

SUPREME COURT OF THE STATE OF NEW YORK -
COUNTY OF KINGS

In the Matter of

Index No. 25643/09

DUMBO NEIGHBORHOOD FOUNDATION INC;
GUS SHEHA, and BARRY W. SILVERSTEIN,

Petitioners - Plaintiffs,

For a Judgment Pursuant to Article 78
Of the CPLR and Declaratory Judgment

-against-

THE CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF CITY PLANNING,
CITY PLANNING COMMISSION, NEW YORK
CITY COUNCIL, DEPARTMENT OF EDUCATION,
SCHOOL CONSTRUCTION AUTHORITY AND
TWO TREES MANAGEMENT CO., LLC.

Respondents - Defendants.

COUNSEL:

PLEASE TAKE NOTICE that, upon the annexed Verified Petition, verified on
October 8, 2009, together with the exhibits annexed thereto, the undersigned will make an application
at Room 189 of the Kings County Supreme Court, located at 360 Adams Street, Brooklyn, New York,
on November 12, 2009 at 9:30 o'clock in the forenoon of the day, or as soon thereafter as counsel can
be heard, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules, granting the
relief set forth in the Verified Petition.

PLEASE TAKE FURTHER NOTICE that pursuant to Civil Practice Law and Rules Section
7804(c), a verified answer and opposing affidavits, if any, must be served and received at least five
(5) days prior to the return date of this application.

NOTICE OF PETITION

RJI
Kings County
Supreme Court
Motion Support
Approved
Date 10/9/09

~~KINGS COUNTY
SUPREME COURT
MOTION SUPPORT
APPROVED
DATE~~

2009 OCT -9 PM 5:14

2009 OCT -9 PM 3:14
KINGS COUNTY CLERK
RECEIVED

COUNTY CLERK - KINGS COUNTY
FEE EXEMPT PURSUANT
TO CPLR 8020

SUPREME COURT OF THE STATE OF NEW YORK-
COUNTY OF KINGS

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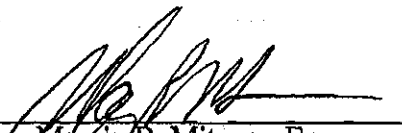
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(5) days prior to the return date of this application.

Petitioners designate Kings County as the place for trial of this proceeding. The basis of venue is that the property which is the subject of this proceeding is in Kings County.

Dated: New York, New York
October 8, 2009

LAW OFFICES OF MARVIN B. MITZNER

By:



Marvin B. Mitzner, Esq.

Attorney for Petitioners
405 Lexington Avenue 26th Floor
New York, New York 10174
(646) 825-3026

SUPREME COURT OF THE STATE OF NEW YORK-
COUNTY OF KINGS

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In the Matter of

Index No.

DUMBO NEIGHBORHOOD FOUNDATION INC;
GUS SHEHA, and BARRY W. SILVERSTEIN,

Petitioners - Plaintiffs,

**VERIFIED PETITION
AND COMPLAINT**

For a Judgment Pursuant to Article 78
Of the CPLR and Declaratory Judgment

-against-

THE CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF CITY PLANNING,
CITY PLANNING COMMISSION, NEW YORK
CITY COUNCIL, DEPARTMENT OF EDUCATION,
SCHOOL CONSTRUCTION AUTHORITY AND
TWO TREES MANAGEMENT CO., LLC.

Respondents -- Defendants.

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DUMBO Neighborhood Foundation Inc., Gus Sheha, and Barry W. Silverstein (collectively "Petitioners"), by their attorney Marvin B. Mitzner, Esq., as and for its Verified Petition and Complaint against the Respondent The City of New York, New York City Department of City Planning, the City Planning Commission, the New York City Council, the New York City Department of Education, the New York School Construction Authority and Two Trees Management Co., LLC (collectively "Respondents"), alleges and sets forth as follows:

SUMMARY OF PROCEEDING

1. The instant Article 78 proceeding and declaratory judgment action seeks to annul and repeal three related actions by Respondents City of New York, City Council of New York, Department of City Planning and the City Planning Commission (hereafter "City Respondents"). The principal object of these actions was to facilitate the development of a new mixed-use building (hereafter the "Dock Street Project") by a private developer, Two Trees Management

Co. (hereafter "Two Trees"), on the following lots within tax block 36 in the Borough of Brooklyn: lots 1, 3, 14, 49, 52, and 53 (the "Development Site"). These actions were approved and adopted by Respondent City Council of the City of New York by resolutions dated June 10, 2009. A copy of a map of the development site is annexed as Exhibit A.

2. The three related actions are as follows: (1) An amendment to Map 12d of the Zoning Maps contained in the Zoning Resolution of the City of New York ("ZR"), identified by City Respondents as application C090181ZMK (the "Amendment"); (2) The grant of a special permit, pursuant to ZR §74-512, to allow a 465 space public parking garage in the Dock Street Project, identified by City Respondents as application C090183ZSK (the "Parking Garage Special Permit"); and (3) The grant of a special permit, pursuant to ZR §74-743 to waive certain bulk regulations related to height and setback, rear yard, inner court and the minimum distance between legally required windows and a side lot line, identified by City Respondents as application C090184ZSK (the "Bulk Special Permit"). (The three related actions are hereafter collectively referred to as the "Dock Street DUMBO Actions.") A copy of the Uniform Land Use Review Procedure ("ULURP") application that was filed with the City Planning Commission is annexed as Exhibit B. Copies of the ZR sections referenced throughout are annexed at the end of this document.

3. The Amendment rezoned an area bounded by Water Street to the north, a line 230 feet westerly of Main Street to the east, Front Street to the south, and Dock Street to the west, from M1-2 to M1-2/R8 (MX-2). A copy of Zoning Map 12d, as amended, is annexed as Exhibit C.

4. The Parking Garage Special Permit allows for the inclusion of a 465 space public parking garage within the Dock Street Project.

5. The Bulk Special Permit allows for the design of the Dock Street Project, which would normally be non-compliant with respect to its bulk, by waiving certain ZR sections related to height and setback, rear yard, inner court and the minimum distance between legally required

windows and a side lot line. The grant of the Bulk Special Permit is predicated upon the claim that the project is a "General Large Scale Development" ("GLSD") as that term is defined in ZR §12-10.

