

2/28/02

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "**Amendment**") is made as of this 25th day of March, 2002 by and between BATTERY PARK CITY AUTHORITY ("**Landlord**"), a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at One World Financial Center, New York, New York 10281, and A LIVING MEMORIAL TO THE HOLOCAUST: MUSEUM OF JEWISH HERITAGE ("**Tenant**"), a New York education corporation, having an office at One Battery Park Plaza, New York, New York 10004.

WITNESSETH

WHEREAS, pursuant to that certain Agreement of Lease by and between Landlord and Tenant dated as of August 16, 1994, as amended by that certain First Amendment to Lease by and between Landlord and Tenant dated as of July 11, 1995 (collectively the "**Lease**"), Landlord has leased to Tenant, and Tenant has leased from Landlord, a portion of the land sometimes known as Site 14 at Battery Park City located in the City of New York, State of New York (such portion of Site 14 being referred to in the Lease as the "Land," being described in Exhibit B attached to the Lease and being referred to herein as the "**Original Land Under Lease**"), together with all improvements and appurtenances located on the Original Land Under Lease;

WHEREAS, the building on the Original Land Under Lease (the “**Site 14A Building**”) was constructed pursuant to Article 14 of the Lease on a portion of the Original Land Under Lease and paid for by Landlord and Tenant; and

WHEREAS, Landlord and Tenant desire to amend the Lease (a) to modify the portion of Site 14 demised to Tenant under the Lease, so that a portion of the Original Land Under Lease (the “**Surrendered Land**”), on which no portion of the Site 14A Building was constructed, will no longer be demised to Tenant (the Surrendered Land, and the balance of the Original Land Under Lease that continues to be demised to Tenant under the Lease (such balance of the Original Land Under Lease being referred to herein as “**Site 14A**”), are described in and depicted on Schedule 1 attached hereto), (b) to include under the Lease an additional portion of Site 14 that is adjacent to and not part of the Original Land Under Lease (which additional portion includes a portion of the Optioned Land) and that, as of the date hereof, is not leased by Landlord to Tenant (such additional portion of Site 14 (including such portion of the Optioned Land) being collectively described in and depicted on Schedule I and being referred to herein as “**Site 14B**”), (c) to provide for the construction on Site 14B of an addition to and expansion of the Site 14A Building (such addition and expansion is referred to herein as the “**East Wing**”), and (d) in certain other respects.

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

1. All capitalized terms used but not defined in this Amendment have the respective meanings ascribed thereto in the Lease.

2. a) Tenant hereby surrenders to Landlord all of Tenant's rights and interests in the Surrendered Land, and Landlord hereby accepts such surrender. The Lease is hereby terminated in all respects as of the date hereof with respect to the Surrendered Land.

b) Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, Site 14B, together with all easements, appurtenances, and other rights and privileges now or hereafter belonging or pertaining thereto, subject to the Title Matters and otherwise on and subject to all of the terms and conditions of the Lease except as otherwise provided in this Amendment.

c) Beginning on the date hereof, all references to the term "Land" in the Lease are deemed to refer to both Site 14A and Site 14B; all references to the term "Premises" in the Lease are deemed to refer to all of Site 14A, the Site 14A Building, Site 14B, and the East Wing; and all references to the term "Building" in the Lease, except as otherwise provided in this Amendment, are deemed to refer to the Site 14A Building, the East Wing, the Equipment, Capital Improvements, footings and foundations, and any other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the Land, and any and all alterations and replacements thereof, additions thereto and substitutions thereof.

d) Landlord hereby surrenders its rights under the Light and Air Easement and the Light and Air Easement is hereby terminated.

