (vi) has not been found to have any recognized environmental conditions as that term is defined in ASTM Standard E 1527-00; and (vii) is not impacted by the presence of any Hazardous Material (as defined in this Subparagraph 2(e)) in quantities that limit in any way its use for the construction or operation of a presidential library, and SMU will cause such representations (without exceptions) to be true at the Closing. As used in this Subparagraph 2(e), the term "Applicable Environmental Law" means those applicable Federal, State, and local laws, as they exist on the date the representation is given, pertaining to health, safety or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). The term "Hazardous Material" shall mean: (i) any "hazardous substance" as defined in CERCLA and regulations promulgated thereunder; (ii) any "hazardous waste" as defined in RCRA and regulations promulgated thereunder; (iii) any petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under the definition of hazardous substance in CERCLA as well as natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and other petroleum products and by-products; (iv) urea formaldehyde foam insulation, polychlorinated biphenyls, radon, perchlorate, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.; (v) any material defined as hazardous or toxic under any statute or regulation of the State of Texas or any agency thereof; and (vi) any other material or substance which is toxic, ignitable, reactive or corrosive and which is regulated by any Applicable Environmental Law; provided, all such terms shall be deemed to include all similar terms used in any Applicable Environmental Law or regulations thereunder (including by way of example, but not limitation, pollutant, contaminant, toxic substance, discharge and migration).

(f) No Unpaid Construction Obligations. There are no unpaid charges, debts, liabilities, claims or obligations arising from SMU's occupancy, ownership, use or operation of the Library Center Property, or the business operated thereon, which could give rise to any mechanic's or materialmen's or other statutory lien against the Library Center Property, or any part thereof, or for which the Foundation shall be responsible.

(g) Access. The Library Center Property has full and free access to and from public highways, streets and roads and SMU has no knowledge of any pending or threatened governmental proceeding or any other fact or condition which would materially limit or result in the termination of such access.

(h) Zoning. At the date of this Agreement, each of the Sites is zoned as set forth on Exhibits A-1 and A-2 attached hereto, without special variances, and to the knowledge of SMU there exists no judicial, quasi-judicial, administrative or other proceeding which might materially adversely affect the validity of such zoning.
(i) No Limitation on Use. Except for any required zoning change, relocation of utilities, the requirement for building permits, street abandonment or replatting with respect to the Library Center Property, to the knowledge of SMU, there exists no judicial, quasi-judicial, administrative or other proceeding or court order, building code provision, deed restriction or restrictive covenant (recorded or otherwise) or other private or public limitation which would materially adversely affect the use of the Library Center Property by the Foundation for the construction and operation of the Library Center Facilities (herein called the "Proposed Use").

(j) Utilities. There are in existence water and sewer lines and systems to the Library Center Property for the transmission of water and the operation of sanitary and storm sewers to service the Library Center Property. The Library Center Property is serviced by gas, telephone and electric facilities. To the knowledge of SMU, all of the foregoing are in compliance with all Applicable Laws. All of the foregoing utilities are available for "tap-in" by the Foundation without the payment of any fees, charges or costs other than normal tap-in fees. SMU makes no representations concerning the adequacy of the existing utility lines and systems to service the Library Center Property, the Proposed Use or any other use of the Library Center Property.

(k) Litigation or Administrative Proceeding. There is no pending or, to the knowledge of SMU, threatened litigation or administrative proceedings which could materially adversely affect (i) title to the Library Center Property or any part thereof; (ii) the ability of SMU to perform any of its obligations hereunder; (iii) the Proposed Use; or (iv) the Library Center Property, except for the litigation (hereinafter called the "University Gardens Litigation and Related Matters") described in Exhibit L attached hereto, which if decided against SMU's interests, could materially adversely affect the matters set forth in (i) through (iv) in this Subparagraph 2(k).

(l) Consent or Approval. Except for the approval of the Municipality (as defined in Paragraph 10 of this Agreement) of the proposed zoning change described in Paragraph 10 of this Agreement, the approval of the Board of Trustees of SMU and the approval of the South Central Jurisdiction of the United Methodist Church (that has been obtained by SMU with respect to the Site described in Exhibit A-1), to the knowledge of SMU, no consent or approval of any person or entity or of any Governmental Authority is required with respect to the execution and delivery of this Agreement by SMU or the consummation by SMU of the transactions contemplated hereby or the performance by SMU of its obligations hereunder which has not been obtained.

(m) No Adverse Fact. SMU has no knowledge of any change contemplated in any Applicable Laws or of any judicial or administrative action, or any action by adjacent landowners, or any natural or artificial conditions upon the Library Center Property, or any material adverse fact or condition relating to the Library Center Property or the Proposed Use by the Foundation, which would materially prevent, limit, or obstruct the Proposed Use.
(n) Not in Flood Prone Area. The Library Center Property is not within an area that has been identified as an area having special flood hazards under the Federal Flood Disaster Protection Act of 1973, as amended.

(o) No Commitments for Dedication. SMU has not made, and to the knowledge of SMU, no other party has made any commitment to any Governmental Authority (except for NARA), utility company, school board, church or other religious body, or any homeowners or homeowners' association, or any other organization, group or individual, relating to the Library Center Property which would impose an obligation upon the Foundation or its successors or permitted assignees to make any contribution or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Library Center Property. To the knowledge of SMU, no Governmental Authority has imposed any requirement that any developer of the Library Center Property pay directly or indirectly any special fees or contributions or incur any special expenses or obligations (collectively, "Assessments") in connection with any development of the Library Center Property or any part thereof. The representations contained in this Subparagraph 2(o) shall not apply to regular or nondiscriminatory local real estate or school taxes, if any, assessed against the Library Center Property.

(p) Corporation. SMU is a non-profit corporation organized and legally existing and in good standing under the laws of the State of Texas. The execution and delivery of, and SMU's performance under, this Agreement are within SMU's powers and have been duly authorized by all requisite corporate action. The person executing this Agreement on behalf of SMU has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of SMU enforceable in accordance with its terms, subject to laws applicable generally to creditor's rights and applicable principles of equity. Performance of this Agreement shall not result in any breach of, or constitute any default under, any agreement or other instrument to which SMU is a party, or by which SMU is bound.

(q) No Permits. To the knowledge of SMU, there are no licenses or permits affecting the Library Center Property or the operation thereof.

(r) No Service Contracts. SMU has not entered into any contracts related to the operation, ownership or management of the Library Center Property, including maintenance, service, construction, supply and equipment rental contracts, which would be an obligation of the Foundation after the Closing.

(s) No Warranties. There are no warranties or guaranties from third parties, for the benefit of SMU, regarding the acquisition, construction, design, use, operation, management or maintenance of the Library Center Property or otherwise relating to the Library Center Property.

(t) Employees. There are no employees currently employed by SMU to manage, maintain or service the Library Center Property whose contracts with SMU would be an obligation of the Foundation after the Closing.
(u) **Contracts and Documents.** To the knowledge of SMU, all contracts or documents delivered by SMU to the Foundation in connection with this Agreement are true, correct and complete originals or copies of such documents, and are in full force and effect, without default by (or notice of default to) any party.

As used in this Paragraph 2, the phrase "to the knowledge of SMU," or "to SMU's knowledge," or similar language, means the actual, current knowledge, without independent investigation, of only the following individuals: R. Gerald Turner, Leon Bennett, John O'Connor and Jim Koons, at the time such representations and warranties are made by SMU hereunder.

3. **The Foundation's Representations.** The Foundation represents to SMU as follows (which representations shall be deemed also made by the Foundation to SMU as of the Closing Date):

   (a) **Corporation.** The Foundation is a nonprofit corporation organized and legally existing and in good standing under the laws of the State of Texas. The execution and delivery of, and the Foundation's performance under, this Agreement are within the Foundation's powers and have been duly authorized by all requisite corporate action. The person executing this Agreement on behalf of the Foundation has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the Foundation enforceable in accordance with its terms, subject to laws applicable generally to creditor's rights and applicable principles of equity. Performance of this Agreement shall not result in any breach of, or constitute any default under, any agreement or other instrument to which the Foundation is a party or by which the Foundation is bound.

   (b) **Consent or Approval.** Except for the approval of (i) the Foundation's Board of Directors, and (ii) as necessary, NARA, no consent or approval of any person or entity or of any Governmental Authority is required with respect to the execution and delivery of this Agreement by the Foundation or the consummation by the Foundation of the transactions contemplated hereby or the performance by the Foundation of its obligations hereunder.

   (c) **Authority.** The Foundation has all requisite authority and power (i) to select the SMU campus as the location of the Library Center Facilities; and (ii) to plan, design, construct, complete, furnish and make operational the Library Center Facilities on the Library Center Property, as contemplated herein.

   (d) **Litigation or Administrative Proceeding.** There is no pending or, to the knowledge of the Foundation, threatened litigation or administrative proceedings which, if decided against the Foundation, would materially adversely affect (i) the ability of the Foundation to perform any of its obligations hereunder; or (ii) the Proposed Use of the Library Center Property by the Foundation.

   (e) **Contracts and Documents.** To the knowledge of the Foundation, all contracts or documents delivered by the Foundation to SMU in connection with this Agreement are true, correct and complete originals or copies of such documents, and are in full force and effect, without default by (or notice of default to) any party.
As used in this Agreement, the phrase "to the knowledge of the Foundation," "to the Foundation's knowledge" or similar language, means the actual, current knowledge, without independent investigation, of only Donald L. Evans, at the time such representations and warranties are made by the Foundation hereunder.

4. **Title.** Within 30 days after the date of this Agreement, SMU shall provide the Foundation with updates of the Title Binders, together with copies of all documents referred to therein as exceptions to title not previously furnished to the Foundation (the "First Updated Title Binders"). If any exceptions appear in the First Updated Title Binders, other than the standard printed exceptions (which shall be modified in the owner's title policy as specified in Paragraph 16(b) of this Agreement), that are unacceptable to the Foundation, or in the event SMU's title is otherwise not as represented herein, the Foundation shall, within 30 days after receipt of both the Survey (as defined in Paragraph 5 of this Agreement) and the First Updated Title Binders including said documents referred to therein, notify SMU in writing of such fact. SMU shall then promptly undertake to eliminate or modify such unacceptable exceptions or cure such title deficiencies (said exceptions and deficiencies hereinafter called "Unacceptable Title Matters") to the reasonable satisfaction of the Foundation. If SMU is unable to do so within ten days after receipt of such notice, the Foundation shall, in its discretion, have the right but not the obligation to eliminate or modify such Unacceptable Title Matters on behalf of SMU. If SMU is unable to eliminate or modify such Unacceptable Title Matters to the reasonable satisfaction of the Foundation within 20 days after receipt by SMU of the above described notice to SMU, and the Foundation has not eliminated or modified such Unacceptable Title Matters to its satisfaction within such 20 day period, the Foundation may, during the 30 day period following the end of such 20 day period, either (a) notify SMU of those Unacceptable Title Matters which the Foundation is willing to approve and those Unacceptable Title Matters which the Foundation is not willing to approve but which it is willing to give SMU until the Closing to eliminate (the "Pending Title Matters") (said notification hereinafter called the "Conditional Title Approval Notice"), or (b) terminate this Agreement by giving notice in writing to SMU of such termination. Any such termination shall be a Permitted Termination (as defined in Subparagraph 17(a)(i) of this Agreement), and after such termination the only rights, duties, obligations and liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement. If the Foundation does not deliver such termination notice or such Conditional Title Approval Notice within such 30 day period, the Foundation shall be deemed to have found as acceptable SMU's title to the Library Center Property as SMU can deliver (with such Unacceptable Title Matters becoming Permitted Encumbrances). If the Foundation does not deliver a termination notice but does deliver a Conditional Title Approval Notice, the Foundation shall be deemed to have accepted the Unacceptable Title Matters which the Foundation approves in the Conditional Title Approval Notice (with such matters becoming Permitted Encumbrances) with the Pending Title Matters not becoming Permitted Encumbrances and remaining for SMU to eliminate prior to the Closing. If the Updated Title Binders have not been delivered to the Foundation within the time specified above, the Foundation in its discretion shall have the right, but not the obligation, to obtain such Updated Title Binders.

5. **Survey.** On or before the 30th day after the date of this Agreement, SMU shall obtain at SMU's sole expense and shall deliver to the Foundation a currently dated survey (hereinafter called the "Survey") of the Library Center Property prepared by a licensed
professional engineer or surveyor acceptable to the Foundation and to the Title Company and complying with the requirements contained in Exhibit C attached hereto and made a part hereof. The Survey shall contain a statement on the face thereof certifying that no part of the Library Center Property lies within a flood plain or flood prone area or a flood way of any body of water. In the event the Survey shows any easement, right-of-way, encroachment, conflict or protrusion or any other matter affecting the Library Center Property that is unacceptable to the Foundation (hereinafter called "Unacceptable Survey Matters"), the Foundation shall, within 30 days after receipt of both the Survey and the First Updated Title Binders and exceptions shown therein as provided in Paragraph 4 of this Agreement, notify SMU in writing of such fact. SMU shall then promptly undertake to eliminate or modify such Unacceptable Survey Matters to the reasonable satisfaction of the Foundation. In the event SMU is unable to do so within 10 days after receipt of such notice, the Foundation shall, in its discretion, have the right but not the obligation to eliminate or modify such Unacceptable Survey Matters on behalf of SMU. In the event SMU is unable to eliminate or modify such Unacceptable Survey Matters to the reasonable satisfaction of the Foundation within 20 days after receipt by SMU of the above described notice to SMU, and the Foundation has not eliminated or modified such Unacceptable Survey Matters to its satisfaction within such period, the Foundation may, during the 30 day period following the end of such 20 day period, either (a) notify SMU of those Unacceptable Survey Matters which the Foundation is willing to approve and those Unacceptable Survey Matters which the Foundation is not willing to approve but which it is willing to give SMU until the Closing to eliminate (the "Pending Survey Matters") (said notification hereinafter called the "Conditional Survey Approval Notice"), or (b) terminate this Agreement by giving notice in writing to SMU of such termination. Any such termination shall be a Permitted Termination, and after such termination the only rights, duties, obligations and liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement. If the Foundation does not deliver such termination notice or such Conditional Survey Approval Notice within such 30 day period, the Foundation shall be deemed to have accepted the matters shown on the Survey (with such Unacceptable Survey Matters becoming Permitted Encumbrances). If the Foundation does not deliver a termination notice but does deliver a Conditional Survey Approval Notice, the Foundation shall be deemed to have accepted the Unacceptable Survey Matters which the Foundation approves in the Conditional Survey Approval Notice, (with such matters becoming Permitted Encumbrances) with the Pending Survey Matters not becoming Permitted Encumbrances and remaining open for SMU to eliminate prior to the Closing. If the Survey shall not have been delivered to the Foundation within the time specified above, the Foundation in its discretion shall have the right, but not the obligation, to obtain such Survey and the cost thereof shall be reimbursed to the Foundation by SMU.

6. Covenants of SMU. SMU covenants and agrees with the Foundation that:

   (a) Maintenance and Operation. (i) Between the date hereof and the Closing Date (1) SMU shall cause the Library Center Property to be maintained and operated in accordance with all Applicable Laws (which term, as used in this Agreement, shall include Applicable Environmental Laws); (2) except for the zoning change contemplated in Paragraph 10 of this Agreement, SMU shall not initiate or support any zoning reclassification of the Library Center Property or seek any variance under existing zoning ordinances applicable to the Library Center Property or impose any restrictive covenants.

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or easements or other encumbrances on the Library Center Property or execute or file any subdivision plat affecting the Library Center Property; and (3) SMU shall not enter into or renew, extend, modify or replace any agreement or other contractual obligation with respect to or affecting the Library Center Property without the express written permission of the Foundation, provided that such permission shall not be required if such agreement or other contractual obligation does not have a term extending beyond the Closing Date; and (ii) between the date that the Foundation chooses the Selected Site and the Closing Date, SMU shall not cause or permit any grading, excavation or construction upon the Library Center Property or any addition, alteration or removal of any improvements forming a part of the Library Center Property, provided, however, that SMU shall, prior to Closing, demolish and remove all buildings and building foundations located on the Selected Site.

(b) **Construction Obligations.** SMU shall, between the date on which SMU receives the Selected Site Notice and the Closing Date, cause (i) the removal of existing utilities on the Selected Site; (ii) any abandonment and/or replatting of streets located on the Selected Site required by the Foundation; and (iii) the performance of any work required by the Foundation to rectify any and all drainage conditions on the Selected Site, and shall cause the payment of any and all costs and expenses incurred by SMU that result from the foregoing.

(c) **Ad Valorem Taxes.** SMU, on or before the Closing Date, shall cause to be paid all taxes and assessments heretofore levied or assessed against the Library Center Property or any part thereof, if any, prior to delinquency.

(d) **Notification of Litigation.** SMU shall, between the date hereof and the Closing Date, promptly notify the Foundation of any litigation or administrative proceeding, of which SMU becomes aware, concerning or affecting the Library Center Property or the use or operation thereof or the ability of SMU to perform its obligations under this Agreement, including continuing updates with respect to the University Gardens Litigation and Related Matters.

(e) **Notification of Violation of Laws.** SMU shall, between the date hereof and the Closing Date, promptly provide to the Foundation copies of any notices which it receives from Governmental Authorities with respect to the alleged violation of any Applicable Laws relating to the Library Center Property.

(f) **Notification of Change of Laws.** SMU shall, between the date hereof and the Closing Date, promptly notify the Foundation in writing of any change in any Applicable Laws, rulings or orders that might affect the Proposed Use of the Library Center Property by the Foundation of which SMU obtains knowledge.

(g) **No Lien or Assignment.** Between the date hereof and the Closing Date, SMU shall not: (i) without the prior written consent of the Foundation, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes
on the Library Center Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Library Center Property, or any part thereof, other than the Permitted Encumbrances, and should any of the foregoing become attached hereafter in any manner to any part of the Library Center Property without the prior written consent of the Foundation, SMU shall cause the same to be promptly discharged and released; or (ii) sell, exchange, assign, transfer, convey or otherwise dispose of all or any part of the Library Center Property or any interest therein, or permit any of the foregoing, except as set forth in Subparagraph 6(h) of this Paragraph.

(h) **Leases.** Between the date hereof and the Closing Date, SMU shall continue to operate the Library Center Property in the usual and customary manner and shall not enter into, extend or renew any lease agreement (except under leases that expire on or before the Closing Date) covering any space in the Library Center Property without the prior written approval of the Foundation, which shall not be unreasonably withheld.

(i) **Agreements.** Between the date hereof and the Closing Date, SMU shall not execute any agreement affecting the Library Center Property without the express prior written approval of the Foundation, which approval shall not be unreasonably withheld.

(j) **Marketing.** Between the date hereof and the Closing Date, SMU shall not market or show the Library Center Property to any prospective purchasers.

(k) **Covenant of Further Assurances.** Between the date hereof and the Closing Date, SMU shall (i) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any of the Exhibits hereto; and (ii) do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement.

(l) **Ancillary Agreements.** Contemporaneously with the execution of this Agreement, SMU shall execute and enter into (i) that certain Governance and Academic Cooperation Agreement (the "Governance Agreement") in the form attached hereto as Exhibit G; (ii) that certain Indemnification Agreement (the "Indemnification Agreement") in the form attached hereto as Exhibit H; (iii) that certain Fund Raising Agreement (the "Fund Raising Agreement") in the form attached hereto as Exhibit I; and (iv) that certain Restrictive Covenant Agreement ("Restrictive Covenant Agreement") in the form attached hereto as Exhibit B. Contemporaneously with the execution of this Agreement, SMU shall, and shall cause SMU Corporation (as defined in Paragraph 38 of this Agreement), to execute and enter into that certain Contract Liability Cap Agreement ("Contract Liability Cap Agreement") in the form attached hereto as Exhibit J and that certain Environmental Agreement (the "Environmental Agreement") in the form attached hereto as Exhibit K. At the Closing (as defined in Paragraph 16 hereof) SMU shall execute and enter into that certain Guaranty Agreement ("Guaranty Agreement") in the form attached hereto as Exhibit D-2. All of the foregoing agreements referred to in this Subparagraph 6(l) are herein collectively referred to as "Ancillary Agreements" and individually referred to as an "Ancillary Agreement".
(m) **Environmental Agreement.** SMU shall cause the representations made in Subparagraph 2(e) of this Agreement (without exceptions) to be true at the Closing with respect to the Selected Site by addressing all of the exceptions related to the Selected Site as disclosed in Exhibit F in accordance with the process set forth the Environmental Agreement, to the extent that SMU can do so by performing remedial action, and in the event the necessary remedial action cannot be completed prior to such Closing, and assuming the Foundation does not exercise its rights not to proceed to close notwithstanding the fact that such remedial action is not completed prior thereto, SMU shall use all reasonable efforts to effect such remedial action as well as remedial action required as a result of any update to the exceptions disclosed in Exhibit F at Closing in accordance with the terms of the Environmental Agreement or as otherwise agreed.

7. **Covenants of the Foundation.** The Foundation covenants and agrees with SMU that between the date hereof and the date of the Closing:

(a) **Payment of Pre-Construction Obligations.** The Foundation shall cause all debts and liabilities of the Foundation for labor, material and services incurred in connection with pre-construction obligations relating to the Library Center Property, and all other pre-construction obligations of the Foundation, including architectural, design and engineering, to be promptly paid.

(b) **Notification of Litigation.** The Foundation shall promptly notify SMU of any litigation or administrative proceeding, of which the Foundation becomes aware, concerning or affecting the Library Center Property or the use or operation thereof or the ability of the Foundation to perform its obligations under this Agreement.

(c) **Notification of Violation of Laws.** The Foundation shall promptly provide to SMU copies of any notices which it receives from Governmental Authorities with respect to the alleged violation of any Applicable Laws relating to the Library Center Property.

(d) **Covenant of Further Assurances.** The Foundation shall (i) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any of the Exhibits hereto; and (ii) do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement.

(e) **The Ancillary Agreements.** Contemporaneously with the execution of this Agreement, the Foundation shall execute and enter into the Ancillary Agreements (except for the Guaranty Agreement which will be executed at the Closing).

8. **Delivery of Information.** SMU has delivered to the Foundation a Phase I Environmental Report covering the Library Center Property prepared by Southwest Geoscience. SMU shall deliver to the Foundation the information and documents described in Exhibit M attached hereto and made a part hereof, which SMU can reasonably obtain and which are not covered by the attorney client privilege.
9. **Inspection.** The Foundation shall have the right, at its sole expense, to physically inspect, and to cause one or more engineers or other representatives of the Foundation to physically inspect, the Library Center Property and to conduct such surface and subsurface tests on the Library Center Property as the Foundation shall consider necessary. In making any intrusive or non-intrusive physical or environmental inspections of the Library Center Property, the Foundation and its agents that enter the Library Center Property shall carry not less than $1,000,000 comprehensive general liability insurance with respect to the activities and conduct of the Foundation and its agents while exercising such right of access to the Library Center Property. The Foundation shall cause SMU to be named as an additional insured on such liability policy. **The Foundation shall indemnify, defend, and hold SMU harmless from any loss, injury, damage, claim, lien, cost or expense, including attorneys' fees and costs, sustained by SMU caused as a result of or arising out of any such inspections or tests by the Foundation or its representatives on the Library Center Property and such indemnification shall survive the termination of this Agreement and shall survive the Closing.**

10. **Zoning.** After the date that the Foundation chooses the Selected Site in the manner provided in Paragraph 1 of this Agreement, SMU shall, within 30 days after written request of the Foundation and at its sole expense, prepare in form and content acceptable to the Foundation a request for an ordinance changing the zoning of the Selected Site to a zoning designation that shall allow the Proposed Use. SMU shall promptly thereafter submit the same for approval of the applicable governing municipal body (the "Municipality") (either University Park, Texas, Highland Park, Texas, or Dallas, Texas, as the case may be) and shall use all reasonable and diligent efforts to procure the adoption of such ordinance within 120 days after the date of such request. SMU shall not agree to any zoning changes affecting the Library Center Property without the concurrence of the Foundation, shall include the Foundation in all formal face-to-face meetings with the Municipality, and shall not submit any document in connection with the zoning to such Municipality without the consent of the Foundation. At the Closing, the representation made by SMU in Subparagraph 2(h) of this Agreement shall be modified to conform to the zoning obtained pursuant to this Paragraph 10. If SMU is unable to procure the adoption of such ordinance within said 120-day period, the Foundation may, within 30 days following said 120-day period, terminate this Agreement by giving notice in writing to SMU of such termination. If the Foundation does not deliver such termination notice within such 30 day period, the Foundation shall be deemed to have accepted the Library Center Property without the adoption of such ordinance. Any such termination shall be a Permitted Termination, and after such termination the only rights, duties, obligations or liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement.

11. **Facilities Design.**

(a) **The Design Committee.** The Foundation shall, contemporaneously with the execution of this Agreement, establish and thereafter maintain a design committee (hereinafter called the "Design Committee") consisting of the number of members desired by the Foundation, one of whom shall be the President of SMU or his or her designee (hereinafter called "the SMU Representative"). The quorum requirement of the Design Committee shall require that the SMU Representative be present to establish a quorum at any meeting of the Design Committee; provided, however, that this requirement shall not
apply to any meeting with respect to which the Foundation shall have given written notice to the SMU Representative (in the manner provided in Paragraph 21 of this Agreement for notices to SMU) of such meeting not less than five days prior to said meeting.

(b) Design Control and Approval. The Foundation acting through the Design Committee shall have exclusive control over the design of the Library Center Facilities, including the selection, termination and replacement of architects and design consultants, except that (i) the Foundation shall cause the architects to design the Library Center Facilities to achieve compatibility with SMU's distinct architectural character while maintaining the distinct architectural character appropriate for a presidential library; (ii) the Foundation shall include in the design of the Library Center Facilities adequate surface and garage parking for cars, buses and recreational vehicles; and (iii) the adoption of the final design for the Library Center Facilities, including the parking facilities, shall be subject to the prior review and written approval of the SMU Board of Trustees Library Committee (the "Library Committee"), which approval shall not be unreasonably withheld. Withholding of such approval shall be deemed unreasonable if it is not based upon a Formal Objection (as defined in Subparagraph 11(c) of this Agreement) that has resulted in the issuance of a Formal Notification in accordance with the procedures set forth in Subparagraph 11(c) of this Agreement that has not theretofore been withdrawn in writing. The Library Committee shall give the Design Committee notice of its approval or disapproval of the final design within 30 days after the later of (i) the date on which the final design is submitted to the Library Committee for its approval and (ii) the date on which the Library Committee has exhausted all procedures available to it under Subparagraph 11(c) of this Agreement for making objections with respect to any design decision contained in the final design that has not been included in the materials previously submitted to the Library Committee pursuant to the provisions of Subparagraph 11(c) of this Agreement. If the Library Committee does not give its written approval to the final design within said 30 day period, the Foundation may terminate this Agreement by written notice thereof to SMU, during the 25 day period following said 30 day period. Any such termination shall be a Permitted Termination, and after such termination the only rights, duties, obligations or liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement.