6. City Respondents' grant of the Bulk Special Permit must be revoked. In order to qualify for the Bulk Special Permit, the subject site must be a GLSD. Two Trees had to acquire several properties nearby the Development Site so that in the aggregate these properties would meet the area requirements of a GLSD. However, the ZR definition of a GLSD requires that the property(s) involved must be "used, developed or enlarged as a unit..." and that existing buildings thereon "form an integral part of the general large-scale development." By Respondents' own description of the proposed residential building, the properties comprising the so-called GLSD will not be "used, developed or enlarged as a unit..." nor will the existing buildings thereon be integral to the GLSD. City Respondents' finding that the Development Site and surrounding properties in common ownership met the ZR definition of a GLSD, and that, therefore, the Bulk Special Permit was available to the Dock Street Project, was contrary to law, without a reasonable basis, and therefore arbitrary and capricious.

7. City Respondents' grant of the Bulk Special Permit must be annulled. Article VI, Chapter 2 of the ZR sets forth specific regulations concerning developments within a "waterfront block" (as that term is defined within the ZR). City Respondents, in their review of the Dock Street DUMBO Actions failed to identify a portion of the GLSD area as being located within a "waterfront block" (tax block 26, lots 33 and 38; hereafter "Zoning Lot C"). Had they properly made this determination the applicability of the waterfront developments regulations (codified at ZR §62-00 et. seq.) to the Dock Street Project, and its compliance or lack thereof with said regulations, would have been recognized. As such, City Respondents did not have the authority to grant the Bulk Special Permit which allows for a development which may be non-compliant with the waterfront regulations. City Respondents' failure to recognize that the Article VI, Chapter 2 waterfront regulations applied to the GLSD was without a reasonable basis, and therefore arbitrary and capricious.

8. Approval of the Dock Street DUMBO Actions must be revoked. The review of the environmental impacts of these actions, which was undertaken concurrently, was insufficient in that it did not adequately investigate whether the Dock Street Project is an appropriate location for a school; alone, or among a set of alternative sites. To the contrary, all evidence points towards a pattern of cooperation (if not collusion) between City Respondents and Two Trees, which rendered selection of the Dock Street Project as the site of a new school a foregone conclusion, and rendered any efforts to assess the potential impacts of such school (whether they were seriously undertaken or not), a fallacy. Thus, City Respondents issuance of a Negative Declaration on November 17, 2008, which Declaration was revised on April 22, 2009, and which forms the basis of City Respondents' concluding that the required environmental review with respect to the school element of the Dock Street Project was undertaken, is irreparably flawed, without a reasonable basis, and therefore arbitrary and capricious.

9. Upon information and belief, Respondents' approval of the Dock Street DUMBO Actions must further be invalidated because: (i) they are the result of lengthy and improper collusion by and among the New York City Department of Education ("DOE"), the New York City School Construction Authority ("SCA"), and Two Trees; and (ii) DOE and SCA officials failed to fulfill their respective obligations to conduct a full, fair and objective examination of the appropriateness of including a middle school as part of the Dock Street Project as well as to conduct a full, fair and objective comparison of alternate middle school sites.

10. This proceeding also seeks to enjoin Two Trees from proceeding with any action, including but not limited to demolishing and/or modifying the existing structures on the affected development parcels, to advance the Dock Street Project.

PARTIES

11. The Petitioners are a community-based preservation organization within the DUMBO neighborhood of Brooklyn, and several persons residing within one thousand (1,000) feet of the Development Site who are active members of said organization.

12. Petitioner DUMBO Neighborhood Foundation (“DNF”) is a New York State Section 501(c)(4) corporation, with office at c/o Gus Sheha, 42 Main Street, 10F, Brooklyn, New York 11201. DNF is a community-based group serving the DUMBO neighborhood of Brooklyn and is a voice for all residents – owners, renters, and business owners – interested in preserving and improving the quality of life in DUMBO. DNF members are dedicated to preserving the historic character of DUMBO, as well as improving the quality of life and work of neighborhood residents, on issues such as safety, traffic, zoning, and beautification. DNF has numerous members and contributors who live in areas adjacent and proximate to the Dock Street project footprint.

13. Gus Sheha is an individual residing at 42 Main St. 10F. Brooklyn NY 11201.

14. Barry W. Silverstein is an individual residing at 70 Washington Street, PH-G, Brooklyn, New York 11201.

15. DNF has standing in this matter as the injuries complained of relate to actions by Respondents which directly affect the mission of the organization, and several of its members individually.

16. Gus Sheha and Barry W. Silverstein, as individuals, have standing in this matter given the proximity of their respective residences to the effects of Respondents actions, which result in their injuries being different from those of the public at large.

17. The City of New York is a duly incorporated and chartered city established and existing within the boundaries of the counties of the Bronx, Kings, New York, Queens and Richmond within the State of New York.

18. The City Planning Commission (“CPC”) is a commission of the City of New York duly authorized and established to, among other purposes: recommend and approve

amendments to the zoning maps of the City of New York, and grant special permits provided for within the ZR at Article VII, Chapter IV.

19. The New York City Department of City Planning (“DCP”) is an agency of the City of New York duly authorized and established to act as lead agency under CEQR for purposes of analyzing the potential environmental impacts of the subject actions.

20. The New York City Council (“Council”) is a corporate governmental agency of the City of New York constituting its legislative body.

21. The New York City Department of Education (“DOE”) is a corporate governmental agency of the City of New York.

22. The New York City School Construction Authority (“SCA”) is a corporate governmental agency of the City of New York.

23. Two Trees Management Co. LLC (“Two Trees”) is, upon information and belief, a corporation authorized to do business in New York with its principal place of business located at 45 Main Street, Suite 601, Brooklyn, New York 11201-1099. Two Trees is the project applicant to build the proposed Dock Street Project and owns the subject development parcels.

VENUE

24. This proceeding is properly venued in Kings County as that is the county in which the property which is the subject of this proceeding is located.

FACTS COMMON TO ALL CLAIMS

25. The principal object of the Dock Street DUMBO Actions is the development of the Dock Street Project at the Development Site.

26. The Dock Street Project is a mixed-use project consisting of a 17-story residential tower in the in close proximity to the landmark Brooklyn Bridge. In addition to the tower, the project calls for a 450-space parking garage, approximately 14,000 square feet of retail space, and an approximately 45,000 square foot core and shell for a public middle school. The project is commonly referred to as the "Dock Street Project" because of its frontage on Dock Street in Brooklyn.

27. The existing buildings on Zoning Lot C, though under common ownership with the Development Site, are not to be changed or altered by the Dock Street Project.

