



## **CITY PLANNING COMMISSION**

April 22, 2009/Calendar No. 15

C 090184 ZSK

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IN THE MATTER OF an application submitted by Two Trees Management Company pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to modify the regulations of Section 23-851 (Minimum dimension of inner courts), Section 23-86 (Minimum distance between Legally Required Windows and Lot Lines), Section 25-533 (Required rear yard equivalents), Section 43-28 (Special Provisions for Through Lots) and Section 25-533 (Height and Setback Regulations) to facilitate a mixed use development on property located on the easterly side of Dock Street between Front Street and Water Street (Block 36, Lots 1, 3, 14, 49, 52 & 53), in an M1-2/R8 (MX-2) District, within a general large scale development (Block 36, Lots 1, 3, 14, 15, 16, 40, 49, 52, & 53, and Block 26, Lots 33 & 38), in M1-2/R8 (MX-2), M1-2/R8A (MX-2), and M3-1 Districts, Borough of Brooklyn, Community District 2.

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This application for a Special Permit pursuant to Section 74-743 of the Zoning Resolution was submitted by Two Trees Management Company on November 5, 2008, to facilitate the development of an approximately 323-unit residential building with ground floor retail, a 300-seat public middle school and a 465-space public parking garage on the western portion of the block bounded by Water Street, Dock Street, Main Street and Front Street in the DUMBO neighborhood of Community District 2, Brooklyn.

### **RELATED ACTIONS**

In addition to the special permit, which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

C 090181 ZMK Zoning map amendment changing from an M1-2 zoning district to an M1-2/R8,

Special Mixed Use District (MX-2); and

C 090183 ZSK Special Permit pursuant to Section 74-512 for a 465 space public parking garage.

## **BACKGROUND**

Two Trees Management Company is seeking several actions to facilitate development of an approximately 323-unit residential building with ground floor retail, a 300-seat public middle school and a 465-space public parking garage on the western portion of the block bounded by Water, Front, Dock and Main Streets in the DUMBO area of Community District 2, Brooklyn.

### **Site Description**

The proposed development would be part of a General Large Scale Development (GLSD) that would include property located on two blocks between Dock Street and Main Street, north of Front Street. The GLSD encompasses three zoning lots totaling 70,283 square feet (1.61 acres), including the development site, and abutting property on the same block, and property across Water Street to the north.

The development site, (Block 36, Lots 1, 3, 14, 49, 52, and 53,) is located at the west end of the block between Front Street, Dock Street, and Water Street. It is currently occupied by a theater (St. Anne's Warehouse), a warehouse used to house a carousel, an attended public parking garage with a capacity of 69 spaces, and a 50 space unattended surface public parking lot. The abutting property to the east, (Block 36, lots 15, 16 and 40), is occupied by two mixed-use structures, 16 and 62 Water Street, together containing 28 residential units and ground floor retail uses. The remaining portion of the GLSD is located across Water Street to the north, (Block 26, Lots 33 and 38) and contains a mixed-use building with three residential units and a theater (Galapagos Arts Space.)

The rezoning area consists of the western, 49,000-square foot portion of Block 36, including all of the development site and part of the abutting property to the east. The applicant owns all of the properties that comprise the General Large Scale Development and rezoning area.

On August 25, 2004, the City Planning Commission approved a series of similar actions for a portion of the site. Those previous applications (C 010645 ZMK, C 010646 ZSK, C 010647 ZSK and C 030492 ZSK) would have similarly changed the rezoning area from an M1-2 district to an M1-2/R8 zoning district, and would have permitted an approximately 200-unit apartment building with ground floor retail, community facility use and a 327-space public parking garage. The proposal required similar height and setback, inner court and rear yard modifications within a General Large Scale Development. The structure would have risen along Water Street to heights of 88 feet and 178 feet without setback. Those applications were withdrawn by the applicant during the City Council's review period.

### **Area Description**

The proposed development site is situated at the juncture of the DUMBO and Fulton Ferry neighborhoods; historic, industrial waterfront areas containing the Brooklyn anchorages of the Manhattan and Brooklyn bridges.

DUMBO is a vibrant, mixed-use neighborhood that contains a wide mix of uses including residential, commercial offices and neighborhood retail, parking garages and manufacturing. The neighborhood contains a mixture of building forms ranging from one-story warehouses to multi-story loft buildings that rise without setback or open space. The area is generally developed to a high density with the taller buildings ranging from eight- to 16-stories. A cluster of loft buildings just east of the site were built by Robert Gair for his cardboard box factories and include the ten-story Sweeney Building (30 Main Street, 151 feet) and the 16-story One Main Street Building (181 feet with a tower of 267 feet). One Main Street was converted to residential use after a rezoning application (C 970753 ZMK) changed the underlying zoning from M1-2 to C6-2A in 1998. Likewise, the Sweeney Building was converted to residential use as a result of a rezoning application (C 980584 ZMK) that became Brooklyn's first Special Mixed Use District (MX-2) and changed the preexisting M1-2 district to a mixed-use M1-2/R8A district.

Across Water Street from the rezoning area, and extending north to the East River, is the Empire Fulton Ferry State Park, in an M3-1 zoning district, which contains the four-to-five story Empire Stores (50 to 65 feet) and the Tobacco Warehouse structure. Brooklyn Bridge Park, the first phase of the proposed 67-acre park stretching along the East River from DUMBO south to Atlantic Avenue, is located immediately north of 1 Main Street on the East River. Across Dock Street to the west, immediately beneath the Brooklyn Bridge, is a city-owned garage used for police vehicle storage and maintenance in an M2-

1 zoning district. Across Front Street to the south of the development site is a non-conforming public parking lot in an R7-1 zoning district.

The rezoning area is currently zoned M1-2, a manufacturing district that allows a wide range of commercial and manufacturing and some community facility uses. Commercial and manufacturing uses have a maximum 2.0 FAR, and community facility uses have a 4.8 FAR limit.

A portion of the proposed rezoning area and the GLSD lies within both the New York City DUMBO Historic District and the State and National Register DUMBO Industrial District. The proposed rezoning area is also adjacent to the New York City Fulton Ferry Landing Historic District. Two buildings located at 16 Water Street and 62 Water Street are within both the City and State historic districts and are not part of the development site. 56 Water Street, a 3-story brick warehouse in the State and National Register, are designated 'non-contributing' buildings and would be demolished for the proposed new building.

A portion of the rezoning area and the proposed development is located beneath the Brooklyn Bridge, a National Historic and New York City Landmark. The part of Block 36, Lot 1 that is located under the Brooklyn Bridge is included as part of the Bridge's landmark designation. The Landmarks Preservation Commission has issued a Certificate of No Effect regarding the proposed development. In addition, development on this site is subject to a restrictive declaration which requires approval of building and design by the New York City Department of Transportation (DOT), and which limits any structure

within 70 feet of the bridge to a height of 50 feet below the bridge or approximately 23 feet tall.

### **Proposed Development**

The applicant proposes to develop an approximately 323-unit mixed-income residential building with ground-floor retail, a 300-seat public middle school on a single story and a three-story, partially below-grade, 465-space public parking garage. Approximately 20 percent of the residential units in the building (65 units) would be affordable to households earning up to 60 percent of the Area Median Income. Retail space would be provided along both Water and Front Streets, with 10,227 square feet of ground-floor retail space serving the neighborhood and broader community along Water Street and 2,900 square feet of neighborhood retail space along Front Street. The core and shell of the 45,772 square foot public middle school would be built within the proposed project and delivered to the School Construction Authority (SCA), which has included funds for improving the site in their five-year Capital Plan.