(c) The Library Committee Review. At key points during the design phase for the Library Center Facilities including the Programmatic/Space Planning Phase, Schematic Design Phase, Design Development Phase and the final design, and at any other time deemed appropriate by the Chair of the Design Committee or his or her designee (the "Chair of the Design Committee"), the Chair of the Design Committee shall submit to the Library Committee for its review material relating to design decisions made by the Design Committee with respect to the Library Center Facilities. Within 21 business days after receipt of materials pertaining to any such design decisions, the Library Committee shall notify the Chair of the Design Committee as to whether the Library Committee has any objection to any of such design decisions failing which the Library Committee shall have no further right to make an objection to any of such design decisions. If any such notice states that the Library Committee has an objection to any of
such design decisions of the Design Committee, the SMU Representative or the Chair of the Library Committee (herein so called) and the Chair of the Design Committee shall promptly thereafter meet to discuss and attempt in good faith to resolve such objection ("Formal Objection") to the mutual satisfaction of the Design Committee and the Library Committee. If a Formal Objection is not so resolved or is not withdrawn by the Library Committee in writing, either the Chair of the Design Committee or the Chair of the Library Committee may at any time after such meeting notify SMU and the Foundation in writing ("Formal Notification") that such Formal Objection cannot be resolved. The Foundation shall have the right to terminate this Agreement by giving notice thereof to SMU, during the 30 day period following receipt of a Formal Notification by SMU or the Foundation, as the case may be. Any such termination shall be a Permitted Termination, and after such termination the only rights, duties, obligations and liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement.

(d) Transportation and Parking Plan. SMU and the Foundation agree to work cooperatively on an ongoing basis to produce transportation and parking plans for daily use and special events that will address traffic flow and control, pedestrian access, and parking for the Library Center Facilities and the SMU campus. Such plans will take into consideration, among other things, compatibility with the functioning of both the Library Center Facilities and SMU, and will address traffic flow considerations and parking surrounding the Library Center Facilities and SMU campus properties as well as local and regional transportation developments. Nothing contained in this Subparagraph 11(d) shall modify, alter or otherwise affect the rights and obligations of the parties hereto as contained in Subparagraphs 11(b) and 11(c) of this Agreement.

12. Identification. The Foundation and SMU shall work cooperatively to publicly recognize the geographic and programmatic relationships between them in connection with the Proposed Use. Illustrative of the opportunities for recognition between the Foundation and SMU are the following: (a) internet/electronic media with each to provide links to the other as appropriate; (b) maps, with each to identify the other on any map produced for public use; (c) printed material with each party to identify the other as to location and association as appropriate; (d) programmatic as set forth in the Governance Agreement; and (e) outdoor monument signage in and around the Library Center Facilities. The parties hereby agree that the descriptive and geographical phrases set forth in Exhibit N hereto are acceptable to both the Foundation and SMU and that other descriptive and geographical phrases shall be added to Exhibit N by amendment in the future for use by each in connection with items (a), (b), (c), (d) and (e) of the foregoing sentence or any other public use. Any change in, or variation of, such phrases shall require the prior written approval of both parties before any public use thereof, such approvals not to be unreasonably withheld.

13. Notification of Closing. The Closing of the transactions contemplated under this Agreement shall occur on a date which is on or after December 31, 2008 and on or before December 31, 2010. The Foundation shall designate the date of Closing within said period by sending a notice (the "Closing Notice") thereof to SMU at least 50 days prior to the designated date of Closing. Within 20 days after receipt of the Closing Notice by SMU, SMU shall cause to be delivered to the Foundation (a) an updated survey ("Updated Survey") of the Library Center
Property complying with the requirements contained in Exhibit C attached hereto and made a part hereof; and (b) an update of the Title Binders ("Second Updated Title Binders") insofar as they cover the Library Center Property. If either the Updated Survey or the Second Updated Title Binders show one or more encumbrances or other matters in addition to those shown on the First Updated Title Binders or the Survey, which, in the commercially reasonable opinion of the Foundation, could interfere with the Proposed Use of the Library Center Property, the Foundation shall have the right to require SMU to remove any such encumbrance or other matter (hereinafter called "Unacceptable Closing Matters") by sending written notice to SMU thereof within 30 days after receipt by the Foundation of the Updated Survey and the Second Updated Title Binders. Upon the expiration of said 30-day period, the Foundation shall be deemed to have accepted the Updated Survey and the Second Updated Title Binders, and all matters shown thereon (except for Unacceptable Closing Matters and Pending Title Matters and Pending Survey Matters) and such matters shall thereafter be included in the term "Permitted Encumbrances" as used herein. Upon receipt of the above described notification, SMU shall promptly undertake to eliminate or modify the Unacceptable Closing Matters described therein to the reasonable satisfaction of the Foundation, failing which, the Foundation may (a) send SMU a notice conditionally approving the Closing Matters (the "Conditional Closing Approval Notice") notifying SMU of those Unacceptable Closing Matters which the Foundation is willing to approve and those Unacceptable Closing Matters which the Foundation is not willing to approve but which it is willing to give SMU until the Closing to eliminate ("Pending Closing Matters"); or (b) terminate this Agreement by giving notice in writing to SMU of such termination within 30 days after the expiration of said 30 day period. Such termination shall be a Permitted Termination, and after such termination the only rights, duties obligations or liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement. If the Foundation does not deliver such termination notice or such Conditional Closing Approval Notice, the Foundation shall be deemed to have found as acceptable SMU's title to the Library Center Property as SMU can deliver except for existing Pending Title Matters, Pending Survey Matters and Pending Closing Matters (with such Unacceptable Closing Matters becoming Permitted Encumbrances). If the Foundation does not deliver a termination notice but does deliver a Conditional Closing Approval Notice, the Foundation shall be deemed to have accepted the Unacceptable Closing Matters which the Foundation approves (with such matters becoming Permitted Encumbrances) with the Pending Closing Matters not becoming Permitted Encumbrances and remaining open for SMU to eliminate prior to the Closing. If the Updated Survey and/or the Second Updated Title Binders have not been delivered to the Foundation within the time specified in this Paragraph 13, the Foundation shall within its discretion have the right, but not the obligation, to obtain same, and the cost thereof, if any, shall be reimbursed to the Foundation by SMU.

14. Conditions to the Foundation's Obligation to Close. The following shall be conditions precedent to the Foundation's obligation to close this transaction:

(a) SMU's Representations, WARRANTIES AND Covenants. On the Closing Date, all of SMU's representations and warranties set forth in Paragraph 2 of this Agreement shall be true and correct in all material respects as if made on the Closing Date (except to the extent any such representations and warranties speak as to a specific date, in which event such representation and warranty shall be true and correct in all material respects as of such date) and SMU shall not be in material breach of any covenants, agreements or
obligations required to be performed by SMU on or before the Closing Date hereunder or under the Ancillary Agreements.

(b) **Not Affected by Disaster.** On the Closing Date, neither the Library Center Property nor any material part thereof shall have been, or be threatened to be, materially adversely affected in any way as a result of fire, explosion, earthquake, disaster, accident, labor dispute, any action by the United States or any other Governmental Authority, flood, embargo, riot, civil disturbance, uprising, activity of armed forces, or act of God or public enemy.

(c) **No Condemnation.** On the Closing Date, neither the Library Center Property nor any part thereof shall be subject to any condemnation or threat of condemnation.

(d) **Building Permit.** On the Closing Date, no fact, condition or impediment shall exist which would prevent the Foundation from obtaining all necessary building permits from the appropriate Governmental Authorities for the Proposed Use on the Library Center Property.

(e) **Soil Tests.** The Foundation shall have obtained the written opinion of a duly licensed soil engineer to the effect that there are no soil compaction or expansion characteristics, rock, surface or subterranean, water, or other conditions which shall require soil treatment or replacement, blasting, water diversion, or structural construction on the Selected Site for the Proposed Use other than the minimum required by the applicable building codes of the Municipality.

(f) **Title.** On the Closing Date, there shall not exist any encumbrance or title defect affecting the Library Center Property that is not a Permitted Encumbrance and all Pending Title Matters, Pending Survey Matters and Pending Closing Matters shall have been eliminated or waived by the Foundation in writing.

(g) **Survey.** On the Closing Date, there shall not exist any easement, right-of-way, encroachment, conflict or protrusion with respect to the Library Center Property not shown on the Survey or otherwise included within the Permitted Encumbrances.

(h) **Zoning Change.** The Municipality shall have granted the zoning requested pursuant to Paragraph 10 of this Agreement and there shall be in existence no judicial, quasi-judicial, administrative or other proceeding which might materially adversely affect the validity of such zoning and the Foundation shall have been furnished evidence of such zoning as the Foundation may reasonably require. Alternatively, the zoning is not granted to the full extent requested and the Foundation, in its sole discretion, accepts the Library Center Property without the adoption of such ordinance as provided in Paragraph 10 of this Agreement.

(i) **Inspections and Tests.** On the Closing Date, the findings made in the inspections and tests referred to in Paragraph 9 of this Agreement shall not have revealed
any problem which would prevent the Foundation from using the Library Center Property for the Proposed Use.

(j) Architect. On the Closing Date, there has been no notice from the architect(s) chosen for the planning and design of the Library Center Facilities to the Foundation that the architect(s) is unable to design such Library Center Facilities on the Selected Site.

(k) Consent or Approval. On the Closing Date all approvals and/or consents of all persons and/or entities or Governmental Authorities have been obtained by SMU that are necessary or required for the consummation of the transactions contemplated hereby or the performance by SMU of its obligations hereunder.

If any one of the above conditions is not satisfied, the Foundation may, at its option, waive such condition or the Foundation may terminate this Agreement by giving written notice of such termination to SMU, which termination shall be a Permitted Termination, and after such termination the only rights, duties, obligations or liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement.

15. Conditions to SMU's Obligation to Close. The following shall be conditions precedent to SMU's obligation to close this transaction:

(a) The Foundation's Representations, Warranties and Covenants. On the Closing Date, all of the Foundation's representations and warranties set forth in Paragraph 3 of this Agreement shall be true and correct in all material respects as if made on the Closing Date (except to the extent any such representations and warranties speak as to a specific date, in which event such representation and warranty shall be true and correct in all material respects as of such date) and the Foundation shall not be in material breach of any material covenants, agreements or obligations required to be performed by the Foundation on or before the Closing Date hereunder or under the Ancillary Agreements.

(b) Zoning Change. The Municipality shall have granted the zoning requested pursuant to Paragraph 10 of this Agreement, unless the zoning is not granted and the Foundation accepts the Library Center Property without the adoption of such ordinance as provided in Paragraph 10 of this Agreement.

If any one of the above conditions is not satisfied, SMU may, at its option, waive such condition or SMU may terminate this Agreement by giving written notice thereof to the Foundation, which termination shall be a Permitted Termination and after such termination the only rights, duties, obligations or liabilities of the parties under this Agreement shall be those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement.

16. The Closing. The Closing of this transaction (herein called the "Closing") shall take place at the offices of Thompson & Knight LLP in Dallas, Texas, on the date (herein called the "Closing Date") specified in the Closing Notice, at 10:00 a.m., Dallas, Texas time. At the
Closing the following shall contemporaneously occur, each of which shall be a concurrent condition to the Closing:

(a) The Ground Lease.

(i) SMU shall cause the SMU Corporation to execute and deliver, and the Foundation shall execute and deliver, the Ground Lease Agreement (the "Ground Lease") in the form attached hereto as Exhibit D and the Memorandum of Ground Lease (the "Memorandum of Ground Lease") in the form attached hereto as Exhibit D-1. SMU and the Foundation shall execute the Guaranty Agreement in the form attached hereto as Exhibit D-2. The description of the Library Center Property contained in the Ground Lease and the Memorandum of Ground Lease shall be that set forth in the Survey of the Library Center Property as provided in Paragraph 13 of this Agreement.

(ii) If at the Closing any portion of the Library Center Property is the subject of litigation or any other claim of any nature, or is otherwise subject to an unperfomed or outstanding condition to the obligation of the Foundation to close as described in Paragraph 14 of this Agreement (hereinafter collectively called the "Outstanding Condition"), the Foundation shall have the option, exercisable by written notice to SMU, to defer the Closing insofar as it covers said portion of the Library Center Property (the "Deferred Closing Portion") until a date (the "Deferred Closing Date") which is no later than 30 days after the resolution or removal of the Outstanding Condition. The Closing would proceed in accordance with this Agreement as to the Library Center Property other than the Deferred Closing Portion. All of the terms and provisions of this Agreement shall remain applicable to the Deferred Closing Portion. On the Deferred Closing Date, the Closing shall occur in accordance with this Agreement as to the Deferred Closing Portion. A recordable document executed and acknowledged by SMU and the Foundation evidencing said option to defer the Closing and describing the Deferred Closing Portion shall be filed of record promptly after the exercise of such option by the Foundation. Notwithstanding the foregoing, the Foundation shall have the right at any time during the term of the Ground Lease to proceed to the Closing insofar as it covers the Deferred Closing Portion, without regard to the resolution or removal of the Outstanding Condition (which resolution or removal shall remain the obligation of SMU as provided herein), upon sending written notice thereof to SMU specifying a Closing Date no later than 30 days after the date of such notice.

(iii) If the Foundation has selected the Site identified on Exhibit A-1 attached hereto (the "A-1 Tract") as the Library Center Property and has had the Closing on a portion of the A-1 Tract and there is a deferred closing as provided in Subparagraph 16(a)(ii) of this Agreement, then the Foundation shall have the right, subject to the last sentence of this Subparagraph 16(a)(iii), exercisable at any time by written notice to SMU, to (A) substitute the Site identified on Exhibit A-2 attached hereto (the "A-2 Tract") for the A-1 Tract in which event the A-2 Tract shall become the Selected Site hereunder rather than the A-1 Tract; (B)
proceed to the Closing on the portion of the A-2 Tract comprised of 3.3 acres of existing intramural fields and (C) continue to defer the Closing the portion of the A-2 Tract comprised of 5.5 acres of the UG Parcel-North (which shall be the Deferred Closing Portion referred to in Subparagraph 16(a)(ii) of this Agreement) until Closing as provided in Subparagraph 16(a)(ii) of this Agreement. If the A-2 Tract is substituted for the A-1 Tract, a recordable document executed by SMU and the Foundation describing the deferred closing as to the new Deferred Closing Portion, rather than the former Deferred Closing Portion, shall be filed of record promptly after the exercise of the right by the Foundation to substitute the A-2 Tract for the A-1 Tract. The Closing described in (B) above shall occur within 90 days after the satisfaction of all applicable conditions to Closing as provided in this Agreement. The Closing described in (C) above shall occur as provided in Subparagraph 16(a)(ii) of this Agreement. The rights of the Foundation under this Subparagraph 16(a)(iii) shall expire and be of no further effect from and after the resolution or removal of the Outstanding Condition as provided in Subparagraph 16(a)(ii) of this Agreement. If Tract A-2 is selected at a time after the design process set forth in Subparagraphs 11(b) and 11(c) has been completed, the parties hereto agree that, with respect to the design of the intramural field in Tract A-2, the parties will follow the design process set forth in Subparagraphs 11(b) and 11(c).

(b) **Owner Title Policy.** SMU shall deliver to the Foundation, at the Foundation's expense, an owner's title insurance policy issued by the Title Company in the amount specified by the Foundation and through an underwriter approved by the Foundation insuring that the Foundation owns the leasehold estate in the Library Center Property, subject to no exceptions other than (i) the Permitted Encumbrances; (ii) the exception as to standby fees, taxes and assessments by any taxing authority for the year of closing, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the Library Center Property, under Section 11.13 of the Texas Tax Code, or because of improvements not assessed for a previous tax year; and (iii) other exceptions which the Foundation approves in writing. The exception for "any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements" shall be deleted (except for shortages in area) at the Foundation's expense. SMU shall provide express insurance under Procedural Rule P-50, at the Foundation's expense, as requested by the Foundation.

(c) **UCC Search – SMU.** SMU shall deliver to the Foundation a current Uniform Commercial Code search from the Office of the Secretary of State of Texas showing no financing statements by SMU as debtor covering any of the Library Center Property.
(d) Proration of Taxes. General real estate taxes, if any, for the then current year relating to the Library Center Property shall be prorated as of the Closing Date. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Library Center Property, provided that, if the taxes for the current year are more or less than the taxes for the preceding year, SMU and the Foundation shall adjust the proration of such taxes and SMU or the Foundation, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Ground Lease delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by SMU and those assessed after the Closing Date shall be paid by the Foundation.

(e) Closing Costs. The escrow fee charged by the Title Company shall be paid one-half by SMU and one-half by the Foundation. The Foundation shall pay the fee for the recording of (i) the Memorandum of Ground Lease delivered by SMU to the Foundation hereunder and (ii) the Restrictive Covenant Agreement described in Subparagraph 16(g) of this Agreement. Each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction which is the subject of this Agreement. All other costs and expenses incurred by SMU and the Foundation prior to the execution of this Agreement shall be the sole responsibility of the party incurring such costs and expenses.

(f) Possession Delivered. Possession of the Library Center Property shall be delivered by SMU to the Foundation with all improvements removed.

(g) Delivery of Documents. SMU shall deliver to the Foundation the originals of all documents described in Exhibit M attached hereto and made a part hereof, to the extent any of the foregoing has not been previously delivered to the Foundation; provided, however, that SMU shall not be required to deliver any document subject to the attorney client privilege.

(h) Certificate of SMU. SMU shall deliver to the Foundation a certificate executed by SMU certifying that as of the Closing Date all of the representations and warranties of SMU contained herein are true and correct and that all conditions to the Foundation's obligation to close hereunder have been satisfied (with appropriate modifications of those representations and warranties made in Paragraph 2 of this Agreement to reflect any changes therein not known to SMU as of the date of this Agreement) or identifying any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change.

(i) Certificate of the Foundation. The Foundation shall deliver to SMU a certificate executed by the Foundation certifying that as of the Closing Date all of the representations and warranties of the Foundation contained herein are true and correct and that all conditions to the Foundation's obligation to close hereunder have been satisfied (with appropriate modifications of those representations and warranties made in Paragraph 3 of this Agreement to reflect any changes therein not known to the
Foundation as of the date of this Agreement) or identifying any representation or
warranty which is not, or no longer is, true and correct and explaining the state of facts
giving rise to the change.

(j) **Bills Paid Affidavit.** SMU shall deliver to the Foundation an affidavit
stating that all bills owed by SMU with respect to the Library Center Property have been
paid, in form satisfactory to the Foundation and the Title Company.

(k) **Evidence of Authority from SMU, the SMU Corporation and the
Foundation.** SMU and the Foundation shall deliver to the Title Company such
documentary and other evidence as may be reasonably required by either party or the
Title Company evidencing the status and capacity of SMU, the SMU Corporation and the
Foundation and the authority of the person or persons who are executing the various
documents on behalf of SMU, the SMU Corporation and the Foundation in connection
with this Agreement.

(l) **Certification of Non-Foreign Status.** SMU shall deliver to the Foundation
a non-foreign certificate required by Section 1445 of the Internal Revenue Code, as
amended, and applicable regulations for SMU and for the SMU Corporation.

If any one of the above concurrent conditions is not satisfied by the party who has
responsibility for such satisfaction, the other party may, at its option, waive such
condition or terminate this Agreement by giving written notice of such termination to the
other party, which termination shall be a Permitted Termination, and after such
termination the only rights, duties, obligations and liabilities of the parties under this
Agreement shall be those which expressly survive termination as provided in Paragraphs
9, 20 and 42 of this Agreement.

17. **Termination; Remedies.**

(a) **Events of Termination.** This Agreement may be terminated at any time
prior to the Closing in and under the following circumstances, by:

(i) a termination permitted under the provisions of Paragraphs 4,
5, 10, 11, 13, 14, 15 and 16 of this Agreement (each a "Permitted Termination");

(ii) the mutual written consent of the Foundation and SMU;

(iii) either the Foundation or SMU if the zoning ordinance change
requested pursuant to Paragraph 10 of this Agreement (or other zoning acceptable
to the Foundation) is not granted by the Municipality on or before the Closing
Date; or

(iv) either the Foundation or SMU, if the Closing shall not have
occurred on or before December 31, 2010; provided that the right to terminate
under this Subparagraph 17(a)(iv) of this Agreement shall not be available to any
party whose failure to fulfill any obligation hereunder has been the cause of, or
resulted in, the failure of the Closing to occur by such date.
(b) Procedures For Termination. If a party is entitled to terminate this Agreement pursuant to Paragraph 17(a) of this Agreement and chooses to do so, then such party shall deliver a notice to the other party to the effect that the notifying party thereby terminates this Agreement. The notice delivered pursuant to the immediately-preceding sentence must be in writing and must specify in reasonable detail the factual basis for the termination of this Agreement.

(c) Effect of Termination. Upon a Permitted Termination or other termination of this Agreement pursuant to this Paragraph 17, neither the Foundation nor SMU nor any of their respective directors, officers, employees, trustees, beneficiaries, agents, consultants, or attorneys (irrespective of when any such person held such status) shall have any further rights, duties, obligations or liabilities under this Agreement except for those which expressly survive termination as provided in Paragraphs 9, 20 and 42 of this Agreement.

(d) Remedies - SMU. The Foundation shall be in default under this Agreement if (i) all of the conditions to the Foundation's obligation to Close, as specified in Paragraph 14 of this Agreement, have been satisfied or waived; and (ii) the Foundation fails or refuses to execute and deliver any of the items required by Paragraph 16 of this Agreement to be executed and delivered by the Foundation for any reason other than a default by SMU hereunder or the termination of this Agreement by the Foundation or SMU pursuant to the terms and provisions of this Agreement. If the Foundation is in default under this Agreement as provided in this Subparagraph 17(d) or is in default under any other provision of this Agreement, SMU shall have all of the rights and remedies available at law or in equity under the laws of the State of Texas or other applicable law, but not punitive, consequential or other special damages, recovery of which is hereby waived by SMU.

(e) Remedies – the Foundation. SMU shall be in default under this Agreement if (i) all the conditions to SMU's obligation to close, as specified in Paragraph 15 of this Agreement, have been satisfied or waived and (ii) SMU fails or refuses to execute and deliver any of the items required by Paragraph 16 of this Agreement to be executed and delivered by SMU for any reason other than a default by the Foundation hereunder or the termination of this Agreement by the Foundation or SMU pursuant to the terms and provisions of this Agreement. If SMU is in default under this Agreement as provided in this Subparagraph 17(e) or is in default under any other provision of this Agreement, the Foundation shall have all of the rights and remedies available at law or equity under the laws of the State of Texas or other applicable law, but not punitive, consequential or other special damages, recovery of which is hereby waived by the Foundation.

18. Further Agreements by SMU. In addition to the obligations required to be performed under this Agreement by SMU at the Closing, SMU agrees to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents and other materials, as the Foundation may reasonably request in order to effectuate the consummation of the transactions contemplated in this Agreement and to vest leasehold title to the Library Center Property.
19. **Further Agreements by the Foundation.** In addition to the obligations required to be performed under this Agreement by the Foundation at the Closing, the Foundation agrees to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents, and other materials, as SMU may reasonably request in order to effectuate the consummation of the transactions contemplated in this Agreement and to maintain SMU's fee simple title to the Library Center Property.

20. **Real Estate Commissions.** Each party hereto represents to the other that it has not authorized any broker or finder to act on its behalf in connection with the transaction contemplated under this Agreement and that it has not dealt with any broker or finder purporting to act on behalf of any other party. Each party hereto agrees to indemnify and hold harmless the other party from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transaction contemplated hereby. Notwithstanding anything to the contrary contained herein, this Paragraph 20 shall survive the Closing or any earlier termination of this Agreement.

21. **Notice.** Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

**To SMU:**
Dr. R. Gerald Turner  
President  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

With copies to:  
Mr. S. Leon Bennett  
General Counsel  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

**To the Foundation:**  
Mr. Donald L. Evans  
Chair  
George W. Bush Presidential Library Foundation  
500 W. Texas Avenue, Suite 960  
Midland, Texas 79701

With copies to:  
Mr. Sam P. Burford, Jr.  
Thompson & Knight LLP  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201
or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

22. **Professional Fees.** If any party hereto institutes any action or proceeding against the other party with regard to this Agreement, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys' fees.

23. **Assignment.** The Foundation shall not have the right to assign its interest in this Agreement except to an entity owned or controlled by the Foundation, provided that upon such assignment the Foundation shall not be relieved of its obligations hereunder. SMU shall have no right to assign its interest in this Agreement except to any entity owned or controlled by SMU, provided that upon such assignment, SMU shall not be relieved of its obligations hereunder.

24. **Survival of Representations and Warranties.** All representations and warranties made in this Agreement shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time, and all of the representations, warranties and covenants contained in this Agreement shall survive the Closing and shall not merge with the Ground Lease and shall not be affected by any investigation, verification or approval by any party hereto or by anyone acting on behalf of any such party. Any suit by a party hereto for any breach by the other party hereto of any representation or warranty contained in this Agreement (other than the representations contained in Subparagraph 2(e) of this Agreement) must be filed on or before two years after the Closing Date or shall be forever barred. In addition to the foregoing, any claim asserted under the provisions of Subparagraphs 2(b), 2(c), 2(f), 2(g), 2(h), and 2(n) of this Agreement for breach of a representation or warranty shall be asserted by written notice received by SMU within 180 days from and after the Closing Date. In further addition to the foregoing, any claim asserted under the provisions of Subparagraphs 2(a), 2(d), 2(i), 2(j), 2(k), 2(l), 2(m), and 2(o) through 2(u) of this Agreement for breach of a representation or warranty shall be asserted by written notice received by SMU within 18 months from and after the Closing Date.

25. **Titles and Subtitles.** The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

26. **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.
27. Modification. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

28. Successors and Assigns. This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

29. Date of this Agreement. The phrase "the date of this Agreement" used herein shall mean the latest date on which either SMU or the Foundation have executed this Agreement.

30. Time. Time is of the essence of this Agreement.

31. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

32. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

33. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

34. Rule of Construction Inapplicable. The parties to this Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Agreement and that this Agreement has not been written solely by counsel for one of the parties. The parties to this Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

35. Public Announcements. Neither SMU nor the Foundation shall make any public announcement about the transactions which are the subject of this Agreement other than on a coordinated basis with the other party.

36. No Joint Venture. Nothing contained in this Agreement or the Ancillary Agreements between the parties is intended by the parties to create a partnership or joint venture between the parties to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.
37. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.

38. **Transfer of the Library Center Property by SMU.** Prior to the Closing, SMU shall transfer and convey the Selected Site to a nonprofit charitable corporation, controlled by SMU, which qualifies as a charitable corporation under Section 501(c)(3) of the Internal Revenue Code (hereinafter called the "SMU Corporation"). At the Closing the SMU Corporation shall be the entity that enters into the Ground Lease, the Memorandum of Ground Lease and (together with SMU) the Environmental Agreement with the Foundation. In connection with the transfer to the SMU Corporation of the Selected Site and its lease thereof to the Foundation, the SMU Corporation shall be (i) entitled to all contractual benefits of the Ground Lease, the Memorandum of Ground Lease and the Environmental Agreement; and (ii) subject to all contractual obligations and liabilities of said Ground Lease, the Memorandum of Ground Lease and the Environmental Agreement. SMU shall guarantee the obligations of the SMU Corporation to the Foundation to the extent provided in the Guaranty Agreement attached to the Ground Lease.