28. The Development Site, Zoning Lot C, and the residences of all Petitioners, are located within the DUMBO neighborhood of Brooklyn.

29. DUMBO, which stands for "Down Under the Manhattan Bridge Overpass" is the neighborhood in the Borough of Brooklyn which is located along the East River, north of the Brooklyn Bridge, and approximately beneath the Brooklyn approach to the Manhattan Bridge. The area was first settled when it was the Brooklyn terminal for East River ferries in the early 19th century. After the Brooklyn Bridge was completed in 1883, the neighborhood saw a rush of new construction. Most of these buildings were loft-style manufacturing and warehouse buildings. So many of these buildings were developed from the late 19th into the early 20th century, that the neighborhood has long been associated with the architectural style and building type reminiscent of these developments. From the early 20th century until the 1990's, the neighborhood saw little new development.

30. In 2004, the owner of the Development Site, Two Trees Management Company ("Two Trees"), proposed to develop a new mixed-use building on the Development Site (then known as, and referred to hereafter as "38 Water Street"), with a different design than that of the Dock Street Project. That proposal was met with strong opposition from local citizens, their representatives, and many local community interest organizations. Therefore, the 38 Water Street

proposal was not pursued, and the series of applications before City Respondents which sought to permit such development, were withdrawn.

31. Despite this setback, Two Trees was determined to obtain an amendment to the existing zoning designation and build an overheight residential tower on the Project Site. It needed a strategy, however, to generate much needed political support for its proposed development project and ultimately obtain Council approval of the zoning map change.

32. Like its 2004 proposal that Two Trees was forced to withdraw, the proposed Dock Street Project suffers from significant defects, including that it is out of scale with the surrounding area, and would impact views to and from the Brooklyn Bridge. However, unlike its earlier proposal, the Dock Street Project included various inducements that Two Trees hoped would help overcome political and public opposition. The principal inducement was the inclusion of a core and shell for a purported 45,000 square foot middle school to be constructed in the base of the residential tower.

33. By all appearances, the major purpose of including a public middle school in the Dock Street Project was to garner community and political support for the project; the development of which hinged on discretionary approval by Respondents.

34. On November 5, 2008, Two Trees filed a land use review application with Respondents to facilitate the Dock Street Project. That application sought the three related actions (the Dock Street DUMBO Actions) by Respondents: (1) the mapping Amendment; (2) the Parking Garage Special Permit; and (3) the Bulk Special Permit.

35. Each of the Dock Street DUMBO Actions were subject to the City's standardized procedure for applications affecting changes to land use, which procedure is known as the Uniform Land Use Review Procedure ("ULURP), and is codified at §197-c of the Charter of the City of New York (the "Charter").

36. ULURP requires, among other things, that proposed actions be: (1) certified as complete by the City Planning Commission; (2) referred to the affected Community Board for review and comment; (3) referred to the affected Borough President for review and comment; (4) thereafter returned to the City Planning Commission for their vote; and finally (5) referred to the City Council for possible approval of the actions and adoption of the change in the zoning district designation.

37. On November 17, 2008 the three related applications which request the Dock Street DUMBO Actions were certified as complete by the City Planning Commission. A copy of the City Planning Commission Disposition Report for November 17, 2008 is annexed as Exhibit D.

38. By resolution dated January 14, 2009, the local community board, Brooklyn Community Board #2, recommended approval of The Dock Street DUMBO Actions.

39. By recommendation dated February 26, 2009 the Brooklyn Borough President, Marty Markowitz, recommended approval of the intent of the actions (to permit new residential development with a public parking garage), but rejected the building proposed by Two Trees—the Dock Street Project. A copy of the Brooklyn Borough President's Recommendation is annexed as Exhibit E.

40. By resolutions adopted April 22, 2009, for each of the three related Dock Street DUMBO Actions (identified as C090181ZMK, C090183ZSK, and C090184ZSK) Respondent City Planning Commission approved of the Amendment, Parking Garage Special Permit, and Bulk Special Permit sought by Two Trees. Copies of the City Planning Commission Reports, dated April 22, 2009, are annexed as follows: C090181ZMK as Exhibit F; C090183ZSK as Exhibit G; and C090184ZSK as Exhibit H.

41. By resolutions dated June 10, 2009, Respondent City Council of the City of New York adopted the Dock Street DUMBO Actions as law. Copies of the City Council Resolutions,

dated June 10, 2009, are annexed as follows: C090181ZMK as Exhibit I; C090183ZSK as Exhibit J; and C090184ZSK as Exhibit K.

THE DOE AND SCA ACTIONS

42. Upon information and belief, for at least the three years preceding, in response to the requests of residents of Dumbo, Brooklyn Heights, and other neighborhoods proximate to Downtown Brooklyn for a new middle school to serve children of the area, DOE and SCA officials indicated on repeated occasions that building a new middle school for the impacted communities was unnecessary because vacancy rates in existing middle schools indicated that no new space was needed.

43. Upon information and belief, in the weeks and months following the unveiling of its proposed Dock Street Project, Two Trees commenced a coordinated and sustained campaign to drum up support for the middle school among elected officials and neighborhood residents. As part of this campaign, Two Trees mailed thousands of pamphlets to area residents encouraging them to support the Dock Street Project on the basis of the proposed new middle school. Two Trees also developed a website, www.dockstreetdumbo.com, which sought to rally public support for the Dock Street Project and identified the inclusion of a middle school as a central benefit of the proposed project.

44. Two Trees also made numerous public presentations seeking to enlist support for the Dock Street Project on the basis of the proposed middle school.

45. Two Trees faced a hurdle in marketing the Dock Street Project on the basis of the proposed middle school. Officials from DOE and SCA did not support construction of a public middle school at the Project Site. In fact, as noted above, these officials were publicly stating that District 13 did not need a new middle school at all—at the Dock Street location or otherwise.

46. At a June 3, 2008 meeting at P.S. 8, SCA executive Elizabeth Bergin told a packed room of parents that “[r]ight now, we do not identify a need” for a District 13 middle school.

47. The lack of support from DOE and SCA officials was a problem for Two Trees because those agencies have a statutory duty to consider the best locations for new middle schools throughout New York City, and to determine that chosen locations meet rigorous environmental and other standards to protect the health and welfare of the City’s schoolchildren.