As certified, the proposed building would have three components: a 96-foot (9 story) section fronting on Water Street; a 184-foot (18-story) section running perpendicular to Water and Front streets on the east end of the development site; and, a two-story base on the entire site containing the retail, parking and school uses. The building would have landscaped terraces on each of the roofs for use by the occupants of the building. This design is intended to complement the high-density loft buildings that characterize the DUMBO neighborhood. The 184-foot section of the building is proposed to be at least

97 feet from the Brooklyn Bridge, the 96-foot section of the building would be at least 82 feet from the bridge, while the base, which would be partially under the bridge, would maintain a distance of at least 50 feet below or adjacent to the bridge, pursuant to DOT restrictions.

The proposed public parking garage would contain a maximum of 465 spaces within the cellar, first and second stories. The parking garage would be fully attended, operating 24-hours a day, seven days a week. The parking garage entrance and exit would be located along Front Street, a one way east-bound street, through a three-lane, 44-foot 4-inch wide driveway and 30-foot wide curb cut that would be the subject of an easement across adjacent property owned by the applicant. At the location of the parking entrance, Front Street is one-way east-bound and traffic would enter and exit the garage heading east along Front Street. The garage would have a maximum of 465 parking spaces including 129 required accessory residential parking spaces and 336 public parking spaces. The garage would be separated from the street by retail uses along Water and Front Streets, and its façade would be glazed along Dock Street.

## **PROPOSED ACTIONS**

To facilitate the development of the proposed building, the following actions are required:

### **Zoning Map Amendment (C 090181 ZMK)**

The proposed action would rezone the western portion of Block 36 from an M1-2 District to an M1-2/R8 District and extend the Special Mixed-Use District (MX-2) currently on the eastern half of Block 36 west to Dock Street. The existing M1-2 zoning district permits 2.0 FAR for manufacturing, commercial, and limited community facility uses (Use Groups 4-14, 16 and 17), but prohibits residential uses and many community facility uses. The proposed M1-2/R8, mixed-use zoning district would permit residential and community facility uses (Use Groups 1-3), in addition to all of the uses currently permitted. M1-2/R8 districts allow 6.02 FAR for residential uses, 6.5 FAR for community facility uses and 2.0 FAR for commercial and manufacturing uses.

The proposed building would contain residential uses (5.22 FAR), community facility (public school) uses (1.0 FAR), and ground floor-retail (0.28 FAR), for a total of 6.5 FAR.

### **Special Permit for Bulk Modifications (C 090184 ZSK)**

A Special Permit pursuant to Section 74-743 (a) for bulk modifications is required that would allow a building form more consistent with the existing built character of the neighborhood and additional design flexibility to keep the mass of the building as far from the Brooklyn Bridge as possible on the site.

Four waivers of the bulk regulations are being sought:



1. Modification of the height and setback regulations of Section 123-662 (a) to allow the proposed building to rise above its maximum base height of 85 feet without setback to a height of 184 feet.
  
2. Modification of the rear yard regulations of Sections 23-532 and 43-28. The regulations require a 20-foot rear yard equivalent for the commercial and community facility portions of the proposed development and a 30-foot rear yard equivalent for the residential portion of the development. The applicant states that compliance with the required rear yard equivalents would either require the building's 18-story tower to be divided into two taller and more narrow sections – one along Front Street and the other on Water Street; or would require the building to be brought closer to the Brooklyn Bridge.
  
3. Modification of the inner court regulations of Section 23-851. These regulations require an inner court to have a minimum dimension of thirty feet with a minimum 1,200 square feet of area. The proposed inner court would be one to two feet deep, less than 300 square feet, and would run along the side lot line separating the development site from the adjacent property owned by the applicant. These dimensions would not meet either inner court dimensional requirement. The requested modification would apply to the residential portion of the building from floors 3 to 17. A 29 foot wide easement on the adjacent property will be provided to provide light and air for the windows located on floors 3-17 facing the inner court.

4. Modification of the minimum distance between legally required windows and side lot line regulations of Section 23-861. These regulations would require a thirty-foot distance between legally required windows and the side lot line. In the proposed building, legally required windows would be provided in the inner court, one to two feet from the side lot line. Both the inner court and the legally required window distance modifications are intended to allow the building to be located as close as possible to the side lot line, and thus as far as possible from the Brooklyn Bridge. An easement will be provided on the adjacent property to provide light and air for the east-facing windows located on floors 3-17 in the building.

#### **Special Permit for a Public Parking Garage (C 090183 ZSK)**

The project requires a Special Permit pursuant to Section 74-512 to allow a public parking garage in excess of 150 spaces and to allow approximately 37,599 square feet of space located on the first and second floors of the proposed building to be exempted from the definition of floor area.

The proposed public parking garage would contain a maximum of 465 spaces within the cellar, first and second stories and would be fully attended and operate 24-hours a day, seven days a week. The parking garage entrance and exit would be through a three-lane driveway located on the adjacent property owned by the applicant and which will be assured through the provision of an access easement. The entrance to the driveway

would be located along Front Street through a thirty-foot wide existing curb cut. Front Street narrows from a two-way street to a one-way eastbound street just west of the entrance and exit. As a consequence, cars entering the garage would approach from the west, and cars exiting the garage would exit to the east. A flashing light and ringing bell at the garage entrance on Front Street would both visually and audibly alert pedestrians to the presence of an exiting vehicle. The garage would contain 23 reservoir spaces, providing the required 5 percent of the total parking spaces in the garage. The garage would be set behind retail uses along Water and Front Streets, and would be glazed along Dock Street.

The proposed 465-space, attended public parking garage would replace an existing 70-space public parking garage and a 50-space surface public parking lot currently on the project site. It is intended to accommodate the 129 required accessory parking spaces required for the proposed building and provide public parking spaces for DUMBO residents and visitors. The applicant is requesting exemption of 37,599 square feet of floor space from the definition of floor area because a high water table at the project site makes below grade parking infeasible and because this floor area exemption would allow the proposed Building to recapture the space devoted to parking for use as community facility and residential FAR.

An additional related application (N 090182 ZRK) for a zoning text amendment was withdrawn by the applicant on December 24, 2008

## **ENVIRONMENTAL REVIEW**

This application (C 090184 ZSK ), in conjunction with the applications for the related actions (C 090181 ZMK and C 090183 ZSK), was reviewed 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. The designated CEQR number is 09DCP025K. The lead agency is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on November 17, 2008. A revised Environmental Assessment Statement was prepared to address the modifications to the project, discussed below, to note the withdrawal of the related application for a zoning text amendment (N090182 ZRK), and to reflect the issuance of a Certificate of No Effect by the Landmarks Preservation Commission with regard to the portion of Block 36, Lot 1 that has landmark status. A Negative Declaration reflecting the revised Environmental Assessment Statement was issued on April 22, 2009.

## **UNIFORM LAND USE REVIEW**

This application (C 090184 ZSK), in conjunction with the applications for the related actions (C 090181 ZMK) and (C 090183 ZSK), was certified as complete by the Department of City Planning on November 17, 2008, and was duly referred to

Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application on December 17, 2008, and on January 14, 2009, by a vote of 32 to 7 with 0 abstentions, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

This application was considered by the Borough President who issued a recommendation on February 25, 2009 disapproving the applications with the following conditions:

1. That the following bulk modifications be made, That,
  - A. The tower be not less than 150 feet from the span of the Brooklyn Bridge in lieu of the approximately 98 feet proposed; and, a setback of not less than 70 feet from Front Street (disapproval of the General Large Scale Special Bulk Permit setback encroachment request) as opposed to no setback as proposed.
  - B. The Water Street street-wall elevation not exceed 80 feet, as opposed to the 93 feet proposed, with no setbacks except for bulkhead and the tower section of the building.
  - C. The tower along Water Street be setback at least 15 feet as opposed to no setback as proposed (i.e., disapproval of that portion of the General Large Scale Special Bulk Permit [090184 ZSK] regarding the setback encroachment request).
  - D. The Front Street tower wall elevation not exceed 85 feet as opposed to the 180 feet as proposed (i.e., disapproval of that portion of the General Large Scale Special Bulk Permit [090184 ZSK] regarding the setback encroachment request).
2. That the affordable housing be codified by a covenant or other legal instrument to run with the property, stating that twenty percent of the residential floor area will be developed as affordable housing.