39. **Liability Limitation.** The liability of the parties hereunder shall be limited to the extent provided in that certain Contract Liability Cap Agreement dated February 22, 2008 by and among SMU, the SMU Corporation and the Foundation.

40. **Governing Law; Venue.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter of this Agreement brought by any other party. Each party hereto hereby agrees to venue in Dallas County, Texas.

41. **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any party to this Agreement upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or in equity afforded to the parties to this Agreement shall be cumulative and not alternative.

42. **Survival.** Each provision of this Agreement containing rights and obligations that by their nature require the payment of money or the performance of obligations after the termination of this Agreement shall survive such termination.
IN WITNESS WHEREOF, this Agreement is executed in multiple originals by SMU and the Foundation as of the date first above written.

SMU's Taxpayer Identification No. 

______________________________

SMU: 

SOUTHERN METHODIST UNIVERSITY, 
a Texas non-profit corporation 

Date of Execution by SMU: 

By: ____________________________
Name: __________________________
Title: __________________________

THE FOUNDATION: 

THE GEORGE W. BUSH PRESIDENTIAL 
LIBRARY FOUNDATION, 
a Texas non profit corporation 

Date of Execution by the Foundation: 

By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A-1

Site Description and Zoning
Exhibit A1
23.1469 ACRES
EXHIBIT A-2

Site Description and Zoning
RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement (this “Agreement”) dated the 22nd day of February, 2008, by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation (“SMU”) and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation (the “Foundation”);

WITNESSETH:

WHEREAS, SMU and the Foundation have simultaneously herewith entered into that certain Master Agreement (the “Master Agreement”) providing for representations and agreements leading up to the execution of that certain Ground Lease Agreement between SMU (or its affiliate corporation) and the Foundation (the “Ground Lease”), pursuant to which the George W. Bush Presidential Library (the “Library”) containing the presidential records and artifacts of President George W. Bush and his administration under the custody and management of the National Archives and Records Administration, together with a museum related to the Library, the George W. Bush Institute for scholarship and research associated with the Foundation, the executive and administrative offices of the Foundation, and ancillary facilities (including parking and gardens, etc.), (all of the foregoing herein collectively called the “Library Center Facilities”) will be constructed and maintained on the “Land” (as defined in the Ground Lease); and

WHEREAS, in connection with the matters set forth in the Master Agreement and the Ground Lease, the Foundation and SMU desire to agree to certain restrictions and other agreements relating to certain SMU owned property in close proximity to the Library Center Facilities;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SMU and the Foundation hereby agree as follows:

1. Bank Site. SMU shall cause the Chase Bank banking complex located on the corner of Dublin Street, Mockingbird Lane and North Central Expressway, identified as Tract 1 on Exhibit B hereto, (the “Bank Site”) to be demolished prior to the completion of the Library Center Facilities. The Foundation and SMU shall jointly decide on outdoor monument signage and landscaping that replace said banking complex. From and after the demolition of the banking complex and environmental or other clean up work, if any, for which SMU shall be solely responsible, the Foundation and SMU shall share equally all expenses in respect to the subsequent Bank Site modifications and landscaping including ongoing expenses associated with irrigation and maintenance of said Bank Site.

2. Shopping Center Site. SMU shall cause the existing shopping center located west of Dublin Street on the north side of Mockingbird Lane (the “Shopping Center”) to be demolished as soon as reasonably practicable (taking into account lease
expiration dates, etc.). SMU may, in its sole discretion, develop the site previously occupied by the Shopping Center, identified as Tract 2 on Exhibit B hereto, (the “Shopping Center Site”) in conformity with permitted uses set forth in Section 3 of this Agreement and may, in addition thereto, incorporate commercial and non-commercial uses, compatible with and supportive of students, faculty, and staff life on a university campus; provided, however, subject to the provisions of Subsections 4(a) and (b) of this Agreement regarding chimney density and elevator/stairwell elevations, respectively, no improvements to be located on (i) the eastern part of the Shopping Center Site (as depicted as Zone 4 on Exhibit A hereto); and (ii) the western part of the Shopping Center Site (as depicted as Zone 3 on Exhibit A hereto), shall exceed the “Absolute Height Limits” as defined in Exhibit A for each such zone.

3. **Airline Site.** SMU may, in its sole discretion use the land located north of the Shopping Center Site and south of Airline Road, identified as Tract 3 on Exhibit B hereto, (the “Airline Site”) for student, faculty, and staff housing, intramural or athletic fields, athletic and academic programming, and surface or structured parking; provided, however, subject to the provisions of Subsections 4(a) and (b) of this Agreement regarding chimney density and elevator/stairwell elevations, respectively, no improvements to be located on (i) the eastern part of the Airline Site (as depicted as Zone 2 on Exhibit A hereto); and (ii) the western part of the Airline Site (as depicted as Zone 1 on Exhibit A hereto), shall exceed the Absolute Height Limits.

4. **Chimney Density and Elevator/Stairwell Elevation.** Restrictions on chimney density and elevator/stairwell elevation are as follows.

   (a) **Chimney Density** – Chimney density for any improvements to be located on Zones 1, 2, 3, 4, or 5 as depicted on Exhibit A hereto shall not exceed 0.280% of the total area of the zone within which the improvements are to be located (the total area of each zone to be calculated assuming a ten foot set back from all curb locations). In determining the area of a chimney, only the area of the top horizontal plane of a chimney will be used, whether a single or double chimney, and the total area of each such chimney shall not exceed dimensions greater than five feet by ten feet.

   (b) **Allowance for Elevator/Stairwell Enclosure** – For each parking garage located within zones 1, 2, 3, 4 and 5 the height of the garage shall not exceed the Absolute Height Limits as set forth in Exhibit A, except that each garage shall be permitted to have two (2) elevator/stairwell enclosures which shall not exceed 11 feet in height above the parapet wall of said garage(s).

5. **Intramural Field Site.** SMU shall cause the existing intramural field situated south of SMU Boulevard, west of Dublin Street and north of Binkley Avenue, identified as Tract 5 on Exhibit B hereto, (the “Intramural Field Site”) to remain an intramural or athletic field; provided, that the Intramural Field Site does not constitute
part of the Land, and provided further, that prior to construction of any improvements associated with said Intramural Field Site in excess of 15 feet in height (other than upgrades to the existing 55 foot light towers), SMU must obtain the prior written approval of the Foundation, which approval shall not be unreasonably withheld.

6. Binkley Site. Along the west side of Dublin Street between Binkley Avenue and Airline Road, identified as Tract 6 on Exhibit B hereto, (the "Binkley Site"), SMU shall limit the construction of all improvements to be located thereon to a height not exceeding 55 feet as calculated by the requirements set forth in existing zoning ordinances of the City of University Park.

7. Mockingbird South Site. SMU shall use its property fronting on the south side of Mockingbird Lane between North Central Expressway and Airline Road, identified as Tract 7 on Exhibit B hereto, (the "Mockingbird South Site"), for the development of student, faculty and staff housing, intramural or athletic fields, academic and athletic programming, surface and structured parking, provided that SMU may include: commercial and non-commercial uses compatible with and supportive of student, faculty, and staff life on a university campus, SMU physical plant facilities, and an electrical substation. In the event physical plant facilities and/or an electrical substation are constructed on the Mockingbird South Site, the location thereof and the construction of other improvements on the Mockingbird South Site shall be constructed so that said physical plant facilities and/or an electrical substation are not visible from Mockingbird Lane. Notwithstanding the foregoing, any and all improvements to be located on the Mockingbird South Site (as depicted as Zones 3 and 5 on Exhibit A hereto) shall, subject to the provisions of Subsections 4(a) and (b) of this Agreement regarding chimney density and elevator/stairwell elevations, respectively, not exceed the Absolute Height Limits set forth in Exhibit A for such zone.

8. East Campus Site. Any improvements constructed on SMU property located east of North Central Expressway south of Dyer Street and north of Twin Sixties Drive, identified as Tract 8 on Exhibit B hereto, (the "East Campus Site") shall not exceed the height of the currently existing Expressway Tower.

9. Sky Bridge. If SMU proposes in the future the construction of a signature walkway bridge across North Central Expressway from the general area of the DART Station to the existing SMU campus (the "Sky Bridge Site"), such plans and construction shall be subject to the prior written approval of the Foundation, which shall not be unreasonably withheld. Among factors to be considered by the Foundation in determining whether it shall approve such plans and construction will be: security, design and location. In the event that a governmental entity shall build such a bridge on the Sky Bridge Site, the Foundation and SMU agree to work cooperatively with such governmental entity and each other with the goal of achieving appropriate security, design and location.

10. University Gardens Site, Potomac Avenue and Park Site. Whether or not the Land includes any portion of the property identified as Tract 10 on Exhibit B hereto)
the "University Gardens Site"), the Foundation shall have the right to approve any improvements proposed to be made by SMU on any of the University Gardens Site, which approval shall not be unreasonably withheld. Likewise, the Foundation shall have the right to approve any improvements or changes proposed to be made by SMU on those portions of the property situated between the south boundary of the University Gardens Site and the Bank Site and east of Dublin Street, identified as Tract 10a on Exhibit B hereto (the "Potomac Avenue and Park Site"), which approval shall not be unreasonably withheld. Among factors to be considered by the Foundation in determining whether it shall approve such improvements to the University Gardens Site and the Potomac Avenue and Park Site will be: security, design, compatibility and location. The parties hereto acknowledge that SMU intends to utilize a portion of the University Gardens Site for permanent intramural fields, the security, location, design and compatibility to be subject to written approval by the Foundation which approval shall not be unreasonably withheld.

11. Effects of Restrictions. The restrictions set forth in this Agreement shall constitute an encumbrance and servitude on the property covered by this Agreement, shall be an appurtenance to the Land, and shall run with the land.

12. Termination. Subject to the last sentence of this Section 12, this Agreement shall terminate and be of no further force or effect (except with respect to any accrued or unpaid obligations between the parties existing at the date of such termination) upon the termination of the Master Agreement unless the parties have entered into the Ground Lease in which case this Agreement shall terminate on the termination of the Ground Lease. Notwithstanding the foregoing sentence, (i) the height restrictions referred to in Exhibit A for all zones including the East Campus Site and the Binkley Site depicted therein and the use restriction set forth in Section 5 of this Agreement pertaining to the Intramural Field Site shall terminate and be of no further force or effect on December 31, 2058; and (ii) the use restrictions set forth in Section 7 of this Agreement with respect to the Mockingbird South Site shall remain in force and effect until December 31, 2058 and as long thereafter as SMU (or an affiliate of SMU) owns a portion thereof.

13. Enforcement. The Foundation shall have the right to enforce any of the terms of this Agreement by any proceedings at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages or both.

14. Notice. Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:
To SMU: Dr. R. Gerald Turner
President
Southern Methodist University
P.O. Box 750100
Dallas, Texas 75275-0100

With copies to: Mr. S. Leon Bennett
General Counsel
Southern Methodist University
P.O. Box 750100
Dallas, Texas 75275-0100

To the Foundation: Mr. Donald L. Evans
Chair
George W. Bush Presidential Library Foundation
500 W. Texas Avenue, Suite 960
Midland, Texas 79701

With copies to: Mr. Sam P. Burford, Jr.
Thompson & Knight LLP
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

15. Professional Fees. If any party hereto institutes any action or proceeding against the other party with regard to this Agreement, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys’ fees.

16. ENTIRE AGREEMENT. THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREBIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.
17. **Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

18. **Successors and Assigns.** This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

19. **Time.** Time is of the essence of this Agreement.

20. **Gender and Number.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

21. **Validity.** A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision hereof and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

22. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

23. **Rule of Construction Inapplicable.** The parties to this Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Agreement and that this Agreement has not been written solely by counsel for one of the parties. The parties to this Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

24. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

25. **No Third Party Benefit.** Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto and their
respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.

26. **Governing Law; Venue.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter of this Agreement brought by any other party. Each party to this Agreement hereby agrees to venue in Dallas County, Texas.

27. **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any party to this Agreement upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or in equity afforded to the parties to this Agreement shall be cumulative and not alternative.

28. **Titles and Subtitles.** The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

29. **Liability Limitation.** The liability of the parties hereunder shall be limited to the extent provided in that certain Contract Liability Cap Agreement dated February 22, 2008, by and among SMU, SMU Corporation and the Foundation.

*The remainder of this page is intentionally left blank.*
IN WITNESS WHEREOF, this Restrictive Covenant Agreement is executed in multiple originals by SMU and the Foundation as of the date first above written.

SMU:

SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation

By: ____________________________
   Name: _________________________
   Title: _________________________

THE FOUNDATION:

THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION a Texas non-profit corporation

By: ____________________________
   Name: _________________________
   Title: _________________________

THE STATE OF TEXAS  §
COUNTY OF  §

This instrument was acknowledged before me on ________________, 2008, by ____________________________, ____________________________ of SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation, on behalf of said non-profit corporation.

______________________________
Notary Public, State of Texas

______________________________
(Printed name)

My Commission Expires:
THE STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on ______________, 2008, by __________________, ______________________ of THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation, on behalf of said non-profit corporation.

____________________________
Notary Public, State of Texas

____________________________
(Printed name)

My Commission Expires:

____________________________
EXHIBIT C

Survey Requirements

An ALTA/ACSM Land Title Survey meeting the 2005 Minimum Standard Detail Requirements, addressed to Purchaser and the Title Company and including the items marked on Table A attached hereto and made a part hereof.
# TABLE A

## OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

**NOTE:** The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items, e.g., in reference to Item 6, there may be a need for an interpretation of a restriction. The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Items 16, 17, and 18 are only for use on projects for the U.S. Department of Housing and Urban Development (HUD).

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise negotiated:

1. **☑** Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by an existing monument or witness to the corner.

2. **☐** Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersection(s).

3. **☐** Flood zone designation (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent, by scaled map location and graphic plotting only.)

4. **☑** Gross land area (and other areas if specified by the client).

5. **☐** Contours and the datum of the elevations.

6. **☑** List setback, height, and floor space area restrictions disclosed by applicable zoning or building codes (beyond those required under paragraph 5d of these standards). If none, so state. The source of such information must be disclosed. See "Note" above.

7. **☐** (a) Exterior dimensions of all buildings at ground level

   (b) Square footage of:

   - **☐** (1) exterior footprint of all buildings at ground level
   - **☑** (2) gross floor area of all buildings; or
   - **☐** (3) other areas to be defined by the client

   **☑** (c) Measured height of all buildings above grade at a defined location. If no defined location is provided, the point of measurement shall be shown.

8. **☑** Substantial, visible improvements (in addition to buildings) such as billboards, signs, parking structures, swimming pools, etc.

9. **☑** Parking areas and, if striped, the striping and the type (e.g. handicapped, motorcycle, regular, etc.) and number of parking spaces.

10. **☑** Indication of access to a public way on land such as curb cuts and driveways, and to and from waters adjoining the surveyed tract, such as boat slips, launches, piers and docks.

11. **☐** Location of utilities (representative examples of which are shown below) existing on or serving the surveyed property as determined by:

   (a) Observed evidence

   **☑** (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information)

   - railroad tracks and sidings;
   - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
   - wires and cables (including their function, if readily identifiable) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crossmembers or overhangs affecting the surveyed premises; and
   - utility company installations on the surveyed premises.

12. **☐** Governmental Agency survey-related requirements as specified by the client.
13. X Names of adjoining owners of platted lands.

14. X The distance to the nearest intersecting street as designated by the client.

15. X Rectified orthophotography, photogrammetric mapping, laser scanning and other similar products, tools or technologies may be utilized as the basis for the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential accuracy and completeness of the data gathered thereby) with the title company, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, relative accuracy and other relevant qualifications of any such data.

16. Observable evidence of earth moving work, building construction or building additions within recent months.

17. Any changes in street right of way lines either completed or proposed, and available from the controlling jurisdiction. Observable evidence of recent street or sidewalk construction or repairs.

18. Observable evidence of site use as a solid waste dump, sump or sanitary landfill.
GROUND LEASE AGREEMENT

by and between

[SMU CORPORATION, A TO BE FORMED ENTITY]

and

THE GEORGE W. BUSH
PRESIDENTIAL LIBRARY FOUNDATION

____________________, 20___
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GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT ("Lease") made this ______ day of ____________, 20__ by and between [SMU CORPORATION, A TO BE FORMED ENTITY], a Texas non-profit corporation ("SMU"), and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas nonprofit corporation (the "Foundation").

RECITALS

A. Southern Methodist University, a Texas non-profit corporation (the "University") and the Foundation have entered into that certain Master Agreement dated as of February 22, 2008 (the "Master Agreement") regarding the location, construction and operation of the Library Center Facilities (as hereinafter defined) at the University.

B. The University organized and controls SMU for the purpose of effecting this Lease.

C. This Lease is being entered into pursuant to the terms of the Master Agreement.

D. The inducement for SMU to enter into this Lease is (i) the commitment of the Foundation to locate and construct and to maintain and operate continuously the Library Center Facilities at the University in accordance with the terms and conditions set forth in this Lease; and (ii) the national and international visibility that will come to the University by reason of locating the Library (as hereinafter defined), the Museum (as hereinafter defined) and the Institute (as hereinafter defined) at the University.

E. The inducement for the Foundation to enter into this Lease is (i) the University's excellent academic reputation; (ii) the University's presence in Dallas; (iii) the strong support of the University's leaders, alumni and friends for the Library Center Facilities being located at the University; and (iv) the University's willingness (through SMU) to lease prime land at nominal rent to the Foundation on which it can locate, construct and operate the Library Center Facilities in accordance with the terms and conditions set forth below.

NOW THEREFORE, for and in consideration of the above premises and the mutual covenants and agreements set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby confirmed and acknowledged by each of the parties hereto, and each of the parties intending to be bound thereby, the undersigned SMU and the Foundation do hereby agree as follows:

AGREEMENT:

ARTICLE I
DEFINITIONS

Section 1.1 Terms Defined. As used in this Lease, the following terms shall have the meanings set forth below:
"Affiliate." A person that directly or indirectly controls, or is controlled by, or is under common control, with the person specified.

"Alterations." Any alterations, additions or improvements to the Improvements.

"Ancillary Agreements." Collectively, that certain Fund Raising Agreement (as defined in the Master Agreement), Indemnification Agreement (as defined in the Master Agreement), Governance and Academic Cooperation Agreement (as defined in the Master Agreement, Restrictive Covenant Agreement and Guaranty Agreement (as defined in the Master Agreement), each by and between the University and the Foundation, and the Environmental Agreement and the Contract Liability Cap Agreement by and among the University, SMU and the Foundation.

"Award." All compensation, damages or interest paid or awarded for a Taking whether pursuant to a judgment, an agreement or otherwise.

"Bankruptcy Code." Title 11 of the United States Code, as amended.

"Chief Judge." The meaning assigned to such term in Section 15.1 of this Lease.

"Commencement Date." The date this Lease is fully executed by the Foundation and SMU.

"Contract Liability Cap Agreement." The meaning assigned to such term in Section 19.1 of this Lease.

"County." Dallas County, Texas.

"Dispute." The meaning assigned to such term in Section 16.8 of this Lease.

"Environmental Agreement." The meaning assigned such term in Section 9.1 of this Lease.

"Environmental Conditions." The meaning assigned to such term in Section 9.1 of this Lease.

"Equipment Financing." The meaning assigned to such term in Subsection 20.14(c) of this Lease.

"Equipment Lessor." The meaning assigned to such term in Subsection 20.14(c) of this Lease.

"Event of Default." The meaning assigned to such term in Section 16.1 of this Lease.

"Fee Mortgage." The meaning assigned to such term in Section 11.3 of this Lease.

"Final Plans." The meaning assigned to such term in Subsection 6.3(d) of this Lease.

"Force Majeure." An act of god, fire, earthquake, floods, explosion, adverse weather, war, terrorism, invasion, insurrection, riot, mob violence, sabotage, inability to procure or
general shortage of labor, equipment, facilities, materials, supplies, products or services in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, change in laws, decisions or orders of governmental or civil or military or naval authorities, including NARA, or any other cause, whether similar or dissimilar to the foregoing, beyond the control of the applicable party.

"Foundation." The meaning assigned to such term in the opening paragraph of this Lease, including the Foundation's successors and permitted assigns.

"Foundation's Personal Property." The meaning assigned to such term in Subsection 20.15(b) of this Lease.

"Hazardous Materials." The meaning assigned to such term in Section 9.1 of this Lease.

"Impositions." All real property and personal property taxes (whether designated as ad valorem taxes or in some other manner and however calculated) and other taxes, assessments (general and special), impositions and other governmental charges, general and special, ordinary and extraordinary, of any kind or nature, which are assessed against or otherwise attributable to real or personal property.

"Imposition Default." The meaning assigned to such term in Subsection 16.2(b)(v) of this Lease.

"Improvements." All buildings, structures, equipment, fixtures and other improvements, now existing or hereafter from time to time constructed, installed or located on the Land including all Library Center Facilities.

"Initial Term." That period of time commencing on the Commencement Date and ending at 11:59 p.m., Dallas, Texas time on the last day of the year following the 99th annual anniversary date of the Commencement Date.

"Institute." The George W. Bush Institute for scholarship and research associated with the Foundation.

"Insurance Default." The meaning assigned to such term in Subsection 16.2(b)(vi) of this Lease.

"Land." That certain tract or parcel of land lying and being situated in the County and State, as described by metes and bounds on Exhibit "A" attached hereto.

"Laws." All present and future laws (including, without limitation, laws relating to Hazardous Materials or environmental, health, safety, industrial hygiene, pollution, or related matters), ordinances, statutes, codes, requirements, orders, directions, rules and regulations of all federal, state, county and municipal governments and of all other governmental authorities having or claiming jurisdiction over the University, SMU, the Foundation, the Leased Property, the Improvements or any appurtenances thereto or any part thereof, and of all the respective departments, bureaus and officials of any such authorities, common law and strict liability
provisions, and any judicial or administrative interpretations thereof, including any governmental, judicial or administrative judgments, orders or directives.

"Leased Property." The meaning assigned to such term in Section 2.1 of this Lease.

"Library." The George W. Bush Presidential Library that will contain the presidential records and artifacts of President George W. Bush and his administration under the custody and management of NARA.

"Library Expert." The meaning assigned to such term in Section 15.1 of this Lease.

"Library Center Facilities." Collectively, the facilities housing the Library, the Museum, the Institute and the Offices and ancillary facilities (such as parking and gardens).

"Liens." Consensual liens (such as deeds of trust and mortgage liens) and judgment liens. This term does not include Mechanic's Liens or liens resulting from Impositions.

"Master Agreement." The meaning assigned to such term in the Recitals.

"Mechanic's Liens." The meaning assigned to such term in Section 6.4 of this Lease.

"Memorandum of Lease." The meaning assigned to such term in Section 20.12 of this Lease.

"Museum." That certain museum related to the Library.

"NARA." National Archives and Records Administration of the United States.

"NARA Agreement." The meaning assigned to such term in Subsection 12.1(b) of this Lease.

"Non-Renewal Notice." The meaning assigned such term in Section 2.3 of this Lease.

"Offices." The executive and administrative offices of the Foundation.

"Partial Taking." The meaning assigned to such term in Subsection 15.2(a) of this Lease.

"Permits." All licenses and permits required for the Foundation's intended use upon the Leased Property.

"Permitted Encumbrances." The meaning assigned to such term in Article V of this Lease.

"Projected Total Construction Costs." The meaning assigned to such term in Section 6.3(d) of this Lease.

"Remediation." The meaning assigned to such term in Section 9.1 of this Lease.

"Renewal Option." The meaning assigned to such term in Section 2.3 of this Lease.
"Renewal Term." The meaning assigned to such term in Section 2.3 of this Lease.

"Rent." The meaning assigned to such term in Article III of this Lease.

"Restrictive Covenant Agreement." The Restrictive Covenant Agreement executed contemporaneously with this Lease by the University and the Foundation.

"ROFO Notice." The meaning assigned to such term in Section 17.3 of this Lease.

"SMU." The meaning assigned to such term in the opening paragraph of this Lease including SMU’s successors and permitted assigns.

"Soft Costs." All architectural, engineering, consulting and other soft costs attributable to the construction of the Library Center Facilities.

"State." State of Texas.

"Subject Property." The meaning assigned to such term in Section 17.3 of this Lease.

"Taking." The taking of all or a portion of the Leased Property or the Improvements for any public or quasi-public use, by eminent domain proceedings, by a governmental authority or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of all or a portion of the Leased Property or the Improvements in lieu thereof.

"Term." The meaning assigned to such term in Section 2.2 of this Lease.

"Total Construction Costs." All costs and expenses incurred in the construction of the Library Center Facilities, which shall not include (a) any costs or expenses for which the University is responsible prior to commencement of construction and (b) any Soft Costs.

"University." The meaning assigned to such term in the Recitals including the University’s successors and permitted assigns.

ARTICLE II

DEMISE AND TERM

Section 2.1 Demise. SMU, in consideration of the Rent and the covenants and agreements to be performed by the Foundation, as hereinafter set forth, does hereby LEASE, DEMISE and LET unto the Foundation and the Foundation LEASES and TAKES from SMU the Land, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said Land (all of such property interests being hereinafter called the "Leased Property"), for the Term. The Leased Property is leased by SMU to the Foundation and is accepted and is to be used and possessed by the Foundation upon and subject to the terms, provisions, covenants, agreements and conditions of this Lease.

Section 2.2 Term. The term ("Term") of this Lease shall commence on the Commencement Date and shall expire at 11:59 P.M. (Dallas, Texas time) on the later of: (a) the last day of the Initial Term; or (b) the last day of the final Renewal Term, if any, unless this
Lease is earlier terminated pursuant to the provisions of this Lease in which case the Term shall end on the date of such termination.

Section 2.3 Renewal Terms. The Foundation, at its option, subject to the terms and conditions hereof, may exercise six separate renewal options (individually, a "Renewal Option"), each of which, when exercised, shall extend the then current term for an additional period of 25 years (each such extension being a "Renewal Term"). Each Renewal Term shall be upon the same terms and conditions hereof as the Initial Term. Each Renewal Option shall be deemed exercised upon the expiration of the Initial Term or the immediately preceding Renewal Term, as the case may be, unless the Foundation shall, between the 120th day and the 180th day prior to the expiration of the Initial Term or the Renewal Term then in effect, as the case may be, give SMU written notice ("Non-Renewal Notice") of the Foundation's election not to extend the then current term for the next applicable Renewal Term. Unless the Foundation timely provides a Non-Renewal Notice to SMU with respect to any Renewal Option, the then current Term shall be extended for an additional period of 25 years pursuant to each Renewal Option. If the Foundation timely gives a Non-Renewal Notice, the then next applicable Renewal Option (and all subsequent Renewal Options) shall be deemed cancelled and the Term shall expire at the end of the Initial Term or the Renewal Term then in effect, as the case may be. All references in this Lease to the Term hereof shall mean the Term as it is renewed. If all six Renewal Options are exercised, the final Renewal Term shall end at 11:59 p.m. on the last day of the 249th year from and after the Commencement Date. Prior to the expiration of the final Renewal Term, SMU and the Foundation contemplate that they will enter into negotiations to extend the Term.

