# SECOND MODIFICATION OF DECLARATION

SECOND MODIFICATION OF DECLARATION (this "Modification") made as of the 21st day of October, 2015 by HAMILTON PLAZA ASSOCIATES, a New York limited partnership, having an address c/o Goodrich Management, LLC, 560 Sylvan Avenue, Suite 2100, Englewood Cliffs, New Jersey 07632 (the "Declarant").

## WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in the County of Kings, City and State of New York, consisting of the parcel located at 1-37 12<sup>th</sup> Street, Brooklyn New York and shown on the Tax Map of the City of New York for the Borough of Brooklyn as Block 1007, Lot 172, and Block 1025, Lots 1, 16, 18, 20, and 200, which real property is more particularly described in **Exhibit A** annexed hereto (the "Modified Subject Property"); and

WHEREAS, First American Title Insurance Company, by its agent, EAM Land Services, Inc. (the "<u>Title Company</u>") has certified in a certification attached hereto as <u>Exhibit B</u> and made a part hereof, that as of September 2, 2015, that Declarant is the fee owner, among the other parties-in-interest (as defined in the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York, as amended, hereinafter referred to as the "<u>Zoning Resolution</u>") in the Modified Subject Property, and is the only party required to execute this Modification; and

WHEREAS, Declarant, as the fee owner of the Modified Subject Property, has executed this Modification; and

WHEREAS, a predecessor of Declarant submitted an application designated No. C 760044 ZSK for a special permit to permit a supermarket over 10,000 square feet in an M1-1 zoning district, which action was approved by the City Planning Commission on May 16, 1977 and modified by the Board of Estimate ("BOE") on June 23, 1977 (the "Original Special Permit"); and

WHEREAS, among other things, the BOE modified the Original Special Permit to add a restriction that "any uses on the 3<sup>rd</sup> and 4<sup>th</sup> floors [of the supermarket building on the Modified Subject Property], other than office and warehousing uses shall only be allowed by written authorization of the City upon recommendation by the City Planning Commission and final approval by the Board of Estimate, after consultation with the community, including local merchants"; and

WHEREAS, a predecessor of Declarant executed a declaration, dated July 28, 1977 and recorded in the Office of the New York City Register, Kings County on October 21, 1977, in Reel 952, Page 1344, which included the above-referenced BOE restriction, among others (the "Original Declaration"); and

WHEREAS, the Original Special Permit expired and a new special permit, designated No. C 780389 ZSK, was approved by the City Planning Commission on March 5, 1979 and by the BOE on March 22, 1979, effectively replacing the Original Special Permit (the "Special Permit"); and

WHEREAS, in connection with an application designated No. M 780389 ZSK for a modification to the Special Permit, to update the site plan and relocate 44 of the off-street parking spaces thereby reducing the parking requirement to 362 spaces, which action was approved by the City Planning Commission, only, on October 13, 1981, a predecessor of Declarant executed a modification to the Original Declaration, dated October 2, 1981 and recorded in the Office of the New York City Register, Kings County on November 25, 1981, in Reel 1280, Page 1448 (the "Modified Declaration", together with the Original Declaration, the "Declaration"); and

WHEREAS, this Second Modification of Declaration alters the restrictions, covenants, and agreements of the Declaration solely in relation to the Modified Subject Property; and

WHEREAS, Paragraph 7 of the Original Declaration provides that the Declaration may not be amended or cancelled without the approval of the City Planning Commission and the BOE, the successor to which is the City Council; and

WHEREAS, Declarant submitted an application, dated August 4, 2015 and designated No. M 780389(B) ZSK for further modification of the Special Permit and cancellation of the Declaration with respect to its application to the Modified Subject Property, to facilitate a change of use and enlargement of the 3rd floor by adding a 2,364 square foot mezzanine within the existing building located at the Modified Subject Property (collectively, the "Proposed Action"); and

WHEREAS, as a condition of approving the Proposed Action, the City Council is requiring the Declaration to be further modified and not canceled.

NOW, THEREFORE, Declarant does hereby declare as follows:

- (1) With respect to the Modified Subject Property, the Declaration is hereby modified as provided for hereinbelow. The Declaration shall remain in effect with respect to the properties identified therein and as modified herein.
- (2) Paragraph number two (#2) of the Original Declaration is hereby deleted and replaced with the following:

The Declarant covenants that any uses on the third and fourth floors of the Modified Subject Property other than the following:

- a) office:
- b) warehouse;
- c) physical culture or health establishment uses (may occupy both floors); and
- d) Use Group 6 uses as defined in the Zoning Resolution, except no retail establishments may occupy more than one floor, and no eating and drinking establishments;

shall only be permitted by written authorization of the City Council, upon recommendation by the City Planning Commission after consultation with the community, including local merchants.

(3) Paragraph number 3 of the Original Declaration is hereby deleted and replaced with the following:

The Declarant covenants that the Modified Subject Property shall be developed in accordance with the following plans, including notes on such plans, prepared by Urban Matrix Architecture and Planning, P.C., annexed hereto as **Exhibit C** and made part hereof:

Drawing Number	Title	Date of last revision
ZD-100	Zoning Calculations	8/6/15
ZD-101	Zoning Lot Site Plan	7/31/15
ZD-102	Ground Floor Plan	7/31/15
ZD-103	2 <sup>nd</sup> Floor Plan	7/31/15
ZD-104	3 <sup>rd</sup> Floor Plan	7/31/15
ZD-105	3 <sup>rd</sup> Floor Mezzanine Plan	7/31/15
ZD-106	4 <sup>th</sup> Floor Plan	7/31/15
ZD-107	Building Sections	7/31/15
ZD-108	<b>Building Elevations</b>	7/31/15

- (4) This Modification shall not be effective until it has been filed for recording in the Office of the City Register, Kings County.
- (5) The Declarant covenants that the Original Declaration and the Modified Declaration are in all other respects unmodified.