3. That for bicycle parking spaces within the public parking garage, such parking shall be provided without fees.

Be it further resolved that the borough president calls on:

4. The Department of Education to consult with Community Education Council 13, Community Board 2, and local elected officials:

- To investigate other available spaces for the location of the school.
- To analyze the current capacity levels of surrounding elementary and middle schools in order to ascertain which grade configuration will best serve the needs of the community two years prior to the projected occupancy of school space within the Dock Street project.

5. The Department of Transportation (DOT) to consider, shifting the location of where Front Street currently terminates as a two-way street to a point further east; thus, facilitating westbound Front Street vehicular movement exiting from the Dock Street project's proposed public parking garage. DOT should consult with Community Board 2, the DUMBO and Fulton Ferry Landing civic associations and local elected officials.

### **City Planning Commission Public Hearing**

On March 18, 2009 (Calendar No. 14), the City Planning Commission scheduled March 4, 2009, for a public hearing on this application (C 090184 ZSK). The hearing was duly held on March 4, 2009 (Calendar No. 31), in conjunction with the public hearings on the applications for the related actions (C 090181 ZMK) and (C 09183 ZSK). There were 37 speakers in favor of the application and 25 speakers in opposition.

Speakers in favor included the developer, the attorney for the developer and the architect.

Also speaking in favor were a representative of the Councilmember for the 35<sup>th</sup> District, the Executive Directors of the Downtown Brooklyn Partnership and the DUMBO Business Improvement District, representatives of the Real Estate Board of New York,

the New York League of Conservation Voters, local academic institutions, local business owners, arts organizations, churches and residents.

The representative of the Councilmember for the 35th District noted that the proposed development would result in an innovative public/private partnership by providing a public middle school within a private development containing affordable housing. Other speakers in support testified that the proposed zoning and accompanying actions would allow the development of a new mixed-use building that would complement the surrounding land uses and built character and add to the vitality of the DUMBO neighborhood. Speakers testified that the proposed public school would fill a significant need within the community. Speakers testified that the proposed building would be the first LEED certified building in DUMBO, the first LEED certified school in the City of New York, and would provide the first permanently affordable housing within the neighborhood. Local property and business owners testified that the project would strengthen the retail community in the neighborhood by adding activity and filling in gaps in the neighborhood's retail frontage. In addition, they recognized the importance of additional public parking in the DUMBO neighborhood today and with the future development of the Brooklyn Bridge Park.

Speakers in opposition included the Councilmembers for the 19<sup>th</sup> and 33<sup>rd</sup> Districts, residents, civic activists, representatives of historic preservation advocacy organizations, and representatives of local community organizations. Many of the speakers in opposition were complimentary of the developer and the quality of their loft conversions

in the neighborhood, but expressed concern regarding the proximity of the proposed building to the Brooklyn Bridge.

The Councilmember for the 19<sup>th</sup> District indicated concern that the proposed development would block views from the Brooklyn Bridge. The Councilmember for the 33<sup>rd</sup> District indicated support for allowing residential development on the site, but not at the proposed height, instead supporting a zoning district that would limit height to below the bridge's roadbed.

Several speakers testified that the project, as proposed, would be too close to the Brooklyn Bridge and that its height would impede important view corridors, particularly from the bridge's walkway. Speakers also indicated concern that the size of the proposed project would significantly change views of the bridge and the experience of seeing or being on the bridge. Many of the speakers stated that they believed that the proposed building would be out of scale with the low-rise character of the Fulton Ferry neighborhood and the adjacent Empire Stores and Tobacco Warehouse. Residents testified that the proposed building should draw its context from the two- to four-story buildings along Old Fulton Street and along Water Street. Representatives of local community organizations requested that the rezoning application be modified to an R7B zoning district and that the height of the building be less than eighty feet.

Speakers also indicated concern about increased traffic congestion on surrounding streets due to the proposed public parking garage, increased residential population and school.



In addition, speakers in opposition indicated concern regarding the safety of a school at the proposed site citing air pollution from traffic on the bridge and pedestrian safety.

There were no other speakers and the hearing was closed.

### **Waterfront Revitalization Program Consistency Review**

This application, in conjunction with the applications for the related actions, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.).

The designated WRP number is 08-109.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

### **CONSIDERATION**

The Commission believes that this Special Permit (C 090184 ZSK) for bulk modifications, as modified, in conjunction with the related applications for amendment of the Zoning Map (C 090181 ZMK), and Special Permit (C 090183 ZSK) for a public parking garage in excess of 150 spaces and to allow a portion of the garage floor area to be exempted from the definition of floor area, is appropriate.

### **Special Permit for Bulk Modifications (C 090184 ZSK)**

The Commission believes that the Special Permit for bulk modifications, as modified, is appropriate. The Commission believes that the height and setback regulations of the M1-2/R8 zoning district on this site would unduly inhibit design flexibility and create a building that would be out of context with the surrounding buildings in the DUMBO area. The Commission notes that the Special Permit limits the heights of the building while mandating a building form that would be more consistent with the surrounding built context.

In response to the recommendation of the Brooklyn Borough President and the testimony heard at the Commission's Public Hearing, the Commission is modifying the application to address issues related to building heights, composition of buildings, and relationship of the proposed development to the DUMBO Historic District and to the Brooklyn Bridge. These modifications would reduce the height of the tallest portion of the building from the originally proposed height of 183 feet, 8 inches, to a maximum height of 170 feet. The modifications would also step down the western fifty feet of the proposed nine-story building from a height of 96 feet, 8 inches, to a maximum height of 75 feet. The remainder of the nine-story section of the building would remain at the originally proposed 96 feet, 8 inches. The Commission notes that this modification would eliminate one floor from the tallest portion of the building, and two floors from the westernmost portion of the mid-rise building. Overall, these modifications represent a reduction of 16,600 square feet from the originally proposed 297,322 square feet, which is equivalent to 0.36 FAR, or 5.6 percent of the floor area of the originally proposed project.

The Commission heard considerable testimony opposing the scale of this development, particularly its height in relationship to the Brooklyn Bridge and surrounding neighborhood, and believes that the modest reductions in the height of the tallest portion of the building and a portion of the mid-rise building would result in an improved relationship of the proposed project to the buildings in the surrounding DUMBO neighborhood and to the Brooklyn Bridge. It notes that the reduction in the height of the high-rise portion of the building better reflects the buildings of the DUMBO Historic District, especially One Main Street. The originally-proposed building height is taller than any of the surrounding tall warehouses, except for the clock tower atop One Main Street. The building heights of the major warehouses include 30 Main Street at 154 feet, 2 inches, 175 feet, 4 inches for the shoulders of One Main Street, 174 feet, 8 inches for 70 Washington Street, and 175 feet 10 inches for 45 Main Street. The Commission believes that a new development should not dominate the historic composition of surrounding buildings and should respect its adjacency to the Brooklyn Bridge. A maximum height of 170 feet would be more in keeping with the surrounding buildings than the originally proposed 183 feet, 8 inches.

In response to the Borough President's comments, the Commission acknowledges the careful consideration that the Borough President made in developing his recommendations, particularly regarding the height of the building along Water Street. The Commission believes that breaking the monolithic massing of the nine-story section of the building along Water Street by eliminating two floors from the westernmost 50

feet of the building would create a better relationship and transition to surrounding buildings and the Brooklyn Bridge. The mid-rise portion of the building is 176 feet wide. Stepping down the building for the westernmost 50 feet would reduce the slab length to 126 feet and would let the building form mimic the rhythm of buildings on the block along Water Street. The stepped reduction would address the length of the slab, the narrowness of Water Street and the low scale nature of the Empire Stores building on the other side of Water Street.