ARTICLE III
RENT

The rent (herein called "Rent") for this Lease is One Thousand and 00/100 Dollars ($1,000.00) payable by the Foundation on the Commencement Date, the receipt and sufficiency of which are hereby acknowledged by SMU.

ARTICLE IV
CONSTRUCTION; OPERATION

The Foundation shall construct the Library Center Facilities on the Leased Property and shall continuously operate such Library Center Facilities, except for those temporary periods of closure of all or part of the Library Center Facilities due to casualty damage or destruction, a Taking, repair, restoration or a Force Majeure event.

ARTICLE V
TITLE

At the date of this Lease, SMU represents and warrants that (a) it has good and indefeasible title to the fee simple estate in the Leased Property and that the Leased Property is free from encumbrances except as set forth in the owner's title insurance policy issued to the Foundation as provided in the Master Agreement, (b) SMU has full right, power and authority to make this Lease, (c) the person executing this Lease on behalf of SMU has the authority to do so, (d) this Lease constitutes the legal, valid and binding obligation of SMU enforceable in
accordance with its terms, subject to laws applicable generally to creditor's rights and applicable principles of equity, and (e) performance of this Lease does not result in any breach of, or constitute any default under, any agreement or other instrument to which SMU is a party, or by which SMU is bound. SMU agrees that, if SMU’s authority to enter into this Lease is challenged, SMU will defend the validity and enforceability of this Lease.

ARTICLE VI
USE AND CONDITION OF THE LEASED PROPERTY

Section 6.1 Permitted Use. The Foundation shall at all times during the Term use the Leased Property solely for the purposes of (a) constructing the Library Center Facilities thereon; and (b) operating the Library Center Facilities.

Section 6.2 Prohibited Use. The Foundation shall not use or occupy the Leased Property or the Improvements, and shall not permit the Leased Property or the Improvements to be used, for any purpose or in any manner which (a) would be in violation of any Laws that are applicable to the Leased Property or the Improvements; (b) would render void any insurance policy affecting the Leased Property or the Improvements (whether such policy is held by SMU or the Foundation) or (c) would violate any covenants, conditions or restrictions of record affecting the Leased Property or the Improvements. The Foundation shall have the right to contest the validity or enforceability of any Law that adversely affects the interests of the Foundation as related to the Leased Property or the Improvements, provided that, if the outcome sought by the Foundation in any such contest would be adverse to SMU’s interests, SMU shall be entitled to independently participate in the proceedings relating to such contest in any manner SMU deems appropriate.

Section 6.3 Construction of and Title to Improvements.

(a) The Foundation shall, at its sole cost and expense, design, construct and finance construction of all Improvements in conformance with all Laws (including the regulations of NARA) and in accordance with sound building and engineering practices and substantially in conformity with the Final Plans. The Foundation shall be solely responsible for the safety and structural soundness of all Improvements.

(b) The Foundation shall have exclusive control over the construction of the Library Center Facilities including the selection, termination and replacement of all architects, contractors, engineers and consultants involved in such construction.

(c) SMU and the University shall not be liable or otherwise responsible in any manner (i) for any of the Total Construction Costs any of the Soft Costs, or, except as required pursuant to Subparagraph 6(b) of the Master Agreement, for any other costs, expenses, obligations, taxes, fees, penalties, Permits or liabilities arising out of the planning, design, construction, furnishing or operation of the Library Center Facilities, (ii) for any costs arising out of the financing of the Total Construction Costs or Soft Costs; or (iii) except as SMU or the University expressly agrees in any other agreement, for any other costs arising out of any other activities or operations of the Foundation, the Museum, the Offices or the Institute.
(d) On or before the 30th day prior to commencement of construction of the Library Center Facilities, the Foundation shall deliver to SMU (i) the final architectural and engineering plans for the Library Center Facilities (the "Final Plans"), and a copy of the Final Plans, as such plans may thereafter be amended, shall also be delivered by the Foundation to SMU upon completion of construction of the Library Center Facilities; (ii) a written budget, prepared by the Foundation, showing the projected Total Construction Costs ("Projected Total Construction Costs") based on the Final Plans and (iii) evidence of the insurance called for by Article XIII of this Lease.

(e) With respect to each one of the Library Center Facilities, the Foundation shall not commence construction of such facility until after the Foundation shall have received funds and/or legally binding gift pledge commitments in writing that in the aggregate equal 80% or more of the Projected Total Construction Costs of such facility. If the Foundation does not initially commence the construction of the entire Library Center Facilities, the Foundation shall first commence the construction of the Library and the Museum.

(f) The Foundation shall contractually obligate all architects, engineers, contractors and other consultants employed or engaged by the Foundation to indemnify SMU and the University against all claims and liabilities arising out of the conduct of such architects, engineers, contractors and consultants with respect to the design, construction and completion of the Library Center Facilities, to the extent available under applicable Laws, and shall, at its expense, obtain and keep in full force and effect appropriate insurance for the benefit of SMU and the University to insure them against any and all claims and liabilities arising out of the design, construction and completion of the Library Center Facilities all in accordance with Article XIII of this Lease.

(g) Any and all Improvements placed or constructed by the Foundation on the Leased Property shall be the property of the Foundation in all respects, and SMU and the University shall have no interest therein whatsoever during the Term of this Lease. After the expiration of the Term or earlier termination of this Lease, title to such Improvements shall vest in SMU as provided in Section 18.1 of this Lease.

(h) The Foundation shall have the right, power and privilege to execute and deliver such easements, rights of way and plat dedications affecting the Leased Property as may be required by (i) governmental authorities (including municipalities) having jurisdiction over the Leased Property and (ii) public or private utilities, in connection with any intended development of the Leased Property by the Foundation, and SMU and the University, where required by the governmental authority or public or private utility, and at the Foundation's expense, shall join in the execution and delivery of all such easements, rights of way and plat dedications.

Section 6.4 Mechanic's Liens.

(a) SMU and the University shall not be liable for any labor or materials furnished or to be furnished to the Foundation upon credit, and no mechanic's or other lien for any such labor or materials ("Mechanic's Liens") shall attach to or affect the fee
interest, or the reversion or other estate or interest of SMU or the University in and to, the Leased Property or the Improvements. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of SMU or the University, express or implied, by inference or otherwise, to any person for the performance of any labor or the furnishing of any materials to the Leased Property or the Improvements, that would give rise to any Mechanic's Lien against the fee interest, or reversion or other estate or interest of SMU or the University in and to the Land, the Leased Property or the Improvements.

(b) The Memorandum of Lease to be placed of record pursuant to Section 20.12 of this Lease shall state that any third party entering into a contract with the Foundation for Improvements to be located on the Leased Property, or any other party claiming under said third party, shall be on notice that it can in no way hold SMU or the University liable for satisfaction of any claims of any nature arising in any way out of a contract or other arrangement with the Foundation.

Section 6.5 Condition of the Leased Property. THE FOUNDATION ACKNOWLEDGES THAT, OTHER THAN THE REPRESENTATIONS, WARRANTIES AND COVENANTS CONTAINED IN THE MASTER AGREEMENT, OR CONTAINED IN THIS LEASE OR IN THE ANCILLARY AGREEMENTS OR IN ANY OTHER AGREEMENT RELATING TO THE LEASED PROPERTY, (A) THE FOUNDATION HAS INSPECTED AND ACCEPTS THE LEASED PROPERTY IN ITS PRESENT CONDITION AS SUITABLE FOR THE PROPOSED USE; (B) NO REPRESENTATIONS, WARRANTIES OR COVENANTS HAVE BEEN MADE BY SMU OR THE UNIVERSITY AS TO THE CONDITION OF THE LEASED PROPERTY INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (C) THE FOUNDATION IS LEASING THE LEASED PROPERTY "AS-IS, WITH ALL FAULTS" AND MAKES NO REQUIREMENTS OF SMU OR THE UNIVERSITY CONCERNING THE CONDITION OF THE LEASED PROPERTY AND (D) SMU AND THE UNIVERSITY HAVE MADE NO PROMISES OR COVENANTS TO IMPROVE THE LEASED PROPERTY IN ANY MANNER. THE PROVISIONS OF THIS SECTION 6.5 SHALL SURVIVE THE TERMINATION OF THIS LEASE UNDER SECTION 16.2 OF THIS LEASE.

ARTICLE VII
MAINTENANCE, REPAIRS AND ALTERATIONS

Section 7.1 Maintenance, Repairs and Alterations.

(a) The Foundation shall at all times during the Term, at its sole cost and expense, keep the Leased Property and the Improvements (interior and exterior including all sidewalks, lawns and landscape areas, parking lots and other public access areas located on the Leased Property) in good condition and repair meeting the standards of other buildings and landscaped areas on the campus of the University.

(b) SMU and the University shall not be obligated to maintain or make any repairs to the Leased Property or the Improvements during the Term. The Foundation
shall have full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Leased Property and the Improvements during the Term.

(c) The Foundation, at its sole cost and expense, shall have the right to make Alterations to the Improvements in any and all respects provided that the requirements of Subsections 6.3(a), (b), (d), and (f) of this Lease are satisfied. The Foundation shall not have the right to demolish any Improvements except in connection with any Alterations or as provided in Article XIV or Article XV of this Lease.

ARTICLE VIII
SMU ASSISTANCE WITH ZONING AND PERMITS

If the Foundation deems it necessary or appropriate to obtain use, zoning, site plan approval or any Permit from any governmental entity having jurisdiction over the Leased Property or the Improvements or any part thereof, SMU, from time to time on the reasonable request of the Foundation, and to the extent necessary as the owner of the fee interest in the Land, shall execute such documents or join in such petitions, applications and authorizations as may be appropriate (except where SMU or the University reasonably determines that such execution or joinder is adverse to the interests of SMU or the University); provided that, the Foundation shall promptly reimburse SMU and the University for all reasonable costs and expenses incurred by SMU and the University in connection with such activities.

ARTICLE IX
ENVIRONMENTAL

Section 9.1 Certain Environmental Definitions.

(a) "Environmental Agreement." The Environmental Agreement between the parties attached to the Master Agreement as Exhibit K.

(b) "Environmental Conditions." Conditions at, on, under, from, or affecting the Leased Property that relate to or arise out of, in any manner, the release or threatened release, discharge, use, ownership, possession, control, generation, treatment, storage, disposal, handling, transportation, migration, existence, or presence of Hazardous Materials or other activities that impact or otherwise involve Hazardous Materials (including, without limitation, the later migration or degradation of such Hazardous Materials, whether or not known at any point in time) which conditions are reasonably expected to require Remediation under any Law.

(c) "Hazardous Materials." As defined in the Master Agreement.

(d) "Remediation." Without limitation, investigation, characterization, testing, sampling, monitoring, corrective actions, removal actions, response actions, remedial actions, transportation, or disposal of Hazardous Materials, restoration, cleanup, and similar activities.
Section 9.2  Hazardous Materials.

(a) The Foundation shall not, following the Commencement Date, permit any Hazardous Materials at or on the Leased Property, except those that are used, stored or otherwise maintained on the Leased Property for cleaning, along with other supplies ordinarily used in the operation of the Foundation's business which might be considered Hazardous Materials, so long as the Foundation's use, storage, and maintenance of such Hazardous Materials is in compliance with all Laws and manufacturer's recommended standards and procedures, and such Hazardous Materials are present only in such quantities as are reasonably required by the Foundation for operations conducted on the Leased Property. The Foundation shall not dispose of Hazardous Materials in, on, or about the Leased Property.

(b) The Foundation shall be solely responsible for any Hazardous Materials used, stored, or otherwise introduced by it (including, without limitation, Hazardous Materials that are released or disposed of at the Leased Property contrary to the provisions of this Lease) at, on, under or emanating from, the Leased Property following the Commencement Date.

(c) The Foundation shall, at its sole cost and expense, diligently undertake, and pursue until completion, all necessary Remediation with respect to Environmental Conditions that it or its agents, vendors or Affiliates caused. The Foundation shall obtain from the appropriate regulatory authorities written confirmation that all necessary Remediation for which the Foundation has responsibility has been completed to attain cleanup standards protective of human health and the environment and appropriate for the current and anticipated use of the Leased Property and surrounding properties, as the case may be.

(d) Nothing in this Section 9.2 shall impair the obligations of SMU with respect to the representations contained in Subparagraph 2(e) of the Master Agreement.

Section 9.3  Environmental Notices by the Foundation. The Foundation shall give prompt written notice to SMU of:

(a) any threatened or pending proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Materials at, under or emanating from the Leased Property or related to any loss or injury alleged to result from any Hazardous Materials;

(b) all claims made or threatened by any third party against the Foundation, or the Leased Property, relating to any loss or injury alleged to result from any Hazardous Materials or Environmental Condition; and

(c) discovery of any Environmental Condition at, on, under or emanating from, the Leased Property (including, without limitation, any condition that could cause the Leased Property to be subject to any restriction on occupancy or use under any Law).
Section 9.4  Environmental Notices by SMU. SMU shall give prompt written notice to the Foundation of:

(a) any threatened or pending proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Materials at, under or emanating from the Leased Property or related to any loss or injury alleged to result from any Hazardous Materials;

(b) all claims made or threatened by any third party against SMU or the University, or the Leased Property, relating to any loss or injury alleged to result from any Hazardous Materials or Environmental Condition; and

(c) discovery of any Environmental Condition at, on, under or emanating from, the Leased Property (including, without limitation, any condition that could cause the Leased Property to be subject to any restriction on occupancy or use under any Law).

ARTICLE X
PROPERTY TAXES, IMPOSITIONS AND UTILITIES

Section 10.1  Payment of Taxes.

(a) The Foundation shall pay all Impositions levied on or against the fee interest in the Land and any interest in the Leased Property and/or the Improvements (whether assessed against the Foundation, SMU or the University), before the same become delinquent, which during the Term may be assessed, levied, imposed upon, or arise from, or become due and payable out of or in respect of, or become a lien on, the fee interest in the Land and any interest in the Leased Property or the Improvements, or any part thereof or any appurtenance thereto. If the Leased Property or the Improvements, or such appurtenances are not separately assessed from the fee interest in the Land or SMU's or the University's other property for tax purposes, the Foundation shall pay that portion of such Impositions that are levied on or against any interest in the Leased Property and the Improvements and their respective appurtenances. All such Impositions that are levied on or against the fee interest in the Land and any interest in the Leased Property and its appurtenances during the first and last year of the Term shall be prorated between SMU and the Foundation based on the actual number of days of the Term that occur within each such respective year (but SMU shall bear no part of any Impositions assessed during each such year of the Term on the Improvements). The Foundation shall furnish to SMU, at least 15 days prior to the delinquency date thereof, official receipts or copies thereof of the appropriate authority evidencing the Foundation's payment of all such Impositions in accordance with the terms of this Lease. If the Foundation fails to timely pay any such Impositions, SMU may, in its sole discretion, pay such Impositions, and the Foundation shall, upon demand by SMU, reimburse such amount to SMU, together with any interest, penalties or late fees accrued.

(b) Nothing contained in this Lease shall require the Foundation to pay any Imposition or other tax not levied on or against the fee interest in the Land and/or any interest in the Leased Property or the Improvements or their respective appurtenances.
(c) The Foundation may contest the amount or validity of any Imposition which the Foundation is obligated to pay under this Section 10.1 by appropriate legal proceedings, diligently pursued, provided that: (i) the Foundation first makes all such contested payments (which may be made by the Foundation under protest if the Foundation so desires), (ii) neither the fee interest in the Land, the Leased Property nor the Improvements or any part thereof nor any interest therein is placed in any danger of being immediately sold, forfeited, lost or interfered with by virtue of such contest and (iii) all expenses (including without limitation any fees, penalties or interest) which are assessed or incurred in connection with or as a result of any such proceedings are paid by the Foundation when due. Upon the termination of such proceeding, the Foundation shall deliver to SMU proof of the amount of the Imposition as finally determined and of payment thereof. SMU, at the Foundation's sole expense, shall join in any such proceeding if any Law shall so require. Any proceeding for contesting the validity or amount of any Imposition, or to recover any Imposition paid by the Foundation, may be brought by the Foundation in the name of SMU or the Foundation or both, as required by applicable Law.

(d) The Foundation shall be liable for Impositions levied or assessed against personal property, furniture or fixtures placed or situated on the Leased Property by the Foundation during the Term. If any such Impositions for which the Foundation is liable under this Subsection 10.1(d) are levied or assessed against SMU or if the assessed value of SMU's property is increased by the inclusion of said personal property, furniture or fixtures, the Foundation shall pay such Impositions or the Impositions resulting from such increased assessed value.

(e) If any Imposition is imposed against the fee interest in the Land (i) after SMU sells, assigns, transfers (including transfer by a trustee under a deed of trust), leases or otherwise alienates such fee interest or any part thereof and/or (ii) after the University transfers its membership interest in SMU or any part thereof, and if such Imposition would not have been so imposed (x) had SMU still owned such fee interest at the date of such assessment and/or (y) had the University still owned all of such membership interests in SMU at the date of such assessment, the Foundation shall have no obligation to pay such Imposition and SMU shall pay, or cause to be paid, such Imposition prior to delinquency. SMU shall be entitled to protest any such Imposition so long as the payment of such Imposition is made prior to delinquency.

(f) If any Imposition is imposed against the Foundation's leasehold interest in the Land and/or in the Foundation's interest in the Improvements (i) after SMU sells, assigns, transfers (including transfer by a trustee under deed of trust), leases or otherwise alienates the fee interest in the Land or any part thereof and/or (ii) after the University transfers its membership interest in SMU or any part thereof, and if such Imposition would not have been so imposed (x) had SMU still owned such fee interest at the date of such assessment and/or (y) had the University still owned all of such membership interests in SMU at the date of such assessment, the Foundation shall have no obligation to pay such Imposition and SMU shall pay, or cause to be paid, such Imposition prior to delinquency. SMU shall be entitled to protest any such Imposition so long as the payment of such Imposition is made prior to delinquency.
(g) During the Term, SMU shall reasonably cooperate with the Foundation with respect to the Foundation’s efforts to (i) obtain and maintain exemptions from Impositions on the Leased Property and (ii) minimize the effect of such Impositions, if any; provided, however, SMU shall not be obligated to so cooperate if SMU determines in its good faith judgment that such efforts by the Foundation or SMU’s cooperation in such efforts would be adverse to the interests of SMU.

(h) During the Term, the Foundation shall reasonably cooperate with SMU and the University with respect to efforts by SMU and/or the University to (i) obtain and maintain exemptions from Impositions on the fee interest in the Land (and if the events described in Subsections 10.1(f)(i) or (ii) of this Lease occur, or are about to occur, on the Foundation's leasehold interest in the Land and/or on the Foundation's interest in the Improvements) and (ii) minimize the effect of such Impositions, if any; provided, however, the Foundation shall not be obligated to so cooperate if the Foundation determines in its good faith judgment that such efforts by SMU and/or the University or the Foundation's cooperation in such efforts would be adverse to the interests of the Foundation.

Section 10.2 Utilities. SMU and the University shall not be required to furnish to the Foundation, the Leased Property or to the Improvements, any facilities or services of any kind, including without limitation, water, gas, heat, light, electricity, telephone, sewer, sprinkler, trash removal and cable services and any maintenance charges for such utilities. SMU and the University shall not be liable in any respect (including for damages to either person or property) in the event of any failure in the provision of any such utilities or utility services or in the event of any cessation thereof. In no event shall any such failure or cessation be construed as an eviction of the Foundation or relieve the Foundation from fulfillment of any covenant in this Lease. Notwithstanding the foregoing, SMU shall provide reasonable access for any of the foregoing utilities and services across property owned by SMU where required in order to furnish such utility or service to the Leased Property.

Section 10.3 Services. SMU and the University shall not be obligated to provide any services to either the Foundation, the Leased Property or the Improvements, including, without limitation, security, janitorial, landscaping, trash removal, or other facility services.

ARTICLE XI
LIENS

Section 11.1 Lien Prohibition – The Foundation. The Foundation shall not place, or permit to be placed, any Lien upon SMU’s fee interest in the Land or the Foundation's leasehold interest in the Land or the Foundation's interest in the Improvements or any part thereof. Notwithstanding the foregoing, the Foundation shall have the right to enter into an assignment or pledge of income accruing to the Foundation, derived from activities permitted to be conducted by the Foundation under the terms of this Lease, to secure a loan or other credit arrangements.

Section 11.2 Mechanic's Lien Prohibition – SMU. SMU shall not allow or permit a Mechanic's Lien to attach to the fee interest in the Land and/or any interest in the Leased Property as a result of any action or non-action by SMU and, if any such Mechanic's Lien does
so attach, SMU will promptly pay the amount secured by the lien unless contested by SMU, in which event SMU will pay such amount secured by the Mechanic's Lien no later than the date a court of competent jurisdiction issues a final non-appealable order that the applicable estate be sold to satisfy such lien.

Section 11.3 SMU Fee Mortgage. This Lease and the Foundation's leasehold interest hereunder shall be prior and superior to all deeds of trust or mortgages or other documents of any kind, entered into by SMU, creating a Lien on the fee interest in the Land owned by SMU (hereafter called a "Fee Mortgage") and the rights of any holder thereof. Any inconsistency between any Fee Mortgage and this Lease shall be resolved in favor of this Lease.

ARTICLE XII
ASSIGNMENT, USE AGREEMENT

Section 12.1 Assignment, Operating Agreement.

(a) The Foundation shall not assign this Lease, in whole or in part, sublease the Leased Property or any part thereof or any interest therein, lease the Improvements or any portion thereof, sell the Improvements or any portion thereof, place a Lien on all or any portion of the Leased Property, the Foundation's leasehold interest hereunder or the Improvements, without the prior written approval of SMU.

(b) The Foundation may enter into an operating or use agreement with NARA (the "NARA Agreement"), subject to SMU's prior written approval which shall not be unreasonably withheld, and SMU and the University shall join therein as reasonably necessary.

ARTICLE XIII
INSURANCE

Section 13.1 Property Insurance.

(a) At all times during the Term, the Foundation shall maintain, at its sole cost and expense, a policy or policies of causes of loss - special form (formerly, "all risks") property insurance (or comparable coverage by whatever name denominated) on all Improvements in an amount equal to not less than 100% of the replacement costs of the Improvements against loss or damage by fire or other casualties. Such policy or policies shall be endorsed to provide that the Foundation's insurance is primary in the event of any overlapping coverage with the insurance carried by SMU and the University (with any policies of SMU and the University being excess, secondary and non-contributing).

(b) During the construction of any Improvements, the insurance required by Subsection 13.1(a) of this Lease shall be in the form commonly known as "Builder's Risk" on an "all risk" basis including without limitation coverage against fire, lightning, wind damage, hail and collapse. The policy shall be obtained and maintained by the Foundation or its general contractor in a form and amount not less than 100% of the replacement costs of the Improvements. Coverage shall include all materials, supplies
and equipment that are intended for specific installation in or on the Improvements while such materials, supplies and equipment are located in or on the Leased Property, in transit, or while temporarily located away from the Leased Property for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

(c) At all times during the Term, the Foundation shall maintain, at its sole cost and expense, a policy or policies of causes of loss - special form (formerly, "all risks") insurance (or comparable coverage by whatever name denominated) on all personal property (including removable trade fixtures, supplies and movable furniture and equipment) located on the Leased Property or the Improvements, against loss or damage by fire or other casualties, in an amount equal to not less than 100% of the replacement costs of such personal property and endorsed to provide that the Foundation's insurance is primary in the event of any overlapping coverage with the insurance carried by SMU and the University (with any policies of SMU and the University being excess, secondary and non-contributing).

Section 13.2 Liability Insurance. At all times during the Term, the Foundation, at its sole cost and expense, shall maintain a policy or policies of the broadest available form of commercial general public liability insurance (utilizing the then ISO form or an equivalent form) covering the Leased Property or the Improvements and the Foundation's use thereof against claims for personal or bodily injury or death or property damage (including contractual indemnity and liability coverage) occurring upon, in or about the Leased Property or the Improvements, with the premiums thereon fully paid on or before the due date, and such policies shall provide minimum limits of not less than $10 million combined single limit primary coverage per occurrence of bodily injury, property damage, or combination thereof, provided that, the minimum limits of such commercial general public liability insurance shall increase each year by a percentage equal to the percentage increase in the amount of Primary and Umbrella commercial general public liability insurance carried by the University during the past year, which amount was $26 million on the date of this Lease. The Foundation shall cause such insurance policies to (a) contain an endorsement that the Foundation's insurance is primary and non-contributory for claims arising out of an incident or event occurring within the Leased Property or the Improvements (with any policies of SMU and the University being excess, secondary and non-contributing); and (b) contain a provision naming SMU and the University as an additional insured and include coverage for the contractual liability of the Foundation to indemnify SMU and the University pursuant to the terms of this Lease.

Section 13.3 Workers' Compensation Insurance. At all times during the Term, the Foundation, at its sole cost and expense, shall maintain a policy or policies of workers' compensation insurance in an amount not less than that necessary to satisfy all statutory limits and other requirements of law concerning such workers' compensation coverage for the Foundation's use and operations within the Leased Property or the Improvements. Such policy shall contain a waiver of subrogation endorsement reasonably acceptable to SMU.

Section 13.4 Certificates; Renewals. The Foundation shall furnish SMU with binders or evidences of all insurance required by this Article XIII to be carried by the Foundation, in form reasonably satisfactory to SMU, prior to the commencement of the Term. Whenever requested by SMU, the Foundation shall also reasonably satisfy SMU that such insurance is in
full force and effect and that SMU and the University named thereunder as an additional insured or loss payee. Copies of all renewals of all insurance policies maintained pursuant to this Article XIII shall be delivered to SMU at least 15 days prior to the expiration dates of such policies.