[Signature Page Follows]

IN WITNESS WHEREOF, Declarant has caused this Modification to be signed as of the date first set forth above.

Declarant:

HAMILTON PLAZA ASSOCIATES.

a New York limited partnership

By:

Michael E. Rosenberg

**Authorized Agent** 

State of New Jersey

) ss.

County of Bergen

On the  $2/s^{4}$  day of October in the year 2015 before me, the undersigned, personally appeared Michael E. Rosenberg 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(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

KATHLEEN M. HANNA Commission # 2302169 Notary Public, State of New Jersey My Commission Expires

June 25, 2018

# Exhibit A

# Legal Description of the Modified Subject Property

ALL that certain plot piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, being bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northwesterly side of Hamilton Place with the southwesterly side of 12th Street;

RUNNING THENCE northwesterly along the southwesterly side of 12th Street, a distance of 82.00 feet;

THENCE northeasterly parallel with Second Avenue, a distance of 293.00 feet to the center line of canal also known as 11th Street Basin (60 feet wide);

THENCE northwesterly along said center line a distance of 375.75 feet to Gowanus Canal, authorized – 100 feet wide – by Chapter 79, Laws of 1849;

THENCE southwesterly along Gowanus Canal a distance of 467.43 feet to the easterly side of Hamilton Avenue;

THENCE southerly along the easterly side of Hamilton Avenue, a distance of 189.50 feet;

THENCE easterly at a right angle to the easterly side of Hamilton Avenue a distance of 21.74 feet to the former southwesterly side of 13<sup>th</sup> Street;

THENCE along the former southwesterly side of 13th Street and at a right angle to the northwesterly side of Hamilton Avenue a distance of 285.80 feet to the northwesterly side of Hamilton Place;

THENCE northeasterly along the northwesterly side of Hamilton Place, a distance of 257.00 feet to the above referenced corner, the point or place of BEGINNING.

# Exhibit B

[Certification of Parties-in-Interest on next page]

#### EXHIBIT "I"

CERTIFICATION PURSUANT TO ZONING LOT SUBDIVISION C OF SECTION 12-10 OF THE ZONING RESOLUTION OF DECEMBER 15, 1961 OF THE CITY OF NEW YORK AS AMENDED **EFFECTIVE AUGUST 18, 1977** 

FIRST AMERICAN TITLE INSURANCE COMPANY, A TITLE INSURANCE COMPANY LICENSED TO DO BUSINESS IN THE STATE OF NEW YORK AND HAVING ITS PRINCIPAL OFFICE AT 633 THIRD AVENUE, NEW YORK, NY 10017-3303, BY ITS AGENT EAM LAND SERVICES, INC., HEREBY CERTIFIES THAT AS TO THE LAND HEREAFTER DESCRIBED BEING A TRACT OF LAND, EITHER UN-SUBDIVIDED OR CONSISTING OF TWO OR MORE LOTS OF RECORD, CONTIGUOUS FOR A MINIMUM OF TEN, LINEAR FEET, LOCATED WITHIN A SINGLE BLOCK IN THE SINGLE OWNERSHIP OF HAMILTON PLAZA ASSOCIATES, L.P., THAT ALL THE PARTIES IN INTEREST CONSISTING OF A "PARTY IN INTEREST" AS DEFINED IN SECTION 12-10, SUBDIVISION (C) OF THE ZONING RESOLUTION OF THE CITY OF NEW YORK, EFFECTIVE DECEMBER 15, 1961, AS AMENDED, ARE THE **FOLLOWING:** 