e) Notwithstanding any other provision of this Amendment, the foregoing provisions of this Section 2, the provisions of Sections 11, 14, 19, 20(b), 22 and 26 of this Amendment, the amendment of the second of the definitions pursuant to Section 25(a) of this Amendment and the addition of the first definition pursuant to Section 25(b) of this Amendment

do not take effect unless and until Tenant begins, in addition to the Initial Work (as hereinafter defined), foundations for, and other construction of, the East Wing prior to the Construction Commencement Date, as hereinafter defined, and if Tenant does not begin, in addition to the Initial Work, foundations for, and other construction of, the East Wing prior to the Construction Commencement Date, the foregoing provisions of this Section 2, the provisions of Sections 11, 14, 19, 20(b), 22 and 26 of this Amendment, the amendment of the second of the definitions pursuant to Section 25(a) of this Amendment and the addition of the first definition pursuant to Section 25(b) of this Amendment and the provisions of Sections 3(b), 12, 13, 16 and 20(a) of this Amendment shall have no force or effect.

3. a) Exhibit C to the Lease does not apply to the East Wing.

b) Beginning on the date hereof, references to “Title Matters” herein and in the Lease are deemed to refer to those matters affecting title to the Land as set forth in Schedule 2 attached hereto.

4. The term “Construction Commencement Date”, as used with respect to construction of the East Wing, shall mean the date, as such date may be extended for Unavoidable Delays, which is twelve (12) months from the date hereof. Notwithstanding any other provision of the Lease or this Amendment, the failure by Tenant to begin, in addition to the Initial Work, foundations for, and other construction of, the East Wing prior to the Construction Commencement Date will not constitute an Event of Default under Section 27.1 of the Lease.

5. With respect to construction of the East Wing, the term “Design Fees” shall mean costs incurred by Tenant for the design of the East Wing in accordance with the Lease, including

such costs payable by Tenant for fees and charges of Tenant's architects, engineers and other design professionals.

6. Landlord and Tenant acknowledge that references to "South Park" in the Lease refer to Robert F. Wagner Jr. Park.

7. Tenant hereby surrenders its rights under the Lease to lease the Optioned Land, other than the portion of the Optioned Land included in Site 14B and leased by Landlord to Tenant as provided in Section 2 hereof, and Tenant's option under the Lease to lease the Optioned Land is hereby terminated. To this end, Section 2.2 of the Lease is hereby deleted in its entirety, and all references in the Lease to the Optioned Land and the option under Section 2.2 of the Lease are deleted from the Lease.

8. Notwithstanding the third sentence of Section 5.1(a) of the Lease, Tenant, after beginning, in addition to the Initial Work, foundations for, and other construction of, the East Wing and before Substantial Completion of the East Wing, shall apply to the appropriate authorities for, and obtain, a single, separate tax lot with respect to Site 14A and Site 14B combined, and Landlord shall cooperate with Tenant in connection therewith.

9. Section 8.1(a)(ii)(A) of the Lease is hereby amended by replacing "twenty million dollars (\$20,000,000.00)" with "twenty five million dollars (\$25,000,000.00)".

10. Landlord and Tenant acknowledge that all of the obligations under Article 12 of the Lease have been performed in accordance with the terms of the Lease, and Article 12 of the Lease and all references in the Lease to said Article 12 are hereby deleted.

11. Article 13 of the Lease is hereby deleted.

12. Tenant shall have the right to construct the East Wing in the location shown on Schedule 1. The East Wing shall not exceed eighty-five (85) feet in height and eighty-five thousand (85,000) square feet in area, provided that Tenant may, at its option after Completion of the East Wing, add one (1) story or two (2) stories to the East Wing, provided further that the gross area of any such addition shall in no event exceed thirty-two thousand (32,000) gross square feet in total and the design and construction of any such addition must comply with all requirements set forth in Article 16 of the Lease (Changes, Alterations and Additions), except that Tenant need not pay to Landlord any fees and expenses for Landlord to review the plans and specifications for any such addition to the East Wing.