The Special Permit would allow waivers to requirements for the maximum streetwall height and required setbacks, the required rear yards, inner courtyard depth, and distance between legally required windows and the side lot line. The Commission believes that due to an unusual site condition, the applicant's request for waivers would allow for the design of a building footprint of sufficient size for a double-loaded corridor in the residential tower portion of the building. The Commission believes that the request for this waiver is minimal and the provision of the full 20 and 30 foot rear yards and inner court would result in a less beneficial building design. The Commission further believes that granting this Special Permit would result in a better site plan with respect to floor area, open space, dwelling units and building footprints without compromising light and air to the existing and proposed buildings.

The Commission believes that the rear yard waivers, inner court waivers and distance between legally-required windows and street line waivers would not adversely affect the adjacent zoning lot, which is owned by the applicant, or pedestrians on the surrounding

streets. The adjoining properties have no windows facing the development site. A light and air easement has been granted by the adjoining zoning lot that would provide the equivalent of a thirty-foot yard along the side lot line and would limit development on the southeast side of that zoning lot, resulting in a permanent source of light and air for those buildings and future residents of the proposed building. Shadows on surrounding sidewalks and buildings would be reduced from those of an as-of-right development by concentrating the mass of the building in the middle of the block on a north-south access, reducing the width of the tallest portion of the building along Water Street.

The Commission notes that a condition of its approval is that the applicant record a restrictive declaration against the property that would, among other things, require any development of the site pursuant to the Special Permit to be in accordance with the approved plans. This includes the provision of a 45,772 square foot public middle school within the proposed project.

The Commission believes that the proposed Special Permit, as modified, along with the related actions, would allow for a new mixed-use development in context with the prevailing bulk and character of the DUMBO neighborhood and Historic District. It would permit the creation of a new public middle school on the site, and the construction of a new public parking facility to meet the neighborhood parking demand while reinforcing the historic and mixed-use character of DUMBO. It would introduce additional pedestrian activity along streets that currently have light pedestrian traffic.

The Commission further believes that the building's design, as modified, would reflect

the high-density Gair loft buildings which characterize the DUMBO neighborhood to the east and would provide a physical transition between the higher-scale buildings of the DUMBO Historic District to the east and the lower-scale buildings of the Fulton Ferry Landing Historic District and the Brooklyn Bridge to the west.

**Zoning Map Change (C 010645 ZMK)**

The Commission believes that the amendment to the zoning map is appropriate because it would allow new mixed-use development in DUMBO consistent with the neighborhood's current character. The Special Mixed Use District was designed to encourage investments in mixed residential and industrial neighborhoods, promote the opportunity for workers to live proximate to their jobs, create new opportunities for mixed-use communities and recognize and enhance the vitality and character of existing and potential mixed-use neighborhoods. The proposed district would allow for a mixture of uses that would reflect and complement the uses on adjacent blocks and in the surrounding area. The proposed development would represent the largest new construction project in this area that has thus far been predominantly characterized by the conversion of former industrial buildings to residential and commercial office use.

The Commission believes the proposed M1-2/R8 (MX-2) density is appropriate for the project site. The rezoning would provide a transition from the high-density, mixed-use district to the east (ranging from 7.5 FAR to 9.5 FAR) to the medium- to low-density, residential district to the west (ranging from 1.5 FAR to 4.5 FAR). The rezoning to M1-2/R8 would facilitate the development of the proposed mixed-use building with

residential, school, parking and ground-floor retail uses that would support the mixed-use character of the surrounding area.

In response to the local neighborhood organizations, the Commission notes that a R7B zoning district with a maximum base height of 60 feet and a maximum building height of 75 feet would unduly restrict design flexibility given the existing development constraints on this property and make it economically unfeasible for the developer to build a project containing features such as a public school and affordable housing. However, as stated above, the Commission believes that the proposed building should step down in scale from the large loft warehouse buildings in the DUMBO neighborhood toward the Fulton Ferry neighborhood to an R7B height as reflected in the modified project.

#### **Special Permit for a Public Parking Garage (C 010647 ZSK)**

The Commission believes that the granting of a special permit pursuant to Section 74-512 for a public parking garage in excess of 150 spaces and the exemption of floor area in the parking garage from the definition of floor area is appropriate. The proposed 465-space public parking garage would provide 23 reservoir spaces, five percent of the total parking spaces provided in the parking garage, which would be adequate to accommodate expected demand at peak times.

The proposed garage would be accessed by a 30-foot curb cut on Front Street. West of the curb cut, Front Street is a two-way street. At the curb cut and to the east, Front Street

is a one-way street heading east. Across Front Street and to the west is the western terminus of York Street, and the off-ramp of the Brooklyn-Queens Expressway (BQE). The proposed garage has convenient access to major arterial routes including Front Street, York Street, Old Fulton Street and the BQE and would therefore not contribute to traffic congestion or inhibit traffic and pedestrian flow in the surrounding area. The exit of the proposed garage would be designed to minimize potential conflicts between departing vehicles and pedestrians with proper sightlines and a flashing light and ringing bell that would both visually and audibly alert pedestrians to the presence of an exiting vehicle.

The traffic analysis conducted as a part of the Environmental Assessment Statement for this project concluded there would be no significant traffic impacts and that the streets providing access to the parking facility would be adequate to handle the traffic generated by the project. The proposed garage would draw a minimum of traffic through local residential streets because cars approaching the garage would generally be traveling from the BQE on to Front Street and Old Fulton Street, minimizing use of neighborhood streets. With this minimal increase in traffic, the EAS found that the surrounding streets would be adequate to handle the volume of traffic from the project.

The Commission notes the proposed garage would be separated from the sidewalk by retail spaces along Water and Front Streets, and that the Dock Street façade of the garage would be glazed. The proposed garage would replace the existing 70-space public garage and 50-space surface parking lot. It would serve the current users, users of the proposed building, neighboring buildings and visitors to the area, including Brooklyn Bridge Park.



The Commission notes that the request for exemption of 37,599 square feet of floor area from the definition of floor area is appropriate. The developer is requesting this exemption in part due to the location of the water table beneath the site, which makes further excavation extremely expensive. The proposed public parking garage is desirable in DUMBO because it provides one of the few opportunities to provide additional off-street parking in this section of the neighborhood. The parking demand in DUMBO is increasing and is expected to continue to rise with the development of the Brooklyn Bridge Park along the East River waterfront. The Commission, therefore, believes that allowing the exemption of 37,599 square feet from the calculation of floor area for the garage is appropriate.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-743 (Special provisions for bulk modifications) of the Zoning Resolution:

- (1) the distribution of #floor area#, #open space#, #dwelling units#, #rooming units# and the location of #buildings#, primary business entrances and #show windows# will result in a better site plan and a better relationship among #buildings# and open areas to adjacent #streets#, surrounding #development#, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the #general large-scale development#, the neighborhood, and the City as a whole;
- (2) the distribution of #floor area# and location of #buildings# will not unduly increase the #bulk# of #buildings# in any one #block# or unduly obstruct access of light and air to the detriment of the occupants or users of #buildings# in the #block# or nearby #blocks# or of people using the public #streets#;
- (3) not applicable;

- (4) considering the size of the proposed #general large-scale development#, the #streets# providing access to such #general large-scale development# will be adequate to handle traffic resulting therefrom;
- (5) not applicable;
- (6) not applicable;
- (7) not applicable; and
- (8) a declaration with regard to ownership requirements in paragraph (b) of the #general large-scale development# definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the consideration and findings described in this report, the application by Two Trees Management Company pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to modify the regulations of 23-851 (Minimum Dimension of Inner Courts), Section 23-86 (Minimum Distance Between Legally Required Windows and Lot Lines), Section 25-533 (Required rear yard equivalents),