Section 13.5 Insurance Requirements. The Foundation shall cause all insurance as required by this Article XIII to be procured from companies licensed to do business in the State having an A.M. Best Rating of "A-VII" or better (or an equivalent rating if Best's ratings are substantially revised or discontinued) and shall be in form and substance reasonably acceptable to SMU. The deductible for any such coverage shall be determined by the Foundation, subject to the prior written approval by SMU which shall not be unreasonably withheld or delayed. All of such policies for property insurance shall provide for payment of the proceeds thereunder jointly to SMU and the Foundation, which proceeds shall be deposited by SMU and the Foundation into a separate segregated escrow account to be held in trust by an escrow agent approved by SMU and the Foundation (which approval shall not be unreasonably withheld or delayed), and to be disbursed and applied in accordance with Section 14.3 of this Lease. All such policies shall contain a provision that they shall not be cancelled or materially modified (including any reduction in the scope or limits of coverage) without at least 30 days prior written notice to SMU. If it becomes customary for properties in the Dallas area to have insurance with coverages other than, or increased coverages over, any of the insurance requirements described in this Section 13.5 then, within 15 days after SMU's reasonable request therefor, the Foundation shall provide SMU with satisfactory evidence of the Foundation's obtaining and maintaining in place the insurance policy or policies so requested in order to provide such increased or other coverages (and which insurance policy or policies shall otherwise be in accordance with the terms and conditions of this Lease).

Section 13.6 Termination of Lease. If this Lease is terminated, all proceeds of insurance under policies maintained by the Foundation as required by this Article XIII and all claims against insurers shall thereafter be and become the sole and absolute property of SMU, except that the Foundation shall be entitled to all premium refunds, if any, due from insurance companies having policies that cover the Improvements.

Section 13.7 Insurance Requirements for NARA. Notwithstanding anything contained in this Article XIII, the interest of NARA in the Leased Property or the Improvements shall be insured with the coverage required by applicable federal laws.

Section 13.8 Waiver of Subrogation. Notwithstanding any provision to the contrary contained herein, each party hereto hereby waives and releases any and every claim which arises or may arise in its favor and against the other party hereto and/or such party's officers, directors, trustees, employees and agents during the Term or any extension or renewal thereof for any and all loss of, or damage to, any of its property or any injuries to or death of any person (REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS THE RESULT OF OR CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE RELEASED PARTY OR ANY STRICT LIABILITY) which loss or damage is covered by valid insurance policies required under this Lease, to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to
property of the parties hereto. Each party hereto hereby agrees immediately to give to each insurance company which has issued to it policies of property insurance written notice of the terms of said mutual waivers, if necessary, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers.

ARTICLE XIV
DAMAGE OR DESTRUCTION

Section 14.1 Notice. If all or any material part of the Improvements is destroyed or damaged by fire or other casualty, the Foundation shall promptly deliver written notice thereof to SMU.

Section 14.2 Restoration Obligation.

(a) If all or any part of the Improvements shall be destroyed by fire or other casualty, and the Lease has not been terminated, the Improvements shall be restored by the Foundation, at its sole cost and expense, without unreasonable delay (and in any event within three years) after the date on which claims made by the Foundation under property insurance covering such fire and other casualty loss shall have been settled or otherwise resolved. The Foundation shall in good faith diligently pursue all claims under such insurance.

(b) Any construction of improvements or additions or changes made in connection with restoration of the Improvements after fire or other casualty shall be completed by the Foundation in a good and workmanlike manner and in accordance with all applicable laws, rules, regulations, ordinances and building codes and in accordance with the standard specified in Subsection 6.3(a) of this Lease.

Section 14.3 Application of Insurance Proceeds. The insurance proceeds placed in the separate segregated escrow account, as provided in Section 13.5 of this Lease, shall be disbursed by the escrow agent thereof upon the delivery by the Foundation to the escrow agent (with a copy to SMU) of a certificate for payment signed by an executive officer of the Foundation, which shall certify the amount of the disbursement requested and the amount of disbursements previously made from the escrow account and shall contain a certification that all such previous disbursements have been applied, and the current disbursement will be applied, to the direct and indirect costs of rebuilding, restoring and repairing that part of the Improvements for which the insurance proceeds were payable and which shall be accompanied by one or more invoices from the general contractor supporting the requested disbursement. Prior to termination of this Lease, the Foundation shall be entitled to adjust in good faith all claims made under any insurance policies obtained by the Foundation by reason of loss of or damage to the Leased Property or any Improvements situated thereon subject to the prior written approval of SMU which shall not be unreasonably withheld or delayed. If this Lease is terminated as provided in Subsection 16.2(b)(iii) of this Lease, SMU shall then be entitled to the entire insurance proceeds payable under all policies of insurance available to the insured because of the such destruction or damage. Any funds held by the escrow agent at the time of the termination of this Lease shall become the property of SMU and shall be promptly disbursed to SMU by the escrow agent.
ARTICLE XV
CONDEMNATION

Section 15.1  Total Condemnation. If the entire or any substantial portion of the Leased Property or the Improvements is subject to a Taking which is sufficient to render the remaining portion unsuitable for restoration for the Foundation's continued use thereof as permitted by Section 6.1 of this Lease, this Lease shall be subject to termination as provided in Subsection 16.2(a)(ii) of this Lease. The effective date of any such termination shall be the date of such Taking. Whether the portion taken is "substantial" and is "sufficient to render the remaining portion unsuitable for restoration for the Foundation's continued use thereof as permitted by Section 6.1 of this Lease" shall be determined by SMU and the Foundation or, if they are unable to agree, by an independent expert in "Library Use and Operation" (the "Library Expert") in consultation with NARA. The Library Expert, if needed, shall be chosen by SMU and the Foundation within 30 days after the condemning authority has made a determination of a Taking and the Award becomes final. If SMU and the Foundation cannot agree on the Library Expert, the then Chief Judge for the United States District Court for the Northern District of Texas ("Chief Judge") shall appoint the Library Expert. The Library Expert in consultation with NARA shall render his or her decision within 120 days after the appointment of the Library Expert by the Chief Judge. If the decision of the Library Expert is not acceptable to either SMU or the Foundation the Dispute shall be mediated pursuant to the provisions of this Lease. Any termination of this Lease pursuant to Subsection 16(a)(ii) of this Lease hereby shall be without prejudice to the rights of either SMU or the Foundation to recover the Award from the condemning authority for any loss or damage caused by such condemnation. Neither SMU nor the Foundation shall have any right in or to any Award made to the other by the condemning authority.

Section 15.2  Partial Taking.

(a)  With respect to a Taking of a portion of the Leased Property or the Improvements that does not come within the provisions of Section 15.1 of this Lease (herein called "Partial Taking"), the Foundation shall, at its sole cost and expense, promptly after such Partial Taking, commence and complete the restoration of the Leased Property and the Improvements as nearly as practicable to their value, condition and character as existed immediately prior to such Partial Taking within three years after the final determination of the Award with respect to such Partial Taking. No Partial Taking shall in itself have the effect of terminating this Lease.

(b)  After the Foundation has spent, on the restoration of the Leased Property and the Improvements, all of the proceeds of its net Award for such Partial Taking as provided in this Section 15.2, and additional funds are required to complete such restoration, SMU shall participate in providing such additional funds on a dollar for dollar basis with the Foundation up to an amount equal to 50% of SMU's net Award with respect to such Partial Taking; provided that, SMU shall have given its written approval to the plans and construction budget for such restoration prior to commencement of such construction, which approval shall not be unreasonably withheld. All condemnation Awards made to the Foundation for a Partial Taking pursuant to this Section 15.2 shall be deposited by the Foundation (and SMU as provided in the preceding sentence) into a
separate segregated escrow account to be held by an escrow agent approved by SMU and the Foundation (which approval shall not be unreasonably withheld or delayed) and to be disbursed and applied in the same manner as in Section 13.5 and in Section 14.3 of this Lease with respect to property insurance proceeds.

Section 15.3 Temporary Requisition. If the use or occupancy of the Leased Property or the Improvements shall be temporarily requisitioned by any governmental authority, civil or military, then this Lease shall continue in full force and effect notwithstanding such requisition, and the Foundation shall be entitled to receive the entire Award payable by reason of such temporary requisition.

ARTICLE XVI
EVENT OF DEFAULT, TERMINATION AND OTHER REMEDIES

Section 16.1 Events of Default. Each of the following occurrences shall constitute an "Event of Default" by the Foundation under this Lease (a) the Foundation fails to comply with, or to observe, any term, condition, obligation, covenant or other provision of this Lease and such failure shall continue for 60 days after written notice of such failure to the Foundation by SMU; or (b) the Foundation fails to perform any of its obligations under the Master Agreement or any of the Ancillary Agreements and such failure shall continue 90 days after written notice of such failure to the Foundation by SMU.

Section 16.2 Termination of Lease. This Lease may be terminated only in the following manner:

(a) Termination By Either Party. Either SMU or the Foundation may terminate this Lease upon the occurrence of either of the following events:

(i) The United States Government (or any instrumentality thereof including NARA) makes any decision or takes any action that requires the Library and the Museum located on the Leased Property to be permanently closed; or

(ii) a Taking of the entire Leased Property and the Improvements, or any substantial part thereof, in accordance with the provisions of Section 15.1 of this Lease, which renders the remaining portion of the Leased Property and the Improvements unsuitable for restoration for the Foundation's continued use thereof as permitted by Section 6.1 of this Lease.

(b) Termination by SMU. SMU (but not the Foundation) may terminate this Lease upon the occurrence of any of the following events:

(i) the construction of the Library Center Facilities is not commenced by December 31, 2012;

(ii) the Library Center Facilities are not completed and opened to the public on or before December 31, 2016;
(iii) after the destruction of all or part of the Improvements by fire or other casualty and the Foundation fails to rebuild, restore and repair such Improvements in accordance with Subsection 14.2(a) of this Lease, and SMU sends the Foundation a letter by registered or certified mail to the Foundation's address provided for in Section 20.2 of this Lease describing such failure and stating, in all caps and bold, that if such failure is not remedied within 90 days after such letter is delivered to such address, SMU shall have the option to terminate this Lease, and the Foundation fails to remedy such failure within 90 days after delivery of such letter to such address;

(iv) after a Partial Taking of a portion of the Leased Property or the Improvements, the Foundation fails to restore the Leased Property and the Improvements in accordance with Subsection 15.2(a) of this Lease and SMU sends the Foundation a letter by registered or certified mail to the Foundation's address provided for in Section 20.2 of this Lease describing such failure and stating, in all caps and bold, that if such failure is not remedied within 90 days after such letter is delivered to such address, SMU shall have the option to terminate this Lease, and the Foundation fails to remedy such failure within 90 days after delivery of such letter to such address;

(v) after the Foundation fails to pay any Imposition when due as required by Subsection 10.1(a) and the second sentence of Subsection 10.1(d) of this Lease ("Imposition Default"), and SMU sends the Foundation a letter by registered or certified mail to the Foundation's address provided for in Section 20.2 of this Lease describing such Imposition Default and stating, in all caps and bold, that if such Imposition Default is not cured within 10 days after such letter is delivered to such address, SMU shall have the option to terminate this Lease, and the Foundation fails to cure the Imposition Default within 10 days after delivery of such letter to such address;

(vi) after the Foundation fails to maintain, and/or pay the premium for, insurance as required by any of the provisions of Section 13.1 and Section 13.5 of this Lease ("Insurance Default"), and SMU sends the Foundation a letter by registered or certified mail to the Foundation's address provided for in Section 20.2 of this Lease describing such Insurance Default and stating, in all caps and bold, that if such Insurance Default is not cured within 30 days after such letter is delivered to such address, SMU shall have the option to terminate this Lease, and the Foundation fails to cure the Insurance Default within 30 days after delivery of such letter to such address;

(vii) a Mechanic's Lien is filed against the fee interest in the Land or the Leased Property and a court of competent jurisdiction issues a final non-appealable order that the applicable estate be sold to satisfy such lien and the applicable amount is not paid by the Foundation contemporaneously with the entry of such order;
(viii) a judgment lien (other than a judgment in favor of SMU) or a federal tax lien is filed against the leasehold estate in the Leased Property and a court of competent jurisdiction issues a final non-appealable order that the said leasehold estate be sold to satisfy such lien and the applicable amount is not paid by the Foundation contemporaneously with the entry of such order;

(ix) the Foundation rejects this Lease or does not or is unable to assume this Lease in a bankruptcy proceeding (for the purposes of this Subsection 16.2 (b)(ix) a breach of Section 6.1, Subsection 7.1(a), Section 9.2, Section 10.1 or Subsection 13.1(a) of this Lease shall be a "Default" (as that term is defined under Section 365 of Bankruptcy Code), and such breach is acknowledged by the Foundation as a material default that must be cured in order for the Foundation to assume this Lease under Section 365 of the Bankruptcy Code;

(x) the Improvements are abandoned by the Foundation; or

(xi) a receiver is appointed for the Foundation or for all or a portion of the Foundation's interest in the Leased Property and/or the Improvements, or the Foundation makes an assignment for the benefit of the Foundation's creditors.

This Lease shall not terminate for any other reason. SMU hereby waives its right to terminate this Lease for any reason other than the reasons specified above. The breach by the Foundation of any covenant, condition or other provision of this Lease, the Master Agreement, any Ancillary Agreement or any other agreement of any kind shall in no event result in the termination of this Lease except as provided in this Section 16.2. The provisions of this Section 16.2 shall in no event prevent SMU from exercising its remedies under the provisions of Section 16.5 of this Lease. The termination of this Lease pursuant to this Section 16.2 shall be in addition to the expiration of the Term of this Lease as provided in Section 2.2 of this Lease.

Section 16.3 Termination Procedure. To exercise the right to terminate this Lease following the occurrence of any of the events specified in Section 16.2 of this Lease, any party having such termination right shall give written notice of such termination to the other party.

Section 16.4 Effect of Termination. If a termination occurs pursuant to Subsections 16.2(a)(i) or (ii) of this Lease, the Foundation shall be entitled thereafter to reopen the Library and the Museum and the other Library Center Facilities at any location it chooses. If a termination occurs pursuant to the provisions of Subsection 16.2(b) of this Lease, the Foundation shall not thereafter establish, relocate or otherwise reopen any of the Library Center Facilities at any location.

Section 16.5 Other Remedies. If an Event of Default occurs under this Lease, SMU shall be entitled to all remedies available under Law (other than termination of this Lease, which shall be available to SMU only as provided in Section 16.2 of this Lease) including the right to sue for damages and injunctive relief as a result thereof.

Section 16.6 SMU's Option. If the Foundation fails to make any payment or perform any monetary obligation as required under this Lease, SMU, without obligation to do so and
without thereby waiving such failure or any resulting Event of Default, may make such payment or otherwise perform such monetary obligation for the account of the Foundation. The Foundation shall pay all costs, expenses and disbursements (including attorneys' fees) incurred by SMU in taking such remedial action. Any such payment by SMU shall not be a waiver of any rights SMU may have under and pursuant to any provision of this Lease.

Section 16.7 Remedies Cumulative. Each right, power and remedy of SMU or the Foundation provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by SMU or the Foundation of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by SMU or the Foundation of any or all such other rights, powers or remedies.

Section 16.8 Mediation of a Dispute. If there is a dispute between SMU and the Foundation as to whether an Event of Default under Section 16.1 of this Lease or an event of termination under Section 16.2 of this Lease has occurred, or for any other dispute in relation to the provisions of this Lease (a "Dispute"), and such Dispute is not resolved within 15 days after same has arisen, SMU and the Foundation shall submit such Dispute to non-binding mediation. Mediation of any Dispute shall be initiated by either party making a written demand therefor to the other. With respect to such mediation, SMU and the Foundation shall, within ten days after delivery of such written notice to the other party, agree upon a mediator who is (a) a reputable person actively engaged in the commercial real estate industry for a continuous period of not less than ten years; and (b) not an Affiliate, or has had material business dealings with either party. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration Association office in Dallas, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Dallas, Texas. The costs of such mediation services shall be shared equally by SMU and the Foundation (but each party shall bear the cost of its own travel and attorneys' fees). Notwithstanding the provisions of this Section 16.8, the Foundation and SMU may each exercise all remedies to which it is entitled while contemporaneously pursuing mediation pursuant to this Section 16.8.

Section 16.9 No Waiver. The failure of SMU or the Foundation to insist upon strict performance of any obligation of the other party under this Lease in one or more instances shall not be deemed a waiver of that party's right to insist upon the full and strict performance of the same or any other obligation of the other party at a subsequent time nor shall the failure of SMU or the Foundation to seek redress for the violation of any obligation or covenant be deemed to preclude said party from seeking redress for any subsequent violation nor to prevent a subsequent act which would originally have constituted a violation from having all the force and effect of an original violation.

Section 16.10 Notification. The Foundation shall promptly send notice to SMU of the determination that an Imposition required by Section 10.1 of this Lease to be paid by the Foundation is owed or that a Mechanic's Lien, judgment lien or federal tax lien has been filed.
against the fee interest in the Land or the leasehold estate in the Leased Property or the Improvements. The Foundation shall periodically send SMU notice of material developments in the filing of such liens or litigation or other legal proceedings relating thereto.

ARTICLE XVII
SPECIAL PROVISIONS

Section 17.1 Quiet Enjoyment; Right to Inspect. During the Term, the Foundation's quiet and peaceful enjoyment of the Leased Property shall not be disturbed or interfered with by SMU, or any party claiming by, through or under SMU; provided however, subject to (a) ten days advance written notice to the Foundation; (b) security clearance by NARA and the Foundation, which shall not be unreasonably withheld; and (c) the condition that an employee of the Foundation accompany any SMU representative, SMU shall have the right to enter the Leased Property and the Improvements for the purpose of inspecting the Leased Property or the Improvements so long as the exercise of such right does not unreasonably interfere with the Foundation's occupancy and use of the Leased Property and the Improvements; and provided, further, SMU shall not have the right to enter those portions of the Leased Property utilized as the personal offices of George W. Bush or Laura Bush or the personal residence of George W. Bush or Laura Bush.

Section 17.2 No Merger of Title. There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Land by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate; and (b) the fee estate in the Land or any interest in such fee estate. No such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by this Lease; and (ii) the fee estate in the Land, join in a written instrument effecting such merger and shall duly record the same.

Section 17.3 Right of First Offer. During the Term, should SMU desire to sell the fee interest in the Land or any part thereof (said fee interest in the Land or any part thereof which is the subject of such offer being hereafter in this Section 17.3 referred to as the "Subject Property") for sale to a third party, SMU shall, before extending such offer to a third party, notify (the "ROFO Notice") the Foundation in writing that SMU is willing to sell the Subject Property to the Foundation upon terms and conditions set forth in the notice. Upon receipt of the ROFO Notice from SMU, the Foundation shall have 30 days thereafter within which to make an offer to purchase the Subject Property, which offer shall be on the same terms and conditions as set forth in the ROFO Notice. Should the Foundation fail to make an offer to purchase the Subject Property within said 30 day period, SMU shall be free after the end of said 30-day period to sell the Subject Property to any third party upon the terms and conditions set forth in the ROFO Notice without further notice to the Foundation.

Section 17.4 Estoppel Certificates.

(a) The Foundation agrees at any time and from time to time, upon not less than 60 days prior written notice by SMU, to execute, acknowledge and deliver, without charge, to SMU, or to any person designated by SMU, a statement in writing certifying that this Lease is in full force and effect and is unmodified (or if there have been
modifications, identifying the same by the date thereof and specifying the nature thereof),
that the Foundation has not received any notice of an Event of Default (or if the
Foundation has received such a notice, that it has been revoked, if such be the case),
that to the knowledge of the Foundation no Event of Default exists hereunder (or if any such
Event of Default does exist, specifying the same and stating that the same has been cured,
if such be the case), and that the Foundation to its knowledge has no claims against SMU
hereunder (or if the Foundation has any such claims, specifying the same).

(b) SMU agrees at any time and from time to time, upon not less than
60 days prior written notice by the Foundation, to execute, acknowledge and deliver,
without charge, to the Foundation, or to any person designated by the Foundation, a
statement in writing stating that this Lease is in full force and effect and is unmodified (or
if there have been modifications, identifying the same by the date thereof and specifying
the nature thereof), that no notice of an Event of Default has been served on the
Foundation (or if SMU has served such notice, that the same has been revoked, if such be
the case), and that to SMU's knowledge no Event of Default exists under this Lease (or if
any such Event of Default does exist, specifying the same).

ARTICLE XVIII
SURRENDER; HOLDING OVER

Section 18.1 Surrender of the Leased Property and the Improvements. Upon the
expiration of the Term or other termination of this Lease, without cost or charge to SMU (a) the
Foundation shall quit and surrender to SMU the Leased Property and the Improvements and their
respective appurtenances; (b) the Improvements and all changes and Alterations thereto shall be
and remain on the Land; and (c) title to all the Improvements shall vest in and belong to SMU
without any compensation to the Foundation or further action on the part of either party hereto.
All of the foregoing shall be subject to the rights of NARA as set forth in the NARA Agreement.
The Foundation shall, within five days after SMU's request therefor, execute, acknowledge and
deliver such documents as may be necessary or convenient in SMU's discretion for the purpose
of further evidencing that title to all of the Leased Property and the Improvements is vested in
SMU. Notwithstanding the foregoing, upon SMU's request the Foundation shall remove such of
the Foundation's Personal Property as SMU may request (but the Foundation shall have no
obligation to remove any of the Improvements), which removal shall be at the Foundation's sole
cost and expense, and the Foundation shall repair all damage caused by such removal. All items
not so removed shall be deemed to have been abandoned by the Foundation, subject to the rights
of any Equipment Lessor under Section 20.15 of this Lease, and may be appropriated, sold,
stored, destroyed or otherwise disposed of by SMU without notice to the Foundation and without
any obligation to account for such items. SMU shall not be liable or responsible for any loss of
or damage to any personality owned or held by or for the Foundation which may be on the Leased
Property when SMU takes possession of it, nor will SMU be required to account for any such
personalty.

Section 18.2 No Holding Over. Upon termination of this Lease (whether by
expiration of the Term or otherwise) the Foundation shall, at its sole cost and expense,
immediately vacate the Leased Property and the Improvements.
ARTICLE XIX
LIABILITY

Section 19.1 Limitation of SMU's Liability. No person holding SMU's interest under this Lease (whether or not such person is named in this Lease) shall have any liability hereunder after such person ceases to hold such interest, except for any liability accruing hereunder while such person held such interest. No officer, director, trustee, employee, agent, or representative of SMU shall have any personal liability under any provision of this Lease. If SMU breaches any of SMU's obligations under this Lease or otherwise, the Foundation shall look solely to SMU and not to the assets, interests or rights of any officer, director, trustee, employee, agent, or representative of SMU for satisfaction of the Foundation's remedies on account thereof. The liability of SMU hereunder shall be limited to the extent provided in that certain Contract Liability Cap Agreement (herein called the "Contract Liability Cap Agreement") dated February 22, 2008 by and among SMU, the University and the Foundation.

Section 19.2 Limitation of the Foundation's Liability. No person holding the Foundation's interest under this Lease (whether or not such person is named in this Lease) shall have any liability hereunder after such person ceases to hold such interest, except for any liability accruing hereunder while such person held such interest. No officer, director, trustee, member of the board of trustees, employee, agent, or representative of the Foundation shall have any personal liability under any provision of this Lease. If the Foundation breaches any of the Foundation's obligations under this Lease or otherwise, SMU shall look solely to the Foundation and not to the assets, interests or rights of any officer, director, trustee, employee, agent, or representative of the Foundation for satisfaction of SMU's remedies on account thereof. The liability of the Foundation hereunder shall be limited to the extent provided in the Contract Liability Cap Agreement.

ARTICLE XX
MISCELLANEOUS

Section 20.1 Provisions Subject To Applicable Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and all such rights, powers and remedies are intended to be limited to the extent necessary so that they shall not render this Lease invalid or unenforceable under any applicable law. If any provision of this Lease is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the other terms of this Lease shall in no way be affected thereby.

Section 20.2 Notice. Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

To SMU:

Dr. R. Gerald Turner
President
Southern Methodist University
P.O. Box 750100
Dallas, Texas 75275-0100
or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

Section 20.3 Modification. Neither this Lease nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

Section 20.4 Successors and Assigns. This Lease and all terms, provisions, covenants and conditions contained in this Lease shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties hereto and the respective successors and permitted assigns of the parties hereto.

Section 20.5 Gender and Number. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

Section 20.6 Titles and Subtitles. The titles of the articles, sections, subsections, paragraphs and subparagraphs of this Lease are for convenience of reference only and are not to be considered in construing this Lease.

Section 20.7 Multiple Counterparts. This Lease may be executed in any number of counterparts, each of which is an original, but all of which constitute one instrument.

Section 20.8 Governing Law; Venue. THIS LEASE SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS LEASE GOVERNED IN
ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Lease hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Lease, or the subject matter of this Lease brought by any other party. Each party hereto hereby agrees to venue in Dallas County, Texas.

Section 20.9 Rule of Construction Inapplicable. The parties to this Lease acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Lease and that this Lease has not been written solely by counsel for one of the parties. The parties to this Lease therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Lease to favor either party against the other.

Section 20.10 Severability. If any provision of this Lease or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 20.11 No Joint Venture. Nothing in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereto or otherwise, it being understood and agreed that no provision contained herein, nor any acts on the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Section 20.12 Recording. Neither SMU nor the Foundation shall file this Lease for record in the Office of the County Clerk of the County, or in any other public place without the written consent of the other. In lieu thereof, SMU and the Foundation agree to execute in recordable form a Memorandum of this Lease (which shall contain inter alia the terms set forth in Subsection 6.4(b) of this Lease) and any renewal thereof, and to file such Memorandum for record in the Office of the County Clerk of the County.

Section 20.13 Professional Fees. If any party hereto institutes any action or proceeding against the other party with regard to this Lease, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys' fees.

Section 20.14 No Third-Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (except the University and other than the parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.
Section 20.15 Waiver of Landlord's Liens: the Foundation's Personal Property.

(a) SMU hereby waives any statutory or other lien or right which SMU may now or hereafter have with respect to personal property of the Foundation located on the Leased Property or otherwise.

(b) All personal property located at or on the Leased Property or the Improvements, supplied by or installed by or on behalf of the Foundation (the "Foundation's Personal Property"), shall remain the property of the Foundation and the Foundation may remove the Foundation's Personal Property from the Leased Property or the Improvements at any time during or after the Term.

(c) The Foundation shall have the right, without obtaining the consent of SMU, to enter various leasing or other financing arrangements with respect to the Foundation’s Personal Property ("Equipment Financing"). SMU agrees, if requested by or on behalf of any lender to which the Foundation shall grant a security interest in the Foundation's Personal Property or any lessor of Foundation's Personal Property (collectively, the "Equipment Lessor"), to promptly execute, acknowledge and deliver such waivers or other instruments reasonably required to confirm that SMU: (i) has waived any such lien, (ii) agrees that the Equipment Lessor shall have the right to enter upon the Leased Property for the purposes of removing the Foundation’s Personal Property and (iii) shall not hinder or delay such removal, provided that the Foundation or the Equipment Lessor shall agree to repair any damage to the Improvements caused by such removal and otherwise comply with the terms of this Lease in connection with such removal.

Section 20.16 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by either party hereunder, such party shall not be liable or responsible for, and there shall be excused from the computation for any such period of time, any delays due to Force Majeure. If an event of Force Majeure occurs which either SMU or the Foundation intends to assert for purposes of this Section 20.16, such asserting party shall, after deciding to assert such event, promptly notify the other party of such event.