48. The SCA is obligated by law to conduct a site selection process in determining the location of new public schools. That selection process involves a proper cost-benefit analysis of all potential sites in a given area and a comparison of those sites to each other. Additionally, an excerpt from SCA’s mission statement indicates the “[SCA is] dedicated to building and modernizing schools in a responsible, cost-effective manner while achieving the highest standards of excellence in safety, quality and integrity.”

49. Pursuant to City Environmental Quality Review (CEQR) requirements as established in Executive Order No. 91 of 1977, and as set forth in its implementing Rules and Procedures, Title 62, Chapter 5 of the Rules of the City of New York, in New York City, when a project requires discretionary action, it must go through the CEQR process. The CEQR process examines a project’s potential for adverse environmental impacts, including vehicular traffic and public transportation, air quality, hazardous materials, historic preservation, natural resources, shadows, economics and noise among other areas. Some examples of a discretionary action that may require CEQR approval would be the use of City, State, or Federal funds, the purchase or leasing of city-owned property, or when a proposed project does not conform to existing zoning regulations. The siting of New York City schools often require CEQR approval since they are commonly funded by the SCA. The SCA provides funding and manages all NYC Department of Education capital projects. This includes the construction of new schools, renovation of existing

schools, and the conversion of existing buildings into schools. All SCA projects undergo CEQR environmental review.

50. In June 2008, DOE and SCA officials—in a complete about-face from their previous statements—announced that they supported construction of a new District 13 middle school. And, critically, that middle school was to be located at the Dock Street site—and only at that site. DOE officials publicly stated that they would begin examining the possibility of building a new middle school at the Project Site.

51. In August 2008, SCA President Sharon Greenburger stated, “At this time we [SCA] believe putting a middle school in the Dock St. project...is the most financially advantageous option for the city.” [New York Daily News, August 6, 2008] This was of course in stark contrast to what Ms. Greenburger’s colleague had stated to P.S. parents just two months earlier.

52. In November 2008, DOE released a new proposed five-year capital plan noting that “District 13...contains a substantial surplus of space given current enrollment levels but is projected to need a school building in the DUMBO/Navy Yard/Fort Greene area.” Moreover, DOE made clear its preference to site a new middle school at the Dock Street site, specifically budgeting \$43.83 million in the capital plan for “Project #1 @ Dock St.”

53. One month later, on December 12, 2008, John White, Chief Operating Officer of DOE, sent a letter to the principal of Public School 84 (another elementary school located in close proximity to the Dock Street site) stating, “[A]t this time, there is insufficient demand for middle school seats in your district or immediate area for a middle school component at your [elementary] school.” P.S. 84 is located less than 2.5 miles from the Dock St. site [and is within the boundaries of District 13]. A copy of Mr. White’s letter is annexed as Exhibit L.

54. Elected officials and local residents, though pleased that DOE and SCA had finally appeared to recognize the importance of adding a new District 13 middle school, were

incredulous that agency officials had chosen the Dock Street site on the basis of a full, fair and objective selection process, in the limited time frame available.

55. Member of the public voiced concerns about the environmental impacts of placing a middle school at the Dock Street site, which lies in a flood plain.

56. Member of the public voiced concerns that including a middle school in the Dock Street Project would endanger the health, safety and security of children attending the school.

57. On or about January 13, 2009, neighborhood residents sent Freedom of Information Law requests to DOE and SCA seeking information concerning the Dock Street Project, Two Trees, Two Trees principals David and Jed Walentas, and the Site Selection Process by which it was determined that a school was appropriately located in the Dock Street Project.

58. On March 18, 2009, two months after the expiration of the statutory five day period for response, SCA officials released a handful of documents. It was not until August 15, 2009, more than two months after the City Council voted to approve the project, that SCA officials released a new batch of documents. No explanation for the delay or why these documents were produced separate from the earlier documents was given.

THE RELATED DISCRETIONARY LAND USE ACTIONS BY RESPONDENTS:

THE DOCK STREET DUMBO ACTIONS

59. In concert, the effects of the Amendment and Bulk Special Permit include: (1) substantially increasing the permitted floor area of developments in the affected area, which directly corresponds with the possible height of buildings in that area; and (2) waiving several bulk regulations as they apply to the Development Site, such that a building which is much taller than those in the surrounding blocks may be constructed.

60. The City Planning Commission is responsible for: "the conduct of planning relating to the orderly growth and development of the City, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population." New York City Charter §192(d).

61. The City Planning Commission is therefore responsible for protecting or creating adequate scenic resources.

62. The Development Site is located, at points, within approximately 100 feet of the Brooklyn Bridge, and near to the foot of the bridge.

63. The area immediately surrounding the foot of the Brooklyn Bridge is characterized by low-rise buildings. Building heights tend to increase with distance from the foot of the bridge in all directions. This gives the area surrounding the foot of the bridge a three dimensional form know to planners as "The Bowl."

64. The bowl is significant in that it allows for views of the Brooklyn Bridge from a broad surrounding area, and views of the area from the bridge in turn. The scenic resource of "The Bowl" that is the views of and from the bridge, is an invaluable scenic resource to the surrounding neighborhoods, the Borough of Brooklyn, and the City of New York.

65. This scenic resource is jeopardized by the Dock Street Project, which is permitted to penetrate "The Bowl" thus obscuring the referenced view of and to the Brooklyn Bridge.

66. Approval of the Dock Street DUMBO Actions, which facilitate the construction of the Dock Street Project, have the proximate effect of destroying this invaluable resource. As such, said actions are directly adverse to the responsibilities of the City Planning Commission, as provided in the New York City Charter §192(d).

67. ZR §74-74 contains the Special Permit provisions that are applicable only to developments that are “General Large Scale Developments” as that term is defined in ZR §12-10.

68. In order to facilitate the Dock Street Project, Two Trees sought to obtain a Special Permit under ZR §74-743, which is one of the special permit sections contained within the General Large Scale Development provisions of ZR §74-74 and which is captioned “Special provisions for bulk modification.” Pursuant to ZR §74-743 distribution of floor area and bulk, may be permitted that is contrary to the otherwise applicable bulk provisions of the underlying zoning district, provided that the property(s) meet the definition of “General Large Scale Development”, and meet the other statutory findings of ZR §74-743.

69. ZR §12-10(a) states that a General Large Scale Development (hereafter “GLSD”) must have an area of at least 1.5 acres. (All of the definitions of the ZR are found at ZR §12-10. Where citations to this section are followed by an alphabetical part, this refers to that part of the referenced definition.)