Section 43-28 (Special Provisions for Through Lots) and Section 123-66 (Height and Setback Regulations) to facilitate a mixed use development on property located on the easterly side of Dock Street between Front Street and Water Street (Block 36, Lots 1, 3, 14, 59, 52, & 53), in an M1-2/R8 (MX-2) District, within a general large-scale development (Block 36, Lots 1, 3, 14, 15, 16, 40, 49, 52, & 53, and Block 26, Lots 33 & 38), in M1-2/R8 (MX-2), M1-2/R8A (MX-2), and M3-1 Districts, Borough of Brooklyn, Community District 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 090184 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Beyer, Blinder, Belle LLP, Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
3a	Zoning Diagram Site Plan	April 22, 2009
3b	Zoning Calculations	April 22, 2009
3c	Site Plan and Roof Plan	April 22, 2009
4a	Encroachment Diagrams	April 22, 2009
4b	Encroachment Diagrams	April 22, 2009
6a	Parking Level P1	November 6, 2008
6b	Parking Level P2 and P3	November 6, 2008

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above that have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. Development pursuant to this resolution shall be allowed only after the General Large Scale Restrictive Declaration attached as Exhibit A, with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed by Dumbo Front LLC, Brooklake Associates, L.L.C., 62 Water LLC, 35-39 Front Street LLC and Dumbo Lofts LLC, and recorded in the Office of the City Registrar, Kings County.
5. Development pursuant to this resolution shall be allowed only after Light and Air Easement Agreements in the form attached as Exhibit B, with such administrative changes as are acceptable to Counsel to the City Planning Commission, have been executed by Dumbo Front LLC, Brooklake Associates, L.L.C., 62 Water LLC, 35-39 Front Street LLC and Dumbo Lofts LLC, and recorded in the Office of the City Registrar, Kings County.
6. Development pursuant to this resolution shall be allowed only after the Amended and Restated Archeological Declaration attached as Exhibit C, with such administrative changes as are acceptable to Counsel to the City Planning

Commission, is executed by Dumbo Front LLC, Brooklake Associates, L.L.C., 62 Water LLC, and 35-39 Front Street LLC, and recorded in the Office of the City Registrar, Kings County.

7. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
8. In the event that the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
9. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated

above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

10. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 090184 ZSK), duly adopted by the City Planning Commission on April 22, 2009 (Calendar No. 15), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair,  
KENNETH J. KNUCKLES, Esq., Vice-Chairman  
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,  
ANGELA R. CAVALUZZI, A.I.A., ALFRED C. CERULLO, III,  
BETTY Y. CHEN, MARIA M. DEL TORO, RICHARD W. EADDY,  
NATHAN LEVENTHAL, JOHN MEROLO, Commissioners**

**SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners, Voting NO**

**EXHIBIT A**

**DECLARATION OF GENERAL LARGE-SCALE DEVELOPMENT**

THIS DECLARATION, made as of this \_\_\_\_\_ day of March, 2008, by Dumbo Front LLC, Brooklake Associates, L.L.C., 62 Water LLC, 35-39 Front Street LLC, Dumbo Lofts LLC, each a New York limited liability company, having an address c/o Two Trees, 45 Main Street, Suite 602, Brooklyn, NY 11201 (collectively, "**Declarant**").

**WITNESSETH:**

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, designated for real property tax purposes as Block 36, Lots 1, 3, 14, 49, 52, and 53, which real property is more particularly described in Exhibit "A" annexed hereto and made a part hereof ("**Parcel A**"), and Block 36, Lots 15, 16, and 40, which real property is more particularly described in Exhibit "B" annexed hereto and made a part hereof ("**Parcel B**"), and Block 26, Lots 33 and 38, which real property is more particularly described in Exhibit "C" annexed hereto and made a part hereof ("**Parcel C**", together known as the "**Subject Property**"): and

WHEREAS, Declarant desires to improve the Subject Property as a "general large-scale development" meeting the requirements of Section 12-10 of the Zoning Resolution (Definitions) definition of "general large-scale development" (such proposed improvement of the Subject Property the "**Large Scale Development Project**"); and



WHEREAS, Declarant filed an application with the New York City Department of City Planning (hereinafter "**City Planning**") to (i) permit the location of buildings without regard for the applicable height or setback regulations of Z.R. Section 123-662(a) [§ 74-743 (a)(2)]; (ii) permit the location of buildings without regard for the applicable rear yard equivalent regulations of Sections 23-533 and 43-28 [§ 74-743 (a)(2)]; (iii) permit the location of buildings without regard for the applicable inner court regulations of Z.R. Section 23-851 [§ 74-743 (a)(2)]; and, (iv) permit the modification of the minimum distance between legally required windows and a side lot line regulations of Z.R. Section 23-861 [§ 74-743 (a)(6)] (items i through iv, filed as ULURP application number 090183ZSK, and collectively known herein as the "**Large Scale Special Permits**") and related applications for a zoning map change (filed as ULURP application number 090181ZMK) and parking special permit (filed as ULURP application number 090184ZSK, and together with the zoning map change application and Large Scale Special Permits, collectively known herein as the "**Land Use Applications**"); and

WHEREAS, Section 74-743(b)(8) of the Zoning Resolution requires that a declaration with regard to ownership requirements in paragraph (b) of the general large scale development definition in Section 12-10 be filed with the New York City Planning Commission; and

WHEREAS, Chicago Title Insurance has certified in certifications

attached hereto as Exhibit "D", Exhibit "D-1" and Exhibit "D-2" and made a part hereof, that as of March \_\_\_\_, 2009 Declarant, GWU Holding Corp. and Federal Home Loan Mortgage Corporation are the only "Parties in Interest" to the Subject Property as "Parties in Interest" is defined in subdivision (c) of the definition of "zoning lot" in Section 12-10 of the Zoning Resolution;

WHEREAS, all Parties in Interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instrument annexed hereto as Exhibit "E" and Exhibit "E-1" and made a part hereof, which instruments are intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

NOW THEREFORE: Declarant hereby declares covenants and agrees as follows:

1. Designation of General Large Scale Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in Section 7 hereof), the Subject Property shall be treated as a general large-scale

development site and shall be developed and enlarged as a single unit.

2. Development of Large Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permits, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Beyer Blinder Belle Architects & Planners LLP, approved as part of the Large Scale Special Permits and annexed hereto in Exhibit "F" and made a part hereof (the "Plans"):

<b>Drawing No.</b>	<b>Title</b>	<b>Date</b>
3a	Zoning Diagram Site Plan	4/22/09
3b	Zoning Calculations	4/22/09
3c	Site Plan and Roof Plan	4/22/09
4a	Encroachment Diagrams	4/22/09
4b	Encroachment Diagrams	4/22/09
6a	Parking Level P1	4/22/09
6b	Parking Level P2; Parking Level P3	4/22/09

3. Development Other Than Pursuant To Large Scale Special Permits : In the event that Declarant does not develop in whole or in part in accordance with the Large Scale

Special Permits, it may develop without the parking garage under ULURP No. 090181ZMK, in the following manner: (a) Parcel A may be developed under the regulations of the M1-2/R8 , provided that: (i) such development is also in accordance with the regulations of an M1-2 district; (ii) no building may exceed one hundred seventy (170) feet in height; (iii) no portion of a building over seventy-five (75) feet may be located within one hundred feet of the Brooklyn Bridge; and (iv) no portion of a building over seventy-five ( 75) feet tall may be located within fifty (50) of Dock Street; (b) Parcels B and C may be developed in accordance with the underlying zoning districts for such parcels. No other development shall be permitted except pursuant to a modification of this Declaration.

4. Representation. Declarant hereby represents and warrants that there is no restriction of record, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a general large-scale development as set forth herein.