Section 20.17 ENTIRE AGREEMENT. THIS LEASE, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HERIN. THIS LEASE MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

Section 20.18 Survival. Each provision of this Lease containing rights and obligations that by their nature require the payment of money or the performance of obligations after the expiration or earlier termination of the Term shall survive any such expiration or earlier termination.
IN WITNESS WHEREOF, SMU and the Foundation have hereto executed this Lease effective as of the day and year first above written.

SMU:

[SMU CORPORATION, A TO BE FORMED ENTITY],
a Texas non-profit corporation

By: _______________________________________
    Name: R. Gerald Turner
    Title: President
    Date of Execution: ________________________

THE FOUNDATION:

THE GEORGE W. BUSH PRESIDENTIAL
LIBRARY FOUNDATION,
a Texas nonprofit corporation

By: _______________________________________
    Name: __________________________________
    Title: __________________________________
    Date of Execution: ________________________
EXHIBIT "A"

Legal Description of Land

[To be inserted prior to execution.]
EXHIBIT D-1

Memorandum of Ground Lease

To be agreed to prior to execution of the Ground Lease.
GUARANTY AGREEMENT

This Guaranty Agreement ("Guaranty") entered into this ___ day of ___________, 20 __, by and between THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation ("Tenant") and SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation ("Guarantor");

WITNESSETH:

WHEREAS, Tenant and SMU Corporation, a Texas nonprofit corporation and an affiliate of Guarantor ("Landlord"), have entered into that certain Ground Lease Agreement, dated February 22, 2008 (the "Lease");

WHEREAS, Tenant and Guarantor entered into that certain Master Agreement dated February 22, 2008 (the "Master Agreement"); and

WHEREAS, as a condition to the closing of the Lease transaction pursuant to the terms of the Master Agreement, Guarantor and Tenant are each required to execute and deliver this Guaranty;

NOW, THEREFORE, in consideration of the above promises and mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and intending to be bound hereby, the parties hereto do hereby agree as follows:

1. Guaranteed Obligations. "Guaranteed Obligations" shall mean collectively (a) the payment of all dollar amounts due and payable by Landlord (which term shall include for purposes of this Agreement any subsequent Landlord under the Lease) to Tenant under the terms and provisions of the Lease, and (b) the performance of all representations, agreements, covenants, obligations and duties imposed upon Landlord under the terms and provisions of the Lease.

2. Guaranty. Guarantor, subject to the terms and provisions of this Guaranty, absolutely and unconditionally agrees to pay or perform, as applicable, the Guaranteed Obligations, as if Guarantor had executed the Lease as Landlord thereunder. If Landlord does not or is unable to pay or to perform, as applicable, any of the Guaranteed Obligations, for any reason, including, without limitation, liquidation, dissolution, termination, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition, or readjustment of, or other similar proceedings affecting the status, composition, identity, existence, assets or obligations of Landlord, or the disaffirmance or termination of any of the liabilities, obligations or duties in or as a result of any such proceeding, no such occurrence shall in any way affect Guarantor's obligations hereunder for the payment or performance, as applicable, of the respective Guaranteed Obligations. The liability of Guarantor
shall not be affected by any indulgence which may be extended to Landlord by Tenant. Guarantor shall not be bound by any modification, extension, amendment or other covenant respecting the Lease which does not receive the prior written consent of Guarantor.

3. **Lease Performance.** Tenant hereby agrees with Guarantor that Tenant shall fully and timely perform all of Tenant's obligations and covenants under the Lease (including without limitation Tenant's obligation under Section 10.1 of the Lease to pay Impositions (as defined in the Lease) of Guarantor and Landlord) in accordance with the terms and provisions of the Lease. Guarantor shall have the direct right and the right on behalf of Landlord to exercise any and all legal remedies to enforce the terms of the Lease against Tenant.

4. **Waiver.** Guarantor hereby waives (a) notice of acceptance by Tenant of this Guaranty, (b) all defenses based upon questions as to the validity, legality or enforceability of the Lease, and (c) all common law and statutory rights and defenses of guarantors at law or in equity, except for the following: (i) the actual payment or performance of the Guaranteed Obligations, (ii) the rights and defenses afforded by the provisions of Paragraphs 5, 11 and 16 of this Guaranty, and (iii) Guarantor does not waive any, and shall be entitled to assert all, rights and defenses that Landlord has under the terms and provisions of the Lease.

5. **Enforcement Against Landlord.** Guarantor agrees that Tenant shall not be first required to enforce against Landlord or any other person any Guaranteed Obligation hereunder before seeking enforcement thereof against Guarantor and specifically Tenant shall not be required to exhaust its remedies against Landlord or any surety other than Guarantor or to proceed against any security now or hereafter existing for the payment or performance of any of the Guaranteed Obligations. Subject to the provisions of Paragraphs 11 and 16 of this Guaranty, suit may be brought and maintained against Guarantor by Tenant to enforce any Guaranteed Obligation under this Guaranty without joinder of Landlord or any other person. Tenant acknowledges by execution of this Guaranty that if Guarantor is required to pay or perform any Guaranteed Obligation on behalf of Landlord, Guarantor shall have and possess any and all rights, causes of action or defenses that Landlord may have against Tenant under and pursuant to the provisions of the Lease.

6. **Preferential Payments.** If any payment of any Guaranteed Obligation by Landlord to Tenant is held to constitute a preference under the bankruptcy laws, or if for any other reason Tenant is required to refund such payment or pay the amount thereof to any other party, such payment by Landlord to Tenant shall not constitute a release of Guarantor from any liability hereunder for any such Guaranteed Obligation, but Guarantor agrees to pay the amount of any such Guaranteed Obligation to Tenant upon demand and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment or payments.

7. **Representations.** Guarantor hereby represents and warrants that (a) this Guaranty is a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, subject to laws applicable generally to creditor's rights and applicable principles of equity, and (b) the execution, delivery, and performance by Guarantor of this Guaranty does not and will not violate the Articles of Incorporation or Bylaws of Guarantor or any authority having the force of law or any indenture, agreement, or other instrument to which
Guarantor is a party or by which Guarantor or any of the properties or assets of Guarantor are or may be bound. Tenant hereby represents and warrants that (a) the provisions of this Guaranty are legal, valid and binding obligations of Tenant, enforceable against Tenant in accordance with their terms, subject to general equitable principles and the rights of creditors, and (b) the execution, delivery, and performance by Tenant of this Guaranty does not and will not violate the Articles of Incorporation or Bylaws of Tenant or any authority having the force of law or any indenture, agreement, or other instrument to which Tenant is a party or by which Tenant or any of the properties or assets of Tenant are or may be bound.

8. **Cumulative Rights.** The rights of Tenant are cumulative and shall not be exhausted by its exercise of any of its rights hereunder or otherwise against Guarantor or by any number of successive actions until and unless all Guaranteed Obligations have been paid or performed. No exercise or nonexercise by Tenant of any right or remedy of Tenant shall in any way affect any of Guarantor’s obligations hereunder, or give Guarantor any recourse against Tenant, except as set forth in this Guaranty.

9. **Ultra Vires.** If Landlord should not be liable for the payment or performance of any Guaranteed Obligation imposed under the Lease because the creation of the Guaranteed Obligations is ultra vires or the officers creating the same acted in excess of their authority and for these reasons the liabilities, obligations or duties cannot be enforced against Landlord, such facts shall in no manner affect the liability of Guarantor and Guarantor shall be liable hereunder notwithstanding that Landlord may not be liable for such Guaranteed Obligations and to the same extent as the Guarantor would have been liable if such Guaranteed Obligations had been enforceable against Landlord.

10. **Status.** Should the legal status of Landlord change, this Guaranty shall continue and also cover the Guaranteed Obligations of Landlord under the new legal status according to the terms hereof.

11. **Right to Notice and Cure.** Tenant shall not commence any action to enforce any provision of this Guaranty until after: (a) Tenant shall have given Landlord and Guarantor written notice ("Notice") of Tenant's intention to enforce this Guaranty, which Notice shall state with reasonable detail the specific Guaranteed Obligations that Landlord has failed to pay or perform as required by the Lease and including a description in reasonable detail of specific breaches by Landlord of the terms or provisions of the Lease that give rise to the Notice, as the case may be, and (b) if the breach by Landlord (i) arises out of its failure to pay a Guaranteed Obligation (including but not limited to the payment of ad valorem taxes pursuant to Section 10 of the Ground Lease), Guarantor shall have failed, within 30 days after receipt of the Notice, to pay such Guaranteed Obligation, or (ii) arises out of its failure to fully and completely perform a Guaranteed Obligation, Guarantor shall have failed, within 90 days after receipt of the Notice, to cause full and complete performance of such Guaranteed Obligation; provided, however, that if such full and complete performance of the Guaranteed Obligation reasonably requires more than 90 days to accomplish, Guarantor shall have a reasonable period of time, not to exceed an additional 90 days, to cause the full and complete performance of any such Guaranteed Obligation prior to Tenant commencing any action against Guarantor. All such time periods for performance of any of the Guaranteed Obligations shall be extended for an event of Force Majeure (as defined in the Lease).
12. **Notice.** Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

To SMU:  
Dr. R. Gerald Turner  
President  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

With copies to:  
Mr. S. Leon Bennett  
General Counsel  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

To the Foundation:  
Mr. Donald L. Evans  
Chair  
George W. Bush Presidential Library Foundation  
500 W. Texas Avenue, Suite 960  
Midland, Texas 79701

With copies to:  
Mr. Sam P. Burford, Jr.  
Thompson & Knight LLP  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

13. **Governing Law; Venue.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to his Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter of this Agreement brought by any other party. Each party hereto hereby agrees to venue in Dallas County, Texas.

14. **Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in
writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

15. **Termination.** This Guaranty shall terminate and be of no further force or effect (except with respect to any accrued or unpaid obligations under this Guaranty between the parties existing at the date of such termination) on the date of termination of the Lease.

16. **Professional Fees.** If any party hereto institutes any action or proceeding against the other party with regard to this Agreement, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys' fees.

17. **Titles and Subtitles.** The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

18. **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HERIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

19. **Successors and Assigns.** This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

20. **Gender and Number.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

21. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

22. **Rule of Construction Inapplicable.** The parties to this Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Agreement and that this Agreement has not been written solely by counsel for one of the parties. The parties to this Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.
23. **No Joint Venture.** Nothing contained in this Agreement or the Ancillary Agreements between the parties is intended by the parties to create a partnership or joint venture between the parties to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

24. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.

25. **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any party to this Agreement upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or in equity afforded to the parties to this Agreement shall be cumulative and not alternative.

26. **Liability Limitation.** The liability of the parties hereunder shall be limited to the extent provided in that certain Contract Liability Cap Agreement dated _______, 2008, by and among SMU, SMU Corporation and the Foundation.

*[The remainder of this page is intentionally left blank.]*
Executed the ______ day of __________________, 200____ to be effective as of the date of the Lease.

GUARANTOR:

SOUTHERN METHODIST UNIVERSITY,
a Texas non-profit corporation

By: ________________________________
Name: ______________________________
Title: ______________________________

TENANT:

THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION,
a Texas non-profit corporation

By: ________________________________
Name: ______________________________
Title: ______________________________
EXHIBIT E

SMU Leases

Copies of leases contained in binders furnished by SMU.
EXHIBIT F

Schedule Delivered Pursuant
to Subparagraph 2(d) and Subparagraph 2(e)

A. With respect to (ii), (iii), (vi), and (vii) of Subparagraph 2(e), currently existing buildings located north of SMU Boulevard and west of Boedeker Drive and located north of Oxford and south of SMU Boulevard are known to have asbestos-containing building materials, and may have other Hazardous Materials installed or applied, all of which are to be addressed when SMU demolishes such buildings pursuant to its obligation under Section 6(a) of the Master Agreement.

B. With respect to (i) and (vi) of Subparagraph 2(e), site conditions in the vicinity of cooling towers and chillers formerly located at property included within the Sites were identified as Recognized Environmental Conditions in a report entitled *Phase I Environmental Site Assessment, Approximate 22-Acre Property Southwest Corner of SMU Boulevard and North Central Expressway, University Park, Dallas County, Texas*, dated October 3, 2007, prepared by Southwest Geoscience. As noted in such report, one chiller was located north of Binkley, one chiller and one cooling tower were located north of Oxford, and one cooling tower was located at the southwest corner of Chalet and College Plaza. Based upon subsequent investigation performed for SMU, Southwest Geoscience concluded that the site conditions in the vicinity of such cooling towers and chillers previously noted were no longer considered Recognized Environmental Conditions, which is documented in a report entitled *Limited Site Investigation, Approximate 22-Acre Property Southwest Corner of SMU Boulevard and North Central Expressway, University Park, Dallas County, Texas*, dated January 23, 2008 and prepared by Southwest Geoscience. As SMU has no knowledge of the facts and circumstances relating to historical releases that could have accounted for the presence of constituents noted in such Limited Site Assessment, reference to Subparagraph 2(e)(i) is made without admission that a violation of Applicable Environmental Law has occurred.
GOVERNANCE AND ACADEMIC CO-OPERATION AGREEMENT

THIS GOVERNANCE AND ACADEMIC CO-OPERATION AGREEMENT (this "Agreement") entered into this 22nd day of February, 2008, by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation ("SMU"), and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas nonprofit corporation (the "Foundation");

WITNESSETH:

WHEREAS, SMU and the Foundation executed and entered into that certain Master Agreement dated February 22, 2008 (the "Master Agreement") pursuant to which The George W. Bush Presidential Library and Museum and the Foundation and its George W. Bush Institute (the "Institute") will be located at SMU; and

WHEREAS, the execution and delivery of this Agreement by each of the parties hereto is made pursuant to the terms of the Master Agreement;

NOW, THEREFORE, in consideration of the above premises, the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto and intending to be bound hereby, the parties hereto do hereby agree as follows:

1. Governance of the Foundation.

(a) Number of Directors. From the date of this Agreement and until the termination of this Agreement, the Foundation shall cause the board of directors (the "Foundation Board") of the Foundation to consist of not less than three (3) nor more than twelve (12) persons with the exact number being determined from time to time by the Foundation Board.

(b) Right to Designate Directors. From the date of this Agreement and until the termination of this Agreement, all members of the Foundation Board shall be elected annually for the next ensuing one-year term in accordance with the bylaws (the "Bylaws") of the Foundation, and in connection therewith, SMU shall have the right to designate two (2) persons to serve as members of the Foundation Board for such ensuing term; provided, however, the then chair of the Foundation, after consultation with the Foundation Board, shall have the right to object in writing to either or both of the persons designated by SMU in which event SMU shall present additional designees until there are two (2) designees for whom no such objection is made. The Foundation shall give SMU written notice (the "Foundation Notice") on or before the thirtieth (30th) day prior to the date of each annual election of the members of the Foundation Board. To exercise its director designation rights under this Section 1, SMU shall give the Foundation written notice (the "SMU Foundation Notice") of its two (2) designees within ten (10) days after the date of SMU's receipt of the Foundation Notice. An SMU designee shall be deemed to have been approved by the Foundation if the chairman of the Foundation does not notify SMU of an objection to such designee within ten (10) days after the date of the Foundation's receipt of the SMU
Foundation Notice. The failure of SMU to exercise its director designation rights under this Section 1 in any year shall not constitute a waiver or termination of its designation rights in any subsequent year.

(c) **Replacement of SMU Designee.** In the event a vacancy is created on the Foundation Board by reason of an SMU designatee not completing his or her elected term as a member of the Foundation Board, SMU shall have the immediate right to designate another person to fill such vacancy on the Foundation Board and complete the unexpired term of the predecessor designatee, provided, however, the chair of the Foundation shall have the right to object in writing to such replacement in which event SMU shall present additional replacement designatees until there is a replacement designatee for whom no such objection is made.

2. **Governance of the Institute.**

(a) **Number of Directors.** From the date of this Agreement and until the termination of this Agreement, the Foundation shall cause the board of directors of the Institute (the "**Institute Board**") to consist of not less than three (3) nor more than nine (9) members, with the exact number being determined from time to time by the Foundation.

(b) **Right to Designate Directors.** From the date of this Agreement and until the termination of this Agreement, all members of the Institute Board shall be selected annually by the Foundation for the next ensuing one-year term in accordance with the Bylaws of the Foundation, and in connection therewith, SMU shall have the right to designate (i) one (1) person to serve as a member of the Institute Board if the Institute Board consists of up to five (5) members, or (ii) in the event the Institute Board shall consist of more than five (5) members, SMU shall be entitled to designate two persons to serve as members, for such ensuing term; provided, however, the chair of the Foundation shall after consultation with the Foundation Board have the right to object to the person or persons, as the case may be, designated by SMU in which event SMU shall present additional designatees until there is one (1) designee or two (2) designees as the case may be for whom no such reasonable objection is made. The Foundation shall give SMU written notice (the "**Institute Notice**") on or before the thirtieth (30th) day prior to each date on which the Foundation will select the members of the Institute Board. To exercise its director designation right under this Section 2, SMU shall give the Foundation written notice (the "**SMU Institute Notice**") of its designee(s) within ten (10) days after the date of SMU's receipt of the Institute Notice. An SMU designee shall be deemed to have been approved by the Foundation if the Foundation chair does not notify SMU of an objection to such designee within ten (10) days after the date of the Foundation's receipt of the SMU Institute Notice. The failure of SMU to exercise its director designation right under this Section 2 in any year shall not constitute a waiver or termination of its designation right in any subsequent year.
(c) **Replacement of Directors.** In the event a vacancy is created on the Institute Board by reason of an SMU designee not completing his or her term as a director, SMU shall have the immediate right to designate another person to fill such vacancy and complete the unexpired term of the predecessor designee, provided, however, the Foundation chair shall have the right to object to such replacement in which event SMU shall present additional replacement designees until there is a replacement designee for whom no such objection is made.

3. **Governance of Fellows and Other Personnel of the Institute.**

(a) **The Institute Fellows.** The Institute shall have sole authority over, and sole responsibility for, the selection, appointment, responsibilities, courses offered, and manner of offering such courses and other activities of persons appointed as Institute Fellows (the "**Institute Fellows**") other than Concurrent Fellows (as defined below), and the payment of the related costs of such Institute Fellows, provided, however, that the Institute Fellows or the Institute shall not offer any course for which college or university credit may be awarded when said course originates from or is conducted at the Institute facilities except as provided in the last sentence of this Section 3(a) and except that an Institute Fellow (i) may, through distance learning technology that originates at the Institute, offer courses for credit solely to students of the home institution of such Institute Fellow; and (ii) may, through distance learning technology, participate in courses for credit in which such Institute Fellow is a guest lecturer at another accredited college or university in cooperation with a regularly appointed faculty member of the institution awarding credit provided that the Institute Fellow’s participation does not exceed 33 1/3% of the course content or contact time with the students. Nothing in this Section 3(a) shall prohibit (i) courses originating at the Institute facilities that are conducted by an Institute Fellow and that are, through distance learning technology, offered for credit to students who are physically present outside the United States at the facilities of a college or university that is headquartered and located outside the United States; or (ii) an Institute Fellow from offering a course for college or university credit from any location other than the Institute facilities.

(b) **Concurrent Fellows and Faculty Members.**

(i) **Concurrent Appointment of Institute Fellows to the University.** SMU (acting through its president, provost and the appropriate dean and faculty) may from time to time appoint an Institute Fellow to the University.

(ii) **Concurrent Appointment of University Faculty to the Institute.** The Institute (acting through its Executive Director) may from time to time appoint a member of the SMU faculty to the Institute.

(iii) **Concurrent Fellows.** Each appointment of a person (a "**Concurrent Fellow**") under Section 3(b)(i) or (ii) of this Agreement shall be made pursuant to a written agreement ("**Concurrent Agreement**") between SMU and the Institute. SMU and the Institute shall set forth in the Concurrent
Agreement for each respective Concurrent Fellow (i) the tenure (if any); (ii) the length of term of the appointment, activities and responsibilities of such Concurrent Fellow; and (iii) the responsibilities of SMU and the Institute with respect to all sources of funding, expenses, and office requirements of such Concurrent Fellow. Employees of either SMU or the Institute may only claim a professional relationship with the other entity during the term of the Concurrent Agreement.

(e) **Academic Advisory Committee.** SMU and the Institute shall form an academic program advisory committee composed of (i) the SMU Provost; (ii) the executive director or the program director of the Institute; and (iii) an equal number of (x) Institute Fellows and program directors of the Institute; and (y) SMU administrators and faculty members for the purpose of enhancing the academic interaction of the Institute and SMU and to encourage the development of joint programs and the appointment of Concurrent Fellows.

(d) **Access to SMU Activities.** SMU shall permit each new professional staff member of the Institute including Institute Fellows to have access to SMU's recreational and library facilities on substantially the same basis and terms as then offered to new members of SMU's staff.

(e) **Access to the Foundation and the Institute Activities.** The Foundation shall permit the faculty and staff of SMU to have access to the programs and activities of the Foundation and the Institute on substantially the same basis such programs and activities are made available to Institute Fellows and to the staff of the Foundation and the Institute.

(f) **Lease of Housing Units.** At the request of the Foundation, SMU shall lease to the Foundation for use by Institute Fellows, up to ten (10) residential/student housing units which units can be combined with another contiguous unit to create a larger unit in SMU’s planned Graduate Student Housing Project on the east side of Central Expressway once it is constructed. The terms of each such lease arrangement shall be on no less favorable terms than those terms offered to SMU graduate students for comparable units.

(g) **Intent of the Parties.** It is the intent of the parties to this Agreement that the contemplated relationship that will exist between SMU and the Institute will not interfere with SMU’s commitment to open inquiry and academic freedom within the University.

(h) **Other Personnel of Institute.** Except as provided above in Section 3 of this Agreement, all other decisions regarding the personnel, fellows and programming of the Institute shall be under the sole authority and control of the Foundation and the Institute and be so reflected in the communications and publications of the Institute. Neither the Institute nor SMU shall list the Institute as being a component of SMU.
4. Miscellaneous.

(a) **Governing Law; Venue.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter of this Agreement brought by any other party. Each party hereto hereby agrees to venue in Dallas County, Texas.

(b) **Successors and Assigns.** This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

(c) **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

(d) **Notice.** Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

To SMU: Dr. R. Gerald Turner  
President  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

With copies to: Mr. S. Leon Bennett  
General Counsel  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100
To the Foundation:

Mr. Donald L. Evans
Chair
George W. Bush Presidential Library Foundation
500 W. Texas Avenue, Suite 960
Midland, Texas 79701

With copies to:

Mr. Sam P. Burford, Jr.
Thompson & Knight LLP
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

(e) **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any party upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or otherwise afforded to the parties shall be cumulative and not alternative.

(f) **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

(h) **Titles and Subtitles.** The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

(i) **Professional Fees.** If any party hereto institutes any action or proceeding against the other party with regard to this Agreement, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys’ fees.
(j) **Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

(k) **Gender and Number.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

(l) **Rule of Construction Inapplicable.** The parties to this Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Agreement and that this Agreement has not been written solely by counsel for one of the parties. The parties to this Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

(m) **No Joint Venture.** Nothing contained in this Agreement between the parties is intended by the parties to create a partnership or joint venture between the parties to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

(n) **No Third Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.

(o) **Liability Limitation.** The liability of the parties hereunder shall be limited to the extent provided in that certain Contract Liability Cap Agreement dated February 22, 2008, by and among SMU, SMU Corporation and the Foundation.

(p) **Termination.** This Agreement shall terminate and be of no further force or effect upon the termination of the Master Agreement unless the parties have entered into a Ground Lease (as defined in the Master Agreement) whereupon this Agreement shall terminate on the termination of the Ground Lease. Each provision of this Agreement containing rights and obligations that by their nature require the payment of money or the performance of obligations after the expiration or earlier termination of the term of this Agreement shall survive any such expiration or earlier termination.

* * * * *
IN WITNESS WHEREOF, this Agreement is executed in multiple originals by SMU and the Foundation as of the date first above written.

SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation

By: ____________________________________________
    R. Gerald Turner
    President

SMU

THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas nonprofit corporation

By: ____________________________________________
    Name:________________________________________
    Title:________________________________________

THE FOUNDATION
INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "Agreement") entered into as of this 22nd day of February, 2008, by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation ("SMU") and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation (the "Foundation");

WITNESSETH:

WHEREAS, SMU and the Foundation executed and entered into that certain Master Agreement dated February 22, 2008 (the "Master Agreement") pursuant to which The George W. Bush Presidential Library and Museum (the "Library") and The George W. Bush Institute (the "Institute") will be located at SMU;

WHEREAS, the execution and delivery of this Agreement by each of the parties hereto is pursuant to the terms of the Master Agreement;

WHEREAS, inducements for SMU to enter into this Agreement include (i) the commitment of the Foundation to locate and construct and to maintain and operate continuously (along with the National Archives and Records Administration) the Library Center Facilities at SMU; and (ii) the national and international visibility that will come to SMU by reason of the locating of the Library and the Institute at SMU; and

WHEREAS, inducements for the Foundation to enter into this Agreement include (i) SMU's excellent academic reputation; (ii) SMU's presence in Dallas, Texas; (iii) the strong support of SMU's leaders, alumni and friends for the Library Center Facilities being located at SMU; and (iv) SMU's willingness to lease prime land to the Foundation on which it can locate, construct and operate the Library Center Facilities;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and intending to be bound hereby, the parties hereto do hereby agree as follows:

1. Definitions.

"AAA" is defined in Section 4 of this Agreement.

"Affiliate" means a person that directly or indirectly controls, or is controlled by, or is under common control, with the person specified.

"Agreement" is defined in the preamble of this Agreement.

"Ancillary Agreements" is defined in the Master Agreement.

"Cap Amount" is defined in Section 4 of this Agreement.
"Cap Notice" is defined in Section 4 of this Agreement.

"Commencement Date" is defined in the Ground Lease.

"Dispute" is defined in Section 8 of this Agreement.

"Environmental Agreement" is defined in the Ground Lease.

"Foundation" is defined in the preamble of this Agreement.

"Foundation Annual Operations Cap" is defined in Section 4 of this Agreement.

"Foundation Indemnified Operations Liabilities" means any and all Losses incurred or otherwise suffered by any Foundation Indemnified Person that arise out of (i) the activities or operations of SMU or SMU Corporation; or (ii) the University Gardens Litigation and Related Matters.

"Foundation Indemnified Person" or "Foundation Indemnified Persons" is defined in Section 3 of this Agreement.

"Indemnifying Party" is defined in Section 7 of this Agreement.

"Indemnified Person" or "Indemnified Persons" is defined in Section 7 of this Agreement.

"Ground Lease" is defined in the Master Agreement.

"Library Center Facilities" is defined in the Master Agreement.

"Losses" means any and all losses, damages, deficiencies, liabilities, obligations, actions, claims, suits, proceedings and judgments (including, without limitation, out-of-pocket interest and penalties, and reasonable technical, investigatory, consulting, legal and accounting fees, costs and expenses, and special exemplary, punitive and consequential damages) of any nature whatsoever.