## NAME AND ADDRESS

# HAMILTON PLAZA ASSOCIATES, L.P.

C/O SHERILU MANAGEMENT CORP. 172 560 SYLVAN AVENUE, SUITE 200 **ENGLEWOOD CLIFFS, NY 07632** 

# JPMORGAN CHASE BANK

270 PARK AVENUE NEW YORK, NY 10017

# BANK OF AMERICA, N.A.

100 FEDERAL STREET

BOSTON, MA 02110

# WILMINGTON TRUST COMPANY

RODNEY SQUARE NORTH, 1100 NORTH MARKET STREET WILMINGTON, DE 19890

# U.S. BANK NATIONAL ASSOCIATION

100 WALL STREET NEW YORK, NY 10005

#### PEOPLES UNITED BANK

250 PARK AVENUE NEW YORK, NY 10005

ONE BOSTON PLACE BOSTON, MA 02108

# DUNKIN' DONUTS OF NEW YORK INC.

P.O BOX 317 RANDOLPH, MA 02368

# A&P REAL PROPERTY, LLC

250 PARK AVENUE NEW YORK, NY 10005

# THE COWARD SHOE, INC.

16 EAST 34TH STREET **NEW YORK, NY** 

#### NATURE OF INTEREST

OWNER OF BLOCK 1007 LOT 172 AND BLOCK 1025 LOTS 1, 16, 18, 20 AND 200

### HOLDER OF MORTGAGE ON BLOCK 1007 LOT 172

BLOCK 1025 LOTS 1, 16, 18, 20 AND 200

#### HOLDER OF MORTGAGE ON BLOCK 1007LOT 172

#### HOLDER OF MORTGAGE ON BLOCK 1007 LOT 172

HOLDER OF MORTGAGE ON BLOCK 1007 LOT 172

#### HOLDER OF MORTGAGE ON BLOCK 1007 LOT 172

BLOCK 1025 LOTS 1, 16, 18, 20 AND 200

# WELLS FARGO BANK, NATIONAL ASSOCIATION HOLDER OF MORTGAGE ON BLOCK 1007 LOT 172

BLOCK 1025 LOTS 1, 16, 18, 20 AND 200

LESSEE OF BLOCK 1007 LOT 172 AND

**BLOCK 1025 LOTS 1 AND 16** 

LESSEE OF BLOCK 1007 LOT 172

BLOCK 1025 LOTS 1, 16, 18, 20 AND 200

LESSEE OF BLOCK 1007 LOT 172

BLOCK 1025 LOTS 1, 16, 18, 20 AND 200

THE SUBJECT TRACT OF LAND WITH RESPECT TO WHICH THE FOREGOING PARTIES ARE THE PARTIES IN INTEREST AS AFORESAID, IS KNOWN AS BLOCK 1007 LOT 172, BLOCK 1025 LOTS 1, 16, 18, 20, AND 200 ON THE TAX MAP OF THE CITY OF NEW YORK, KINGS COUNTY, AND MORE IN SCHEDULE A (ATTACHED)

THAT THE SAID PREMISES ARE KNOWN AS AND BY THE FOLLOWING STREET ADDRESSES:

- BLOCK 1007 LOT 172: 1-37 12TH STREET, BROOKLYN, NY
- BLOCK 1025 LOT 1: NO # GOWANUS CANAL, BROOKLYN, NY
- BLOCK 1025 LOT 16: 42 12TH STREET, BROOKLYN, NY
- BLOCK 1025 LOT 18: NO # 12<sup>TH</sup> STREET, BROOKLYN, NY
- BLOCK 1025 LOT 20: NO # HAMILTON PLACE, BROOKLYN, NY
- BLOCK 1025 LOT 200: NO # HAMILTON PLACE, BROOKLYN, NY
   ALL AS SHOWN IN THE ATTACHED DIAGRAM (SCHEDULE B)

NOTE:

A ZONING LOT MAY OR MAY NOT COINCIDE WITH A LOT AS SHOWN ON THE OFFICIAL MAP OF THE CITY OF NEW YORK, OR ON ANY RECORDED SUBDIVISION PLOT OR DEED. A ZONING LOT MAY BE SUBDIVIDED INTO TWO OR MORE ZONING LOTS PROVIDED ALL THE RESULTING ZONING LOTS AND ALL THE BUILDINGS THEREON SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF THE ZONING LOT RESOLUTION.

THIS CERTIFICATE IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND (\$1,000.00) DOLLARS.

CERTIFIED THIS 2<sup>ND</sup> DAY OF <u>SEPTEMBER</u>, 2015 TO HAMILTON PLAZA ASSOCIATES, L.P. APPLICANT FOR THIS CERTIFICATION.

FIRST AMERICAN TITLE
INSURANCE COMPANY
BY: EAM LAND SERVICES, INC.

JEREMY S. BERLIN, ESQ. COUNSEL

STATE OF NEW YORK

SS.:

**COUNTY OF NASSAU** 

ON THE 2<sup>ND</sup> DAY OF SEPTEMBER, 2015, BEFORE ME, PERSONALLY APPEARED JEREMY S. BERLIN PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO 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(S) ON THE INSTRUMENT, THE INDIVIDUAL(S) OR THE PERSON UPON BEHALF OF WHICH THE INDIVIDUAL(S) ACTED, EXECUTED THE INSTRUMENT.

NOTARY PUBLIC - STATE OF NEW YORK

BRIAN MARUSCHAK
Notary Public, State of New York
No. 01MA6113126
Qualified in Queens County
Commission Expires July 19, 20

#### SCHEDULE A

### **DESCRIPTION OF PREMISES**

Title No. ALSS111418K

ALL that certain plot piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, being bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northwesterly side of Hamilton Place with the southwesterly side of 12<sup>th</sup> Street;

RUNNING THENCE northwesterly along the southwesterly side of 12th Street, a distance of 82.00 feet;

THENCE northeasterly parallel with Second Avenue, a distance of 293.00 feet to the center line of canal also known as 11<sup>th</sup> Street Basin (60 feet wide);

THENCE northwesterly along said center line a distance of 375.75 feet to Gowanus Canal, authorized – 100 feet wide – by Chapter 79, Laws of 1849;

THENCE southwesterly along Gowanus Canal a distance of 467.43 feet to the easterly side of Hamilton Avenue;

THENCE southerly along the easterly side of Hamilton Avenue, a distance of 189.50 feet;