13. Article 14 of the Lease will apply to the construction of the East Wing, except as modified by the following:

a) Where appropriate, all references to the "Building" shall be deleted and replaced with references to the "East Wing" and all references to the Construction Documents shall be deleted and replaced with references to the "East Wing Construction Documents".

b) Except for the Initial Work, Tenant shall not begin foundations for, or other construction of, the East Wing until, in addition to the applicable conditions set forth in Section 14.1(a), (aa) and (b), the Chairman of Tenant's Board of Trustees executes, acknowledges and delivers to Landlord a statement in the form attached hereto as Schedule 3 certifying that the Pledges and Commitments are sufficient to pay the anticipated costs for construction of all core and shell portions of the East Wing (the "**East Wing Anticipated Costs**") as of the date of such statement. It is intended that

East Wing Anticipated Costs do not include costs for usual museum fit-up or costs for Equipment and furnishings for operation of the East Wing for Museum Uses, but do include, without limitation, the following: (i) all "hard costs" (as that phrase is customarily defined in the construction industry) payable by Tenant for construction of all core and shell portions of the East Wing including, without limitation, all costs and expenses of materials incorporated into the core and shell portions of the East Wing; (ii) all costs of permits for construction of all core and shell portions of the East Wing and insurance and testing during construction of all core and shell portions of the East Wing; and (iii) all Design Fees with respect to construction of all core and shell portions of the East Wing. As used herein, the term "**Pledges and Commitments**" means the sum of (y) cash and the investments equivalent to cash available to Tenant and (z) the commitments of governmental entities for funding and the enforceable commitments of non-government contributors under written pledges, which cash, investments, and commitments shall be sufficient to assure the timely payment of the East Wing Anticipated Costs. Construction of the core and shell portions of the East Wing includes all of the items listed in, and the estimated East Wing Anticipated Costs as of the date hereof are set forth on, Schedule 4 attached hereto.

c) No later than the date of delivery to Landlord of the statement described in Section 13(b) of this Amendment, Tenant shall submit to Landlord evidence in writing that prior to the date of said statement, the Contract from The City of New York to Tenant dated as of November 1, 2001 (the "**N.Y. City Contract**") has been fully executed and registered with the Comptroller of The City of New York as a contract of The City of New York. Simultaneously with the delivery to Landlord of the statement

described in Section 13(b) of this Amendment, Tenant shall submit to Landlord (i) a listing of all of the items included in all core and shell portions of the East Wing that, as of the date of said statement, differ from the items listed in Schedule 4 hereof, and a listing, as of the date of said statement, of any changes in the then anticipated East Wing Anticipated Costs compared to the estimates thereof set forth on Schedule 4 hereof, including changes resulting from Tenant obtaining bids from prospective trade contractors or from other information applicable to such Costs and from estimates of such Costs, as of the date of said statement, provided to Tenant by qualified cost estimators, such as Barney Skanska Inc. and Hanscomb Inc. which firms prepared and provided to Tenant prior to the date hereof estimates of all East Wing Anticipated Costs, such estimates having been provided by Tenant to Landlord prior to the date hereof, and (ii) other documentation, all in form and substance reasonably satisfactory to Landlord, identifying the amount of all East Wing Anticipated Costs.

d) References to Tenant depositing funds into the Trust Account are hereby deleted and Tenant's rights as set forth in Article 14 are not conditioned on Tenant making such deposits.

e) Section 14.1(b)(ii) and (v) and 14.1(c) does not apply to construction of the East Wing.

f) Section 14.2(a), (b), (c) and (d) does not apply to construction of the East Wing. Section 14.2 is amended as follows:

Tenant has submitted to Landlord and Landlord has approved final contract plans and specifications for the East Wing prepared by the

Architect. Schedule 5 to this Amendment lists and identifies such final contract plans and specifications by date, title and any other like descriptive information. Such final contract plans and specifications, as the same may be changed from time to time by Tenant, to the extent such changes are approved by Landlord as hereinafter provided, are hereinafter referred to as the “**East Wing Construction Documents**”.