"Master Agreement" is defined in the recitals to this Agreement.

"Notice" is defined in Section 7 of this Agreement.

"Person" means any individual, corporation, limited or general partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

"Resolution Date" is defined in Section 8 of this Agreement.

"Selected Site" is defined in the Master Agreement.

"Sixty-Day Period" is defined in Section 4 of this Agreement.
"SMU" is defined in the preamble of this Agreement.

"SMU Annual Operations Cap" is defined in Section 4 of this Agreement.

"SMU Corporation" means SMU Corporation, a Texas nonprofit corporation.

"SMU Indemnified Operations Liabilities" means any and all Losses incurred or otherwise suffered by any SMU Indemnified Person that arise out of (i) the construction, development, completion, maintenance, restoration, rebuilding, additions to or operation of the Library Center Facilities or the Selected Site; or (ii) the activities or operations of the Foundation or the Institute.

"SMU Indemnified Person" or "SMU Indemnified Persons" is defined in Section 2 of this Agreement.

"Third Party" means a Person other than an SMU Indemnified Person or a Foundation Indemnified Person.

"Third-Party Claim" is defined in Section 7 of this Agreement.

"University Gardens Litigation and Related Matters" is defined in the Master Agreement.

2. Indemnification by the Foundation.

(a) From and after the date hereof, the Foundation shall indemnify and hold harmless (i) SMU; (ii) SMU Corporation; (iii) SMU's Affiliates, board of trustees, officers, employees and agents; and (iv) the respective successors and assigns of the Persons identified in this Subsection 2(a)(i), (ii) and (iii) from and against any and all SMU Indemnified Operations Liabilities provided, however, that the Foundation's indemnification obligations under this Section 2(a) with respect to all SMU Indemnified Operations Liabilities that are attributable to activities and conduct occurring in the same calendar year shall be limited to that dollar amount which is equal to the Foundation Annual Operations Cap in effect for such calendar year as determined in accordance with the provisions of Section 4 of this Agreement.

(b) The persons identified in (i), (ii), (iii) and (iv) in Section 2(a) of this Agreement are each herein individually called an "SMU Indemnified Person" and collectively, the "SMU Indemnified Persons."

3. Indemnification by SMU.

(a) From and after the date of this Agreement, SMU shall indemnify and hold harmless (i) the Foundation; (ii) the Foundation's Affiliates, board of directors, officers, employees and agents; and (iii) the respective successors and assigns of the persons identified in this Subsection 3(a)(i) and (ii) from and against any and all Foundation Indemnified Operations Liabilities provided, however, that SMU's
indemnification obligation under this Section 3(a) with respect to all Foundation Indemnified Operations Liabilities that are attributable to activities and conduct occurring in the same calendar year shall be limited to that dollar amount which is equal to the SMU Annual Operations Cap in effect for such calendar year as determined in accordance with the provisions of Section 4 of this Agreement. Notwithstanding the foregoing, SMU's indemnification obligations contained in this Section 3(a) with respect to the University Gardens Litigation and Related Matters shall not be subject to, nor limited in amount by, the SMU Annual Operations Cap.

(b) The persons identified in (i), (ii) and (iii) of Section 7(a) of this Agreement above are each herein individually called a "Foundation Indemnified Person" and collectively, the "Foundation Indemnified Persons."


(a) "Foundation Annual Operations Cap" and "SMU Annual Operations Cap" shall each mean for each respective calendar year that dollar amount which is equal to the Cap Amount in effect on the first day of such calendar year in accordance with Section 4(b) and (c) of this Agreement.

(b) "Cap Amount" shall mean $25,000,000.00 until when and if a different amount is established pursuant to Section 4(c) of this Agreement in which case it shall mean, on any date, that amount which is then in effect pursuant to Section 4(c) of this Agreement.

(c) If, on the tenth anniversary of the date of this Agreement and on any such anniversary date thereafter, SMU or the Foundation shall believe that the then Cap Amount is either excessive or insufficient, SMU and the Foundation shall, within 15 days after written notice ("Cap Notice") by one party to the other, meet and endeavor to agree upon a new dollar amount for the Cap Amount. If the parties are able to so agree, the parties shall execute an addendum to this Agreement establishing the Cap Amount as so adjusted and such Cap Amount shall continue in effect thereafter until when and if a new Cap Amount is established pursuant to this Section 4. If the parties are unable to agree on a new amount for the Cap Amount within 60 days ("Sixty-Day Period") after the date of the Cap Notice, the matter shall be submitted to binding arbitration in accordance with the then-current commercial arbitration rules of the American Arbitration Association ("AAA"), to the extent such rules do not conflict with this Section 4(c). The arbitration shall be conducted by a single neutral arbitrator. The parties shall endeavor to select a neutral arbitrator by mutual agreement. If such agreement cannot be reached within 30 calendar days after the end of the Sixty-Day Period, any party may request the AAA to submit to each party an identical panel of nine (9) persons without conflict. Within ten business days after the AAA presents the parties with the panel list, four alternate strikes shall be made by each of the two parties to the panel, commencing with the party that gave the Cap Notice to readjust the Cap Amount, until the name of one person
remains. The parties may, however, by mutual agreement, request the AAA to submit additional panels of possible arbitrators. The final panel member thus remaining shall after the eighth strike be the arbitrator for such arbitration. The arbitrator shall have the power to determine all matters incident to the conduct of the arbitration, including without limitation all procedural and evidentiary matters and the scheduling of any hearing. The decision as to the new amount for the Cap Amount as made by the arbitrator shall be final and binding upon the parties thereto. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16. Unless otherwise agreed by the parties, the arbitration shall be held in Dallas County, Texas. The parties shall execute an addendum to this Agreement stating the new Cap Amount established by the arbitrator and such Cap Amount shall continue in effect thereafter until when and if a new Cap Amount is established pursuant to this Section 4.

5. **Environmental Liabilities.** SMU's and the Foundation's indemnification rights and indemnification obligations with regard to environmental liabilities relating to the Selected Site shall be governed solely by the terms of the Environmental Agreement and not by this Agreement.

6. **No Indemnification.** Notwithstanding anything to the contrary in this Agreement, neither SMU nor the Foundation shall be required to indemnify any Person for Losses resulting from such Person's intentional acts or omissions, gross negligence or negligence.

7. **Indemnification Procedures for Third Party Claims.**

(a) In order for a person ("Indemnified Person") or ("Indemnified Persons") to be entitled to any indemnification under this Agreement in respect of SMU Indemnified Operations Liabilities or Foundation Indemnified Operations Liabilities, as the case may be, that involve a claim, litigation or proceeding ("Third-Party Claim") made against such Indemnified Person by a Third Party, such Indemnified Person shall give (promptly after receiving notice of such Third-Party Claim) written notice ("Notice") to the party ("Indemnifying Party"), from whom such indemnification is sought pursuant to this Agreement, of the assertion of such Third-Party Claim, of which it has knowledge and in respect of which it may seek indemnity hereunder, provided, that a failure to provide such notice shall not affect such Indemnified Person's right to indemnification hereunder as long as such failure shall not have materially prejudiced the Indemnifying Party's defense of such Third-Party Claim.

(b) If an Indemnified Person desires to seek indemnity under this Agreement for a Third-Party Claim, the Indemnifying Party shall have 45 days after receipt of such Notice to undertake, through counsel of its own choosing reasonably satisfactory to the Indemnified Person and at its own expense, the settlement or defense thereof; provided, however, that the Indemnified Person shall be entitled to participate in (but not control) such settlement or defense through counsel chosen by such Indemnified Person, provided, that the fees and expenses of such counsel
shall be borne by such Indemnified Person unless (i) the employment of such counsel shall have been authorized in writing by the Indemnifying Party in connection with the defense of such action; or (ii) the Indemnified Person shall have reasonably concluded that there is a conflict of interest between the Indemnifying Party and the Indemnified Person on a significant issue which, under applicable standards of professional conduct, requires that the Indemnifying Party and the Indemnified Person be represented by separate counsel; provided, that the Indemnifying Party shall not, in connection with any one such action or proceeding or separate but substantially similar or related actions or proceedings arising out of the same general allegations or circumstances, be required to pay for more than one firm of attorneys at any time for all of the Indemnified Persons, which firm shall be designated in writing by the Indemnified Persons. If the Indemnifying Party does not notify the Indemnified Person within 45 days after the receipt of the Indemnified Person's Notice of a claim of indemnity hereunder that it elects to undertake the defense thereof or declines to undertake the defense, the Indemnified Person shall have the right to defend the Third-Party Claim. All reasonable fees and expenses (including attorneys' fees) incurred by the Indemnified Persons in connection with such defense shall be deemed for all purposes hereunder to be Indemnified Liabilities and shall be paid by the Indemnifying Party on behalf of the Indemnified Persons as incurred.

The Indemnifying Party shall not settle any Third-Party Claim without the prior written consent of the Indemnified Person, and an Indemnified Person shall not settle any Third-Party Claim without the prior written consent of the Indemnifying Party, which consent in either case shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Indemnified Person shall have the right to pay or settle any such Third-Party Claim if it shall waive any right to indemnity therefor by the Indemnifying Party, and the Indemnifying Party shall have the right to pay or settle any such Third-Party Claim if such settlement includes a release of all involved Indemnified Persons from liability with respect to such Third-Party Claim and if the settlement does not require or restrict any action by the Indemnified Person.

8. **Mediation of a Dispute.** If a dispute arises between an SMU Indemnified Person and the Foundation or between a Foundation Indemnified Person and SMU regarding the performance or a breach of any of the terms of this Agreement (a "Dispute"), and such Dispute is not resolved within 15 days after it arises (the "Resolution Date"), such Dispute shall be submitted to mediation if any party makes a written demand therefor to the other party within 15 days of the Resolution Date. Such parties shall, within ten days after delivery of such written notice to the other party, seek to agree upon a mediator who is (i) a reputable person actively engaged in the mediation of commercial contract disputes for a continuous period of not less than ten years; and (ii) is not an Affiliate of, or has had material business dealings with, either party. If the parties are unable to agree upon a mediator within 30 days, at the request of any such party, a mediator having the qualifications set forth above shall be appointed by the AAA office in Dallas, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Dallas, Texas. The costs
of such mediation services shall be shared equally by the respective parties to the Dispute (but each party shall bear the cost of their own travel and attorney's fees). The parties to a Dispute may not file a lawsuit with respect to such Dispute prior to the completion of such mediation unless there is a failure to comply with the provisions of this Section 8.

9. **Miscellaneous.**

(a) **Governing Law; Venue.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter of this Agreement brought by any other party. Each party to this Agreement hereby agrees to venue in Dallas County, Texas.

(b) **Successors and Assigns.** This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

(c) **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

(d) **Notice.** Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

To SMU:    Dr. R. Gerald Turner  
President  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100
With copies to: Mr. S. Leon Bennett
General Counsel
Southern Methodist University
P.O. Box 750100
Dallas, Texas 75275-0100

To the Foundation: Mr. Donald L. Evans
Chair
George W. Bush Presidential Library Foundation
500 W. Texas Avenue, Suite 960
Midland, Texas 79701

With copies to: Mr. Sam P. Burford, Jr.
Thompson & Knight LLP
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

(e) **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any party to this Agreement upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or in equity afforded to the parties to this Agreement shall be cumulative and not alternative.

(f) **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(g) **Third Party Beneficiaries.** The parties hereto acknowledge that SMU and the Foundation and their respective board of trustees or board of directors, as the case may be, and their respective officers, employees and agents are intended to be third party beneficiaries of and under this Agreement, and as such, this Agreement shall be enforceable by such third party beneficiaries. All of the benefits of SMU and the Foundation under this Agreement shall inure to the benefit of such third
party beneficiaries, and such third party beneficiaries shall have all legal or equitable rights, remedies or claims to which SMU and the Foundation are respectively entitled under this Agreement.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

(i) **Titles and Subtitles.** The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

(j) **Professional Fees.** If any party hereto institutes any action or proceeding against the other party with regard to this Agreement, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys' fees.

(k) **Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

(l) **Rule of Construction Inapplicable.** The parties to this Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Agreement and that this Agreement has not been written solely by counsel for one of the parties. The parties to this Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

(m) **No Joint Venture.** Nothing contained in this Agreement or the Ancillary Agreements between the parties is intended by the parties to create a partnership or joint venture between the parties to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

(n) **Gender and Number.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

(o) **Survival.** Each provision of this Agreement containing rights and obligations that by their nature require the payment of money or the performance of obligations after the termination of this Agreement shall survive any such termination.
IN WITNESS WHEREOF, each of the parties has caused this Indemnification Agreement to be executed on its behalf by its officers thereto duly authorized, all as of the day and year first above written.

SMU:

SOUTHERN METHODIST UNIVERSITY,
a Texas non-profit corporation

By: ________________________________
    R. Gerald Turner
    President

THE FOUNDATION:

THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION,
a Texas non-profit corporation

By: ________________________________
    Name: ________________________________
    Title: ________________________________
FUND RAISING AGREEMENT

THIS FUND RAISING AGREEMENT (this “Agreement”) entered into this 22nd day of February, 2008 by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation (“SMU”) and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation (the “Foundation”);

WITNESSETH:

WHEREAS, SMU and the Foundation executed and entered into that certain Master Agreement dated February 22, 2008 (the “Master Agreement”) pursuant to which the Library Center Facilities (as defined in the Master Agreement) will be located at SMU;

WHEREAS, it will be necessary to conduct a fund raising campaign ("Campaign") to provide the funds necessary to construct the Library Center Facilities and fund required and anticipated operating expenses and endowments; and

WHEREAS, SMU and the Foundation desire to set forth in this Agreement the terms and conditions pursuant to which SMU and the Foundation will conduct the Campaign;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and intending to be bound hereby, the parties hereto do hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below.

   Construction Costs shall mean all costs arising out of the planning, design, construction, completion and furnishing of the Library Center Facilities on the Library Center Property (as defined in the Master Agreement).

   Distribution Change Point shall mean the time at which the aggregate amount of Net Collected Funds received by the Foundation first equals $200,000,000.00.

   Financing Costs shall mean all direct costs arising out of any debt financing obtained by the Foundation to fund the payment of any of the Construction Costs.
**Net Collected Funds** shall mean the sum of all funds received by the Foundation from and after the date of this Agreement, net of all fundraising expenses.

**Total Project Costs** shall mean the sum of the Construction Costs and the Financing Costs.

2. **Effective Date.**

Notwithstanding the date of execution of this Agreement, this Agreement shall not be operational until the Foundation shall first implement Section 1.(b) of that certain Governance and Academic Co-Operation Agreement entered into by the parties on the 22nd day of February 2008.

3. **Fundraising Efforts.**

The Foundation’s operation of the Campaign shall be subject to the Foundation’s obligations to SMU under this Agreement. The Foundation shall solicit and accept gifts from the general public to provide funds for: (i) the benefit and support of the Foundation; (ii) the construction of the Library Center Facilities; and (iii) the other purposes described in Section 3(b) of this Agreement.

(a) **The Foundation.** Consistent with the terms of this Agreement, the Foundation shall be responsible for overseeing and directing all efforts to solicit the charitable contributions needed to provide funds for the purposes described in Section 3(b) of this Agreement.

(b) **Best Efforts.** Upon the terms, and subject to the conditions set forth in this Agreement, the Foundation and SMU shall use their best efforts to work together to solicit charitable contributions for the Foundation. The Foundation shall cause Net Collected Funds to be distributed or used by the Foundation for the purposes of: (i) paying Total Project Costs; (ii) establishing a fund to be contributed to National Archives and Records Administration ("NARA") for underwriting operating costs of the Library and the Museum (as each is defined in the Master Agreement); (iii) funding startup and operating costs of the Foundation (including the operations of the Institute) and, in addition, creating an endowment, in an amount determined by the Foundation’s board of directors, for underwriting operating costs of the Foundation; and (iv) funding a restricted endowment established by SMU for underwriting SMU’s share of the costs of joint programs conducted with the Institute, the Library and the Museum (as each is defined in the Master Agreement). In determining the amount of the endowment described in this Section 3(b)(iii), the Foundation’s board of directors shall consider input from the Organizing Committee (as defined herein) and appropriate advisors. In conducting the Campaign and designing solicitation materials, the Foundation and
Organizing Committee shall consider, among other things, the impact of solicitation materials on a determination of whether specific contributions may be regarded as “endowment funds” under the Texas Uniform Prudent Management of Institutional Funds Act.

(c) **Restrictions.** Neither the Foundation nor SMU shall engage in any fund raising activities, nor solicit any pledge commitments or collect any funds, for any of the specific purposes provided in Subsections 3(b)(i), (ii), (iii) and (iv) of this Agreement, except for fund raising activities involving pledge commitments and collections dedicated to the Foundation, NARA, or SMU, as described in Section 3(b) of this Agreement. SMU shall be entitled to continue to engage in any and all other solicitation activities for contributions to SMU provided that they are not for the specific purposes set forth in Subsection 3(b)(i), (ii), (iii) and (iv) of this Agreement. SMU and the Foundation shall be entitled to have appropriate safeguards regarding the use of its own donor contribution list.

4. **The Foundation’s Authority.**

(a) The Foundation shall have all legal authority and obligations pertaining to the Campaign, including contracting with consultants and other key personnel (employment of Campaign staff); maintaining and operating all Campaign records, including all Campaign banking accounts; and conducting annual outside audits, including audits of the application of and distribution of contributions.

(b) The Campaign shall have no employees except as mutually approved in writing by the Foundation and SMU.

(c) SMU shall have the right at any time to audit the Foundation records at SMU’s expense.

5. **Expenses.** All expenses of the Campaign including all expenses relating to the fund raising activities contemplated by this Agreement shall be the sole liability of, and promptly paid by, the Foundation. All out-of-pocket expenses incurred respectively by the Foundation and SMU in carrying out the fund raising activities contemplated by this Agreement shall constitute fund raising expenses and any expenses so incurred by SMU shall be promptly reimbursed to SMU by the Foundation. All expenses must be approved before they are incurred by the Campaign Committee.

6. **Campaign Structure and Termination.**

(a) **Organizing Committee.** The Foundation shall establish and maintain an Organizing Committee (the “Organizing Committee”) that shall have the sole responsibility and authority for coordinating all fund raising activities
of the Foundation, including setting Campaign goals, identifying specific individuals and organizations to be solicited for contributions, setting the amount of specific solicitations and selecting the persons who will make such solicitations.

(b) The Organizing Committee shall be appointed by the Foundation with equal representation of appointed members – one half appointed by the Foundation and one-half appointed by the Foundation as nominated by SMU. The Organizing Committee shall determine its structure and officers.

(c) The Organizing Committee shall cease to exist and this Agreement shall terminate upon the unanimous vote of the Organizing Committee in its sole discretion. In addition, from time to time during the Campaign, the Organizing Committee may consider terminating this Agreement if, among other considerations, it unanimously concludes that sufficient funds have been raised to cover the Total Project Costs (Construction and Financing Costs) of the Library Center Facilities, the funds to be contributed to the National Archives and Records Administration, operating funds for the Foundation, and funds for the ongoing maintenance and operation of the Library Center Facilities and an appropriate endowment for the ongoing programming and operations of the Foundation and Institute and funds for a restricted endowment established by SMU for its joint programs to be conducted with the Institute. Notwithstanding the foregoing, should the total of Net Collected Funds received by the Foundation exceed $500,000,000, this Agreement shall automatically terminate.

7. **Distribution Formula.** Until the Distribution Change Point, the Foundation shall apply all Net Collected Funds solely toward the payment of Total Project Costs, funding startup and operating costs of the Foundation (including operations of the Institute), and establishing a fund to be contributed to NARA for underwriting operating costs of the Library and the Museum. From and after the Distribution Change Point, the Foundation shall retain or use eighty-five percent (85%) of each dollar of Net Collected Funds for any of the purposes described in **Subparagraph 3(b)(i)-(iii) of this Agreement**, and the Foundation shall distribute the remaining fifteen percent (15%) of Net Collected Funds to SMU at least quarterly for the purpose of funding a restricted endowment established by SMU for underwriting SMU's share of the costs of joint programs conducted with the Institute, the Library and the Museum. SMU shall cease to be entitled to receive any distribution when the Organizing Committee shall cease to exist.

8. **Donor Recognition.**

(a) The formula for distributing funds as provided in **Section 7** of this Agreement and the purposes for which contributions will be used will be
disclosed to donors in an appropriate manner as determined from time to time by the Organizing Committee.

(b) Donor Recognition by the Foundation – (i) the Foundation shall in its gift receipts to all donors acknowledge the purpose or purposes for which the donor's contribution will be used. All donor recognition materials and other modes of public donor recognition shall, to the extent deemed appropriate by the Foundation after consultation with the Organizing Committee, acknowledge the donor’s contribution. (ii) The Foundation and SMU agree to work cooperatively to publicly recognize SMU for its support financially and otherwise on a basis consistent with the Foundation’s recognition of other donors who make significant contributions.

(c) Donor Recognition by SMU – SMU shall recognize the Foundation for the funding of the SMU endowment described in Subsection 3(b)(iv) of this Agreement, which was made possible by the donors to the Foundation for the purposes set forth in Section 3(b)(i)-(iv) of this Agreement. SMU’s recognition of the Foundation shall be in all donor recognition materials or other modes of public recognition associated with the SMU Centennial Capital Campaign commensurate with the dollar amount of funding provided to the SMU endowment by the Foundation.

9. **Miscellaneous.**

(a) **Governing Law; Venue.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter of this Agreement brought by any other party. The parties hereto hereby agree to venue in Dallas County, Texas.

(b) **Successors and Assigns.** This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

(c) **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE
SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

(d) **Notice.** Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

To SMU:  Dr. R. Gerald Turner  
President  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

With copies to:  Mr. S. Leon Bennett  
General Counsel  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

To the Foundation:  Mr. Donald L. Evans  
Chair  
George W. Bush Presidential Library Foundation  
500 W. Texas Avenue, Suite 960  
Midland, Texas 79701

With copies to:  Mr. Sam P. Burford, Jr.  
Thompson & Knight LLP  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

(e) **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy
inuring to any party upon any breach or default of any party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or otherwise afforded to the parties shall be cumulative and not alternative.

(f) **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

(h) **Titles and Subtitles.** The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

(i) **Professional Fees.** If any party hereto institutes any action or proceeding against the other party with regard to this Agreement, the prevailing party in such action shall be entitled to recover from the losing party, in addition to the costs and expenses of and related to the suit, its actual reasonable attorneys' fees.

(j) **Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

(k) **Gender and Number.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

(l) **Rules of Construction Inapplicable.** The parties to this Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Agreement and that this Agreement has not been written solely by counsel for one of the parties. The parties to this Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved
against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

(m) **No Joint Venture.** Nothing contained in this Agreement between the parties is intended by the parties to create a partnership or joint venture between the parties to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

(n) **No Third Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.

(o) **Liability Limitation.** The liability of the parties hereunder shall be limited to the extent provided in that certain Contract Liability Cap Agreement dated February 22, 2008, by and among SMU, SMU Corporation and the Foundation.

[The remainder of this page is intentionally left blank.]
IN WITNESS WHEREOF, SMU and the Foundation have hereto executed this Agreement effective as of the day and year first above written.

SMU:

SOUTHERN METHODIST UNIVERSITY,
a Texas non-profit corporation

By: ______________________________
Name: R. Gerald Turner
Title: President

Date of Execution: __________________

THE FOUNDATION:

THE GEORGE W. BUSH PRESIDENTIAL
LIBRARY FOUNDATION,
a Texas nonprofit corporation

By: ______________________________
Name: __________________________
Title: __________________________

Date of Execution: __________________
CONTRACT LIABILITY CAP AGREEMENT

THIS CONTRACT LIABILITY CAP AGREEMENT (this "Agreement") entered into as of this 22nd day of February, 2008, by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation ("SMU"), THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation (the "Foundation") and SMU CORPORATION ("SMU Corporation"), a Texas non-profit corporation;

WITNESSETH:

WHEREAS, SMU and the Foundation executed and entered into that certain Master Agreement dated February 22, 2008 (the "Master Agreement") pursuant to which The George W. Bush Presidential Library and Museum and The George W. Bush Institute (the "Institute") will be located at SMU;

WHEREAS, the execution and delivery of this Agreement by each of the parties hereto is required pursuant to the terms of the Master Agreement; and

WHEREAS, SMU, SMU Corporation and the Foundation desire to limit the amount of liability that SMU, SMU Corporation and the Foundation can incur from their respective breaches, if any, of the Library Contracts (defined in Section 1 of this Agreement);

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and intending to be bound hereby, the parties hereto do hereby agree as follows:

1. Definitions.

"AAA" is defined in Section 4 of this Agreement.

"Affiliate" means a person that directly or indirectly controls, or is controlled by, or is under common control, with the person specified.

"Agreement" is defined in the preamble of this Agreement.

"Ancillary Agreements" is defined in the Master Agreement.

"Cap Amount" is defined in Section 4 of this Agreement.

"Cap Notice" is defined in Section 4 of this Agreement.

"Dispute" is defined in Section 5 of this Agreement.

"Foundation" is defined in the preamble of this Agreement.

"Foundation Annual Contract Cap" is defined in Section 4 of this Agreement.
"Environmental Agreement" is defined in the Ground Lease.

"Foundation Annual Contract Cap" is defined in Section 4 of this Agreement.

"Ground Lease" is defined in the Master Agreement.

"Library Contracts" means collectively, the Master Agreement, the Ground Lease and the Ancillary Agreements.

"Institute" is defined in the recitals to this Agreement.

"Losses" means any and all losses, damages, deficiencies, liabilities, obligations, actions, claims, suits, proceedings and judgments (including, without limitation, out-of-pocket interest and penalties, and reasonable technical, investigatory, consulting, legal and accounting fees, costs and expenses, and special exemplary, punitive and consequential damages) of any nature whatsoever.

"Master Agreement" is defined in the recitals to this Agreement.

"Resolution Date" is defined in Section 6 of this Agreement.

"Sixty-Day Period" is defined in Section 4 of this Agreement.

"SMU" is defined in the preamble of this Agreement.

"SMU Annual Contract Cap" is defined in Section 4 of this Agreement.

"SMU Corporation" is defined in the preamble of this Agreement.

2. **The Foundation Contract Liability Cap.** The Foundation's liability for all Losses suffered by SMU and/or SMU Corporation that are attributable to all breaches by the Foundation of the provisions of the Library Contracts occurring in the same calendar year shall be limited to that dollar amount which is equal to the Foundation Annual Contract Cap in effect for such calendar year as determined in accordance with the provisions of Section 4 of this Agreement provided, however, that in the case of any such Losses attributable to any and all breaches by the Foundation of Section 10.1 of the Ground Lease, the Foundation Annual Contract Cap shall not apply and there shall be no dollar limit to such obligation of the Foundation. All claims and legal actions asserted by or on behalf of SMU and/or SMU Corporation against the Foundation for its breaches of any of the provisions of any of the Library Contracts shall be subject to the liability limitations of this Section 2.