70. In its application for the Bulk Special Permit, Two Trees claimed that this area requirement was met by the combined area of the Development Site and Zoning Lot C (the two properties located across Water Street from the Development Site), which properties are a separate zoning lot and, Respondents claim, would be contiguous with the Development Site but for the street between them.

71. If Zoning Lot C is not included in the area calculations for the Dock Street Project, the area of the project would be 1.46 acres—less than the 1.5 acres required for qualification as a GLSD. Therefore, Zoning Lot C's inclusion in the Dock Street Project (albeit a fiction) is essential to the project being considered a GLSD, and thus qualifying for a special permit pursuant to ZR §74-743.

72. ZR §12-10(b) provides that a GLSD is one or more properties, “designated as a tract, all of which is to be used, developed or enlarged as a unit.”

73. In its application for the Bulk Special Permit, Two Trees' description of the Dock Street Project, and the buildings located on Zoning Lot C, fails to provide any reasonable basis for concluding that said properties are or would be "used, developed or enlarged as a unit..." in any way, as is required to satisfy the definition of a GLSD.

74. As proposed and approved, the development of Dock Street Project and the existing building on Zoning Lot C are not intended to be used, developed or enlarged as a unit.

75. ZR §12-10 further provides that a "General Large Scale Development" may include land occupied by buildings existing at the time an application is submitted to the City Planning Commission under the provisions of Article VII, Chapter 4 (as with both the Parking Garage Special Permit and the Bulk Special Permit), "provided that such buildings form an integral part of the General Large Scale Development."

76. In its application for the Bulk Special Permit, Two Trees' description of the Dock Street Project and the buildings located on Zoning Lot C, fails to provide any reasonable basis for concluding that the existing buildings on Zoning Lot C form an integral part of the GLSD.

77. As proposed and approved, the existing buildings on Zoning Lot C are not intended to nor do they form an integral part of the GLSD.

78. In its application for the Bulk Special Permit, Two Trees' description of the existing buildings located on Zoning Lot C, specifically acknowledges that those buildings will not be altered by the proposed development. In its report on the Bulk Special Permit approval, Respondent City Planning Commission similarly acknowledges that the existing buildings on Zoning Lot C will not be altered in connection with the proposed development.

79. Respondents' finding that the Dock Street Project, along with the buildings on Zoning Lot C, comport with the ZR definition of a GLSD, and enable the grant of a Special

Permit pursuant to ZR §74-743 was without a reasonable basis, and therefore arbitrary and capricious.

80. The development of properties on or near the waterfront are regulated within the ZR at Article VI, Chapter II, entitled "Special Regulations Applying in the Waterfront Area" (hereafter the "Waterfront Regulations").

81. The stated purposes of the Waterfront Regulations include, among others, the following:(a) to maintain and reestablish physical and visual public access to and along the waterfront; (b) to promote a greater mix of uses in waterfront developments in order to attract the public and enliven the waterfront; (c) to encourage water dependent uses along the City's waterfront; (d) to create a desirable relationship between waterfront development and the water's edge, public access areas and adjoining upland communities; (e) to preserve historic resources along the City's waterfront; and (f) to protect natural resources in environmentally sensitive areas along the shore.

82. Due to the comprehensive and multi-faceted nature of the Waterfront Regulations, it is common practice for the Respondent Department of City Planning to determine whether said regulations apply to a project during the its technical review of land use review applications. Accordingly, their review of the Dock Street DUMBO Actions included, or should have included, such review.

83. The applicability of the Waterfront Regulations is set forth at ZR §62-12, which begins with the following general statement: "*Within the waterfront area, all developments on zoning lots within waterfront blocks shall be subject to all provisions of this Chapter, unless stated otherwise.*" (Italicized text indicating terms defined within the ZR.)

84. "Waterfront Area" is defined within ZR §12-10 as follows: "The "waterfront area" is the geographical area comprising all blocks between the pierhead line and a line 800 feet landward from the shoreline."

85. Under the ZR definition, the entire area affected by the Dock Street DUMBO Actions, that is, the Development Site and Zoning Lot C, are within the "waterfront area."

86. A "Development" is defined within ZR §12-10 as follows: "A "development" includes the construction of a new building or other structure on a zoning lot, the relocation of an existing building on another zoning lot, or the use of a tract of land for a new use.

87. Under the ZR definition, the Dock Street Project is a "development."

88. "Zoning Lot" is defined within ZR §12-10(c) as follows: "a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single block, which at the time of filing for a building permit (or, if no building permit is required, at the time of the filing for a certificate of occupancy) is under single fee ownership and with respect to which each party having any interest therein is a party in interest (as defined herein)." The remainder of the ZR §12-10 definition of "zoning lot" describes other arrangement of properties considered a "zoning lot" which are not relevant here.

89. Under the ZR definition, the Development Site and Zoning Lot C, are both separate "zoning lots."

90. A "Waterfront Block" (and "waterfront zoning lot," though not relevant here) is defined within the text of the Waterfront Regulations, at ZR §62-11 as a block or zoning lot in the waterfront area having a boundary at grade coincident with or seaward of the shoreline and includes a block within the waterfront area that abuts a public park along the waterfront

91. Tax block 26 in the Borough of Brooklyn and Zoning Lot C, which is located within said tax block, abuts a public park; the Empire-Fulton Ferry State Park. Therefore tax block 26 is part of a waterfront block.

92. Pursuant to ZR § 62-132, the special permit under ZR §74-743 is modified where a portion of a GLSD is located within a waterfront block so that all zoning lots within the development are subject to the bulk regulations of ZR § 62-30 et. seq. (the special bulk regulations of the Waterfront Regulations).

93. Therefore, the Dock Street Project is subject to the special bulk regulations of ZR § 62-30 et. seq.

94. Pursuant to ZR §62-12 all developments on zoning lots within a waterfront area must comply with the Waterfront Regulations, which would include development on Zoning Lot C. This section also provides that other zoning lots within the waterfront area are subject to the Waterfront regulations “when part of a large-scale development, any portion of which is within a *waterfront block*.”

95. If the Development Site and Zoning Lot C are deemed a GLSD, since Zoning Lot C is within a waterfront block, then the development of the Dock Street Project is subject to the Waterfront Regulations.

96. As Respondents did not evaluate or require compliance with the Waterfront Regulations, approval of Dock Street DUMBO Actions was in violation of law, arbitrary and capricious.