g) Section 14.2(i) is not to be applied to prohibit Tenant from adding one (1) story or two (2) stories to the East Wing, subject to all other provisions and requirements under the Lease. Section 14.2(i) is deemed not to be violated by any of the following amendments to the Zoning Resolution or by any application or other filing by Tenant with respect to such amendments:

(i) allowing the eastern mandatory front building wall of the East Wing to be located within 30 feet from the eastern mandatory front building wall line and allowing the southern mandatory front building wall of the East Wing to be reduced in length up to 30 feet along the southern mandatory front building wall line;

(ii) increasing the width of the allowable curb cut on First Place from 20 to 24 feet; and

(iii) eliminating the arcade requirement on the westward extension of the Battery Place northern street line.

h) The Design Guidelines do not apply to construction of the East Wing. Section 14.2(m) does not apply to construction of the East Wing. Landlord acknowledges that Tenant's award prior to the date hereof of a trade contract for the Initial Work and a trade contract for foundation work for the East Wing, and Tenant's commencement and prosecution of the Initial Work prior to the date hereof, are not violations of Tenant's obligations under the Lease as hereby amended; and Tenant is permitted to award any other trade contract to any specific trade contractor at any time.

i) The introduction to Section 14.3(a) is hereby amended to state as follows:

Commencing upon execution of this Amendment, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect with respect to the Premises, until Completion of the East Wing, the following:

j) Section 14.3(a)(i) is hereby amended by replacing "twenty million dollars (\$20,000,000.00)" with "twenty five million dollars (\$25,000,000.00)".

k) The number sixty (60) in the second sentence of Section 14.4 is hereby replaced with the number thirty-six (36).

l) Section 14.6(b) does not apply in the case of any Construction Agreement for the East Wing. No Construction Agreement for the East Wing shall be subject to approval by Landlord so long as such Construction Agreement requires that all work thereunder conform to the East Wing Construction Documents. If Landlord at any time

or from time to time requests, Tenant shall, notwithstanding the foregoing, submit any Construction Agreement for the East Wing to Landlord for Landlord's review.

14. The next to the last sentence of Section 17.1, the last sentence of Section 17.4(d) and Sections 21.1 and 21.2 of the Lease apply to Site 14B, except that the date of execution of this Amendment shall replace references therein to the "date of execution of this Lease," and except that none of the exceptions set forth in such provisions of the Lease will apply to any Hazardous Materials existing on or under Site 14B as a result of Tenant's conduct at any time.

15. Landlord and Tenant acknowledge that the Tenant Civic Facilities described in Section 29.1(b)(i) through (v) of the Lease have been completed and that the Landlord Civic Facilities described in Section 29.1(c) of the Lease pertaining to Site 14A have been completed.

16. Article 29 of the Lease applies to Site 14B except for the following modifications:

a) The improvements in the Project Area to be performed by Landlord and without cost to Tenant with respect to Site 14B consist of installation and maintenance by Landlord of street lighting and landscaping determined by Landlord to be appropriate for or serving Site 14B, including landscaping in the area between the eastern boundary of Site 14B and Battery Place and other open space, whether or not such landscaping is on or not on the Land. The improvements described above in this Section 16(a) and those, if any, performed by Landlord pursuant to Section 16(b) hereof are to be considered part of Landlord's Civic Facilities for all purposes under the Lease.

b) Landlord and Tenant acknowledge that demapping by New York City and closing of First Place, adjacent to the northern boundary of Site 14, is desirable for each

of them. Landlord will seek in good faith to obtain approval by New York City for said demapping and closing. Landlord, upon obtaining such approval, shall proceed with such closing and with landscaping and other improvements related to such closing, provided that Landlord has available sufficient funds to pay the costs of such closing, landscaping and other improvements. Any such closing, landscaping and other improvements may not materially interfere with access by Tenant and its visitors to or from the Site 14A Building or the East Wing.

c) Sections 29.1, 29.2 and 29.4(a), (b) and (c) and Exhibit F of the Lease do not apply to Site 14B.

d) Section 29.3(ii) is amended as follows with respect to Site 14B:

The obligation of Landlord to perform Maintenance Obligations and any of its other obligations under Article 29 of the Lease is expressly conditioned upon Tenant's compliance with Tenant's obligations under Sections 29.5 and 29.5B. Maintenance Obligations on the part of Landlord in respect of any portion of Landlord's Civic Facilities described in Section 16(a) of this Amendment or any of Landlord's Civic Facilities performed by Landlord pursuant to Section 16(b) of this Amendment shall terminate on the date on which the appropriate utility company or The City of New York, as the case may be, begins to perform such Maintenance Obligations.

e) Section 29.4(d) is amended as follows with respect to Site 14B:

In the event Landlord shall fail to perform Landlord's Maintenance Obligations with respect to Landlord's Civic Facilities described in Section 16(a) of this Amendment or performed by Landlord pursuant to Section 16(b) of this Amendment, Landlord shall incur no penalty or liability and Tenant shall have no remedies or rights other than specific performance and injunctive relief to the extent available under applicable law, it being agreed by the parties that Landlord's failure to perform such Landlord's Maintenance Obligations shall not be deemed a failure by Landlord to perform a substantial obligation on Landlord's part to be performed under this Lease.

f) Section 29.5, as amended under Section 17 hereof, applies with respect to Site 14A. Section 29.5(c) and (d) applies with respect to Site 14B, and Section 29.5(a) and (b) does not apply with respect to Site 14B. A new Section 29.5B is added to the Lease as set forth below; it applies with respect to Site 14B and does not apply with respect to Site 14A.

Section 29.5B

Tenant, for each Lease Year or portion thereof commencing on the date on which a temporary Certificate of Occupancy is issued for the Site 14B Building (the "**Initial Site 14B Occupancy Date**") and ending on the last day of the Term, shall pay to Landlord an annual sum (the "**Site 14B Civic Facilities Payment**"), determined as follows:

(i) for the period commencing on the Initial Site 14B Occupancy Date and ending on the last day of the Lease Year in which the Initial Site 14B Occupancy Date occurs, an amount equal to the product of (y) the sum calculated under Section 29.5(a) of the Lease with respect to Site 14A for the Lease Year in which the Initial Site 14B Occupancy Date occurs, adjusted, however, to reflect the gross square feet of floor area in the East Wing rather than in the Site 14A Building, multiplied by (z) a fraction the numerator of which is the number of days between the Initial Site 14B Occupancy Date and the last day of the Lease Year in which the Initial Site 14B Occupancy Date occurs and the denominator of which is three hundred sixty-five (365); and

(ii) for the next succeeding Lease Year and for each Lease Year thereafter, an amount equal to the sum of the Site 14B Civic Facilities Payment for the previous Lease Year, without adjustment thereof for any multiplication by the fraction described above in Section 29.5B(i)(z), plus the product of (y) the Site 14B Civic Facilities Payment for the previous Lease Year, without adjustment thereof for any multiplication by the fraction described above in Section 29.5B(i)(z), multiplied by (z) zero, or if greater than zero, a fraction the numerator of which is the increase, if any, of the Consumer Price Index between the first day of the previous Lease Year and the last day of the previous Lease Year and the denominator of which is the Consumer Price Index for the first day of the previous Lease Year.

Tenant shall pay to Landlord the Site 14B Civic Facilities Payment due in respect of each Lease Year in equal monthly installments payable in advance on the first (1st) day of each month that occurs within such Lease Year. The Site 14B Civic Facilities Payments are to be included as part of Civic Facilities Payment(s) for all purposes under the Lease.