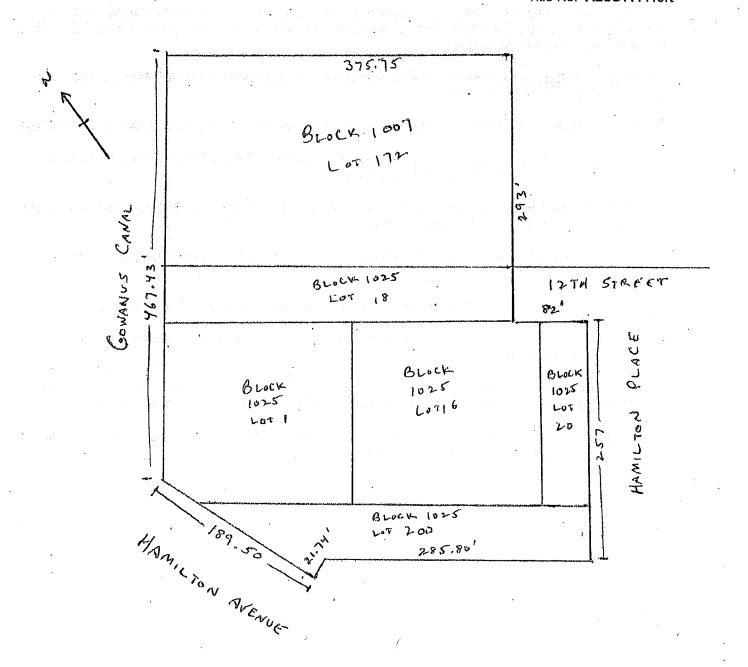
THENCE easterly at a right angle to the easterly side of Hamilton Avenue a distance of 21.74 feet to the former southwesterly side of 13<sup>th</sup> Street;

THENCE along the former southwesterly side of 13<sup>th</sup> Street and at a right angle to the northwesterly side of Hamilton Avenue a distance of 285.80 feet to the northwesterly side of Hamilton Place;

THENCE northeasterly along the northwesterly side of Hamilton Place, a distance of 257.00 feet to the above referenced corner, the point or place of BEGINNING.

# SCHEDULE B DIAGRAM

Title No. ALSS111418K



# Exhibit C

[Plans on next page]

221,946 SF (Waterfront Zoning Lot) 1, 16, 18, 20, 200

List of Required Actions:

1. Modification to the perviously approved Special Ferm's and Restrictive Declaration (2.720385.25X)

2. DPC Chalf Certification for waterfront public access and visual comdor requirements pursuant to Section 62-831.

Related Action:

1. Special Permit by the BSA (124-14-82) to allow the operation of a physical culture establishment (Retro Fitness) on the third floor.

ZR Section	ZR Section Description	Required/Parmitted	Existing to Remain	Proposed	Total	Notes/Compliance
46-34	date	COTTOT IS AN AV	and any as the		PCE	and Restrictive Declaration (C 780389 ZSK)
43-12	FAR	Commercial=2.0 Community Facility=4.8	0.51	10.0	0.52	Compiles
	FLOOR AREA	221,946 * 2.0 = 443,832 S.F.	111,091 S.F.	2,364 SF*	113,455 S.F.	Compiles  Compiles  *Mod fination to the previously approved Special Permit  and Restrictive Declaration (C 780389 ZSK)
44-21	ACCESSORY OFF-STREET PARKING	UG 6A = 1. per 200 5.F. (44,490 5.F./200) = 222 spaces UG 6B = 1. per 200 5.F. (38,549 5.F./200) = 239 spaces UG 36D = (PR-G-J) 1 per 200 5.F. or 1 per 3 Employees, whichever requires a lesser mo. of spaces. 6 employees = 2 spaces Total Required = 53.6 spaces Required	362 spaces (Block 1025 lots 1, 16, 18, 20, 200) 44 spaces (Block 1025 tot 100) as per M 780389 25K.	PCE (2,364/300) = 8 spaces	362 spaces 44 spaces	Compiles Compiles (M 780389 ZK()
44-52	REQUIRED OFF-STREET LOADING	Commercial trust (UG 6A) = 3 required First 8,000 = 4 Next Next 15,000 = 1 Next 15,000 = 1 Next 16,000 = 1 Next 0,000 = 1 Next 40,000 = 1 Next 40,000 = 1 Next 40,000 = 1 (44,900 5, F. = 3 tenth)	3 loading benths	1 loading berth Incresse due to introduction of PCE (15.358 S.F)	6 loading berths	Complies
		Commercial Uses [VG 68] = 1 required First 25,000 = 4 kine Next 75,000 = 1 Next 75,000 = 1 Fech additional 300,000 or fraction thereof = 1 188,588 5.f. = 1 benth	1 loading berth	NA.		
		Warehouse (IG 150) = 2 required  First \$,000 - Mone  Next 15,000 = 1  Next 15,000 = 1  Next 20,000 = 1  Such additional 80,000 or fraction thereof = 1  [27,622.55, = 2 bertify)	I loading berth Decrease from 2 to 1 loading berth due to conversion of Warehouse (UG 16D) to PCE.	NA.		
Visual Corr 62-51 52-511	nidor & of Visual	ccess Area Requirements Exemption for change of use within existing buildings or other structures		*Mandatory visua: corridor already exists within 400' of the first upland street bounding the waterfront		* CPC Chair Certification for waterfront public access and visual corridor requirements pursuant to Socilon 62-
	Cerridors	Visual Corridor pursuant to 63-531(d) not required if certain conditions exist within 400 FT and Its elimanation does not result in a condition whereby visual corridors through the southing for or continer side of the southing for are more than 600 feet appart and the change of use is within the existing building		Street bounding the waterfront block (Hamilton Place), and its elimination does not result in a condition whereby visual corridors through the zoning lot or to either side of the zoning lot are more than 600 feet spart and the change of use is within the existing building.		811
62-52	Waterfront Public Access Area	Exemption for enlargement and change of use which in the aggregate involve an increase in floor area of less than 50% of the amount existing on the zoning lot on October 25, 1993, and not more than 20,000 SF (116,643 SF * 50%)=88,372 SF	Existing Floor Area in 10/25/93 = 116,643 SF	*Charge of use (3 <sup>rd</sup> ficor) and enlargement (3 <sup>rd</sup> foor mezzanine) (13,9945F + 2,364 SF) 16,388 SF < 58,322 SF 16,358 SF < 20,000 SF		* CPC Chair Certification for waterfront public access and visual corridor requirements pursuant to Section 62- 811

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CHO MENO	ZD-100	PROJECT NO. DIOLOS.

bal 116,643.5. 2394.5.F. 12194.5.F. 2394.5.F. 239

113,455 S.F. 362 spaces 1 (C 780389 ZSK)

2,364 S.F. 13,994 S.F. 13,994 S.F. 1,909 S.F. 24,955 S.F. 42,581 S.F.