3. **SMU Contract Liability Cap.** SMU's and SMU Corporation's collective (aggregate) liability for all Losses suffered by the Foundation that are attributable to all breaches by SMU and/or SMU Corporation of the provisions of the Library Contracts occurring in the same calendar year shall be limited to that dollar amount which is equal to the SMU Annual Contract Cap in effect for such calendar year as determined in accordance with the provisions of Section 4 of this Agreement, provided, however, that in the case of any
Losses attributable to any and all breaches by SMU or SMU Corporation of (i) Section 10.1 of the Ground Lease; or (ii) SMU’s indemnity obligations to the Foundation regarding the University Gardens Litigation and Related Matters as defined and set forth in that certain Indemnification Agreement between SMU and the Foundation of even date herewith, the SMU Annual Contract Cap shall not apply and there shall be no dollar limit to such obligations of SMU and SMU Corporation. All claims and legal actions asserted by or on behalf of the Foundation against SMU and/or SMU Corporation for their breaches of any of the provisions of any of the Library Contracts shall be subject to the liability limitations of this Section 3.

4. **Cap Amount.**

(a) "Foundation Annual Contract Cap" and "SMU Annual Contract Cap" shall each mean for each respective calendar year that dollar amount which is equal to the Cap Amount in effect on the first day of such calendar year in accordance with Sections 4(b) and (c) of this Agreement.

(b) "Cap Amount" shall mean $25,000,000.00 until when and if a different amount is established pursuant to clause (c) below in which case it shall mean, on any date, that amount which is then in effect pursuant to Section 4 (c) of this Agreement.

(c) If, on the tenth anniversary of the date of this Agreement and on any such anniversary date thereafter, SMU or the Foundation shall believe that the then Cap Amount is either excessive or insufficient, SMU and the Foundation shall, within fifteen (15) days after written notice ("Cap Notice") by one party to the other, meet and endeavor to agree upon a new dollar amount for the Cap Amount. If the parties are able to so agree, the parties shall execute an addendum to this Agreement establishing the Cap Amount as so adjusted and such Cap Amount shall continue in effect thereafter until when and if a new Cap Amount is established pursuant to this Section 4. If the parties are unable to agree on a new amount for the Cap Amount within 60 days ("Sixty-Day Period") after the date of the Cap Notice, the matter shall be submitted to binding arbitration in accordance with the then-current commercial arbitration rules of the American Arbitration Association ("AAA"), to the extent such rules do not conflict with this Section 4(c). The arbitration shall be conducted by a single neutral arbitrator. The parties shall endeavor to select a neutral arbitrator by mutual agreement. If such agreement cannot be reached within 30 calendar days after the end of the Sixty-Day Period, any party may request the AAA to submit to each party an identical panel of nine persons without conflict. Within ten business days after the AAA presents the parties with the panel list, four alternate strikes shall be made by each of the two parties to the panel, commencing with the party that gave the Cap Notice to readjust the Cap Amount, until the name of one person remains. The parties may, however, by mutual agreement, request the AAA to submit additional panels of possible arbitrators. The final panel members thus remaining shall, after the eighth strike, be the arbitrator for such arbitration. The arbitrator shall have the power to determine all matters incident to the conduct of the arbitration, including without limitation all procedural and evidentiary matters and
the scheduling of any hearing. The decision as to the new amount for the Cap Amount as made by the arbitrator shall be final and binding upon the parties thereto. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16. Unless otherwise agreed by the parties, the arbitration shall be held in Dallas County, Texas. The parties shall execute an addendum to this Agreement stating the new Cap Amount established by the arbitrator and such Cap Amount shall continue in effect thereafter until when and if a new Cap Amount is established pursuant to this Section 4.

5. **Environmental Liabilities.** SMU's and the Foundation's rights and obligations with regard to environmental liabilities shall be governed solely by the terms of the Environmental Agreement, and such liabilities shall not be subject to either the Foundation Annual Contract Cap nor the SMU Annual Contract Cap.

6. **Mediation of a Dispute.** If a dispute arises between SMU, SMU Corporation and the Foundation regarding the performance or a breach of any of the terms of this Agreement (a "Dispute"), and such Dispute is not resolved within 15 days after it arises (the "Resolution Date"), such Dispute shall be submitted to mediation if any party makes a written demand therefor to the other party within 15 days of the Resolution Date. Such parties shall, within ten days after delivery of such written notice to the other parties, seek to agree upon a mediator who is (i) a reputable individual actively engaged in the mediation of commercial contract disputes for a continuous period of not less than ten years; and (ii) is not a Affiliate of, or has had material business dealings with, either party. If the parties are unable to agree upon a mediator within thirty (30) days, at the request of any such party, a mediator having the qualifications set forth above shall be appointed by the AAA office in Dallas, Texas. Such mediation shall occur within thirty (30) days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Dallas, Texas. The costs of such mediation services shall be shared equally by the respective parties to the Dispute (but each party shall bear the cost of their own travel and attorney's fees). The parties to a Dispute may not file a lawsuit with respect to such Dispute prior to the completion of such mediation unless there is a failure to comply with the provisions of this Section 6.

7. **Miscellaneous.**

(a) **GOVERNING LAW; VENUE.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division and, if such court does not have jurisdiction, of the courts of the State of Texas in Dallas County, for the purposes of any action arising out of this Agreement, or the subject matter hereof or thereof brought by any other party. Each party hereto herein agrees to venue in Dallas County, Texas.
(b) **Successors and Assigns.** This Agreement and all terms, provisions, covenants and conditions contained in this Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the parties to this Agreement and the respective successors and permitted assigns of the parties to this Agreement.

(c) **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH ALL EXHIBITS ATTACHED HERETO, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREIN. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

(d) **Notices.** Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

To SMU: Dr. R. Gerald Turner  
President  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

With copies to: Mr. S. Leon Bennett  
General Counsel  
Southern Methodist University  
P.O. Box 750100  
Dallas, Texas 75275-0100

To the Foundation: Mr. Donald L. Evans  
Chair  
George W. Bush Presidential Library Foundation  
500 W. Texas Avenue, Suite 960  
Midland, Texas 79701

With copies to: Mr. Sam P. Burford, Jr.  
Thompson & Knight LLP  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the
time of personal delivery or, in the case of delivery service or mail, as of the date
of first attempted delivery at the address and in the manner provided herein, or in
the case of facsimile, upon receipt.

(e) **Delays or Omissions.** Except as otherwise provided herein to the contrary, no
delay or omission to exercise any right, power or remedy inuring to any party
upon any breach or default of any party under this Agreement shall impair any
such right, power or remedy of such party nor shall it be construed to be a waiver
of any such breach or default, or an acquiescence therein, or of or in any similar
breach or default thereafter occurring; nor shall any waiver of any single breach
or default be deemed a waiver of any other breach or default theretofore or
thereafter occurring. All remedies either under this Agreement or by law or
otherwise afforded to the parties shall be cumulative and not alternative.

(f) **Severability.** If any provision of this Agreement or the application thereof to any
person or circumstance is invalid or unenforceable to any extent, the remainder of
this Agreement and the application of such provisions to other persons or
circumstances shall not be affected thereby and shall be enforced to the greatest
extent permitted by law.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts,
each of which shall be an original, but all of which together shall constitute one
and the same instrument.

(h) **Titles and Subtitles.** The titles of the articles, sections, paragraphs and
subparagraphs of this Agreement are for convenience of reference only and are
not to be considered in construing this Agreement.

(i) **Professional Fees.** If any party hereto institutes any action or proceeding against
the other party with regard to this Agreement, the prevailing party in such action
shall be entitled to recover from the losing party, in addition to the costs and
expenses of and related to the suit, its actual reasonable attorneys' fees.

(j) **Modification.** Neither this Agreement nor any provision hereof may be waived,
modified, amended, discharged or terminated except as provided herein or by an
instrument in writing signed by the party against which the enforcement of such
waiver, modification, amendment, discharge or termination is sought, and then
only to the extent set forth in such instrument.

(k) **Gender and Number.** Words of any gender used in this Agreement shall be held
and construed to include any other gender, and words in the singular or plural
number shall be held to include the other, unless the context otherwise requires.

(l) **Rule of Construction Inapplicable.** The parties to this Agreement acknowledge
and confirm that their respective attorneys have participated jointly in the review
and revision of this Agreement and that this Agreement has not been written
solely by counsel for one of the parties. The parties to this Agreement therefore
stipulate and agree that the rule of construction to the effect that any ambiguities
are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

(m) **No Joint Venture.** Nothing contained in this Agreement or the Ancillary Agreements between the parties is intended by the parties to create a partnership or joint venture between the Foundation, SMU and SMU Corporation to this Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party to this Agreement as an agent of the other for any purpose whatsoever. Neither party to this Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

(n) **No Third Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Agreement.

(o) **Survival.** Each provision of this Agreement containing rights and obligations that by their nature require the payment of money or the performance of obligations after the termination of this Agreement shall survive such termination.

*[The remainder of this page is intentionally left blank.]
IN WITNESS WHEREOF, each of the parties has caused this Indemnification Agreement to be executed on its behalf by its officers thereto duly authorized, all as of the day and year first above written.

SMU:
SOUTHERN METHODIST UNIVERSITY

By: ____________________________
   R. Gerald Turner
   President

THE FOUNDATION:
THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION

By: ____________________________
   Name: ____________________________
   Title: ____________________________

SMU CORPORATION:
SMU CORPORATION,
a Texas nonprofit corporation

By: ____________________________
   Name: ____________________________
   Title: ____________________________
Environmental Agreement

THIS ENVIRONMENTAL AGREEMENT (this "Environmental Agreement") made this 22nd day of February, 2008, by and between SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation, and SMU CORPORATION, a Texas non-profit corporation ("SMU Corporation"), on the one hand, and THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION, a Texas non-profit corporation ("Foundation"), on the other hand;

WITNESSETH:

WHEREAS, Southern Methodist University and the Foundation have this day entered into that certain Master Agreement dated February 22, 2008 (the "Master Agreement") regarding the location, construction and operation of the Library Center Facilities (as therein defined) at Southern Methodist University. Attached to the Master Agreement as an Exhibit is a form of Ground Lease Agreement which SMU Corporation and the Foundation shall execute at the Closing (as defined in the Master Agreement) (the "Lease") covering certain real property described therein (the "Leased Property"). Southern Methodist University and SMU Corporation shall be referred to herein, collectively, as "SMU". SMU and the Foundation shall be referred to herein as each a "Party" and collectively, the "Parties". Terms defined in the Lease are used with the same meaning herein unless otherwise defined in this Environmental Agreement; and

WHEREAS, the Parties are entering into this Environmental Agreement to address the Parties' respective responsibilities for Environmental Conditions at the Leased Property and such agreement is intended to become effective at the time the Parties enter into the Ground Lease;

NOW THEREFORE, for and in consideration of the above premises and the mutual covenants and agreements set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby confirmed and acknowledged by each of the Parties hereto, and each of the Parties intending to be bound thereby, the undersigned SMU and Foundation do hereby agree as follows:

1. Responsibility for Environmental Conditions.

A. Environmental Conditions Discovered Prior to the Completion Date.

(i) SMU shall be solely responsible for Remediation of any Environmental Conditions discovered prior to the Completion Date. For purposes of this Environmental Agreement, "Completion Date" means:

(x) with respect to each building to be built as part of the Library Center Facilities at the Leased Property, upon the earlier to occur of the following:
(I) the date on which the last concrete is poured for the foundation of each such building to be constructed on the Leased Property as shown in the Final Plans, or

(II) June 30, 2013; and

(y) with respect to the Leased Property in its entirety, upon the earlier to occur of the following:

(I) the date on which the last concrete is poured for the foundation of the last building to commence being built as part of the Library Center Facilities as shown in the Final Plans; or


With respect to such Remediation obligation, SMU will cause its insurers, if any, to waive subrogation against the Foundation with respect to Remediation costs that the Foundation could otherwise potentially be deemed responsible for but for the contractual obligation set forth in this Section 1.A(i), to the extent those costs are covered by insurance held by SMU.

(ii) If SMU breaches the Remediation obligation which it is solely responsible for under this provision, the Foundation's sole and exclusive remedies shall be: (x) to sue for damages; or (y) to seek specific performance of SMU's obligations. The Foundation waives any and all other rights, claims or causes of action it may have against SMU with respect to such Remediation obligation, including, without limitation, such rights, claims, and causes of action the Foundation may have against SMU under strict liability provisions, statutory cost recovery provisions, and other provisions under Applicable Environmental Laws (as defined in the Master Agreement), breaches of statutory implied warranties or otherwise, nuisance or tort actions, and rights of contribution.

B. Environmental Conditions Discovered After the Completion Date.

(i) Except as set forth in Section 1.B(ii) of this Environmental Agreement, the Foundation shall be solely responsible for Remediation on the Leased Property of Environmental Conditions on the Leased Property first discovered on or after the twentieth (20th) anniversary of the Completion Date (as such Completion Date is determined pursuant to Subsections 1.A(i)(x) or (y) of this Environmental Agreement, as appropriate), irrespective of how long such conditions existed prior to their discovery. With respect to such Remediation obligation, the Foundation will cause its insurers, if any, to waive subrogation against SMU with respect to Remediation costs that SMU could otherwise
potentially be deemed responsible for but for the contractual obligation set forth in this Section 1.B(i), to the extent those costs are covered by insurance held by the Foundation.

(ii) With respect to: (x) Environmental Conditions on the Leased Property discovered prior to the twentieth (20th) anniversary of the Completion Date that are not otherwise the obligation of SMU pursuant to Subsection 1.A(i) of this Environmental Agreement, and (y) with respect to Environmental Conditions first discovered after the Completion Date (as such Completion Date is determined pursuant to Subsections 1.A(i)(x) or (y) of this Environmental Agreement, as appropriate) that are (a) Hazardous Materials from an offsite source, or (b) Hazardous Materials impacting an offsite property from a source on the Leased Property, the responsibility, as between the Parties, for Remediation of same shall be as may be agreed upon in writing by the Parties, and if the Parties cannot reach agreement, the responsibility for Remediation of same shall be as the courts or applicable environmental governmental authority, as the case may be, may determine.

(iii) If the Foundation breaches the Remediation obligation which it is solely responsible for under this provision, SMU's sole and exclusive remedies shall be: (x) to sue for damages; or (y) to seek specific performance of the Foundation's obligations. SMU waives any and all other rights, claims or causes of action it may have against the Foundation with respect to such Remediation obligation, including, without limitation, such rights, claims, and causes of action SMU may have against the Foundation under strict liability provisions, statutory cost recovery provisions, and other provisions under Applicable Environmental Laws, breaches of statutory implied warranties or otherwise, nuisance or tort actions, and rights of contribution.

C. Other Agreements. Nothing in this Environmental Agreement shall limit the obligations of Southern Methodist University under Paragraph 6(a) of the Master Agreement or of the Foundation under Article IX of the Lease.

2. Cleanup Obligation and Cleanup Standard.

A. Each Party shall, at its sole cost and expense, diligently undertake, and pursue until completion, all necessary Remediation with respect to Environmental Conditions for which such Party is responsible pursuant to Section 1 of this Environmental Agreement and, in the case of the Foundation, the Lease. The Party obligated to perform the Remediation shall confer with the other Party prior to undertaking any such Remediation. The Parties shall cooperate in good faith with respect to the timeframe for planning and implementing Remediation activities (including without limitation cooperating with regard to the placement of wells or other Remediation equipment and the staging of Remediation
activities). Remediation activities at the Leased Property shall be planned and conducted so as to reasonably minimize interference with construction or other business activities being carried out at the Leased Property, in light of the site conditions requiring Remediation, the technical approaches available and other relevant considerations. The Party performing the Remediation shall notify the other Party, a reasonable time in advance, of all submissions to, meetings or other communications with the Texas Commission on Environmental Quality, or its successor agency, ("TCEQ"), or other governmental authorities regarding such Remediation and allow the notified Party a reasonable time to review and approve such communications or participate in such communications. Remediation may be provided by a Party's contractors and subcontractors (which, along with any other agents or representatives of a Party are herein referred to, individually and collectively, as "Contractors"). The Parties shall agree on the cleanup standard for such Remediation arising out of Environmental Conditions, and the Parties shall memorialize all such agreements in writing. If the Parties cannot agree on the cleanup standard for such Remediation, the cleanup standards established by the TCEQ, in effect at the time of such disagreement, for residential land use, which may include the use of institutional controls restricting the use of groundwater, (the "Applicable Cleanup Standard") shall be the default standard utilized. The Master Agreement shall not restrict how Remediation under this Environmental Agreement is achieved.

B. Each Party shall within a reasonable time of receipt make available to the other Party copies of all test results and data from laboratories, and final reports from its Contractors regarding the Leased Property and impacted off-site property (if any). Each Party shall within a reasonable time of receipt or submission make available (unless such other Party is already copied on same) to the other Party copies of correspondence to and from the TCEQ or other governmental authorities and any other documents or other information submitted to the TCEQ or other governmental authorities relating to the Leased Property and impacted off-site property (if any). Notwithstanding anything to the contrary in this Environmental Agreement, neither Party shall be obligated to provide to the other Party any documents or information of any kind that are validly subject to attorney-client privilege or the attorney work product doctrine.

3. Discovery and Notification. In the event that prior to the Completion Date (determined pursuant to Subsections (x) or (y), as appropriate, of Section 1.A(i) of this Environmental Agreement) the Foundation's Contractors reasonably believe that they have encountered soils or groundwater with Hazardous Materials that exceed Applicable Cleanup Standards, then the Foundation shall promptly notify SMU in writing.

4. Waste. Each Party shall be responsible for the timely and proper management, transportation and off-site disposal of all wastes (including contaminated soil, groundwater and fluids) generated in the course of its respective Remediation activities at the Leased Property, and neither Party will be deemed the agent of the other for any purpose relating to the generation, disposal or transport of waste.
5. **Access.** The Foundation hereby grants, effective upon the Commencement Date, a nonexclusive license to SMU, and to SMU's Contractors, to access the Leased Property to perform Remediation for which SMU is responsible. The license shall continue until SMU has completed its Remediation obligations pursuant to Section 1.A(i) of this Environmental Agreement; provided however, that in the event that there are no Environmental Conditions for which SMU is obligated to perform Remediation pursuant to Section 1.A(i) of this Environmental Agreement, such license will automatically terminate upon the Completion Date determined pursuant to Section 1.A(i)(y) of this Environmental Agreement; and provided further, such license will automatically be reinstated in the event that after such Completion Date, SMU is obligated, under this Environmental Agreement or otherwise, to perform Remediation. In accessing the Leased Property, SMU shall coordinate with the Foundation to minimize, to the extent reasonably possible, interference with the Foundation's permitted use of the Leased Property, including construction and other site development activities.

6. **Reporting.** SMU shall perform any government reporting obligation that arises out of the Environmental Conditions discovered prior to the Completion Date determined pursuant to Section 1.A(i)(y) of this Environmental Agreement. Any other governmental reporting obligations that arise after the Commencement Date shall be an obligation of the Foundation. SMU and the Foundation shall cooperate with each other with respect to either Party's performance of any such reporting obligations.

7. **General Provisions.**

   A. **Notice.** Any notice or communication required or permitted under this Environmental Agreement shall be given in writing, sent by (a) personal delivery; (b) expedited delivery service with proof of delivery; (c) United States mail, postage prepaid, registered or certified mail; or (d) confirmed facsimile, addressed as follows:

   **To SMU:**
   Dr. R. Gerald Turner  
   President  
   Southern Methodist University  
   P.O. Box 750100  
   Dallas, Texas 75275-0100

   **With copies to:**
   Mr. S. Leon Bennett  
   General Counsel  
   Southern Methodist University  
   P.O. Box 750100  
   Dallas, Texas 75275-0100

   **To the Foundation:**
   Mr. Donald L. Evans  
   Chair  
   George W. Bush Presidential Library Foundation  
   500 W. Texas Avenue, Suite 960  
   Midland, Texas 79701
or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable Party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

B. Approvals. Any decision, approval or consent required of either Party herein shall not be unreasonably withheld.

C. Professional Fees. If any Party hereto institutes any action or proceeding against the other Party with regard to this Environmental Agreement, the prevailing Party in such action shall be entitled to recover from the losing Party, in addition to the reasonable costs and expenses (including but not limited to expert fees) of and related to the suit, its actual reasonable attorneys' fees.

D. Titles and Subtitles. The titles of the articles, sections, paragraphs and subparagraphs of this Environmental Agreement are for convenience of reference only and are not to be considered in construing this Environmental Agreement.

E. ENTIRE AGREEMENT. THIS ENVIRONMENTAL AGREEMENT, TOGETHER WITH THOSE PROVISIONS OF OTHER AGREEMENTS CROSS REFERENCED HEREIN, EMBODIES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREOF, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES, NOR ANY REPRESENTATIONS MADE BY EITHER PARTY, RELATIVE TO THE SUBJECT MATTER HEREOF WHICH ARE NOT EXPRESSLY SET FORTH HEREIN. THIS ENVIRONMENTAL AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY THE PARTY OR PARTIES TO BE BOUND THEREBY.

F. Modification. Neither this Environmental Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except as provided herein or by an instrument in writing signed by the Party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

G. Successors and Assigns. This Environmental Agreement and all terms, provisions, covenants and conditions contained in this Environmental Agreement shall apply to, be binding upon and shall inure to the benefit of and be enforceable by each of the Parties to this Environmental Agreement and the respective successors and permitted assigns of the Parties to this Environmental Agreement.
H. **Gender and Number.** Words of any gender used in this Environmental Agreement shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other, unless the context otherwise requires.

I. **Severability.** If any provision of this Environmental Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Environmental Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

J. **Counterparts.** This Environmental Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

K. **Rule of Construction Inapplicable.** The Parties to this Environmental Agreement acknowledge and confirm that their respective attorneys have participated jointly in the review and revision of this Environmental Agreement and that this Environmental Agreement has not been written solely by counsel for one of the Parties. The Parties to this Environmental Agreement therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting Party shall not be employed in the interpretation of this Environmental Agreement to favor either Party against the other.

L. **No Joint Venture.** Nothing contained in this Environmental Agreement or the Ancillary Agreements (as defined in the Master Agreement) between the Parties is intended by the Parties to create a partnership or joint venture between the Parties to this Environmental Agreement and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Environmental Agreement does not create a joint enterprise, nor does it appoint either Party to this Environmental Agreement as an agent of the other for any purpose whatsoever. Neither Party to this Environmental Agreement shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

M. **No Third-Party Beneficiaries.** Nothing in this Environmental Agreement is intended or shall be construed to confer upon any person or entity (other than the Parties hereto and their respective successors and permitted assigns) any benefit, right, remedy or cause of action under or by reason of this Environmental Agreement.

N. **Governing Law; Venue.** THIS ENVIRONMENTAL AGREEMENT SHALL BE GOVERNED AND INTERPRETED AND THE RIGHTS OF THE PARTIES TO THIS ENVIRONMENTAL AGREEMENT GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE. Each Party to this Environmental Agreement hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, and, if such court does not have jurisdiction, to the courts of the State of Texas.
in Dallas County, for the purposes of any action arising out of this Environmental Agreement, or the subject matter of this Environmental Agreement brought by any other Party. Each Party to this Environmental Agreement hereby agrees to venue in Dallas County, Texas.

O. **Delays or Omissions.** Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any Party to this Environmental Agreement upon any breach or default of any Party under this Environmental Agreement shall impair any such right, power or remedy of such Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Unless otherwise provided in this Environmental Agreement, all remedies either under this Environmental Agreement or by law or in equity afforded to the Parties to this Environmental Agreement shall be cumulative and not alternative.

P. **Joint and Several Obligation.** In each instance where the Environmental Agreement provides for an obligation of SMU, the obligation shall be deemed to be a joint and several obligation of Southern Methodist University and SMU Corporation.

Q. **Termination.** This Environmental Agreement shall terminate and be of no further force or effect upon the termination of the Master Agreement unless the Parties have entered into the Ground Lease whereupon this Environmental Agreement shall terminate on the termination of the Ground Lease; provided, however, that each provision of this Environmental Agreement containing rights and obligations that by their nature require the payment of money or the performance of obligations after the expiration or earlier termination of this Environmental Agreement shall survive any such expiration of or earlier termination.

*[The remainder of this page is intentionally left blank.]*
IN WITNESS WHEREOF, SMU and the Foundation have hereto executed this Environmental Agreement on the day and year first above written to become effective at the time the Parties enter into the Ground Lease.

SMU:

SOUTHERN METHODIST UNIVERSITY, a Texas non-profit corporation

By: __________________________
Name: _________________________
Title: _________________________
Date of Execution: ______________

SMU CORPORATION,
a Texas non-profit corporation

By: __________________________
Name: _________________________
Title: _________________________
Date of Execution: ______________

THE FOUNDATION:

THE GEORGE W. BUSH PRESIDENTIAL LIBRARY FOUNDATION,
a Texas non-profit corporation

By: __________________________
Name: _________________________
Title: _________________________
Date of Execution: ______________
EXHIBIT L

Universary Gardens Litigation
and Related Matters

For purposes of this Agreement, the Ground Lease and the Ancillary Agreements, the term "Universary Gardens Litigation and Related Matters" shall mean and include, without limitation, any claim, action, suit, proceeding, judgment or party or non-party discovery of any nature whatsoever arising from or related to the facts, allegations or circumstances described in documents furnished to the Foundation by SMU under the headings: "The First Pending Suit"; "The Second Pending Suit"; and "The Additional Known Matters" and labeled Exhibit L.
EXHIBIT M

Documents to be Delivered

(a) Copies of all leases covering space within the Library Center Property;

(b) Copies of all management, service, employment, supply and maintenance contracts with respect to the Library Center Property and all other contracts (other than said leases) that affect the Library Center Property or the operation thereof;

(c) Copies of all certificates of occupancy, licenses, permits, authorizations and approvals required by law and issued by all Governmental Authorities having jurisdiction over the Library Center Property and copies of all certificates issued by the local board of fire underwriters (or other body exercising similar functions) relating to the Library Center Property;

(d) Copies of all existing insurance policies in force affecting the Library Center Property or any portion thereof;

(e) The original of each bill for current charges for utilities, together with proof of payment thereof;

(f) All records and files relating to the operation and maintenance of the Library Center Property;

(g) A list of all guarantees and warranties issued or made in connection with the construction, improvement, alteration or repair of the Library Center Property, together with a copy of each such guaranty or warranty;

(h) Copies of receipts for all ad valorem taxes assessed against the Library Center Property for the year 2006 and any information regarding current renditions on the Library Center Property or notices relative to change in valuation for ad valorem taxes;

(i) A list of the expenses for water, gas, electric and trash service on the Library Center Property for the years 2006 and 2007;

(j) Copies of all reports of environmental and/or engineering investigations, tests or studies with respect to the Library Center Property made by SMU or at SMU's direction or within the possession of SMU; and

(k) All other information concerning the Library Center Property which Foundation, its attorneys, accountants or other representatives, shall reasonably request.
EXHIBIT N

Descriptive and Geographical Phrase