97. In its application for the Bulk Special Permit, Two Trees’ describes the Dock Street Project as a GLSD. The application, however, makes no mention of the fact that the project is, by virtue of being a GLSD, subject to the Waterfront Regulations. Nor does it attest to its compliance with said regulations.

98. Respondents failed to recognize or consider whether the Dock Street Project is subject to the Waterfront Regulations.

99. Respondents' failure to find that the Dock Street Project complied with the Waterfront Regulations was without a reasonable basis, and therefore arbitrary and capricious.

100. According to Respondent Department of City Planning, it was the lead agency in the environmental review of the three related Dock Street DUMBO Actions, which review was undertaken in parallel.

101. Respondent Department of City Planning's review of the environmental impact of the Dock Street DUMBO Actions was undertaken pursuant to the New York State Environmental Quality Review Act ("SEQRA"), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. And the City Environmental Quality Review ("CEQR)" Rules of Procedure of 1991 and Executive Order No. 91 of 1977.

102. A study of the potential environmental impacts of the Dock Street DUMBO Action was undertaken by way of an Environmental Assessment Statement ("EAS"), filed under CEQR application number: 09DCP025K.

103. In shepherding the Dock Street Project through the public hearings required under ULURP, Two Trees officials repeatedly trumpeted the DOE- and SCA-endorsed public middle school as an inducement to enlist public and political support for the Dock Street DUMBO Actions.

104. DOE and SCA officials, for their part, worked to advance Two Trees' rezoning application, sanctioning Dock Street as not only the best – but also the only – location for a new District 13 middle school. Upon information and belief, the DOE and SCA did not adequately determine the environmental consequences of locating the new middle school in the Dock Street Project nor adequately examine alternative sites for the new middle school.

105. Largely on the basis of the statements by DOE and SCA officials endorsing a middle school at the Dock Street site, Two Trees' rezoning application gained momentum throughout the ULURP process and prevailed over numerous concerns with other aspects of the Dock Street Project, including that it was out-of-scale with adjacent low-level structures and impaired views of and from the Brooklyn Bridge.

106. Testimony offered at the City Council hearings of the Dock Street DUMBO Actions confirm that the inclusion of the middle school in the Dock Street Project was determinative of the Council's decision. For this reason the Council's June 10, 2009 resolutions approving the Dock Street Project is predicated on the Two Trees' inclusion of the public middle school in the project.

107. After reviewing the EAS for the Dock Street DUMBO Actions, Respondent City Planning Commission issued a "Negative Declaration" on November 17, 2008, adopted as revised April 22, 2009, which concluded that the proposed actions did not have environmental impacts sufficient to warrant a full Environmental Impact Statement.

108. The statutory intent of ULURP, includes a thorough review of the potential environmental consequences which ensue from changes to the zoning maps of the City of New York, as well as discretionary approval of land use actions such as special permits. In this way, ULURP creates a system of checks and balances that ensures that a thorough review of consequences is reviewed in accordance with State (SEQRA) and City (CEQR) environmental law.

109. Unless sufficient review has been undertaken by the EAS to justify a Negative Declaration, such declaration runs afoul of the lead agency's legal obligations under SEQRA and CEQR, resulting in arbitrary and capricious agency action.

110. Because the Dock Street Project is proposed to include a middle school, review of the project's environmental impacts, with respect to the school, was necessarily undertaken in

coordination with the Department of Education ("DOE") and School Construction Authority ("SCA").

111. Review of the proposed school's impact on the school system should have fully considered the availability of school seats in the area, the ability to satisfy existing and projected demand for new schools, and whether the proposed school would alleviate problems resulting where existing schools are currently overburdened.

112. Review of the proposed school's impact on the community at large should have fully considered the traffic, noise, and other externalities to be anticipated by the new school, possible incompatibility of a new school with existing commercial and manufacturing uses, and the impact of a new school as to the unique character of the DUMBO neighborhood.

113. In addition, review of the proposed school—if it were determined that a new school was needed within the area—should have included a review of potential alternative sites, which review clearly documented why the Dock Street Project, as opposed to the other potential sites for a new school, is the best alternative.

114. As previously stated, as late as June 3, 2008 SCA executive Elizabeth Bergin publicly testified, speaking generally about the demand for schools in the area, that "[r]ight now, we do not identify a need" for a District 13 middle school.

115. On August 6, 2008, just two months later, SCA President Sharon Greenburger stated in an interview with the Daily News: "At this time we [SCA] believe putting a middle school in the Dock St. project. is the most financially advantageous option for the city," a seeming reversal of that agency's position as to the need and desirability of a new middle school in District #13.

116. On November 17, 2008, just three months later, Respondent City Planning Commission issued its Negative Declaration.

117. Ross Holden, SCA Vice President and General Counsel would later testify at the December 17, 2008 meeting of Community Board #2 that the decision to locate the new school at the Dock Street Project resulted from a comprehensive site selection process that had supported the viability of a school at the site.

118. It is absurd to believe that an agency that was telling the public there was no need for a new school in June had, by November: undertaken a comprehensive site selection process; identified candidate sites; assessed each of the same by comparison to the needs of the area; determined the ability of the candidate sites to satisfy the programmatic needs of a school; sought public comment; and issued its findings—all in time for the City Planning Commission to fully consider the EAS and the possible impacts it raised, and be prepared to issue its Negative Declaration by November 17, 2008.

119. Under New York State's freedom of information law, DOE and SCA officials are required to provide access to records within five days of a written request.

120. Petitioners have properly filed several FOIL requests with the agencies whose review is at issue, in effect inviting those agencies to provide proof that a true review process was undertaken, and prove Petitioners wrong.

121. Upon information and belief, as of the filing of this petition, almost 10 months after neighborhood residents sent their FOIL requests, DOE has not produced all of the documents requested despite, as described above, its decision to begin examining the Dock Street Project as the site for a District 13 middle school and its subsequent inclusion of such a school in its proposed capital program.

122. SCA officials, after substantial delay, released a handful of documents believed by Petitioners to be incomplete per their request. Based on review of the document that have been provided by SCA, it appears that: (1) The Dock Street Project site was not chosen on the basis of

a full, fair and objective site selection process; (2) That DOE and SCA officials, in collusion with Two Trees, engaged in a systematic and lengthy effort to allow the proposed school to be used to advance the Dock Street DUMBO Actions; (3) That SCA officials failed to consider alternative sites for a new District 13 middle school; and (4) That SCA officials believed that the Dock Street Project was an inferior site that did not meet the programmatic need standards for a New York City public school.