(Warehouse)

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14,550 S.F. 14.550 S.F.

13.994 S.F. 13.994 S.F.

2,038 S.F.

ZONING CALCULATIONS KITE 4.95.2015

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JOHN CA	DRAWING		8/06/15	7/31/15	DATE
CA CI I ATOMS			DCP COMMENTS	DCP COMMENTS	DESCRIPTION

FLOOR AREA SCHEDULE

Uses Proposed

26.300 S.F. 44,868 S. F. Existing (GFA) Proposed (GFA)

24,955 S.F. 42,581 S.F. 1,509 S.F.

23 83

Floor Area (S.F.)
Existing (ZFA) Proposed (ZFA) Total (ZFA)

UG 6B (Retall)
UG 6A
[Supermarket]
UG 6A
[Supermarket]
UG 6B (Office)
UG 16D
UG 16D
(Warehouse)

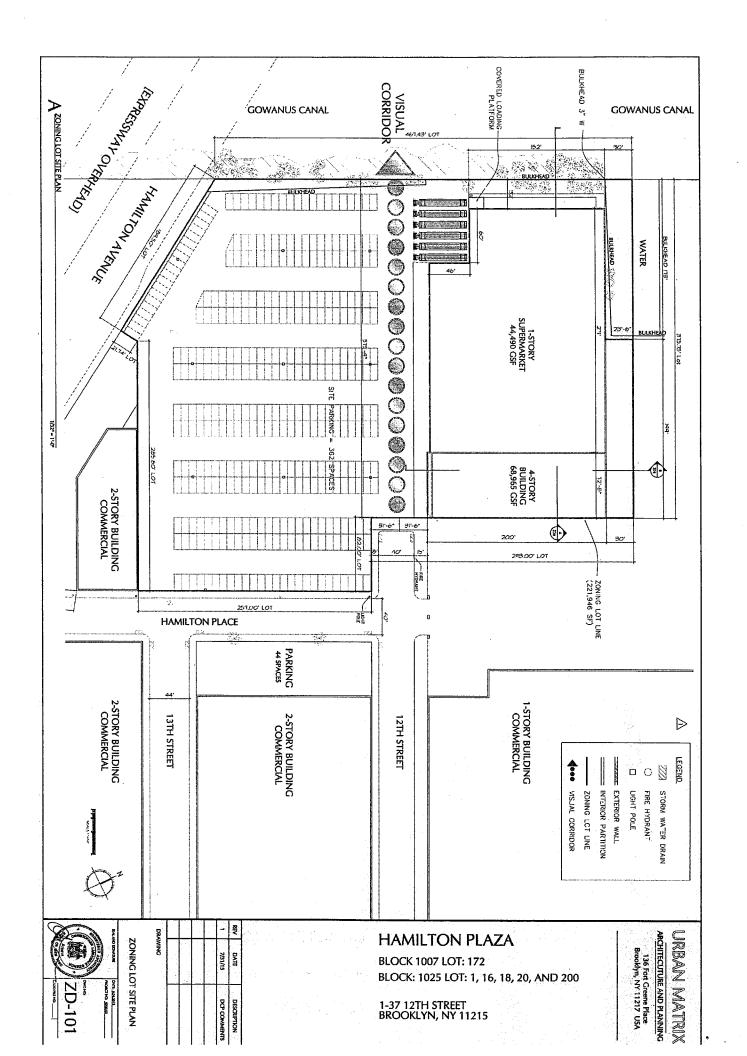
**HAMILTON PLAZA** 

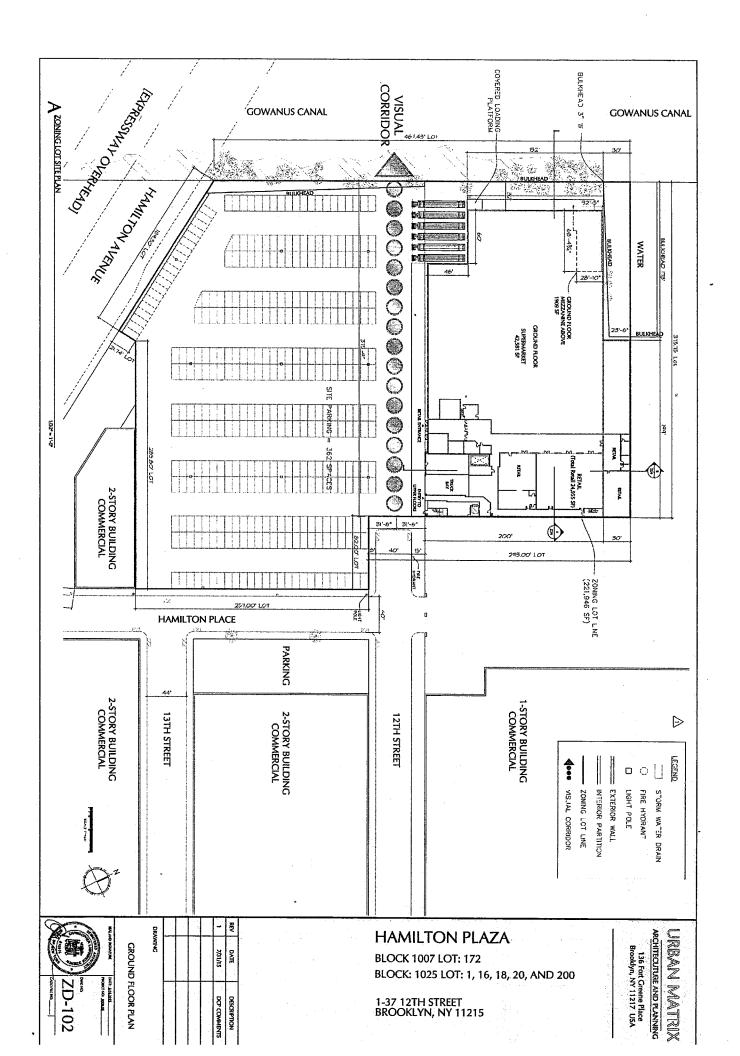