17. With respect to Site 14A, Section 29.5 of the Lease is amended as follows:

a) Section 29.5(a)(iii), (iv) and (v), together with the last two paragraphs of Section 29.5(a), are hereby deleted in their entirety and replaced with the following Section 29.5(a)(iii) and (iv) and final paragraph of Section 29.5(a):

(iii) for each of the next three (3) Lease Years, an amount equal to the product derived by multiplying thirty-five cents (\$0.35) by the gross square feet of floor area in the Building; and

(iv) for the sixth Lease Year and for each Lease Year thereafter, an amount equal to the sum of the Civic Facilities Payment for the previous Lease Year plus the product of (y) the Civic Facilities Payment for the previous Lease Year multiplied by (z) zero, or if greater than zero, a fraction the numerator of which is the increase, if any, of the Consumer Price Index between the first day of the previous Lease Year and the last day of the previous Lease Year and the denominator of which is the Consumer Price Index for the first day of the previous Lease Year.

Tenant shall pay to Landlord the Civic Facilities Payment due in respect of each Lease Year in equal monthly installments payable in advance on the first (1st) day of each month that occurs within such Lease Year.

b) Section 29.5(b) is hereby deleted.

c) Section 29.5(d) is amended by deleting from the first sentence thereof the words "Subject to the applicable covenants of Landlord's General Bond Resolution and Series Resolution, both adopted May 5, 1972,".

18. Tenant will endeavor to continue its policy of co-sponsoring educational and cultural events with community organizations and of encouraging participation in such events, the use of the Premises in connection with such events by residents of Battery Park City and visitors to lower Manhattan. Tenant shall deliver to Landlord as soon as practicable after the end of each Quarterly Period, but in no event later than thirty (30) days thereafter, a written report of such activities to Landlord.

19. Tenant, in consultation with Landlord, shall from time to time propose security plans and access plans with respect to Site 14B. Such plans shall be satisfactory to Landlord in all respects. Subject to the preceding sentence, the parties will cooperate with each other with respect to implementation of such plans, taking into consideration the fact that Tenant has security concerns due to its high profile nature and taking into consideration Landlord's concerns about the parks and other public spaces in the vicinity of the Land.

20. a) Landlord shall retain all rights to use, develop, sell, or otherwise transfer any permitted Floor Area on Site 14 in excess of the aggregate Floor Area of the Site 14A

Building and the East Wing, which development rights may be used by Landlord in its sole discretion, provided, however, that Landlord will not develop any Floor Area on any portion of Site 14 not leased to Tenant.

b) Notwithstanding Section 20(a) above, Tenant shall maintain such development rights as may be necessary to allow for the addition to the East Wing of one (1) story or two (2) stories, the gross area of which shall in no event exceed thirty-two thousand (32,000) gross square feet in total.

21. Section 43.3 of the Lease and Exhibit G to the Lease are hereby deleted. Tenant shall, and shall cause each of its agents, contractors, and subcontractors to, promptly and diligently carry out its obligations in accordance with the terms of any affirmative action program developed by Landlord, as such affirmative action program may be amended or modified from time to time. The affirmative action program effective as of the date hereof is attached as Schedule 6 to this Amendment.

22. With respect to construction of the East Wing, Section 27.1(b) of the Lease is amended as follows:

if Tenant begins foundations or other construction of the East Wing, in addition to the Initial Work, and any of the following occurs: (i) construction of the East Wing fails to proceed or fails to proceed continuously, with diligence and without interruption, as a result of Unavoidable Delay arising from the termination by The City of New York of the N.Y. City Contract based solely on the provisions of Section 17.1(A)(3) of said Contract, and any such failure or failures should continue for an aggregate of twenty-four (24) months or longer; or (ii) Substantial

Completion of the East Wing does not occur before the Scheduled Completion Date and such failure continues for ninety (90) days after notice from Landlord to Tenant; or (iii) the date of Completion of the East Wing does not occur on or before (subject to Unavoidable Delays) twenty-four (24) months after Substantial Completion of the East Wing, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant;

23. Section 28.1(a) of the Lease (Notices) is hereby deleted in its entirety and replaced with the following:

(a) if by Landlord, by delivery or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at One Battery Park Plaza, New York, New York 10004-1484, Attention: Co-Chairman, with a copy thereof to Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: J. Philip Rosen, Esq., or to such other address(s) and attorneys as Tenant may from time to time designate by notice given to Landlord as aforesaid; and

24. The last two (2) sentences of Article 42 of the Lease (Recording of Lease) are deleted from the Lease in their entirety.