123. To date Petitioners FOIL requests, together, have not produced any evidence that the required level of review was ever undertaken. Moreover, the trickle of documents that have slowly been produced leave unanswered questions and holes in the facts, suggesting such documents are incomplete.

124. In light of Respondent City Planning Commission's apparent failure to conduct the extent of review necessary to justify their November 17, 2008 Negative Declaration, their approval of the Dock Street DUMBO Actions was arbitrary and capricious.

AS AND FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

125. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

126. The Dock Street Project and Zoning Lot C are not arranged or designed to be used, developed or enlarged as a unit.

127. The Dock Street Project and Zoning Lot C in combination do not constitute a GLSD.

128. The Dock Street Project development site itself contains 1.46 acres, which is less than the 1.5 acres required for it to qualify as a GLSD.

129. Petitioners are entitled to a declaration that the Dock Street Project and Zoning Lot C are not used, developed or enlarged as a unit and, therefore, the Dock Street Project is not a GLSD and thus does not qualify for a Special Permit pursuant to ZR §74-743.

AS AND FOR A SECOND CAUSE OF ACTION

(ARTICLE 78)

130. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

131. The determination by Respondents that the Dock Street Project and Zoning Lot C are used, developed or enlarged as a unit and meet the definition of a GLSD was contrary to law, arbitrary, capricious and an abuse of discretion.

132. Therefore, the approval of the Dock Street DUMBO Actions was arbitrary, capricious and an abuse of discretion and should be overturned.

AS AND FOR A THIRD CAUSE OF ACTION

(DECLARATORY JUDGMENT)

133. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

134. Zoning Lot C was occupied by existing buildings at the time the Bulk Special Permit application was submitted to Respondent City Planning Commission.

135. The existing buildings on Zoning Lot C do not form an integral part of the Dock Street Project and therefore cannot be included with the Dock Street Project to form a GLSD.

136. Without the inclusion of Zoning Lot C, the Dock Street Project itself contains 1.46 acres, which is less than the 1.5 acres required for it to qualify as a GLSD.

137. Petitioners are entitled to a declaration that the existing buildings on Zoning Lot C do not form an integral part of the Dock Street Project and, therefore, the Dock Street Project is not a GLSD and thus does not qualify for a Special Permit pursuant to ZR §74-743.

AS AND FOR A FOURTH CAUSE OF ACTION

(ARTICLE 78)

138. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

139. The determination by Respondents that the existing buildings on Zoning Lot C form an integral part of the Dock Street Project and meet the definition of a GLSD was contrary to law, arbitrary, capricious and an abuse of discretion.

140. Therefore, the approval of the Dock Street DUMBO Actions was arbitrary, capricious and an abuse of discretion and should be overturned.

AS AND FOR A FIFTH CAUSE OF ACTION

(DECLARATORY JUDGMENT)

141. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

142. Zoning Lot C is situated within Tax Block 26 in the Borough of Brooklyn.

143. Tax Block 26 abuts a waterfront public park and therefore is a Waterfront Block.

144. Since a portion of the GLSD is located within a waterfront block all the zoning lots in the GLSD, including the Dock Street Project, is subject to the bulk regulations of ZR §62-30 et seq. (ZR §62-132).

145. Petitioners are entitled to a declaration that, if the GLSD is deemed to be properly constituted, all the zoning lots within the GLSD, namely the Dock Street Project and Zoning Lot C, are subject to the special bulk regulations of ZR §62-30 et seq.

AS AND FOR A SIXTH CAUSE OF ACTION

(ARTICLE 78)

146. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

147. The failure of Respondents to require the Dock Street Project and Zoning Lot C, to comply with the special bulk regulations of ZR §62-30 et seq. was contrary to law, arbitrary, capricious and an abuse of discretion.

148. Therefore, the approval of the Dock Street DUMBO Actions was arbitrary, capricious and an abuse of discretion and should be overturned.

AS AND FOR A SEVENTH CAUSE OF ACTION

(DECLARATORY JUDGMENT)

149. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

150. The Dock Street Project and Zoning Lot C are both within a waterfront area.

151. Zoning Lot C is situated in a waterfront block.

152. Therefore, if the GLSD is deemed to be properly constituted to include the Dock Street Project and Zoning Lot C, the development of the Dock Street Project is subject to the Waterfront Regulations (ZR §62-12).

153. Petitioners are entitled to a declaration that, if the GLSD is deemed to be properly constituted, all the zoning lots within the GLSD, namely the Dock Street Project and Zoning Lot C, are subject to the Waterfront Regulations.

AS AND FOR A EIGHTH CAUSE OF ACTION

(ARTICLE 78)

154. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

155. The failure of Respondents to require the Dock Street Project and Zoning Lot C, to comply with the Waterfront Regulations was contrary to law, arbitrary, capricious and an abuse of discretion.

156. Therefore, the approval of the Dock Street DUMBO Actions was arbitrary, capricious and an abuse of discretion and should be overturned.

AS AND FOR A NINTH CAUSE OF ACTION

(SEQRA AND CEQR)

157. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

158. SEQRA and CEQR procedures require an agency assessing the significance of effects of a proposed action upon the environment to follow three procedural steps: (a) identify all relevant areas of concern; (b) thoroughly analyze each; and (c) include a written, reasoned elaboration and cross-references to supporting documentation in its determination of significance.

159. Respondents failed to consider the impact of compliance with the Waterfront Regulations.

160. The EAS filed in connection with Dock Street DUMBO Actions did not consider the potential impact of Zoning Lot C being within a waterfront block or the Dock Street Project being subject to the bulk regulations of ZR §62-30 et seq.

161. The DCP did not identify all relevant areas of concern with regard to the Dock Street DUMBO Actions.

162. The DCP did not thoroughly analyze all relevant areas of concern in its review of the Dock Street DUMBO Actions.

163. The DCP's determination of environmental impact does not contain a written, reasoned elaboration, but rather states its conclusions in a brief summary fashion.

164. The DCP determination that none of the many potential impacts of the Dock Street DUMBO Actions, in particular the siting of the new middle school and the visual disruption to a scenic resource (the Brooklyn Bridge Bowl), are not significant and do not require an Environmental Impact Statement, was arbitrary, capricious and an abuse of discretion.