BLOCK 1007 LOT: 172

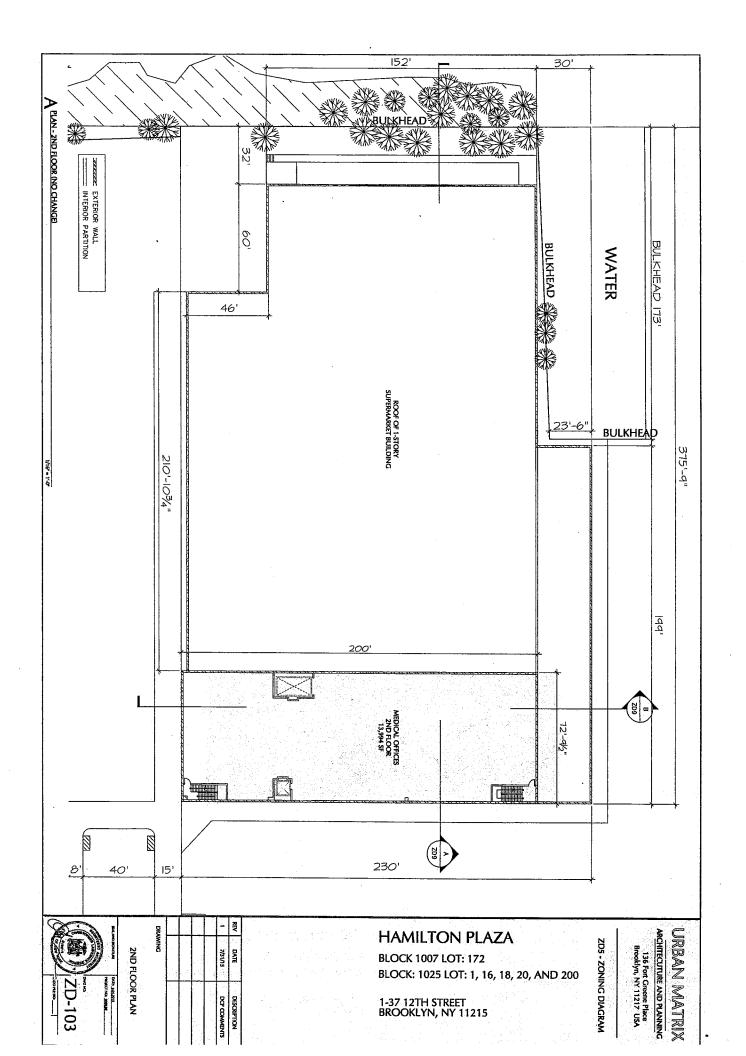
BLOCK: 1025 LOT: 1, 16, 18, 20, AND 200

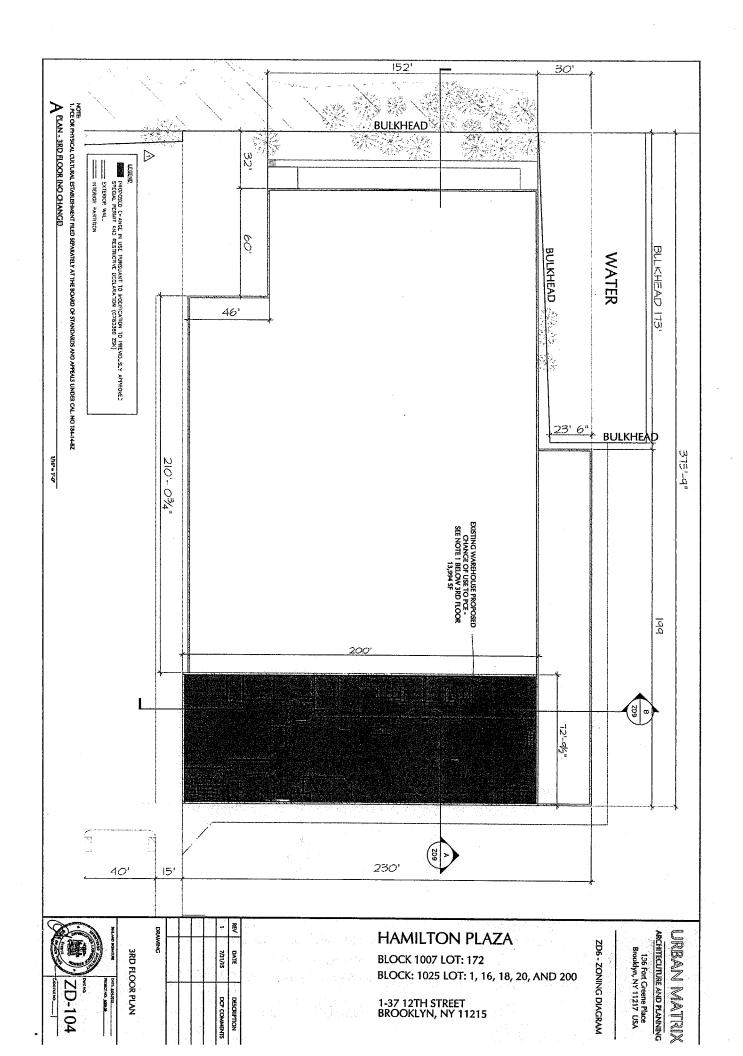
1-37 12TH STREET BROOKLYN, NY 11215

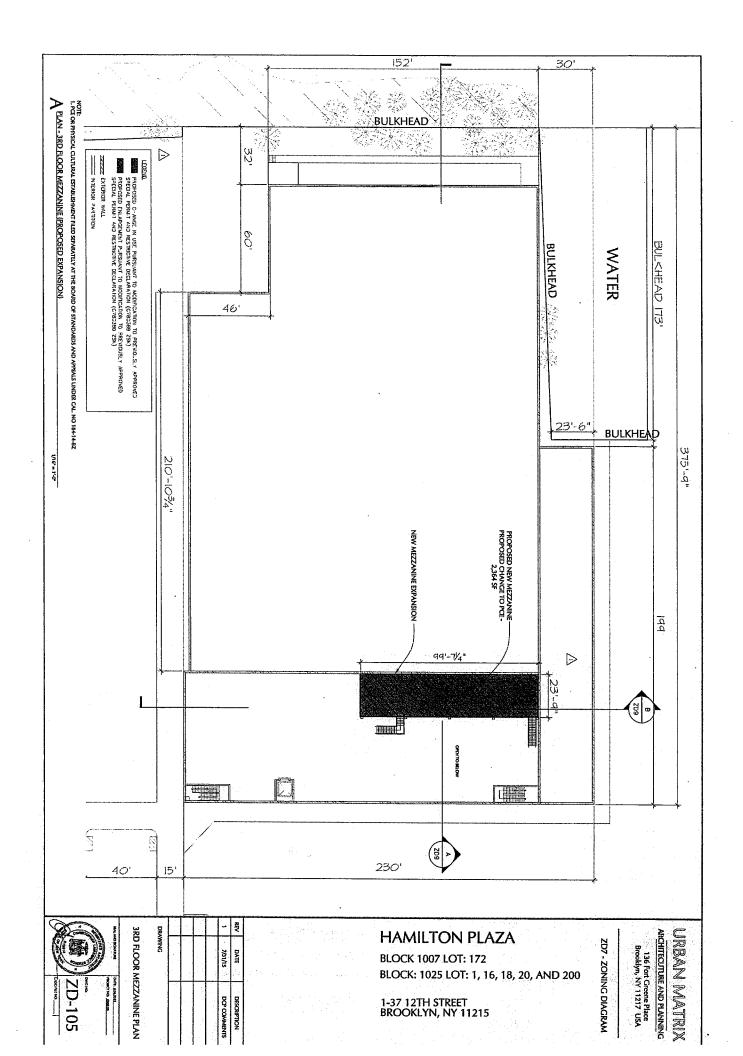
URBAN MATRIX ARCHITECUTURE AND PLANNING 136 Fort Greene Place Brooklyn, NY 11217 USA