5. Light and Air Easement. Declarant, as fee owner of the Subject Property, has entered into a Light and Air Easement Agreement for the benefit of the Large Scale Development Project, which shall be recorded simultaneously with this Declaration. Separate and apart from the covenants and agreements of the Easement Agreement, Declarant is prohibited from constructing or allowing to exist any new buildings,

improvements, alterations or additions above twenty-three feet within the area of the easement ("Easement Area") as such Easement Area is described in Exhibit "G" annexed hereto and made a part hereof, except that nothing contained herein shall be deemed to prohibit or restrict the construction of any building or structure below twenty-three (23) feet or the replacement, or continued maintenance within the Easement Area of any parapet, bulkhead, fence, elevator shaft, water tower, antenna, satellite dish, chimney, pipe, ladder, fire escape, or other mechanical or telecommunications equipment as the same exist on the date hereof or to prohibit or restrict the replacement, reconstruction or continued maintenance of any buildings or improvements within the Easement Area as the same exist on the date hereof. The easement shall stay in full force and effect notwithstanding that such easement might otherwise be terminated by operation of law, for reasons including, but not limited to extinguishment by merger.

6. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with

respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

7. Recordation. Declarant shall File and record this Declaration in the Office of the City Register of the City of New York (the "**Register's Office**"), indexing it against the Subject Property on or after the date of the approval by the CPC and the City Council (where applicable) of the Land Use Applications (such date, the "**Recording Date**"). Declarant shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarant fails to so record this Declaration by the Recording Date, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by CPC, shall be borne by Declarant.

8. Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 6 above, provided however, that in the event that any administrative, judicial, or other action or enforcement proceeding is brought challenging the validity of the Large Scale Special Permits, the approval of any of the Land Use Applications, the conveyance of the Subject Property to Declarant or any action undertaken in connection with or related thereto, then the Effective Date shall be

deferred to the date of final resolution of such action or proceeding, including any appeals, upholding in all respects the validity of the Large Scale Special Permits, the approval of the Land Use Applications, the conveyance of the Subject Property, or such related action(s), as the case may be.

9. Notice. All notices, demands, requests, consents, approvals, and other communications (each, a "**Notice**") which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

(i) if to Declarant:

to the address at the commencement of this Declaration Attention:

with a copy to:

Cozen O'Connor  
250 Park Avenue  
New York, New York 10177  
Attention: Kenneth K. Fisher

(ii) if to CPC:

New York City Planning Commission  
22 Reade Street  
New York, New York 10007  
Attention: Chairperson

with a copy to:

the general counsel of CPC at the same address

(iii) if to a Party in Interest other than Declarant:

at the address provided in writing to CPC in accordance with this Section

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(iv) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section

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Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 8, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarant shall also be sent to every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

10. Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations



of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Sections 9(c) and 9(d) hereof. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the Subject Property built pursuant to the Large Scale Special Permits; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

(b) Notwithstanding any provision of this Declaration, only Declarant, and Declarant's successors and assigns and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other

person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the the Land Use Applications.

(c) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant twenty (20) business days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarant commences to effect such cure within such twenty (20) business day period (or if cure is not capable of being commenced within such twenty (20) business day period, Declarant commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid twenty (20) business day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 8 hereof, and the right to cure shall apply equally to all Declarants.

(d) If Declarant fails to observe any of the terms or conditions of this Declaration, and Declarant fails to cure such violation within the applicable grace period provided in Section 9(c) above, then, upon the expiration of such cure period, prior to

institution by the City of any action or proceeding against Declarant, and every Party in Interest shall be given twenty (20) days written notice of such alleged violation by the City, during which period each Party in Interest shall have the opportunity to effect such cure. If any Party in Interest commences to effect a cure during such twenty (20) day period and thereafter proceeds diligently to complete the effectuation of such cure, such cure period shall be extended for so long as any Party in Interest continues to proceed diligently toward such cure. If a Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and the City, as if performed by Declarant.

(e) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, or a Party in Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 9 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

11. Applications.

(a) Declarant shall include a copy of this Declaration with any application made to the New York City Department of Buildings ("**Buildings**") for a foundation,

new building, alteration, or other permit (a "**Permit**") for any portion of the Large Scale Development Project built pursuant to the Large Scale Special Permits. Nothing in this Declaration including but not limited to the declaration and covenant made in Section 1 hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or Buildings from issuing, any permit for all or any portion of the Large Scale Development Project, in such phase or order as Declarant sees fit in Declarant's sole discretion.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "**Agency**") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 9(b) shall be construed as superceding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

12. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only upon application by Declarant with the express written consent of CPC or an agency succeeding to CPC's jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

(b) Notwithstanding anything to the Contrary Contained in Section 11(a) hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC.

13. Severability. In the event that any of the provisions of the Declaration shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

14. Applicable Law. This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration as of this \_\_\_\_\_.

**Dumbo Front LLC,**  
Owner, Block 36, Lot 1

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**Brooklake Associates, LLC,**  
Owner Block 36, Lot 3 and Block  
26, Lots 33 and 38

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**62 Water LLC**  
Owner, Block 36, Lots 14 and 15

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**35-39 Front Street LLC**  
Owner Block 36, Lots 49, 52, and 53

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**Dumbo Lofts LLC,**  
Owner, Block 36 Lots 16 and 40

By: \_\_\_\_\_  
Jed Walentas, Authorized Signatory

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF NEW YORK    )  
  ) .ss.:  
COUNTY OF Kings    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_ Walentas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT B**



**LIGHT AND AIR EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009, between 62 Water LLC and Dumbo Lofts LLC, each a New York limited liability company, having an address c/o Two Trees, 45 Main Street, Suite 602, Brooklyn, NY 11201 (collectively, referred to as “**Grantor**”) and Dumbo Front LLC, Brooklake Associates, L.L.C., 62 Water LLC, 35-39 Front Street LLC, each a New York limited liability company, having an address c/o Two Trees, 45 Main Street, Suite 602, Brooklyn, NY 11201 (collectively, referred to as “**Grantee**”).

**WITNESSETH:**

WHEREAS, Grantor is the fee owner of certain land with buildings located thereon, located in the City and State of New York, Borough of Manhattan, City, County and State of New York, designated as Block 36, Lots 15, 16 and 40 on the Tax Map of the City of New York (hereinafter referred to as “**Parcel A**”) and more particularly described by a metes and bounds description set forth in Exhibit A annexed hereto and made a part hereof;

WHEREAS, the Grantee is the fee owner of certain land located in the City and State of New York, Borough of Manhattan, City, County and State of New York, designated as Block 36, Lots 1, 3, 14, 49, 52, and 53 on the Tax Map of the City of New York (hereinafter referred to as “**Parcel B**”) and more particularly described by a metes and bounds description set forth in Exhibit B annexed hereto and made a part hereof;

WHEREAS, there is a four-story, 40-foot tall, brick building and a five-story, 62-foot tall, masonry building erected on Parcel A (the "**Grantor Buildings**");

WHEREAS, on November 5th, 2008, Grantee applied for a special permit from the City Planning Commission of the City of New York (hereinafter referred to as "**CPC**"), pursuant to application number C 090184ZSK ("**Application**"), seeking to modify the minimum distance between legally required windows and side lot line regulations of Z.R. Section 23-861, pursuant to Z.R. Section 74-743(a)(6), on Parcel B;

WHEREAS, the CPC may approve the Application upon the condition, inter alia, that Grantor create an easement for light and air for the benefit of the present and future owners of Parcel B in order to satisfy the applicable provisions of the Zoning Resolution of the City of New York and Multiple Dwelling Law;

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor, for itself, and its legal representatives, successors and assigns hereby makes, with respect to its respective interest in Parcel A, the following grant to Grantee, its legal representatives, successors, and assigns and to any future owners of Parcel B:

1. The right to twenty-nine (29) feet of unrestricted light and air, spread evenly over the westernmost portion of Parcel A, as described herein, such that any construction above twenty-three (23) feet on Parcel A shall never infringe upon the light and air

granted to Parcel B, except for the air space occupied by the Grantor Buildings as they exist on the date hereof (hereinafter referred to as the “**Grantor Building Envelope**”).