165. The DCP wrongly determined that the Dock Street DUMBO Actions do not require the submission of an Environmental Impact Statement and the public review process that attends the review and consideration of an Environmental Impact Statement.

166. The DCP's actions here violate lawful procedures.

167. The DCP's negative determination of environmental impact was arbitrary and capricious and an abuse of discretion because it was based on a review that ignored critical factors and underestimated or improperly evaluated the significance of the impact of the development on the surrounding community and the Waterfront Regulations.

168. The DCP wrongly concluded that the action would have no significant effect upon the environment.

169. The failure of DCP to comply with the mandates of the SEQRA and CEQR statutes as stated above render the approval of the Dock Street DUMBO Actions as contrary to law and arbitrary, capricious and an abuse of discretion, and the approval of the Dock Street DUMBO Actions should be overturned.

170. Petitioner has been harmed by the DCP's abuse of discretion.

171. Petitioner has no adequate remedy at law.

AS AND FOR A TENTH CAUSE OF ACTION

(SEQRA – MIDDLE SCHOOL SITING)

172. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

173. The Dock Street Project proposes to include a middle school as part of the development.

174. The determination to site a middle school within the Project site would require that the DOE and the SCA review and consider the proposed school's impact on the school system and community at large, and require DCP to consider such impacts in the EAS.

175. The DOE and SCA did not identify relevant areas of concern with regard to the siting of a middle school within Dock Street Project, and DCP did not examine or consider such areas of concern in the EAS.

176. The DOE and SCA did not thoroughly analyze all relevant areas of concern in its review of the decision and consequences of locating a middle school within the Dock Street Project, and DCP did not adequately examine all of the consequences of such action in the EAS.

177. The actions of DOE, SCA and DCP here violate lawful procedures, are arbitrary and capricious and an abuse of discretion.

178. The failure of DOE and SCA to lawfully and appropriately designate the Dock Street Project for construction and operation of a new middle school for District 13 renders the Dock Street DUMBO Actions, which were approved and dependent upon the inclusion of a new middle school, contrary to law, arbitrary, capricious and an abuse of discretion, and the approval of the Dock Street DUMBO Actions should be overturned.

179. Petitioners have been harmed by the DOE, SCA and DCP's actions.

180. Petitioners have no adequate remedy at law.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

(DECLARATORY JUDGMENT)

181. Petitioners repeat and reallege the preceding paragraphs as if fully set forth herein.

182. The development of the Dock Street Project as approved would destroy the protective "Bowl" established to safeguard the visual integrity of the Brooklyn Bridge.

183. The elimination of the Bowl would threaten a valuable scenic resource.

184. The approval of the Dock Street DUMBO Actions, in particular the approval of a building form that fails to protect the Bowl, is inconsistent with a well-ordered plan and violates CPC's legal mandate.

185. The CPC's actions here represent a violation of its constitutional mandate with regard to enactment of zoning district designation changes and of the requirements under CEQRA and SEQRA, and Plaintiff seeks a declaratory judgment as such.

186. The CPC and DCP rezoned the affected area as a matter of convenience for politically expedient reasons and as a result, they failed to adhere to a comprehensive plan and perform the necessary predicate studies to take a "hard look" at the impact of the proposed development upon the community and its resources, review the effects of the change in relation to the lack of conformity the proposed development would have in contrast to the surrounding neighborhood character proximate to the Brooklyn Bridge and the overall environmental consequences which would ensue as a result.

187. Petitioner has been harmed by the DCP's violation of SEQRA.

188. Petitioner has no adequate remedy at law.

189. There presently exists a justiciable controversy that requires an adjudication by a court of competent jurisdiction.

190. Absent adjudication and the issuance of a declaratory judgment, Petitioner will suffer irreparable injury as a result of the development of the Dock Street Project. Petitioner is therefore entitled to an injunction enjoining Two Trees from proceeding with any action, including but not limited to demolishing and/or modifying the existing structures on the affected development parcels, to advance the Dock Street Project.

191. The DCP's acts are an abuse of discretion, arbitrary and capricious and render the subsequent rezoning provisions, as they relate to the rezoned area, null and void.

WHEREFORE, Petitioner requests a judgment against the Respondents as follows:

- (a) on the first and third causes of action, a judgment declaring that GLSD is not properly formed and the Dock Street DUMBO Actions are null and void;
- (b) on the second, fourth, sixth and eighth causes of action, annulling and revoking the approvals of the Dock Street DUMBO Actions;
- (c) on the fifth cause of action, a judgment declaring that the Dock Street Project is subject to ZR §62-30 et. seq.;
- (d) on the seventh cause of action, a judgment declaring that the Dock Street Project is subject to the Waterfront Regulations of ZR, Article VI, Chapter 2;
- (e) on the ninth cause of action, a judgment annulling and revoking the approvals of the Dock Street DUMBO Actions;
- (f) on the tenth cause of action, a judgment annulling, revoking and reversing the decision of DOE and SCA siting a middle school within the Dock Street Project;
- (g) on the eleventh cause of action, a judgment annulling and revoking the approvals of the Dock Street DUMBO Actions;
- (h) a money judgment for all costs and disbursements of this action; and
- (i) granting such other and further relief as this Court deems just and proper.

Dated: New York, NY

October 8, 2009

LAW OFFICES OF MARVIN B. MITZNER

by: 

Marvin B. Mitzner

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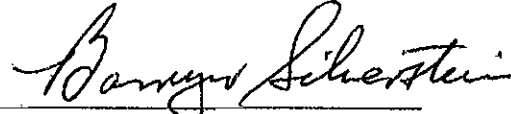
VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK)

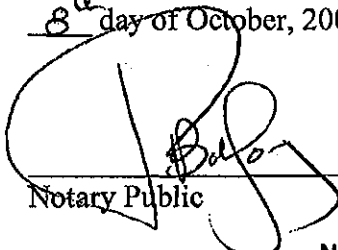
I, Barry W. Silverstein, being duly sworn, states:

I am a Petitioner in this action. The foregoing petition is true to my own knowledge, except as to matters therein stated on information and belief and as to those matters I believe to be true. The grounds of my belief as to all matters not stated upon my knowledge are my review of files associated with this proceeding and discussions with persons with direct knowledge.



Barry W. Silverstein

Sworn to before me this
8th day of October, 2009



Notary Public

REMKO B. DEJONG
Notary Public, State of New York
No. 02DE6060266
Qualified in Kings County
Commission Expires 6/18/2011

[AFFIX NOTARY STAMP]