25. a) With respect to construction of the East Wing, the following definitions in Article 1 of the Lease (Definitions) are hereby amended as follows:

“Architect” shall mean Kevin Roche John Dinkeloo and Associates, or any other architect chosen by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

“Unavoidable Delays” shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to any cause beyond Tenant’s reasonable control (but not including Tenant’s insolvency or financial condition, except including as a cause beyond Tenant’s reasonable control with respect to construction by Tenant on Site 14B, Tenant’s financial condition due to termination by The City of New York of the N.Y. City Contract based solely on the provisions of Section 17.1(A)(3) of said Contract), and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to any cause beyond Landlord’s reasonable control (but not including Landlord’s insolvency or financial condition); in each case provided such party shall have notified the other party not later than fourteen (14) days after such party knows or should have known of the occurrence of same and the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented.

b) In addition to those defined terms added elsewhere in this Amendment, the following defined terms are hereby added to the Lease:

“Completion of the East Wing” shall mean the latest to occur of (i) the issuance of a permanent Certificate or Certificates of Occupancy for the East Wing, (ii) the date on which all construction of the East Wing is completed, and (iii) the date on

which the Equipment, furnishings and exhibits reasonably necessary for the operation of the East Wing for Museum Uses are installed and ready to operate.

"Initial Work" shall mean driving of piles for construction of the East Wing and any excavation related thereto as permitted under a license agreement dated November 8, 2001, from Landlord to Tenant.

"Zoning Resolution" shall mean the Zoning Resolution of New York City as amended from time to time.

26. With respect to the Exhibits of the Lease, Exhibit A to the Lease (Design Fee Certification Form) is deleted from the Lease in its entirety.

27. Each of the parties hereto represents to the other that it has not dealt with any broker, finder or like Person in connection with this Amendment. Each party hereto agrees to defend, indemnify and hold harmless the other party against and from any claims for any brokerage commissions, and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, arising out of its breach of its respective representations and warranties contained in this Section 27.

28. Tenant and Landlord, and each of the persons executing this Amendment on behalf of Tenant and Landlord, do hereby warrant that the party for which they are executing this Amendment (i) is a duly authorized and existing entity; (ii) is qualified to do business in the State of New York; and (iii) has full right and authority to enter into this Amendment, and that any person signing on behalf of such party is authorized to do so. Upon either party's request,

the other party shall provide evidence reasonably satisfactory to the requesting party confirming the foregoing warranties.

29. Landlord hereby represents to Tenant that no party's consent, including, but not limited to, any mortgagee or any ground landlord, is required with respect to Landlord's execution and delivery of this Amendment and the effectiveness of this Amendment. Landlord hereby agrees to indemnify, defend and hold harmless Tenant if this representation is untrue.

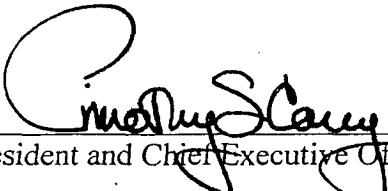
30. This Amendment may not be changed, modified or terminated orally, but only by a written instrument of change, modification or termination executed by the party against which enforcement of any change, modification, or termination is sought.

31. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

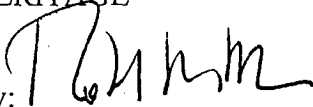
32. The Lease as amended herein is hereby ratified and confirmed and shall remain in full force and effect. After (but not at the time of or before) the execution and delivery of this Amendment all references to the Lease mean the Lease as hereby amended.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment to Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By: 
President and Chief Executive Officer

A LIVING MEMORIAL TO THE
HOLOCAUST: MUSEUM OF JEWISH
HERITAGE

By: 
Chairman