2. Grantor covenants and agrees that no new buildings, improvements, alterations or additions shall be constructed or allowed to exist above twenty-three (23) feet on Parcel A, and no construction, addition, reconstruction, replacement, repair or rebuilding (collectively, “**Rebuilding**”) of the Grantor Buildings shall be made so as to encroach beyond the Grantor Building Envelope into the area of the easement (hereinafter referred to as the “**Easement Area**”) granted herein (but nothing contained in this Section 2 shall be deemed to prohibit or restrict construction of any building or structure below twenty-three (23) feet tall or the placement or replacement, or continued maintenance, on or above the roof of the Grantor Building of any parapet, bulkhead, fence, elevator shaft, water tower, antenna, satellite dish, chimney, pipe, ladder, fire escape, or other mechanical or telecommunications equipment as the same exist on the date hereof.)
3. The Easement Area exists twenty-three (23) feet above base plane and is twenty-nine (29) feet by two-hundred (200) feet, as more particularly described by a metes and bounds description set forth in Exhibit C annexed hereto and made a part hereof.
4. This Easement Agreement may not be modified, amended or terminated without the prior written consent of the New York City Department of City Planning.

5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
6. The easement shall stay in full force and effect notwithstanding that such easement might otherwise be terminated by operation of law, for reasons including, but not limited to extinguishment by merger.
7. Failure to comply with the terms of this Easement Agreement may result in the exercise of administrative or legal remedies by the City of New York, including but not limited to the revocation of the special permit, building permits or certificates of occupancy.
8. This Easement Agreement shall be recorded in the Office of the City Register for New York County and the cross-reference number and title of the Easement Agreement shall be cited on each temporary and permanent certificate of occupancy hereafter issued for any building on Parcels A and B.

IN WITNESS WHEREOF, the parties have made and executed the foregoing Easement Agreement as of the date hereinabove written.

GRANTOR:

GRANTEE:

**62 Water LLC**

Owner, Block 36, Lot 14

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**62 Water LLC**

Owner, Block 36, Lot 14

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**Dumbo Lofts LLC,**

Owner, Block 36 Lots 16 and 40

By: \_\_\_\_\_  
Jed Walentas, Authorized Signatory

**Dumbo Front LLC,**

Owner, Block 36, Lot 1

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**Brooklake Associates, LLC,**

Owner Block 36, Lot 3

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**35-39 Front Street LLC**

Owner Block 36, Lots 49, 52, and 53

By: \_\_\_\_\_  
Walentas, Authorized Signatory

**EXHIBIT C**

**AMENDED AND RESTATED**  
**DECLARATION**

This DECLARATION made as of the \_\_\_\_ day of \_\_\_\_\_ 2009, by Dumbo Front LLC, Brooklake Associates, LLC, 62 Water LLC, and 35-39 Front Street LLC, each a New York limited liability company, having an address c/o Two Trees, 45 Main Street, Suite 602, Brooklyn, NY 11201 (collectively referred to hereinafter as "Declarant") supercedes and replaces the Declaration by Dumbo Front LLC, Brooklake Associates, LLC, 62 Water LLC, and 35-39 Front Street LLC as Declarants, dated November 13th, 2008, which was recorded in the Office of the City Register against the Project Site (hereinafter defined) on November 14, 2008 at CRFN 2008000441754 without Exhibit C, referred to therein, attached;

**WITNESSETH**

WHEREAS, Declarant is the fee owner of certain real property located in the County of Kings, City and State of New York, designated for real property tax purposes as Lot(s) 1, 3, 14, 49, 52, and 53 of Tax Block 36 commonly known by the street addresses 21-29 Front Street, 38-52 Water Street, 56 Water Street, and 35-43 Front Street (the "Project Site") and is more particularly described in Exhibit A, annexed hereto and made part hereof; and

WHEREAS, Chicago Title Insurance Company has issued a Certification of Parties Interest, annexed hereto as Exhibit B and made a part hereof, that as of \_\_\_\_\_, Declarant is the only Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) in the Project Site (the "Certification"); and

WHEREAS, all Parties-in-Interest to the Project Site have executed this Declaration; and

WHEREAS, as of the date hereof, the Title Company has determined that there has been no change in the facts set forth in the Certification, and the Declarant represents and warrants that the parties-in-interest listed in the Certification are the only known parties-in-interest in the Project Site as of the date hereof; and

WHEREAS, applications, designated numbers 090181ZMK, 090183ZSK, and 090184ZSK, were submitted by the Declarant to the Department of City Planning ("DCP") for approval by the City Planning Commission ("CPC") pursuant to the Uniform Land Use Review Procedure and Section 197-c of the New York City Charter for a zoning map amendment to change the zoning of the Project Site and part of Lots 15, 16, and 40 of Block 36 from M1-2 to M1-2/R8; an extension of the MX-2 mixed use district; a Special Permit for a public parking garage in excess of 150 spaces, with exclusion of garage floor space; and a Special Permit to (i) permit the location of buildings without regard for the applicable height or setback regulations of Z.R. Section 123-662(a) [§ 74-743 (a)(2)]; (ii) permit the location of buildings without regard for the applicable rear

yard equivalent regulations of Sections 23-532 and 43-28 [§ 74-743 (a)(2)]; (iii) permit the location of buildings without regard for the applicable inner court regulations of Z.R. Section 23-851 [§ 74-743 (a)(2)]; and, (iv) permit the modification of the minimum distance between legally required windows and a side lot line regulations of Z.R. Section 23-861 [§ 74-743 (a)(6)] (collectively referred to as the "Application"); and

WHEREAS, the Application would facilitate the development of the Project Site; and

WHEREAS, an environmental assessment statement concerning the property that is the subject of the Application, including the Project Site, prepared pursuant to the City Environmental Quality Review (the "CEQR") is under review in connection with the Application (CEQR. 09DCP025K) and, pursuant to CEQR, the Landmarks Preservation Commission (the "LPC"), among others, has reviewed the environmental assessment, including the historic land use of the Project Site; and

WHEREAS, the results of such review, as documented in LPC's December 3, 2007 notice, attached hereto as Exhibit C and made a part hereof, indicate the potential presence of archaeological resources on the Project Site (the "Subject Property"); and

WHEREAS, the requirements of this Declaration shall only apply to the Subject Property; and

WHEREAS, Declarant desires to identify the existence of any potential archeological resources and mitigate any potential damage to any such archeological resources found in connection with the development or redevelopment of the Subject Property and has agreed to follow and adhere to all requirements for archaeological identification, investigation and mitigation set forth in the CEQR Technical Manual and LPC's Guidelines for Archaeological Work in NYC, including without limitation, the completion of archaeological field testing, excavation, mitigation and curation of archaeological resources as required by the LPC (collectively, the "Archaeological Work"); and

WHEREAS, Declarant agrees to restrict the manner in which the Subject Property may be developed or redeveloped by having the implementation of the Archaeological Work, performed to the satisfaction of the LPC, as evidenced by writings described and set forth herein, be a condition precedent to any soil disturbance for any such development or redevelopment (other than soil disturbance necessitated by Declarant's performance of the Archaeological Work); and

WHEREAS, Declarant intends this Declaration to be binding upon all successors and assigns; and

WHEREAS, Declarant intends this Declaration to benefit all land owners and tenants including the City of New York ("the City") without consenting to the enforcement of this Declaration by any party or entity other than the City,

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property



shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the value and desirability of the Subject Property and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof:

1. Declarant covenants and agrees that no application for grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance shall be submitted to or accepted from the Department of Buildings (the "DOB") by the Declarant until LPC has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraphs 2(a) and 2(c), a Notice to Proceed as set forth in Paragraph 2(b), a Notice of Satisfaction as set forth in Paragraph 2(d) or a Final Notice of Satisfaction as set forth in Paragraph 2(e). Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction, as the case may be, to the DOB at the time of filing of any application set forth in this Paragraph 1.