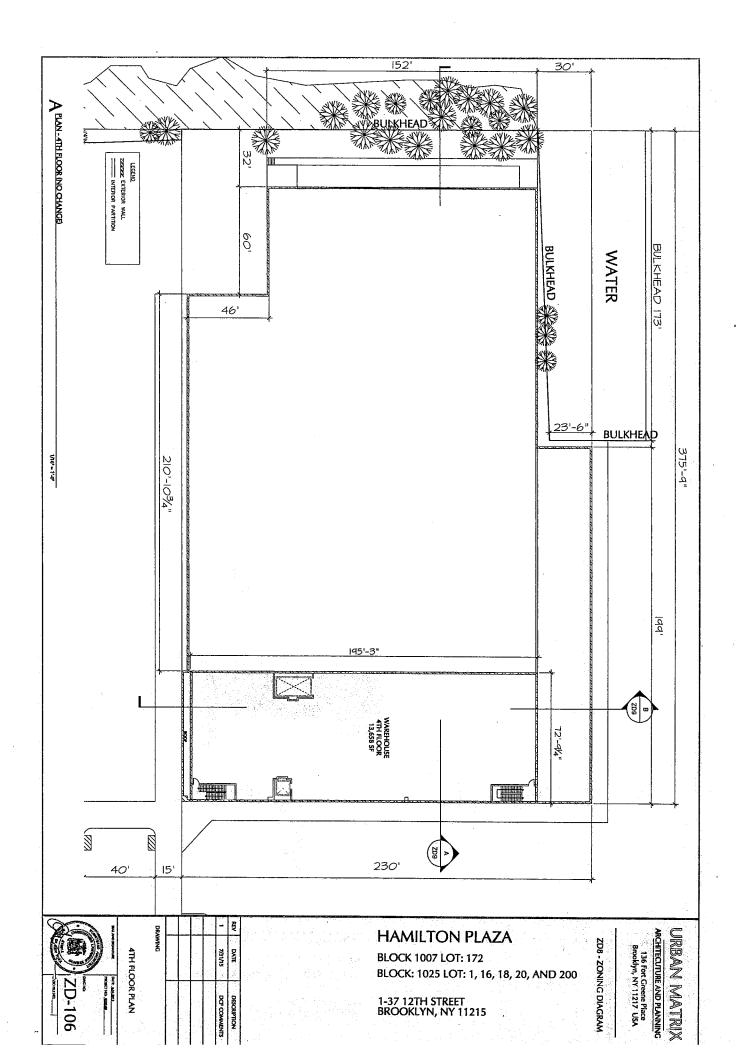


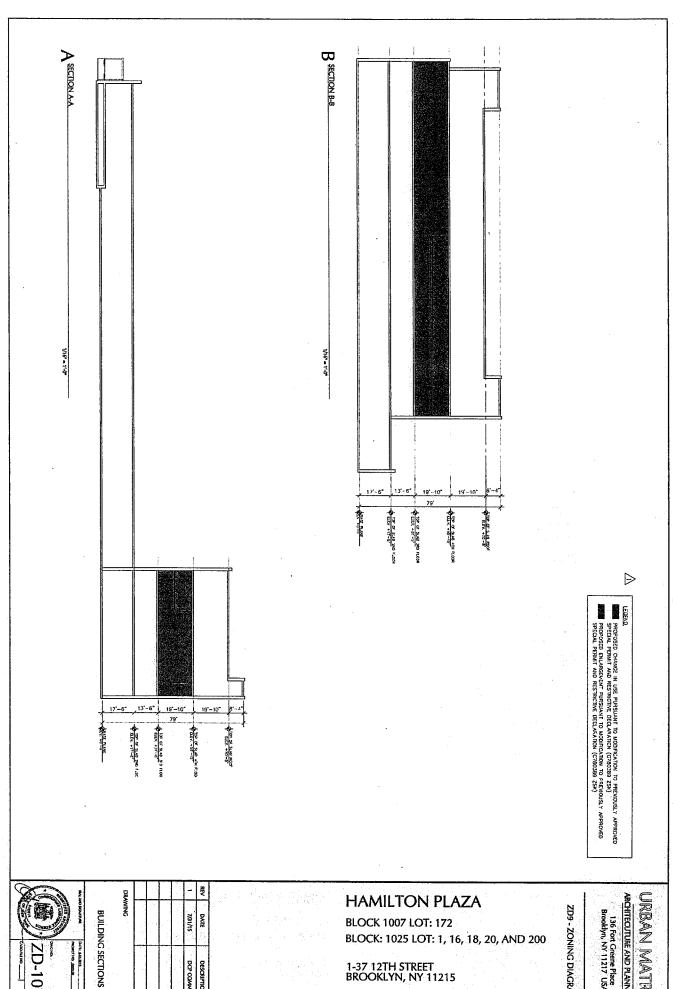












DCP COMMENT

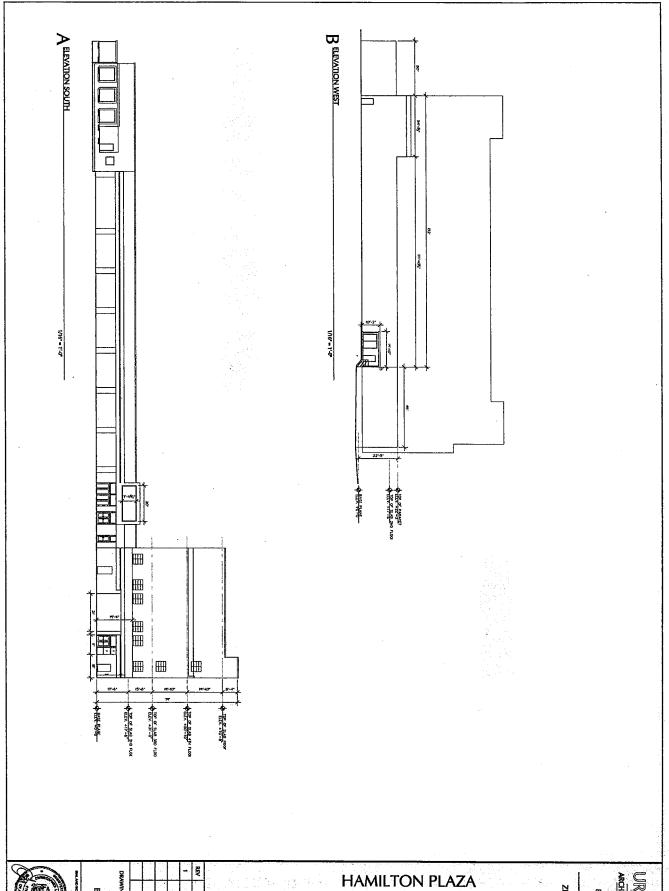
ZD-107

BLOCK: 1025 LOT: 1, 16, 18, 20, AND 200

1-37 12TH STREET BROOKLYN, NY 11215

ZD9 - ZONING DIAGRAM

ARCHITECUTURE AND PLANNING URBAN MATRIX 136 Fort Greene Place Brooklyn, NY 11217 USA



DEAMING

BUILDING ELEVATIONS

BUILDING ELEVATIONS

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BLOCK 1007 LOT: 172

BLOCK: 1025 LOT: 1, 16, 18, 20, AND 200

1-37 12TH STREET BROOKLYN, NY 11215

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ZD10 - ZONING DIAGRAM	Brooklyn, NY 11217 USA	136 Fort Creene Place	RCHITECUTURE AND PLANNING	URBAN MATRIX
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