2. (a) Notice of No Objection - LPC shall issue a Notice of No Objection after the Declarant has completed the work set forth in the LPC-approved Archaeological Documentary Study and LPC has determined that the results of such assessment demonstrate that the site does not contain potentially significant archeological resources.

(b) Notice to Proceed with LPC Approved Field Testing and/or Mitigation - LPC shall issue a Notice to Proceed after it approves a Field Testing Plan and, if necessary, a Mitigation Plan. Issuance of a Notice to Proceed shall enable the Declarant to obtain a building permit solely to perform excavation or other work necessary to implement the Field Testing and/or Mitigation Plan. The LPC shall review and approve the scope of work in all permits prior to field testing or mitigation work commencing on the Subject Property.

(c) Notice of No Objection After Field Work - LPC shall issue a Notice of No Objection After Field Work if Declarant has performed required LPC-approved field testing and, as a result of such testing, the LPC determines that the Subject Property does not contain potentially significant archaeological resources. The notices described in subparagraphs (a) and (c) of this paragraph shall each hereafter be referred to as a "Notice of No Objection." Issuance of a Notice of No Objection shall be sufficient to enable Declarant to obtain a full building permit for the performance of excavation or construction on the Subject Property.

(d) Notice of Satisfaction - LPC shall issue a Notice of Satisfaction after the Mitigation Plan has been prepared and accepted by LPC and LPC has determined in writing that all significant identified archaeological resources have been documented and removed from the Subject Property. Issuance of a Notice of Satisfaction shall enable Declarant to obtain a building permit for excavation and construction on the Subject Property;

(e) Final Notice of Satisfaction - LPC shall issue a Final Notice of Satisfaction after the mitigation has been completed and the LPC has set forth in writing that the Mitigation Plan, including but not limited to the Final Archaeological Report and a curation plan for any archaeological resources found on the Subject Property, has been completed to the satisfaction of LPC.

3. No temporary certificate of occupancy ("TCO") or permanent certificate of occupancy shall be granted by the Buildings Department or accepted by Declarant until the Chairperson of the LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection.

4. The Director of Archeology of the LPC shall issue all notices required to be issued hereunder reasonably promptly after Declarant has made written request to the LPC and has provided documentation to support each such request, and the Director or Archeology of the LPC shall in all events endeavor to issue such written notice to the DOB, or inform Declarant in writing of the reason for not issuing said notice, within thirty (30) calendar days after Declarant has requested such written notice.

5. Declarant represents and warrants with respect to the Subject Property that no restrictions of record, nor any present or presently existing estate or interest in the Subject Property nor any lien, encumbrance, obligation, covenant of any kind preclude, presently or potentially, the imposition of the obligations and agreements of this Declaration.

6. Declarant acknowledges that the City is an interested party to this Declaration and consents to the enforcement of this Declaration solely by the City, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.

7. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant shall be deemed to include such successors and assigns as well as successors to their interest in the Subject Property. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof.

8. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, except that the City and any other party relying on this Declaration will look solely to the fee estate interest of the Declarant in the Subject Property for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration. The Declarant shall have no personal liability under this Declaration.

9. The obligations, restrictions and agreements herein shall be binding on the Declarant or other parties in interest only for the period during which the Declarant and

any such Party-in-Interest holds an interest in the Subject Property; provided, however, that the obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure.

10. Declarant shall indemnify the City, its respective officers, employees and agents from all claims, actions, or judgments for loss, damage or injury, including death or property damage of whatsoever kind or nature, arising from Declarant's performance of its obligations under this Declaration, including without limitation, the negligence or carelessness of the Declarant, its agents, servants or employees in undertaking such performance; provided, however, that should such a claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City and no such claim or action shall be settled without the written consent of the City.

11. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant, including but not limited to the cost of undertaking the Mitigation Plan, if any.

12. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) to all or a portion of the Subject Property to waive its right to execute this Declaration and subordinate its interest in the Subject Property to this Declaration. Any mortgage or other lien encumbering the Subject Property in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as Exhibits and recorded in the Office of the County or City Register.

13. This Declaration and the provisions hereof shall become effective as of the date of this Declaration. Declarant shall record or shall cause this Declaration to be recorded in the Office of the County or City Register, indexing it against the Subject Property within five (5) business days of the date hereof and shall promptly deliver to the LPC and the CPC proof of recording in the form of an affidavit of recording attaching the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to LPC and CPC as soon as a certified copy is available.

14. This Declaration may be amended or modified by Declarant only with the approval of LPC or the agency succeeding to its jurisdiction and no other approval or

consent shall be required from any other public body, private person or legal entity of any kind. A statement signed by the Chair of the LPC, or such person as authorized by the Chair, certifying approval of an amendment or modification of this Declaration shall be annexed to any instrument embodying such amendment or modification.

15. Any submittals necessary under this Declaration from Declarant to LPC shall be addressed to the Director of Archaeology of LPC, or such other person as may from time to time be authorized by the Chair of the LPC to receive such submittals. As of the date of this Declaration LPC's address is:

Landmarks Preservation Commission  
1 Centre Street, 9N  
New York, New York 10007

Any notices sent to Declarant shall be sent to the address hereinabove first set forth, to the attention of Jed Walentas, and shall be sent by personal delivery, delivery by reputable overnight carrier or by regular mail.

16. Declarant expressly acknowledges that this Declaration is an essential element of the environmental review conducted in connection with the Application and as such the filing and recordation of this Declaration may be a precondition to the determination of significance pursuant to CEQR, which implements the State Environmental Quality Review Act ("SEQRA") and the SEQRA Regulations, Title 6 New York Code of Rules and regulations ("NYCRR") Part 617.7 within the City of New York.

17. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Local laws.

18. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

19. Wherever in this Declaration, the certification, consent, approval, notice or other action of Declarants, LPC or the City is required or permitted, such certification, consent, approval, notice or other action shall not be unreasonably withheld or delayed.

20. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

21. This Declaration and its obligations and agreements are in contemplation of Declarant receiving approvals or modified approvals of the Application. In the event that the Declarant withdraws the Application before a final determination or the Application is not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and Declarant may request that LPC issue a Notice of

Cancellation upon the occurrence of the following events; (i) Declarant has withdrawn the Application in writing before a final determination on the Application; (ii) the Application was not approved by the CPC; or (iii) LPC has issued a Final Notice of Satisfaction. Upon such request, LPC shall issue a Notice of Cancellation after it has determined, to LPC's reasonable satisfaction, that one of the above has occurred. Upon receipt of a Notice of Cancellation from LPC, Declarant shall cause such Notice to be recorded in the same manner as the Declaration herein, thus rendering this Restrictive Declaration null and void. Declarant shall promptly deliver to LPC and the CPC a certified copy of such Notice of Cancellation as recorded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

**Dumbo Front LLC,**  
Owner, Block 36, Lot 1

By: \_\_\_\_\_  
Jed Walentas, Authorized Signatory

**Brooklake Associates, LLC,**  
Owner Block 36, Lot 3

By: \_\_\_\_\_  
Jed Walentas, Authorized Signatory

**62 Water LLC**  
Owner, Block 36, Lot 14

By: \_\_\_\_\_  
Jed Walentas, Authorized Signatory

**35-39 Front Street LLC**  
Owner Block 36, Lots 49, 52, and 53

By: \_\_\_\_\_  
Jed Walentas, Authorized Signatory

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF KINGS)

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared Jed Walentas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public